
SUBJECT: CASS COUNTY FLOOD LOT LEASE POLICY

ADOPTED DATE: DECEMBER 4, 2017

PAGE 1 OF 8

CASS COUNTY FLOOD LOT LEASE POLICY

Cass County & Leaseholder Rights & Responsibilities:

Existing leaseholders have the option and priority to renew an existing lease. Leaseholders have the ability to restrict access or require permission to enter leased property. Hunting activities are allowed on leased property, but must comply with all applicable laws and local ordinances.

Leaseholders will control all weeds, with special attention and control efforts focused on noxious weeds. Leaseholders will remove garbage in a timely manner. Parcels in residential areas that are not otherwise maintained must be mowed by leaseholders a minimum of once every month during the growing season. Where appropriate and consistent with surrounding properties, leaseholders are encouraged to mow portions of leased property adjacent to, or near road right-of-ways and leave riverbank areas in a natural state.

Any type of construction or placement of a permanent structure or change in elevation of the lot is prohibited, with an exception as defined by FEMA in Section 1. b. of Appendix A.

Season extension hoops and structures are acceptable, but must be removed at the end of the season.

Leaseholders are encouraged to plant trees along riverbanks. Leaseholders should consult with the local Soil Conservation District for recommended species. Leaseholders are required to carry liability insurance on the property. In rare circumstances the County may assist leaseholders in controlling weeds, particularly after major floods.

Types of Lease Agreements:

Cass County has two types of flood lot lease agreements: 1) leases with other governmental agencies & 2) leases with individuals. All lease agreements shall be for a maximum of one year. Lease agreements with individuals will only be entered into with individuals who own adjacent property. Requests for an exemption to this policy will be submitted to the County Administrator and reviewed by the Administrator, County Planner, Weed Control Officer and the Portfolio Commissioner for Weed Control, with final approval by the County Commission.

All uses shall be consistent with local zoning ordinances. All existing leases will be grandfathered in and subject to annual review.

Alternative Uses:

Alternative uses of flood lot properties, such as community gardens, may be considered. Before entering into a lease for an alternative use, the county must understand and approve of the alternative use. Proposals for alternative uses shall be submitted to the County Administrator and reviewed by the Administrator, County Planner, Weed Control Officer and the Portfolio Commissioner for Weed Control, with final approval by the County Commission.

SUBJECT: CASS COUNTY FLOOD LOT LEASE POLICY

ADOPTED DATE: DECEMBER 4, 2017

PAGE 2 OF 8

Disposal of County Flood Lots:

County-owned properties acquired with a FEMA grant for flood protection may only be disposed of by transfer to another governmental agency. If transferred, the receiving agency must agree to abide by the restrictions of the Stafford Act (Exhibit A) and maintain the property as green space. If a governmental entity receives flood protection property and the entity later dissolves, Cass County agrees to re-acquire the property and maintain it for green space. If transfer of a flood property is considered, the Federal Emergency Management Agency (FEMA) must approve the transfer.

**EXHIBIT A
STAFFORD ACT**

WHEREAS, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the County of Cass has made such an application and has entered into a FEMA-state agreement dated January 23, 2014, and herein incorporated by reference;

WHEREAS, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. Section 206.434), and FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

NOW, THEREFORE, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.V.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act Section 404 acquisition program:

SUBJECT: CASS COUNTY FLOOD LOT LEASE POLICY

ADOPTED DATE: DECEMBER 4, 2017

PAGE 3 OF 8

- (a) Compatible Uses. The land shall be used for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. Section 206.434, as it reads now and may be amended in the future.
- (b) Structures. No new structures or improvements shall be erected on the property other than:
- i. a public facility that is open on all sides and functionally related to the open space use;
 - ii. a rest room; or
 - iii. a structure that is compatible with the uses described in Paragraph 1(a) above, and approved by the Director in writing prior to the commencement of the construction of the structure.

Any structures built on the property according to this paragraph shall be flood-proofed or elevated to the Base Flood Elevation plus one foot of freeboard.

- (c) Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;
- (d) Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a) above, including agriculture, with the prior approval of the Regional Director.
- i. the Grantee shall convey, in accordance with section (d) above, a conservation easement to someone other than the title holder, or
 - ii. at the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, it's representatives, and assigns, including County of Cass, shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

SUBJECT: CASS COUNTY FLOOD LOT LEASE POLICY

ADOPTED DATE: DECEMBER 4, 2017

PAGE 4 OF 8

3. Monitoring and Reporting. Every two (2) years on July 1, the Grantee, through the County of Cass, shall submit to the FEMA Regional Director, a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, FEMA, its representatives, and the Grantee are responsible for taking measures to bring the property back into compliance.

- (a) The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.
- (b) If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
- (c) FEMA may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:
 - i Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or
 - ii Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

- (a) Any breach or threatened breach of the above conditions may be enjoined upon application by the State of North Dakota. In addition, the State of North Dakota, shall have the option to repurchase the above described premises for the sum of One Dollar (\$1.00), if the Grantee, its successors or assigns shall have failed to remove or correct any violation of the above conditions within thirty (30) days after the mailing of written notice thereof by said State of North Dakota or its successor, to the Grantee, it's successors, or assigns.

SUBJECT: CASS COUNTY FLOOD LOT LEASE POLICY

ADOPTED DATE: DECEMBER 4, 2017

PAGE 5 OF 8

EXHIBIT B
EXAMPLE OF LEASE AGREEMENT

THIS LEASE is made by and between Cass County, North Dakota (hereinafter "County") and Leaseholder, (address) (hereinafter "Lessee").

THE PARTIES HEREBY COVENANT AND AGREE AS FOLLOWS:

1. Property: The County hereby offers to lease, and the Lessee agrees to lease, the property situated in the Township of XXXX, County of Cass, State of North Dakota, described as: (legal property description) (hereinafter "property").
2. Term: The term of this lease shall commence on January 1, 201X, and expire at midnight on December 31, 201X.
3. Rent: Rent shall be \$10 dollars per year, payable in advance of the commencement day, to the County by and through the Cass County Auditor at the address given in the section herein entitled Notices.
4. Use: The property shall only be used for purposes consistent with those contained in Exhibit 1 (attached). Furthermore, the property shall not be used for, among other purposes, parking vehicles; building any kind of structure without prior written approval of the County; storage of any kind of equipment or personal property; placement of any signs; raising or keeping of animals; or disposal of any kind of materials, whether hazardous or not. The determination of compliance with these limitations on use of the property shall be at the County's sole discretion.
5. Maintenance: The portion of the lot visible to the general public shall be mowed a minimum of once per month during the growing season.
6. Delivery of Possession: Lessee acknowledges that Lessee has inspected the property and accepts it as suitable for the purpose and use described in this Lease and that the property then complies with the use limitations.
7. Insurance: At all times during the term of this Lease, Lessee shall maintain at Lessee's sole expense, public liability and property damage liability insurance in an amount not less than \$500,000. Lessee shall deliver to County a copy of the certificate of insurance prior to the commencement, and renewal if applicable, of this Lease. County makes no representation that the limits of liability specified herein are adequate to protect Lessee.

SUBJECT: CASS COUNTY FLOOD LOT LEASE POLICY

ADOPTED DATE: DECEMBER 4, 2017

PAGE 6 OF 8

8. Indemnification: County shall not be liable for any damage to Lessee, or any other person, or to any property, occurring on the premises or any part thereof, unless such damage is the proximate result of the negligence or an unlawful act of the County. Lessee agrees to hold the County harmless from any claims for damages occurring on the property, no matter how caused, except for injury damages for which County is legally responsible.
9. Ordinances and Statutes: Lessee shall comply with all statutes, ordinances and requirements of municipal, state and federal authorities.
10. Assignment and Subletting: Lessee shall not assign this Lease or sublet any portion of the property without prior written consent of the County.
11. Entry/Inspection of Property: Lessee shall permit County or County's agents to enter and inspect the property at any reasonable time for the purpose of verifying compliance with the terms of this Lease.
12. Maintenance: Lessee shall, at his/her own expense, and at all times, remove snow from any sidewalks, keep the property clear of rubbish or weeds, regularly mow the grass, irrigate or water the property in a manner sufficient to maintain the property but not in a manner inconsistent with governing statutes, ordinances or rules.
13. Default - Event: Lessee will be in default of this Lease for failure to timely pay any rent, or failure to abide by any material terms or conditions of this Lease including, but not limited to, the limitations on use of the property, and such default continues for ten (10) days after written notice from County.
14. Default - County's Remedies: If any one or more of the default events set forth herein occurs, then the County may, in its sole discretion, do one or more of the following:
 1. Give Lessee written notice of its intention to terminate this Lease on the date of such notice, or on any later date that the County may specify in such notice. On the date so specified in such notice, Lessee's right to use of the property will cease and the Lease will be terminated.
 2. Remove personal property and/or other materials that reflect an inappropriate use of the property, and charge Lessee a reasonable sum for removal, storage or/and disposal of such items.
 3. Collect all reasonable attorney fees, costs and disbursements that may arise as a result of any suit filed as a result of Lessee's default.
 4. Exercise such rights or remedies that may be provided by law.

SUBJECT: CASS COUNTY FLOOD LOT LEASE POLICY

ADOPTED DATE: DECEMBER 4, 2017

PAGE 7 OF 8

15. Notices: Any notice which either party may or is required to give, may be given by mailing the same, postage prepaid, to the Lessee or County at the respective addresses given below, or at such other places as may be designated by the parties in writing from time-to-time, or may be delivered in person.

County: Cass County Commission, 211 9th Street South, P.O. Box 2806, Fargo, ND 58108-2806

Lessee: (Address)

16. Binding Effect: All the provisions hereof shall extend to and be binding upon, and in favor of or against (as the case may be), the heirs, executors, administrators, guardians, assigns and successors in interest of the parties hereto.
17. Severability: If any provision of this Lease should be found invalid or unenforceable, then the rest and remainder of the provisions shall remain valid and enforceable.
18. Entire Agreement: This Lease represents the entire agreement between the parties and there are no collateral or oral agreements or understandings and any executory agreement hereafter made shall be made ineffective to change, modify or discharge this lease, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.
19. Construction: All provisions hereof and words and phrases used herein shall be governed and construed under the laws of the State of North Dakota.
20. Time is of the Essence: Time is of the essence for each term and provision of this lease.
21. Effective Date: The effective date of this lease is January 1, 201X, regardless of the day that the parties may have signed this agreement.

IN WITNESS WHEREOF, the parties hereto affix their signatures:

Cass County

Lessee

By: Chair, Cass County Commission

SUBJECT: CASS COUNTY FLOOD LOT LEASE POLICY

ADOPTED DATE: DECEMBER 4, 2017

PAGE 8 OF 8

EXHIBIT 1

Additional Lease Terms and Conditions

WHEREAS, Cass County North Dakota became the rightful owner of certain real property, more fully described in the attached Lease, through the use of certain disaster relief funds under Section 404 of the Stafford Act; and

WHEREAS, the terms of the Stafford Act, and related regulations and agreements (e.g., FEMA-State Agreement) require that Cass County agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural flood plain values;

NOW, THEREFORE, the attached Lease is made subject to the following additional terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44-C.F.R. 206-434), as they read now and may be amended in the future, and the

FEMA-State Agreement, the following conditions and restrictions shall apply to the leased property:

- (a) Compatible Uses. The land shall be used for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved previous parking lots and other uses described in 44 C.F.R. Section 206-434, as it reads now and may be amended in the future.
 - (b) Structures. No new structures shall be erected on the property other than:
 - (1) a public facility that is open on all sides and functionally related to the open space use;
 - (2) a restroom; or
 - (3) a structure that is compatible with the uses described in Paragraph 1(a), above, and approved by Cass County in writing prior to the commencement of the construction of the structure.
2. Inspection. FEMA, its representatives, and assigns, including Cass County, shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the above terms.
 3. Enforcement. Any violation of these terms may, at Cass County's sole discretion, be deemed a default with all the rights and remedies available under the attached Lease.