



August 2018

Property Rights Acquisition and Mitigation Plan Summary

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The full Mitigation Plan is 115 pages and includes the following items.

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The Metro Flood Diversion Authority (Diversion Authority) has prepared the Property Rights Acquisition and Mitigation Plan to document the property rights acquisition and mitigation policies that will be followed for the Fargo-Moorhead (FM) Area Diversion Project (Project). This Property Rights Acquisition and Mitigation Plan has been drafted in coordination with the US Army Corps of Engineers (USACE), and in consultation with the North Dakota State Water Commission (NDSWC) and the Minnesota Department of Natural Resources (MDNR) along with input from the Diversion Authority's Land Management Committee and the Agriculture Policy Subcommittee. Throughout the Property Rights Acquisition and Mitigation Plan, the Project is commonly referred to as the 'FM Area Diversion Project', but it should be noted that USACE, other agencies, and certain documents identify the Project as the 'Fargo-Moorhead Metro Flood Risk Management Project'.

It should also be noted that the Project being referenced in the Property Rights Acquisition and Mitigation Plan is a refined and updated version of the Project that the Diversion Authority has submitted to MDNR as part of a permit application. The Project is now considered "Plan B", and is intended to be consistent with the recommendations of the Governors' Task Force.

The Property Rights Acquisition and Mitigation Plan is intended to be a living document that will be reviewed and amended periodically as additional information and operations prompt updates.

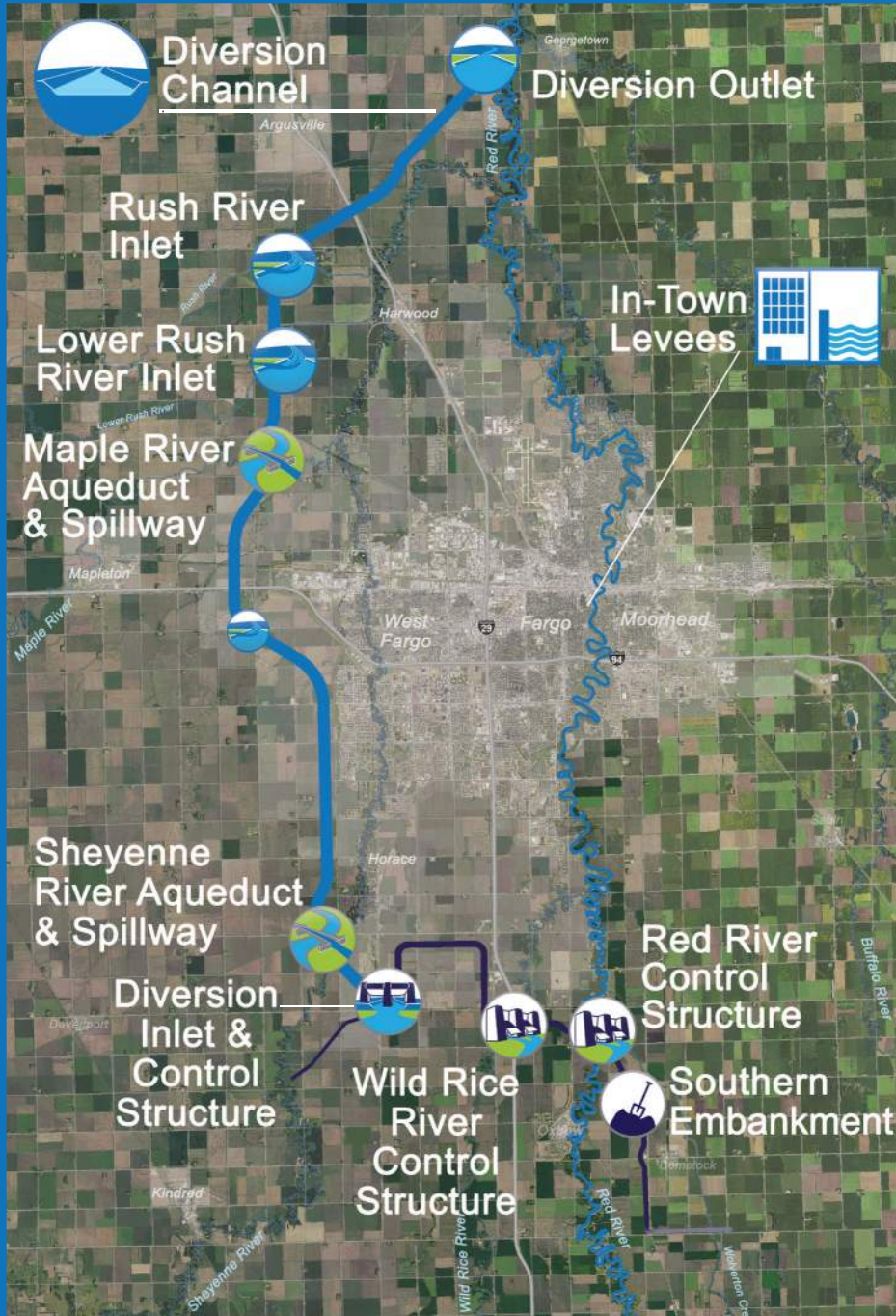
This Property Rights Acquisition and Mitigation Plan contains information about the acquisition of property rights needed for the Project and property mitigation programs. The document is a compilation of a series of plans for a variety of topics. Collectively, the individual topics contained within the document serve as the comprehensive Property Rights Acquisition and Mitigation Plan for the Project.

Full Mitigation Plan Document Available

www.fmdiversion.com/studies-technical-documents/



Project Map



Diversion Outlet

Water exiting the channel and entering the Red River.



River or Drain Inlet

Water from surrounding drainage areas that enter the Diversion Channel.



Aqueduct & Spillway

A structure that allows a river normally to cross the Diversion Channel and "spill" into the Channel during flood events.



Diversion Inlet & Control Structure

During times of extreme flooding, water behind the Southern Embankment will enter the Diversion Channel through the inlet.



Southern Embankment

The southern embankment is an earthen structure that temporarily holds water during extreme flood events.



River Control Structure

Control structures safely regulate the flow of water.

Process and Procedure

The Diversion Authority has adopted a thorough process for acquiring property. The mission of the Authority is to acquire necessary property in compliance with State and Federal guidelines and in accordance with the philosophy of being friendly, fair, and flexible to those whose property is required for the project.

The Diversion Authority aims to acquire properties following a timeline based on design and construction schedules. That being said, and now that the Project Partnership Agreement (PPA) has been executed with the Federal Government, the Diversion Authority will entertain requests for early acquisition. The intention of this program is to allow property to be acquired early if the property owners desire.

By the Numbers

- Approximately 1,240 total impacted parcels
- Flowage easements on approximately 875 parcels
- Approximately 365 parcels to acquire in fee title
- 1,060 North Dakota parcels
- 180 Minnesota parcels

Excess Property

If requested by the property owner, the Diversion Authority may purchase full parcels of land rather than simply the bare minimum property needed to implement the Project. If, as a result, the Diversion Authority owns excess property, the remnants will be sold via public sale in a timely fashion.



Overview Of Some Key Elements

CLEAN UP PLANS

Operation of the Project will result in the staging and retention of flood waters upstream of the Fargo-Moorhead metro area. The upstream retention area will impact a different amount of acres for each flood event depending on the magnitude of the flood. The Diversion Authority will obtain flowage easements on the properties that are within a defined mitigation area. The flowage easement will compensate property owners for the impacts associated with the Project. However, in recognition that operation of the upstream retention area may cause debris (logs, straw, trash, etc.) to accumulate within and along the edges of the upstream retention area, the Diversion Authority has developed post-operation debris clean-up plans for both private and public properties. The private-lands debris clean-up plan is patterned after the “clean-up week” approached used in the metro area where items to be disposed of are piled up at the curb. The public-lands repair and debris clean-up plan is patterned after the approach FEMA uses for post-disaster damage assessment and reimbursement where local government units are reimbursed for cleanup costs.

FLOWAGE EASEMENTS

The FM Area Diversion Project includes a mitigation area upstream of the Project. The mitigation area is a necessary component of the Project, and it will occasionally and temporarily store flood waters. Flowage Easements will be purchased and applied to the properties in the upstream mitigation area. The value of each flowage easement will be determined through an appraisal that will consider the depth, duration, and frequency of additional flooding, and the highest and best use of the property to determine the market value of the property. Phase 1 of valuation study is underway now.

SUPPLEMENTAL CROP LOSS PROGRAM

Summer operation of the Project would likely damage growing crops. Even though summer operation is extremely unlikely, the Diversion Authority will adopt a Summer Operation Supplemental Crop Loss program to provide additional assurance to producers in the upstream mitigation area. The Program would provide producers with coverage for the risk associated with Project induced flooding on growing crops if the Project operates during summer. The Diversion Authority understands and acknowledges that this program is important to the agricultural community because under these events, it is anticipated that producers will not be able to utilize the federal crop insurance program(s) for damages caused by operation of the Project.

CEMETERIES

There are 5 cemeteries upstream of the Diversion Project that may potentially be impacted by varying levels (ranging from 0.3 feet to 6.3 feet) of additional water during major floods due to operation of the Project in a 100-year (one-percent annual chance) flood. Additionally, there are 21 cemeteries that currently would flood within the protected area that will now have improved flood protection due to construction of the Project.

Some of the recommended mitigation steps for cemeteries include protective berms, access changes, debris fencing, anchoring headstones, and/or raising the site. The previously completed cemetery studies can be found at www.fmdiversion.com/studies-technical-documents/.

FINANCIAL CONSIDERATIONS

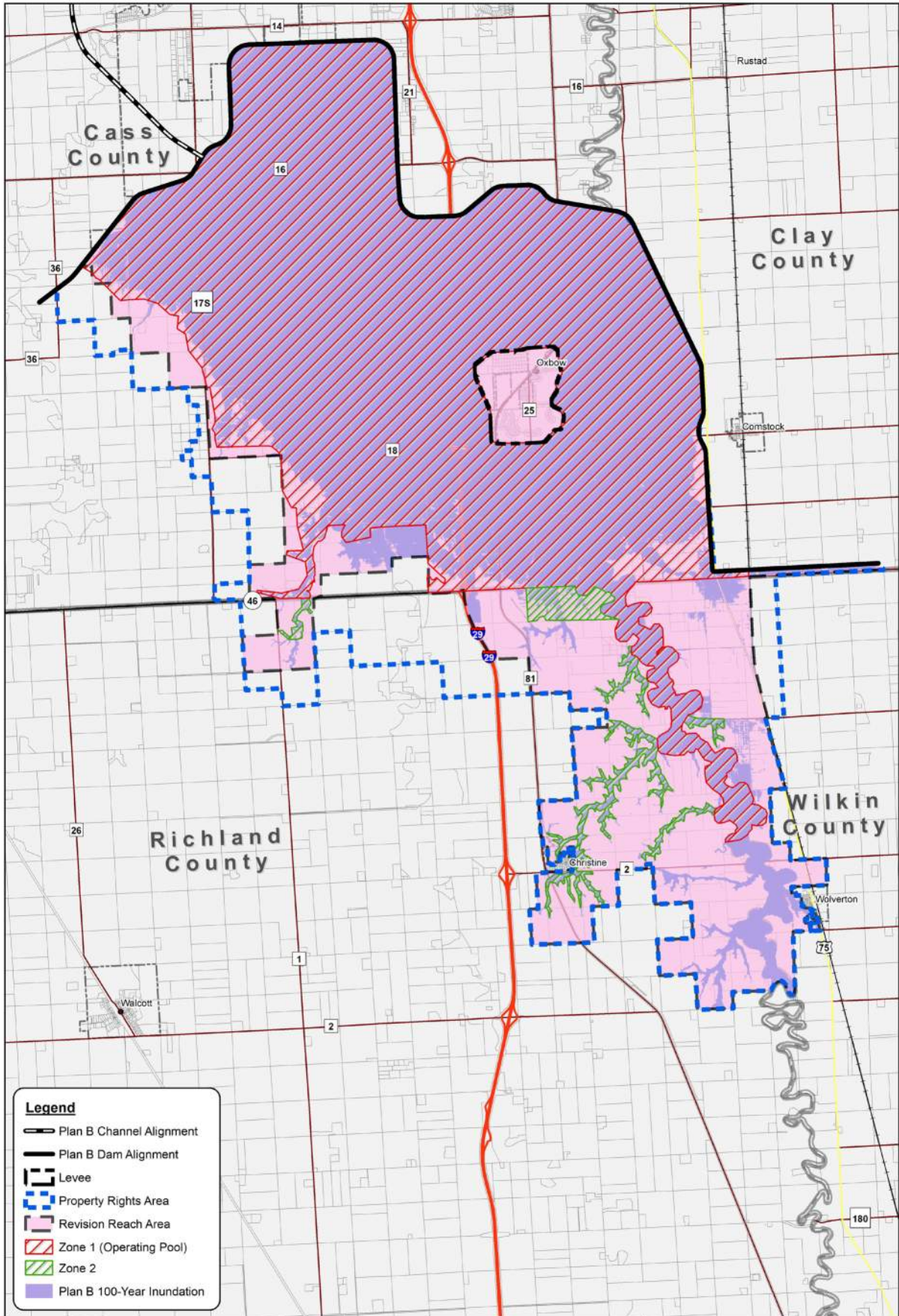
The Diversion Authority will establish an on-going O&M Funding Program and utilize either sales taxes or a maintenance district, or a combination of both to fund the program. In addition, the Diversion Authority will make sure that all of the mitigation costs outlined in the Mitigation Plan will be eligible for funding through the O&M Funding Program. The O&M Funding Program will also provide a mechanism for funding unforeseen mitigation needs that may arise due to Project operation.

DISPUTE RESOLUTION BOARD

In addition to acquiring the necessary property rights from property owners, the Diversion Authority will provide an informal, administrative forum for property owners to file claims for damages. The Diversion Authority will establish the Alternative Dispute Resolution Board for such purposes. It should be noted that the Dispute Resolution Board is modeled after a similar process created by the North Dakota State Water Commission (NDSWC) for the Devils Lake outlet project. The Dispute Resolution Board provides a fair and independent process and mechanism for property owners who believe they were impacted by the Project to submit a claim of damages. The Board will be relied upon for property owners outside of the mitigation boundaries described in the Property Rights Acquisition and Mitigation Plan.



100-year Event Map



DRAFT

Property Rights Acquisition and Mitigation Plan v.4

ADA Accessible Version

August 13, 2018



This is a draft Property Rights Acquisition and Mitigation Plan and the Diversion Authority requests MDNR provide input and comments on the Plan.

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Preface

The Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project) was authorized by Section 7002 of the Water Resources Reform and Development Act of 2014 (WRRDA). The purpose of the Project is to reduce flood risk, flood damages and flood protection costs related to flooding in the Fargo-Moorhead metropolitan area. The project is led by the St. Paul District, Army Corps of Engineers (USACE), and the non-federal sponsors Fargo, North Dakota; Moorhead, Minnesota; and the Metro Flood Diversion Authority (collectively Sponsors).

The Project is located in the Fargo-Moorhead Metropolitan Area. The Project consists of a diversion channel system including, but not limited to: excavated channels; control structures; aqueducts; tie-back embankments; an upstream staging area; levees; and environmental mitigation projects located inside and outside the project area.

The Project originated as a recommendation from the Final Feasibility Report and Environmental Impact Statement (FEIS), Fargo-Moorhead Metropolitan Area Flood Risk Management, July 2011. As outlined within the FEIS, the Project would have various environmental effects and require various property rights. These impacts, property needs, and mitigation needs were updated through the 2013 Supplemental Environmental Assessment and the 2018 Supplemental Environmental Assessment.

The Metro Flood Diversion Authority (Diversion Authority) has prepared this Property Rights Acquisition and Mitigation Plan to document the property rights acquisition and mitigation policies that will be followed for the Fargo-Moorhead (FM) Area Diversion Project (Project). This Property Rights Acquisition and Mitigation Plan has been drafted in coordination with the US Army Corps of Engineers (USACE), and in consultation with the North Dakota State Water Commission (NDSWC) and the Minnesota Department of Natural Resources (MDNR), along with input from The Diversion Authority's Land Management Committee and the Agricultural Policy Subcommittee. Throughout this Property Rights Acquisition and Mitigation Plan, the Project is commonly referred to as the 'FM Area Diversion Project', but it should be noted that USACE, other agencies, and certain documents identify the Project as the 'Fargo-Moorhead Metro Flood Risk Management Project'.

It should also be noted that the Project being referenced in this Property Rights Acquisition and Mitigation Plan is a refined and updated version of the Project that the Diversion Authority submitted to MDNR as part of a permit application. The refinements and updates include a micro-sited alignment of the southern embankment and updated hydraulic modeling. The Project is considered "Plan B", and is intended to be consistent with the recommendations of the Governors' Task Force.

This Property Rights Acquisition and Mitigation Plan is intended to be a living document that will be reviewed and amended periodically as additional information and operations prompt updates.

This Property Rights Acquisition and Mitigation Plan contains information about the acquisition of property rights needed for the Project and property mitigation programs. This document is a compilation of a series of plans for a variety of topics. Collectively, the individual topics contained within this document serve as the comprehensive Property Rights Acquisition and Mitigation Plan for the Project.

Property Acquisition Philosophies

Mission

To acquire the property necessary for the Project, in compliance with Minnesota and North Dakota law and Federal guidelines and in accordance with the philosophy of being friendly, fair, and flexible to those whose property is required for the Project.

Overarching Property Acquisition Philosophies

- Follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (PL 91-646) as the basis for establishing the minimum standards for property acquisitions. The objectives of the URA are to:
 - Provide uniform, fair, and equitable treatment of persons whose real property is acquired or are displaced in connection with the Project.
 - Ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement.
 - Ensure no individual or family is displaced unless decent, safe, and sanitary housing is available within the displaced person's financial means.
- Work to be friendly, fair, and flexible with those whose property is being acquired and in the facilitation of the acquisition and relocation process.
- Use Eminent Domain as a last resort measure to acquire the necessary property.
- Acquisition costs will stay within the Project's annual budget.
- Property acquisition program will comply with Minnesota and North Dakota law, the URA, permit requirements, interagency agreements, and applicable project agreements and Memorandums of Understanding as each applies to the acquisition process for the Diversion Authority, the Cass County Joint Water Resource District (CCJWRD), and the Moorhead-Clay County Joint Powers Authority (MCCJPA). (Note: the MCCJPA is expected to be formed in 2018.)
- Program will acquire land impacted by the Project as opportunities arise with willing sellers.
- Program, upon request from seller, will offer a 'right of first refusal' to purchase back the property in the event the Project does not need the property.
- Payment for relocation benefits are a reimbursement of costs incurred by the displaced person(s).
- Negotiations: Negotiations are a necessary component of property acquisitions. Negotiation teams do their best to secure the property for the most equitable price possible and use Eminent Domain as a last resort. Property owners have been able to counter offer their appraised values and are encouraged to support these counter offers with factual data to support their position, this could include:
 - Updated comparable sales.
 - Updated cost approach information.
 - Updated financial information (for businesses).
 - Issues in the appraisal (i.e., square footage difference, missed features, incorrect data).

- Per the Project Partnership Agreement (PPA) executed on July 11, 2016, the federal government can also acquire land on behalf of the non-Federal sponsor.

Quick Take Eminent Domain Process

DRAFT, December 10, 2018

The Cass County Joint Water Resource District (CCJWRD) has the responsibility for acquiring property rights in North Dakota for the FM Area Diversion Project. The Diversion Authority and CCJWRD have established property acquisition philosophies that include the goal of utilizing eminent domain only as a last resort. This means that a priority will be placed on negotiating a mutually agreeable compensation of property rights with the property owners. However, for situations where a fair, mutually agreeable compensation is not be possible, the CCJWRD will follow the Quick Take Eminent Domain process as specified by NDCC 61-16.1-09(2)(b). This document outlines the steps that shall be followed during property acquisition for the FM Diversion Project.

Timeline / Steps

Step	Timeline (minimum)
PRE-OFFER STEPS	
1. CCJWRD sends letter to property owner(s) of the impacted OINs, introducing the Land Agent, providing Land Agent & CCJWRD contact information and identifying the timeline for property acquisition.	Before Negotiations Commence
<p>Process: Land Agent shall be in contact with property owner(s) prior to the appraiser.</p> <p>Notes: Land Agent may need to request other Diversion Project resources to address questions that property owner(s) may have during the acquisition process including, but not limited to: PMC, Engineering & Survey Team. Diversion Project resources can be requested by the Land Agent at this step or at any other steps during the acquisition process.</p>	
2. Appraisal reviewed and just compensation amount approved by CCJWRD Board.	Before Negotiations Commence
INFORMAL NEGOTIATIONS	
3. Land Agent provides property owner(s) with a copy of appraisal of property rights and the offer of just compensation.	Day 1
<p>Process: Land Agent sends property owner(s) informal offer letter on CCJWRD letterhead [signed by both CCJWRD & Land Agent] and the appraisal to trigger the start of the 60-day informal negotiation timeline. Land Agent may also deliver the informal offer letter & appraisal by hand or via email but must include the date of delivery (this is considered 'Constructive Delivery'). If hand delivered, Land Agent should write the date of delivery on a copy of the signed informal offer letter or if via email should include a copy of the "Delivery Receipt" email. Land Firm will provide a signed copy of the informal offer letter and supporting material/notes to AE2S for upload into WMX and AE2S will input the "Informal Negotiation Start" date in WMX data field.</p> <p>Notes:</p> <ol style="list-style-type: none"> Land Agent should maintain a log/journal of notes, including attempts made to contact property owner(s), dates of mailings, emails or hand deliveries, and conversations with property owner(s). Land Agent should attempt to meet with property owner before sending the initial offer letter via mail or email. Land Agent should reinforce the importance of the acquisition timeline we have promised the client. Land Agent will process eligibility for relocation assistance under the URA outside the QT-ED process, if applicable. The projected date for the Completion of Property Acquisition will vary depending on which work package the parcel belongs to. The PMC (AE2S) will provide the Completion Date for Property Acquisitions. OT will provide a block of text that Land Agents shall include on all written communications (including emails) with property owners to satisfy the requirement per ND Century Code (61.16.1-09(2)(b)(2)) to provide "a description of the required negotiation timeline" and yet not reference Quick Take-Eminent Domain during negotiations. OT will also provide a narrative/script for the Land Agents to use if asked by property owner(s) about Quick Take-Eminent Domain. Part of this narrative will direct the property owner(s) to the Attorney General Website. 	
4. Informal negotiations between Land Agent and property owner(s).	Day 1-60

Step	Timeline (minimum)
FORMAL NEGOTIATIONS – if no agreement, no sooner than 60 days, proceed into formal negotiations.	
5. Land Agent provides property owner(s) with formal offer of just compensation with a copy of appraisal of property rights. Formal Offer shall be sent by Certified Mail with Return Receipt Requested.	Day 61 (or upon receipt of formal offer)
<p>Process: Land Agent sends property owner(s) formal offer letter on CCJWRD letter head [signed by both CCJWRD & Land Agent] and the appraisal via Certified Mail w/ Return Receipt Requested. Formal Negotiations start when property owner(s) receive formal offer of just compensation to purchase only the portions of the impacted parcel(s) that are required for the PROJECT along with the appraisal. Land Firm will provide a signed copy of the formal offer letter, return receipt confirmation slip or documentation from process server and supporting materials/notes to AE2S for upload into WMX and AE2S will input the “Formal Negotiation Start” date in WMX data field.</p> <p>Notes:</p> <ul style="list-style-type: none"> a. The formal offer of just compensation that is mailed to the property owner(s) should represent only the required property needs based on the Project design, and the offer shall be based on the Appraised amount. It is recognized that informal negotiations may have developed a different taking (e.g. Project buying more land than required) and/or different offer amount. Due to these potential differences, the Land Agent will need to inform the property owner(s) of the mailing prior to its delivery and explain that the offer of just compensation is required to follow the process steps per the ND Century Code. b. Land Agent will have input on timing of sending this letter. If sending this letter at the earliest possible time will negatively impact negotiations that have transpired so far, it may be delayed based on input from the Land Agent. 	
If no agreement following receipt of the formal offer letter, no sooner than 15 days after receipt of the formal offer, proceed to Step 6.	+ 15 days
6. CCJWRD sends to property owner(s) an invitation to meet in person with CCJWRD at an upcoming CCJWRD Board Meetings. Invitation shall be sent by Certified Mail with Return Receipt Requested.	Day 76
<p>Process: CCJWRD sends invite letter to property owner(s) to meet with the CCJWRD Board (suggesting the Land Agent would be present as well) via Certified Mail w/ Return Receipt Requested. CCJWRD will upload into WMX a copy of the signed invite letter & return receipt confirmation slip or documentation from process server and will input the “CCJWRD Invite Receipt” date in WMX data field.</p> <p>Notes:</p> <ul style="list-style-type: none"> a. Land Agent will have input on timing of sending this CCJWRD invite letter. If sending this invite letter at the earliest possible time will negatively impact negotiations that have transpired so far, it may be delayed based on input from the Land Agent. b. If the property owner(s) have not been open to negotiations, sending of this invite letter at the earliest possible time is recommended. c. CCJWRD Board will establish the best way to efficiently and effectively have property owners attend board meetings to discuss property acquisition. Options include: <ul style="list-style-type: none"> i. Have a standing time slot on the CCJWRD Board Meeting Agenda to discuss acquisitions with properties owner(s) ii. Hold special meetings, outside regular CCJWRD Board meetings, with acquisitions as the sole agenda item, where acquisitions would be discussed with property owner(s) 	
7. CCJWRD Board meets with property owner(s) within 30 days of receipt of CCJWRD invite letter.	Day 76-106
If no agreement within 30 days of property owner(s) receiving CCJWRD invite letter, proceed to Step 8.	within 30 days
8. CCJWRD sends to property owner(s) a notice “of intent to take possession of the right of way if there is no agreement regarding compensation”. Notice shall be sent by Certified Mail with Return Receipt Requested.	Day 107

Step	Timeline (minimum)
<p>Process: CCJWRD sends to property owner(s) a notice “of intent to take possession of the right of way if there is no agreement regarding compensation” via Certified Mail with Return Receipt Requested. CCJWRD will upload into WMX a copy of the notice & return receipt confirmation slip or documentation from process server and will input the “Possession Intent” date in WMX data field.</p> <p>Notes:</p> <ul style="list-style-type: none"> a. Land Agent will have input on timing of sending the letter in Step 8. If sending this letter at the earliest possible time will negatively impact negotiations that have transpired so far, it may be delayed based on input from the Land Agent. b. If the property owner(s) have not been open to ongoing negotiations, sending of this letter at the earliest possible time is recommended. 	
<p>9. Land Agent prepares an Affidavit for the CCJWRD, which may include notes from the Land Agent’s negotiation journal and dated negotiation process steps they have completed, ensuring that no reference or threat of quick take eminent domain was used during informal or formal negotiations. Land Firm will provide a copy of the Land Agent Affidavit, along with all supporting materials to AE2S for upload into WMX.</p>	<p>Day 107-137</p>
<p>10. CCJWRD reviews the Land Agent Affidavit. CCJWRD board chairman signs an Affidavit indicating that no reference or threat of quick take eminent domain was used during negotiations. CCJWRD will provide documentation of the CCJWRD Affidavit to the Cass County Commission.</p>	<p>Day 107-137</p>
<p>If no agreement within 30 days of notice “of intent to take possession of the right of way if there is no agreement regarding compensation”, formal negotiations conclude and proceed to Step 11.</p>	<p>within 30 days</p>
<p>11. CCJWRD passes a motion to move forward with request to Cass County Commission to proceed with quick take eminent domain. Motion should also include approving the deposit of funds with the County Clerk and proceeding with quick take, pending approval by the Cass County Commission to proceed with QT-ED after the public meeting (Step 14).</p>	<p>Day 138 (or the next regular CCJWRD Board Meeting)</p>
<p>12. CCJWRD sends a letter to Cass County Commission to request the Commission’s approval to take possession of the right of way by utilizing quick take eminent domain. Request from CCJWRD shall include a copy of the CCJWRD Affidavit verifying that no reference or threat of quick take eminent domain was used during negotiations.</p>	<p>Day 138 (following the next regular CCJWRD Board Meeting)</p>
<p>Process: CCJWRD will send request to utilize QT-ED to the Cass County Commission. CCJWRD will upload into WMX a copy of the request to the Cass County Commission (email/letter/etc.) along with the signed CCJWRD Affidavit and will upload the request and affidavit into WMX and input “Commission Request” date in WMX data field.</p> <p>Notes:</p> <ul style="list-style-type: none"> a. Land Agent will have input on timing of sending the request in Step 12. If sending this request at the earliest possible time will negatively impact negotiations that have transpired so far, it may be delayed based on input from the Land Agent. b. If the property owner(s) have not been open to ongoing negotiations, sending of this request at the earliest possible time is recommended. 	
<p>COUNTY COMMISSION INVOLVEMENT – if no agreement prior to this, proceed to next step.</p>	
<p>13. Cass County Commission places the QT-ED topic on its agenda and sends property owner(s) a 30-day notice letter (invite) of an upcoming Cass County Commission Meeting. Invite shall be sent by Certified Mail with Return Receipt Requested.</p>	<p>Day 145 (assume one week for agenda development)</p>
<p>Process: Cass County Commission will send the 30-day notice and invite letter to the property owner(s) via Certified Mail w/ Return Receipt Requested to attend an upcoming Cass County Commission meeting to discuss CCJWRD’s request to utilize QT-ED pursuant to N.D.C.C. Section 61-16.1-09(2). County Commission will provide a</p>	

Step	Timeline (minimum)
copy of invite letter & return receipt confirmation slip or documentation from process server to AE2S for upload into WMX and AE2S will input "Commission Invite Sent" date in WMX data field.	
ACTION ITEM/QUESTIONS: Discuss with Cass County (Administration and Commission) the process of scheduling the public meetings required by 61-16.1-09(2)(b)(3) so that the invite letter can be sent to the property owner(s) as expeditiously as possible.	
If no agreement prior to county commission public meeting, proceed to step 14.	within 30 days
14. Cass County Commission holds public meeting and votes to approve use of quick take eminent domain by CCJWRD to take possession of right of way.	Day 176 (or the next regular County Commission Meeting)
If Cass County Commission approves request to use QT-ED, then proceed to Step 15.	
FORMAL QUICK TAKE FILING	
15. OT files pleadings with the clerk of district court, including updated CCJWRD board chair Affidavit that demonstrates the CCWJRD fulfilled the negotiating steps, and deposits the amount of the written offer with the clerk.	Day 177
Process: CCJWRD will file an Affidavit and will deposit offer of just compensation with the County Clerk. CCJWRD will upload the ED-QT deposit documents, including the Affidavit in WMX and input "QT-ED Deposit" date into WMX data field. At this point, going forward activity related to property acquisition via QT-ED is handled by the Legal Team. However, the landowner/property owner should still be afforded the opportunity to continue negotiations with the Land Agent unless the attorneys request no further negotiations.	

General Notes:

- (1) Land Agents are encouraged to negotiate with property owner(s) throughout the process, if at any point during the negotiations an agreement is agreed upon.
- (2) All written communications, whether letter, email or other such document, shall include:
 - a. OIN(s) that are associated with the communications
 - b. Land Agent Contact Information
 - c. CCJWRD Contact Information
 - d. Timeline for Property Acquisition
- (3) The Cass County Commission shall be copied on all Formal Negotiations communications with property owner(s).
- (4) When the term 'property owner(s)' is utilized in this process, it implies that 'property owner(s)' include all persons that have ownership of the parcel(s), or who are the registered agents for an entity owning an interest in the parcel(s). All individual owners must receive the letter, even if the group has suggested one person as the point of contact.
- (5) Where indicated, if the property owner(s) does not sign the Return Receipt Requested, and the Land Agent is unable to hand deliver to the property owner(s), then service of process with a process server would be effective for compliance with the notice requirement in the statute.