



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 *JPB*
DATE: April 21, 2022

SUBJECT: Agenda topic for May 2, 2022 Commission Meeting: Request a public hearing for June 20th 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 24th Street Southeast, 27th Street Southeast, 170th Avenue Southeast, 171st Avenue Southeast, and 172nd Avenue Southeast that will be impacted by Phase 1 of the FM Diversion SWDCAI.

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 portions of 24th Street Southeast, 27th Street Southeast, 170th Avenue Southeast, 171st Avenue Southeast, and 172nd Avenue Southeast that will be impacted by Phase 1 of the FM Diversion SWDCAI. (see map in the attached CCJWRD Resolution).

Pursuant to the terms of the MOU, the next step in the process is for Cass County to set a date and time for a public hearing on the requests. Once the public hearing date and time is set, we have agreed to issue notices of the public hearing to landowners within 1,000 feet of the requests at least 30 days prior to the hearing. The FMDA will provide the list of property owners impacted within the 1000-foot area (see attached sample letter).

I am requesting the public hearing be set for June 20th during the regular meeting of the Cass County Commission. Following the public hearing the Commission will be asked to approve a resolution taking over road ROW and granting written permission to permanently obstruct the same and the underlying section lines (see attached sample resolution).

SUGGESTED MOTION: Move that the Cass County Board of Commissioners set a public hearing for June 20th 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 24th Street Southeast, 27th Street Southeast, 170th Avenue Southeast, 171st Avenue Southeast, and 172nd Avenue Southeast.

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395

Manager _____ introduced the following resolution and moved its adoption:

**RESOLUTION REQUESTING AUTHORIZATION
TO PERMANENTLY OBSTRUCT
RIGHT-OF-WAY AND SECTION LINE
(SWDCAI – Phase 1)**

WHEREAS, the Cass County Joint Water Resource District (the “District”) is a North Dakota water resource district and political subdivision under Chapter 61-16.1 of the North Dakota Century Code; and

WHEREAS, the District is a member entity of the Metro Flood Diversion Authority (the “Authority”) and has been tasked by the Authority to acquire all property interests necessary for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”); and

WHEREAS, one element of the Comprehensive Project is the storm water diversion channel and associated infrastructure (“SWDCAI”); and

WHEREAS, that portion of the SWDCAI that is located approximately between Interstate 29 near Harwood and the diversion outlet is known as Phase 1 of the SWDCAI; and

WHEREAS, the location of Phase 1 of the SWDCAI is set forth on Exhibit A, and it intersects those portions of 24th Street Southeast, 27th Street Southeast, 170th Avenue Southeast, 171st Avenue Southeast, and 172nd Avenue Southeast that are depicted in the color red on Exhibit A; and

WHEREAS, on April 22, 2021, the Authority, Cass County, and the District entered into a Memorandum of Understanding (the “ROW MOU”), which outlined the roles and responsibilities of the Authority, Cass County, and the District regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Comprehensive Project; and

WHEREAS, in accordance with the ROW MOU, the Authority has directed Cass County to acquire the road right-of-way of 24th Street Southeast, 27th Street Southeast, 170th Avenue Southeast, 171st Avenue Southeast, and 172nd Avenue Southeast that will be impacted by Phase 1 of the SWDCAI (the “ROW”); and

WHEREAS, also in accordance with the ROW MOU, the District now seeks, pursuant to N.D.C.C. § 24-06-28, permission from Cass County to permanently obstruct the ROW and underlying section lines with Phase 1 of the SWDCAI.

NOW, THEREFORE, BE IT RESOLVED, pursuant to N.D.C.C. § 24-06-28, that the District hereby requests permission from Cass County to permanently obstruct the ROW and underlying section lines in the areas depicted on Exhibit A for Phase 1 of the SWDCAI, with the actual timing of obstruction dependent upon the commencement of construction of Phase 1 of the SWDCAI as set forth in the ROW MOU.

BE IT FURTHER RESOLVED, that the District, in accordance with the ROW MOU, will notify landowners within one thousand (1,000) feet of the ROW of its request to Cass County to permanently obstruct the ROW.

(Signatures appear on the following page.)

APPROVED:

Dan Jacobson, Chair

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer

The motion for the adoption of the foregoing resolution was duly seconded by Manager _____.

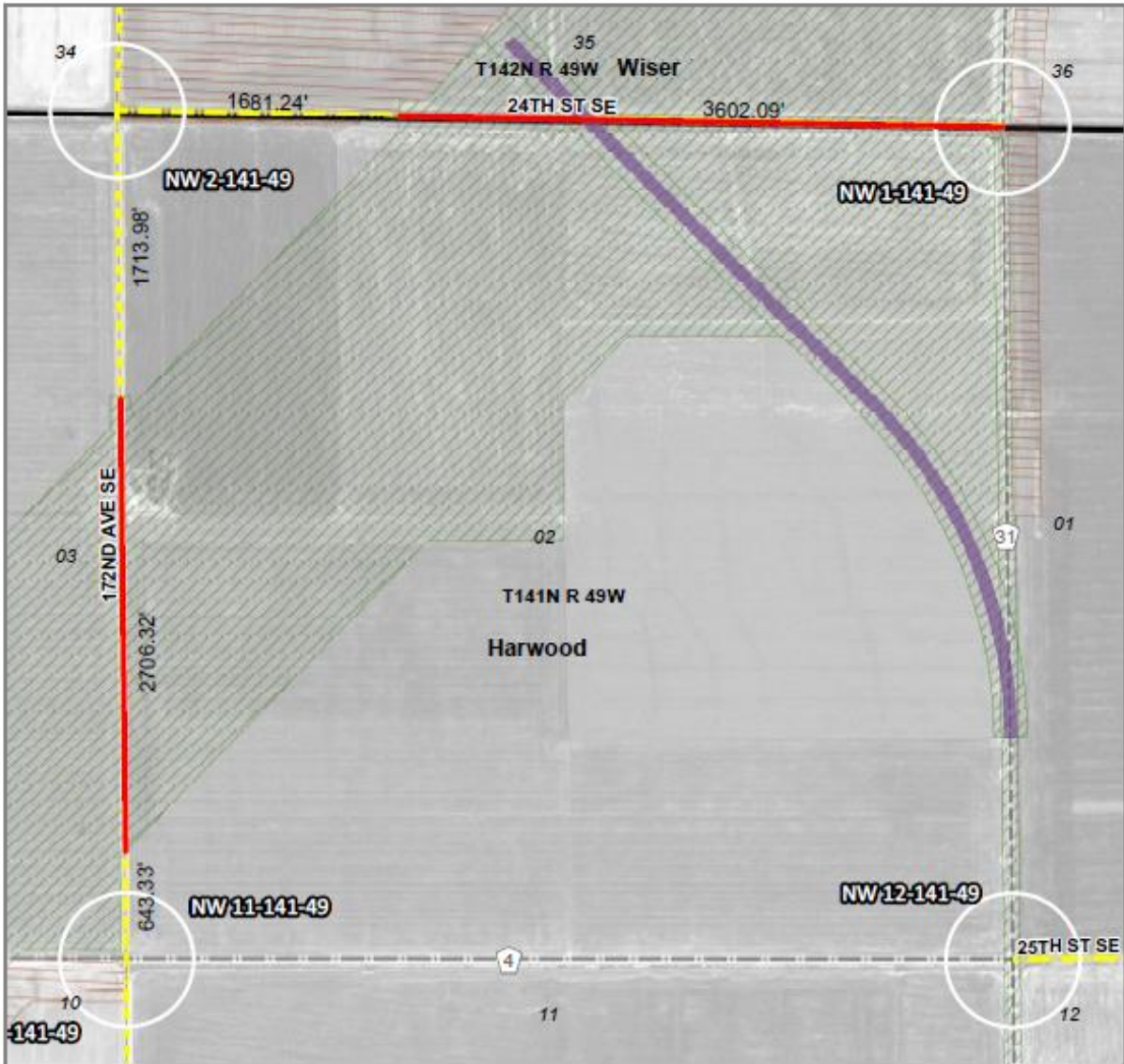
On roll call vote the following Managers voted aye: _____.

The following Managers voted nay: _____.

The following Managers were absent: _____. Upon roll call vote, the motion carried unanimously, and the resolution was duly adopted.

Date Approved: _____, 2022.

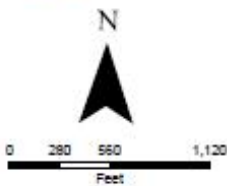
EXHIBIT A



Any reliance upon this map is at user's own risk. AEDS 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 3002 Feet | Produced By: records - AEDS, Inc. |
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	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

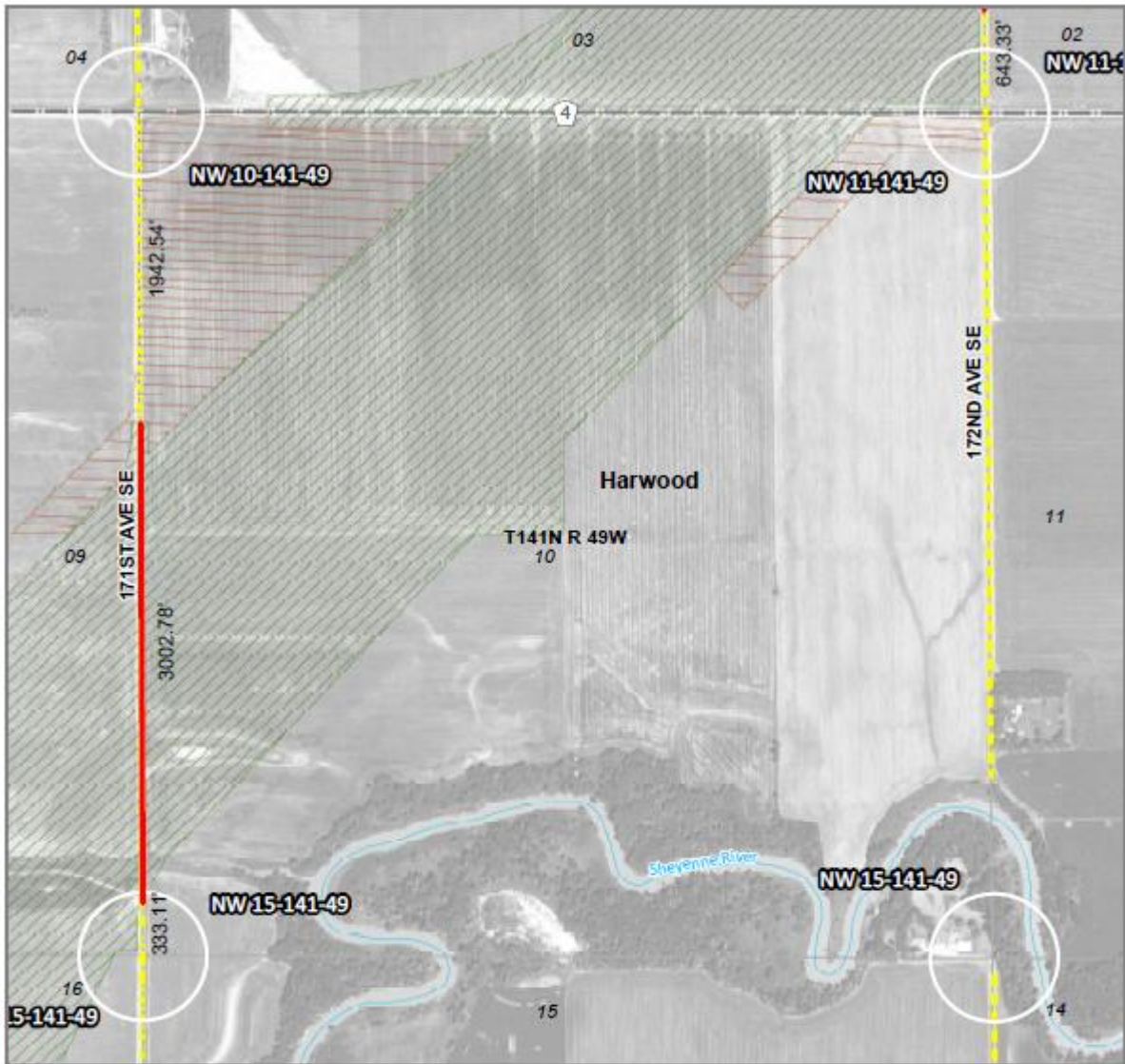
Vacated portions will be defined by plat.
 Dimensions are GIS measurements.



Harwood Township

FM Area Division
 Map Date: 4/15/2022



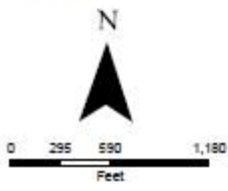


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	Channel/SE Crossings		Road Controlled by Cass County
	Township Boundary		Road Controlled by Township
	Project Limits		County Road
	Temporary Construction Easement		State or US Highway

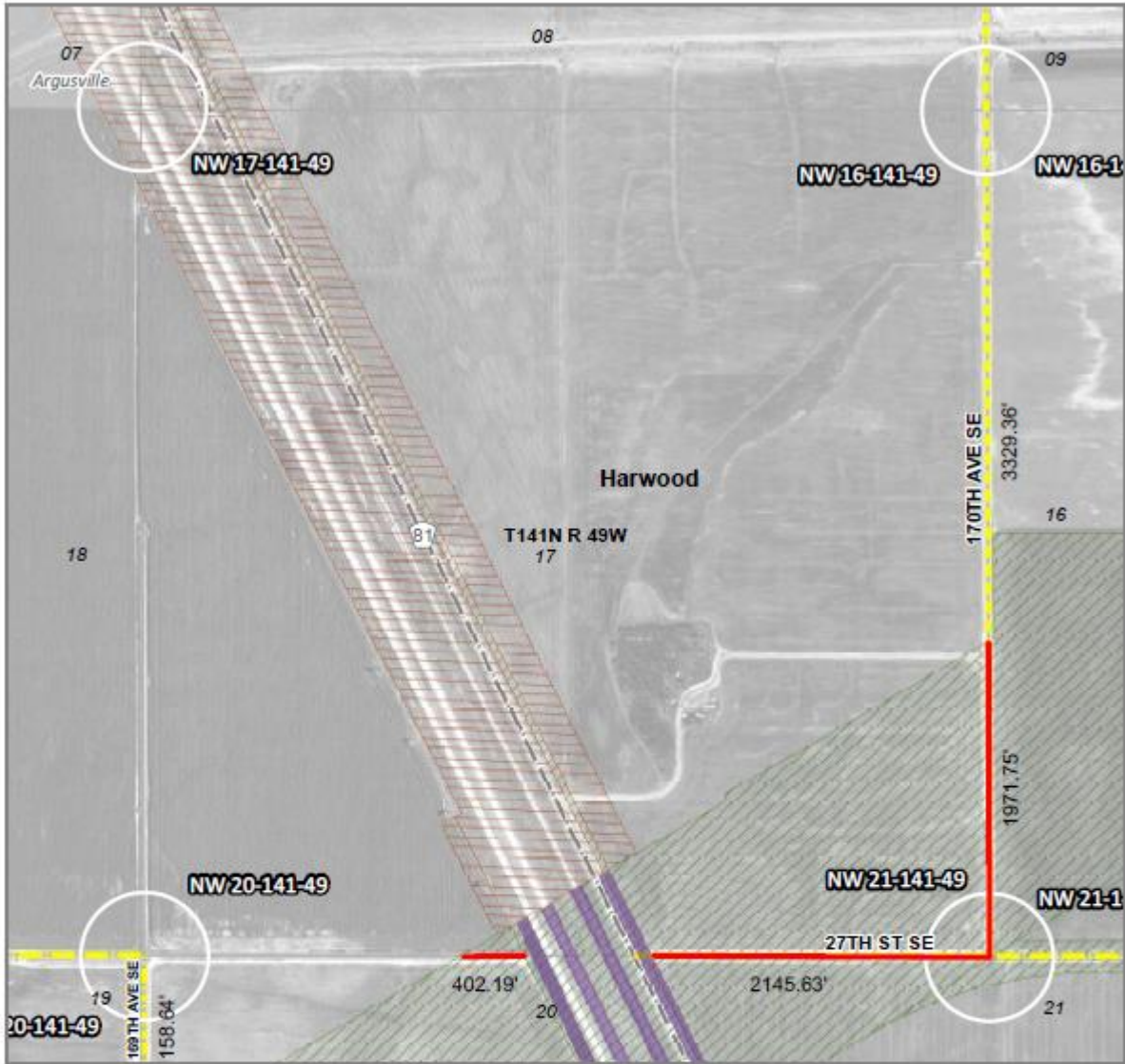
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Harwood Township









FM Area Diversion
Map Date: 4/15/2022



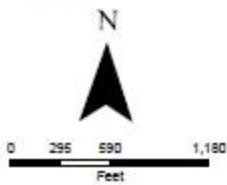


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Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3002 Feet | Produced by: records - AEGIS, Inc. |
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	Channel/SE Crossings		Road Controlled by Cass County
	Township Boundary		Road Controlled by Township
	Project Limits		County Road
	Temporary Construction Easement		State or US Highway

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



Harwood Township

FM Area Diversion
 Map Date: 4/15/2022



RESOLUTION # _____

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 AND
THE UNDERLYING SECTION LINES
(Component)**

WHEREAS, on _____, 20__, 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 _____, 20__, the Cass County Commission received a request from the Cass County Joint Water Resource District (“CCJWRD”) to permanently obstruct the road rights-of-way and the underlying section lines with (Component) 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 _____, 20__, at _____ 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 and the underlying section lines.

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:

[insert description of road rights-of-way]

(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. § 24-06-08(1), Cass County hereby grants CCJWRD's request to permanently obstruct the ROW and the underlying section lines with (*Component*) 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 and underlying section lines 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.

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Adopted _____, 20__.

CASS COUNTY, NORTH DAKOTA

By: _____
_____, Chair
Board of County Commissioners

ATTEST

_____, County Auditor

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

DRAFT

_____, 2021

Dear Property Owner:

Notice is hereby given that the Cass County Commission will conduct a Public Hearing to consider approval or denial of a request from the Metro Flood Diversion Authority to designate the road rights-of-way identified on Exhibit A (the "ROW") as part of the County highway system.

Additionally, notice is hereby given that the Cass County Commission will conduct a Public Hearing to consider approval or denial of a request from the Cass County Joint Water Resource District to permanently obstruct the ROW and the underlying section lines with _____ of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

As part of the request procedure, the County is notifying adjacent property owners within 1,000 feet of the ROW. If you have any comments, please submit them or attend the Commission meeting on _____, 2021, at _____ p.m. at _____. This will be a virtual meeting, and there will be both online and phone access.

For questions, please contact me at 701-298-2375 or puppeg@casscountynd.gov.

Sincerely,

Grace Puppe
Cass County Planner