



## 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

DATE: March 24, 2023

SUBJECT: Agenda topic for April 3<sup>rd</sup>, 2023 Commission Meeting: Request a public hearing for May 15<sup>th</sup>, 2023 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 166<sup>th</sup> Avenue Southeast, 38<sup>th</sup> Street Southeast, 13<sup>th</sup> Avenue West, 26<sup>th</sup> Street West, 21<sup>st</sup> Avenue West, and 64<sup>th</sup> Avenue West. That will be impacted by Phase 3 of the FM Diversion SWDCAI.

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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 166<sup>th</sup> Avenue Southeast, 38<sup>th</sup> Street Southeast, 13<sup>th</sup> Avenue West, 26<sup>th</sup> Street West, 21<sup>st</sup> Avenue West, 40<sup>th</sup> Ave West, and 64<sup>th</sup> Avenue West. That will be impacted by Phase 3 of the FM Diversion SWDCAI. (see map in the attached CCJWRD Resolution). 40<sup>th</sup> Ave West is removed from this motion due to the span being requested by FMDA and CCJWRD is currently a County Road. A separate memo will be sent out for the permanent obstruction at a later Commission meeting for 40<sup>th</sup> Ave West.

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 May 15<sup>th</sup>, 2023 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).

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

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



## Highway Department

Jason Benson, P.E.  
County Engineer

Thomas B. Soucy, P.E.  
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Superintendent

**SUGGESTED MOTION:** Move that the Cass County Board of Commissioners set a public hearing for May 15<sup>th</sup>, 2023 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 166<sup>th</sup> Avenue Southeast, 38<sup>th</sup> Street Southeast, 13<sup>th</sup> Avenue West, 26<sup>th</sup> Street West, 21<sup>st</sup> Avenue West, and 64<sup>th</sup> Avenue West.

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[https://casscounty-my.sharepoint.com/personal/stamnessm\\_casscountynd\\_gov/Documents/Desktop/Agenda Memo Cass Public Hearing for Diversion Road Closure - Along the SW portion of the intersection of 129 and 194.docx](https://casscounty-my.sharepoint.com/personal/stamnessm_casscountynd_gov/Documents/Desktop/Agenda%20Memo%20Cass%20Public%20Hearing%20for%20Diversion%20Road%20Closure%20-%20Along%20the%20SW%20portion%20of%20the%20intersection%20of%20129%20and%20194.docx)

Manager Gust introduced the following resolution and moved its adoption:

**RESOLUTION REQUESTING AUTHORIZATION  
TO PERMANENTLY OBSTRUCT  
RIGHT-OF-WAY AND SECTION LINE  
(SWDCAI – Phase 3)**

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 94 near West Fargo and County Road 6 is known as Phase 3 of the SWDCAI; and

WHEREAS, the location of Phase 3 of the SWDCAI is set forth on Exhibit A, and it intersects those portions of 166th Avenue Southeast, 38th Street Southeast, 13th Avenue West, 26th Street West, 21st Avenue West, 40th Avenue West, and 64th Avenue West 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 166th Avenue Southeast, 38th Street Southeast, 13th Avenue West, 26th Street West, 21st Avenue West, 40th Avenue West, and 64th Avenue West that will be impacted by Phase 3 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 3 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 3 of the SWDCAI, with the actual timing of obstruction dependent upon the commencement of construction of Phase 3 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:

  
\_\_\_\_\_  
Rodger Olson, Chair

ATTEST:

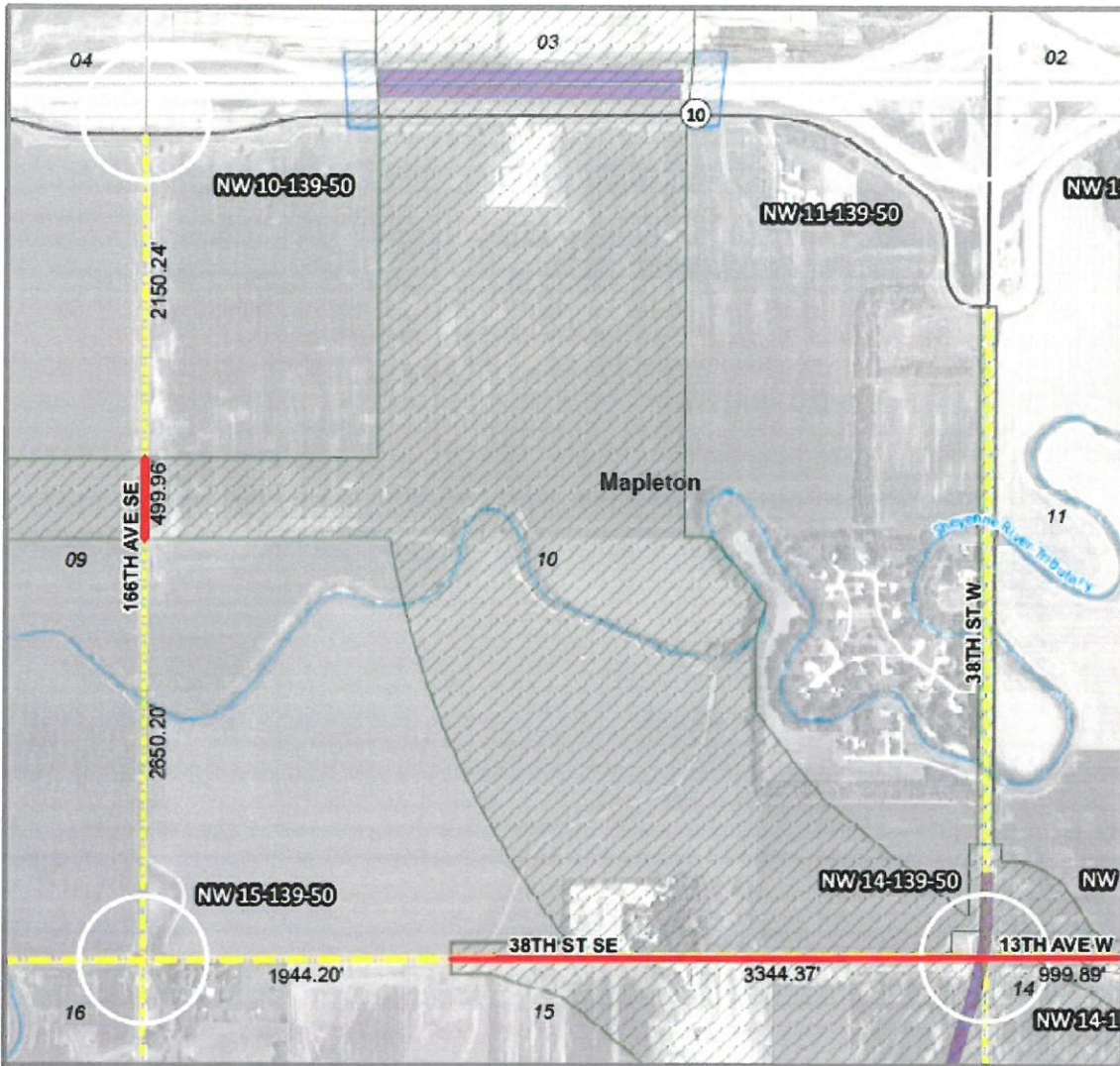
  
\_\_\_\_\_  
Carol Harbeke Lewis  
Secretary-Treasurer

The motion for the adoption of the foregoing resolution was duly seconded by Manager Lougheed. On roll call vote the following Managers voted aye: Olson, Lougheed, Gust and Steen. The following Managers voted nay: none. The following Managers were absent: Weston. Upon roll call vote, the motion carried unanimously, and the resolution was duly adopted.

Date Approved: March 23, 2023.



# EXHIBIT A



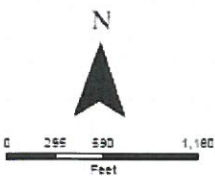
Any reliance upon this map is at user's own risk. AECS does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown herein are based on County GIS data. Final acreages and legal descriptions to be determined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

Coordinate System: NAD 1983 StatePlane North Dakota South 1172 3202 Feet | Produced By: tracorder - AECS, 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		State or US Highway
	MOU		

Page: 1

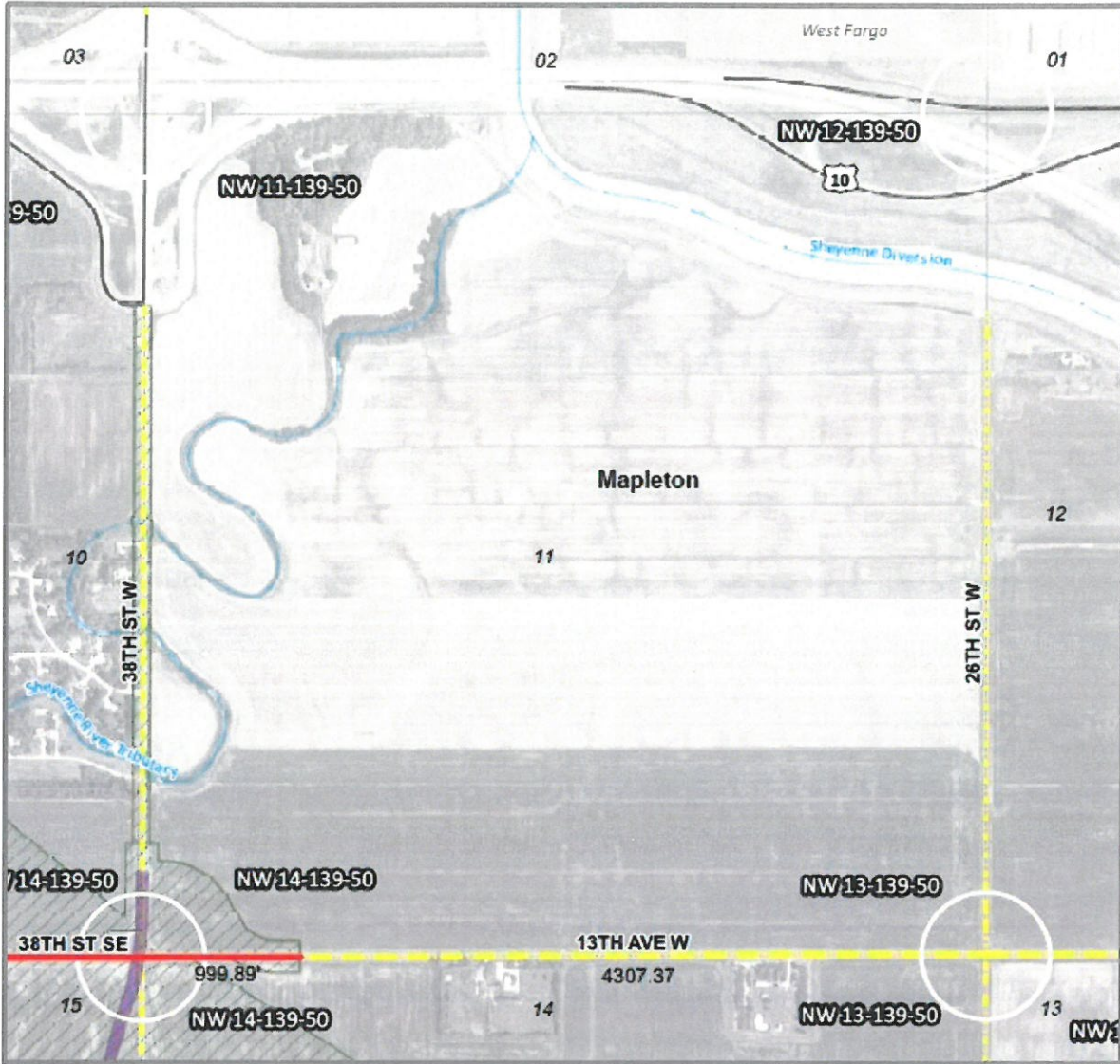
Vacated portions will be defined by plat.  
 Dimensions are GIS measurements.



## Mapleton Township

FM Area Division  
 Map Date: 3/9/2023





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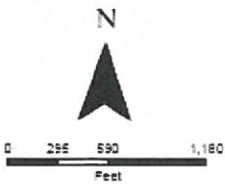
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	Channel/SE Crossings		Road Controlled by Cass County
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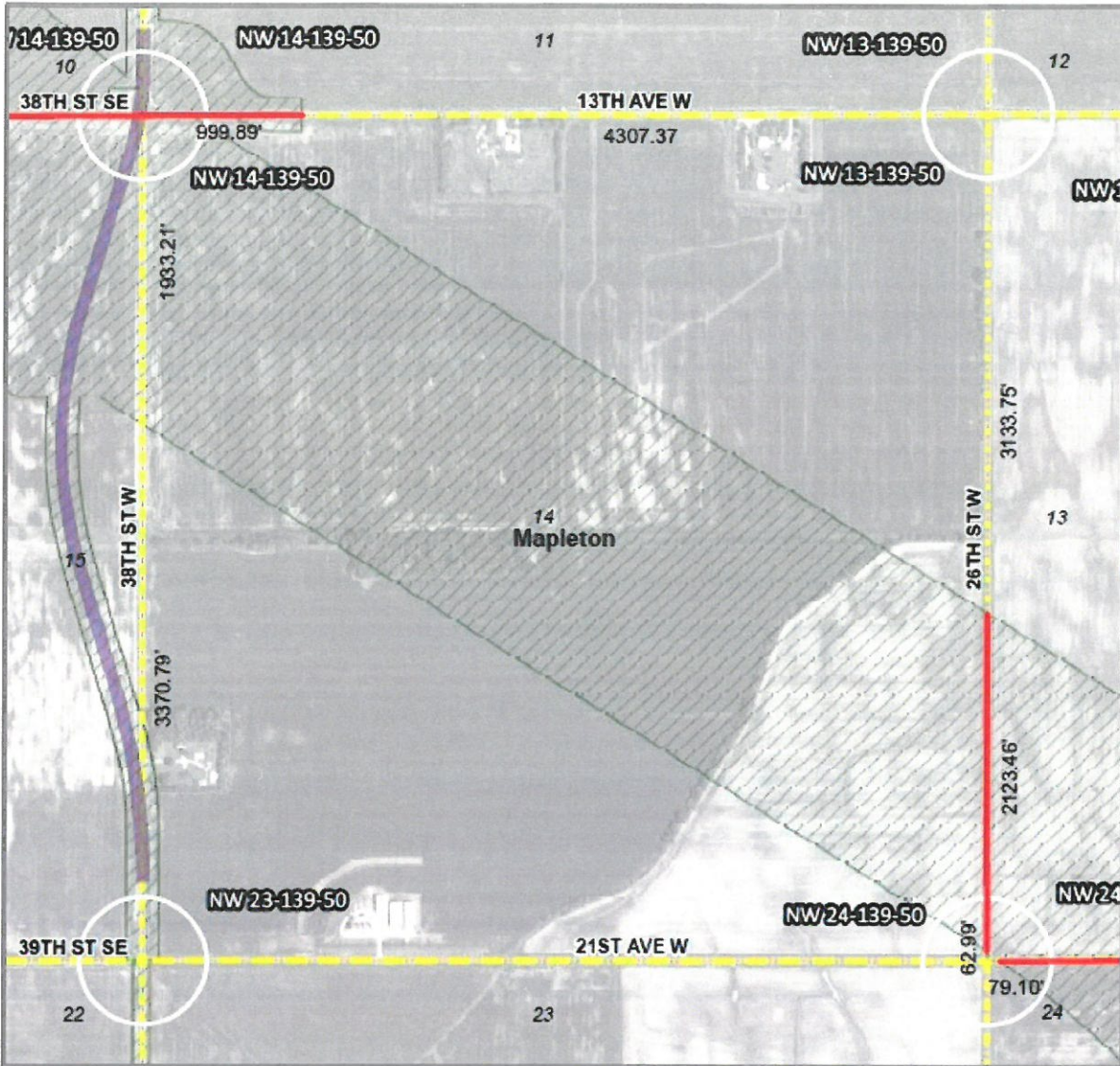
### Mapleton Township



FM Area Diversion  
Map Date: 3/9/2023







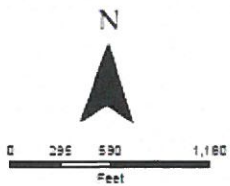
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|  | Channel/SE Crossings   |  | Road Controlled by Cass County |
|  | Township Boundary      |  | Road Controlled by Township    |
|  | Project Limits         |  | County Road                    |
|  | Temporary Construction |  | State or US Highway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

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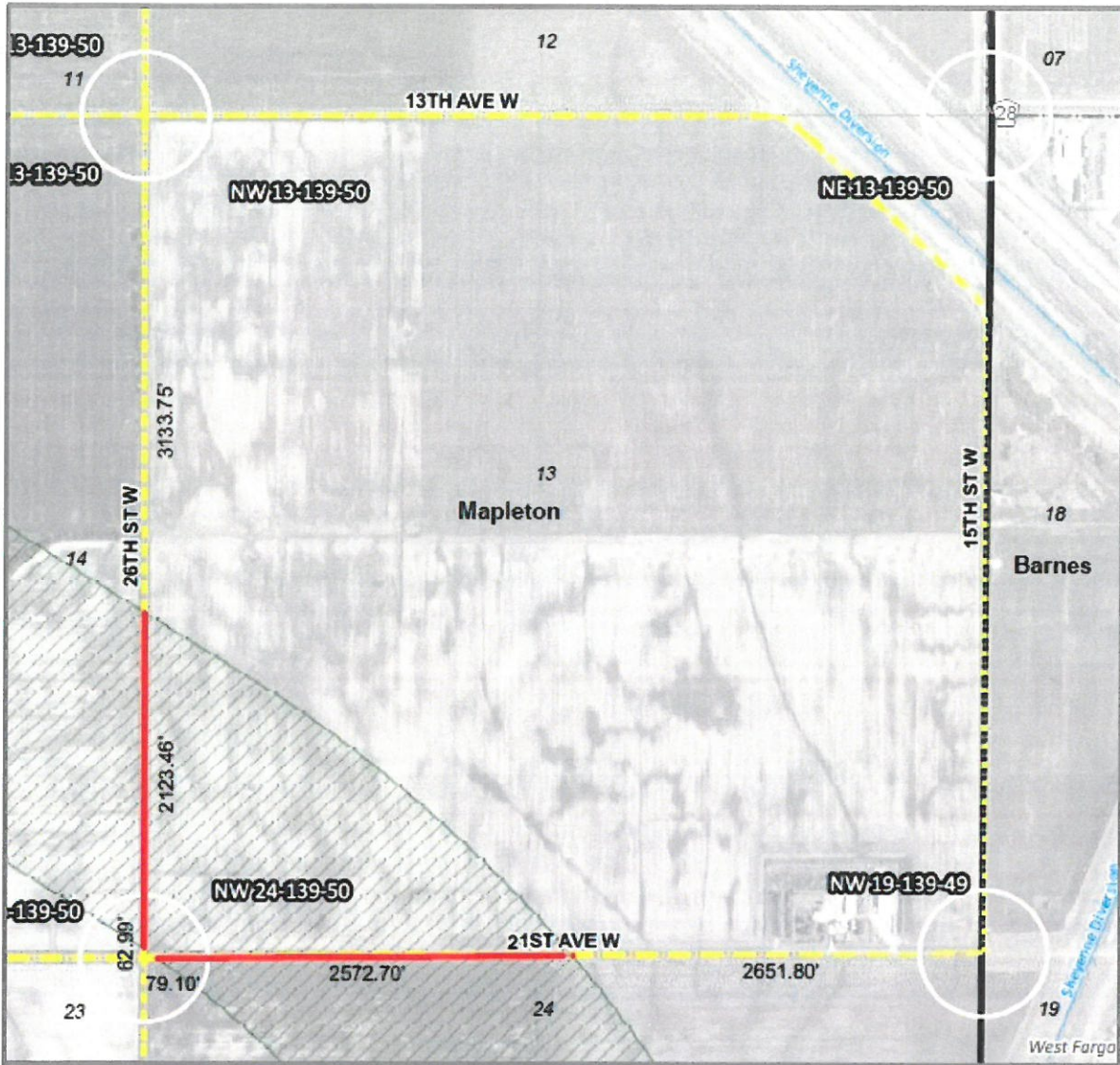
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### Mapleton Township

FM Area Diversion  
Map Date: 3/9/2023





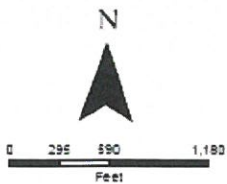
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	Channel/SE Crossings		Road Controlled by Cass County
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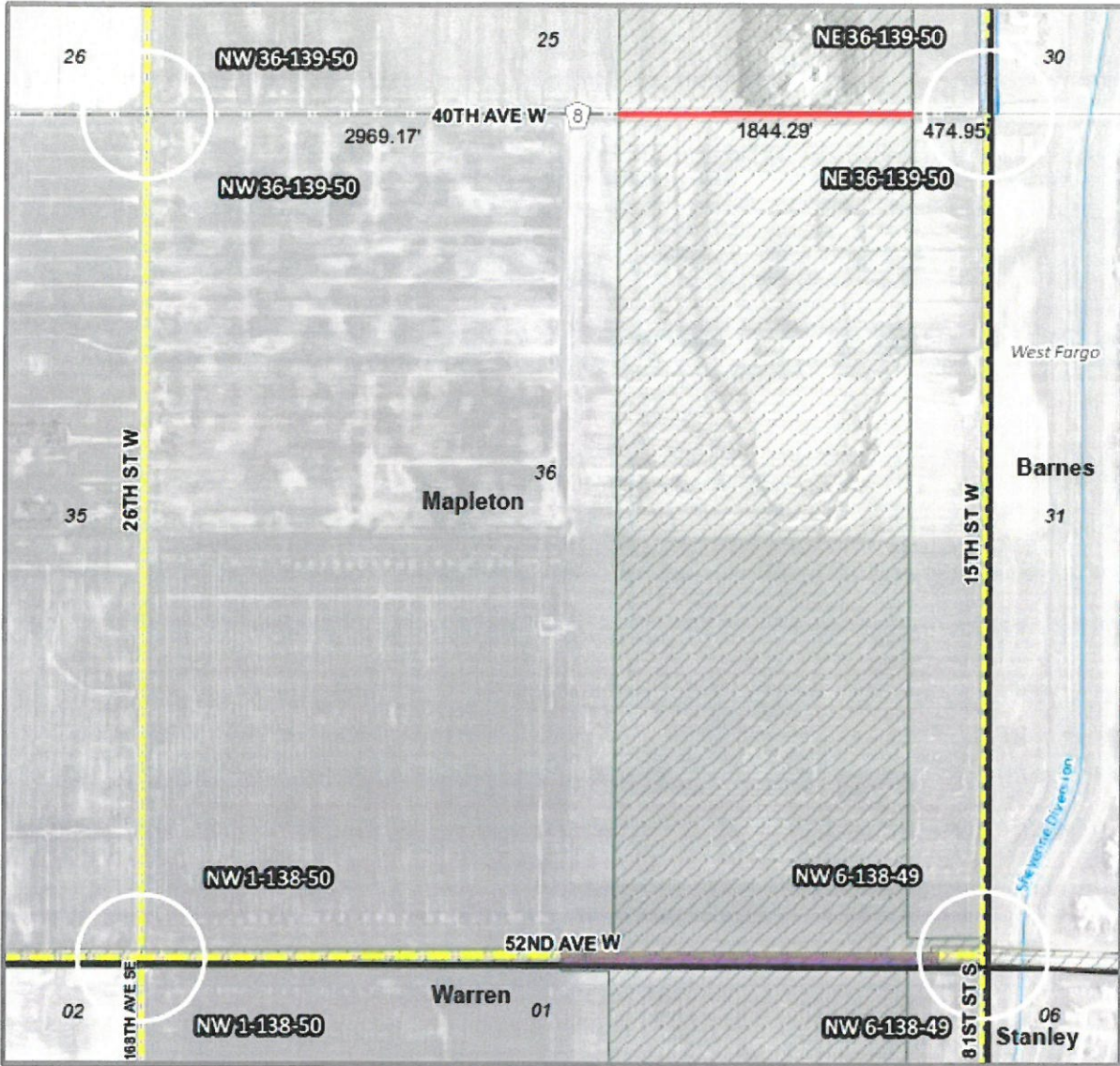


### Mapleton Township

FM Area Diversion  
Map Date: 3/9/2023







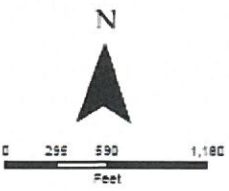
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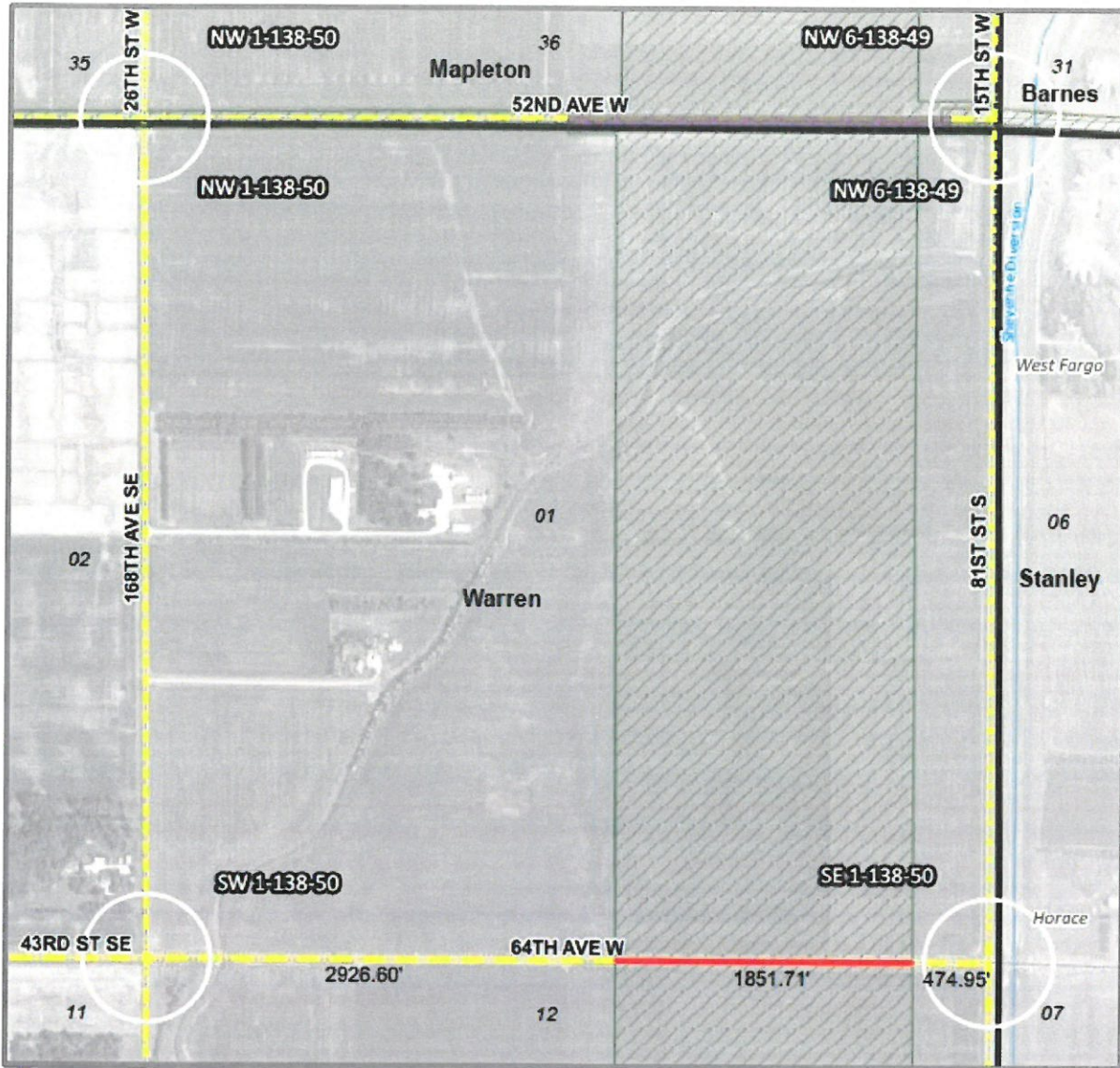
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FM Area Diversion  
Map Date: 3/9/2023



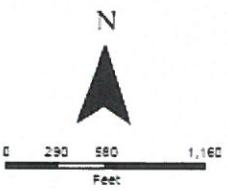


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**Warren Township**

FM Area Diversion  
Map Date: 3/9/2023

