



Community Development Department

DATE: January 23, 2024

FROM: Ben Ehreth, Community Development Director

ITEM: Consider the request for the New Extraterritorial Area (ETA) Agreement with Apple Creek Township.

REQUEST:

The Community Development Department requests for the City of Bismarck to enter into a new ETA agreement with Apple Creek Township to address actions in the existing agreement that are no longer current.

BACKGROUND INFORMATION:

North Dakota Century Code allows for cities to extend zoning, subdivision, building inspections, floodplain, and stormwater management authority into unincorporated areas within a certain distance of a city's corporate limits. The purpose of the ETA is to ensure the orderly outward expansion of North Dakota's communities. There are two options allowed by North Dakota Century Code for establishing an extraterritorial boundary. One option is population-based, and for communities 25,000 or larger, the community has sole authority from the corporate limits to two miles out, and from two to four miles there is joint authority between the city and the other jurisdiction. The second option allows for a negotiated boundary agreed upon by the city and the other jurisdiction, which would allow the city to retain all permitting authority within the negotiated ETA. Bismarck presently utilizes a series of negotiated agreements between five different jurisdictions including: Missouri Township; Apple Creek Township; Naughton Township; the City of Lincoln; and Burleigh County. The majority of these agreements are 10 or more years old. There is no statutory requirement to update or amend these agreements. Updates or changes have historically been initiated by one of the jurisdictions involved in the agreement.

The Bismarck Together 2045 Plan recommended meeting periodically to determine if the agreements continue to be appropriate or if changes may be necessary. Additionally, the Bismarck-Burleigh Commission Committee directed staff to meet with all the jurisdictions involved in an ETA agreement with the City of Bismarck. Representatives from all the jurisdictions involved with an ETA agreement met in October 2023 to be informed of the existing agreements and discuss if any changes were necessary. Additionally, representatives agreed to meet on regular two-year intervals as a group to continue to evaluate the current ETA agreements.

Through the course of discussion, it was determined that Apple Creek Township's map

associated with the agreement, as well as language within the agreement, no longer aligned with current practices. Primarily, Bismarck staff are no longer conducting floodplain administration duties within the entirety of Apple Creek Township as the original agreement indicated. Rather, these duties, along with building inspections and permitting services, are conducted through an agreement with Burleigh County. The corresponding map also contained outdated boundaries which have also been suggested for update.

Representatives from the City of Bismarck, Apple Creek Township, and Burleigh County met jointly to discuss proposed changes and all appeared in agreement. The new agreement was approved and signed by Apple Creek Township and is included in Attachment A. For a point of reference, the existing agreement is also included in Attachment B.

Through the course of discussion, it was also discovered that a signed ETA agreement between the City of Bismarck and Missouri Township could not be produced by either party. A potential agreement with Missouri Township may also be forthcoming, pending Missouri Township's action on the item.

RECOMMENDED CITY COMMISSION ACTION:

Consider the request and adopt the proposed Apple Creek Township and City of Bismarck ETA agreement as reflected in Attachment A.

STAFF CONTACT INFORMATION:

Ben Ehreth, Community Development Director, 701-355-1842, behreth@bismarcknd.gov

ATTACHMENTS:

1. Attachment A - ETA Agreement
2. Attachment B - ETA Agreement

**APPLE CREEK TOWNSHIP AND BISMARCK
EXTRATERRITORIAL JURISDICTION AGREEMENT - 2024**

This AGREEMENT, hereinafter referred to as "2024 Agreement", is between THE CITY OF BISMARCK, a Municipal Corporation, hereinafter referred to as "Bismarck", and APPLE CREEK TOWNSHIP, an organized township, hereinafter referred to as "Apple Creek".

WHEREAS, Section 40-47-01.1 North Dakota Century Code (NDCC), Section 40-48-18 NDCC, and Section 58-03-11 NDCC provide for the jurisdiction of Bismarck and Apple Creek over the zoning of land and generally provide: that Bismarck would have sole extraterritorial authority within two miles of its corporate limits in any direction, that Bismarck and Apple Creek would have joint jurisdiction with the area from two miles and four miles of Bismarck's corporate limits in any direction in Apple Creek Township, and that Apple Creek would have sole jurisdiction within the remainder of the township beyond four miles of Bismarck's corporate limits, and

WHEREAS, Title 14, Section 14-04-19 and Section 14-05-07 of the Code of Ordinances of the City of Bismarck further provide for the jurisdiction of Bismarck over the issuance of building permits and the administration of flood plain regulations and generally provide that Bismarck would have sole extraterritorial authority for such activities within four miles of its corporate limits in any direction in Apple Creek Township, and

WHEREAS Bismarck and Apple Creek previously agreed to the extraterritorial boundaries by Agreement dated January 4, 2010 by Apple Creek Township and January 12, 2010 by the City of Bismarck, hereinafter referred to as "2010 Agreement", and now the parties terminate the 2010 Agreement and contemporaneously modify the extraterritorial boundary between the two political subdivisions under this 2024 Agreement as delineated below, and

WHEREAS, Section 40-47-01.1 NDCC provide that two subdivisions may control authority pursuant to a written agreement and that Bismarck and Apple Creek have reached such an agreement,

NOW THEREFORE, IT IS AGREED, between Bismarck and Apple Creek that Bismarck shall have sole extraterritorial zoning, building permit, and floodplain administration authority and Apple Creek shall have sole zoning, building permit, and floodplain administration authority as shown in Exhibit "A" hereto and by reference made a part hereof.

ATTACHMENT A

IT IS FURTHER AGREED that upon the written request of either party, the terms of the agreement shall be reviewed. Any amendments to the agreement shall be mutually approved by both parties.

IT IS FURTHER AGREED that the term of the agreement shall be for a period of five years from the date of approval of the last signature of a party noted below and shall automatically renew for successive five-year terms unless terminated in writing by notice to the other party at least six (6) months prior to the renewal date.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year written below.

BY: _____
President, Board of City Commissioners

BY: Mont Sill
Chair, Township Board of Supervisors

ATTEST: _____
City Administrator

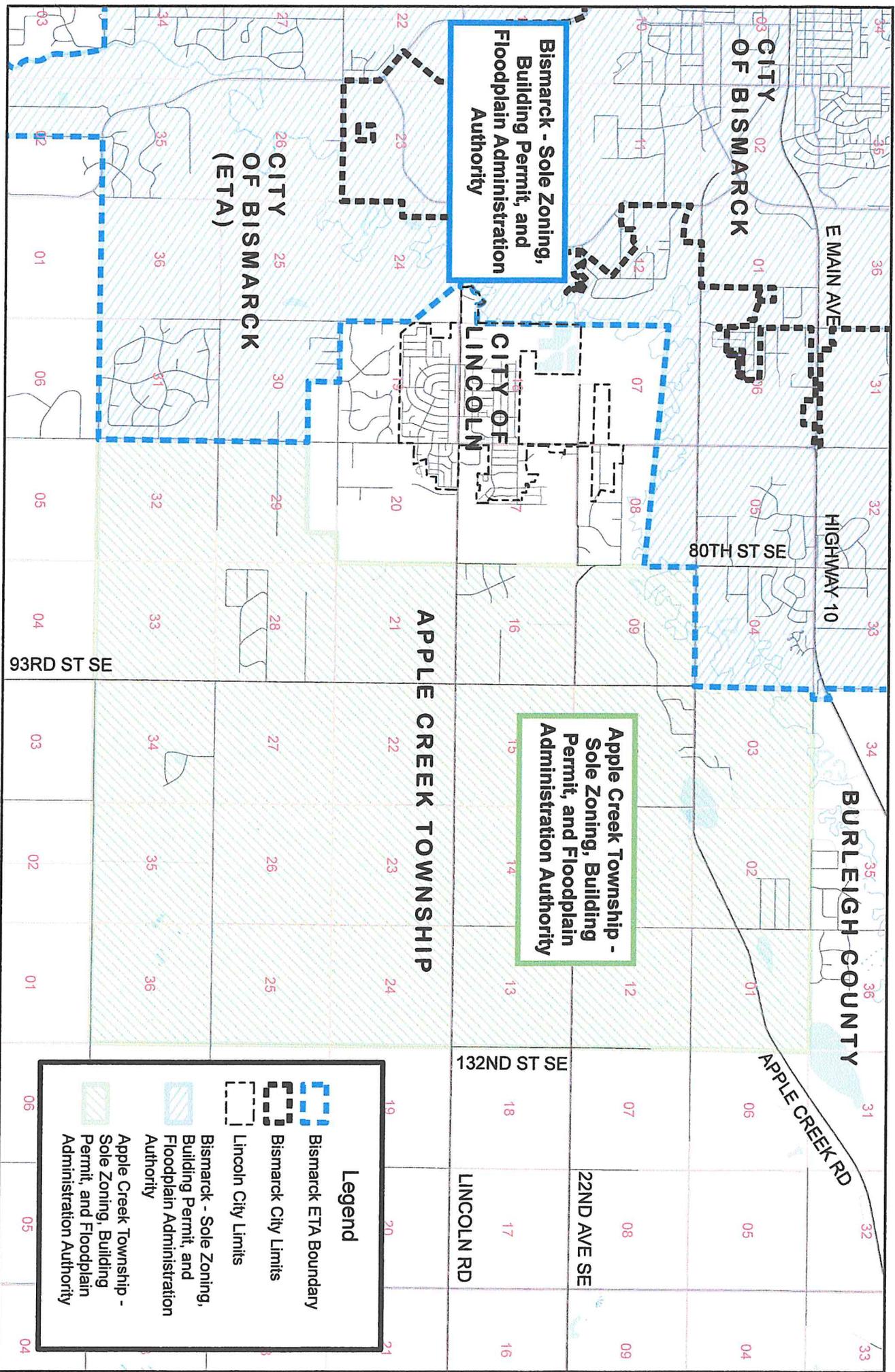
ATTEST: Stephen Schnaible
Township Secretary

DATE: _____

DATE: 8 Jan 2024

EXHIBIT A

December 2023



This map is for reference only and is not intended as a survey. No liability is assumed as to the accuracy of the data delineated hereon.

APPLE CREEK TOWNSHIP AND BISMARCK

2010 EXTRATERRITORIAL JURISDICTION AGREEMENT

AGREEMENT between THE CITY OF BISMARCK, a Municipal Corporation, hereinafter referred to as "Bismarck", and APPLE CREEK TOWNSHIP, an organized township, hereinafter referred to as "Apple Creek".

WHEREAS, Section 40-47-01.1 North Dakota Century Code (NDCC), Section 40-48-18 NDCC, and Section 58-03-11 NDCC provide for the jurisdiction of Bismarck and Apple Creek over the zoning of land and generally provide: that Bismarck would have sole extraterritorial authority within two miles of its corporate limits in any direction, that Bismarck and Apple Creek would have joint jurisdiction within the area from two miles and four miles of Bismarck's corporate limits in any direction in Apple Creek Township, and that Apple Creek would have sole jurisdiction within the remainder of the township beyond four miles of Bismarck's corporate limits, and

WHEREAS, Title 14, Section 14-04-19 and Section 14-05-07 of the Code of Ordinances of the City of Bismarck further provide for the jurisdiction of Bismarck over the issuance of building permits and the administration of flood plain regulations and generally provide that Bismarck would have sole extraterritorial authority for such activities within four miles of its corporate limits in any direction in Apple Creek Township, and

WHEREAS, Bismarck and Apple Creek wish to modify the extraterritorial boundary between the two political subdivisions, and

WHEREAS, Section 40-47-01.1 NDCC provides that the two subdivisions may control their authority pursuant to a written agreement and that Bismarck and Apple Creek have reached such an agreement,

NOW THEREFORE, IT IS AGREED, between Bismarck and Apple Creek that Bismarck shall have sole extraterritorial zoning and building permit jurisdiction in Sections 4-8 and Sections 30 and 31, and Apple Creek shall have sole zoning and building permit jurisdiction in Sections 1-3 and 9-16 ; the E½ of Section 17; the E½ and the SE¼ of the SW¼ of Section 20; all of Sections 21-29; and all of Sections 32-36 as shown in Exhibit "A" attached hereto and by reference made a part hereof.

ATTACHMENT B

IT IS FURTHER AGREED between Bismarck and Apple Creek that the area of sole floodplain administration jurisdiction of Bismarck (all of Apple Creek Township except for the area under the jurisdiction of the City of Lincoln) shall be as shown in Exhibit "B" attached hereto and by reference made a part hereof.

IT IS FURTHER AGREED between Bismarck and Apple Creek that Apple Creek will notify the Bismarck Flood Plain Administrator prior to issuing any building permits within or adjacent to the 100 year flood plain as shown in Exhibit "A" attached hereto and by reference made a part hereof.

IT IS FURTHER AGREED between Bismarck and Apple Creek that it is the intent of Apple Creek to have on staff a fully certified Building Inspector to provide inspection services for the township.

IT IS FURTHER AGREED that upon the written request of either party, the terms of the agreement shall be reviewed. Any amendments to the agreement shall be mutually approved by both parties.

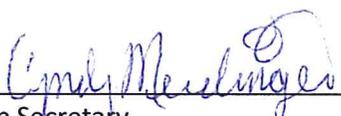
IT IS FURTHER AGREED that the term of the agreement shall be for a period of five years from the date of approval noted below and shall automatically renew for successive five-year terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written below.

BY:  _____
President, Board of City Commissioners

BY:  _____
Chair, Township Board of Supervisors

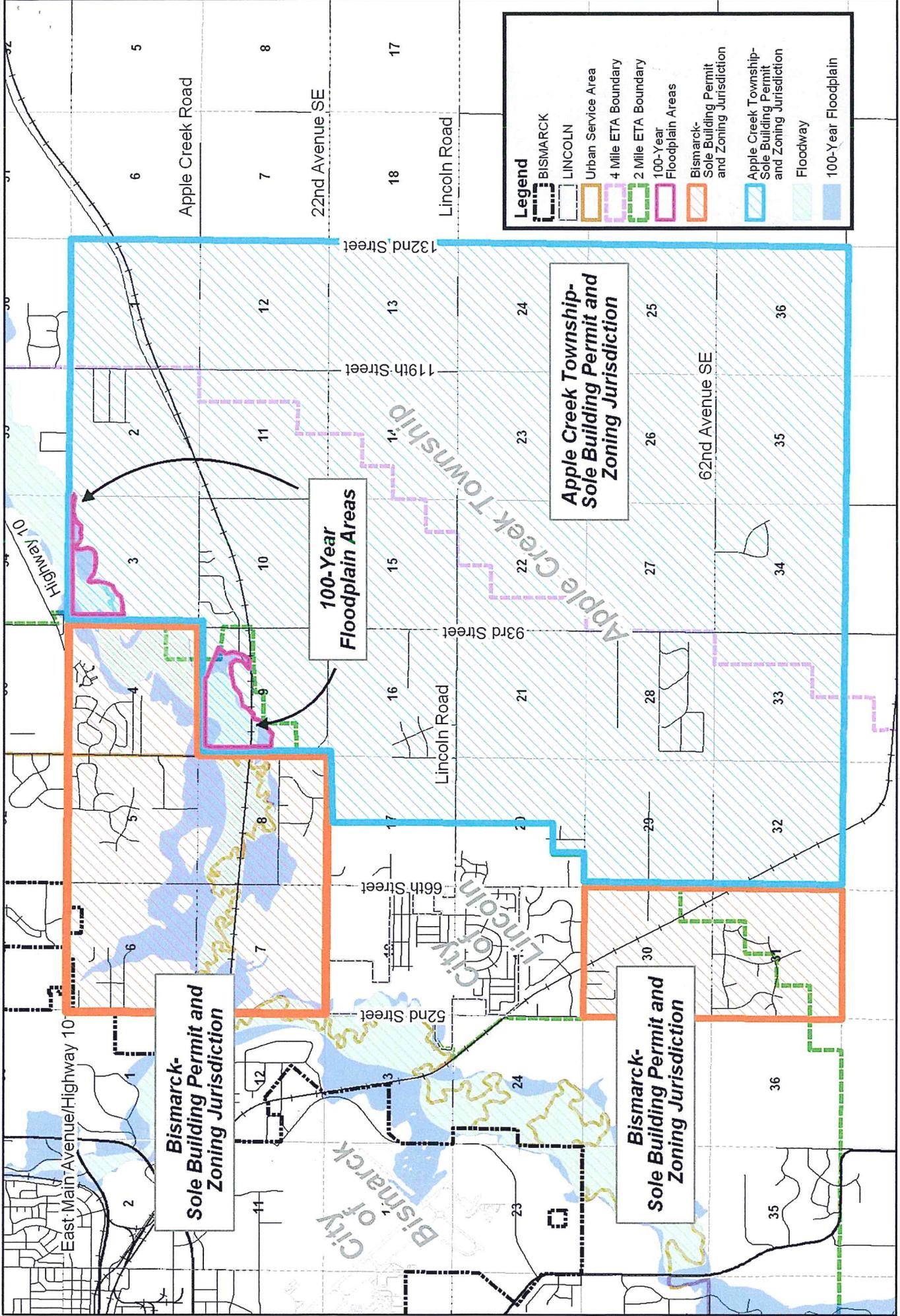
ATTEST:  _____
City Administrator

ATTEST:  _____
Township Secretary

DATE: 1/12/10 _____

DATE: 1/4/10 _____

Exhibit A



Legend

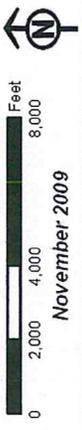
- BISMARCK
- LINCOLN
- Urban Service Area
- 4 Mile ETA Boundary
- 2 Mile ETA Boundary
- 100-Year Floodplain Areas
- Bismarck-Sole Building Permit and Zoning Jurisdiction
- Apple Creek Township-Sole Building Permit and Zoning Jurisdiction
- Floodway
- 100-Year Floodplain

Bismarck-Sole Building Permit and Zoning Jurisdiction

Apple Creek Township-Sole Building Permit and Zoning Jurisdiction

100-Year Floodplain Areas

Bismarck-Sole Building Permit and Zoning Jurisdiction



November 2009

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

Exhibit B

