



NOTICE OF MEETING OF THE WOODBURY COUNTY BOARD OF SUPERVISORS
(AUGUST 20) (WEEK 34 OF 2024)

Live streaming at:
https://www.youtube.com/user/woodburycountyiowa

Agenda and Minutes available at:
www.woodburycountyiowa.gov

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Matthew A. Ung
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You are hereby notified a meeting of the Woodbury County Board of Supervisors will be held August 20, 2024, at 4:30 p.m. in the Basement of the Courthouse, 620 Douglas Street, Sioux City, Iowa for the purpose of taking official action on the agenda items shown hereinafter and for such other business that may properly come before the Board.

This is a formal meeting during which the Board may take official action on various items of business. Members of the public wishing to speak on an item must follow the participation rules adopted by the Board of Supervisors.

- 1. Please silence cell phones and other devices while in the Boardroom.
2. The Chair may recognize speakers on agenda items after initial discussion by the Board.
3. Speakers will approach the microphone one at a time and give their name and address before their statement.
4. Speakers will limit their remarks to three minutes on any one item and address their remarks to the Board.
5. At the beginning of discussion on any item, the Chair may request statements in favor of an action be heard first followed by statements in opposition to the action. The Chair may also request delegates provide statements on behalf of multiple speakers.
6. Any concerns or questions which do not relate to a scheduled item on the agenda will be heard under the item "Citizen Concerns." Please note the Board is legally prohibited from taking action on or engaging in deliberation on concerns not listed on the agenda, and in such cases the Chair will request further discussion take place after properly noticed.
7. Public comment by electronic or telephonic means is prohibited except for a particular agenda item when approved by the Chair 24 hours before a meeting or by a majority of the board during a meeting for a subsequent meeting.

AGENDA

3:30 p.m. Closed Session {Iowa Code Section 21.5(1)(c)} - First Floor Boardroom

4:30 p.m. Call Meeting to Order - Pledge of Allegiance to the Flag - Moment of Silence

- 1. Approval of the agenda Action

Consent Agenda

Items 2 through 7 constitute a Consent Agenda of routine action items to be considered by one motion. Items pass unanimously unless a separate vote is requested by a Board Member.

- 2. Approval of the minutes of the August 13, 2024 meeting
3. Approval of claims
4. Board Administration - Heather VanSickle
Approval of Notice of Property Sale Resolution for Parcel #894729285006 (aka 512 - 14 Market Street) for Tuesday, September 3rd at 4:35 p.m.

5. Deputy Commissioner of Elections – Steve Hofmeyer
Receive the appointments of Connie Westphal and Ruth Groth as council members for the City of Anthon
6. Deputy County Auditor – Michelle Skaff
Receive amended Auditor’s Quarterly Report to replace the approved report on July 3
7. Human Resources – Melissa Thomas
 - a. Approval of Memorandum of Personnel Transactions
 - b. Authorization to Initiate Hiring Process

End Consent Agenda

8. Human Resources – Melissa Thomas
Approval to create a Human Resources temporary secretary position Action
9. Secondary Roads – Mark Nahra
Approval of the Secondary Roads Driveway and Entrance Policy, PPM#1 Action

Recess Board of Supervisors Meeting

Convene Bennett McDonald Levee & Wolf Creek Drainage Districts Trustees meeting

10. ISG – Caleb Rasmussen & Secondary Roads – Mark Nahra
Discussion of flood damage, repair and response to Corps of Engineers Information

Adjourn Bennett McDonald Levee & Wolf Creek Drainage Districts Trustees meeting

Continue Board of Supervisors meeting

11. Board of Supervisors – Matthew Ung
 - a. Approval to reallocate \$173,291 of unspent American Rescue Plan Act funds to expense category 3.4 in accordance with plan rules Action
 - b. Receive into record Woodbury County’s July 12, 2024, motion to reconsider final decision and order with the Iowa Utilities Commission regarding Summit Carbon Solutions, LLC and their hazardous liquid pipeline permit including rights of eminent domain Information
12. Reports on Committee Meetings Information
13. Citizen Concerns Information
14. Board Concerns Information

ADJOURNMENT

Subject to Additions/Deletions

CALENDAR OF EVENTS

- WED., AUG 21 12:00 p.m.** Siouxland Economic Development Corporation Meeting, 617 Pierce St., Ste. 202
- MON., AUG 26 5:00 p.m.** Zoning Commission Meeting, First Floor Boardroom
- THU., AUG 29 1:30 p.m.** SIMPCO Community and Economic Development Meeting, 6401 Gordan Dr.
- WED., SEP 4 10:00 a.m.** Loess Hills Alliance Stewardship Meeting, Pisgah, Iowa
- 11:00 a.m.** Loess Hills Alliance Executive Meeting
- 1:00 p.m.** Loess Hills Alliance Full Board Meeting
- 4:45 p.m.** Veteran Affairs Meeting, Veteran Affairs Office, 1211 Tri-View Ave.
- 6:00 p.m.** Board of Adjustment Meeting, Courthouse Basement Boardroom
- THU., SEP 5 12:00 p.m.** SIMPCO Regional Policy & Legislative Affairs Committee Meeting, 6401 Gordan Dr.
- FRI., SEP 6 9:00 a.m.** Hungry Canyons Alliance Fall Meeting, Loess Hills State Forest Visitor Center, Pisgah
- WED., SEP 11 8:05 a.m.** Woodbury County Information Communication Commission, First Floor Boardroom
- 12:00 p.m.** District Board of Health Meeting, 1014 Nebraska St.
- 6:30 p.m.** 911 Service Board Meeting, Public Safety Center, Climbing Hill
- THU., SEP 12 12:00 p.m.** SIMPCO Board of Directors, 6401 Gordon Drive
- WED., SEP 18 12:00 p.m.** Siouxland Economic Development Corporation Meeting, 617 Pierce St., Ste. 202
- THU., SEP 19 4:30 p.m.** Community Action Agency of Siouxland Board Meeting, 2700 Leech Avenue
- FRI., SEP 20 12:00 p.m.** Siouxland Human Investment Partnership Board Meeting, 2540 Glenn Ave.

Woodbury County is an Equal Opportunity Employer. In compliance with the Americans with Disabilities Act, the County will consider reasonable accommodations for qualified individuals with disabilities and encourages prospective employees and incumbents to discuss potential accommodations with the Employer.

Federal and state laws prohibit employment and/or public accommodation discrimination on the basis of age, color, creed, disability, gender identity, national origin, pregnancy, race, religion, sex, sexual orientation or veteran's status. If you believe you have been discriminated against, please contact the Iowa Civil Rights Commission at 800-457-4416 or Iowa Department of Transportation's civil rights coordinator. If you need accommodations because of a disability to access the Iowa Department of Transportation's services, contact the agency's affirmative action officer at 800-262-0003.

AUGUST 13, 2024, THIRTY-THIRD MEETING OF THE WOODBURY COUNTY BOARD OF SUPERVISORS

The Board of Supervisors met on Tuesday, August 13, 2024, at 4:30 p.m. Board members present were Ung, Nelson, Radig, Bittinger II, and Taylor. Staff members present were Karen James, Board Administrative Assistant, Melissa Thomas, Human Resources Director, and Patrick Gill, Auditor/Clerk to the Board.

The regular meeting was called to order with the Pledge of Allegiance to the Flag and a Moment of Silence.

1. Motion by Radig second by Ung to approve the agenda for August 13, 2024. Carried 5-0. Copy filed.

Motion by Ung second by Radig to approve the following items by consent:
2. To approve minutes of the August 06, 2024, meeting. Copy filed.
3. To approve the claims totaling \$859,877.62. Copy filed.
4. To approve and authorize the chairperson to sign a Resolution approving petition for suspension of taxes through the redemption process for Susan Rae Janssen, parcel #894730331012.

**WOODBURY COUNTY, IOWA
RESOLUTION #13,787
RESOLUTION APPROVING PETITION FOR SUSPENSION OF TAXES
THROUGH THE REDEMPTION PROCESS**

WHEREAS, Susan Rae Janssen and as titleholder of property located at 225 S. Casselman Street, Sioux City, Iowa, Woodbury County, Iowa, and legally described as follows:

Parcel # 894730331012

HIGHLAND 1 & 2 S 150 FT LOT 54 & N ½ VAC W HORNE AVE LYING BETWEEN LOT 54 & LOT 67

WHEREAS, Susan Rae Janssen, as titleholder of the aforementioned property has petitioned the Board of Supervisors for a suspension of taxes pursuant to the 2017 Iowa Code Section 447.9(3) and,

WHEREAS, the Board of Supervisors recognizes from documents provided that the petitioner is unable to provide to the public revenue; and

NOW, THEREFORE, BE IT RESOLVED, that the Woodbury County Board of Supervisors hereby directs the County Auditor to redeem this property Parcel #894730331012 owned by the petitioner from the holder of a certificate of purchase of the amount necessary to redeem under section 447.9, and hereby directs the Woodbury County Treasurer to so record the approval of this tax suspension for this parcel.

SO RESOLVED this 16th day of August, 2022.
WOODBURY COUNTY BOARD OF SUPERVISORS
Copy filed.

- 5a. To approve the separation of Blasé Sanford, Temporary Engineering Aide, Secondary Roads Dept, effective 8-23-2024., End of Temp Work; the appointment of David Brown, Operations Officer-PT EMT, Emergency Services Dept., effective 8-19-2024, \$23.90/hour. Job Vacancy Posted on 5/31/2023. Entry Level Salary: \$23.90/hour.; appointment of Bethany Lukart, Operations Officer-PT EMT, Emergency Services Dept., effective 8-19-2024, \$23.90/hour. Job Vacancy Posted on 5/31/2023. Entry Level Salary: \$23.90/hour.; the transfer of Adam Kirkpatrick, Deputy Sheriff, Sheriff's Office, effective 8-13-2024, \$29.13/hour, 19%=\$4.56/hr. Transfer from Correctional Officer Deputy. Authorization to Hire Approved 5/13/2024.; the transfer of Phoenix Larned, Deputy Sheriff, Sheriff's Office, effective 8-13-2024, \$29.13/hour, 14%=\$3.56/hr. Transfer from Correctional Officer to Deputy.

Authorization to Hire Approved 5/13/2024.; and the appointment of Saul Luna-Perez, Deputy Sheriff, Sheriff's Office, effective 8-13-2024, \$29.13/hour. Authorization to Hire. Approved 5/13/2024. Copy filed.

5b. Presentation of Award Certificate to Mark Nahra. Copy filed.

5c. To approve a new copier lease agreement with Access Systems. Copy filed.

6a. To approve the permit to work in the right of way for Mitch Parker. Copy filed.

Carried 5-0.

7. Motion by Taylor second by Bittinger to approve to direct the auditor to redeem remaining balance of tax sale certificate in the amount of \$1,885.71 for parcel 894301379006. Carried 5-0. Copy filed.

8a. Motion by Radig second by Nelson to approve the client authorization to bind the Business Income & Extra Expense Coverage through ICAP. Carried 5-0. Copy filed.

8b. Motion by Radig second by Taylor to approve the AFSCME County Attorney MOU. Carried 5-0. Copy filed.

9a. Motion by Radig second by Ung to approve contract for project number L-B(J178)—73-97 bridge replacement project with Graves Construction Co. Inc. for \$606,737.87. Carried 5-0. Copy filed.

9b. Bid letting was held for Propane – FY2025. The bids are as follows:

Johnson Propane, Battle Creek, IA	\$1.06/Gal
Sapp Bros Petroleum Inc., Sioux City, IA	\$1.399/Gal
New Cooperative Inc., Hornick, IA	\$1.25/Gal

Motion by Radig second by Nelson to receive the bids and refer them to the County Engineer for recommendation. Carried 5-0. Copy filed.

Motion by Taylor second by Ung to award the bid for Propane FY2025 to Johnson Propane for \$1.06/Gal. Carried 5-0. Copy filed.

9c. Bid letting was held for Calcium Chloride – 2025. The bids are as follows:

Scotwood Industries, Overland Park, KS	\$42,944.00
EnviroTech Services, Indianola, IA	\$65,120.00
Perk Products, Nashville, TN	\$43,560.00

Motion by Taylor second by Ung to receive the bids and refer them to the County Engineer for recommendation. Carried 5-0. Copy filed.

9d. Motion by Radig second by Ung to award bid for Calcium Chloride – 2025 to Scotwood Industries for \$42,944.00. Carried 5-0. Copy filed.

9e. Motion by Radig second by Ung to award bid to Graves Construction Co., Inc. for \$606,737.87 precast RCB culvert to replace 12' reinforced concrete slab located on 220th St. Carried 5-0. Copy filed.

9f. Information was presented regarding changes to the secondary road dust control policy. Copy filed.

10a. Motion by Radig second by Taylor to approve the funding request of \$150,000 from the Opioid Remediation Settlement Fund to Agape Community Services for the hiring of an Executive Director for the purpose of obtaining necessary licenses, grant resources, networking, fund-raising and creating the infrastructure for opening a substance abuse treatment center. Carried 4-0; Bittinger abstained. Copy filed.

- 10b. Motion by Radig second by Nelson to approve using \$1,000 from Gaming Revenue to support the Sioux City Symphony Orchestra for the construction of a Musical Education Center and to authorize the Chairperson to sign the resolution of support for the SCSO grant application. Carried 5-0.

**RESOLUTION OF THE BOARD OF SUPERVISORS
OF WOODBURY COUNTY, IOWA:
RESOLUTION #13,788
COMMUNITY ATTRACTIONS AND TOURISM GRANT APPLICATION
GILCHRIST MUSIC EDUCATION CENTER**

Whereas, the Sioux City Symphony Orchestra is eligible for Community Attraction and Tourism grant funding from the Iowa Economic Development Authority and;

Whereas, the County of Woodbury, is committed to the Gilchrist Music Education Center and;

Whereas, the funding requirements are secured with the County of Woodbury committing \$1,000 to support the Gilchrist Music Education Center, and;

Whereas, other entities and donors have committed \$966,000 to support the project, now,

Be It Therefore Resolved on this 13th Day of August 2024 that the County of Woodbury endorses the application for Community Attraction and Tourism Grant Funding for the project.

WOODBURY COUNTY BOARD OF SUPERVISORS
Copy filed.

11. Motion by Bittinger second by Ung to direct county staff to study & review for potential changes to the WECS ordinance. Carried 5-0. Copy filed.
12. Reports on committee meetings were heard.
13. There were no citizen concerns.
14. Board concerns were heard.

The Board adjourned the regular meeting until August 20, 2024.

Meeting sign in sheet. Copy filed.

RESOLUTION

NOTICE OF PROPERTY SALE

Parcels #894729285006

WHEREAS Woodbury County, Iowa was the owner under a tax deed of a certain parcel of real estate described as:

**Lots Three (3) Block Twenty-Six (26) Sioux City Addition in the County of Woodbury and State of Iowa
(512 – 14 Market Street)**

NOW THEREFORE,

BE IT RESOLVED by the Board of Supervisors of Woodbury County, Iowa as follows:

1. That a public hearing on the aforesaid proposal shall be held on
The **3rd Day of September, 2024 at 4:35 o'clock p.m.** in the basement of the Woodbury County Courthouse.
2. That said Board proposes to sell the said parcel of real estate at a public auction to be held on the **3rd Day of September, 2024**, immediately following the closing of the public hearing.
3. That said Board proposes to sell the said real estate to the highest bidder at or above a **total minimum bid of \$260.00** plus recording fees.
4. That this resolution, preceded by the caption "Notice of Property Sale" and except for this subparagraph 4 be published as notice of the aforesaid proposal, hearing and sale.

Dated this 20th Day of August , 2024.

ATTEST:

WOODBURY COUNTY BOARD OF SUPERVISORS

Patrick F. Gill
Woodbury County Auditor
and Recorder

Matthew A. Ung, Chairman

REQUEST FOR MINIMUM BID

Name: Salvador Palmillas

Date: _____

Address: 518 Market St.

Phone: 10/30/23

Address or approximate address/location of property interested in:

512-14 Market St.

712-833-4472
712-927-8884

GIS PIN # 894729285006

**This portion to be completed by Board Administration **

Legal Description:

Lot 3 in Block 26. Sioux City Addition
in the County of Woodbury and State of Iowa

Tax Sale #/Date: 0739 - 6/20/2022

Parcel # 7125

Tax Deeded to Woodbury County on: 8/6/24

Current Assessed Value: Land \$8,000 Building 0 Total \$8,000

Approximate Delinquent Real Estate Taxes: \$41,258

Approximate Delinquent Special Assessment Taxes: \$1500

*Cost of Services: \$160

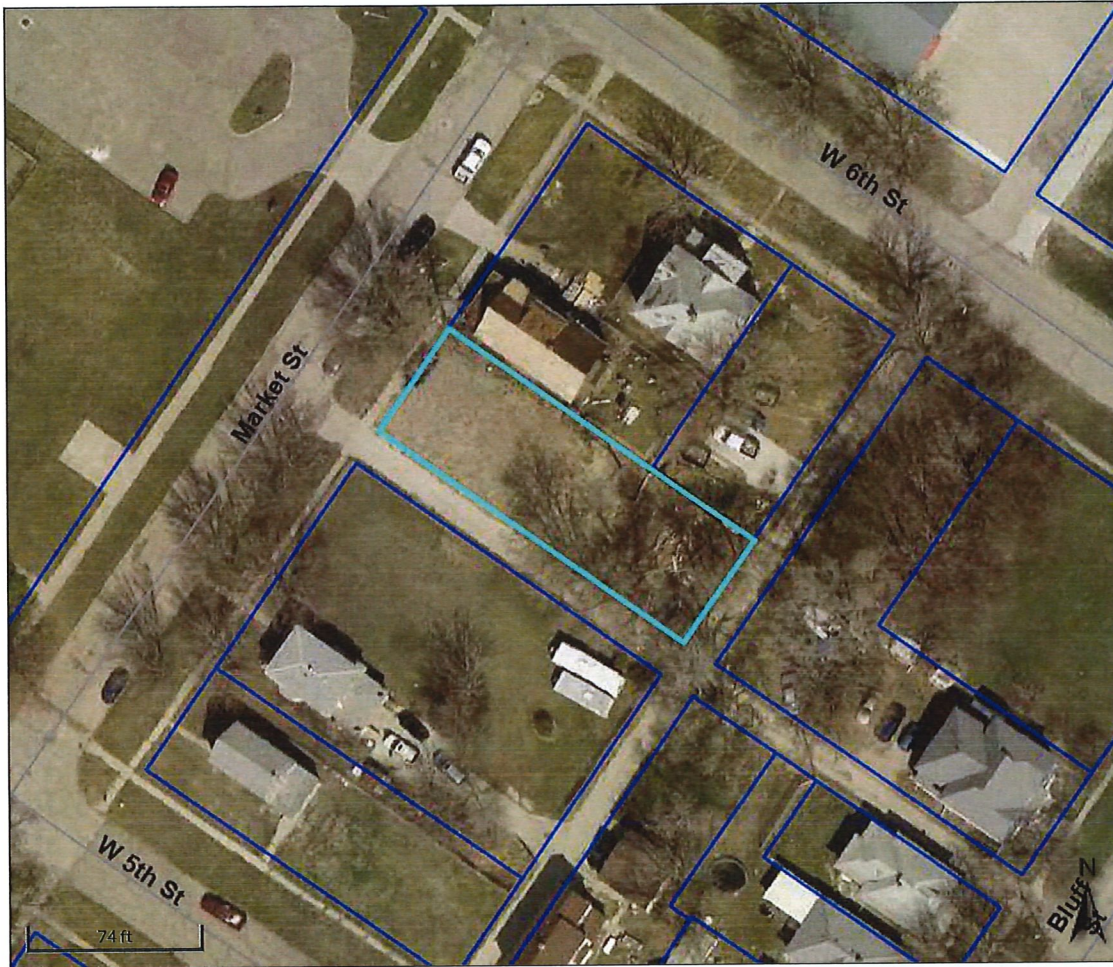
Inspection to: Matthew Ong

Date: 10/31/23

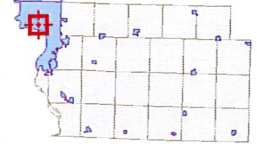
Minimum Bid Set by Supervisor: \$100 plus \$160 for cost of services Total \$260

Date and Time Set for Auction: Tuesday, September 3rd @ 4:35 p.m.

* Includes: Abstractors costs; Sheriff's costs; publishing costs; and mailing costs.



Overview



Legend

- Roads
- Corp Boundaries
- Townships
- Parcels

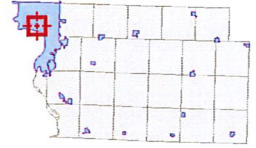
Parcel ID	894729285006	Alternate ID	7125	Owner Address	WOODBURY COUNTY IOWA
Sec/Twp/Rng	n/a	Class	R		620 DOUGLAS ST
Property Address	512-14 MARKET ST	Acreage	n/a		SIOUX CITY, IA 51101
	SIOUX CITY				
District	0087				
Brief Tax Description	SIOUX CITY ADDN LOT 3 BLK 26				
	(Note: Not to be used on legal documents)				

Date created: 8/15/2024
 Last Data Uploaded: 8/15/2024 2:04:30 AM

Developed by Schneider
 GEOSPATIAL



Overview



Legend

- Roads
- Corp Boundaries
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Parcel ID	894729285006	Alternate ID	7125	Owner Address	WOODBURY COUNTY IOWA
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NOTICE OF APPOINTMENT TO FILL A VACANCY

TO: Patrick F. Gill, Woodbury County Auditor/Recorder & Commissioner of Elections

From: City of Anthon

Anita Braemelt City Clerk

8.14.21 Date

This is to notify you and the Board of Supervisors of Woodbury County that the following person has been appointed until the next regular/general election:

For the office of Council member

Name Russ Groth

Address 305 N. Courser

City/Zip Anthon IA 51004

This appointment is to fill the office previously held by:

Jonathan Kuhlman
(Name of previous official)

NOTICE OF APPOINTMENT TO FILL A VACANCY

TO: Patrick F. Gill, Woodbury County Auditor/Recorder & Commissioner of Elections

From: City of Anthon

Anita Brandt City Clerk

8.14.24 Date

This is to notify you and the Board of Supervisors of Woodbury County that the following person has been appointed until the next regular/general election:

For the office of Council member

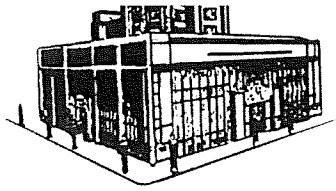
Name Cornel Westphal

Address 405 W Main St.

City/Zip Anthon IA 51004

This appointment is to fill the office previously held by:

Amy Beck
(Name of previous official)



AUDITOR'S QUARTERLY REPORT

April 1, 2024/ June 30, 2024

Patrick F. Gill, Woodbury County Auditor/Recorder

Payroll Taxes

Beginning Cash Balance	April 1, 2024		
Payroll Taxes		339,666.35	
Other		(1,739.44)	
Total Beginning Balance			337,926.91
Receipts:			
Payroll Taxes		3,226,364.11	
Interest		2,561.78	
Other		-	
Total Receipts			3,228,925.89
Total Resources			3,566,852.80
Disbursements:			
Payroll Taxes		2,929,991.70	
Interest Paid to Treasurer		2,679.02	
Other		-	
Total Disbursements			2,932,670.72
Ending Cash Balance	June 30, 2024		
Payroll Taxes		636,038.76	
Other		(1,856.68)	
Total Ending Balance			634,182.08

I, Patrick F. Gill, County Auditor/Recorder of Woodbury County, Iowa, hereby certify the above to be a true and correct statement of the Receipts and Disbursements of the office of County Auditor for the 4th Quarter ending 06/30/24.


Patrick F. Gill, County Auditor/Recorder

HUMAN RESOURCES DEPARTMENT

MEMORANDUM OF PERSONNEL TRANSACTIONS

DATE: August 20th, 2024

*** PERSONNEL ACTION CODE:**

A - Appointment	R - Reclassification
T - Transfer	E - End of Probation
P - Promotion	S - Separation
D - Demotion	O - Other

TO: WOODBURY COUNTY BOARD OF SUPERVISORS

NAME	DEPARTMENT	EFFECTIVE DATE	JOB TITLE	SALARY REQUESTED	% INCREASE	*	REMARKS
Mosqueda, Maria	Building Services	8-22-2024	Custodian	\$17.29/hour		A	Job Vacancy Posted 6/3/2024. Entry Level Salary: \$17.29/hour
Greer, Emily	Sheriff's Office	8-19-2024	Jail Sergeant	\$36.76/hour	44%=\$11.19/hour	P	Promoted to Sergeant.
Ham, Taryn	Human Resources	8-23-2024	Clerk II			S	Resignation
Lamoureux, Michael	Sheriff's Office	8-5-2024	Civilian Jailer	\$33.24/hour	0%	T	Transfer from Court Security Officer to Civilian Jailer.
Moodie, Clifford	Sheriff's Office	8-5-2024	Civilian Jailer	\$33.24/hour	0%	T	Transfer from Court Security Officer to Civilian Jailer.
Hatfield, Jonathon	Sheriff's Office	8-5-2024	Court Security Officer	\$33.24/hour	0%	T	Transfer from Civilian Jailer to Court Security Officer.
Vogt, Ronald	Sheriff's Office	8-5-2024	Court Security Officer	\$33.24/hour	0%	T	Transfer from Civilian Jailer to Court Security Officer.

APPROVED BY BOARD DATE: _____

MELISSA THOMAS, HR DIRECTOR: _____

**HUMAN RESOURCES DEPARTMENT
WOODBURY COUNTY, IOWA**

DATE: August 20, 2024

AUTHORIZATION TO INITIATE HIRING PROCESS

DEPARTMENT	POSITION	ENTRY LEVEL	APPROVED	DISAPPROVED
Human Resources	Senior Clerk	AFSCME Courthouse: \$21.15/hour		
Sheriff's Office	Jail Sergeant	CWA: \$36.76/hour		

Chairman, Board of Supervisors

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 08/15/2024 Weekly Agenda Date: 08/20/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Melissa Thomas HR Director

WORDING FOR AGENDA ITEM:

Approval to create a Human Resources Temporary Secretary position.

ACTION REQUIRED:

- | | | |
|--|---|--|
| Approve Ordinance <input type="checkbox"/> | Approve Resolution <input type="checkbox"/> | Approve Motion <input checked="" type="checkbox"/> |
| Public Hearing <input type="checkbox"/> | Other: Informational <input type="checkbox"/> | Attachments <input checked="" type="checkbox"/> |

EXECUTIVE SUMMARY:

Human Resources is down 2 FTE's due to resignations.

BACKGROUND:

With 2 full time positions currently open, adding this temp position would help HR through the transitioning and training of two new employees.

FINANCIAL IMPACT:

There will be no financial impact due to a senior clerk position being unfilled since the beginning of the fiscal year. The cost of the temp position is \$7418.83

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Approve the motion

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve and authorize to hire a HR temp secretary position

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 08/15/2024 Weekly Agenda Date: 08/20/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Mark J. Nahra, Woodbury County Engineer

WORDING FOR AGENDA ITEM:

Consider update to the secondary road driveway and entrance policy, PPM #1

ACTION REQUIRED:

- | | | |
|--|--|--|
| Approve Ordinance <input type="checkbox"/> | Approve Resolution <input type="checkbox"/> | Approve Motion <input checked="" type="checkbox"/> |
| Public Hearing <input type="checkbox"/> | Other: Informational <input checked="" type="checkbox"/> | Attachments <input checked="" type="checkbox"/> |

EXECUTIVE SUMMARY:

A change was requested to the county entrance policy last year to allow additional driveways on paved dead end road and cul de sacs. The revised policy is presented for approval.

BACKGROUND:

The policy is presented for review and approval. No additional changes are recommended at this time. While many rural residences want more than one driveway, each driveway becomes a long term expense for the county and is a potential accident site. The dead end road exception is recommended due to the limited access to the residential lot.

FINANCIAL IMPACT:

Woodbury County agrees to take care of new entrances into perpetuity. Each driveway culvert costs \$1500-\$3000 to replace once every 30-50 years. Driveways on paved roads in curb cuts do not require culverts in most cases, eliminating the long term expense for the county when more than one is allowed.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Approve the revised policy.

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve the Secondary Road Driveway and Entrance Policy.



Woodbury County Secondary Roads Department

759 E. Frontage Road • Merville, Iowa 51039
Telephone (712) 279-6484 • (712) 873-3215 • Fax (712) 873-3235

PPM #1, Rev. 8/2024

WOODBURY COUNTY SECONDARY ROAD DEPARTMENT POLICY AND PROCEDURE MEMORANDUM

Secondary Road Driveways and Entrances

Permits are required for all work done within Woodbury County Secondary Road rights of way as provided in section 318.8 of the Code of Iowa.

Applications for a permit for a new entrance, or to widen or move an existing entrance, shall be directed to the County Engineer's office. The Engineer or District Road Foreman will determine the size and length of culvert needed and will issue a permit of the applicant to construct or widen the entrance. Driveways may be constructed by county staff or contractors hired by the property owner. If the property owner does not construct the driveway under the requirements stated herein, or fails to obtain a permit, the Engineer or Foreman shall notify the property owner of the correction needed and allow 30 days for the property owner to make the correction. If the property owner does not comply with the correction needed, the County will remove the entrance at a cost to the property owner of up to \$500.

The County will determine the need for and size of culverts for each proposed entrance. The minimum culvert diameter is 24-inches unless an exception is approved by the county engineer. Only new corrugated metal or new reinforced concrete pipes are allowed for use in Woodbury County rights of way. Corrugated metal pipe shall be a minimum of 14 gauge for sizes from 24" to 42" and 12 gauge for 48" and larger diameters. The maximum allowable entrance top width for a residence is 30 feet, except by special permit. The maximum allowable top width for a farm entrance is 40 feet to accommodate large trucks and equipment.

DRIVEWAY WIDENING:

Prior to approving driveway widening requests, the county will check the existing driveway culvert for structural soundness. If the existing culvert is in poor condition at the time an extension is requested, the county may require the replacement the entire culvert, not just add the desired extra width. The permittee will be billed for the portion of new culvert and band necessary to widen the driveway to meet current county standards.

DRIVEWAY MAINTENANCE: The County will be responsible for all continuing maintenance on driveways and field entrances. The county will maintain, repair, or replace driveways constructed within the county right of way, including when driveways

are widened, flattened, or replaced in the course of a county construction or maintenance project. The county will maintain rock surfacing driveways for house and building sites only, unless exceptions are made by the county engineer. Landowners may provide their own rock surfacing for any driveway or field entrance at their own expense.

If the driveway culvert fails for any reason, is blocked and ponding water in the ditch, or if the driveway needs to be reconstructed in the course of ditch cleaning or other maintenance work, the county will contact the property owner to see if the driveway is still needed. If the driveway is still needed, the county will do all work to replace the culvert under the driveway and replace any surfacing gravel or aggregate lost at no additional cost to the landowner in the course of maintenance work.

DRIVEWAY ELIMINATION:

If a driveway is no longer needed, the county will remove the driveway as part of maintenance work or ditch cleaning at no cost to the landowner. The property owner may opt to keep the culvert, if one is present, from the driveway after removal, but may not use this pipe at another location within the right of way.

CONSTRUCTION REQUIREMENTS FOR DRIVEWAYS BUILT BY OTHERS:

Property owners constructing their own driveways may not use dirt from the ditch to build the driveway unless the County grants written permission on the permit form. The locating of underground utilities shall be the responsibility of the applicant and may be done by contacting Iowa One Call at 1-800-292-8989.

GENERAL REQUIREMENTS:

Entrance side slopes shall be 6:1 or flatter on all paved roads. Entrance slopes on granular surfaced or dirt roads shall be 3:1 or flatter. **The construction of vertical headwalls for decorative or driveway widening is not permitted.** The County considers such headwalls to be obstructions in the right of way and will require their removal at the landowner's expense.

Minimum sight distance requirements for house, field or business entrances and private road intersections as shown below:

Road Speed Limit	Single Lot Access	Paved Road Single Access	Minor Subdivision Road	Major Subdivision Road	Commercial Business Drive/Road
25 mph	150 feet	200 feet	250 feet	325 feet	325 feet
30 mph	200 feet	250 feet	325 feet	400 feet	400 feet
35 mph	250 feet	350 feet	400 feet	475 feet	475 feet
40 mph	325 feet	425 feet	475 feet	550 feet	550 feet
45 mph	400 feet	500 feet	550 feet	650 feet	650 feet
50 mph	475 feet	550 feet	650 feet	725 feet	725 feet
55 mph	550 feet	600 feet	725 feet	800 feet	850 feet

Speed limit is based on the posted speed limit established by the Woodbury County Board of Supervisors or by the Code of Iowa, Section 321.285 for roads where the speed limit is not posted. Driveways and roads will not be approved unless they meet the minimum sight distance requirements of this section. Exceptions to the sight distance

requirements may be made if, due to road alignment, proximity to an intersection or other geometric feature prevents traffic from driving the legal speed limit of the road in question. The county engineer will be the final judge in such cases and a driveway may not be approved if it cannot be safely located.

Every driveway is a potential collision location along the roadway. As such, driveways are limited to locations where sight distance is adequate and installed as needed for land access. Only one driveway is allowed per rural residential lot under 10 acres in size.

An exception to the policy of only one driveway per rural residential lot may be granted on paved dead-end roads and cul-de-sacs with curb and gutter and a speed limit under 25 mph. Circle driveways (two separate driveways in the ditch connected by a continuous lane or driveway on private property) are not allowed on rural residential properties.

All entrances on paved roads shall be rock surfaced from the edge of the shoulder to the right of way line. Asphalt or Portland Cement Concrete paved driveways are not allowed within Woodbury County rights of way on paved roads without special permit from the Engineer's office. Maintenance of all paved driveways or private subdivision streets within Woodbury County rights of way is the responsibility of the landowner/applicant/homeowner's association. Asphalt and concrete paved driveways on granular surfaced roadways are prohibited.

Driveways require a minimum setback of 125 feet from county road intersections. New driveways connected directly to intersections will not be allowed. Driveways must be separated by at least 50 feet to allow drainage of the road surface to the ditch.

MULTIPLE DRIVEWAYS FOR AGRICULTURAL PROPERTY:

Multiple driveways may be allowed for farm property access. Driveways may be installed along a farm boundary as needed for farm operations if driveways meet sight distance and separation requirements. A farm property may be served by a single driveway for the residence, plus a second driveway to allow access to farm buildings or grain bins. Field entrances will be approved as sight distance allows and generally, up to two field entrances may be allowed per forty (40) acre field. Farm access drives and field entrances may be up to 40 feet in top width. Exceptions for special access needs may be granted by the county engineer.

APPROVED:

Chairman-Woodbury County Board of Supervisors

Mark J. Nahra, Woodbury County Engineer

Attachments: Permit for Entrance
 Permit to Pave a Residence or Business Entrance
 Permit for Extra Wide Driveways

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 08/15/2024 Weekly Agenda Date: 08/20/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Caleb Rasmussen, ISG and Mark Nahra, County Engineer

WORDING FOR AGENDA ITEM:

Session as trustees to Bennett McDonald Smithland Levee and Wolf Creek Drainage Districts: Discussion of flood damage, repair and response to Corps of Engineers

ACTION REQUIRED:

Approve Ordinance Approve Resolution Approve Motion
Public Hearing Other: Informational Attachments

EXECUTIVE SUMMARY:

Damage occurred throughout the Little Sioux River Watershed during June 2024 flooding. Corps of Engineers has responded to county requests for assistance.

BACKGROUND:

Corps of Engineers (COE) is reviewing damage for all of the Little Sioux River watershed flood protection and drainage districts. COE is requesting financial commitment from trustees of affected districts to pay for repairs and restoring the districts to compliance with standards and cost sharing repairs necessitated by recent flooding.

FINANCIAL IMPACT:

The Bennett McDonald Smithland levee has been non-compliant since damage occurred in 1990 and 1993. Costs to bring it into compliance would likely exceed \$1,000,000, not counting new damage during the June flood. These costs would normally be levied to the benefited properties within the district.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Information only this week for deliberation and a vote within the next two weeks.

ACTION REQUIRED / PROPOSED MOTION:

Information only at this time.

Mark Nahra

From: Cominoli, Mary N (Nicole) CIV USARMY CENWO (USA)
<Mary.N.Cominoli@usace.army.mil>
Sent: Thursday, August 15, 2024 12:45 PM
To: Caleb.Rasmussen@ISGInc.com; Mark Nahra
Cc: CENWO-EOC; Horihan, Colleen M CIV USARMY CENWO (USA); Blankers, Lowell J CIV USARMY CENWO (USA)
Subject: RE: Bennet-Smithland Section 120(2) WRDA 2020 Request for Assistance
Attachments: CG, USACE - WRDA 20, Section 120, Emergency Response to Natural Disasters - 1 Sep 21.pdf

CAUTION: This email originated from **OUTSIDE** of the organization. Please verify the sender and use caution if the message contains any attachments, links, or requests for information as this person may NOT be who they claim. **If you are asked for your username and password, please call WCICC and DO NOT ENTER any data.**

Caleb,

Following up from our phone conversation earlier today regarding the WRDA 2020 Section 120(2) levee rehabilitation assistance request we received for the Little Sioux Bennet-Smithland Levee Systems/Segments, Woodbury County Levee Sponsor.

Attached is the USACE Implementation Guidance on the WRDA 2020 Section 120(2) Projects.

Section 120(2) of the Water Resources Development Act of 2020 (WRDA 2020) amends the authority provided in Section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), commonly referred to as Public Law (P.L.) 84-99, to require the Secretary to consider Flood Risk Management (FRM) projects not in compliance with P.L. 84-99 Rehabilitation Program eligibility requirements on the date of a natural disaster to be eligible for repair and rehabilitation if the non-Federal interest pays, during the Secretary's performance of the repair and rehabilitation work, all costs to address deferred or inadequate maintenance items identified by the Secretary prior to the natural disaster.

As discussed today and identified in paragraph 4 of the attached, the non-Federal interest for an inactive FRM project damaged by a flood event must submit a written request to the responsible Corps District Commander for assistance under this section no later than 30 calendar days from the date the floodwaters recede to bank full. **The written request must include a statement of the non-Federal interest's willingness and capability to pay, in advance, all planning, design, and construction costs incurred by the Corps to address the following in the course of carrying out repair and restoration work:**

- a. Items of deficient, deferred or inadequate maintenance identified by the Corps in its most recent inspection of the project prior to the flood event.
- b. Any damage to the project from the flood event that the Corps determines is attributable to the items described in subparagraph a.

****If Woodbury County decides to proceed with the WRDA Section 120 Program for Inactive projects, please submit the written request, as discussed above, no later than 16 SEP 2024.****

Please reach out with any questions.

Thanks,
Nicole

Nicole Cominoli, CFM
U.S. Army Corps of Engineers, Omaha District
2024 Flood, Levee Rehabilitation Team Deputy
402-281-8949 (cell)

From: Caleb Rasmussen <Caleb.Rasmussen@ISGInc.com>
Sent: Tuesday, August 13, 2024 3:32 PM
To: CENWO-EOC <CENWO-EOC@usace.army.mil>
Cc: Mark Nahra <mnahra@woodburycountyiowa.gov>
Subject: [Non-DoD Source] Bennet-Smithland Section 120(2) WRDA 2020 Request for Assistance

Please find the Bennet-Smithland Levee District's (Woodbury County) application for the request for rehabilitation assistance from the June 2024 flood event.
Please let me know if you have any questions.
Thank you,
Caleb



Caleb Rasmussen, PE
Civil Engineer
Employee Owner

P 712.732.7745
C 712.304.1958
E Caleb.Rasmussen@ISGInc.com
W ISGInc.com





DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON, DC 20310-0108

SACW

01-Sep-2021

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation Guidance for Section 120(2) of the Water Resources Development Act of 2020, Emergency Response to Natural Disasters

1. Section 120(2) of the Water Resources Development Act of 2020 (WRDA 2020) amends the authority provided in Section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), commonly referred to as Public Law (P.L.) 84-99, to require the Secretary to consider Flood Risk Management (FRM) projects not in compliance with P.L. 84-99 Rehabilitation Program eligibility requirements on the date of a natural disaster to be eligible for repair and rehabilitation if the non-Federal interest pays, during the Secretary's performance of the repair and rehabilitation work, all costs to address deferred or inadequate maintenance items identified by the Secretary prior to the natural disaster. Section 120(2) of WRDA 2020, and Section 5 of the Act of August 18, 1941, as amended, are enclosed.
2. This section is applicable to the Headquarters and all Divisions, Districts, and Field Offices of the U.S. Army Corps of Engineers (Corps) with civil works responsibilities.
3. For purposes of this guidance, the term "inactive FRM project" means a FRM project that is either a non-Federal project that left active status voluntarily or a non-Federal or Federally-authorized project determined by the Corps, prior to the flood event causing damage to the project, to no longer meet the eligibility criteria for participation in the P.L. 84-99 Rehabilitation Program, in accordance with the guidance provided in the Corps Director of Contingency Operations Memorandum, "Interim Policy for Determining Eligibility Status of Flood Risk Management Projects for the Rehabilitation Program Pursuant to Public Law (P.L.) 84-99," 21 March 2014, or any P.L. 84-99 Rehabilitation Program continued eligibility guidance issued after the date of this memorandum.
4. The non-Federal interest for an inactive FRM project damaged by a flood event must submit a written request to the responsible Corps District Commander for assistance under this section no later than 30 calendar days from the date the floodwaters recede to bankfull. The written request must include a statement of the non-Federal interest's willingness and capability to pay, in advance, all planning, design, and construction costs incurred by the Corps to address the following in the course of carrying out repair and restoration work:

SACW

SUBJECT: Implementation Guidance for Section 120(2) of the Water Resources Development Act of 2020, Emergency Response to Natural Disasters

a. Items of deficient, deferred or inadequate maintenance identified by the Corps in its most recent inspection of the project prior to the flood event.

b. Any damage to the project from the flood event that the Corps determines is attributable to the items described in subparagraph a.

5. Upon receipt of a request described in paragraph 4, the responsible Corps District Commander will inspect the inactive FRM project and prepare, at Federal expense, a preliminary scope of work and rough order of magnitude cost estimate for repair and restoration of the project and for work to address the items described in paragraphs 4a and 4b. The District Commander will advise the non-Federal interest of the rough order of magnitude costs for which the non-Federal interest will be responsible and request written confirmation of the non-Federal interest's intent to proceed.

6. If the responsible Corps District lacks the capability to perform all work required to repair and restore the project and to address the items described in paragraphs 4a and 4b without adversely impacting the timely completion of repair and restoration work for FRM projects that comply with the continuing eligibility requirements of the P.L. 84-99 Rehabilitation Program, the District Commander will coordinate with the Division Commander, and with the Chief of the Headquarters Regional Integration Team, if necessary, to identify a Corps District with adequate capability.

7. Prior to preparing the Project Information Report for the project, the responsible District Commander will enter into a Cooperation Agreement (CA) with the non-Federal interest. In addition to any required cost share for the repair and restoration of the project, the CA will require the non-Federal interest to provide funding sufficient to cover all planning, design, and construction costs incurred by the Corps to address the items described in advance of the Corps' performance of the work. The CA will require the non-Federal interest to provide all lands, easements, and rights-of-way determined by the Corps to be required for performance of any work on the project. The District Commander must submit the draft CA, through the Division Commander, to the Director of Civil Works at Corps Headquarters for review and approval prior to execution.

8. The acceptance of funds provided by a non-Federal interest for work performed under the authority of this section does not affect or alter any requirements under federal laws, regulations, and policies otherwise applicable to design and construction of repair and restoration work or operation and maintenance of FRM projects.

9. The provision of funding to carry out repair and restoration work under the authority provided by this section is subject to the availability of Flood Control and Coastal Emergencies (FCCE) appropriations. The P.L. 84-99 Program Manager at Corps Headquarters will ensure that funds provided for work carried out under the authority

SACW

SUBJECT: Implementation Guidance for Section 120(2) of the Water Resources Development Act of 2020, Emergency Response to Natural Disasters

provided for this section does not adversely impact the timely completion of repair and restoration work for FRM projects that comply with the continuing eligibility requirements of the P.L. 84-99 Rehabilitation Program.

10. Under no circumstances shall this policy be modified, supplemented, amended, or rescinded, directly or indirectly, nor shall the Corps take action not in accordance with the direction herein, without the express written approval from the Assistant Secretary of the Army for Civil Works (ASA(CW)). This guidance shall be transmitted to the appropriate Corps Division and District Commanders and posted to the Corps WRDA website within five business days of receipt (written or electronic) from this office. Guidance shall be transmitted and posted as is and without additional guidance attached.

11. Questions regarding this implementation guidance should be directed to Sharron DaCosta-Chisley, Office of the ASA(CW), at sharron.h.dacosta.civ@mail.mil or 703-695-6789.



JAIME A. PINKHAM
Acting Assistant Secretary of the Army
(Civil Works)

Encl

CF:
DCG-CEO
DCW

SACW

SUBJECT: Implementation Guidance for Section 120(2) of the Water Resources Development Act of 2020, Emergency Response to Natural Disasters

Section 120(2). Emergency Response to Natural Disasters

Section 5(a)(1) of the Act of August 18, 1941 (33 U.S.C. 701n(c)) is amended in accordance with below:

(2) Compliance.

(A) In general. Notwithstanding the status of compliance of a non-Federal interest with the requirements of a levee owner's manual described in paragraph (1), or with any other eligibility requirement established by the Secretary related to the maintenance and upkeep responsibilities of the non-Federal interest, the Secretary shall consider the non-Federal interest to be eligible for repair and rehabilitation assistance under this section if the non-Federal interest

(i) enters into a written agreement with the Secretary that identifies any items of deferred or inadequate maintenance and upkeep identified by the Secretary prior to the natural disaster; and

(ii) pays, during performance of the repair and rehabilitation work, all costs to address

(I) any items of deferred or inadequate maintenance and upkeep identified by the Secretary; and

(II) any repair or rehabilitation work necessary to address damage the Secretary attributes to such deferred or inadequate maintenance or upkeep.

(B) Eligibility. The Secretary may only enter into one agreement under subparagraph (A) with any non-Federal interest.

(C) Sunset. The authority of the Secretary to enter into agreements under paragraph (2) shall terminate on the date that is 5 years after the date of enactment of this paragraph, and

(D) in paragraph (3) (as so redesignated), by striking "this subsection" and inserting "paragraph (1)".

SACW

SUBJECT: Implementation Guidance for Section 120(2) of the Water Resources Development Act of 2020, Emergency Response to Natural Disasters

Section 5(a)(1) of the Act of August 18, 1941 (33 U.S.C. 701n(c))

(2) Compliance

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(I) any items of deferred or inadequate maintenance and upkeep identified by the Secretary; and

(II) any repair or rehabilitation work necessary to address damage the Secretary attributes to such deferred or inadequate maintenance or upkeep.

(B) Eligibility: The Secretary may only enter into one agreement under subparagraph (A) with any non-Federal interest.

(C) Sunset: The authority of the Secretary to enter into agreements under paragraph (2) shall terminate on the date that is 5 years after December 27, 2020.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON, DC 20310-0108

SACW

01-Sep-2021

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation Guidance for Section 120(2) of the Water Resources Development Act of 2020, Emergency Response to Natural Disasters

1. Section 120(2) of the Water Resources Development Act of 2020 (WRDA 2020) amends the authority provided in Section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), commonly referred to as Public Law (P.L.) 84-99, to require the Secretary to consider Flood Risk Management (FRM) projects not in compliance with P.L. 84-99 Rehabilitation Program eligibility requirements on the date of a natural disaster to be eligible for repair and rehabilitation if the non-Federal interest pays, during the Secretary's performance of the repair and rehabilitation work, all costs to address deferred or inadequate maintenance items identified by the Secretary prior to the natural disaster. Section 120(2) of WRDA 2020, and Section 5 of the Act of August 18, 1941, as amended, are enclosed.
2. This section is applicable to the Headquarters and all Divisions, Districts, and Field Offices of the U.S. Army Corps of Engineers (Corps) with civil works responsibilities.
3. For purposes of this guidance, the term "inactive FRM project" means a FRM project that is either a non-Federal project that left active status voluntarily or a non-Federal or Federally-authorized project determined by the Corps, prior to the flood event causing damage to the project, to no longer meet the eligibility criteria for participation in the P.L. 84-99 Rehabilitation Program, in accordance with the guidance provided in the Corps Director of Contingency Operations Memorandum, "Interim Policy for Determining Eligibility Status of Flood Risk Management Projects for the Rehabilitation Program Pursuant to Public Law (P.L.) 84-99," 21 March 2014, or any P.L. 84-99 Rehabilitation Program continued eligibility guidance issued after the date of this memorandum.
4. The non-Federal interest for an inactive FRM project damaged by a flood event must submit a written request to the responsible Corps District Commander for assistance under this section no later than 30 calendar days from the date the floodwaters recede to bankfull. The written request must include a statement of the non-Federal interest's willingness and capability to pay, in advance, all planning, design, and construction costs incurred by the Corps to address the following in the course of carrying out repair and restoration work:

SACW

SUBJECT: Implementation Guidance for Section 120(2) of the Water Resources Development Act of 2020, Emergency Response to Natural Disasters

a. Items of deficient, deferred or inadequate maintenance identified by the Corps in its most recent inspection of the project prior to the flood event.

b. Any damage to the project from the flood event that the Corps determines is attributable to the items described in subparagraph a.

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6. If the responsible Corps District lacks the capability to perform all work required to repair and restore the project and to address the items described in paragraphs 4a and 4b without adversely impacting the timely completion of repair and restoration work for FRM projects that comply with the continuing eligibility requirements of the P.L. 84-99 Rehabilitation Program, the District Commander will coordinate with the Division Commander, and with the Chief of the Headquarters Regional Integration Team, if necessary, to identify a Corps District with adequate capability.

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9. The provision of funding to carry out repair and restoration work under the authority provided by this section is subject to the availability of Flood Control and Coastal Emergencies (FCCE) appropriations. The P.L. 84-99 Program Manager at Corps Headquarters will ensure that funds provided for work carried out under the authority

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SUBJECT: Implementation Guidance for Section 120(2) of the Water Resources Development Act of 2020, Emergency Response to Natural Disasters

provided for this section does not adversely impact the timely completion of repair and restoration work for FRM projects that comply with the continuing eligibility requirements of the P.L. 84-99 Rehabilitation Program.

10. Under no circumstances shall this policy be modified, supplemented, amended, or rescinded, directly or indirectly, nor shall the Corps take action not in accordance with the direction herein, without the express written approval from the Assistant Secretary of the Army for Civil Works (ASA(CW)). This guidance shall be transmitted to the appropriate Corps Division and District Commanders and posted to the Corps WRDA website within five business days of receipt (written or electronic) from this office. Guidance shall be transmitted and posted as is and without additional guidance attached.

11. Questions regarding this implementation guidance should be directed to Sharron DaCosta-Chisley, Office of the ASA(CW), at sharron.h.dacosta.civ@mail.mil or 703-695-6789.



Encl

JAIME A. PINKHAM
Acting Assistant Secretary of the Army
(Civil Works)

CF:
DCG-CEO
DCW

SACW

SUBJECT: Implementation Guidance for Section 120(2) of the Water Resources Development Act of 2020, Emergency Response to Natural Disasters

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(A) In general. Notwithstanding the status of compliance of a non-Federal interest with the requirements of a levee owner's manual described in paragraph (1), or with any other eligibility requirement established by the Secretary related to the maintenance and upkeep responsibilities of the non-Federal interest, the Secretary shall consider the non-Federal interest to be eligible for repair and rehabilitation assistance under this section if the non-Federal interest

(i) enters into a written agreement with the Secretary that identifies any items of deferred or inadequate maintenance and upkeep identified by the Secretary prior to the natural disaster; and

(ii) pays, during performance of the repair and rehabilitation work, all costs to address

(I) any items of deferred or inadequate maintenance and upkeep identified by the Secretary; and

(II) any repair or rehabilitation work necessary to address damage the Secretary attributes to such deferred or inadequate maintenance or upkeep.

(B) Eligibility. The Secretary may only enter into one agreement under subparagraph (A) with any non-Federal interest.

(C) Sunset. The authority of the Secretary to enter into agreements under paragraph (2) shall terminate on the date that is 5 years after the date of enactment of this paragraph, and

(D) in paragraph (3) (as so redesignated), by striking "this subsection" and inserting "paragraph (1)".

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(C) Sunset: The authority of the Secretary to enter into agreements under paragraph (2) shall terminate on the date that is 5 years after December 27, 2020.

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 08/15/2024

Weekly Agenda Date: 8/20/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Chairman Matthew Ung

WORDING FOR AGENDA ITEM:

Approval to reallocate \$173,291.65 of unspent American Rescue Plan Act funds to expense category 3.4 in accordance with plan rules

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

EXECUTIVE SUMMARY:

According to American Rescue Plan Act ("ARPA") rules, all funds must be obligated by Dec. 31, 2024, and must be spent in obligated projects by Dec. 31, 2026. With \$173,291.65 in ARPA funds currently remaining from previously completed projects, these funds should be reallocated to projects which will spend the funds before the deadline. Projects have been identified to complete this step now.

BACKGROUND:

Attachments and their explanations are listed below.

1) Available ARPA funds--by Dennis Butler, Shane Albrecht, and Matthew Ung

EXPLANATION: The total available fund balance comes from several different ARPA expense categories which are completed or which for other reasons can be unobligated. Of major note:

a) Administrative Expenses (UHY; Baker Group) -- \$40,000 is available from this category because UHY, which acted as our ARPA compliance consultant/advisor, came in under budget. Baker Group's contracted services in this area saved Woodbury County money by offsetting a lot of expenses that otherwise would have payable to UHY at a much higher rate. This still leaves money in this category for UHY to provide services in response to any future auditing needs, but we will need to revisit this prior to December 31, 2024 in order to not forfeit any unexpended funds.

b) County Attorney 4% FY23 and FY24 -- \$53,822.38 is available from this category due to persistent staff vacancies in the County Attorney's Office.

c) Trospen Hoyt Emergency Repairs -- \$60,000 is available from this category due to further eligible expenses being unidentified.

2) Memorandum from Iowa Judicial Branch to Iowa State Association of Counties

EXPLANATION: Apparently, new state law says that if counties decide to renovate and improve the space used by the state judicial branch, counties ALSO have to pay 25% of new furnishings, supplies, and equipment expenditures chosen by the state judicial branch after they get the new space. Why 25%? Because the law says 25%! Surprise!

3) Payment request from Iowa Judicial Branch to Woodbury County in the amount of \$75,096.66

EXPLANATION: Fortunately, this unanticipated expense due to a new state law is an allowed category under ARPA rules.

FINANCIAL IMPACT:

For simplicity, all \$173,291.65 of currently available ARPA funds can be reallocated to one expense category and one project, as detailed below.

ARPA Expense Category 3.4 -- Public Sector Capacity: Effective Service Delivery

Project Description: Furniture, Fixtures and Equipment for new LEC Facility as needed by Woodbury County

CURRENT EXPENSES:

\$75,096.66 to Iowa Judicial Branch

\$40,000.00 to moving or purchase expenses of cooler and freezer to new Woodbury County Law Enforcement Center

FUTURE EXPENSE:

\$58,194.99 to building services department, for furniture, fixtures, and equipment expenses for congregate settings (Law Enforcement Center). It is completely reasonable to anticipate expenses in this category of \$58,194.99 between now and the end of 2026.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

See below.

ACTION REQUIRED / PROPOSED MOTION:

Reallocate \$173,291.65 of unspent American Rescue Plan Act funds to ARPA Expense Category 3.4 (Public Sector Capacity: Effective Service Delivery) and Project Identification Number ARPA 13

Available ARPA Funds

ARPA #	ARPA TITLE	AMOUNT Obligated	AMOUNT Expended	AMOUNT Unspent	AMOUNT Available
ARPA 6	Sheriff's Correctional Officers FY 23	\$ 345,000.00	\$ 348,922.66	\$ (3,922.66)	\$ (3,922.66)
ARPA 7	S.R. Road Maintenance CWA Union Workers FY 23	\$ 115,000.00	\$ 114,652.08	\$ 347.92	\$ 347.92
ARPA 8	EMS Employees FY 23	\$ 52,909.00	\$ 52,743.50	\$ 165.50	\$ 165.50
ARPA 10	Adminstrative Fees (UHY; Baker Group)	\$ 82,000.00	\$ 19,900.00	\$ 62,100.00	\$ 40,000.00
ARPA 15	County Attorney 4% FY23 and FY24	\$ 118,853.00	\$ 65,030.62	\$ 53,822.38	\$ 53,822.38
ARPA 17	County Attorney Internship	\$ 10,000.00	\$ 7,004.77	\$ 2,995.23	\$ 2,995.23
ARPA 18	Conservation & Emergency Services Radios	\$ 162,745.00	\$ 157,901.99	\$ 4,843.01	\$ 1,743.01
ARPA 19	Trospher/Hoyt Emergency Repairs	\$ 200,000.00	\$ 139,477.27	\$ 60,522.73	\$ 60,522.73
ARPA 22	#2 County Union Workers Retention	\$ 108,894.00	\$ 91,276.46	\$ 17,617.54	\$ 17,617.54
Totals		\$ 1,195,401.00	\$ 996,909.35	\$ 198,491.65	\$ 173,291.65

MEMORANDUM

To: Iowa State Association of Counties
From: Iowa Judicial Branch
Re: Limiting Judicial Branch Contribution to Furnishings and Equipment that are Required by County Renovation or Construction to 75% (effective 7/1/23)
Date: 2/4/23

Background

In the 2022 Iowa Code, Iowa Code section 602.11101(1)(e)(2) provided:

(2) Until July 1, 1986, the county shall remain responsible for the compensation of and operating costs for court employees not presently designated for state financing and for miscellaneous costs of the judicial branch related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. Effective July 1, 1986, the state shall assume the responsibility for the compensation of and operating costs for court employees presently designated for state financing and for miscellaneous costs of the judicial branch related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. However, the county shall at all times remain responsible for the provision of suitable courtrooms, offices, and other physical facilities pursuant to [section 602.1303, subsection 1](#), including paint, wall covering, and fixtures in the facilities.

Effective July 1, 2022, [HF 2579, section 18 \(2022 RIIF Bill\)](#) added the following provision at the end of the above subparagraph:

In addition, however, effective July 1, 2023, if a county expends moneys for the renovation or construction of suitable courtrooms, offices, and other physical facilities pursuant to section 602.1303, that requires the purchase of furnishings, supplies, and equipment for the use of judicial officers, referees, and their staff as a result of that renovation or construction, the state shall be responsible for only seventy-five percent of the cost of the purchase.

Analysis

The statutory change to Iowa Code section 602.11101(1)(e)(2) for sharing the cost of furnishings, supplies, and equipment provides that the change is effective July 1, 2023. However, there is some ambiguity as to the applicability of the provision.

Absent further legislative instruction, the judicial branch intends to apply the change in law to purchases made with moneys appropriated on or after July 1, 2023.

We believe this approach is consistent with legislative intent because the change in Iowa Code section 602.11101 was passed in the same bill that provided 100% of the judicial branch's request for furnishings, supplies, and equipment for FY23. This approach defers to the legislature's authority to appropriate the amount the legislature deems appropriate for furnishings and equipment for county-initiated renovation or construction of court-controlled spaces. Finally, this approach is the most transparent and easiest for the judicial branch and counties to implement going forward.

Conclusion

The judicial branch recognizes that the applicability of [HF 2579, bill section 18 \(2022 RIIF bill\)](#) is ambiguous. To start the conversation on the interpretation of this provision, the judicial branch offers the interpretation that HF 2579, bill section 18 caps the judicial branch's contribution to furnishings, supplies, and equipment at 75% of the cost of the purchase, beginning with purchases funded by moneys appropriated by the legislature to the judicial branch that take effect on or after July 1, 2023.



Fw: Woodbury LEC Technology Funds
 Peggy Frericks to: Patrick Tott

11/06/2023 08:34 AM

Peggy Frericks | District Court Administrator - District 3
 Woodbury County Courthouse - Room 210
 620 Douglas St. | Sioux City | Iowa 51101
 712.279-6035 (phone) | 712-279-6631 (fax)

Peggy.Frericks@iowacourts.gov

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The Iowa Judicial Branch dedicates itself to providing independent and accessible forums for the fair and prompt resolution of disputes, administering justice under law equally to all persons.

----- Forwarded by Peggy Frericks/District3/JUDICIAL on 11/06/2023 08:34 AM -----

From: "Kent Farver [JB]" <Kent.Farver@iowacourts.gov>
 To: "Peggy Frericks [JB]" <Peggy.Frericks@iowacourts.gov>
 Cc: "Mare Steil [JB]" <Mare.Steil@iowacourts.gov>
 Date: 11/02/2023 03:50 PM
 Subject: Woodbury LEC Technology Funds

Peggy:

Good afternoon. Quick update on ongoing discussions concerning the 75/25 discussion concerning capital funding. For FY 2024, the legislature appropriated funds for the Woodbury County LEC from both the RIF fund and the Technology Capital fund. We had previously discussed that the RIF funds now require the county to provide 25% of the cost and that the state will contribute 75% of the cost. With the introduction of the technology capital funds into this discussion, we have determined that these will also require the 25% match from the county. This is an update from what we had previously discussed.

So based on the code language and the appropriation, below is a chart detailing the amount appropriated and the amount that the county will need to contribute. If you have any questions, please reach out to Mare or myself. Thanks.

Kent

	FY 24 Appropriation Amount	County Contribution Required
Woodbury LEC II F&E	\$ 100,000	\$ 33,333.33
Woodbury Co LEC tech projects	\$ 125,290	\$ 41,763.33

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image001.png

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: _____ Weekly Agenda Date: _____

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: _____

WORDING FOR AGENDA ITEM:

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

EXECUTIVE SUMMARY:

BACKGROUND:

FINANCIAL IMPACT:

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

ACTION REQUIRED / PROPOSED MOTION:

**STATE OF IOWA
IOWA UTILITIES COMMISSION**

IN RE:	DOCKET NO.
SUMMIT CARBON SOLUTIONS, LLC	HLP-2021-0001
PETITION FOR HAZARDOUS LIQUID PIPELINE PERMIT	

COME NOW, the Supervisors of Shelby County, Kossuth County, Floyd County, Emmet County, Dickinson County, Wright County, and Woodbury County (“the Counties”), by and through the undersigned counsel, and in support of their Motion to Reconsider Final Decision and Order (“Motion”) in this docket state as follows.

MOTION TO RECONSIDER FINAL DECISION AND ORDER

On June 25, 2024, the Iowa Utilities Board issued a Final Decision and Order in this docket approving a permit for Summit Carbon Solutions (“the Order”). On July 1, 2024, pursuant to recently enacted legislation, the Iowa Utilities Board was renamed the Iowa Utilities Commission (“Commission”).¹ While the agency uses the term Board in the Order when referring to itself, the Counties in this Motion will adopt the new name, which took effect on July 1, 2024.

Under the Commission’s rules, “Any party to a contested case may file an application for rehearing or reconsideration of the final decision.” *See* 199 Iowa Administrative Code rule 7.27(1). *See also* Iowa Code §§ 17A.16 and 476.12. The Counties were parties to this proceeding. *See* Final Decision and Order at 8. Under Iowa Code §§ 17A.16 and 476.12 and Iowa Administrative Code

¹ See 2024 Iowa Acts, Senate File 2385. <https://iuc.iowa.gov/press-release/2024-07-02/iowa-utilities-board-now-iowa-utilities-commission>.

rule 199 – 7.27(1), for the reasons described below, the Counties hereby move the Commission to reconsider the Order.

BRIEF STATEMENT OF THE GROUNDS FOR ERROR

As the Commission explained in the Order, the parties to this proceeding are numerous and the record is voluminous. *See* Final Decision and Order at 7-8. The Order itself is 507 pages long. The Commission elected to discuss in the Order only certain arguments and evidence, and issued a blanket rejection for other arguments and evidence. The Order states, “The entire record and legal arguments of the parties has been considered by the Board. *If an argument or piece of evidence is not discussed in this order, the Board has found that argument or piece of evidence to be irrelevant or lacking in sufficient argument to warrant specific discussion.*” *See* Final Decision and Order at 13 (emphasis supplied). The Ordering Clauses section of the Order includes a general rejection of anything not specifically addressed and states, “Arguments presented in written filings or made orally at the hearing that are *not addressed specifically in this final decision and order are rejected, either as not supported by the evidence or as not being of sufficient persuasiveness to warrant detailed discussion.*” *See* Final Decision and Order at 477 (emphasis supplied). The Counties interpret this as a catch-all rejection of arguments made during the proceeding but not discussed in the Order, including certain arguments the Counties made.

The Commission has a rule setting forth the form for requesting rehearing or reconsideration. “Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error.” *See* Iowa Administrative Code rule 199 – 7.27(2). The Counties argue that the Order contains errors of both fact and law such that the Commission should reconsider the Order.

The Counties recognize that significant effort was required to consider the record and render a 507-page decision in this matter and trust that the Commission recognizes that a brief statement of the grounds for error is also challenging. Just as the Commission elected to limit its discussion in the Order to the arguments it deemed most significant, the Counties also will not attempt to discuss in detail every individual finding, conclusion or ground for error in this Motion. However, to the extent that the Counties raised other legal or factual matters during the proceeding, proposed other findings or conclusions, or made other arguments that are documented elsewhere in the record but not specifically discussed in this Motion, any and all errors in the Commission's consideration or rejection of those matters, findings, conclusions or arguments, whether in the Order or in other orders or rulings, are hereby incorporated in this Motion by reference and preserved for purposes of judicial review under Iowa Code chapter 17A.

In this Motion, to keep the statement of errors as brief as possible, the Counties have organized their discussion of certain specific grounds of error into two primary sections: (1) arguments, findings or conclusions for which the Counties seek additional findings or clarifications; and (2) arguments, findings or conclusions the Commission made that the Counties ask the Commission to reconsider.

1. Arguments, findings, and conclusions for which clarification is sought.

To the extent the Counties made certain arguments, proposed findings or conclusions that the Commission intentionally or inadvertently rejected without specific discussion (or with minimal discussion), the Counties now seek clarification or supplemental findings. These issues are briefly stated below.

a. *Proposed findings of fact.*

The Iowa Administrative Procedure Act specifically provides for proposed findings of fact in a contested case proceeding: “If, in accordance with agency rules, a party submitted proposed findings of fact, the decision *shall* include a ruling upon each proposed finding.” *See* Iowa Code § 17A.16(1) (emphasis supplied). As the Order notes, the Commission has not adopted any rules regarding proposed findings of fact. Because the Commission’s rules do not restrict the submission of proposed findings and because none of the Commission’s orders in this proceeding disallowed proposed findings, the Counties maintain that the submission of proposed findings is “in accordance” with the Commission’s rules. For this reason, the Commission “shall include a ruling upon each proposed finding.” *Id.*

As the Commission notes in the Order, the Counties and some other parties submitted proposed findings of fact. The Counties submitted a total of 24 proposed findings of fact in their Reply Brief. *See* Counties RB at page 37. The Commission declined to specifically address the Counties’ proposed findings of fact. *See* Final Decision and Order at 14. The Counties recognize that many (but not all) of the general matters touched on by the Counties’ specific proposed findings are discussed in various places in the Order, sometimes with rulings related to the general matter, but sometimes with only limited discussion or without a specific finding. The Counties urge the Commission to reconsider its interpretation of the requirements of Iowa Code § 17A.16(1) and respectfully ask that it provide a specific ruling on each of the Counties’ proposed findings.

In particular, the Counties restate here several proposed findings for which they seek clarification as to the Commission’s findings:

- Does the Commission find that the express purposes of the project include: (1) increasing profits to ethanol plants; (2) selling ethanol at premium prices; and (3) increasing corn prices? (*See Counties proposed finding #2*).
- Does the Commission find that the project will likely increase the price at which Summit's partner ethanol plants sell ethanol? (*See Counties proposed finding #3*).
- Does the Commission find that the project will likely increase corn prices? (*See Counties proposed finding #4*).
- Does the Commission find that the project will likely not increase ethanol production levels? (*See Counties proposed finding #5*).
- Does the Commission find that the amount of federal tax credits that Summit will *receive* is substantially more than the amount of tax contributions Summit will *make* to government revenues? (*See Counties proposed finding #6*).
- Does the Commission find that Summit used the same 400-foot screening distance that Dakota Access used? (*See Counties proposed finding #15*).
- Does the Commission find that Summit has agreed to amend the pipeline route in the vicinity of the city of Bismarck, ND based on economic development concerns, but refuses to do the same for similarly situated Iowa cities? (*See Counties proposed finding #22*).

b. Proposed permit conditions.

Under Iowa Code § 479B.16, the Commission is only authorized to grant eminent domain rights “to the extent necessary.” As the Counties explained in their initial brief, the necessity requirement in Iowa Code § 479B.16 relates to the scope of the taking and requires that any taking must be necessary *for the uses proposed*. *See* the Counties’ IB at 17-19. A taking beyond the uses

proposed is unlawful. *See Draker v. Iowa Electric Co.*, 191 Iowa 1376, 1382, 182 N.W. 896, 899 (1921); *Vittetoe v. Iowa S. Utilities Co.*, 123 N.W.2d 878, 881 (Iowa 1963); *SMB Investments v. Iowa-Illinois Gas and Elec. Co.*, 329 N.W.2d 635, 640 (Iowa 1983). The proposed uses must have a public purpose or benefit. *See Puntteney v. Iowa Utilities Bd.*, 928 N.W.2d 829 (Iowa 2019).

The Commission has the authority to prescribe and limit the scope of eminent domain to only what is necessary for the uses proposed through the imposition of permit conditions. *See Iowa Code § 479B.16*. Summit's stated "purpose and need" for the project are that it will "(1) support the longevity and competitiveness of the ethanol and agricultural industries; (2) create and preserve jobs and economic productivity; and (3) benefit the environment by removing CO2 from the atmosphere. These three aspects present a clear purpose and need for the Project to support key industries, jobs, and the climate." *See Pirolli Direct Testimony* at p. 3. In this proceeding, these are the public purposes or benefits for which the taking is purportedly justified. The Commission should impose permit conditions to ensure the grant of eminent domain is tailored appropriately to secure such public purposes or benefits.

The Counties proposed several permit conditions, including six specific conditions that would ensure the taking is permanently linked to what constitutes the public necessity. *See generally Counties IB* at 82-86. The Counties now briefly restate those conditions and move the Commission to reconsider them.

First, the Counties asked the Commission to impose a condition that Summit obtain all necessary permits before exercising rights of eminent domain. The Commission did not impose this condition. The Counties ask the Commission to reconsider its rejection of this condition.

Second, the Counties asked the Commission to impose a condition requiring expiration and reversion if the regulatory markets for low carbon fuels are no longer accessible to ethanol. The

Commission did not impose this condition. The Counties ask the Commission to reconsider its rejection of this condition. In its consideration of public convenience and necessity and discussion of the balancing test, the Commission clearly found that the ability to sell ethanol into low carbon fuel markets is one of “three significant national issues” that weigh in favor of the project. *See* Final Decision and Order at 105, 114-16. The Commission also found that “already being able to sell into the market reduces the overall positive to Summit Carbon’s petition, but does not weigh against it.” If, as the Commission has found, the ability to access low carbon fuel markets is a factor weighing in favor of the necessity of the proposed use, then it is appropriate that the Commission should impose a condition guarding against the loss of access to these markets.

Third, the Counties asked the Commission to impose a condition requiring expiration and reversion if the sequestration of carbon dioxide is no longer eligible for the 45Q or 45Z tax credits. The Commission did not impose this condition. The Counties ask the Commission to reconsider its rejection of this condition. In its consideration of public convenience and necessity and discussion of the balancing test, the Commission clearly found that federal sequestration tax credit policy is one of “three significant national issues” and that this factor “weighs heavily in favor of granting Summit Carbon’s petition for hazardous liquid pipeline permit.” *See* Final Decision and Order at 105, 109-11. If, as the Commission has found, federal sequestration tax credit policy is a factor weighing “heavily” in favor of the necessity of the proposed use, then it is appropriate that the Commission should impose a condition guarding against a change in that policy.

Fourth, the Counties asked the Commission to impose three conditions related to the climate benefits of the proposed use. The first was a condition requiring expiration and reversion if the pipeline owner or operator ever proposes to convert it to another use or to carry another commodity. The second was a condition requiring the sequestration of all carbon dioxide

transported by the project and prohibiting any offtake of the carbon dioxide prior to the sequestration site. The third was a condition prohibiting the use of any of the transported carbon dioxide for enhanced oil recovery. The Commission did not impose any of these conditions. The Counties ask the Commission to reconsider its rejection of these conditions. In its consideration of public convenience and necessity and discussion of the balancing test, the Commission clearly found that climate change is one of “three significant national issues” and that Summit’s proposed use “will contribute to the reduction in ‘atmospheric contamination,’ thus providing an overall benefit to Iowans.” *See* Final Decision and Order at 105, 125. If, as the Commission found, the possible reduction in “atmospheric contamination” is a “significant benefit to Iowans,” then it is appropriate that the Commission should impose conditions securing that benefit against a change in the company’s use of the pipeline from what has been proposed and from what has been found to have “public convenience and necessity.” Without these conditions, the company could change the use of, or affect the benefits accruing from, the property taken by eminent domain, in which case what has been found to be a public benefit could one day be converted to a private use or benefit, if the permit is not appropriately prescribed.

Finally, the Counties observe that while five of the six conditions restated in this section of the Motion relate directly to the Commission’s “three significant national issues,” none of the conditions are discussed in the public convenience and necessity section of the Order. For that reason, the Counties now ask the Commission to reconsider the conditions proposed on pages 82-86 of the Counties’ Initial Brief and to use its authority to ensure that: (1) Summit’s project will actually deliver public rather than private benefits; and (2) the taking approved by the Commission is tailored to secure the public benefits of the proposed use.

2. Arguments, findings, and conclusions that were discussed but are erroneous.

The Order is 507 pages long and contains findings and conclusions throughout. The Counties' primary arguments on the statutory requirements, findings of fact, public convenience and necessity, public use, and routing were made in their Initial Brief and in their Reply Brief. To the extent that the Commission rejected those arguments, such rejection constitutes grounds for error, unless reconsidered pursuant to this Motion. For purposes of this Motion, some of those arguments are briefly restated below.

a. Erroneous findings of fact: Petition Requirements.

The Counties maintain that the Commission clearly erred in its findings regarding compliance with the petition requirements. In particular, Iowa Code § 479B.5(7) requires that Summit's petition must state the "relationship of the proposed project to the present and future land use and zoning ordinances." (emphasis supplied). Note that the statute unambiguously requires the petition to discuss "ordinances."

Zoning ordinances are regulations, not land use plans. In the county zoning chapter, the statute granting counties the authority to zone provides "the board of supervisors may *by ordinance regulate and restrict*" various land uses. Iowa Code § 335.3(1). The statutory requirement to discuss "zoning ordinances" is, therefore, a requirement to discuss the content of the regulations and restrictions in those ordinances.

In the Order, the Commission makes the following finding regarding Summit's compliance with the petition requirements: "Having reviewed the information, the Board finds Summit Carbon has complied with the requirements of Iowa Code § 479B.5(7) and 199 IAC 13.3(1)(f)(2)(3). A plain reading of these requirements provides that a hazardous liquid pipeline company need only state the relationship its proposed project has to present and future land use, which Summit Carbon

has done.” *See* Final Decision and Order at 40 (emphasis supplied). However, the Commission’s finding has omitted the phrase “and zoning ordinances”, which is present in the statute. By omitting this phrase from the discussion, the Commission’s finding has plainly failed to address one of the statutory requirements.

The Counties’ Witness Prof. Neil Hamilton submitted testimony clearly showing that Summit’s petition exhibits and expert witness testimony did not discuss a single ordinance or comprehensive plan. *See* generally, Counties IB at 34-40. Hamilton’s testimony also clearly showed that the use of the phrase “present and future land uses” in the statute refers to comprehensive plans. The Commission’s staff appears to have agreed with Hamilton’s assessment of the sufficiency of the petition. On June 26, 2023, after completing a review of the petition, the staff filed a Petition Staff Report (Excluding Exhibit H) (“the Staff Report”). The Staff Report found that the information Summit filed in its petition “regarding 199 IAC 13.3(1)(f)(2)(3) does not appear to address the future land use and zoning ordinances.” The Commission Staff Report directed Summit to provide additional information. *See* Petition Staff Report (Excluding Exhibit H) at pp. 8 and 12. Even after this report, Summit did not describe or refer to any zoning ordinance or comprehensive plan.

The Order’s interpretation of the petition requirements on zoning ordinances is clearly erroneous. The Order states in one sentence: “Therefore, the requirement of Iowa Code § 479B.5(7) is to provide the Board with information as it relates to how the proposed project will interact with present and future land use and zoning, not necessarily how it complies.” *See* Final Decision and Order at 41-42 (emphasis supplied). But then it states in the very next sentence: “If and to what extent it complies is a decision for the Board to make as it examines the routing of the pipeline.” *Id.* (emphasis supplied).

As explained above, zoning ordinances are regulations. If a pipeline company is not required to at least summarize and review the *content* of the regulations in each county, the petition will not provide sufficient information for the Commission to make a decision on the *extent* of compliance. The Commission has ordered this to be done for other permitting authorities, but refuses to do so for county regulations. This is clear error. Regardless of whether Summit is in compliance with the ordinances, the burden to include this information in the permit, or in testimony, is Summit's. The effect of the Commission's interpretation is to inappropriately shift the burden to other parties.

For all of the reasons already argued in the Counties' Initial Brief, in its Reply Brief, and briefly restated here, Summit's petition failed to meet a threshold statutory requirement. Nonetheless, the Commission finds that Summit carried its burden on the requirement to state "the relationship...to zoning ordinances" when, as the record clearly shows, at no time did Summit describe, summarize or even mention a *single* ordinance in *any* county. The Commission's finding on this statutory requirement is clearly erroneous, and the Commission should reverse this finding.

Additionally, the Order refuses to impose the Counties' proposed condition requiring Summit to comply with all other applicable permit requirements. *See* Counties IB at 80. The Order characterizes the Counties' request as "additional conditions." *See* Final Decision and Order at 43. The Counties dispute this characterization. As the Counties clearly argued in their Initial Brief, the Commission has a prior practice and precedent of expressly conditioning a pipeline permit on the obtaining of other necessary permits. *Id.* In fact, the Order itself conditions the commencing of construction on obtaining permits in North and South Dakota. The Counties again point out that the Commission included the proposed language in the Final Decision and Order in Iowa Utilities Board Docket No. HLP-2014-0001. If the Counties do not prevail in the zoning litigation, then the

permits will not be necessary. If they do prevail, then obtaining them will be necessary. The proposed condition would appropriately address either outcome. The permit language should expressly reflect all other required permits, as the Commission has done in other dockets and even in the Order for state and federal permits. There is no basis to treat county zoning permits differently than county road permits, state routing permits or federal environmental permits. The Counties request the Commission reconsider its rejection of this proposed condition.

Finally, the Commission rejected the Counties' proposed condition that would have prevented pipeline construction from commencing until the conclusion of all pending zoning litigation. *See* Final Decision and Order at 43. If the counties prevail in the zoning litigation, then zoning permits will be applicable to the project and necessary to be obtained. If construction has already begun at that time, a ruling in favor of the counties would create turmoil. It is reasonable for the Commission to avoid that outcome now by imposing the Counties' proposed condition. Therefore, the Commission should reconsider its refusal to expressly condition the commencement of construction upon the resolution of all pending zoning litigation, in order to preserve the jurisdictional interest of counties in local zoning permits.

b. Erroneous findings of fact: Route Determination.

The Commission rejected the Counties' proposed separation requirements, both the two-mile setback from cities and the uniform 1,000-foot setback from occupied structures, finding Summit's "macro route to be just and proper." *See* Final Decision and Order at 64. However, the weight of evidence in the record regarding (1) the economic development impacts of a carbon dioxide pipeline; and (2) the setback distances necessary to protect human health clearly support the use of reasonable setbacks throughout the "macro route." The Commission's finding on these

setbacks clearly is not supported by substantial evidence in the record. For all of the reasons stated in the Counties' Initial Brief and Reply Brief, the Commission should reconsider this finding.

The Commission also rejected the Counties' proposed denial of the trunk line from Ida County to Fremont County. For all of the reasons stated in the Counties' Initial Brief and in Commissioner Byrnes' dissent to the Order, the Counties ask the Commission to reconsider the approval of Lateral 4.

c. Erroneous findings of fact (and Conclusions): Determination of Public Convenience and Necessity.

In general, the Counties argue that Summit's project lacks public convenience and necessity for all of the reasons already stated in their Initial Brief and Reply Brief. To the extent the Commission has rejected those arguments, the Order's findings are erroneous and should be reconsidered. The Counties refer the Commission to pages 29-70 of their Initial Brief and to the proposed findings of fact in their Reply Brief.

d. Erroneous findings of fact: Safety.

As the Counties argued during the hearing and in their Reply Brief, the Commission has made errors of law in the treatment of Summit's safety evidence by not excluding it on the basis of judicial estoppel. *See* Counties RB at 18-20. The Commission should reconsider this ruling, strike Summit's safety evidence, and revise the determination of public convenience and necessity accordingly.

e. Erroneous findings of fact: Transportation Methods.

As the Counties argued in their Initial Brief, the transportation of carbon dioxide by rail or truck is a red herring. *See* Counties IB at 64-67. Unlike Dakota Access, Summit's hazardous

pipeline is *not safer than the status quo* because, unlike oil, at present carbon dioxide at ethanol plants is released into the atmosphere and not transported by truck or rail. Based only on the hearing testimony of Mr. Leaders, a landowner, the Order finds that there is “at least one ethanol plant currently capturing and transporting their ethanol by truck.” But the Counties do not argue that there is no transportation of carbon dioxide by truck and rail. They argue that Summit has not demonstrated with substantial evidence in the record that, without the pipeline, the participating ethanol plants intend to use trucks and rail for transportation. The Order nonetheless compares the safety of pipelines to the safety of trucks and rail. For these reasons and the reasons explained by the Counties in their Initial Brief, the finding on transportation methods is clearly erroneous under the reasoning in *Puntenney* and the Commission should reconsider it.

f. Erroneous findings of fact: Conditions.

The Counties argued for several conditions in their Initial Brief and Reply Brief. Many of those conditions are also discussed in this Motion, including the grounds for error. The Counties will not repeat those reasons here, but merely restate their request that the Commission reconsider all the conditions requested by the Counties that are rejected in the Order.

g. Erroneous findings of fact: Public Use.

The Order finds Summit’s pipeline to be a common carrier and grants rights of eminent domain on that basis. *See* Final Decision and Order at 288. The Counties maintain that Summit has not produced enough evidence in the record to establish that it is a common carrier. For all of the reasons articulated in the Initial Briefs of the Counties, the Sierra Club, and the Jorde Landowners, the Commission should reconsider this finding.

h. Erroneous Conclusions of Law.

In a separate section titled, “Conclusions of Law”, the Order makes six conclusions of law. *See* Final Decision and Order at 476. There is some overlap between the discussion of the parties’ arguments in the factual findings and the conclusions of law stated in the separate section. For the sake of completeness, the Counties briefly discuss these conclusions separately in this section of the Motion and ask the Commission to reconsider the following conclusions for the following reasons.

First, the Commission concludes that “The requirements of Iowa Code § 479B.5 have been met by Summit Carbon.” For the reasons already discussed in their Initial Brief and Reply Brief, and as briefly restated above, the Counties maintain that Summit has not met the requirements of Iowa Code § 479B.5. In particular, the Counties argue that the requirement to state the relationship to “zoning ordinances” has not been met.

Second, the Commission concludes that “Summit Carbon has established its hazardous liquid pipeline will promote the public convenience and necessity as required by Iowa Code § 479B.9.” For the reasons already discussed in their Initial Brief and Reply Brief, and as briefly restated above, the Counties maintain the Commission’s Order makes legal and factual errors in its determination of public convenience and necessity.

Third, the Commission concludes that “Summit Carbon will be vested with the right of eminent domain as described in this order, once a permit is issued, in accordance with Iowa Code § 479B.16.” For the reasons already discussed in their Initial Brief and Reply Brief, and as briefly restated in this Motion, the Counties maintain that Summit is not a common carrier, is not proposing a public use or benefit, and should not be granted rights of eminent domain.

CONCLUSION

For all the reasons discussed above, the Counties respectfully request that the Commission reconsider the Final Decision and Order approving a permit for Summit Carbon Solutions, particularly including the erroneous findings of fact and conclusions of law briefly restated here.

Respectfully submitted,

By: /s/ Timothy J. Whipple

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ATTORNEY FOR SHELBY, KOSSUTH,
FLOYD, EMMET, DICKINSON, WRIGHT,
AND WOODBURY COUNTIES

02374262\20586-015