



# State of North Dakota

## Office of the State Engineer

### Regulatory Division

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Regulatory Division (701) 328-2752 • FAX (701) 328-3696 • <http://swc.nd.gov>

June 22, 2017

Mr. Dave Carlsrud, Mayor  
City of Valley City  
P.O. Box 390  
Valley City, ND 58072

Re: Correspondence received on June 13, 2017

Dear Mayor Carlsrud:

Upon review of the information provided in your June 13, 2017 correspondence (attached), the Office of the State Engineer will clarify what more is required to constitute the City of Valley City's (City) "Permanent Flood Protection - Phase 2" (project) construction permit application complete. Your letter raised a number of points, including the City's publicly held meetings, the referendum for project funding, and the City's general commitment to protect the citizens of Valley City. Also attached to the letter was an "Emergency Flood Plan," dated April 2017, which appears to be somewhere in between an emergency action plan and operation and maintenance manual for the City's existing flood protection system.

While our office appreciates these documents, the documents provided fall short of what this office would consider "evidence establishing a property right for the property that will be affected by the construction of [a] dam, dike, or other device" (N.D. Administrative Code 89-08-02-02). Further, while the model provided is quite robust, our office requests that additional information be put in the model's report. Below is a summary of the additional information needed for the Phase 2 construction permit application to satisfy the "evidence establishing a property right" requirement:

1. For properties affected by the project, our office will need one of the following:
  - a. Property rights secured and documented, (typically easements or fee title ownership)
  - b. Stated legal authority and intent to secure property rights (typically eminent domain or quick take authorities), or
  - c. A plan to mitigate affected properties (i.e. a detailed plan that will indicate how affected properties will be addressed)
2. An updated model report
  - a. Please include more tables comparing the pre-versus-post project conditions. The current report has a table like this for the 100-year event (Table 4 of the report). Since you modeled the 2, 5, 10, 20, and 50 year events, please include

similar tables for those events as well.

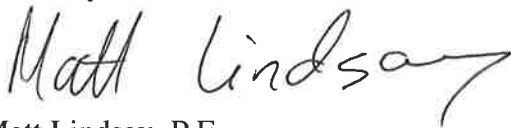
- b. Please include inundation mapping for all modeled events. These maps will serve as a guide that the general public can utilize if there is question as to the effects the project may have on a given property.

Generally speaking, your letter briefly addressed the intent to obtain property rights from upstream landowners “when the permanent flood protection is functional.” For clarification, our office considers affected properties for each phase of a project as it is proposed for a permit application (i.e. Phase 1 + Phase 2 for your current permit application). We do not consider full-build-out scenarios with respect to affected properties because typically, phased projects may take years, if not decades, to complete. Our office also does not consider emergency dikes or levees with respect to the affected properties. Our office only takes into consideration permanent structures proposed in the construction permit application.

Also, for your consideration, your letter stated that “there are numerous remnant clay levees and elements of emergency flood protection within Valley City’s City Limits that have and currently are functioning no differently than the Phase 1 and Phase 2 projects.” To this office’s knowledge, no other dikes or levees in Valley City, whether emergency or permanent, have been permitted by the state. Without further information, it is difficult to say if these remnant levees and protection elements required permits at the time they were constructed. However, if any dikes, dams, or other water control devices were capable of retaining, obstructing, or diverting more than 50 acre-feet of water (N.D. Century Code § 61-16.1-38) at the time of their construction, those structures may potentially be viewed as unauthorized structures in the eyes of the state.

I am currently reviewing the design and specifications submitted for your construction permit application. Please let me know if you have any questions on these additional requirements. If you have any questions, please contact Aaron Carranza at 701-328-4813 or [acarranza@nd.gov](mailto:acarranza@nd.gov).

Sincerely,

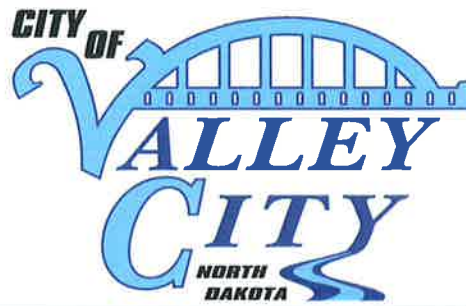


Matt Lindsay, P.E.  
Water Resource Engineer

ML/1504  
Enclosures

Cc: Erik Gilbertson, P.E. – KLJ (electronic)  
Robert Falk, P.E. – KLJ (electronic)

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June 13, 2017

North Dakota State Water Commission  
John Paczkowski, P.E.  
Assistant State Engineer  
900 East Boulevard Avenue, Dept. 770  
Bismarck, ND 58505-0850



RE: Valley City Flood Protection and Property Rights

Dear Mr. Paczkowski,

The City of Valley City is planning to commence the Phase 2 Permanent Flood Protection Project during the 2017 construction season. This is the second of eight planned phases of permanent flood protection. To best serve and protect properties of this City, the Valley City Flood Task Force has developed a strategic plan to fight floods moving into the future. One of the greatest benefits of living in a town like Valley City is the importance this community places in protecting the properties of its residents. Without the concerted effort of the residents, the City government, and the Valley City Flood Task Force, winning the 2009 and 2011 flood would not have been possible.

The Construction Permit for the project is being reviewed by your staff and questions have been asked how the City will comply with the intent of North Dakota Administrative Code 89-08-02-02 regarding individual property rights. The City of Valley City is in compliance with the intent of this Code as explained below:

Public input has been a central part of the process. The "who, what, when, where, why" for permanent flood protection has been discussed at over a dozen public meetings. Additionally, the projects have been discussed with the local news organizations, at regular City meetings, and at service club meetings (Kiwanis, Rotary, and Optimist) to increase the education of the community.

The Phase 1 and 2 areas were specifically selected because they encompass portions of town that are notoriously the most difficult to establish emergency flood protection. By prioritizing this project with permanent flood protection measures, it frees up considerable resources to direct flood fighting measures throughout the rest of town. As has been experienced twice in the recent past, establishing emergency flood protection measures along Phase 1 and 2 locations, has required the most time, energy and resources spent in fighting floods. Emergency measures for flood prevention are inherently time and energy sensitive and by

establishing Phase 1 and 2 infrastructure now, protects all property rights for the citizens of Valley City well into the future.

The City of Valley City has established a historical precedent and commitment to protecting individual property owners that are endangered during flood events. This protection was demonstrated when the City reached major flood stage 5 times within the last 25 years. Individual property damage was minimal compared to the alternative. This commitment shows that protecting properties is of the utmost importance.

The community's commitment to flood protection was shown in their support of a referendum on flood protection funding. This referendum asked our citizens whether or not to proceed with funding of permanent flood protection by passage of a sales tax. The referendum passed overwhelmingly in November of 2013. The community has shown that they support in sharing the permanent flood protection responsibility equally as a resident in Valley City, including those in and outside the floodplain.

There are numerous remnant clay levees and elements of emergency flood protection within Valley City's City Limits that have and currently are functioning no differently than the Phase 1 and Phase 2 projects. The Phase 1 and Phase 2 flood protection projects are part of the Emergency Flood Plan that the City has developed for protecting the community. Attached is a copy of this plan, which describes the required emergency measure to create a fully functioning flood protection system during an emergency. The permanent flood protection elements of both Phase 1 and Phase 2 are completely non-functional without undertaking additional emergency flood fighting measures. In order for Phase 2 to be functional in holding back flood waters, 13,815-ft of clay levees and 1,317-ft of sandbagging is required. Phase 1 would require 153-ft of clay levees. Short of undertaking all measures both permanent and emergency in nature can any property owners receive the benefit of flood protection.

Finally, when the permanent flood protection is functional, Valley City will address and compensate, in accordance with property rights requirements, the rural properties upstream being affected by a BFE (Base Flood Elevation) rise because of the functional permanent flood protection system serving Valley City. As shown in the attached report by KLJ, when the flood protection is not functional, the impact with Phase 1 and Phase 2 is negligible. If we assume that Phase 1 and Phase 2 are functional (with the installation of emergency measures), the largest impact is 0.36 feet near these phases.

The Phase 1 and Phase 2 projects enhance the protection of all citizens by ensuring that additional resources are available to assist those outside of these areas. On behalf of the City of Valley City I would like to request that you consider the information provided which shows how the City is protecting the property rights of the citizens of Valley City. Please contact me if you have any questions or concerns.

Sincerely,



Dave Carlsrud, Mayor