



**MEMORANDUM**

**Highway  
Department**

Jason Benson, P.E.  
County Engineer

Thomas B. Soucy, P.E.  
Deputy County Engineer

Blaine Laaveg  
Superintendent

TO: Cass County Commission  
FROM: Jason Benson, Cass County Engineer *JAB*  
DATE: October 14, 2021

SUBJECT: Agenda topic for October 18, 2021 Commission meeting:  
Public hearing for a resolution to take over road rights-of-way and grant permission to permanently obstruct the same and the underlying section lines of portions of Pfiffer Drive.

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On September 7<sup>th</sup>, 2021, the Cass County Commission approved a motion that the Cass County Board of Commissioners set a public hearing for October 18<sup>th</sup> during the regular meeting of the Cass County Commission for a resolution to take over road ROW and grant written permission to permanently obstruct the same of Pfiffer Drive.

Cass County has been working with the Metro Flood Diversion Authority (FMDA) on road closures for the construction of the Diversion Project. In April 2021, the FMDA, Cass County Joint Water Recourse District (CCJWRD), and Cass County approved a Memorandum of Understanding (MOU) for the construction of the diversion over road rights-of-way (ROW).

We are now being asked by the FMDA and CCJWRD to take control of and prepare to close Pfiffer Drive (see map in the attached CCJWRD Resolution). This closure is required for the construction of the Red River Structure. The County will take control of Pfiffer Drive immediately following the approval of the County Commission. The closure of this road would take place immediately as the Red River Structure will begin construction next spring and all properties along Pfiffer Drive have been acquired by the CCJWRD. Pursuant to the terms of the MOU, notices of the public hearing were sent to landowners within 1,000 feet of the requests at least 30 days prior to the hearing.

As per the MOU, a public hearing to gather input from the public must take place prior to the County Commission adopting the resolution. Following the public hearing, the Commission is asked to adopt a resolution taking over road ROW and granting written permission to permanently obstruct the same and the underlying section lines (see attached resolution).

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SUGGESTED MOTION: Move that the Cass County Board of Commissioners adopts Resolution 13 to take over road right of way and grant written permission to permanently obstruct the same and the underlying platted right of way of Pfiffer Drive.

**RESOLUTION #13**

Commissioner \_\_\_\_\_ introduced the following resolution and moved its adoption:

**RESOLUTION TAKING OVER ROAD RIGHTS-OF-WAY  
AND GRANTING WRITTEN PERMISSION TO  
PERMANENTLY OBSTRUCT THE SAME  
(Red River Control Structure)**

**WHEREAS**, on or about September 7, 2021, the Cass County Commission received a request from the Metro Flood Diversion Authority (the “Authority”) to take over and designate certain road rights-of-way identified on Exhibit A as part of the Cass County highway system; and

**WHEREAS**, on or about September 7, 2021, the Cass County Commission received a request from the Cass County Joint Water Resource District (“CCJWRD”) to permanently obstruct the road rights-of-way with the Red River Control Structure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project; and

**WHEREAS**, in conjunction with their above-described requests, the Authority and CCJWRD provided notice to property owners within 1,000 feet of the road rights-of-way of such requests; and

**WHEREAS**, upon its receipt of the requests, the Cass County Commission scheduled a public hearing to consider the requests and provided notice to property owners within 1,000 feet of the road rights-of-way of the date and time for the public hearing; and

**WHEREAS**, the Cass County Commission held a public hearing on the Authority’s and CCJWRD’s requests on October 18, 2021, at 3:30 p.m.; and

**WHEREAS**, the Cass County Commission now desires to grant the Authority’s request for Cass County to take over the road rights-of-way and to grant CCJWRD’s request to permanently obstruct the road rights-of-way.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of Cass County, North Dakota:

Section 1. Takeover of Road Right-of-way. Pursuant to N.D.C.C. § 24-05-09, Cass County hereby deems it necessary, for its present use in altering the road rights-of-way, that Cass County permanently takes over the following road rights-of-way as shown on Exhibit A:

That portion of the roadway commonly referred to as Pfiffer Drive presently located upon Section 6 of Township 137 North, Range 49 West, Cass County, North Dakota

(the “ROW”).

Such takeover will become effective immediately upon the adoption of this resolution. In conjunction with the takeover, Cass County hereby designates the ROW as part of the Cass County highway system.

Section 2. Permanent Obstruction. Pursuant to N.D.C.C. § 24-06-28(1), Cass County hereby grants CCJWRD's request to permanently obstruct the ROW with the Red River Control Structure of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. CCJWRD will provide advanced notice to Cass County of the timing for when the permanent obstruction will commence. Until such time, the ROW will remain open for public travel unless otherwise temporarily obstructed by, or with authorization from, Cass County.

Section 3. North Dakota Law Applies. This resolution will be controlled by the laws of the State of North Dakota, and any claims arising out of or pertaining to this resolution will be filed, heard, and decided in the state district court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 4. Effective Date. This resolution will take effect immediately upon adoption.

Section 5. Electronic Signatures. Electronic signatures to this resolution shall be valid as original signatures and shall be valid to bind the Authority. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

*(Remainder of page intentionally left blank.)*

Adopted October 18, 2021.

**CASS COUNTY, NORTH DAKOTA**

By: \_\_\_\_\_  
Chad M. Peterson, Chairman  
Board of County Commissioners

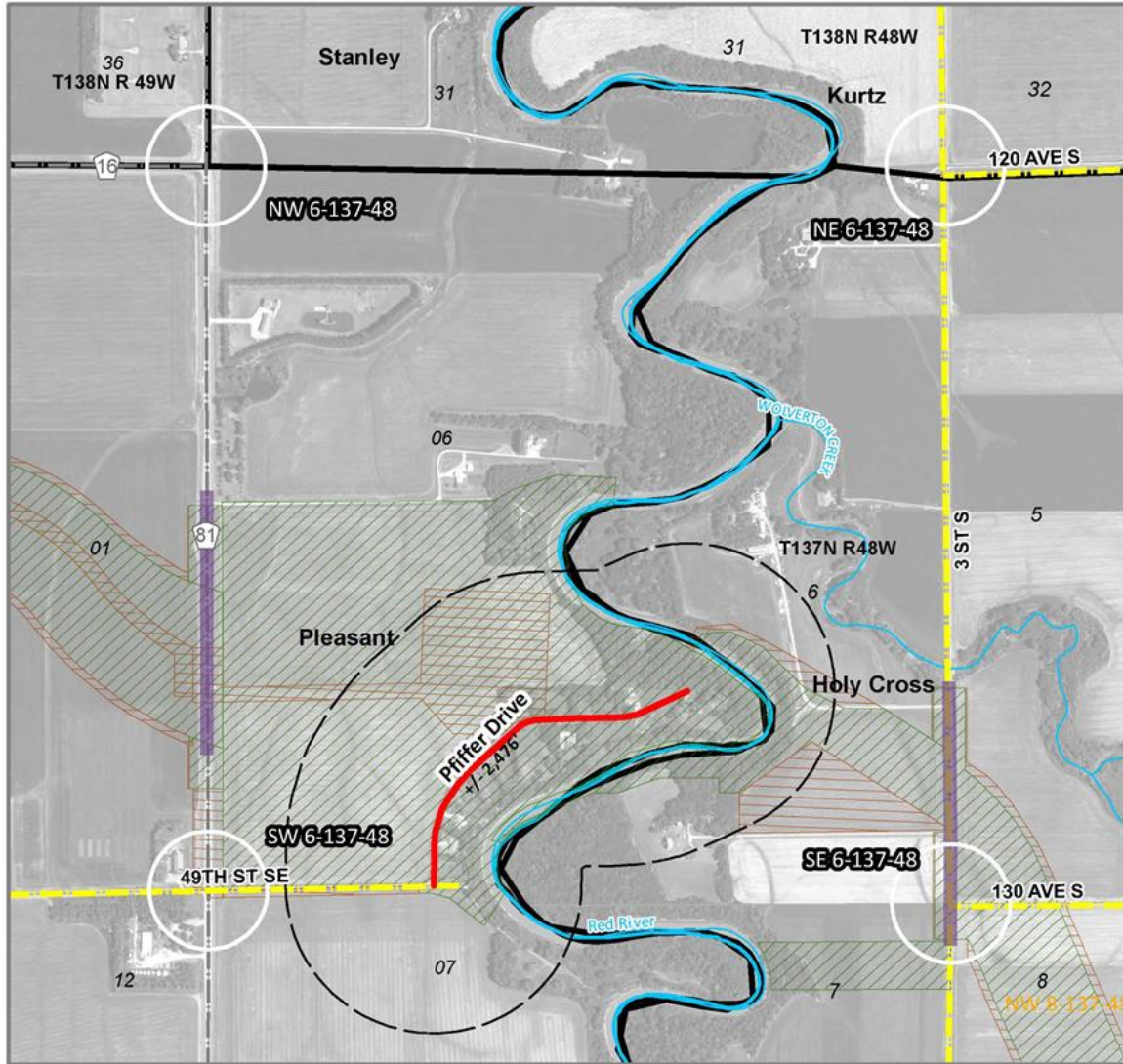
**ATTEST**

\_\_\_\_\_  
Brandy Madrigga, Finance Director

The motion for adoption of the foregoing resolution was duly seconded by Commissioner \_\_\_\_\_, and upon roll call vote, the following voted in favor thereof: \_\_\_\_\_ . The following were absent and not voting: none. The following voted against the same: none. The majority having voted aye, the resolution was duly passed and adopted.

## EXHIBIT A

### MAP OF ROAD RIGHTS-OF-WAY

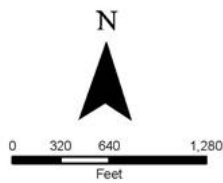


*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.*

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: hrecords - AE2S, Inc. | C:\Data\Projects\GIS Projects\FM Area Diversion\012 Lands Program\Property Acquisition\Project Wide\Overall LA Maps\County Res Mapbook MOU by Survey Dimensions.mxd

	Channel/SE Crossings		Road Controlled by Cass County
	Township Boundary		Road Controlled by Township
	Project Limits		County Road
	Temporary Construction Easement		State or US Highway
			1,000-Foot Buffer Area

Vacated portions will be defined by plat. Dimensions are GIS measurements.



### Pleasant Township

FM Area Diversion  
Map Date: 8/9/2021

