

FM AREA DIVERSION PROJECT

Property Owner Information Packet for Cass County Commission

October 5th, 2020

PROPERTY OWNER: Allen & Dawn Pritchard

LAND AGENT: Pat Roberts with ProSource

OIN: 8678



FM AREA
DIVERSION
PROJECT

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Written Correspondence Timeline – Allen & Dawn Pritchard

OIN 8678	Sent	Received
Offer to Purchase	11/6/2019	11/6/2019
Formal Negotiations and Written Offer of Just Compensation	4/22/2020	5/8/2020
Request for Meeting	6/5/2020	6/6/2020
Notice of Intent to Take Possession of Right-of-Way	7/21/2020	7/23/2020
Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement	8/21/2020	8/21/2020
Invitation to Attend Public Meeting	8/26/2020	8/27/2020
Commission Meeting Date	10/5/2020	

**CASS COUNTY COMMISSION
CHECKLIST — COMPLIANCE WITH N.D. CENT. CODE § 61-16.1-09(2)
FARGO-MOORHEAD AREA DIVERSION PROJECT**

A. Subject Property Information:

1. Landowner: Allen Pritchard and Dawn Pritchard
2. Land Agent: Patrick Roberts
3. Parcel No.: 53-0000-09081-020
4. OIN No.: 8678

B. Verification:

1. NDCC § 61-16.1-09(2)(b)(1)(a) requires the Cass County Joint Water Resource District (“CCJWRD”) to conduct 60 days of informal negotiations.
 - Did CCJWRD verify at least 60 days of informal negotiations with Landowner:

2. NDCC § 61-16.1-09(2)(b)(1)(b)[1] requires CCJWRD to send the landowner an appraisal and written offer for just compensation by certified mail or commercial delivery requiring a signed receipt or other evidence of constructive notice.
 - Did CCJWRD verify it sent Landowner an appraisal and written offer for just compensation: _____
 - Did CCJWRD verify service of the appraisal and offer by certified mail or commercial delivery, and that Landowner either signed for them or had constructive notice: _____
3. NDCC § 61-16.1-09(2)(b)(1)(b)[2] requires CCJWRD to send Landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 15 days of Landowner’s receipt or notice of CCJWRD’s offer].
 - Did CCJWRD verify it sent Landowner a written request for a meeting by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: _____

4. NDCC § 61-16.1-09(2)(b)(1)(b)[3] requires CCJWRD to send Landowner a written notice of intent to take possession of the right of way and temporary easement, by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 30 days of Landowner's receipt or notice of CCJWRD's invitation to a meeting].
 - Did CCJWRD verify it sent a written notice of intent to take possession of right away by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: _____
5. NDCC § 61-16.1-09(2)(b)(2) requires all written communications to Landowner to include contact information for responding to CCJWRD and a description of the required negotiation timeline.
 - Did CCJWRD verify that all written communications to Landowner included contact information for responding to CCJWRD and a description of the required negotiation timeline: _____
6. NDCC § 61-16.1-09(2)(b)(3) prohibits a district from including or utilizing any reference to quick take eminent domain during negotiations.
 - Did CCJWRD verify it did not include or utilize any reference to quick take eminent domain during negotiations: _____

If the Commission answers in the affirmative to the above questions,

RECOMMENDED MOTION:

- I move to authorize the Cass County Joint Water Resource District to utilize quick take eminent domain under Section 61-16.1-09(2) of the North Dakota Century Code to take an easement for a right of way and a temporary easement regarding OIN 8678.

FM Area Diversion Project

Property Acquisition Summary

September 23, 2020

Owner	Allen and Dawn Pritchard
Address	1808 38 th Street W, West Fargo, ND
Property Location	Re-Alignment of 38 th Street West
Property Type	Single Family rural residence. Owner occupied
OIN	8678
Land Agent	Patrick Roberts

Property Need: Re-alignment of 38th Street

Valuation and Negotiation Summary:

Appraisal Value / Date	\$4,700 / April 10,2019
1 st Counteroffer –Pritchard 6-12-20	\$47,000
1 st suggested counteroffer – Land agent 6-18-20	\$21,240
2nd Counteroffer – Pritchard 7-13-20	\$30,124
2 nd Counteroffer – From board 7-23-20	\$5170 with no trees likely harmed
3 rd Counteroffer – Pritchard 8-5-20	\$10,000 & project is responsible for tree damage
Option #1 for Counteroffer	Continue with the process as it is with the +10%
Option #2 for Counteroffer	\$10,000 with responsibility for trees. (see below)
Option #3 for Counteroffer (board approved)	\$24,800 administrative settlement. (see below)

Negotiation Notes

- 6-12-2020 Conversation with Mr. Pritchard. Received a verbal counteroffer & one tree bid. Counteroffer was based on 3 different points:
 - \$19,000 for 20 new trees
 - \$18,000 for dust control
 - \$10,000 for .57 acres. **Total \$47,000 from Mr. Pritchard**
- 6-18-2020 Patrick replied with a counteroffer that was felt would gain more traction.
 - \$5100 provided directly for the purchase and planting of trees. Along with an additional \$300/tree for any tree needed to be replaced in the temporary construction easement area.
 - \$0.00 for dust control as this would be part of the project requirement.
 - \$16,140 for the .57 acres. Note: The \$16,140 is based on \$.65/sf x 24,829 SF needed to acquire. This is similar to what has been paid to others. **Total \$21,240 suggested by Land Agent**
- 7-13 Received another email from Mr. Pritchard with a new counteroffer:
 - \$20,124 for 20 trees based on a bid from Big Tree.
 - All abstract & documentation fees paid by CCJWRD
 - If damage to any of their utilities in the ditch, reconnect & related fees to be paid by CCJWRD.

4. \$10,000 for the .57 acres

5. Guarantee of dust control for the duration of the construction. **Total of \$30,124 from Mr. Pritchard**

- 7-23 Presented counteroffer to the board. Was provided feedback that the trees may not be impacted at all and to offer +10% which equals \$5126
- Provided that feedback to Mr. Pritchard. He is fine if trees are not harmed and if it is put into the PA that trees will be replaced if harmed and is holding tight to his \$10,000 for the property.
- The letter is being sent advising the intent to take possession and the Cass County Commission meeting is coming up.
- Mr. Pritchard has been negotiating in good faith thru this process. He has two concerns. 1. He feels other property owners have been compensated differently and for amounts much more than what he has been offered. 2. He is concerned with the trees being cut down and losing his tree barrier for the dust.
- To illustrate Mr. Pritchard's point on his first concern, CCJWRD paid \$5,000 for the 5,040 sq feet we needed on OIN 2375 for a small road type taking, a very similar type of taking to what we need on OIN 8678, although OIN 2375 didn't even have a home on it. We are acquiring 24,829 SF from Pritchards and have offered \$4560 +\$110 TCE. We are offering less on the Pritchard property for almost 3 times the square feet. (Summary and exhibit included).
- For his 2nd concern, at the last board meeting that this was discussed, Lyndon spoke of the possibility that there is a possibility that these trees would not be damaged at all. That would be just fine with Mr. Pritchard if none of the trees were damaged. However, he is not willing to eliminate all language or discussion on tree damage. He would insist that his interests be protected as well with language in the PA that guarantees the safety and health of the trees not just during the construction period, but perhaps up to a year later, understanding that roots may be damaged during the construction period and damage the tree. Seems reasonable to desire to protect his interests.

With that in mind I have two counter-offer proposals for your consideration:

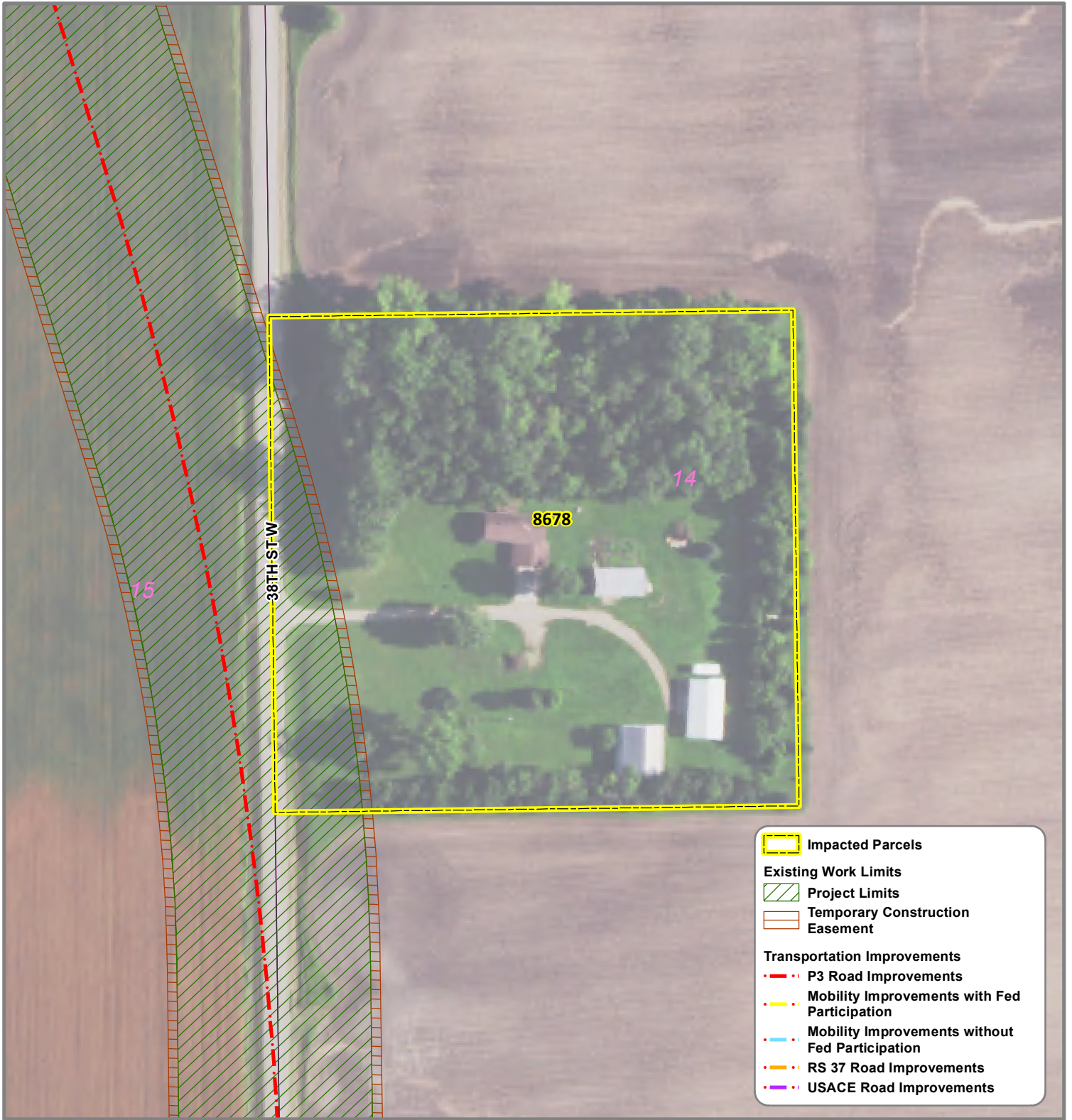
- 1. We could offer +10% on our appraisal to get to \$5016 + \$110 for the TCE = \$5126, and then offer +\$4874 in "severance" for a total of \$10,000 to address the lifetime of increased dust on the wider gravel road and include acceptable language in the PA that states the project will still be responsible for managing and monitoring & paying for any negative impact to the trees.
- 2. Or we could offer Mr. Pritchard an administrative settlement of \$24,800. \$10,000 for the parcel and \$14,800 for damage settlement and he is responsible for the trees.

Requested Actions

Board review of updated counter-offer points and provide the board's wishes on a counteroffer.

Board Action: Approved an administrative settlement of \$24,800 based on \$.40/SF for the 24,829 SF being acquired and \$14,800 for the damage to 17 trees as outlined in the appraisal. Tree replacement will be the responsibility of the landowner.

Landowner Update: Landowner agreed to administrative settlement with the understanding that the settlement addressed trees within the TCE area. Requested language be put into the PA that addresses trees damaged outside the TCE would be the responsibility of the project. PA sent to property owner. As of 9-23-2020 Property owner attorney reviewing PA.



Impacted Parcels

Existing Work Limits

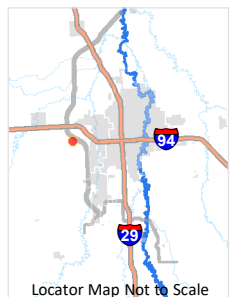
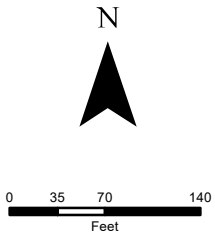
- Project Limits
- Temporary Construction Easement

Transportation Improvements

- P3 Road Improvements
- Mobility Improvements with Fed Participation
- Mobility Improvements without Fed Participation
- RS 37 Road Improvements
- USACE Road Improvements

Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced by: hrecords - AE2S, Inc. |
 C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\!Project Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10v105.mxd



OIN: 8678
ALLEN & DAWN PRITCHARD
Parcel ID: 53-0000-09081-020
Cass County, ND

FM AREA DIVERSION
 Map Date: 6/8/2020





November 6, 2019

Hand Delivered

Allen Pritchard and Dawn Pritchard
1808 38th St W
West Fargo, ND 58078

RE: **Offer to Purchase**
Fargo-Moorhead Area Flood Diversion Project
Property Address: 1808 38th St W, Mapleton Township ND
Property ID(s): 8678 **PID(s):** 53-0000-09081-020

Dear Allen Pritchard and Dawn Pritchard:

Cass County Joint Water Resource District (CCJWRD) will be acquiring your property located at 1808 38th St W, Mapleton Township ND for the proposed construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project for the purpose of diversion of flood water from the Red River and its tributaries around Fargo-Moorhead. CCJWRD has hired ProSource Technologies LLC as the consultant to aid in the acquisition of your property.

CCJWRD hereby makes an approved offer to all interested parties who may have an interest in the real estate rights to be acquired the sum of \$4,700.00. This offer is based on an independent appraisal by Compass Land Consultants, Inc.

You will have reasonable time to consider this offer. You are not required to move for at least 90 days after you have signed the purchase agreement. This offer to purchase is not considered final until the CCJWRD Board officially accepts the purchase agreement.

If you accept the offer, the parcel will be acquired by direct purchase, and you will be paid upon satisfactory evidence of marketable title. If you do not accept the offer, CCJWRD wishes to continue negotiating with you regarding purchase of your property. Ultimately, the property may be acquired in an eminent domain proceeding if we cannot agree to the terms of the purchase within a reasonable time.

Your signature on page two (2) of this document is the only verification that this "Offer to Purchase" has been given to you. You also acknowledge that you have received the "Relocation Assistance" brochure, and a copy of the "Appraisal Report." Your signature does not affect your right to have the final amount determined through eminent domain proceedings in the event the direct purchase/negotiation method of acquisition is unsuccessful.

Page 2

Allen Pritchard and Dawn Pritchard
Offer to Purchase Letter

Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) provides for 1) The relocation advisory services; 2) payment for your moving expenses; and 3) replacement housing payment. You may be reimbursed or paid for your actual reasonable moving costs and related moving expenses. A notice of relocation eligibility letter will be provided to you that will further explain these services. The URA is a non-negotiable federal assistance program that provides funding for the above services.

I HEREBY ACKNOWLEDGE RECEIPT OF THE OFFER LETTER, THE GUIDE BOOK, AND COPY OF THE APPRAISAL REPORT.



Name

11-6-19

Date

Name

Date

OIN(s): 8678
Project Parcel Number



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 22, 2020

**Cass County
Joint Water
Resource
District**

Allen and Dawn Pritchard
1808 38th Street W
West Fargo, ND 58078
Certified No. 7019 1640 0002 0398 8347

Greetings:

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Formal Negotiations and Written Offer of Just Compensation
OIN: 8678
Parcel No.: 53-0000-09081-020

The Cass County Joint Water Resource District (the "District") is in the process of acquiring property interests necessary for the Fargo-Moorhead Area Diversion Project (the "Project"), and the District has been in discussions with you regarding right of way and temporary easement the District must acquire from you to accommodate the Project. The District directed me to provide you this letter as the District's formal offer to purchase right of way and a temporary easement from you. More specifically, to accommodate the Project, the District must acquire right of way and a temporary easement from you over property located in Cass County and identified as Parcel Identification Number 53-0000-09081-020. The legal description of the property to be acquired is:

Right of Way:

That part of the Southwest Quarter (SW1/4) of Section 14, Township 139 North, Range 50 West of Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW1/4) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County, said point also being the Point of Beginning; thence continuing N02°43'10"W on said west line a distance of 455.73 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the south line of said parcel described in Doc. #1083412; thence S87°16'50"W on said south parcel line a distance of 91.73 feet to the Point of Beginning.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynđ.gov
casscountynđ.gov

Said parcel contains 0.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement:

A 10-foot-wide temporary construction easement across the Southwest Quarter (SW1/4) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW1/4) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County ;thence N87°16'50"E on the south line of said parcel a distance of 91.73 feet to the Point of Beginning; thence continuing N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 423.45 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 2110.00 feet, central angle of 11°29'54", and long chord length of 422.73 feet bearing N13°31'50"W; thence N19°16'47"W a distance of 78.86 feet to said west line of the SW1/4; thence S2°43'10"E on said west line a distance of 35.08 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the point of beginning.

Said easement contains 0.11 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Enclosed is an appraisal regarding the value of the right of way and temporary easement the District must acquire from you, as determined by a licensed North Dakota appraiser. As you can see from the appraisal, the appraiser indicated the value of the right of way the District must acquire from you is \$4,560.00, and the temporary easement is \$110.00, for a total purchase price of \$4,670.00, rounded to \$4,700.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$4,700.00 as just compensation to purchase right of way and a temporary easement from you for the Project. If you are willing to accept the District's offer, please sign the enclosed *Purchase Agreement* and return it to the District in the enclosed self-addressed, stamped envelope.

You are encouraged to maintain contact with the land agent assigned to your property. **Pat Roberts** of ProSource Technologies, LLC can be reached at (763) 786-1445 or proberts@prosourcetech.com. Pat is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way and a temporary easement from you for the Project.

Allen and Dawn Pritchard
April 22, 2020
Page 3

For your information, North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way and temporary easement. If you do not accept the District's offer of just compensation and do not return a signed Purchase Agreement within fifteen (15) days, the District will send you a written request to discuss the Project and required right of way and temporary easement to be acquired at an upcoming Cass County Joint Water Resource District meeting. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

We look forward to reaching a mutually acceptable agreement to resolve this matter. Thank you for your consideration.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
Lewisc@casscountynd.gov

Enclosures

cc: Pat Roberts, Land Agent
Eric Dodds, Program Manager, AE2S
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Cass County Commission Chair
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

ALLEN AND DAWN PRITCHARD
 1909 30TH STREET W
 WEST FARGO ND 58078



9590 9402 3806 8032 1545 98

2. Article Number (Transfer from service label)

19 1640 0002 0398 8347

Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *CL RIS C-19*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

5/8/2020

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

June 5, 2020

**Cass County
Joint Water
Resource
District**

Allen and Dawn Pritchard
1808 38th Street W
West Fargo, ND 58078
Certified No. 7019 1640 0002 0398 7753

Greetings:

Dan Jacobson
Chairman
West Fargo, North Dakota

Rodger Olson
Manager
Leonard, North Dakota

Ken Loughheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Meeting
OIN: 8678
Parcel No.: 53-0000-09081-020

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). The District previously provided you a letter dated April 22, 2020; a copy of the District's appraisal for the right of way needed from you; and a Purchase Agreement as the District's offer of just compensation to purchase the right of way and temporary easement from you. The District's letter specifically described the right of way and temporary easement the District must acquire from you for the Project. We have not received a signed Purchase Agreement from you, and we have not otherwise arrived at mutually acceptable terms regarding the District's purchase of right of way and temporary easement from you to accommodate the Project.

The District requests your attendance at a meeting to discuss the District's offer to purchase right of way and temporary easement from you. The District is meeting at 8:00 a.m., on June 11, 2020, and June 25, 2020. Over the next several months, District meetings will be conducted via conference call and District board members will not be attending in person. The requirements that a meeting room be available to the public and that a speakerphone or monitor be provided at a physical location under NDCC § 44-04-19 have been suspended indefinitely pursuant to Governor Burgum's Executive Order 2020-16; therefore, we request your attendance by telephone.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynd.gov
casscountynd.gov

The District hopes you will attend one of the above-mentioned meetings to discuss the Project and the right of way and temporary easement the District must acquire from you to accommodate the Project. If you would like to attend one of the meetings by phone, please contact me or Melissa Maertens at (701) 298-2381 at least 24 hours in advance of the meeting so the necessary arrangements can be made and the call-in information provided to you.

Allen and Dawn Pritchard
OIN 8678
June 5, 2020
Page 2

Please continue to maintain contact and negotiate with the land agent assigned to your property. **Patrick Roberts** of ProSource Technologies, LLC. is your point of contact for getting answers to any questions you have about the Project. Pat can be reached at **(763) 786-1445** or proberts@prosourcetech.com.

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way and temporary easement. The District must conclude all negotiations and complete the acquisition of right of way and temporary easement necessary for construction of Project components on your property by Fall of 2020.

The District hopes you will attend one of the upcoming District meetings to discuss the Project and the required right of way and temporary easement. The District looks forward to meeting with you.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
lewisc@casscountynynd.gov

cc: Patrick Roberts, Land Agent
Eric Dodds, Program Manager, AE2S
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Chair, Cass County Commission
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority

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ALLEN & DAWN PRITCHARD
1808 38TH STREET W
WEST FARGO ND 58078



9590 9402 5989 0062 9068 77

2. Article Number (Transfer from service label)

7019 1640 0002 0398 7753

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *CH BISCOP* Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

6/6/2020

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

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt



VIA UPS DELIVERY

Cass County
Joint Water
Resource
District

July 21, 2020

Allen and Dawn Pritchard
1808 38th Street West
West Fargo, ND 58078

Dan Jacobson
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY
OIN: 8678
Parcel No. 53-0000-09081-020

Ken Lougheed
Manager
Gardner, North Dakota

Jacob Gust
Manager
Fargo, North Dakota

Keith Weston
Manager
Fargo, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). On behalf of the District, I previously provided you a letter dated April 22, 2020, a copy of the District's appraisal for your right of way and temporary easement, and a Purchase Agreement as the District's offer of just compensation to purchase the right of way and temporary easement from you. In addition, I also provided you a letter dated June 5, 2020, to invite you to meet with the District for purposes of discussing the acquisition of your land. The parties have conducted the informal and formal negotiation procedures required by law but, unfortunately, the parties have not yet reached a mutually-acceptable agreement regarding compensation for the District's purchase of the right of way and temporary easement from you to accommodate the Project.

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

This letter is the District's NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY. If we do not have an agreement, the District will be requesting approval from the Cass County Commission to take possession of a right of way easement and temporary easement over your property. Cass County will provide you with at least 30 days' notice of a public meeting, and will invite you to the meeting to discuss the District's request.

701-298-2381
FAX 701-298-2397
wrld@casscountynd.gov
casscountynd.gov

This NOTICE does not preclude the parties from continuing negotiations. The District still hopes the parties can arrive at a mutually-acceptable agreement.

Allen and Dawn Pritchard
OIN 8678
July 21, 2020
Page 2

You are encouraged to maintain contact with the land agent assigned to your property. **Patrick Roberts** of **ProSource Technologies, LLC** can be reached at **(763) 786-1445** or **proberts@prosourcetech.com**. Pat is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way and temporary easement from you for the Project.

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way and temporary easement. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
lewisc@casscountynynd.gov

cc: Patrick Roberts, Land Agent
Chris McShane, Ohnstad Twichell, P.C.
Chad Peterson, Chair, Cass County Commission
Robert Wilson, Cass County Administrator
Birch Burdick, Cass County State's Attorney
Eric Dodds, Program Manager, AE2S
Joel Paulsen, Executive Director, Diversion Authority

Proof of Delivery



Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZY93E24A827189396

Weight

1.00 LBS

Service

UPS Ground

Shipped / Billed On

07/21/2020

Additional Information

Adult Signature Required

Delivered On

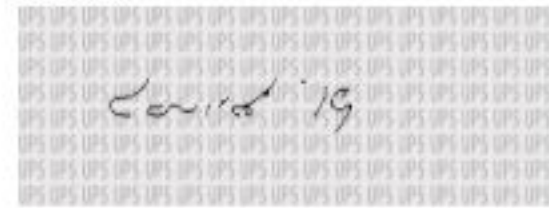
07/23/2020 4:39 P.M.

Received By

DAWN

Delivered To

1808 38TH ST W
WEST FARGO, ND, 58078, US



Left At

Reception

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 07/24/2020 4:04 P.M. EST

[Print this page](#)



SENT VIA EMAIL wilsonro@casscountynd.gov

Cass County
Joint Water
Resource
District

August 21, 2020

Robert Wilson
Cass County Administrator
Cass County Commission
211 9th Street S
Fargo, ND 58103

Dan Jacobson
Chairman
West Fargo, North Dakota

Greetings:

Rodger Olson
Manager
Leonard, North Dakota

RE: Cass County Joint Water Resource District
Fargo-Moorhead Area Diversion Project
Request for Approval to Take Possession of Necessary Right of Way and
Temporary Easement
OIN: 8678
Parcel No. 53-0000-09081-020

Ken Lougheed
Manager
Gardner, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of acquiring the right of way necessary for the Fargo Moorhead Diversion Area Project ("Project"). I previously copied you on the following three letters whereby the District sought to negotiate the acquisition of the right of way and temporary easement from Allen Pritchard and Dawn Pritchard (the "Landowner"):

Jacob Gust
Manager
Fargo, North Dakota

- Letter dated April 22, 2020, enclosing the District's appraisal for the acquisition of the right of way and temporary easement from the Landowner and a proposed Purchase Agreement;
- Letter dated June 5, 2020, inviting the Landowner to meet with the District for purposes of negotiating compensation for the right of way and temporary easement to be acquired; and
- Letter dated July 21, 2020, notifying the Landowner the District planned to submit a request to the Cass County Commission seeking immediate possession of the right of way and temporary easement necessary for the Project.

Keith Weston
Manager
Fargo, North Dakota

The District has conducted months of negotiations with the Landowner to arrive at a mutually acceptable agreement for the District's purchase. More specifically, the District engaged in both informal and formal negotiations with the Landowner, as required under N.D. Cent. Code § 61-16.1-09(2)(b), in an effort to reach agreement regarding fair compensation to the Landowner for the acquisition of the necessary right of way and temporary easement in, on, over, across, and through certain property owned by the Landowner in Cass County, North Dakota. The legal description of the necessary right of way and temporary easement is as follows:

Carol Harbeke Lewis
Secretary-Treasurer

1201 Main Avenue West
West Fargo, ND 58078-1301

701-298-2381
FAX 701-298-2397
wrđ@casscountynd.gov
casscountynd.gov

Right of Way Easement:

That part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW¼) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County, said point also being the Point of Beginning; thence continuing N02°43'10"W on said west line a distance of 455.73 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the south line of said parcel described in Doc. #1083412; thence S87°16'50"W on said south parcel line a distance of 91.73 feet to the Point of Beginning.

Said parcel contains 0.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Temporary Easement:

A 10-foot-wide temporary construction easement across the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW¼) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County; thence N87°16'50"E on the south line of said parcel a distance of 91.73 feet to the Point of Beginning; thence continuing N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 423.45 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 2110.00 feet, central angle of 11°29'54", and long chord length of 422.73 feet bearing N13°31'50"W; thence N19°16'47"W a distance of 78.86 feet to said west line of the SW¼; thence S2°43'10"E on said west line a distance of 35.08 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the point of beginning.

Said easement contains 0.11 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

Robert Wilson
August 21, 2020
Page 3

As you may recall, in 2017, the North Dakota Legislature modified the process for water resource districts to acquire immediate possession of right of way necessary for water projects; the new process is set forth in Section 61-16.1-09(2)(b). The District has followed all of the necessary steps under the statute, but the parties have not reached a mutually acceptable agreement. Under the new acquisition process enumerated in Section 61-16.1-09(2)(b)(3), the District must next seek the County Commission's approval to proceed further, and to ultimately utilize quick take eminent domain to take possession of the right of way and temporary easement above to commence the Project.

More specifically, Section 61-16.1-09(2)(b)(3) requires the County Commission to hold a public meeting and to provide the Landowner no less than thirty days' notice of the meeting. The District will also attend the meeting, along with a representative of the land firm which was the Landowner's main point of contact throughout the negotiation process. Prior to the public meeting, the land firm representative and the District will verify neither the District nor any of its agents referenced or threatened quick take eminent domain during the informal and formal negotiation process.

While the District takes all landowners' rights very seriously, the District also has an obligation, as a member of the Metro Flood Diversion Authority, to acquire the right of way and temporary easement necessary for the Project, and construction of the Project will not be possible without acquiring the right of way and temporary easement identified above. As the District will explain and verify for the Commission in more detail through this process, the District provided the Landowner with the District's appraisal as the starting point for negotiations, then attempted to negotiate further with the Landowner over the course of several months. This step is not one the District takes lightly; quick take eminent domain is a serious undertaking, and the District has negotiated in good-faith with the Landowner to avoid this process. Despite the District's efforts to be fair, friendly, and flexible in both the informal and formal negotiations with the Landowner, unfortunately, the parties have not reached a mutually acceptable agreement for the acquisition of the right of way and temporary easement.

The District respectfully requests that the Cass County Commission proceed with the public meeting process under Section 61-16.1-09(2)(b)(3) regarding the Landowner and the right of way and temporary easement identified in this letter. Further, the District respectfully requests that the Cass County Commission ultimately approve the District's use of quick take eminent domain to take possession of the right of way and temporary easement identified above by quick take eminent domain so the Project may proceed. For your information, while the County conducts the process under Section 61-16.1-09(2)(b)(3), the District still hopes the parties can arrive at a mutually-acceptable agreement.

Robert Wilson
August 21, 2020
Page 4

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis
Secretary-Treasurer
1201 Main Avenue West
West Fargo, ND 58078
(701) 298-2381
lewisc@casscountynd.gov

cc: Patrick Roberts, Land Agent
Chris McShane, Ohnstad Twichell, P.C.
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority
Eric Dodds, AE2S Program Manager
Sharon Oliver, Ohnstad Twichell, P.C.
Heather Worden, Administrative Assistant, Cass County Commission



August 26, 2020

VIA UPS – DELIVERY CONFIRMATION

Board of County Commissioners

Allen and Dawn Pritchard
1808 38th Street West
West Fargo, ND 58078

Chad M. Peterson
Fargo, North Dakota

Re: Cass County Commission
Fargo-Moorhead Area Diversion Project
Invitation to Attend Public Meeting
OIN: 8678
Parcel No.: 53-0000-09081-020
UPS Tracking No. 1Z F51 82Y 30 9241 4202

Rick Steen
Fargo, North Dakota

Ken Pawluk
Fargo, North Dakota

Duane Breitling
West Fargo, North Dakota

Mary Scherling
Stanley Township, North Dakota

Greetings:

As you know, the METRO FLOOD DIVERSION BOARD OF AUTHORITY (the "Authority") is proceeding with the Fargo Moorhead Area Diversion Project ("Project"); the Cass County Commission (the "Commission") is a member of the Authority. The Cass County Joint Water Resource District (the "District") is also a member of the Authority, and the Authority previously directed the District to obtain the North Dakota right of way and temporary easement necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding the right of way and temporary easement the District must acquire from you for the Project. The District copied the Commission on the following three letters the District sent to you regarding the District's negotiations with you:

- Letter dated April 22, 2020, enclosing the District's appraisal for the acquisition of the right of way and temporary easement from you, along with a proposed Purchase Agreement;
- Letter dated June 5, 2020, inviting you to meet with the District for purposes of negotiating compensation for the right of way and temporary easement to be acquired; and
- Letter dated July 21, 2020, notifying you the District planned to submit a request to the Commission seeking immediate possession of the right of way and temporary easement necessary for the Project.

Heather Worden
Commission Assistant

P.O. Box 2806
211 9th Street South
Fargo, North Dakota 58108
701-241-5609
www.casscountynd.gov

The District informed the Commission that you and the District have not reached a mutually-acceptable agreement, and have not signed a purchase agreement, regarding the right of way and temporary easement the District must purchase from you to accommodate the Project. With that in mind, the District recently requested approval from the Commission to utilize quick take eminent domain to take possession of the right of way and temporary easement the District must acquire from you. The legal description of the necessary right of way and temporary easement is as follows:

Right of Way Easement:

That part of the Southwest Quarter (SW $\frac{1}{4}$) of Section 14, Township 139 North, Range 50 West of Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW $\frac{1}{4}$) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County, said point also being the Point of Beginning; thence continuing N02°43'10"W on said west line a distance of 455.73 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the south line of said parcel described in Doc. No. 1083412; thence S87°16'50"W on said south parcel line a distance of 91.73 feet to the Point of Beginning.

Said parcel contains 0.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement:

A 10-foot-wide temporary construction easement across the Southwest Quarter (SW $\frac{1}{4}$) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW $\frac{1}{4}$) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County; thence N87°16'50"E on the south line of said parcel a distance of 91.73 feet to the Point of Beginning; thence continuing N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 423.45 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 2110.00 feet, central angle of 11°29'54", and long chord length of 422.73 feet bearing N13°31'50"W; thence

N19°16'47"W a distance of 78.86 feet to said west line of the SW¼; thence S2°43'10"E on said west line a distance of 35.08 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the point of beginning.

Said easement contains 0.11 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

The Commission invites you to attend the Commission's meeting on October 5, 2020 at 3:30 p.m. The District will also participate in the meeting, along with a representative of the land firm which was your primary point of contact throughout the negotiation process. At the meeting, the Commission will ask the District to verify the District's compliance with Section 61-16.1-09(2) of the North Dakota Century Code. The Commission will ultimately vote on whether to approve the District's use of quick take eminent domain to take a right of way and temporary easement over your property.

If you wish to participate in the Commission's October 5, 2020 public meeting via conference call or Microsoft Teams, please contact Heather Worden at (701) 241-5609 or wordenh@casscountynd.gov as soon as possible so Ms. Worden can assist you with the necessary arrangements.

This Notice does not preclude you from continuing to work with the District regarding the right of way and temporary easement necessary for the Project. In fact, the Commission and the District encourage you to maintain contact with **Patrick Roberts** and to continue discussions about the Project. **Patrick Roberts** of **ProSource Technologies, LLC** is your point of contact regarding the Project. You can reach **Patrick Roberts** at [(319) 899-0433 or proberts@prosourcetech.com.

Finally, North Dakota law requires the Commission to provide you with a description of the District's timeline regarding your right of way and temporary easement. The District must complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2020.

Pritchard
August 26, 2020
Page 4

Sincerely,

CASS COUNTY COMMISSION



Robert Wilson, Cass County Administrator
Cass County Commission
211 Ninth Street South
Fargo, ND 58103
(701) 241-5609

cc: Patrick Roberts, Land Agent
Birch Burdick, Cass County State's Attorney
Joel Paulsen, Executive Director, Diversion Authority
Chris McShane, Ohnstad Twichell, P.C.
Eric Dodds, AE2S Program Manager
Sharon Oliver, Ohnstad Twichell, P.C.
Heather Worden, Administrative Assistant, Cass County Commission

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZF5182Y3092414202

Weight

1.00 LBS

Service

UPS Next Day Air Saver®
with UPS Carbon Neutral 

Shipped / Billed On

08/25/2020

Delivered On

08/27/2020 6:11 P.M.

Delivered To

1808 38TH ST W
WEST FARGO, ND, 58078, US

Received By

DRIVER RELEASE

Left At

Met Customer Woman

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 08/31/2020 5:02 P.M. EST

AFFIDAVIT OF LAND AGENT

STATE OF Minnesota)
) ss.
COUNTY OF Anoka)

[¶1] I, Patrick Roberts do hereby state on oath:

[¶2] I am employed by ProSource Technologies, LLC as a Land Agent. The Cass County Joint Water Resource District (“the District”) hired ProSource Technologies, LLC to negotiate and acquire the necessary right of way for the Fargo-Moorhead Area Diversion Project (the “Project”).

[¶3] The District must acquire certain interest in real property from Allen and Dawn Pritchard (“Landowner”) for construction, operation, and maintenance of the Project.

[¶4] Landowner’s real property where the District must acquire a Right of Way and Temporary Easement for the Project located in Cass County, North Dakota, is more fully described as follows:

Right of Way
OIN 8678

That part of the Southwest Quarter (SW1/4) of Section 14, Township 139 North, Range 50 West of Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW1/4) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County, said point also being the Point of Beginning; thence continuing N02°43'10"W on said west line a distance of 455.73 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the south line of said parcel described in Doc. #1083412; thence S87°16'50"W on said south parcel line a distance of 91.73 feet to the Point of Beginning.

Said parcel contains 0.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement

OIN 8678

A 10-foot-wide temporary construction easement across the Southwest Quarter (SW1/4) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW1/4) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County; thence N87°16'50"E on the south line of said parcel a distance of 91.73 feet to the Point of Beginning; thence continuing N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 423.45 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 2110.00 feet, central angle of 11°29'54", and long chord length of 422.73 feet bearing N13°31'50"W; thence N19°16'47"W a distance of 78.86 feet to said west line of the SW1/4; thence S2°43'10"E on said west line a distance of 35.08 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the point of beginning.

Said easement contains 0.11 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

The property described above is the "Necessary Property."

[¶5] Affiant is familiar with the records maintained by ProSource Technologies, LLC with respect to the Necessary Property and has reviewed all such records prior to executing this affidavit.

[¶6] ProSource Technologies, LLC has attempted to negotiate with Landowner to acquire the Necessary Property. Attached as **Exhibit A** is a log of all contacts ProSource Technologies, LLC has had with Landowner.

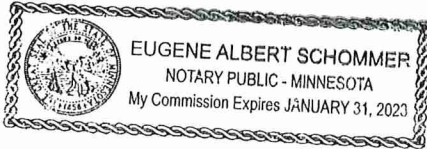
[¶7] The District has instructed ProSource Technologies, LLC to refrain from referencing, mentioning, or threatening quick take eminent domain during negotiations since August 1, 2017.

[¶8] I verify to the best of my knowledge, as Senior Project Manager of ProSource Technologies, LLC, nobody from ProSource Technologies, LLC has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations since August 1, 2017.

Dated this 14th day of September, 2020.

Patrick Roberts
Patrick Roberts
Senior Project Manager

Subscribed to and sworn to before me this 14th day of Sept., 2020.



Eugene A. Schommer
Notary Public, County of Washington
State of Minnesota
My Commission Expires: 1-31-23

(SEAL)

Exhibit A

Dates	OIN 8678 Contact Notes
	Land agent is Patrick Roberts from ProSource.
11/6/2019	Patrick met with Mr. Pritchard to present the appraisal and offer letter for the .57 acres needed for the road re-alignment. Mr. Pritchard expressed he would sign if the road would be paved, but knew it likely would not be. Patrick advised would check into it.
11/12/2019	Patrick advised Dean Vetter of the signed receipt for the offer letter. Also advised of Mr. Pritchard response that he would sign the PA if he knew the roadway would be paved. Dean requested feedback from Adam Ruud of Houston Engineering on the roadway.
11/13/2019	Adam advised that the road would be widened to a county gravel road.
11/13/2019	Patrick advised Mr. Pritchard that the road would not be paved. He was not surprised. Expressed his concern again over the increased dust that would be generated on the wider gravel road and the increased speed. Was not inclined to sign at this time, needed some time to talk to his neighbors.
-2019 to 4-20	Periodic check in to see if any new thoughts on a counter-offer or signing.
4/8/2020	Patrick had a conversation with Mr. Pritchard regarding the trees that would be cut down and if there was a program to replace those trees. The trees act as a barrier to the wind and the dust. He does not want to lose those trees. Patrick advised would see if we could get a detailed map showing which trees would likely be cut and look into the compensation for the trees. In the meantime, Mr. Pritchard advised he would work on getting some estimates for trees.
	Patrick requested feedback on the above from Dean Vetter and Scott Stenger.
	Received feedback and direction ideas.
4/16/2020	Patrick spoke with Mr. Pritchard regarding sending him a map that he could use to put locations of new trees that he would like to have planted and then we could work on a counter-offer. Mr. Pritchard seemed to be backing away from the tree idea and indicated that what we are paying him for his .57 acres is too little based on what he is seeing the project is paying for other property. Patrick asked him which properties he was thinking of that prompted the changed. He mentioned the Orten Braudshaug property and a property that was purchased last fall for a Jimmy Gerhartsen. Mr. Pritchard indicated that he was going to do some research and provide me with his counter-offer & documentation to support it next week.
4/29/2020	Spoke with Mr. Pritchard. His business has been busy and he hasn't had time to do any research. He asked if I could assist in getting him some information.
5/29/2020	Emailed information to Mr. Pritchard on some comparable strip takings for his review and reply with his thoughts on a counter-offer.
6/4/2020	Patrick phoned and left a message for Mr. Pritchard.
6/5/2020	Meeting invitation letter sent out.
6/10/2020	Patrick phoned and left a message for Mr. Pritchard. He is out on the road all day.
6/12/2020	Conversation with Mr. Pritchard and received a verbal counter-offer & one tree bid.
	Counter-offer was based on 3 different points:
	1. \$19,000 for 20 new trees
	2. \$18,000 for dust control
	3. \$10,000 for .57 acres
6/18/2020	<ul style="list-style-type: none"> • 6-18-2020 Patrick replies with an email with thoughts on a counter-offer that was felt would gain more traction.
	1. \$5100 provided directly for the purchase and planting of trees. Along with an additional \$300/tree for any tree needed to be replaced in the temporary construction easement area.
	2. \$0.00 for dust control as this would be part of the project requirement.
	3. \$16,140 for the .57 acres.
	Note: the \$16,140 is based on \$.65/sf x 24,829 SF needed to acquire. This is similar to what has been paid to others.
6/25/2020	Allen participated in board meeting call.
6/30/2020	Conversation with Mr. Pritchard regarding the trees again. Requested feedback on the size of the trees and the breakout between the tree cost and the spading. Received feedback on the tree size but no breakout of costs.
7/13/2020	Received another email from <u>Mr. Pritchard with a new counter-offer:</u>
	1. \$20,124 for 20 trees based on a bid from Big Tree.
	2. All abstract & documentation fees paid by CCJWRD

	3. If damage to any of their utilities in the ditch, reconnect & related fees to be paid by CCJWRD.
	4. \$10,000 for the .57 acres
	5. Guarantee of dust control for the duration of the construction.
	Total of \$30,124 from Mr. Pritchard
7/23/2020	Presented counter-offer to the board. Was provided feedback that the trees may not be impacted at all and to offer +10% which equals \$5126
	Provided that feedback to Mr. Pritchard. He is fine <u>if trees are not harmed</u> and if it is put into the PA that trees will be replaced if harmed and is holding tight to his \$10,000 for the property.
	The letter is being sent advising the intent to take possession and the Cass County Commission meeting is coming up.
	Mr. Pritchard has been negotiating in good faith thru this process. He has two concerns. 1. He feels other property owners have been compensated differently and for amounts much more than what he has been offered. 2. He is concerned with the trees being cut down and losing his tree barrier for the dust.
	To illustrate Mr. Pritchard's point on his first concern, CCJWRD paid \$5,000 for the 5,040 sq feet we needed on OIN 2375 for a small road type taking, a very similar type of taking to what we need on OIN 8678, although OIN 2375 didn't even have a home on it. We are acquiring 24,829 SF from Pritchards and have offered \$4560 +\$110 TCE. We are offering less on the Pritchard property for almost 3 times the square feet. (Summary and exhibit included).
	For his 2 nd concern, at the last board meeting that this was discussed, Lyndon spoke of the possibility that there is a possibility that these trees would not be damaged at all. That would be just fine with Mr. Pritchard if none of the trees were damaged. However, he is not willing to eliminate all language or discussion on tree damage. He would insist that his interests be protected as well with language in the PA that guarantees the safety and health of the trees not just during the construction period, but perhaps up to a year later, understanding that roots may be damaged during the construction period and damage the tree. Seems reasonable to desire to protect his interests.
	With that in mind I have two counter-offer proposals for your consideration:
	1. We could offer +10% on our appraisal to get to \$5016 + \$110 for the TCE = \$5126, and then offer +\$4874 in "severance" for a total of \$10,000 to address the lifetime of increased dust on the wider gravel road and include acceptable language in the PA that states the the project will still be responsible for managing and monitoring & paying for any negative impact to the trees.
	2. Or we could offer Mr. Pritchard an administrative settlement of \$24,800. \$10,000 for the parcel and \$14,800 for damage settlement and he is responsible for the trees.
8/14/2020	Board approved an administrative settlement of \$24,800 based on \$.40/SF for the 24,829 SF being acquired and \$14,800 for the damage to 17 trees as outlined in the appraisal. Tree replacement will be the responsibility of the landowner.
8/14/2020	Landowner agreed to administrative settlement with the understanding that the settlement addressed trees within the TCE area. Requested language be put into the PA that addresses trees damaged outside the TCE would be the responsibility of the project.

AFFIDAVIT OF DAN JACOBSON FOR CASS COUNTY COMMISSION

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

[¶1] I, Dan Jacobson, do hereby state on oath:

[¶2] I serve as Chair of the Cass County Joint Water Resource District (“the District”).

[¶3] As a member of the Metro Flood Diversion Authority, the District is responsible for acquiring the right of way in North Dakota necessary to accommodate the Fargo-Moorhead Area Diversion Project (the “Project”).

[¶4] The District has concluded acquisition of a Right of Way and Temporary Easement in and to real property owned by Allen and Dawn Pritchard (“Landowner”) is necessary for the Project.

[¶5] State and federal funds have been made available for the Project.

[¶6] The real property owned by Landowner where a Right of Way and Temporary Easement must be acquired by the District for the Project is located in Cass County, North Dakota, more fully described as follows:

Right of Way
OIN 8678

That part of the Southwest Quarter (SW¼) of Section 14, Township 139 North, Range 50 West of Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW¼) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County, said point also being the Point of Beginning; thence continuing N02°43'10"W on said west line a distance of 455.73 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the south line of said parcel described in Doc. #1083412; thence S87°16'50"W on said south parcel line a distance of 91.73 feet to the Point of Beginning.

Said parcel contains 0.57 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

AND

Temporary Easement

OIN 8678

A 10-foot-wide temporary construction easement across the Southwest Quarter (SW¹/₄) of Section 14, Township 139 North, Range 50 West of the 5th Principal Meridian, Cass County, North Dakota, further described as follows:

Commencing at the Southwest Corner of Section 14; thence N02°43'10"W on the west line of the Southwest Quarter (SW¹/₄) of said Section 14 a distance of 1049.00 feet to the southwest corner of the parcel described in Doc. #1083412, records of Cass County; thence N87°16'50"E on the south line of said parcel a distance of 91.73 feet to the Point of Beginning; thence continuing N87°16'50"E on said south parcel line a distance of 10.04 feet; thence 423.45 feet on the arc of a non-tangential curve, concave to the southwest, having a radius of 2110.00 feet, central angle of 11°29'54", and long chord length of 422.73 feet bearing N13°31'50"W; thence N19°16'47"W a distance of 78.86 feet to said west line of the SW¹/₄; thence S2°43'10"E on said west line a distance of 35.08 feet; thence S19°16'47"E a distance of 45.23 feet; thence 420.55 feet on the arc of a tangential curve, concave to the southwest, having a radius of 2100.00 feet, central angle of 11°28'27", and long chord length of 419.85 feet bearing S13°32'34"E to the point of beginning.

Said easement contains 0.11 acres, more or less, and is subject to all prior easements, reservations, restrictions, and conveyances of record.

[¶7] The District has fulfilled the required negotiation steps in accordance with subsection 2 of section 61-16.1-09 of the North Dakota Century Code.

[¶8] The District sent a written offer of just compensation to Landowner by certified mail, along with an appraisal and purchase agreement, on April 22, 2020. A copy of the offer (without the appraisal that was included) is attached as **Exhibit 1**.

[¶9] On June 5, 2020, the District sent Landowner a written request for a meeting, by certified mail; the District and Landowner have not reached an agreement regarding compensation, and more than fifteen days have passed since Landowner's receipt of the offer. A copy of the written request for a meeting with the landowner is attached as **Exhibit 2**.

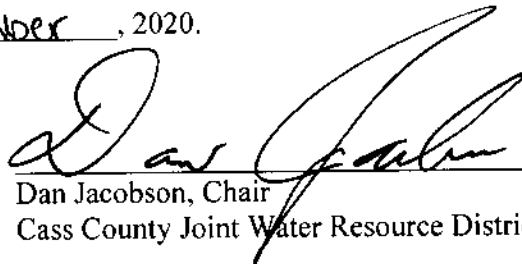
[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

[¶11] On July 21, 2020, the District sent Landowner a written notice of intent to take possession of the Right of Way and Temporary Easement, by certified mail. A copy of the notice of intent is attached as **Exhibit 3**.

[¶12] The District has retained land agents who are in direct contact with Landowner. The District instructed our land agents not to reference, mention, or threaten quick take eminent domain during negotiations. The land agents have verified they have not referenced, mentioned, or threatened quick take eminent domain during the course of negotiations with Landowner since August 1, 2017.

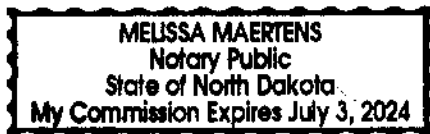
[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.

Dated this 25 day of September, 2020.



Dan Jacobson, Chair
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 25 day of September, 2020.





Notary Public, Cass County, State of North Dakota

(SEAL)