

**FLOOD SALES TAX COMMITTEE
AGENDA FOR NOVEMBER 20, 2017**

Cass County Commission

Conference Room

1:00 PM

1. Call to Order
2. Approve minutes from previous meeting
3. Draft policy on use of funds
4. Other business
5. Adjournment

cc: Local Media

**FLOOD SALES TAX COMMITTEE
OCTOBER 2, 2017—11:30 AM**

1. MEETING TO ORDER

Commissioner Rick Steen called a meeting of the Flood Sales Tax Committee to order on Monday, October 2, 2017, at 11:30 AM in the Commission Conference Room, Cass County Courthouse, with the following present: County Auditor Michael Montplaisir; Cass County Joint Water Resource District Vice Chairman Rodger Olson; County Commissioner Rick Steen; and County Administrator Robert Wilson. County Commissioner Mary Scherling was absent.

Also present were County Engineer Jason Benson; Brandon Oye, Moore Engineering; Mike Opat, Moore Engineering; Jake Gust, Cass County Joint Water Resource District, and residents of Sheldon Addition.

2. MINUTES APPROVED

MAIN MOTION, passed

Mr. Montplaisir moved and Mr. Olson seconded to approve the meeting minutes from March 20, 2017, as presented. Discussion: Mr. Olson said he would like to add clarity to a motion that was passed under the “Cost Share Percentage” agenda item, which allows this committee to provide a larger cost share percentage for projects than was previously used. Mr. Olson would like to strike the word “only” from the discussion of the motion.

AMENDED MOTION, passed

Mr. Olson moved and Mr. Montplaisir seconded to amend the main motion to approve the minutes from March 20, 2017, by striking the word “only” in the discussion of the motion for the “Cost Share Percentage” agenda item. Motion carried.

Main motion carried.

3. FLOOD SALES TAX FUND UPDATE

Mr. Montplaisir said the unencumbered fund balance for projects is over \$4.2 million.

Mr. Steen asked if significant funding changes are anticipated going forward. Mr. Montplaisir said 9% of the half-cent sales tax revenues are withheld to fund county flood control projects outside of the diversion project. Recently, sales tax revenues have not been as robust as projected so alternative methods of funding the diversion project are being explored, including decreasing the percentage withheld for county projects or funding the diversion project up to a certain level. The goal is to continue funding the diversion project while also funding local projects without the need for special assessments.

4. DRAFT POLICY ON USE OF FLOOD SALES TAX FUNDS

County Engineer Jason Benson said he has been working with Commissioner Scherling to develop a more formalized policy on how flood sales tax funds are utilized for county projects.

Mr. Benson gave an overview of the draft policy including the general provisions, administration, funding eligibility, and project priorities. The committee discussed the types of projects eligible for funding, and Mr. Benson stressed that it is important for approved projects to prevent future flood damage.

Mr. Olson said he would like to spend more time discussing the draft before it is approved, and a subsequent meeting is needed.

5. ERIE DAM REPAIRS UPDATE

Mr. Montplaisir said \$25,000 was appropriated by this committee in 2016 for repairs to the Erie Dam at Brewer Lake, and an additional \$10,000 was appropriated this spring for the repairs. A letter was recently received from the North Dakota Game and Fish Department stating that they will now take over financial obligation for the repairs. The money previously appropriated for this project can be de-obligated.

MOTION, passed

Mr. Montplaisir moved and Mr. Wilson seconded to de-obligate \$35,000 for the Erie Dam/Brewer Lake Project. Motion carried.

6. REVIEW OF ADDITIONAL PROJECTS FOR 2017

Davenport Flood Risk Reduction Project

Engineer Mike Opat of Moore Engineering was present to discuss the Davenport Flood Risk Reduction Project. Mr. Opat said a portion of the City of Davenport will be mapped into the FEMA floodplain, which will require some residents to obtain flood insurance. In conjunction with the Maple River Water Resource District, the city would like to do a feasibility study to develop a comprehensive flood control system for the community. A request has been made to the State Water Commission to fund 35% of the project. The request to this committee is to fund 50% of the remaining local share, which is \$32,500.

MOTION, passed

Mr. Montplaisir moved and Mr. Wilson seconded to approve the Davenport Flood Risk Reduction Project in the amount of \$32,500. Motion carried.

Sheldon Addition Ring Levee Project

Mr. Opat said residents of Sheldon Addition in Raymond Township and the Cass County Joint Water Resource District have discussed the need for permanent flood protection for Sheldon Addition. The proposed project includes a ring levee for the 14 homes in the addition, which will be on the unprotected side of the diversion. A 60% cost share has been requested from the State Water Commission but there are no funds available for the 2017-2019 biennium. Funds may be available during the next biennium, and there is also the possibility of using materials from the diversion project depending on the timing.

Mr. Opat said residents are waiting for a decision from this committee before beginning discussions on a special assessment district, which would be created through the water resource district. The earliest estimate for construction is 2019.

Mr. Olson said he believes the project falls within the framework of the new policy document presented by Mr. Benson.

Mr. Montplaisir said if no state water funds are available and this committee provides a 50% project match each residence would be responsible for approximately \$22,000 in special assessments. Mr. Opat said that is a worst case scenario that will be discussed with residents.

Jake Gust of the Cass County Joint Water Resource District said residents in the Sheldon Addition requested to be on the protected side of the diversion but were told the option was too costly. Mr. Gust said he believes residents are entitled to a cost share greater than 50% and this addition warrants special treatment, similar to the community of Oxbow.

Mr. Olson said he would like to see funds continue to be sought from the state for this project, but he is comfortable providing a local cost share of 50%-75%. Hopefully funds can be secured from the state and the local cost share will be greatly reduced.

MOTION, passed

Mr. Olson moved and Mr. Montplaisir seconded to approve the Sheldon Addition Ring Levee Project for 75% of the local share, up to \$462,750. On roll call vote, the motion carried unanimously.

Casselton Storm Water Improvements Project

Engineer Brandon Oye of Moore Engineering said the City of Casselton has submitted a request for funding assistance for project costs associated with a city storm water detention pond and lift station, which will directly benefit a proposed residential development and improvements to Central Cass School. After speaking with Mr. Benson, Mr. Oye understands that this committee may only wish to provide a local match for the school's assessed portion of the project.

MOTION, passed

Mr. Olson moved and Mr. Wilson seconded to approve the Casselton Storm Water Improvements Project for up to 50% of the local share for the school's assessed portion. On roll call vote, the motion carried unanimously.

7. OTHER BUSINESS

Project cost adjustment requests

Mr. Oye said he would like to request two adjustments to previous funding requests that have been approved by this committee. The Casselton Industrial Parks Improvements Project approved in 2015 is expected to cost around \$25,000 more than previously anticipated; and the Casselton Map Revision Project approved earlier this year is expected to cost around \$5,000 more than previously anticipated. As both projects have a 50% cost share the request is for an additional \$12,500 and \$2,500, respectively.

MOTION, passed

Mr. Olson moved and Mr. Wilson seconded to approve additional appropriations in the amounts of \$12,500 for the Casselton Industrial Improvements Project; and \$2,500 for the Casselton Map Revision Project. On roll call vote, the motion carried unanimously.

Mr. Montplaisir requested that written documentation of this request be supplied.

8. ADJOURNMENT

MOTION, passed

On motion by Mr. Montplaisir, seconded by Mr. Steen, and all voting in favor, the meeting was adjourned at 12:46 PM.

Minutes prepared by Brielle Edwards, HR Assistant

SUBJECT: COUNTY SALES TAX FOR FLOOD RISK REDUCTION AND RECOVERY PROJECTS
RIGHT OF WAY ENCROACHMENT POLICY

ADOPTED DATE: Amended 10/16/17 (Originally Adopted 08MM/02DD/YY10) PAGE 1 OF 23

PURPOSE

The purpose of this ~~p~~Policy is to provide guidance for the administration and funding of projects with Cass County Flood Control Sales Tax funds. ~~prohibit encroachments upon the right of way for completed county highway projects funded through the Federal Aid Highway program, pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.~~

GENERAL PROVISIONS

As passed during the 2010 election and extended in the 2016 election, the voters approved the following: The Cass County Home Rule Charter be amended to extend the existing flood-protection-related sales, use, and gross receipts tax of one-half of one percent (1/2%) to be used solely for the engineering, land purchase, construction, and maintenance of flood control measures including the Metro Flood Diversion Project including associated special assessments and indebtedness, through December 31, 2084, and shall be rescinded when all of the costs, obligations, and debt for said project have been paid in full and satisfied, whichever event occurs first as provide in Resolution #2016-20.

Cass County Commission Policy 38.23 outlines Ordinance #2010-2 Amended (Flood Control Sales Tax) which serves as the ordinance for the establishment and regulation of the Cass County Flood Control Sales Tax.

This policy governs expenditures of funds from a one half percent County sales tax that started in 2011 and will end in 2084 to fund flood risk reduction projects. The primary purpose of the sales tax measure is to fund local costs associated with a planned Fargo Moorhead Area Flood Diversion project in either Minnesota or North Dakota. The planned diversion project will not address all flood damage risks in Cass County. Additional measures are necessary to reduce risk to areas within and outside of the diversion perimeter. Sales tax proceeds may also be expended for the Diversion and other flood risk reduction or recovery projects subject to funding availability and approval by the County Commission. The County sales tax proceeds should be used to leverage other sources of funding when possible.

County sales tax funds expended within incorporated cities: The County Commission through the Flood Sales Tax Committee may consider requests for flood risk reduction and recovery funding from cities within Cass County. The city will be responsible for planning and engineering costs associated with the project. Plans and specifications should be prepared by a professional engineer registered within the State of North Dakota. Projects won't be considered if they are strictly for new city development, especially cases where a developer would be shifting their cost to the County Flood Sales Tax. The city should also be able to demonstrate that other revenue sources for the project have been actively sought out. The preferred funding split is that City funds match the County sales tax proceeds on a 1:1 basis. Other funding splits may be considered by the Commission on a case by case basis to allow consideration to be given to unique circumstances and the ability of the City to pay 50% of the local cost share.

County sales tax funds expended outside of incorporated cities: The County Commission, through the Flood Sales Tax Committee, may also consider flood risk reduction and recovery projects recommended by the County Engineer or requested by townships, neighborhood groups, or individuals for areas within and outside of the diversion protected area. Projects won't be considered if they are strictly for new rural development, especially cases where a developer would be shifting their cost to the County Flood Sales Tax. Special assessments may be considered as a local match to County sales tax funds. Funds may be expended for projects that provide benefit to Cass County residents but are physically constructed outside of the County boundaries such as retention projects. Funds may also be spent to assist property owners downstream from the diversion channel in offsetting diversion project impacts.

~~The NDDOT is, according to Title 23 United States Code and 23 CFR 1.27, required to maintain, or cause to maintain, all federally funded highway projects. Title 23 United States Code 101 defines maintenance as: "...the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway."~~

~~Title 23 further requires a State transportation department to maintain each project constructed with Federal-aid funds until such time that it no longer constitutes a part of the Federal-aid system. It is the Federal Highway Administration's (FHWA) role to see that maintenance of Federal-aid projects is adequate and to provide technical assistance in disseminating information on successful maintenance techniques.~~

~~It is the policy of the NDDOT to require all county and city projects receiving federal dollars to enter into an agreement with the Department to ensure that as recipients of federal money the counties and cities agree to abide by the terms and conditions required. The agreement will require counties receiving federal funds to provide an annual certification that all federally funded highway projects constructed are being maintained as required.~~

ADMINISTRATION

The Cass County Commission will organize and appoint members to a Flood Sales Tax Committee. This will be a five member committee made up of the following members:

1. Two members of the Cass County Commission
2. Cass County Auditor
3. Cass County Administrator
4. One member from either the Southeast Cass, Maple River, Rush River, or North Cass Water Resource District.

While the Cass County Engineer is not a member of the Flood Sales Tax Committee, the County Engineer will serve as a technical representative to the Flood Sales Tax Committee.

The Flood Sales Tax Committee will solicit project requests on a bi-annual basis. Meetings to review project requests will generally be held with one meeting in the fall (October-November) and one meeting in the spring (March-April). Requests received from political subdivisions and county staff for cost effective projects will be prioritized and considered for funding by the County Commission as funds available allow.

FUNDING ELIGIBILITY

~~Right of way boundaries will be marked with steel posts and right of way signs. The County will perform routine inspections for right of way encroachments each Fall and re-inspect each Spring. Those persons damaging or removing highway right of way signs will be held responsible for the repair or replacement of the signs.~~

~~In addition, and in accordance with N.D.C.C § 24-05-23, any landowner who encroaches upon a county highway right of way or its ditches or approaches will be given notice, no later than September 15th each year, by the Cass County Highway Department that the encroachment has been discovered. The landowner must remove the encroachment within 30 days of receipt of this notice. Failure to remedy this situation will cause the landowner to be liable to the County for damages resulting from the encroachment. The county will conduct the work necessary and the landowner will be liable for the cost associated with correcting the damages. The expense of the repair will become part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes are collected. Corrective action will include, but not be limited to, replacement of approved or recommended grass seed or correction of slopes or ditches that have been altered as a result of the encroachment.~~

Entities eligible for funding: Funding should generally be for flood protection for communities or individuals that live outside of the Diversion protected area or those within the Diversion protected area that do not receive a significant benefit from the Diversion. This includes:

1. Cities
2. Townships
3. Water Resource Districts
4. Individual Farmsteads

Types of projects eligible for funding:

1. Levee construction or recertification for cities or rural subdivisions. Generally levee projects should be constructed to FEMA and/or US Army Corps of Engineer standards and be able to bring the benefited area out of the 1% chance (100 year) floodplain. These levees would also need to be maintained at that standard by either the city or township that is a member of the National Flood Insurance Program. Rural subdivisions seeking this funding would need to complete an agreement with the township and form an assessment district for the long term maintenance of the levee.
2. Flood control projects.
3. Water retention or detention projects.
4. Dam construction or maintenance.
5. Lift Stations for removing storm water from within a levee protected area.
6. Rural Farmstead Ring Levees (in conjunction with the ND State Water Commission 50% cost share) as outlined on the ND State Water Commission website under "Cost Share" at http://www.swc.state.nd.us/project_development/cost_share.html. Generally levee projects should be constructed to FEMA and/or US Army Corps of Engineer standards. However, individual rural farmsteads cannot be "certified" by FEMA or the US Army Corps of Engineers as they not maintained by either a city or township that is a member of the National Flood Insurance Program.
7. Road Projects that provide infrastructure protection to prevent significant future flood damage. These requests may be standalone projects or in conjunction with post-flood damage repair with or without FEMA cost share.
8. Road access (road raises or other infrastructure improvements that will allow access to a city, subdivision, or rural residence/farmstead).

9. Embankment slumping along the Red River, Wild Rice River, Sheyenne River, Maple River, Rush and Lower Rush Rivers, and Legal Drains. River slumping projects may include road and infrastructure repair, home buyouts, and repair to legal drains.
10. Home buyouts for flooding and bank slumping.
11. Flood Recovery projects to include: Levee repair, road repair, bridge repair, and other infrastructure related repair projects. None infrastructure flood recovery such as debris removal and sandbag cleanup will not be eligible.

Cass County Sales Tax Cost Share:

1. Generally the cost share will be 50% of the "local" share of the non-retention projects, i.e. if a \$100,000 project had a 50% state cost share, the local share would be \$50,000 and the County cost share would be \$25,000.
2. Policy for Retention Projects: Cost share is 75% of the "local" share if they are approved by the Red River Joint Water Resource District.
3. Home buyouts for flooding and bank slumping: Cost share is 90% of the "local" cost with the homeowner paying 10% of the "local" cost.
4. If significant funds are available compared to the project requests, the County may authorize a cost share above 50% for non-retention projects and above 75% for Retention Projects.

PROJECT PRIORITIES

Priority of projects will be based on the following:

1. Population benefited by the project
2. Distribution of funds by location
3. Disbursement percentage determined by the number of people benefited
4. Cost effectiveness of the project
5. Permanency of the project
6. Effect of the diversion on the project
7. Does the project have long-term merit (benefits extend beyond 10 years)
8. Other sources of funding from local, state, or federal cost share programs.

Evaluation Criteria: The County Commission and/or Flood Sales Tax Committee may use some or all of the following criteria in determining funding priorities:

1. Benefit cost ratio
2. Land area benefited
3. Population benefited
4. Downstream flood reduction
5. Total acre-feet of retention storage