



# Burleigh County Water Resource District

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

## Terms and Conditions for Sale of Auctioned Properties October 13, 2015

### 1. GENERAL TERMS AND CONDITIONS

The Burleigh County Water Resource District ("Seller") will receive sealed bids for property it has acquired through voluntary acquisition. Bids shall be delivered either by mail or in person to: Bliss Law Firm, LLC, 400 East Broadway Avenue, Suite 308, Bismarck, North Dakota 58502-4126 (701-223-5769) until 5 pm the day before the bid, or they may be delivered in person at the time and place noted for the bid opening.

The sealed bids will be opened during a special meeting of the Burleigh County Water Resource District on November 10, 2015 at 12 o'clock noon, held in the Tom Baker Meeting Room, City/County Building 221 North 5th Street, Bismarck, ND 58501. The top five Bidders will have an opportunity to increase their bids at that time.

Buyers will not be discriminated against based on sex, race, color, religion, or national origin.

### 2. PROPERTY RESTRICTIONS

Deed restrictions will not allow the construction of any structures on any of the four properties at any time. The Seller retains the right to construct a flood control project across the properties at any time in the future. The properties are subject to the existing easements for maintenance of the Federally-constructed bank stabilization measures. Local covenants may further restrict the use of the property. Copies of these covenants, deed restrictions and easements are attached to these Terms and Conditions as appendices. Bank stabilization measures installed by the Seller or by private parties are provided and accepted **as-is** with no guarantee or warranty as to existing condition or future maintenance.

### 3. DISCREPANCIES

Information presented on the Seller's website and printed and digital ads are for informational purposes only. Discrepancies, if any, are the Buyer's sole responsibility. The Buyer agrees to hold the Seller harmless for any damages as a result of discrepancies not resolved at the time of bidding.

4. **AUCTION DETAILS**

Auction details will be posted on the Burleigh County Water Resource District's website located at [www.bcwrld.org](http://www.bcwrld.org). Specific questions as to the sale may be directed to District Engineer Michael Gunsch (323-0200) or District Counsel, David Bliss, Bliss Law Firm, LLC (223-5769).

5. **SUBMITTING A BID**

All bids shall be binding. The Buyer will be required to sign a bill of sale and must comply with the terms and conditions stated herein and those terms and conditions set forth in the bill of sale. Retractions of bids will not be allowed. The BCWRD has through its own review established a reserve price for each of the subject property. The BCWRD reserves the right to not sell any property, if the reserve price for each and every individual property has not been met. Subsequently, the designated reserve price or minimum bid for each property located in the Riverside Subdivision shall be as follows:

Description	Acreage	Reserve Price
Lot 1, Block 1	0.88 acres	\$ 48,300
Lot 6 and N½ of Lot 5 Block 1	1.50 acres	\$ 82,300
Lot 7 and S½ of Lot 8 Block 1	0.96 acres	\$ 52,600
Lot 9 and N½ of Lot 8 and S½ of Lot 10 Block 1	1.58 acres	\$ 86,600

Survey certificates for each individual property are included in the appendices. Each property is provided as-is. The Seller makes no specific representation as to the condition of the property. The Buyer is solely responsible to make their own observations of the property. The Seller hereby informs the Buyer that the North Dakota State Engineer has defined the Ordinary High Water Mark on the property, which defines the location in change from private ownership to sovereign lands.

6. **INSURANCE AND RISK OF LOSS**

The Buyer is responsible for obtaining insurance on the property within seven (7) days of the date of the sale. Risk of loss or damage to the property will transfer from the Seller to the Buyer upon acceptance of the Buyer's bid. The Seller shall not be held responsible for any losses incurred by the Buyer once the auction is complete and the sale is finalized.

If flooding conditions occur and warrant emergency flood protection to be placed on the property, the Seller reserves the right to construct emergency flood protection operations on any portion of the property at any future date.

7. **AMENDMENTS, MODIFICATIONS OR WAIVERS**

No amendment, modification, or waiver of any condition, provision or term shall be valid or of any effect unless made in writing and signed by Buyer and Seller, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not effect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein shall limit the remedies and rights of the parties.

## **8. INDEMNITY AND HOLD HARMLESS**

The Buyer agrees to indemnify and hold the Seller, its directors, employees, attorneys and agents harmless from any and all claims, liabilities, losses, damages and expenses, including claims arising from death or personal injury and attorney's fees, that may arise directly or indirectly from the condition of the property or the Buyer's performance of these terms and conditions.

## 9. BINDING EFFECT

The terms herein and the bill of sale comprise the entire agreement and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

## 10. GOVERNING LAW

This agreement shall be governed by the laws of the State of North Dakota.

Dated this \_\_\_\_ day of November 2015

Burleigh County Water Resource District, a  
political subdivision, State of North Dakota

By: \_\_\_\_\_  
Terry Fleck, Its Chairman  
(Seller)

[illegible]

On this \_\_\_\_\_ day of November 2015, before me, a notary public within and for said county and state, personally appeared Terry Fleck, Chairman, known to me to be the person described in and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same on behalf of the Burleigh County Water Resource District.

David R. Bliss, Notary Public  
Burleigh County, North Dakota  
My commission Expires: 10-16-13

The Buyer and/ or the Buyer's agent hereby agree to purchase the above-described property for the price and on the terms and conditions set forth in this agreement.

(Buyer)

[illegible]

On this \_\_\_\_\_ day of November 2015, before me, a notary public within and for said county and state, personally appeared \_\_\_\_\_, known to me to be the Buyer described in and who executed the within foregoing instrument.

\_\_\_\_\_, Notary Public  
Burleigh County, North Dakota  
My Commission Expires: \_\_\_\_\_

## **Appendices**

### **Appendix A - Riverside Subdivision Restrictive Covenants**

**Document No. 360265 (5/28/1985)**

**Document No. 465644 (6/25/1995)**

**Document No. 819117 (2/6/2015)**

### **Appendix B – Easement and Deed Restrictions**

### **Appendix C – Bank Stabilization Easement Documents**

**Document No. 272820 (9/13/1976)**

**Document No. 362793 (8/22/1985)**

**Document No. 362794 (8/22/1985)**

### **Appendix D - Lot Exhibits Riverside Subdivision**

**Lot 1, Block 1**

**Lot 6 and N½ of Lot 5 Block 1**

**Lot 7 and S½ of Lot 8 Block 1**

**Lot 9 and N½ of Lot 8 and S½ of Lot 10 Block 1**

### **Appendix E – Permits**

**Sovereign Land Permit S-1818 – Section 32 COE**

**Sovereign Land Permit S-1871 – BCWRD**

**Corps of Engineers Permit [NOW-2013-1633-BIS]**

# **Appendix A**

## **Riverside Subdivision Restrictive Covenants**

**Document No. 360265 (5/28/1985)**

**Document No. 465644 (6/25/1995)**

**Document No. 819117 (2/6/2015)**

(113)

(2) No lot shall be

Dated May 28, 1985

Filed June 7, 1985 10:30 AM

Recorded as Doc. No. 360265

(06) No other building shall at any time be used as a

residence, except as hereinafter provided.

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned are the owners and grantors of all of the lots within the Riverside Subdivision and other lands on Bourgois Island to be developed by owners and are desirous of recording the following building and use restrictions to the following legally described property and other properties to be developed on Bourgois Island by owners:

Lot One (1) through Lot Twenty-Six (26), Block One (1), shall be Lot One (1) through Lot Six (6), Block Two (2); Lot One (1) through Lot Six (6), Block Three (3); Riverside Subdivision, situated in Sections Twenty-Seven (27) and Twenty-Eight (28), Township 140, Range 81 West, Burleigh County, North Dakota.

NOW, THEREFORE, in consideration of the premises, the undersigned hereby establishes and declares the following building restrictions and protective covenants which shall be applicable to all of the above described real estate.

PERSONS BOUND BY THE COVENANTS & RESTRICTIONS:

All persons, corporations or other entities, who shall hereafter acquire any interest in and to the above described real estate herein after referred to as grantees, shall be taken to hold and agree and covenant with the owners of the lots and with their heirs, trustees and assigns, to conform to and to observe the following covenants, restrictions and stipulations as to the use thereof, and as to the construction of residence and improvements thereon:

BUILDING & USE RESTRICTIONS:

(01) Each lot shall be known as a residential lot and shall be sold solely for residential purposes. No structure shall be erected, altered, placed or permitted upon any such residential lot other than one detached single family dwelling, not to exceed two stories in height, with double garage minimum.

(02) Each dwelling unit constructed on the lots shall have a minimum of 1,140 square feet excluding its garage. In the event it is necessary to calculate the square feet on more than one level in order to equal 1,140 square feet, the total of all levels of said dwelling must collectively have a minimum of 1,600 square feet.

(03) The term residential as used herein shall be construed as single family residences, to exclude the rental of portions of the home, and to further exclude professional and commercial uses.

(04) None of the property shall at any time be used for purpose of any trade, professional, manufacturing or business of any description.

(continued)

(2) No lot shall be Dated May 28, 1985, of  
conveyed as more than one dwelling unit, as shown  
Recorded as Doc. No. 360265

(3) No trailer, mobile home, or other structure, other than a  
dwelling unit, shall at any time be used on a  
lot. DECLARATION OF RESTRICTIONS All my successors and

WHEREAS, the undersigned are the owners and grantors of all of  
the lots within the Riverside Subdivision and other lands on Bourgois  
Island to be developed by owners and are desirous of recording the  
following building and use restrictions to the following legally  
described property and other properties to be developed on Bourgois  
Island by owners:

Lot One (1) through Lot Twenty-Six (26), Block One (1);  
Lot One (1) through Lot Six (6), Block Two (2);  
Lot One (1) through Lot Six (6), Block Three (3);  
Riverside Subdivision, situated in Sections Twenty-Seven  
(27) and Twenty-Eight (28), Township 140, Range 81 West,  
Burleigh County, North Dakota.

NOW, THEREFORE, in consideration of the premises, the undersigned  
hereby establishes and declares the following building restrictions and  
protective covenants which shall be applicable to all of the above  
described real estate.

PERSONS BOUND BY THE COVENANTS & RESTRICTIONS:

All persons, corporations or other entities, who shall hereafter  
acquire any interest in and to the above described real estate herein-  
after referred to as grantees, shall be taken to hold and agree and  
covenant with the owners of the lots and with their heirs, trustees  
and assigns, to conform to and to observe the following covenants,  
restrictions and stipulations as to the use thereof, and as to the  
construction of residence and improvements thereon.

BUILDING & USE RESTRICTIONS:

(01) Each lot shall be known as a residential lot and shall  
be sold solely for residential purposes. No structure shall be  
erected, altered, placed or permitted upon any such residential lot  
other than one detached single family dwelling, not to exceed two  
stories in height, with double garage minimum.

(02) Each dwelling unit constructed on the lots shall have a  
minimum of 1,140 square feet excluding its garage. In the event it is  
necessary to calculate the square feet on more than one level in  
order to equal 1,140 square feet, the total of all levels of said  
dwelling must collectively have a minimum of 1,600 square feet.

(03) The term residential as used herein shall be construed as  
single family residences, to exclude the rental of portions of the  
home, and to further exclude professional and commercial uses.

(04) None of the property shall at any time be used for purpose  
of any trade, professional, manufacturing or business of any description

(continued)



anything be done thereon which may become an annoyance or nuisance to the neighborhood.

(05) No lot shall be sub-divided for the purpose of constructing more than one dwelling on any lot as platted.

(06) No trailer, mobile home, motor home, basement, tent, shack, garage or other building erected shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary basis be used as a residence, and the exterior of the dwelling shall be finished in their entirety before they can be occupied.

(07) Detached storage buildings must be erected in accordance with county specifications and exterior finish must match the primary residence thereon.

(08) No horse, cow, hog, goat or similar animal shall be kept or maintained on any lot nor shall any chicken yard or similar factory be maintained thereon. However, domestic pets may be kept by the owners, which domestic pets shall be defined as meaning not more than two (2) cats and not more than two (2) dogs, subject, however, to proper confinement and control so as not to create a nuisance or be offensive to other owners. The commercial breeding and sale of any animal is forbidden upon any lot or tract. All dogs shall be either maintained on a leash or other otherwise restricted to the owner's premises so as not to run at large at any time. No kennel will be erected within twenty (20) feet of the boundary line of any adjacent lot within the subdivision.

(09) No construction material of any nature shall be moved upon the lot prior to sixty (60) days before the start of construction and any building started shall have its exterior completed within one (1) year from the date of its starting. All construction debris is to be removed within thirty (30) days after occupancy or finish of its exterior.

(10) No trash, ashes or other refuse may be thrown or dumped on any vacant lot. All trash or other refuse, cans and containers, shall be kept in garages or in enclosures such that they will be concealed from the view of streets and lots which are adjacent to the lot on which they are located except on days garbage pickup is made. No burning barrels shall be allowed on the premises.

117 No clothesline poles, wires or devices for hanging clothes shall be erected outside any home or building except that retractable clothesline apparatus may be erected outside any home or building in the back yard.

(12) No structure shall be erected, altered or placed closer than fifty (50) feet from the front of the lot line or fifteen (15) feet from the side or rear lot line. It is further covenanted by the grantees, and their successors and assigns, of Lots One (1) through Twenty (20) inclusive, that no structure shall be erected, altered or placed within the setback area as depicted on the plat of the Riverside Subdivision. The setback area is defined as that area from the bank of the Missouri River to that line which originates 184 feet southeast of said river on the northeast boundary of Lot Twenty (20) and extends to that point 25 feet southwest of said river on the southwest boundary of Lot One (1).

(13) All fences erected on any lot shall not exceed six (6) feet in height.

(14) There shall be no abandoned or junked or wrecked vehicles stored on any of the lots unless stored within the garage.

(15) No signs, billboards or advertising devices of any kind, except those used in any subsequent sale of the property, shall be placed or otherwise installed on any lot or building. Said signs may not exceed nine (9) square feet in area.

(16) In the interest of public health and sanitation, and so that the land above described and all other land in the same locality may be benefited by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wildlife, and other public uses, grantee will not use the above described property for any purpose that would result in the pollution of any waterway by refuse, sewage or other material that might tend to pollute the waters of any stream or impair the ecological balance of the surrounding land. All garbage must be maintained in steel metal, plastic or concrete constructed containers and all septic tanks and drainage fields shall be constructed according to appropriate state and local authorities standards and requirements.

(17) All lots conveyed are conveyed as unimproved property without any obligation on the part of the grantors to improve the same or the street in or adjacent to such property, or to other

(17) The grantors hereby agree to discharge all public covenances for the benefit of their property with the exception of the grantors' obligation to install: A) An elevated gravel road connecting the Riverside Subdivision to North Dakota Highway 1804; B) An elevated gravel road as depicted in the plat of Riverside Subdivision on file with the Burleigh County Register of Deeds; and C) A fully operational boat landing adjacent to Lot One (1) of the Riverside Subdivision.

(18) Capital Improvements: It is further covenanted by all owners of lots within the subdivision for themselves, their successors and assigns, that in the event the grantors, their successor or assigns, as owners of seventy percent (70%) of the lots of the subdivision should decide to further grade, pave or otherwise improve the street, or to install or construct water or sewer lines or other improvements, each lot shall bear its part of the cost of such improvements in proportion to the total number of lots located in the subdivision. These covenants shall run with the land and the cost of the improvements referred to above shall be a charge on the land and whatsoever hands it shall be at the time of such improvements. If payment for a lot's part of constructing or improving the above-referenced items is not received within thirty (30) days of written notice requesting payment thereof, a majority (51%) of the lot owners, or their agent, is herein expressly authorized to execute and file a lien on that lot to secure payment of said costs.

(19) Maintenance: It is further covenanted by all lot owners within the subdivision for themselves, their successors and assigns that should a majority (51%) of the lot owners in the subdivision decide that, in the best interest of the subdivision, general upkeep and repairs of the roads, boat landing or other improvements of the subdivision are necessary, the property hereby conveyed shall bear its part of the cost of such general upkeep and repairs in proportion to the total number of lots located in this subdivision. These covenants shall run with the land, and the cost of the upkeep and repair referred to above shall be a charge on the land and whatsoever hands it shall be at the time of such improvements. If payment of a lot's part of the above-referenced cost of general upkeep and repair is not received within thirty (30) days of written notice requesting payment thereof, a majority (51%) of the lot owners, or their agent, is herein expressly authorized to execute and file a

Dated this 28<sup>th</sup> day of May, 1985.

Peter Hogue  
Peter Hogue, Owner

Karen Hogue  
Karen Hogue, Owner

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF BURLEIGH )

On this 28<sup>th</sup> day of May, 1985, before me, a notary  
public within and for said county and state, personally appeared

Peter Hogue and Karen A. Hogue known to me to  
be the same persons who is described in, and who executed the above  
and foregoing instrument and severally acknowledged to me that  
they executed the same.

(SEAL)

Harmon D. Steink  
Notary Public  
Burleigh County, North Dakota  
My Commission Expires: July 11, 1987

End Doc. No. 360265

465644

### DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned are the owners and grantors of all of the lots within the Riverside Subdivision and other lands on Bourgois Island to be developed by owners;

AND WHEREAS, the undersigned desire to amend those restrictive covenants dated May 28, 1985, and recorded with the Burleigh County Register of Deeds on June 7, 1985, as Document No. 360265;

AND WHEREAS, the undersigned are desirous of recording the following revised building and use restrictions to the following legally described property and other properties to be developed on Bourgois Island by owners:

Lot One (1) through Lot Twenty-six (26), Block One (1);  
Lot One (1) through Lot Six (6), Block Two (2); Lot One  
(1) through Lot Six (6), Block Three (3); Riverside Subdivision,  
situated in Section Twenty-seven (27) and Twenty-eight (28),  
Township 140, Range 81 West, Burleigh County, North  
Dakota.

NOW THEREFORE, in consideration of the premises, the undersigned hereby establish and declare the following building restrictions and protective covenants which shall be applicable to all of the above described real estate.

#### PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS:

All persons, corporations or other entities, who shall hereafter acquire any interest in and to the above described real estate hereinafter referred to as grantees, shall be taken to hold and agree and covenant with the owners of the lots and with their heirs, trustees and assigns, to conform to and to observe the following covenants, restrictions and construction of residence and improvements thereon.

The present owners and grantors as of June 25, 1995 must meet the covenant restrictions specified in the covenant and registered as document No. 360265 and any new owners and grantees after June 25, 1995 must meet the covenants and restrictions specified as document No. recorded with the Burleigh County Register of Deeds on

#### BUILDING AND USE RESTRICTIONS:

(01) Each lot shall be known as a residential lot and shall be sold solely and exclusively for residential purposes. No structure shall be erected, altered placed or permitted upon any such residential lot, other than one single family dwelling with attached double garage minimum.

(02) The living area of the dwelling structure, exclusive of open porches and garages, shall be not less than 1,800 square feet.

(03) The term residential as used herein shall be construed as single family residences and shall exclude the rental of portions of the home, and shall exclude professional and commercial uses.

(04) All dwelling units shall be constructed on site of new materials only. No existing or prefabricated dwelling structures shall be moved, placed or permitted on the property. Only newly constructed dwellings shall be erected, placed or permitted on any lot.

(05) No dwelling or other structure shall be erected on any building lot in the above-described subdivision until the plans and specifications, along with the proposed site for such structure, have been submitted to and approved by the Riverside Subdivision Review Committee (Committee). The Committee consists of Peter Hogue, Karen Hogue and one person who has ownership interest in the following lots: 3, 9, 15, and 20. The committee must act on any request within thirty (30) days of receiving a written request to construct a residential dwelling. The written request must provide the Committee the following information:

1. Name and address of the building contractor;
2. Precise location of the residential structure on the lot;
3. A list of building materials the applicant intends to use;
4. A drawing illustrating the height, width, depth, and shape of any proposed structure.

If the Committee fails to approve or reject the proposal by sending written or oral notice to the applicant within thirty (30) days of the applicant's written request, the proposal shall be deemed accepted and no further approval is necessary. The written application shall be mailed to one

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Operator's Signature

Kelvin Schmidt

Date

7-6-94

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of the Committee members at their regular mailing address, by certified mail or delivered personally to the chairperson of the Committee.

The Committee will review the application to assure its compliance with the restrictive covenants. A simple majority shall be necessary to approve the plans and specifications for the erection of a structure.

(06) No property shall at any time be used for any trade, profession, manufacturing or business of any description and no noxious or offensive activity shall be carried on nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

(07) No lot shall be sub-divided without the approval of the Committee. A fractional lot adjacent to a lot of the same land owner, (a fractional lot plus the adjacent lot), will be considered as one (1) lot in construction, improvements and in voting. Once the lot boundary is determined, further subdividing will not be permitted without approval of the Review Committee.

(08) No trailer, mobile home, tent, shack, garage or other building erected shall at any time be used as a dwelling, temporarily or permanently, nor shall any structure of a temporary basis be used as a dwelling, and the exterior of the dwelling shall be finished in its entirety before it can be occupied. No trailer, mobile home, motor homes or equipment shall be stored on any portion of the Subdivision unless stored within the garage or directly adjacent to the structure.

(09) No detached storage buildings are allowed without prior written approval of the Committee.

(10) No horse, cow, hog, goat or similar animal shall be kept or maintained on any lot nor shall any chicken yard or similar factory be maintained thereon. However, domestic pets may be kept by the owners, which domestic pets shall be defined as meaning not more than two (2) cats and not more than two (2) dogs, subject however, to proper confinement and control so as not to create a nuisance or be offensive to other owners. The commercial breeding and sale of any animal is forbidden upon any lot or tract. All dogs shall be either maintained on a leash or otherwise restricted to the owner's premises so as not to run at large at any time. No kennel will be erected or placed within fifteen (15) feet of the boundary line of any adjacent lot within the subdivision.

(11) No construction material of any nature shall be moved upon the lot prior to sixty (60) days before the start of construction and any building started shall have its exterior completed within one (1) year from the date of its starting. All construction debris is to be removed within thirty (30) days after occupancy or finishing of a structure's exterior. Lots without structures shall be free of all building materials, detached structures, fences, vehicles, shacks, or other unsightly debris as determined by the Committee.

(12) No trash, ashes or other refuse may be thrown, dumped or stored on any lot. All trash, other refuse, and trash cans and containers shall be kept in garages or in enclosures such that they will be concealed from the view of streets and lots which are adjacent to the lot on which they are located except on days garbage pickup is made. No burning barrels shall be allowed on the premises.

(13) No clothesline poles, wires or devices for hanging clothes shall be erected outside any home or building except that retractable clothesline apparatus may be erected outside any home or building in the back yard.

(14) No structure shall be erected, altered or placed closer than fifty (50) feet from the front of the lot line or fifteen (15) feet from the side or rear lot line. It is further covenanted by the grantees, and their successors and assigns, of Lots One (1) through Twenty (20) inclusive, that no dwelling shall be erected, altered or placed within the setback area as depicted on the plat of the Riverside Subdivision. The setback area is defined as that area from the bank of the Missouri River to that line which originates 184 feet southwest of said river on the northeast boundary of Lot Twenty (20) and extends to that point 25 feet southwest of said river on the southwest boundary of Lot One (1).

(15) No fence erected on any lot shall exceed six (6) feet in height.

(16) There shall be no abandoned, junked or wrecked vehicles stored on any lots.

(17) No sign, billboards or advertising devices of any kind, except those used in any subsequent sale of the property, shall be placed or otherwise installed on any lot or building. Said signs may not exceed nine (9) square feet in area.

(18) In the interest of public health and sanitation, and so that the land above-described and all other land in the same locality may be benefited by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wildlife, and other public uses, grantee will not use the above

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Operator's Signature *Rebyn Schmeider*

Date *9-6-94*

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described property for any purposes that would result in the pollution of any waterway by refuse, sewage or other material that might tend to pollute the waters of any stream or impair the ecological balance of the surrounding land. All garbage must be maintained in steel, metal, plastic or concrete constructed containers and all septic tanks and drainage fields shall be constructed according to appropriate state and local authorities standards and requirements.

(19) All lots conveyed are conveyed as unimproved property without any obligation on the part of the grantors to improve the same or the street in or adjacent to such property, or to other conveniences for the benefits of such property with the exception of the grantors' obligations to install: A) An elevated gravel road connecting the Riverside Subdivision to North Dakota Highway 1804; B) An elevated gravel road as depicted in the plat of Riverside Subdivision on file with the Burleigh County Register of Deeds; and C) A boat landing adjacent to Lot One (1) of the Riverside Subdivision.

(20) Capital Improvements: It is further covenanted by all owners of lots within the subdivision for themselves, their successors and assigns, that in the event the grantors, their successor or assigns, as owners of eighty-five percent (85%) of the lots of the subdivision should decide to further grade, pave or to otherwise improve the street, or to install or construct water or sewer lines or other improvements, each lot shall bear its share of the cost of such improvements in proportion to the total number of lots located in the subdivision. These covenants shall run with the land and the cost of the improvements referred to above shall be a charge on the land and whatsoever hands it shall be at the time of such improvements. If payment for a lot's part of constructing or improving the above referenced items is not received within thirty (30) days of written notice requesting payment thereof, a majority (51%) of the lot owners, or their agents, if herein expressly authorized to execute and file a lien on that lot to secure payment of said costs.

(21) Maintenance: It is further covenanted by all lot owners within the subdivision for themselves, their successors and assigns that should seventy percent (70%) of the lot owners decide that, in the best interest of the subdivision, general upkeep and repairs of the roads, boat landing or other improvements of the subdivision are necessary, the property hereby conveyed shall bear its cost of such general upkeep and repairs in proportion to the total number of lots located in this subdivision. These covenants shall run with the land, and the cost of the upkeep and repair referred to above shall be a charge on the land and whatsoever hands it shall be at the time of such improvements. If payment of a lot's part of the above referenced cost of general upkeep and repair is not received within thirty (30) days of written notice requesting payment thereof, a majority (51%) of the lot owners, or their agents, is herein expressly authorized to execute and file a lien on said lot to secure payment of said costs.

(22) These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date of these covenants and restrictions are recorded, after which times said covenants and restrictions as recorded, after which times said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by seventy-five percent (75%) of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

#### RIGHT TO ENFORCE

The covenant and restrictions herein set forth shall run with the land and bind present owners, their heirs, devisees, trustees, and assigns, and any and all other parties claiming by, through, or under them, shall be taken to hold, agree and covenant with the owners of said lots, their heirs, devisees, trustees, and assigns, and with each of the owners of said lots, to conform to and observe said covenants and restrictions as to the use of said lots and the construction of improvements thereon; but, no covenants or restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breach which is committed during its, his, or their seizing of, or title to said land; and the owner or owners of any of the above lands shall have the right to sue for and obtain an injunction prohibitive or mandatory to prevent the breach of, or to enforce the observance of the covenants and restrictions above set forth, in addition to ordinary legal action for damages; and the failure of the present owners, or the owner or owners of any lot to enforce the covenant and restrictions herein set forth at the time of any violation thereof, shall be in no event deemed as a waiver of the right to do so. The above covenants and restrictions may be altered or amended at any time upon the placing of record at office of

MICROFILM CERTIFICATE - STATE OF NORTH DAKOTA - SFN 2051 (3-89)

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Operator's Signature *Karen Schmidt*

Date

7-6-94

25 x 8 1/4

the County Clerk and Recorder the written consent thereto by the owners of at least seventy-five percent (75%) of the above-described lots.

DATE

*Peter Hogue*  
Peter Hogue

8-29-94

*Karen G. Hogue*  
Karen G. Hogue

8-29-94

*Bill Wood*  
Bill Wood

6-7-94

*David A. Tschider*  
David A. Tschider

8-29-94

*Bernie A. Tschider*  
Bernie A. Tschider

*Earl J. Dunnigan*  
Earl J. Dunnigan

8/29/94

Jocelyn M. Dunnigan

Thomas A. Lenihan

Bonita B. Lenihan

*Russell K. Kunz*  
Russell K. Kunz

6-7-94

*Rita M. Kunz*  
Rita M. Kunz

6-7-94

*John Adams*  
John Adams

6-7-94

*Renee Adams*  
Renee Adams

6/7/94

*Lynn Mills*  
Lynn Mills

6/22/94

*Sharalyn D. Mills*  
Sharalyn Mills Sharalyn Mills

6/22/94

*Engel Dressler*  
Engel Dressler

6/7/94

*Patricia Dressler*  
Patricia Dressler

6-7-94

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Operator's Signature *Karen A. Nichols*

Date

9-6-94

25x60



Bruce Belzer Susan Belzer 8-22-94

Dennis Kemmesat

Charlyne Kemmesat

TOD BAER 6-7-94

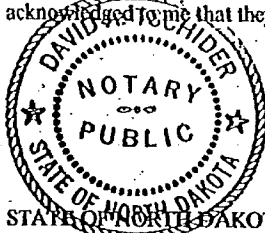
Patricia D. Baer 6-7-94

Patricia G. Baer

STATE OF NORTH DAKOTA )

COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of June, 1994, before me a notary public, within and for said county and state, personally appeared Karen and Peter Hogue, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged to me that they executed the same.



Dave Tschider

DAVE TSCHIDER, Notary Public

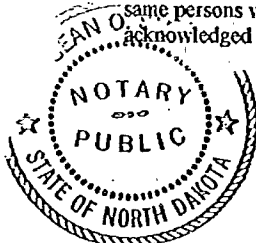
Burleigh County, North Dakota

My commission expires: 03-25-97

STATE OF NORTH DAKOTA )

COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of June, 1994, before me a notary public, within and for said county and state, personally appeared David and Bernie Tschider, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged to me that they executed the same.



Sean O. Smith

SEAN O. SMITH, Notary Public

Burleigh County, North Dakota

My commission expires: \_\_\_\_\_

STATE OF NORTH DAKOTA )

COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of June, 1994, before me a notary public, within and for said county and state, personally appeared Thomas and Bonita Lenihan, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged to me that they executed the same.

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

Burleigh County, North Dakota, My commission expires: \_\_\_\_\_

MICROFILM CERTIFICATE - STATE OF NORTH DAKOTA - SFN 2051 (3-89)

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Operator's Signature Kathryn A. Schaefer

Date

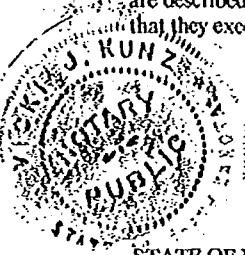
9-6-94

25X11

STATE OF NORTH DAKOTA )

COUNTY OF BURLEIGH )

On this 7<sup>th</sup> day of June, 1994, before me, a notary public, within and for said county and state, personally appeared Rita and Russell Kunz, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged to me that they executed the same.

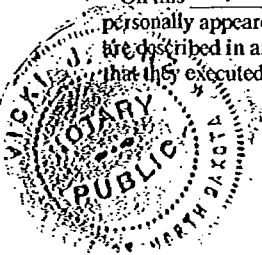


Vicki J. Kunz  
Vicki J. Kunz, Notary Public  
Burleigh County, North Dakota  
My commission expires: 11-2-97

STATE OF NORTH DAKOTA )

COUNTY OF BURLEIGH )

On this 7<sup>th</sup> day of June, 1994, before me, a notary public, within and for said county and state, personally appeared John and Renae Adams, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged to me that they executed the same.

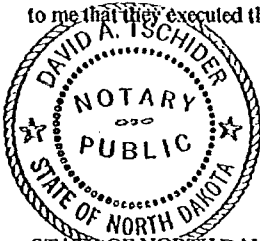


Vicki J. Kunz  
Vicki J. Kunz, Notary Public  
Burleigh County, North Dakota  
My commission expires: 11-2-97

STATE OF NORTH DAKOTA )

COUNTY OF BURLEIGH )

On this 22 day of June, 1994, before me, a notary public, within and for said county and state, personally appeared Lynn and Sharlyn Mills, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged to me that they executed the same.



David A. Ischider  
DAVE ISCHIDER, Notary Public  
Burleigh County, North Dakota  
My Commission expires: 03-25-97

STATE OF NORTH DAKOTA )

COUNTY OF BURLEIGH )

On this 7<sup>th</sup> day of June, 1994, before me, a notary public, within and for said county and state, personally appeared Patricia and Enge Dressler, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged

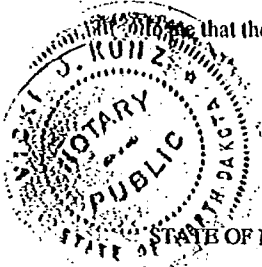
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Operator's Signature Karen A. Schaefer

Date 9-6-94

25 X 8 1/2

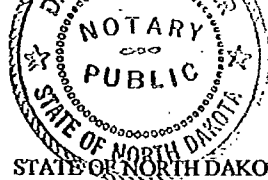


that they executed the same.

Vicki J. Kunz  
 Vicki J. Kunz, Notary Public  
 Burleigh County, North Dakota  
 My Commission expires: 11-2-97

STATE OF NORTH DAKOTA )  
 )  
 COUNTY OF BURLEIGH )

On this 29<sup>th</sup> day of June 1994, before me, a notary public, within and for said county and state, personally appeared Earl and Joselyn Dunnigan, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged to me that they executed the same.



Dave Thuermer  
 Dave Thuermer, Notary Public  
 Burleigh County, North Dakota  
 My Commission expires: 03-25-97

STATE OF NORTH DAKOTA )  
 )  
 COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of June, 1994, before me, a notary public, within and for said county and state, personally appeared Dennis and Charlyne Kemmesat, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged to me that they executed the same.

\_\_\_\_\_, Notary Public  
 Burleigh County, North Dakota  
 My Commission expires: \_\_\_\_\_

STATE OF NORTH DAKOTA )  
 )  
 COUNTY OF BURLEIGH )

On this 7<sup>th</sup> day of June, 1994, before me, a notary public, within and for said county and state, personally appeared Bill Wood, known to me to be the same person who is described in and who executed the above and foregoing instrument and severally acknowledged to me that he executed the same.



Vicki J. Kunz  
 Vicki J. Kunz, Notary Public  
 Burleigh County, North Dakota  
 My Commission Expires: 11-2-97

MICROFILM CERTIFICATE - STATE OF NORTH DAKOTA - SFN 2051 (3-89)

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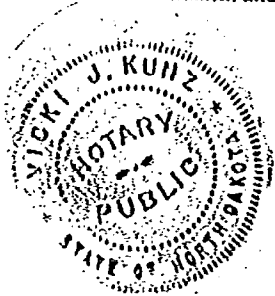
Operator's Signature Kelvin Ahnau Date 7-6-94

25 x 5.1

STATE OF NORTH DAKOTA )

COUNTY OF BURLEIGH )

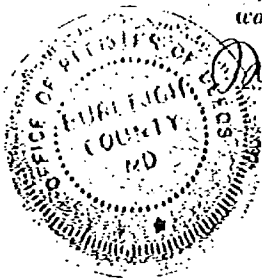
On this 7<sup>th</sup> day of June, 1994, before me, a notary public, within and for said county and state, personally appeared Tod Baer and Patricia B. Baer, husband and wife, known to me to be the same persons who are described in and who executed the above and foregoing instrument and severally acknowledged to me that they executed the same.



Vicki J. Kunz  
Vicki J. Kunz, Notary Public  
Burleigh County, North Dakota  
My Commission Expires: 11-2-97

STATE OF NORTH DAKOTA ) SS  
COUNTY OF BURLEIGH, )

I hereby certify that the within instrument was filed in this office for record on the 10 day of AUG, 30 1994 A.D., 19 at 12:35 o'clock P M. and was duly recorded. 465644



Debra Heil  
REGISTER OF DEEDS

\$31.00 Rita Kunz  
10020 Island Rd  
Bismarck ND 58501-9259

MICROFILM CERTIFICATE - STATE OF NORTH DAKOTA - SFN 2051 (3-89)

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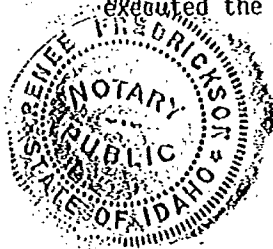
Operator's Signature Kathy Schaefer

DATE 9-6-94

25X51

State of Idaho  
County of Latah

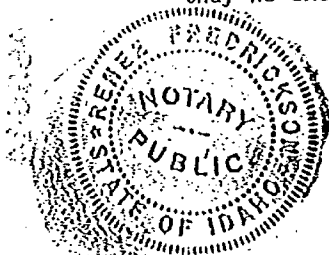
On this 22nd day of August, 1994, before me, a notary public, within and for said county and state, personally appeared Suzan Belzer, known to me to be the same person who is described in and who executed the above and foregoing instrument and severally acknowledged to me they she executed the same.



*Renee Fredrickson*  
Notary Public  
State of Idaho, County of Latah  
Expires: 7-20-00

State of Idaho  
County of Latah

On this 23rd day of August, 1994, before me, a notary public, within and for said county and state, personally appeared Bruce Belzer, known to me to be the same person who is described in and who executed the above and foregoing instrument and severally acknowledged to me that he executed the same.



*Renee Fredrickson*  
Notary Public  
State of Idaho, County of Latah  
Expires: 7-20-00

MICROFILM CERTIFICATE - STATE OF NORTH DAKOTA - SFN 2051 (3-89)

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Operator's Signature

*Robin Achard*

Date

7-6-94

25 X 11

**819117**

ANDECREST \$76.00  
Page: 1 of 22  
2/6/2015 9:28 AM  
Burleigh County

## AMENDED DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned are the owners and grantors of all of the lots within the Riverside Subdivision and Riverside Second Subdivision and other lands on Bourgois Island to be developed by owners;

AND WHEREAS, the undersigned desire to amend those restrictive covenants relating to Riverside Subdivision recorded with the Burleigh County Register of Deeds on September 6, 1994 as Document No. **465644**;

AND WHEREAS, the undersigned are the owners and grantors of all of the lots within Riverside Subdivision are desirous of recording the following Amended Declaration of Restrictions to the following legally described property and other properties to be developed in Riverside Subdivision on Bourgois Island by owners:

Lot One (1) throughout Lot Twenty-six (26), Block One (1); Lot One (1) through Lot Six (6), Block Two (2); Lot One (1) through Lot Six (6), Block Three (3); Riverside Subdivision, situated in Section Twenty-seven (27) and Twenty-eight (28), Township 140, Range 81 West, Burleigh County, North Dakota.

AND WHEREAS, the undersigned desire to amend those restrictive covenants relating to Riverside Second Subdivision recorded with the Burleigh County Register of Deeds on August 6, 1997 as Document No. **500270**;

AND WHEREAS, the undersigned are the owners and grantors of all of the lots within Riverside Second Subdivision are desirous of recording the following Amended Declaration of Restrictions to the following legally described property and other properties to be developed in Riverside Second Subdivision on Bourgois island by owners:

Lot One (1) throughout Lot Nineteen (19), Block One (1); Lot One (1) throughout Lot Eleven (11), Block Two (2); Riverside Second Subdivision, situated in Section Twenty-seven (27), Twenty-eight (28), and Thirty-three (33) Township 140 North, Range 81 West, Burleigh County, North Dakota.

NOW, THEREFORE, in consideration of the premises, the undersigned hereby establish and declare the following building restrictions and protective covenants which shall be applicable to all of the above described real estate:

### PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS:

All persons, corporations or other entities, who shall hereafter acquire any interest in and to the above described real estate hereinafter referred to as grantees, shall be taken to hold and agree and covenant with the owners of the lots and with their heirs, trustees and assigns, to conform to and to observe the following covenants, restrictions and construction of residence and improvements thereon.

**BUILDING AND USE RESTRICTIONS:**

- (1) Each lot shall be known as a residential lot and shall be sold solely and exclusively for residential purposes. No structure shall be erected, altered placed or permitted upon any such residential lot, other than one single family dwelling with attached double garage minimum.
- (2) The living area of the dwelling structure, exclusive of open porches and garages, shall be not less than 1,800 square feet.
- (3) The term residential as used herein shall be construed as single family residences and shall exclude the rental of portions of the home, and shall exclude professional and commercial uses which would interfere with the appearance and integrity of Riverside Subdivision and Riverside Second Subdivision by the Riverside Subdivision and Riverside Second Subdivision Enforcement Committee;
- (4) All dwelling units shall be constructed of new materials only. No prefabricated dwelling structures shall be moved, placed or permitted on the property. Only newly constructed dwellings shall be erected, placed or permitted on any lot.
- (5) No dwelling or other structure shall be erected on any building lot in the above-described subdivision until the plans and specifications, along with the proposed site for such structure, have been submitted to and approved by the Riverside Subdivision and Riverside Second Subdivision Enforcement Committee (Committee).

The Committee shall consist of five members as follows: Karen Hogue, two representatives having an ownership interest in lots located in Riverside Subdivision and two representatives having an ownership interest in lots located in Riverside Second Subdivision. Representative Committee members shall be elected by majority vote at the combined annual meeting of the Riverside Subdivision and Riverside Second Subdivision. Representative Committee members shall serve three (3) year terms.

The Committee must act on any completed application within thirty (30) days of receiving a written request to construct a residential dwelling. The completed application must provide the Committee the following information:

- a) Name and address of the building contractor
- b) Precise location of the residential structure on the lot;
- c) A list of building materials the applicant intends to use
- d) A drawing illustrating the height, width, depth, square footage and shape of any proposed structure.

If the Committee fails to approve or reject the proposal by sending written or oral notice to the applicant within thirty (30) days of the application, the proposal shall be deemed accepted and no further approval is necessary. The written application shall be mailed to one of the Committee members at their regular mailing address, by certified mail or delivered personally to the chairperson of the Committee.

The Committee will review the application to assure its compliance with the restrictive



covenants. A simple majority shall be necessary to approve the plans and specifications for the erection of a structure.

If the Committee fails to approve or reject the proposal by sending written or oral notice to the applicant within thirty (30) days of the application, the proposal shall be deemed accepted and no further approval is necessary. The written application shall be mailed to one of the Committee members at their regular mailing address, by certified mail or delivered personally to the chairperson of the Committee.

The Committee will review the application to assure its compliance with the restrictive covenants. A simple majority shall be necessary to approve the plans and specifications for the erection of a structure.

(6) No property shall at any time be used for any trade, profession, manufacturing or business of any description which would be noxious or offensive, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood as determined in the exclusive and sole discretion of the Committee.

(7) No lot shall be sub-divided without the approval of the Committee. A fractional lot adjacent to a lot of the same land owner, (a fractional lot plus the adjacent lot), will be considered as one (1) lot in construction, improvements and in voting. Once the lot boundary is determined, further subdividing will not be permitted without approval of the Review Committee.

(08) No trailer, mobile home, camper, travel trailer, motor home, tent, shack, garage, other building erected, shall at any time be used as a dwelling, temporarily, or permanently, nor shall any structure of a temporary basis or for recreational purpose, including a campsite, be established or erected or otherwise used as a dwelling, shelter or housing. No trailer, mobile home, tents, camper, motor homes, travel trailer, boats, pontoons, boat trailers, pontoon trailers or equipment shall be stored on any portion of the Subdivision unless stored within the garage or on property that has an associated permanent dwelling.

(08a) No fire pits or fire rings may be built and no open burning, including bonfires, may occur on any lot without a permanent dwelling.

(08b) Community, Association or "Club" boat docks and multi-slip, multi-family docking facilities are prohibited.

(9) No detached storage buildings are allowed without prior written approval of the Committee. The Committee must approve the location of the storage building. The exterior of the second structure must match exactly to the exterior of the primary residence.

(10) No horse, cow, hog, goat or similar animal shall be kept or maintained on any lot nor shall any chicken yard or similar factory be maintained thereon. However, domestic pets may be kept by the owners, which domestic pets shall be defined as meaning not more than two (2) cats and not more than two (2) dogs, subject however, to proper confinement and control so as not to





create a nuisance or be offensive to other owners. The commercial breeding and sale of any animal is forbidden upon any lot or tract. All dogs shall be either maintained on a leash or otherwise restricted to the owner's premises so as not to run at large at any time. No kennel will be erected or placed within fifteen (15) feet of the boundary line of any adjacent lot within the subdivision.

(11) No construction material of any nature shall be moved upon the lot prior to sixty (60) days before the start of construction and any building started shall have its exterior completed within one (1) year from the date of its starting. All construction debris is to be removed within thirty (30) days after occupancy or finishing of a structure's exterior. Lots without structures shall be free of all building materials, detached structures, fences, vehicles, shacks, or other unsightly debris as determined by the Committee. It is each lot owner's responsibility to not leave construction debris which would be taken by the wind to litter other property in the area.

(12) No trash, ashes or other refuse may be thrown, dumped or stored on any lot. All trash, other refuse, and trash cans and containers shall be kept in garages or in enclosures such that they will be concealed from the view of streets and lots which are adjacent to the lot on which they are located except on days garbage pickup is made. No burning barrels shall be allowed on the premises.

(13) No clothesline poles, wires or devices for hanging clothes shall be erected outside any home or building except that retractable clothesline apparatus may be erected outside any home or building in the backyard.

(14) No structure shall be erected, altered or placed closer than fifty (50) feet from the front of the lot line or and fifteen (15) feet from the side or rear lot line. It is further covenanted by the grantees, and their successors and assigns of any lot with river frontage shall have no dwelling erected, altered or placed within one hundred feet of the bank of the Missouri River and fifteen (15) feet from the side or rear lot line.

(15) No fence erected on any lot shall exceed six (6) feet in height and shall not protrude the set back line. There shall be no planting of trees within the setback area on river frontage lots.

(16) There shall be no abandoned, junked or wrecked vehicles stored on any lots.

(17) No sign, billboards or advertising devices of any kind, except those used in any subsequent sale of the property, shall be place or otherwise installed on any lot or building. Said signs may not exceed nine square feet in area.

(18) In the interest of public health and sanitation, and so that the land above-described and all other land in the same locality may be benefited by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wildlife, and other public uses, grantee will not use the above described property for any purposes that would result in the pollution of any waterway by refuse, sewage or other material that might tend to pollute the waters of any stream or impair the ecological balance of the surrounding land. All garbage must be maintained in steel, metal, plastic or concrete constructed containers and all septic tanks and drainage fields



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AMDECRES Page: 5 of 22  
2/6/2015 9:28 AM  
Burleigh County

shall be constructed according to appropriate state and local authorities' standards and requirements.

(19) All lots conveyed are conveyed as unimproved property without any obligation on the part of the grantors to improve the same or the street in or adjacent to such property, or to other conveniences for the benefits of such property.

(20). Capital Improvements: It is further covenanted by all owners of lots within Riverside Subdivision or Riverside Second Subdivision for themselves, their successors and assigns, that in the event the grantors, their successor or assigns, as owners of eighty-five percent (85%) of the lots of the subdivision should decide to further grade, pave or to otherwise improve the street, or to install or construct water or sewer lines or other improvements, each lot shall bear its share of the cost of such improvements in proportion to the total number of lots located in each subdivision. These covenants shall run with the land and the cost of the improvements referred to above shall be a charge on the land and whatsoever hands it shall be at the time of such improvements. If payment for a lot's part of constructing or improving the above referenced items is not received within thirty (30) days of written notice requesting payment thereof, a majority (51%) of the lot owners, or their agents, if herein expressly authorized to execute and file a lien on that lot to secure payment of said costs.

(21) Maintenance: It is further covenanted by all lot owners within Riverside Subdivision or Riverside Second Subdivision for themselves, their successors and assigns that should seventy percent (70%) of the lot owners decide that, in the best interest of the subdivision, general upkeep and repairs of the roads, boat landing or other improvements of the subdivision are necessary, the property hereby conveyed shall bear its cost of such general upkeep and repairs in proportion to the total number of lots located in this subdivision. These covenants shall run with the land, and the cost of the upkeep and repair referred to above shall be a charge on the land and whatsoever hands it shall be at the time of such improvements. If payment of a lot's part of the above referenced cost of general upkeep and repair is not received within thirty (30) days of written notice requesting payment thereof, a majority (51%) of the lot owners, or their agents, is herein expressly authorized to execute and file a lien on said lot to secure payment of said costs, interest and legal fees necessary to obtain and enforce the lien.

(22) These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date of these covenants and restrictions are recorded, after which times said covenants and restrictions as recorded, after which times said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by seventy-five percent (75%) of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

(23) The Riverside Subdivision and Riverside Second Subdivision Enforcement Committee shall enforce the covenants and restrictions by first issuing a notice of non-compliance to any individual in violation with these covenants. Upon receipt of notice of non-compliance, the non-compliant landowner or other individual will have seven (7) days to remedy all violations. If

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Page: 6 of 22  
2/6/2015 9:28 AM  
Burleigh County

violations have not been remedied after seven (7) days, the Committee will pursue all remedies available under the law, including, but not limited to damages and attorney fees.

(24) Any owner of Lot One (1), Riverside Subdivision, will not be allowed to place any type of structure attached to the shoreline that impedes access to the river for the intended use of the Subdivision's boat landing.

#### RIGHT TO ENFORCE

The covenant and restrictions herein set forth shall run with the land and bind present owners, their heirs, devisees, trustees, and assigns, and any and all other parties claiming by, through, or under them, shall be taken to hold, agree and covenant with the owners of said lots, their heirs, devisees, trustees, and assigns, and with each of the owners of said lots, to conform to and observe said covenants and restrictions as to the use of said lots and the construction of improvements thereon but, no covenants or restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breach which is committed during its, his, or their seizing of, or title to said land and the owner or owners of any of the above lands shall have the right to sue for and obtain an injunction prohibitive or mandatory to prevent the breach of, or to enforce the observance of the covenants and restrictions above set forth, in addition to ordinary legal action for damages and the failure of the present owners, or the owner or owners of any lot to enforce the covenant and restrictions herein set forth at the time of any violation thereof, shall be in no event deemed as a waiver of the right to do so. The above covenants and restrictions may be altered or amended at any time upon the placing of record at the office of the County Clerk and Recorder the written consent hereto by the owners of at least seventy-five percent of the above-described lots.



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Page: 7 of 22  
2/6/2015 9:28 AM  
Burleigh CountyDated: Feb 5, 2015Karen G. Hogue

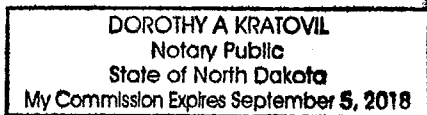
Karen G. Hogue, Co-Trustee of the Karen G. Hogue Living Trust

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH )

On this 5 day of <sup>February</sup> ~~January~~, 2015, before me, personally appeared Karen G. Hogue, Co-Trustee of the Karen G. Hogue Living Trust, known to me to be the person who executed the above and foregoing instrument and acknowledged to me that she executed the same.

[Signature]Dated this 2 day of <sup>Feb</sup> ~~January~~, 2015.[Signature]

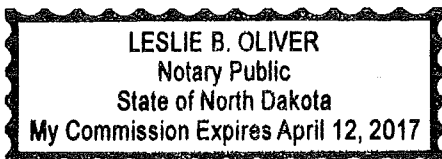
David J. Hogue Co-Trustee of the Karen G. Hogue Living Trust

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH )

On this 2 day of <sup>Feb</sup> ~~January~~, 2015, before me, personally appeared David J. Hogue, Co-Trustee of the Karen G. Hogue Living Trust, known to me to be the person who executed the above and foregoing instrument and acknowledged to me that he executed the same.

[Signature]




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 Page: 8 of 22  
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 Burleigh County

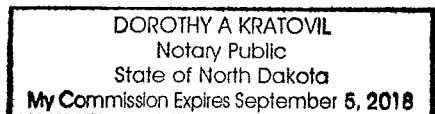
Dated: 2-5-2015

  
Jeffrey Frankhauser

Kandice Frankhauser

STATE OF NORTH DAKOTA) )  
 ) SS.  
COUNTY OF BURLEIGH )

On this 5 day of <sup>February</sup>~~January~~, 2015, before me, personally appeared Jeffrey Frankhauser and Kandice Frankhauser, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.





Dated:

## Leland Bertsch

## Jane Bertsch

STATE OF NORTH DAKOTA) )  
 ) SS.  
COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of January, 2015, before me, personally appeared Leland Bertsch and Jane Bertsch, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.



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Page: 9 of 22  
2/6/2015 9:28 AM  
Burleigh County

Dated: Feb 5, 2015

Oryn A Wagner

Oryn Wagner

Marilyn Wagner

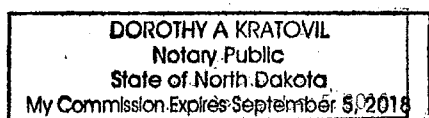
Marilyn Wagner

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH )

On this 5 day of <sup>February</sup> ~~January~~, 2015, before me, personally appeared Oryn Wagner and Marilyn Wagner, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.



[Signature]

Dated: 1/29/15

Ronald Sanford

Ronald Sanford

Janet Sanford

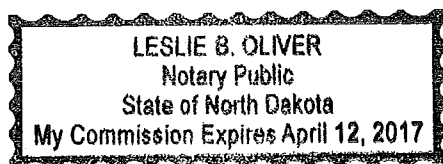
Janet Sanford

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH )

On this 29 day of January, 2015, before me, personally appeared Ronald Sanford and Janet Sanford, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.



[Signature]










**819117**

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Page: 12 of 22  
2/6/2015 9:28 AM  
Burleigh County

Dated: 1-30-15

  
John Reifenger

Erleen Reifenberger

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH )

On this 30 day of January, 2015, before me, personally appeared John Reifenberger and Erleen Reifenberger, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.

Dated:

Clete F. Burbach

Leslie Bakken Oliver

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF BURLEIGH )

On this 29 day of January, 2015, before me, personally appeared Clete F. Burbach and Leslie Bakken Oliver, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.

**DOROTHY A KRATOVIL**  
Notary Public  
State of North Dakota  
My Commission Expires September 5, 2018



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 AMDECRES Page: 13 of 22  
 2/6/2015 9:28 AM  
 Burleigh County

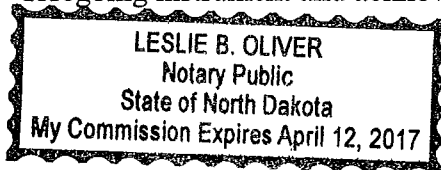
Dated: 1/29/15

Brad Magnus  
 Brad Magnus

Heather Magnus  
 Heather Magnus

STATE OF NORTH DAKOTA)  
 ) SS.  
 COUNTY OF BURLEIGH )

On this 29 day of January, 2015, before me, personally appeared Brad Magnus and Heather Magnus, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.



Leslie B. Oliver

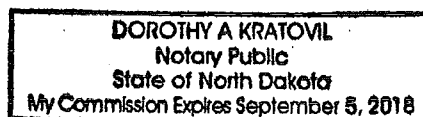
Dated: 1/29/15

Mary (Kathy) Odegaard  
 Kathy Odegaard

STATE OF NORTH DAKOTA)  
 ) SS.  
 COUNTY OF BURLEIGH )

On this 29 day of January, 2015, before me, personally appeared Kathy Odegaard, known to me to be the person who executed the above and foregoing instrument and acknowledged to me that she executed the same.

Dorothy A. Kratovil





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Page: 14 of 22  
2/6/2015 9:28 AM  
Burleigh County

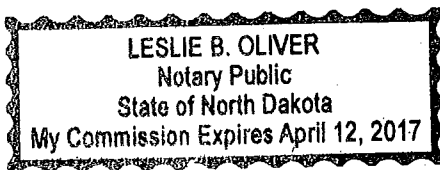
Dated: 22/2/2015

James Kratovil

Dorothy Kratovil

STATE OF NORTH DAKOTA) ) SS.  
COUNTY OF BURLEIGH )

On this 29 day of January, 2015, before me, personally appeared James Kratovil and Dorothy Kratovil, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.



Leslie B. Quinn


Dated: 1/30/15

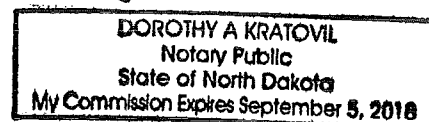
Blair Mitzel

Kathleen (Kathy) Mitzel  
Kathy Mitzel

STATE OF NORTH DAKOTA) )  
 ) SS.  
COUNTY OF BURLEIGH )

On this 30 day of January, 2015, before me, personally appeared Blair Mitzel and Kathy Mitzel, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.







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Page: 15 of 22  
2/6/2015 9:28 AM  
Burling County

Dated:

Bill Mitzel

Roberta Mitzel

STATE OF NORTH DAKOTA) ) SS.  
COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of January, 2015, before me, personally appeared Bill Mitzel and Roberta Mitzel, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.

Dated: \_\_\_\_\_

## Bill Wood

STATE OF NORTH DAKOTA) ) SS.  
COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of January, 2015, before me, personally appeared Bill Wood, known to me to be the person who executed the above and foregoing instrument and acknowledged to me that he executed the same.







**819117**

\$76.00  
Page: 18 of 22  
2/6/2015 9:28 AM  
Burleigh County

Dated:

Richard Livesay

## Vickie Livesay

STATE OF NORTH DAKOTA) )  
 ) SS.  
COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of January, 2015, before me, personally appeared Richard Livesay and Vickie Livesay, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.

Dated: Jan 29, 2015

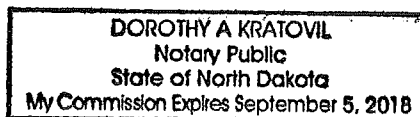
Mark Brunner

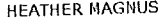
Sheila Brunner

STATE OF NORTH DAKOTA) )  
 ) SS.  
COUNTY OF BURLEIGH )

On this 29 day of January, 2015, before me, personally appeared Mark Brunner and Sheila Brunner, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.


18





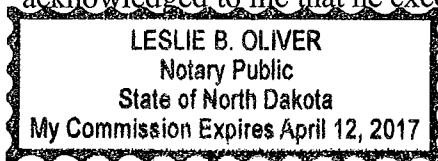
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Page: 19 of 22  
2/6/2015 9:28 AM  
Burleigh County

Dated: 1-29-15

  
Russell Kunz

STATE OF NORTH DAKOTA) ) SS.  
COUNTY OF BURLEIGH )

On this 29 day of January, 2015, before me, personally appeared Russell Kunz, known to me to be the person who executed the above and foregoing instrument and acknowledged to me that he executed the same.



Leslie O'Quinn

Dated: 2-3-15

*Adrian*

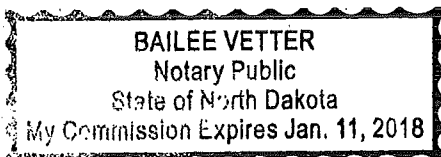
Tom Dickson

*[Handwritten signature]*

Sherri Dickson

STATE OF NORTH DAKOTA) )  
 ) SS.  
COUNTY OF BURLEIGH )

On this 3 day of <sup>February</sup> ~~January~~, 2015, before me, personally appeared Tom Dickson and Sherri Dickson, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.



Baile Vetter





**819117**

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\$76.00  
Page: 20 of 22  
2/6/2015 9:28 AM  
Burling County

Dated:

## Lynn Mills

## Sharalynn Mills

STATE OF NORTH DAKOTA) ) SS.  
COUNTY OF BURLEIGH )

On this \_\_\_\_ day of January, 2015, before me, personally appeared Lynn Mills and Sharalynn Mills, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.

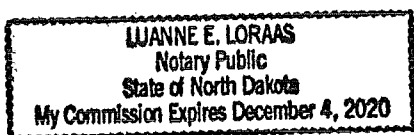
Dated: FEB. 5, 2015

Craig A. Johnson  
Craig Johnson

Constance Hofland

STATE OF NORTH DAKOTA) )  
 ) SS.  
COUNTY OF BURLEIGH )

On this 5th day of February, 2015, before me, personally appeared Craig Johnson and Constance Hofland, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.



Leanne & Loraas



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\$76.00  
Page: 21 of 22  
2/6/2015 9:28 AM  
Burleigh County

Dated: 1-30-15

Lynn Mills

## Sharalynn Mills

STATE OF NORTH DAKOTA) ) SS.  
COUNTY OF BURLEIGH )

On this 30 day of January, 2015, before me, personally appeared Lynn Mills and Sharalynn Mills, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.

Dated: \_\_\_\_\_

**DOROTHY A KRATOVL**  
Notary Public  
State of North Dakota  
My Commission Expires September 5, 2018

## Craig Johnson

Constance Hofland

STATE OF NORTH DAKOTA) )  
 ) SS.  
COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of January, 2015, before me, personally appeared Craig Johnson and Constance Hofland, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.

Dated: 1/29/15

Greg Wavra

Greg Wavra

Lauri Wavra

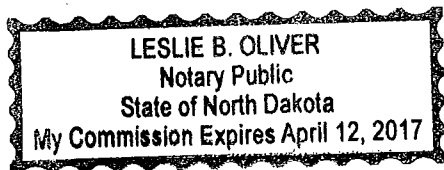
Lauri Wavra

STATE OF NORTH DAKOTA)

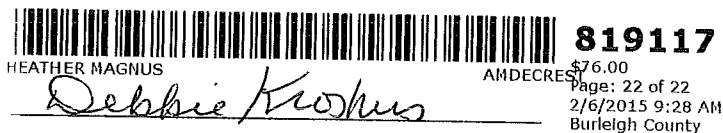
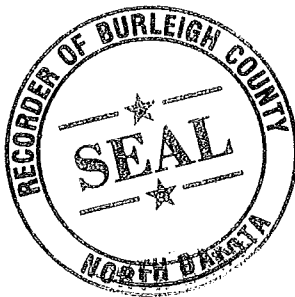
) SS.

COUNTY OF BURLEIGH )

On this 29 day of January, 2015, before me, personally appeared Greg Wavra and Lauri Wavra, husband and wife, known to me to be the persons who executed the above and foregoing instrument and acknowledged to me that they executed the same.



Leslie B. Oliver



Debbie Krohn

## **Appendix B**

### **Easement and Deed Restrictions**

***Burleigh County Water Resource District  
Easement Dedication and Deed Restriction  
Hogue Island Properties, Burleigh County***

**NOTE: THIS DOCUMENT IS UNDER REVIEW BY THE SWC FOR COMPLIANCE WITH AGREEMENT AND SUBJECT TO REVISION.**

WHEREAS, the Burleigh County Water Resource District (District) established the Hogue Island Flood Control Project, on December 20, 2011; and,

WHEREAS, the District purchased the following four rural residential flood-damaged properties located within the Riverside Subdivision, Burleigh County, North Dakota,

Lot 1, Block 1  
Lot 6 and N½ of Lot 5 Block 1  
Lot 7 and S½ of Lot 8 Block 1  
Lot 9 and N½ of Lot 8 and S½ of Lot 10 Block 1;

And,

WHEREAS, these properties were purchased under a cost share agreement between the District and the North Dakota State Water Commission (NDSWC), using disaster funding appropriated for the 2011 Missouri River flood event provided via a special session of the North Dakota State Legislature, herein incorporated by reference {unrecorded document}; and,

WHEREAS, the residential and other flood damage structures were removed along with unusable infrastructure, and the properties restored to a green space condition along with the restoration or installation of bank stabilization measures, and;

WHEREAS, the Hogue Island residents declined to have the District implement the established flood control project, by general acclamation through public input, and the District dissolved the Hogue Island Flood Control Project on July 8, 2014; and,

WHEREAS, the Hogue Island residents recommended, by general acclamation through public input, that the District auction these properties rather than have them available to transfer for alternative public uses; and,

WHEREAS, the District has authorized the public auction of these properties; and,

WHEREAS, Burleigh County participates in the National Flood Insurance Program [NFIP] and is in good standing with NFIP as of the date of this easement and deed restriction and the NDSWC {Public Funding} agreement requires the District to set conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values and to allow for their future use for flood control project purposes. These properties are also not eligible for federal Hazard Mitigation Grant (HMGP) funding and flood insurance under the NFIP; and,

WHEREAS, the District purchased these properties for the intended purpose of constructing a flood control project; that such use and value remain with the subject property. Therefore the District has elected to preserve and retain all such rights and authorities on said parcels.

THEREFORE, the following conditions and restrictions shall apply in perpetuity to the property described above concerning its acquisition for a flood control project and use as open space:

Compatible uses - The property is hereby dedicated under this easement and shall be maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping; boat docks, parking lots; buffer zones; and other uses consistent open space acquisition. These uses are also subject to any local subdivision covenants that may exist.

Structures. No new structures can be constructed or improvements shall be erected on the property other than:

The installation of approved public flood control structures and related paved surfaces and bridges.

Structural elements that are compatible with open space, which conserves the natural function of the floodplain, including the uses described above and approved by the District in writing before construction begins.

Any improvements on the property shall be in accordance with proper floodplain management policies and practices, and obtain any applicable federal, state or local floodplain development permits.

Sale or Transfer. Any owner of these properties, including successors in interest, shall be required to comply with the easement and deed restrictions, and notice of such transfer or sale shall be provided to the District. Conveyance of any property interest must refer to and incorporate this easement and deed restrictions, to provide notice of the conditions and provisions contained herein.

Inspection. The District and its representatives and assigns, including the State of North Dakota, shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspection to ensure compliance with the terms of this easement.

Monitoring and Reporting. The owner of the subject property or any person with interests therein shall, prior to any change in the topography, grading or intended use, excluding normal property maintenance and care, report to the District on that change to obtain assurance and approval that such work is acceptable. The final determination on acceptable changes shall lie with the District; and the NDSWC should they determine as the provider of the funding used for purchase to become involved.

Enforcement. The District and their respective representatives, successors and assigns, are responsible for taking measures to bring the property back into compliance, if said property is not maintained according to the terms of this easement. The property owner and subsequent holders of interest therein at the time of enforcement, shall include the following:

1. The District will notify the owner or any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.
2. If the owner or any current holder of the property interest fail to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the District shall enforce the provisions of this easement by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction; or,
3. The District, its representatives, and assignees may enforce the terms of the easement and deed restrictions by taking any measures it deems appropriate, including but not limited to one or more of the following:
  - a. The current holder of the property interest shall bear the costs of bringing the property back into compliance with the terms of the easement and deed restriction
  - b. The District reserves the right to implement compliance measures and assess any and all costs for such work upon the property; or
  - c. Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the ownership parties and interests in the event that there is a failure to comply with the provisions of this easement and deed restrictions.

IN WITNESSES WHEREOF, the Grantor has caused this instrument to be executed this \_\_\_\_\_ day of November 2015.

Burleigh County Water Resource District

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

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

On this \_\_\_\_\_ day of November 2015, before me, a notary public in and for said county and state, personally appeared Terry Fleck, 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 R. Bliss  
Bliss Law Firm, LLC (ID NO.: 04729)  
400 East Broadway Avenue, Suite 308  
P.O. Box 4126  
Bismarck, ND 58502-4126  
(701) 223-5769

## **Appendix C**

### **Bank Stabilization Easement Documents**

**Document No. 272820 (9/13/1976)**

**Document No. 362793 (8/22/1985)**

**Document No. 362794 (8/22/1985)**



## PERPETUAL EASEMENT

THIS INDENTURE, made this 15<sup>th</sup> day of September 1976, by and between Pete Hogue, hereinafter referred to as the Grantor, and the Burleigh County Water Management District, hereinafter referred to as the District.

## WITNESSETH:

WHEREAS, the Grantor is owner in fee of the following tract of land situated in Burleigh County, State of North Dakota, to wit:

All that portion of the E $\frac{1}{2}$  of Section 28, Township 140 North, Range 81 West, 5th P. M., lying within a strip of land east of the left bank of the Missouri River and located on the westerly side of and measured at right angles to the following described Corps of Engineers centerline as surveyed and staked. Said easement is for the purpose of bank protection.

Beginning at a point N 53° 09' 43" W five hundred twenty-eight point three seven feet (528.37') from the common corner of Sections 21-22 and 27-28 said Township and Range, thence S 00° 57' 28" E fifty-six point nine three feet (56.93') to the true point of beginning, thence running S 36° 16' 55" E six hundred thirty-nine point twenty-two feet (639.22') to a point, thence running S 17° 37' 10" E six hundred nine point sixteen feet (609.16') to a point, thence running S 04° 27' 09" E six hundred eighty-seven point twenty-eight feet (687.28') to a point, thence running S 16° 26' 33" W eight hundred fourteen point thirteen feet (814.13') to a point, thence running S 21° 34' 18" W eight hundred thirty-five point nineteen feet (835.19') to a point, thence S 25° 40' 21" W one thousand five hundred one point forty-seven feet (1501.47') to a point, thence running S 02° 01' 39" W until said line crosses the south line of said E $\frac{1}{2}$ , excepting all that portion belonging to Raymond and Betty Martel and a tract belonging to the Fraternal Order of Eagles. Tract contains 31.73 acres, more or less, also including all right of access, including ingress to and egress from the remaining property.

WHEREAS, said tract of land is needed by the District, the North Dakota State Water Commission, and the United States Army Corps of Engineers in connection with the construction and subsequent maintenance and operation of a bank stabilization and protection project along the Missouri River.

NOW, THEREFORE, in consideration of the sum of One Dollar, the receipt of which is hereby acknowledged, and the benefits to be derived by the Grantor from the construction, maintenance and operation of said Missouri River bank stabilization and protection project, the Grantor does hereby grant, bargain, sell and convey to the District and its assigns, a perpetual right and easement to enter upon, occupy and use the aforesaid tract of land for the purpose of constructing, maintaining,

and operating bank stabilization and protection devices, structures and facilities, and appurtenant devices, structures and facilities in connection with said bank stabilization and protection project, including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, and obstructions that interfere with the construction, maintenance or operation of said bank stabilization project, together with the right to perform any and all acts thereupon necessary and incident thereto and all right of access, including ingress to and egress from each aforesaid tract of land.

AND IN FURTHER consideration of the aforesaid sum of money and the benefits to be derived by the Grantor as hereinbefore set forth, the Grantor does hereby grant, bargain, sell and convey to the District and its assigns, a perpetual right and easement over and across the aforesaid described tract for the purpose of constructing and maintaining access roads. In order to confine to a minimum the impact of construction operations on the natural environment, the clearing of timber and brush within right-of-way areas shall be limited to the minimum amount necessary to provide haul roads. The width and amount of such haul roads shall be limited to the amount actually necessary to provide access to construction sites and dike abutments.

All alterations shall be restored as nearly as possible to original conditions after completion of contract work. Where additional required right-of-way is not covered by this easement, the contractor shall make all necessary arrangements with the landowner for the utilization, clearing and restoration of the required areas.

RESERVING, however, to the Grantor and his assigns, all such rights and privileges in said tract of land not specifically granted to the District by this instrument.

TO HAVE AND TO HOLD, the rights and easements hereunto granted to the District and its assigns, forever; the Grantor for himself and his assigns, do hereby covenant with the District, and its assigns, that he has good and sufficient right, title and interest in and to said tract of land to sell and convey the rights and easements as aforesaid, and that he will warrant and defend the title to the District and its assigns, against the lawful claims and demands of all persons.

WITNESS

  
Pete Hogue

STATE OF NORTH DAKOTA }  
COUNTY OF BURLEIGH }

On this 13<sup>th</sup> day of September, 1976, before me, a Notary Public within and for said County, personally appeared Pete Hogue, who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

*James T. Eastgate*  
Notary Public, Burleigh County,  
State of North Dakota

My Commission Expires:

JAMES T. EASTGATE  
Notary Public, BURLEIGH CO., N. Dak.  
My Commission Expires Aug. 4, 1977.



STATE OF NORTH DAKOTA }  
COUNTY OF BURLEIGH, } ss

I hereby certify that the within instrument was filed in this office for record on the 13<sup>th</sup> day of SEP 22 1976 E

19 at 9:45 o'clock A. M. and was duly recorded as DOCUMENT NO.

**272820**

*Sharon Henry*  
REGISTER OF DEEDS  
Deputy

*\$2.00 Burleigh Co. Water Mfg.*

## RELEASE AND TERMINATION OF EASEMENT

THIS INDENTURE, Made this 22<sup>ND</sup> day of AUGUST, 1985, between the Burleigh County Water Resource District, formerly known as the Burleigh County Water Management District, a body politic and a corporation under the laws of the State of North Dakota of Bismarck, North Dakota, party of the first part, and Pete Hogue, a/k/a Peter Hogue residing north of Bismarck, North Dakota, party of the second part;

## WITNESSETH:

WHEREAS, On September 13, 1976, the party of the second part granted a perpetual easement to the party of the first part to, among other things, enter upon, occupy and use portions of the land described as the West Half (W-1/2) of Section Twenty-seven (27) in Township One Hundred Forty (140) North, Range Eighty-one (81) West in Burleigh County, North Dakota, which easement was filed in the Office of the Register of Deeds at 9:45 A.M., on September 22, 1976, and there recorded as Document No. 272818, and;

WHEREAS, On September 13, 1976, the party of the second part granted a perpetual easement to the party of the first part to, among other others, enter upon, occupy and use portions of the land described as the East Half (E-1/2) of Section Twenty-eight (28) in Township One Hundred Forty (140) North, Range Eighty-one (81) West in Burleigh County, North Dakota, which easement was filed in the Office of the Register of Deeds at 9:45 A.M., on September 22, 1976, and there recorded as Document No. 272820.

NOW, THEREFORE, In consideration of Ten Dollars (\$10.00) and other valuable consideration, receipt of which is hereby acknowledged, the party of the first part hereby releases to the party of the second part the easements described above, it being the intention of the parties to terminate said easement.

IN TESTIMONY WHEREOF, The said grantor has caused these presents to be executed in its corporate name by its Chairman and

its Secretary and its corporate seal to be hereunto affixed.

BURLEIGH COUNTY WATER RESOURCE  
DISTRICT

By:

Alfred A. Thompson  
Its Chairman

By:

Roger B. Bourgois  
Its Secretary

STATE OF NORTH DAKOTA)

COUNTY OF BURLEIGH )

ss.

On this 1<sup>st</sup> day of SEPTEMBER, 1985, before me personally appeared Alfred A. Thompson and Roger Bourgois to me known to be the Chairman and Secretary of the corporation that is described in, and that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.



Commission Expires:

Norman D. Steidle  
Notary Public  
Burleigh County, North Dakota  
July 11, 1987



STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

HEREBY CERTIFY THAT THE WITHIN INSTRUMENT  
WAS FILED IN THIS OFFICE FOR RECORD ON  
SEP 3 1985 AT 9:15 O'CLOCK P. M. AND  
RECORDED AS DOCUMENT No. 362793  
Y. Steidle this rec

DEPUTY

REGISTER OF DEEDS

# 7.10.12 Norman D. Steidle  
Jandman Vice.  
S. R. R. Barry Back.

## PERPETUAL EASEMENT

THIS INDENTURE, Made this 22<sup>nd</sup> day of August, 1985, by and between Pete Hogue, a/k/a Peter Hogue, hereinafter referred to as the Grantor, and the Burleigh County Water Resource District, hereinafter referred to as the District.

## WITNESSETH:

WHEREAS, The Grantor is the owner in fee of the following tract of land situated in Burleigh County, State of North Dakota, to-wit:

All that part of Sections Twenty-seven (27) and Twenty-eight (28) in Township One Hundred Forty (140) North, Range Eighty-one (81) West, Fifth Principal Meridian, that lies within the plat of "Bourgois Island" as shown on said plat in Document No. 139893 recorded in the Office of the Register of Deeds of said Burleigh County and that lies within one hundred (100) feet of the left bank of the Missouri River, as the same is now or may hereafter be situated.

WHEREAS, Said tract of land is needed by the District, the North Dakota State Water Commission, and the United States Army Corps of Engineers in connection with the construction, maintenance and operation of a bank stabilization and protection project along the Missouri River.

NOW, THEREFORE, In consideration of the sum of One Dollar, the receipt of which is hereby acknowledged, and the benefits to be derived by the Grantor from the construction, maintenance and operation of said Missouri River bank stabilization and protection project, the Grantor does hereby grant, bargain, sell and convey to the District and its assigns, a perpetual right and

easement to enter upon, occupy and use the aforesaid tract of land for the purpose of constructing, maintaining, and operating bank stabilization and protection devices, structures and facilities, and appurtenances, devices, structures and facilities in connection with said bank stabilization and protection project, including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, and obstructions that interfere with the construction, maintenance or operation of said bank stabilization project, together with the right to perform any and all acts thereupon necessary and incident thereto.

AND IN FURTHER Consideration of the aforesaid sum of money and the benefits to be derived by the Grantor as hereinbefore set forth, the Grantor does hereby grant, bargain, sell and convey to the District and its assigns, a perpetual right and easement over and across the aforesaid described tract for the purpose of constructing and maintaining access roads. In order to confine to a minimum the impact of construction operations on the natural environment, the clearing of timber and brush within right-of-way areas shall be limited to the minimum amount necessary to provide haul roads. The width and amount of such haul roads shall be limited to the amount actually necessary to provide access to construction sites and dike abutments.

All alterations shall be restored as nearly as possible to original conditions after completion of contract work. Where additional required right-of-way is not covered by this easement, the contractor shall make all necessary arrangements with the landowner for the utilization, clearing and restoration of the

required areas.

ALSO IN FURTHER Consideration of the aforesaid benefits to be derived by the Grantor, the Grantor does hereby grant, bargain, sell and convey to the District and its assigns, for the purpose of providing access to and from the above described tracts only, a perpetual right and easement over and across the following described land, to-wit:

All that part of Section Twenty-eight (28), Township One Hundred Forty (140) North, Range Eighty-one (81) West, Burleigh County, North Dakota, shown on the survey of Bourgois Island as recorded in the Burleigh County Courthouse as Document No. 139893 and that lies within the following described traverse:

Beginning at the southeast corner of Lot One (1), Block One (1), Riverside Subdivision; thence southwesterly and to the left on a 840.00 foot radius curve, the radius of which bears S. 71°22'33" E. from said point, along an extension of the west line of Island Road, an arc distance of 40.00 feet; thence N. 88°00'00" W. a distance of 388 feet, more or less to the east bank of the Missouri River; thence northeasterly along said east bank a distance of 151 feet, more or less to the southwest corner of Lot One (1), Block One (1) Riverside Subdivision; thence S. 71°22'33" E. along the south line of said Lot One (1) a distance of 375 feet, more or less to the point of beginning.

RESERVING, However, to the Grantor and his assigns, all such rights and privileges in said tract of land not specifically granted to the District by this instrument.

TO HAVE AND TO HOLD, The rights and easements hereunto granted to the District and its assigns, forever; the Grantor for himself and his assigns, does hereby covenant with the District, and its assigns, that he has good and sufficient right, title and interest in and to said tract of land to sell and convey the



rights and easements as aforesaid, and that he will warrant and defend the title to the District and its assigns, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, The said party of the first part hereunto set his hand the day and year first above written.

Pete Hogue  
Pete Hogue

STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH ) ss.

On this 22nd day of AUGUST A.D. 1985,  
before me personally appeared Pete Hogue known to me to be the same person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the



Norman A. Steidle  
Notary Public  
Burleigh County, North Dakota

My Commission Expires:

July 11, 1987



**STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH**

HEREBY CERTIFY THAT THE WITHIN INSTRUMENT  
WAS FILED IN THIS OFFICE FOR RECORD ON  
SEP 3 1985 AT 9:15 O'CLOCK A.M. AND  
RECORDED AS DOCUMENT No. 362794  
BY Norman A. Steidle  
DEPUTY REGISTER OF DEEDS

4:00 PM Norman A. Steidle  
Jensen & Co. 210 W. 1st Ave. Bldg. Bldg.

## **Appendix D**

### **Lot Exhibits Riverside Subdivision**

**Lot 1, Block 1**

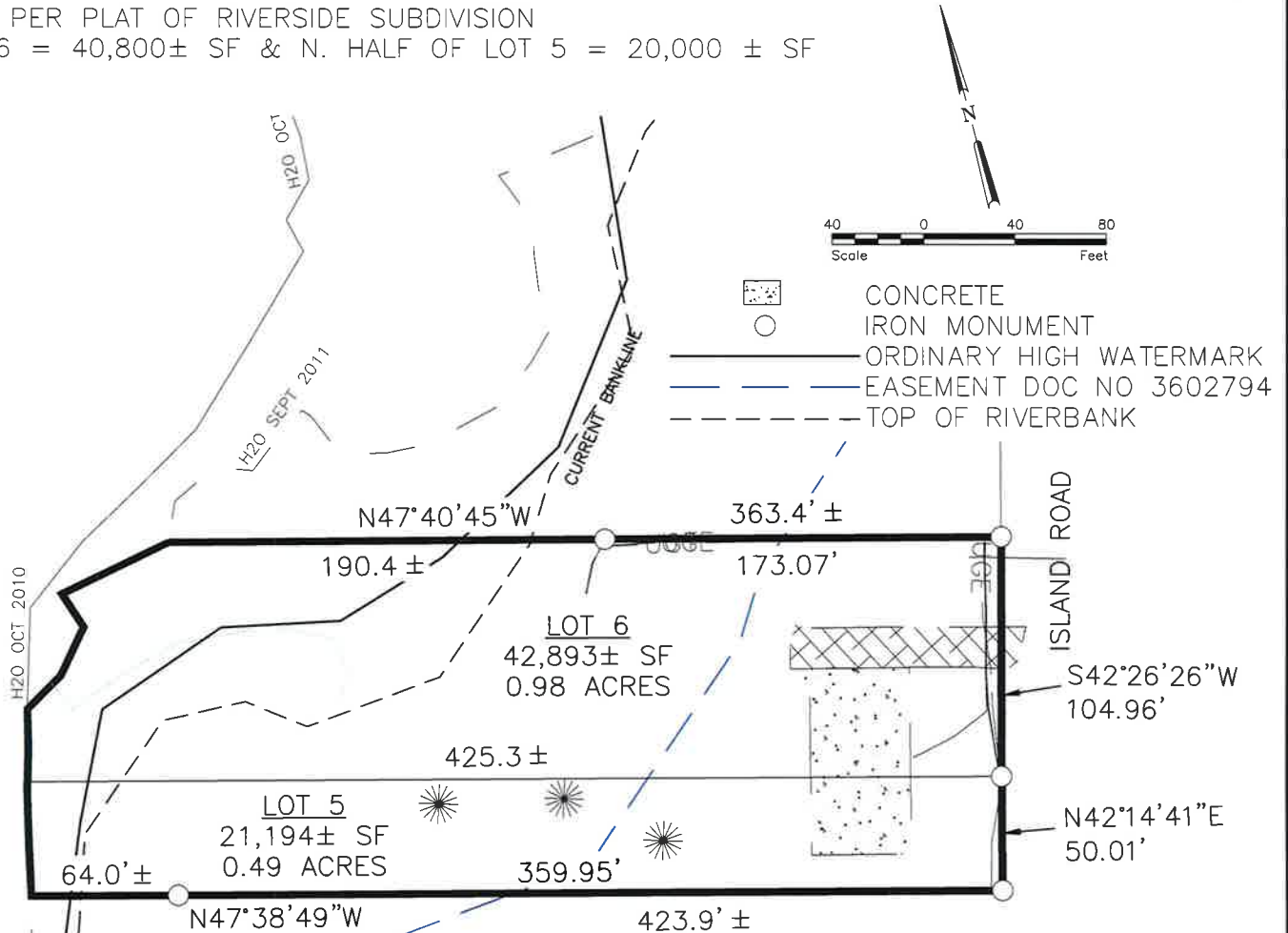
**Lot 6 and N½ of Lot 5 Block 1**

**Lot 7 and S½ of Lot 8 Block 1**

**Lot 9 and N½ of Lot 8 and S½ of Lot 10 Block 1**

LOT EXHIBIT  
FOR  
9750 ISLAND ROAD  
LOT 6 & NORTH HALF OF LOT 5, BLOCK 1  
RIVERSIDE SUBDIVISION  
BURLEIGH COUNTY, NORTH DAKOTA

AREA PER PLAT OF RIVERSIDE SUBDIVISION  
LOT 6 = 40,800± SF & N. HALF OF LOT 5 = 20,000 ± SF



ALL BEARINGS AND DISTANCES ARE FIELD MEASURED. NOTE: PROPERTY SUBJECT TO RESTRICTIONS DIRECTED BY BCWRD.

LEGAL DESCRIPTION: LOT 6, BLOCK 1 AND THE NORTH HALF OF LOT 5, BLOCK 1, RIVERSIDE SUBDIVISION, BURLEIGH COUNTY, NORTH DAKOTA.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 64,087 SQUARE FEET, MORE OR LESS.

I HERBY CERTIFY THAT THIS SURVEY, PLAN, AND OR REPORT WAS PREPARED UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.



NAME Todd Marshall

DATE 10-14-15

4431  
REG NO

SURVEYOR



Bismarck

Drawn by  
CH

Date  
10-14-15

Checked by  
TM

Scale  
AS SHOWN

RIVERSIDE SUBDIVISION  
BCWRD  
BURLEIGH COUNTY, N.D.

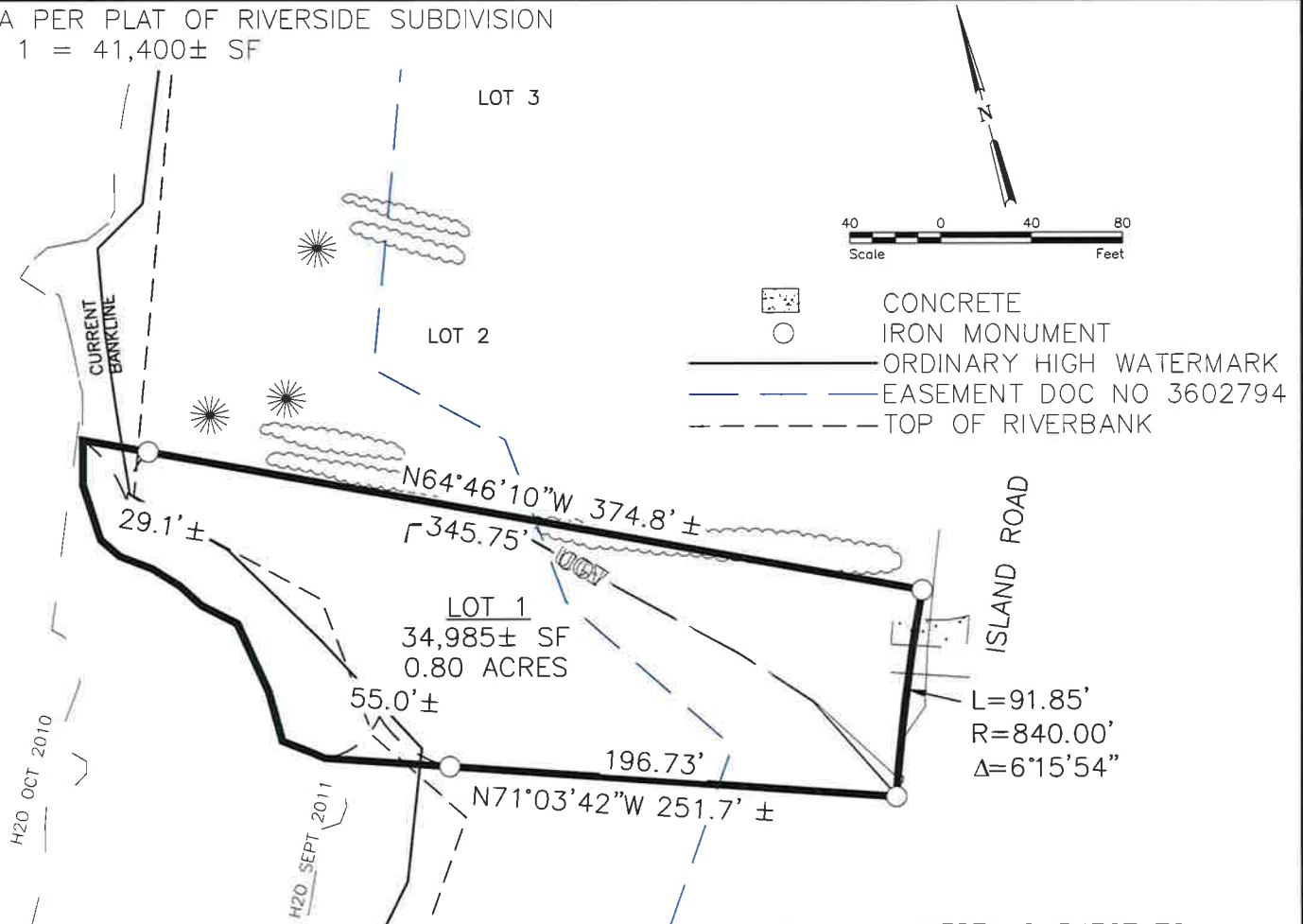
PROJECT NO. 6025-011

SHEET

1 of 1

LOT EXHIBIT  
FOR  
9700 ISLAND ROAD  
LOT 1, BLOCK 1  
RIVERSIDE SUBDIVISION  
BURLEIGH COUNTY, NORTH DAKOTA

AREA PER PLAT OF RIVERSIDE SUBDIVISION  
LOT 1 = 41,400± SF



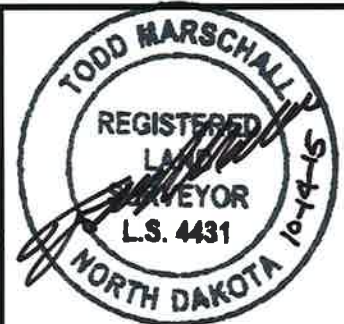
ALL BEARINGS AND DISTANCES ARE FIELD MEASURED.

NOTE: PROPERTY SUBJECT TO RESTRICTIONS DIRECTED BY BCWRD.

LEGAL DESCRIPTION: LOT 1, BLOCK 1, RIVERSIDE SUBDIVISION, BURLEIGH COUNTY, NORTH DAKOTA.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 34,985 SQUARE FEET, MORE OR LESS.

I HERBY CERTIFY THAT THIS SURVEY, PLAN, AND OR REPORT WAS PREPARED UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.



SURVEYOR

NAME Todd Marschall

DATE 10-14-15

REG NO 4431



Houston  
Engineering Inc.

Bismarck

P: 701.323.0200  
F: 701.323.0300

Drawn by  
CH

Date  
10-14-15

Checked by  
TM

Scale  
AS SHOWN

RIVERSIDE SUBDIVISION  
BCWRD  
BURLEIGH COUNTY, N.D.

PROJECT NO. 6025-011

SHEET

1 of 1

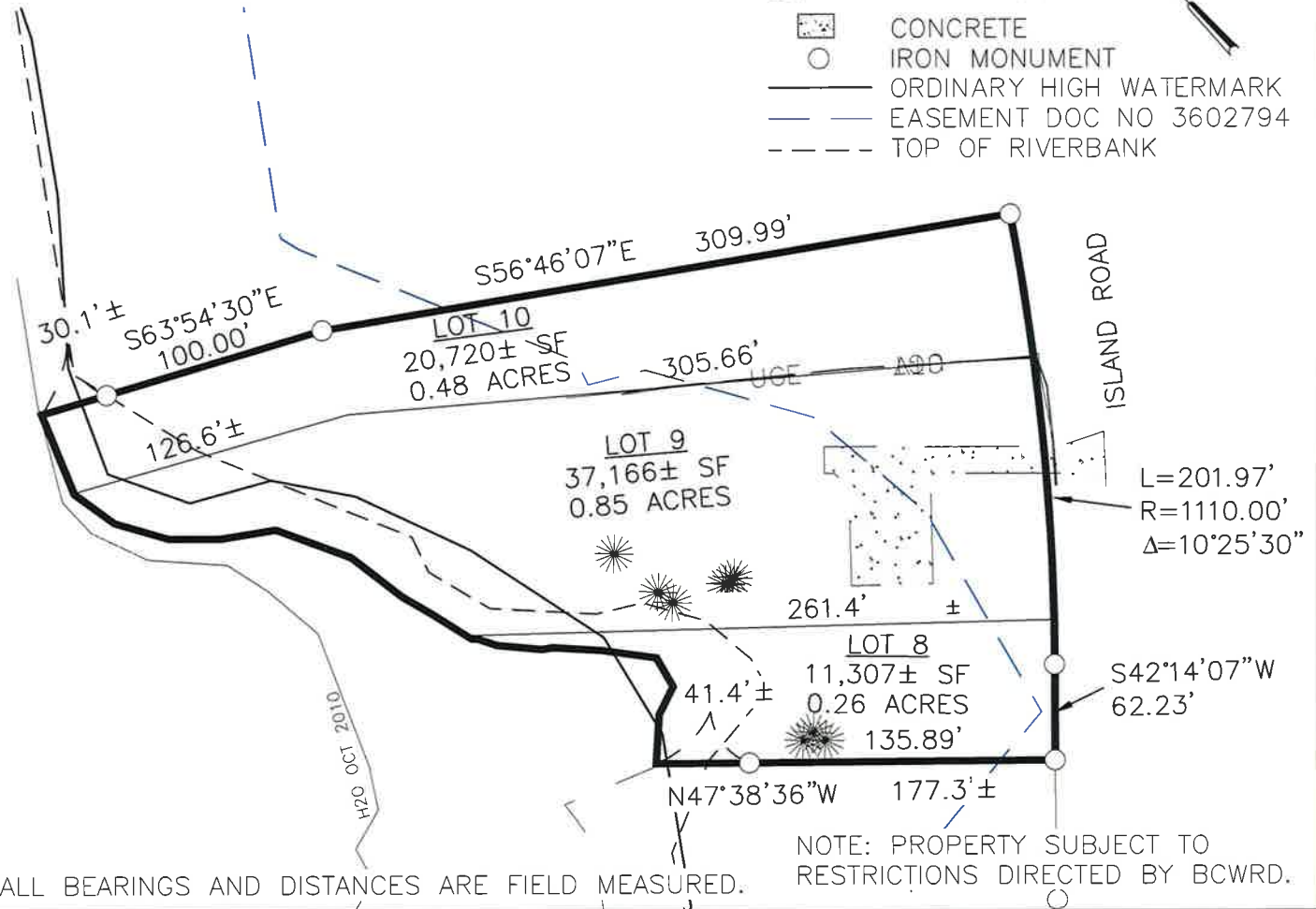
**LOT EXHIBIT  
FOR  
9828 ISLAND ROAD  
LOT 9 & NORTH HALF OF LOT 8 & SOUTH HALF OF LOT 10, BLOCK 1  
RIVERSIDE SUBDIVISION  
BURLEIGH COUNTY, NORTH DAKOTA**

AREA PER PLAT OF RIVERSIDE SUBDIVISION

LOT 9 = 40,300± SF, N. HALF OF LOT 8 = 20,000± SF  
& S. HALF OF LOT 10 = 20,000± SF

Scale 0 40 80 Feet

CONCRETE  
IRON MONUMENT  
ORDINARY HIGH WATERMARK  
EASEMENT DOC NO 3602794  
TOP OF RIVERBANK



LEGAL DESCRIPTION: LOT 9, THE NORTH HALF OF LOT 8 AND THE SOUTH HALF OF LOT 10 BLOCK 1, RIVERSIDE SUBDIVISION, BURLEIGH COUNTY, NORTH DAKOTA.

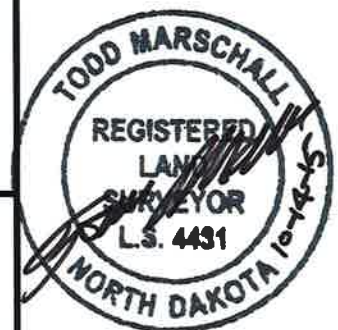
THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 69,193 SQUARE FEET, MORE OR LESS.

I HERBY CERTIFY THAT THIS SURVEY, PLAN, AND OR REPORT WAS PREPARED UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.

*Todd Marshall*  
NAME

10-14-15  
DATE

4431  
REG NO



SURVEYOR



Bismarck

Drawn by  
CH

Date  
10-14-15

Checked by  
TM

Scale  
AS SHOWN

RIVERSIDE SUBDIVISION  
BCWRD  
BURLEIGH COUNTY, N.D.

PROJECT NO. 6025-011

SHEET

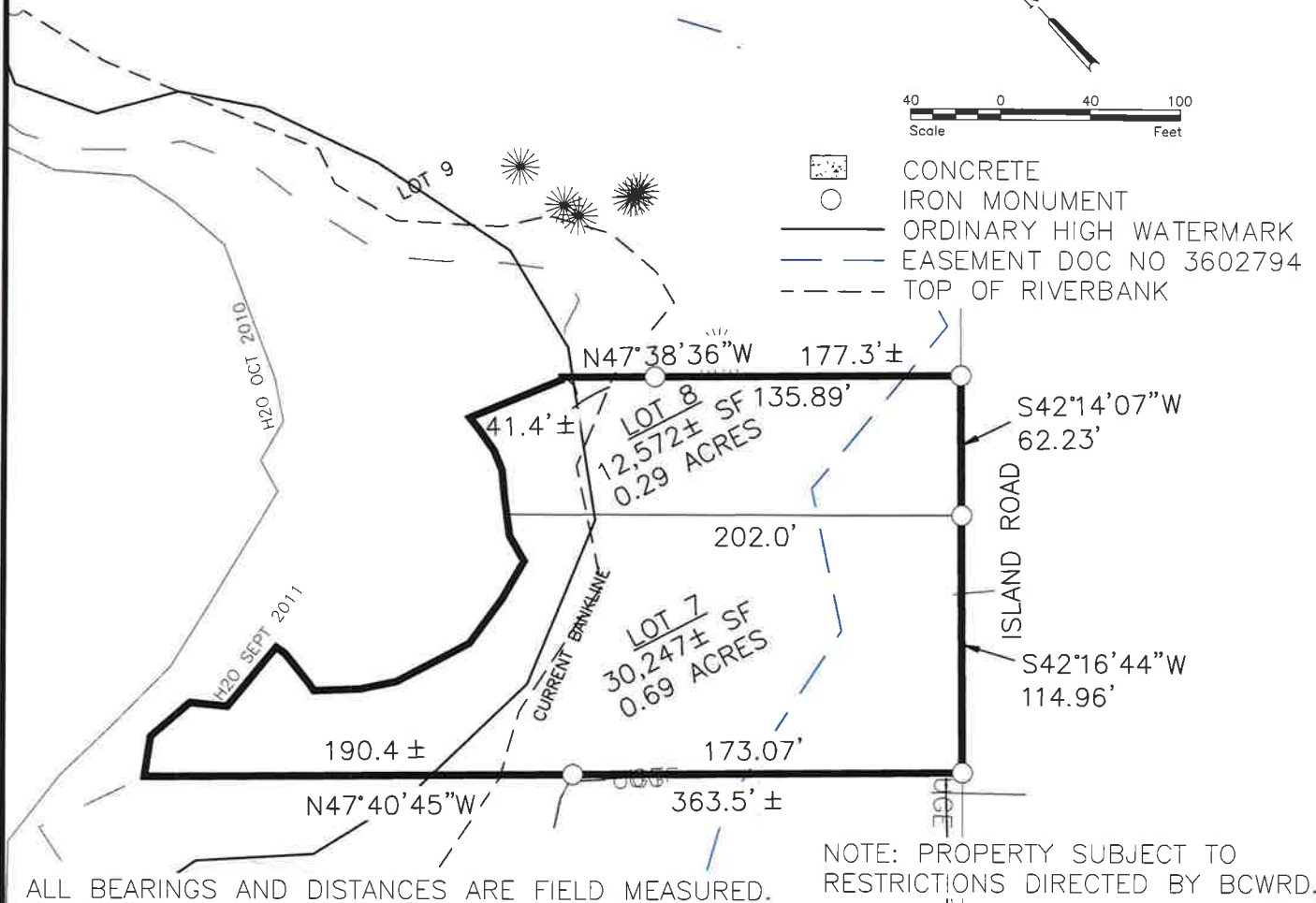
1 of 1



LOT EXHIBIT  
FOR  
9806 ISLAND ROAD  
LOT 7 & SOUTH HALF OF LOT 8, BLOCK 1  
RIVERSIDE SUBDIVISION  
BURLEIGH COUNTY, NORTH DAKOTA

AREA PER PLAT OF RIVERSIDE SUBDIVISION

LOT 7 = 42,300± SF & S. HALF OF LOT 8 = 20,000 ± SF



LEGAL DESCRIPTION: LOT 7, BLOCK 1 AND THE NORTH HALF OF LOT 8, BLOCK 1, RIVERSIDE SUBDIVISION, BURLEIGH COUNTY, NORTH DAKOTA.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 42,819 SQUARE FEET, MORE OR LESS.

I HERBY CERTIFY THAT THIS SURVEY, PLAN, AND OR REPORT WAS PREPARED UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.



*Todd Marschall*  
NAME

10-14-15  
DATE

4431  
REG NO

SURVEYOR



**Houston  
Engineering Inc.**

Bismarck

P- 701.323.0200  
F- 701.323.0300

Drawn by  
CH

Date  
10-14-15

Checked by  
TM

Scale  
AS SHOWN

RIVERSIDE SUBDIVISION  
BCWRD  
BURLEIGH COUNTY, N.D.

PROJECT NO. 6025-011

SHEET

1 of 1

## **Appendix E – Permits**

**Sovereign Land Permit S-1818 – Section 32 COE**

**Sovereign Land Permit S-1871 – BCWRD**

**Corps of Engineers Permit [NOW-2013-1633-BIS]**

## Sovereign Land Permit No. S-1818

Permittee: **U.S. Army Corp of Engineers  
1616 Capitol Avenue  
Omaha, NE 68102**

Location: **SE ¼ of Section 21, the W ½ NW ¼ of Section 27, the E ½ E ½ of Section 28, and the E ½ of Section 33, Township 140 North, Range 81 West and the W ½ NW ¼ and the E ½ SW ¼ of Section 3, the NE ¼ NE ¼ of Section 4, and the NE ¼ NW ¼ of Section 10, Township 139 North, Range 81 West, Burleigh County.**

### Project Description:

**The Permittee is hereby authorized to repair several bank stabilization structures on the left bank of the Missouri River in Burleigh County, North Dakota. These structures were constructed by the Corps beginning in the 1960s under Public Law 88-253, Public Law 90-483 "1968 Flood Control Act," and in the 1970s under Public Law 93-251, Section 32, "Streambank Erosion Control Evaluation and Demonstration Act of 1974."**

**The 2011 Missouri River flood event caused significant damage to these structures through channel scouring and bank erosion. The proposed project is intended to restore functionality of the structures. The project will involve reshaping the riverbank where necessary and the placement of approximately 10,770 tons of rock rip-rap on the various revetments, refusals, and hard points.**


This authorization is subject to the conditions listed below and to the attached North Dakota Department of Health "Construction and Environmental Disturbance Requirements." Any other use of sovereign land is prohibited. Any proposed additional use must comply with the application and permitting process and all other requirements of state law.

### General Conditions

1. Authorization of this undertaking is a privileged use of a public resource and does not constitute a property right. The public use and enjoyment of the Missouri River is of high priority.
  2. All construction, maintenance, and reclamation activities shall be carried out in a manner reasonably designed to prevent degradation of the Missouri River.
  3. The Permittee shall implement measures to minimize the opportunity for sediment to enter the Missouri River during construction.
- 
4. Any construction debris or excess material shall be disposed of in a non-wetland, non-timbered upland site or in an approved landfill.



5. No work is to take place within the Missouri River between April 15 and June 1 in order to protect fishery resources.
6. Prior to or during construction, if items of substantial archeological value are discovered or a deposit of such items is disturbed, the Permittee shall cease construction activities in the area so affected. The State Engineer shall be promptly notified of the discovery, and construction will not resume until the State Engineer gives written permission.
7. This Authorization is site specific for the project as proposed and outlined in the application and supporting documents. Any changes or deviation from the site or design will need authorization from the State Engineer.
8. At the discretion of the State Engineer, in accordance with the exercise of any of the State Engineer's duties, the project is subject to modification or removal at the expense of the Permittee.
9. The State Engineer or the State Engineer's representative shall have access to inspect the authorized project during construction and associated activities and for the life of the project to ensure that it is being or has been accomplished and maintained in accordance with the terms and conditions of this Authorization.
10. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.
11. By granting this Authorization, no liability for damages of any kind, including those caused by improper construction, operation and maintenance, design or failure in design, materials, or workmanship, is assumed by or transferred to the State of North Dakota, the State Engineer, the State Water Commission or any of their respective employees, agents, or assigns. The Permittee will indemnify and hold harmless the State of North Dakota, its officials, employees, agents, boards, commissions, and assigns for any and all liability for work performed and action taken under this Authorization.

  
\_\_\_\_\_  
Todd Sando  
State Engineer

Date: 8/31/12



# State of North Dakota

## Office of the State Engineer

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

*Emailed  
11-22-13*

November 19, 2013

Mr. Terry Fleck, Chairman  
Burleigh County Water Resource District  
221 North Fifth Street  
Bismarck, ND 58501

RE: Application S-1871: Reshape and place rock riprap on the left bank of the Missouri River.

Dear Mr. Fleck:

Enclosed is your sovereign land authorization to reshape and place rock riprap on the left bank of the Missouri River in Burleigh County.

Specifically, the project will involve reshaping the bank to the proper slope. Sand currently remaining on site may be used as fill material for the project once the sand bags and other debris have been sorted from the sand and properly disposed of. Approximately 862 square yards of geotextile fabric will be placed on the bank. Approximately 887 cubic yards of rock riprap will be placed over the fabric. The fabric and riprap would be tied into the existing U.S. Army Corps of Engineers Section 33 structures at both ends of the project. The rock riprap will be 6 inches to 24 inches in diameter of which 20 percent by weight will be at least 16 inches in diameter. Typical thickness of the riprap will be 24 inches. The bank above the riprap will be graded, top-soiled, and reseeded.

The project will be located in the NE ¼ of Section 28, Township 140 North, Range 81 West, Burleigh County.

Also enclosed are copies of all the solicitation of views we received from other agencies on your project and a copy of NDDH "Construction and Environmental Disturbance Requirements". If you have any questions or if I can be of further assistance, please contact me at (701) 328-4935.

Sincerely,

Gerald R. Heiser  
Regulatory Section

GH:ph/1625

Enclosure

cc: Mr. Michael Gunsch, Houston Engineering, Inc., Bismarck, North Dakota

**Sovereign Land Permit No. S-1871**

Permittee: **Burleigh County water Resource District  
221 North Fifth Street  
Bismarck, ND 58501**

Location: **NE ¼ of Sections 28, Township 140 North, Range 81 West, Burleigh County.**

Project Description:

**The Permittee is hereby authorized to reshape and place rock riprap on the left bank of the Missouri River in Burleigh County.**

**Specifically, the project will involve reshaping the bank to the proper slope. Sand currently remaining on site may be used as fill material for the project once the sand bags and other debris have been sorted from the sand and properly disposed of. Approximately 862 square yards of geotextile fabric will be placed on the bank. Approximately 887 cubic yards of rock riprap will be placed over the fabric. The fabric and riprap would be tied into the existing U.S. Army Corps of Engineers Section 33 structures at both ends of the project. The rock riprap will be 6 inches to 24 inches in diameter of which 20 percent by weight will be at least 16 inches in diameter. Typical thickness of the riprap will be 24 inches. The bank above the riprap will be graded, top-soiled, and reseeded.**

This authorization is subject to the conditions listed below and to the attached North Dakota Department of Health "Construction and Environmental Disturbance Requirements." Any other use of sovereign land is prohibited. Any proposed additional use must comply with the application and permitting process and all other requirements of state law.

**General Conditions**

1. Authorization of this undertaking is a privileged use of a public resource and does not constitute a property right. The public use and enjoyment of the Missouri River is of high priority.
2. All construction, maintenance, and reclamation activities shall be carried out in a manner reasonably designed to prevent degradation of the Missouri River.

3. All sand bags and other debris shall be sorted from any on-site material to be used as fill material.
4. Any construction debris or excess material shall be disposed of in a non-wetland, non-timbered upland site or in an approved landfill.
5. The Permittee shall implement measures to minimize the opportunity for sediment to enter the Missouri River during construction.
6. The Permittee shall comply with the North Dakota Department of Health's *Construction and Environmental Disturbance Requirements* (copy attached).
7. The Permittee shall require their contractor to acquire a General Construction Permit from the North Dakota Department of Health prior to construction. North Dakota Department of Health's contact for a General Construction Permit is Dallas Grossman at (701) 328-5242.
8. No work shall be conducted within the waters of the Missouri River from April 15 to June 1 in order to protect fishery resources.
9. The Permittee shall comply with all state regulations with regard to the prevention of introduction of Aquatic Nuisance Species (ANS) into the state's waters. The Permittee shall contact Mr. Fred Ryckman, ANS Biologist, North Dakota Game and Fish Department at (701) 770-0920 to schedule an inspection of all vehicles and equipment a minimum of 72 hours prior to those items being launched or placed in the Missouri River.
10. Prior to or during construction, if items of substantial archeological value are discovered or a deposit of such items is disturbed, the Permittee shall cease construction activities in the area so affected. The State Engineer shall be promptly notified of the discovery, and construction will not resume until the State Engineer gives written permission.
11. This Authorization is site specific for the project as proposed and outlined in the application and supporting documents. Any changes or deviation from the site or design will need authorization from the State Engineer.
12. At the discretion of the State Engineer, in accordance with the exercise of any of the State Engineer's duties, the project is subject to modification or removal at the expense of the Permittee.
13. The State Engineer or the State Engineer's representative shall have access to inspect the authorized project during construction and associated activities and for the life of the project to ensure that it is being or has been accomplished and maintained in accordance with the terms and conditions of this Authorization.
14. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.

15. By granting this Authorization, no liability for damages of any kind, including those caused by improper construction, operation and maintenance, design or failure in design, materials, or workmanship, is assumed by or transferred to the State of North Dakota, the State Engineer, the State Water Commission or any of their respective employees, agents, or assigns. The Permittee will indemnify and hold harmless the State of North Dakota, its officials, employees, agents, boards, commissions, and assigns for any and all liability for work performed and action taken under this Authorization.



Todd Sando  
State Engineer

Date: 11/7/13





**Burleigh County Water Resource District**  
**NE1/4 Section 28, T140N, R81W**  
**Hogue Island Revetment Rehabilitation**

**Burleigh Co.**  
**Permit No. S1871**







## **Construction and Environmental Disturbance Requirements**

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

### **Soils**

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

### **Surface Waters**

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

### **Fill Material**

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.



**STATE  
HISTORICAL  
SOCIETY  
OF NORTH DAKOTA**

RECEIVED

SEP 19 2013

STATE WATER  
COMMISSION

Jack Dalrymple  
*Governor of North Dakota*

September 17, 2013

North Dakota  
State Historical Board

Calvin Grinnell  
*New Town - President*

A. Ruric Todd III  
*Jamestown - Vice President*

Margaret Puetz  
*Bismarck - Secretary*

Albert I. Berger  
*Grand Forks*

Gereld Gerntholz  
*Valley City*

Diane K. Larson  
*Bismarck*

Chester E. Nelson, Jr.  
*Bismarck*

Sara Otte Coleman  
*Director  
Tourism Division*

Kelly Schmidt  
*State Treasurer*

Alvin A. Jaeger  
*Secretary of State*

Mark Zimmerman  
*Director  
Parks and Recreation  
Department*

Grant Levi  
*Director  
Department of Transportation*

Merlan E. Paaverud, Jr.  
*Director*

*Accredited by the  
American Alliance  
of Museums since 1986*

Mr. Gerald R. Heiser  
Sovereign Lands Manager  
North Dakota State Water Commission  
900 East Boulevard Avenue  
Bismarck, North Dakota 58505-0830

**ND SHPO REF.: 13-1421 OSE: S-1871 Burleigh County Water Resource  
District re-shape and place rock riprap on the left bank of the Missouri river  
in portions of [T140N R81W Section 28] Burleigh County, North Dakota**

Dear Mr. Heiser:

We reviewed ND SHPO REF.: 13-1421 OSE: S-1871 Burleigh County Water Resource District re-shape and place rock riprap on the left bank of the Missouri river in portions of [T140N R81W Section 28] Burleigh County, North Dakota. We concur with "No Historic Properties Affected" and "No Significant Sites Affected" determinations provided the project is of the nature stated and that it takes in the location plotted and mapped in your documentation dated September 9, 2013, and received in this office September 16, 2013.

Thank you for the opportunity to review the project. If you have questions, please contact Susan Quinnell at (701) 328-3576 or [squinnell@nd.gov](mailto:squinnell@nd.gov).

Sincerely,

Merlan E. Paaverud, Jr.  
State Historic Preservation Officer (North Dakota)  
and  
Director, State Historical Society of North Dakota

C: COE Bismarck Regulatory





Jack Dalrymple, Governor  
Mark A. Zimmerman, Director

1600 East Century Avenue, Suite 3  
Bismarck, ND 58503-0649  
Phone 701-328-5357  
Fax 701-328-5363  
E-mail [parkrec@nd.gov](mailto:parkrec@nd.gov)  
[www.parkrec.nd.gov](http://www.parkrec.nd.gov)

October 4, 2013

Gerald Heiser  
ND Office of the State Engineer  
900 East Boulevard Ave.  
Bismarck, ND 58505-0850

RE: Burleigh County Water Resource District, Bismarck, ND, Application No. S-1871

Dear Mr. Heiser:

The North Dakota Parks and Recreation Department (the Department) has reviewed the above referenced project proposal to reshape and place riprap on the left bank of the Missouri River in Burleigh County.

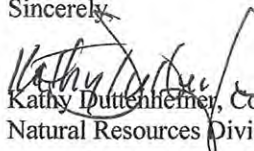
Our agency scope of authority and expertise covers recreation and biological resources (in particular rare plants and ecological communities). The project as defined does not affect state park lands that we manage or Land and Water Conservation Fund recreation projects that we coordinate.

The North Dakota Natural Heritage biological conservation database has been reviewed to determine if any current or historic plant or animal species of concern or other significant ecological communities are known to occur within an approximate one-mile radius of the project area. Based on this review, we several animal species of concern records that have been documented in sections adjacent to and within the project area indicating that the habitat in the project area may be suited for these species or other rare, threatened, sensitive or endangered species. Please see the attached spreadsheet and map for more information on these occurrences. We defer further comments regarding animal species to the North Dakota Game and Fish Department and the United States Fish and Wildlife Service.

Because this information is not based on a comprehensive inventory, there may be species of concern or otherwise significant ecological communities in the area that are not represented in the database. The lack of data for any project area cannot be construed to mean that no significant features are present. The absence of data may indicate that the project area has not been surveyed, rather than confirm that the area lacks natural heritage resources.

We appreciate your commitment to rare plant, animal and ecological community conservation, management and inter-agency cooperation to date. For additional information please contact me at (701-328-5370 or [kgduttenehner@nd.gov](mailto:kgduttenehner@nd.gov)). Thank you for the opportunity to comment on this proposed project.

Sincerely,

  
Kathy Duttenehner, Coordinator  
Natural Resources Division

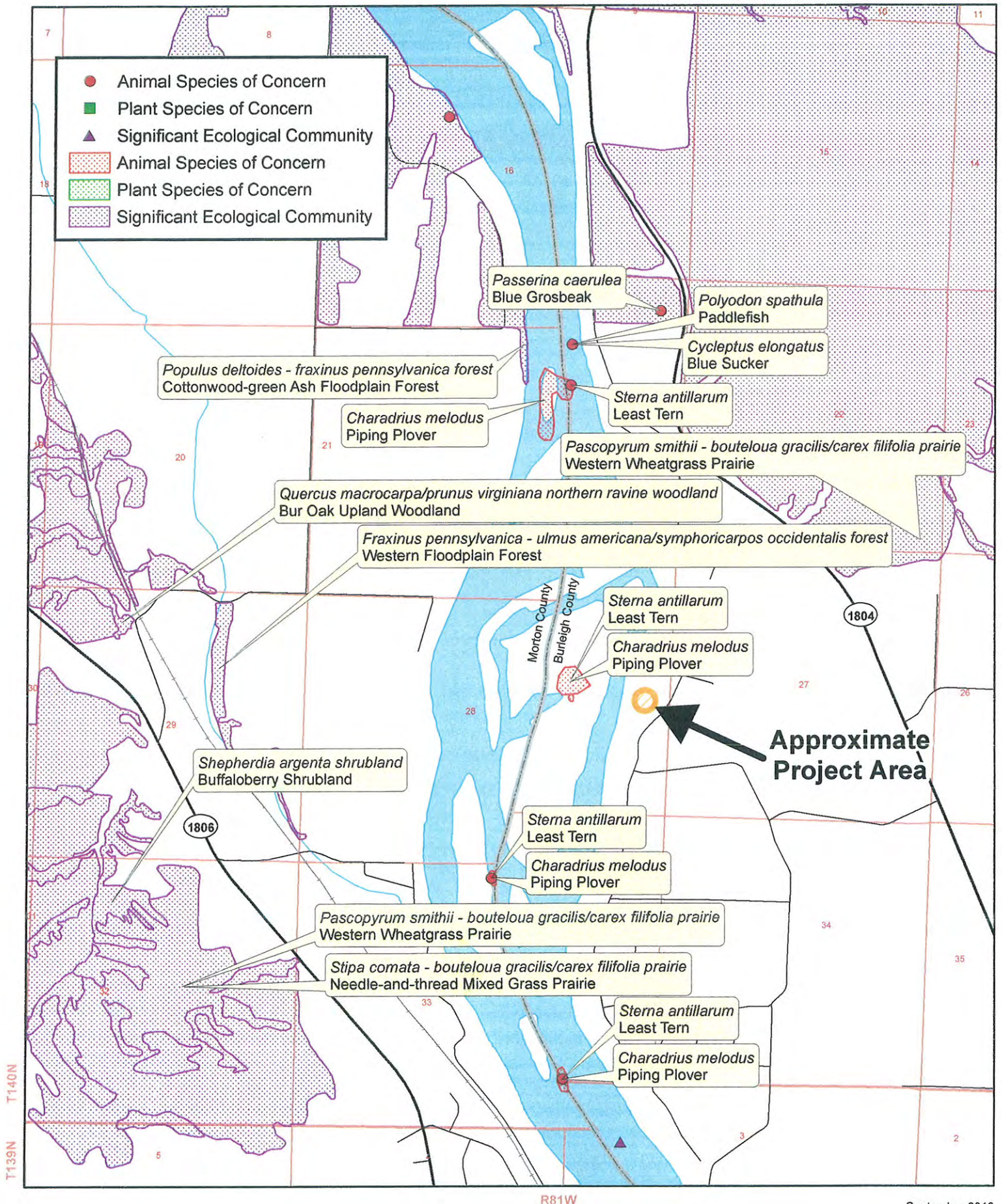
R.USNDNHI\*2013\_116KD10.2.2013DL10.5.2013



.....  
*Play in our backyard!*



# North Dakota Parks and Recreation Department North Dakota Natural Heritage Inventory





North Dakota Natural Heritage Inventory  
Rare Animal and Plant Species and Significant Ecological Communities

State Scientific Name	State Common Name	State Rank	Global Rank	Federal Status	Township Range Section	County	Last Observation	Estimated Representation Accuracy	Precision
Charadrius melodus	Piping Plover	S1S2	G3	LE,LT	140N081W - 21	Burleigh, Morton	1999-06-01	Medium	S
Charadrius melodus	Piping Plover	S1S2	G3	LE,LT	140N081W - 28	Burleigh	1999-06-22	High	S
Charadrius melodus	Piping Plover	S1S2	G3	LE,LT	140N081W - 33	Burleigh, Morton	1990	High	S
Charadrius melodus	Piping Plover	S1S2	G3	LE,LT	140N081W - 33; 139N081W - 03	Burleigh, Morton	1993-07-14	Medium	S
Cycleptus elongatus	Blue Sucker	S3	G3G4		140N081W - 21	Burleigh, Morton	1994-06-23		S
Fraxinus pennsylvanica - ulmus americana/symphoricarpos occidentalis forest	Western Floodplain Forest	S3	GNR		140N081W - 28; 140N081W - 20; 140N081W - 29	Morton	2007-06-12	Medium	
Pascopyrum smithii - bouteloua gracilis/carex filifolia prairie	Western Wheatgrass Prairie	S3S4	GNR		140N081W - 20; 140N081W - 31; 140N081W - 30; 139N081W - 05; 140N081W - 32; 140N081W - 29; 140N081W - 33; 140N081W - 19	Morton	2007-06-12	Medium	
Pascopyrum smithii - bouteloua gracilis/carex filifolia prairie	Western Wheatgrass Prairie	S3S4	GNR		140N081W - 26; 140N081W - 27; 140N081W - 15; 140N081W - 03; 140N081W - 16; 140N081W - 09; 140N081W - 23; 140N081W - 22; 140N081W - 14; 140N081W - 10; 140N081W - 21; 140N081W - 04	Burleigh	2007-09-26	Low	
Passerina caerulea	Blue Grosbeak	SU	G5		140N081W - 21; 140N081W - 27; 140N081W - 14; 140N081W - 28; 140N081W - 10; 140N081W - 16; 140N081W - 15; 140N081W - 22; 140N081W - 23; 140N081W - 08; 140N081W - 09	Burleigh, Morton	1982-07-30		M
Polyodon spathula	Paddlefish	SNR	G4		140N081W - 21	Burleigh, Morton	1994-09-19		S
Populus deltoides - fraxinus pennsylvanica forest	Cottonwood-green Ash Floodplain Forest	S3	GNR		140N081W - 08; 140N081W - 17; 140N081W - 16; 140N081W - 21	Morton	2007-06-12	High	
Quercus macrocarpa/prunus virginiana northern ravine woodland	Bur Oak Upland Woodland	S3	GNR		140N081W - 32; 140N081W - 31; 140N081W - 20; 140N081W - 30; 140N081W - 19; 140N081W - 18; 140N081W - 29	Morton	2007-06-12	Medium	
Shepherdia argenta shrubland	Buffaloberry Shrubland	S4	GNR		140N081W - 30; 140N081W - 33; 139N081W - 05; 140N081W - 32; 140N081W - 29	Morton	2007-06-12	Medium	
Sterna antillarum	Least Tern	S1	G4	PS:LE	140N081W - 21	Burleigh, Morton	2000-05-29	Medium	S
Sterna antillarum	Least Tern	S1	G4	PS:LE	140N081W - 28	Burleigh	1999-06-22	Medium	S
Sterna antillarum	Least Tern	S1	G4	PS:LE	140N081W - 33; 139N081W - 03	Burleigh, Morton	1993-07-14	Medium	S
Sterna antillarum	Least Tern	S1	G4	PS:LE	140N081W - 33; 140N081W - 28	Burleigh, Morton	1989-07	Medium	S

North Dakota Natural Heritage Inventory  
Rare Animal and Plant Species and Significant Ecological Communities

State Scientific Name	State Common Name	State Rank	Global Rank	Federal Status	Township Range Section	County	Last Observation	Estimated Representation Accuracy	Precision
<i>Stipa comata</i> - <i>bouteloua gracilis</i> /carex filifolia prairie	Needle-and-thread Mixed Grass Prairie	S2	GNR		140N081W - 20; 140N081W - 31; 140N081W - 30; 139N081W - 05; 140N081W - 32; 140N081W - 33; 140N081W - 29; 140N081W - 19	Morton	2007-06-12	Medium	

## North Dakota Natural Heritage Inventory Biological and Conservation Data Disclaimer

The quantity and quality of data collected by the North Dakota Natural Heritage Inventory are dependent on the research and observations of many individuals and organizations. In most cases, this information is not the result of comprehensive or site-specific field surveys; many natural areas in North Dakota have never been thoroughly surveyed, and new species are still being discovered. For these reasons, the Natural Heritage Inventory cannot provide a definite statement on the presence, absence, or condition of biological elements in any part of North Dakota. Natural Heritage data summarize the existing information known at the time of the request. Our data are continually upgraded and information is continually being added to the database. This data should never be regarded as final statements on the elements or areas that are being considered, nor should they be substituted for on-site surveys.

### Estimated Representation Accuracy

Value that indicates the approximate percentage of the Element Occurrence Representation (EO Rep) that was observed to be occupied by the species or community (versus buffer area added for locational uncertainty). Use of estimated representation accuracy provides a common index for the consistent comparison of EO reps, thus helping to ensure that aggregated data are correctly analyzed and interpreted.

Very high (>95%)

High (>80%, <= 95%)

Medium (>20%, <= 80%)

Low (>0%, <= 20%)

Unknown

(null) - Not assessed

### Precision

A single-letter code for the precision used to map the Element Occurrence (EO) on a U.S. Geological Survey (USGS) 7.5' (or 15') topographic quadrangle map, based on the previous Heritage methodology in which EOs were located on paper maps using dots.

S - Seconds: accuracy of locality mappable within a three-second radius; 100 meters from the centerpoint

M - Minute: accuracy of locality mappable within a one-minute radius; 2 km from the centerpoint

G - General: accuracy of locality mappable to map or place name precision only; 8 km from centerpoint

U - Unmappable



**NORTH DAKOTA**  
DEPARTMENT of HEALTH

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



September 23, 2013

Gerald R. Heiser  
Sovereign Lands Manager  
900 East Boulevard Ave  
Bismarck, ND 58505-0850



Application No: S-1871

Dear Mr. Heiser:

Thank you for the opportunity to review application S-1871. In brief, the Burleigh County Water Resource District has filed an application to place rock riprap on the left bank of the Missouri River. The project will entail reshaping the bank to the proper slope, placing 862 yards<sup>2</sup> of geotextile over the area and burying the entire area with 6 to 24 inch diameter rock tying into the existing U.S. Corps of Engineer's structures.

The Department has completed its review for compliance with the States Standards of Water Quality. If our interpretation is correct, the Department feels reasonable assured that no violation will occur provided that all materials used are free from trash and:

- 1) A General Construction Permit is acquired by the agent/company doing the work, and
- 2) That our Construction and Environmental Disturbance Requirements (attached) is adhered to.

These comments are based on my interpretation of the project. The U.S. Army Corps of Engineers (USACE) may require water quality certification from this Department for this project. Any additional information which may be required by the USACE under the process will be considered in our determination regarding the issuance of such a certification.

If you have any questions I may be reach at 701.328.5268.

Sincerely

Peter Wax  
Environmental Scientist  
Division of Water Quality

PNW:dlp  
Enc:



"VARIETY IN HUNTING AND FISHING"

## NORTH DAKOTA GAME AND FISH DEPARTMENT

100 NORTH BISMARCK EXPRESSWAY BISMARCK, NORTH DAKOTA 58501-5095 PHONE 701-328-6300 FAX 701-328-6352

September 27, 2013

Todd Sando  
State Engineer  
900 East Boulevard  
Bismarck, North Dakota 58505-0850

Dear Mr. Sando:

Re: Burleigh County Water Resource District Stabilization Project  
Application No.: S-1871

The North Dakota Game and Fish Department has been notified of the Burleigh County Water Resource District's proposal to reshape and place rock riprap on the left bank of the Missouri River in Burleigh County. The homes located at the site have been purchased by the County, sold at auction and will be removed. The project is intended to repair and stabilize the riverbank to make room for and prepare the site for construction of a permanent levee. The proposed project is located in the NE1/4 of Section 28, Township 140 North, Range 81 West in Burleigh County, North Dakota.

The Department has previously stated that until a cumulative impact analysis is completed which indicates no significant adverse impacts to public values, we cannot support stabilization projects on the Missouri River unless needed for immediate protection of occupied dwellings or public utilities. Since this project is for public infrastructure and will provide a public benefit, the Department does not oppose the project.

Sincerely,

  
Greg Link  
Chief

Conservation & Communication Division

blk







# State of North Dakota

## Office of the State Engineer

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

November 19, 2013

Col. Joel R. Cross, District Commander  
U.S. Army Corps of Engineers  
1616 Capitol Ave., Ste. 9000  
Omaha, NE 68128

Dear Col. Cross:

Beginning in the 1960's, the U.S. Army Corps of Engineers (Corps) began construction on several bank stabilization structures on the Missouri River in North Dakota under Public Law 88-253, Public Law 90-483 "1968 Flood Control Act," and in the 1970's under Public Law 93-251, Section 33, "Streambank Erosion Control Evaluation and Demonstration Act of 1974". Those completed structures were then turned over to the State of North Dakota for operation and maintenance. The State entered into agreements with the various County Water Resource Districts in which the structures are located as the local sponsors for operation and maintenance of the structures.

In 2013, the Burleigh County Water Resource District (WRD), Bismarck, North Dakota applied for authorization from the State Engineer (copy attached) and the Corps to reshape and place rock riprap on the left bank of the Missouri River in the NE ¼ of Section 28, Township 140 North, Range 81 West, Burleigh County. The project site is located between Corps windrow revetments 1323.55 and 1323.45.

The project site suffered extensive erosion during the 2011 Missouri River flood event, causing one home to fall into the river and rendering three other homes uninhabitable. Those homes have been purchased by the County, sold at auction, and removed from the site. The project is intended to repair and stabilize the riverbank at the project site and to make room for and prepare the site for construction of a proposed permanent flood control levee.

Specifically, the project involves reshaping the bank to a more stable slope. Approximately 862 square yards of geotextile fabric will be placed on the bank with approximately 887 cubic yards of rock riprap placed over the fabric. The fabric and riprap will tie into windrow revetments 1323.55 above and 1323.45 below the project. The rock riprap would be 6 inches to 24 inches in diameter of which 20



Col. Joel R. Cross  
Page 2  
November 19, 2013

percent by weight would be at least 16 inches in diameter. Typical thickness of the riprap would be 24 inches. The bank above the riprap would be graded, top-soiled, and reseeded.

It is my understanding that projects that involve or affect any Section 33 structures requires approvals from the State Engineer and the local sponsor as a pre-condition to the Corps issuance of a Section 404 Permit. The State Engineer authorized this project by signing Sovereign Land Permit No. S-1871, on November 7, 2013 (copy attached). The local sponsor, Burleigh County WRD, is the applicant.

Therefore, please consider this letter a recommendation for you to approve the proposed project.

If you have any questions concerning this matter, please contact Gerald Heiser, Sovereign Lands Manager at (701) 328-4935.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Sando", with a stylized flourish at the end.

Todd Sando  
State Engineer

GH:ph/1625  
Enclosures

cc: Burleigh County Water Resource District, Bismarck, ND  
U.S. Army Corps of Engineers, Regulatory Office, Bismarck, ND  
Houston Engineering, Inc., Bismarck, ND



**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
**NORTH DAKOTA REGULATORY OFFICE**  
1513 SOUTH 12TH STREET  
BISMARCK ND 58504-6640

January 21, 2014

North Dakota Regulatory Office

[NWO-2013-1633-BIS]

**RECEIVED**

JAN 26 2014

**Houston Engineering, Inc.**  
**Bismarck, ND**

Mr. Michael Gunsch  
Houston Engineering  
3712 Lockport Street  
Bismarck, North Dakota 58503

Dear Mr. Gunsch:

We have reviewed your request for Department of the Army (DA) authorization, on behalf of the Burleigh County Water Resource District, for the proposed placement of rock riprap and filter fabric along a 500-foot segment of Missouri River bank line. The project includes shaping the bank to a more stable slope. As previously indicated, any remaining on-site sand bags are not an acceptable source of fill material for the bank shaping portion of this project. This project is located at Missouri River mile 1323.5L, Section 28, Township 140 North, Range 81 West, Burleigh County, North Dakota.

We have prepared a preliminary jurisdictional determination (JD) for the site which is a written indication that the waters in the project area may be jurisdictional waters of the United States. Such waters have been treated as jurisdictional for purposes of computation of impacts and compensatory mitigation requirements. If you concur with the preliminary JD, please sign it and return it to the letterhead address. If you believe the preliminary JD is inaccurate, you may request this office complete an approved JD prior to commencement of any work in waters of the US. An approved JD is an official determination regarding the presence or absence of such waters. Completion of an approved JD may require coordination with the US Environmental Protection Agency.

If you do not want the Corps to complete an approved JD, you may proceed with the project in accordance with the terms and conditions of DA Nationwide Permit No. 13 found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General and Regional Conditions that must be adhered to for this authorization to remain valid. In addition, the North Dakota Department of Health has issued individual Section 401 Water Quality Certification for this project. A copy of that certification, dated January 7, 2014, is also attached.

This determination is applicable only to the permit program administered by the US Army Corps of Engineers. It does not eliminate the need to obtain other applicable Federal, State, Tribal and local permits as required. Please note that deviations from the original plans and specifications of this project could require additional authorization from this office.

Burleigh County Water Resource District is responsible for all work accomplished in accordance with the terms and conditions of this nationwide permit. If a contractor or other authorized representative will be accomplishing the work authorized by this nationwide permit, it is recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the nationwide permit. Failure to comply with all the terms and conditions of this authorization may result in an enforcement action.

In compliance with General Condition 30, you are required to submit the following project compliance certification within thirty (30) days of project completion. [Please check all applicable statements.]

- ☐ I certify that I have completed the project as permitted.
- ☐ I certify that I have completed a modified version of the project.
- ☐ I certify that I have completed all required mitigation.

**Permittee's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

This verification will be valid until **March 18, 2017**. If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to March 18, 2017. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete out Customer Service Survey found on our website at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination, please contact Mr. Jason Renschler of this office by letter or telephone at (701) 255-0015 and reference Nationwide Permit number **NWO-2013-1633-BIS**.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt J. Mikulecky", with a large, looping flourish at the end.

Matthew Mikulecky  
Acting Regulatory Program Manager  
North Dakota

Enclosure  
- Fact Sheet #13

**FACT SHEET  
NATIONWIDE PERMIT 13  
(2012)**

**BANK STABILIZATION.**

Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- (g) The activity is not a stream channelization activity.

This NWP also authorizes temporary structures, fills, and work necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Invasive plant species shall not be used for bioengineering or vegetative bank stabilization. (Sections 10 and 404)

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 31.)

## **Nationwide Permit General Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

**1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical

habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

**20. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic



Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification**—(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition

20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee

cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information: (1) Name, address and telephone numbers of the prospective permittee; (2) Location of the proposed project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans); (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate; (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act. (c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used. (d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and

ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

### **Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

**2012 Nationwide Permits  
Regional Conditions  
Omaha District  
State of North Dakota**

The following Nationwide Permit regional conditions will be used in the State of North Dakota. Regional conditions are placed on Nationwide Permits to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**Wetlands Classified as Peatlands – Revoked for Use**

All Nationwide Permits, with the exception of 3, 5, 20, 32, 38 and 45, are revoked for use in peatlands in North Dakota.

Peatlands are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

**Wetlands Classified as Peatlands – Pre-construction Notification Requirement**

For Nationwide Permits 3, 5, 20, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition 31 (Notification) prior to initiating any regulated activity impacting peatlands in North Dakota.

**Waters Adjacent to Natural Springs – Pre-construction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in North Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

**Missouri River, including Lake Sakakawea and Lake Oahe within the State of North Dakota – Pre-construction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity in the Missouri River, including Lake Sakakawea and Lake Oahe, within the State of North Dakota.



### **Borrow Site Identification – All Nationwide Permits**

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

### **Counter-sinking Culverts and Associated Riprap – All Nationwide Permits**

That culverts and riprap proposed to be installed within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota shall be installed one foot below the natural streambed. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>.

## **REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS**

### **Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and Nationwide Permit 12 – Utility Line Activities**

**Intake Structures** - Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed 1/2-foot per second.

Pumping plant sound levels will not exceed 75 dB at 50 feet.

Intakes located in Lake Sakakawea, above river mile 1519, are subject to the following conditions:

- The intakes shall be floating.
- At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
- If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
- If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to 1/4 foot per second.

Intakes located in Lake Sakakawea, below river mile 1519, and in the Missouri River below Garrison Dam are subject to the following conditions:

- The intakes shall be submerged.
- At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- If the 20-foot depth is not attainable, then the intake velocity shall be limited to 1/4-foot per second with the intake placed at the maximum practicable attainable depth.

### **Nationwide Permit 11 – Temporary Recreational Structures - Boat Docks**

a. If future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

b. No boat dock shall be located on a sandbar or barren sand feature located in or along the banks of the Missouri River.

c. The farthest point riverward on the dock located on the Missouri River proper shall not exceed a total length of 30 feet from the ordinary high water line found along the high bank out into the River. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.

d. Any boat dock located on the Missouri River shall be anchored to the top of the high bank.

e. Any boat dock located within an excavated bay or marina off the main river channel may be anchored to the bay or marina bottom with spuds.

### **Nationwide Permit 13 - Bank Stabilization**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

### **Nationwide Permit 23 - Approved Categorical Exclusions**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota. In addition to information required by General Condition 31, permittees must identify the approved categorical exclusion that applies and provide documentation that the project fits the categorical exclusion.

### **Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment and Enhancement Activities**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

## **GENERAL CONDITIONS (REGIONAL ADDITIONS)**

### **General Condition 3- Spawning Areas**

No regulated activity within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June. No regulated activity within the Red River of the North shall occur between 15 April and 1 July. North Dakota Public Fishing Waters can be accessed at: <http://gf.nd.gov/fishing/nd-fish-wat.html>. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>.

### **General Condition 6 – Suitable Material**

Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material. Specific verbiage on prohibited materials can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>.

### **General Condition 9 - Management of Water Flows**

Permittees are reminded that water flow management addressed in General Condition 9 is applicable to all aspects of a permitted project, including temporary features.

### **General Condition 31 – Pre-construction Notification**

Prospective permittees should be aware that a **field delineation** may be required for applications where notification is required in accordance with General Condition 31 and/or mitigation may be required. The Corps 1987 Wetland Delineation Manual and applicable Regional Supplements to the Manual can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>.

## ***PRELIMINARY JURISDICTIONAL DETERMINATION FORM***

This preliminary JD finds that there “*may be*” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**A. Report Completion Date for Preliminary Jurisdictional Determination (JD):**

January 21, 2014

**B. Name and Address of Person Requesting Preliminary JD:**

Houston Engineering  
3712 Lockport Street  
Bismarck, ND 58503

**C. District Office, File Name, and Number:**

Omaha District; H.E. / BCWRD; NWO-2013-1633-BIS

**D. PROJECT LOCATION(S), BACKGROUND INFORMATION, AND WATERS:**

State: **North Dakota**

City: **Bismarck**

County: **Burleigh**

Name of nearest waterbody: **Missouri River.**

Identify amount of waters in the review area: +/- **.25-acre.**

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

**Table 1 - Waters of the U.S.**

Site #	Latitude	Longitude	Stream Flow	Cowardin Class	Estimated amount of aquatic resources in review area	Estimated amount of aquatic resource impact	Class of aquatic resource
1	46.91696	-100.89682	Permanent	Riverine	.15-acre	.05-acre	Non-tidal

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**


- ☒ Office (Desk) Determination. Date: **January 21, 2014**  
☐ Field Determination. Date(s):

**F. SUPPORTING DATA:**

**Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:  
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.  
☐ Office concurs with data sheets/delineation report.  
☐ Office does not concur with data sheets/delineation report.  
☐ Data sheets prepared by the Corps: .  
☐ Corps navigable waters' study: .  
☐ U.S. Geological Survey Hydrologic Atlas: .  
☐ USGS NHD data.  
☒ USGS 8 and 12 digit HUC maps.  
☒ U.S. Geological Survey map(s). Cite quad name: **Harmon - 1:24,000.**  
☐ USDA Natural Resources Conservation Service Soil Survey.  
☒ National wetlands inventory map(s). Cite name: **Harmon - 1:24,000.**  
☐ State/Local wetland inventory map(s): .  
☐ FEMA/FIRM maps: .  
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)  
☐ Photographs: ☐ Aerial (Name & Date):  
or ☐ Other (Name & Date):  
☐ Previous determination(s). File no. and date of response letter: .  
☒ Other information (please specify): **Goggle Earth.**

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

 **1/21/14.**  
Signature and date of  
Regulatory Project Manager  
(REQUIRED)

\_\_\_\_\_  
Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining the  
signature is impracticable)



## **G. EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:**

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.
2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.



**NORTH DAKOTA**  
DEPARTMENT of HEALTH

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



January 7, 2013

Michael Guncsh, P.E.  
Houston Engineering  
3712 Lockport Street  
Bismarck, ND 58503

**COPY** FIVE  
JAN 9 2014

**Section 401 Water Quality Certification: NWO-2013-1633-BIS**

Dear Mr. Guncsh:

The department has reviewed your proposal to rehabilitate existing revetment along the bank of Hogue Island. Based on our review, the department certifies that the project, as described in the 404 permit application (NWO-2013-1632-BIS), should not result in a violation of the Standards of Quality for Waters of the State provided you assure that construction entities comply with the following conditions:

- 1) Follow the Department's Construction and Environmental Disturbance Requirements (attached).

If the project is operated in a manner not consistent with the conditions of this certification, this certification shall be deemed denied. The department reserves the right to amend this certification if it is determined that the conditions no longer provide reasonable assurance that the project is complying with the standards or other appropriate requirements of State law. Should you have any questions, I may be reached at 701.328.5268.

Sincerely,

Peter Wax  
Environmental Scientist  
Division of Water Quality

PW:dlp

xc. / Jason Renschler, Regulatory Project Manager, USCAE Bismarck  
Terry Fleck, Burleigh County Water Resource Board

**U.S. Army Corps of Engineers  
North Dakota Regulatory Office  
1513 South 12th Street  
Bismarck, North Dakota 58504  
Telephone (701) 255-0015    Fax (701) 255-4917**

**IMPORTANT INSTRUCTIONS FOR OUR PERMIT CUSTOMERS**

Notice of the Reissuance of Nationwide Permits was published in the Federal Register [77 FR 10184] on February 21, 2012. The Nationwide Permits went into effect on March 19, 2012. Project compliance certification is required by General Condition 30. The following instructions are provided to clarify the information contained within the nationwide permit authorization letter and attachments.<sup>1</sup>

**STEP 1**

Review the permit authorization and be sure you understand the terms and conditions for the authorization to remain valid. If you do not understand, or have any questions, please do not hesitate to contact this office at the above address.

**STEP 2**

Complete your project in accordance with the permit terms and conditions. [Remember that any deviation from the original plans and specifications of your project could require additional authorization from this office.]

**STEP 3**

Within thirty (30) days of project completion, please complete the permit compliance certification contained within your permit authorization letter. A photocopy of the first page (marked with a colored COPY stamp) has been provided for this purpose. Mark the applicable statements, sign and date where indicated, and forward the COPY to this office at the above address.

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<sup>1</sup>There is no charge associated with any aspect of this nationwide authorization or the follow-up compliance certification.





**COPY**

[NWO-2013-1633-BIS]

This determination is applicable only to the permit program administered by the US Army Corps of Engineers. It does not eliminate the need to obtain other applicable Federal, State, Tribal and local permits as required. Please note that deviations from the original plans and specifications of this project could require additional authorization from this office.

Burleigh County Water Resource District is responsible for all work accomplished in accordance with the terms and conditions of this nationwide permit. If a contractor or other authorized representative will be accomplishing the work authorized by this nationwide permit, it is recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the nationwide permit. Failure to comply with all the terms and conditions of this authorization may result in an enforcement action.

In compliance with General Condition 30, you are required to submit the following project compliance certification within thirty (30) days of project completion. [Please check all applicable statements.]

- ☐ I certify that I have completed the project as permitted.
- ☐ I certify that I have completed a modified version of the project.
- ☐ I certify that I have completed all required mitigation.

**Permittee's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

This verification will be valid until **March 18, 2017**. If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to March 18, 2017. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

