



FEMA

May 31, 2017

Mr. Greg Wilz, Director
Division of Homeland Security
North Dakota Department of Emergency Services
Fraire Barracks Lane, Building 35
Bismarck, North Dakota 58504-5511

Re: City of Drayton Open Space Compliance

Dear Mr. Wilz:

As you know, the City of Drayton has several deed restricted properties that were acquired for open space purposes under the Hazard Mitigation Grant Program (HMGP), authorized by Section 404(b) of the Stafford Act (42 U.S.C. 5170c(b)). This statute requires that land use on these properties be compatible with open space, recreational, or wetlands management practices in perpetuity. No new structure is allowed except a public facility that is open all sides, a rest room, or a structure that is approved in writing by the Administrator prior to construction. The Department of Homeland Security Appropriations Act of 2017, Title III, Section 311, states that notwithstanding § 5170c (b)(2)(B)(ii), FEMA may allow the construction of an earthen levee on deed restricted hazard mitigation land if the levee meets certain criteria: is constructed of naturally occurring materials, is part of a flood control project, and meets other criteria as established by the Administrator.

I have reviewed your community's placement of an earthen levee on deed restricted land (see attachment) within the city limits. I have determined that the earthen levee meets the statutory criteria identified in Section 311. Therefore, I find that the earthen levee may remain on the properties at the City of Drayton's discretion. In accordance with 44 CFR 80.19(a)(4), FEMA reminds the City that Federal disaster assistance is not available for land that is deed-restricted as open space in perpetuity.

My determination is limited to FEMA's authority under the Stafford Act to evaluate open space land use. Section 311 does not provide authority or approval under any other applicable local, state, or Federal law or requirement. Such other laws or requirements include but are not limited to the City's local floodplain management ordinance; North Dakota state law regarding flood control measures, as implemented by the State Water Commission or other State agencies; and any Federal permitting for the placement of fill in waters of the United States.

Additionally, FEMA has no record of any engineering design, operation, and maintenance plans for the earthen levee. FEMA cannot make a determination whether the earthen levee provides

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reasonable protection from the base flood in accordance with 44 CFR 65.10. As a result, FEMA cannot recognize the measures as a flood control structure within the meaning of the regulation. The floodplain maps upon which floodplain management decisions and flood insurance rate determinations are based will not change. Land and structures behind the flood protection measures will continue to be subject to the City's local floodplain ordinance and the requirements of the National Flood Insurance Program (NFIP).

Because property owners are vulnerable to risk from flooding despite the presence of the levee, FEMA suggests that the City continue to encourage the purchase of flood insurance, and that the City develop and regularly execute a community evacuation plan for those high-risk flood areas. To the extent practicable, critical services, such as emergency medical care facilities, should be located outside the high-risk areas.

If you have any questions or need additional information, please have a member of your staff contact Karen Helbrecht, Acting Director, Hazard Mitigation Assistance Division at (202) 646-3358.

Sincerely,



Roy E. Wright
Deputy Associate Administrator
for Insurance and Mitigation

cc: Nancy Dragani, Acting Regional Administrator, FEMA Region VIII
Justin Messner, State Hazard Mitigation Officer, North Dakota Department of
Emergency Services
Garland Erbele, State Engineer, North Dakota State Water Commission

Attachment: City of Drayton HMGP deed-restricted parcels (impacted by the earthen levee)

Draft Location of 17 Properties adjacent to Earthen Structure

