



## 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: May 4, 2023

SUBJECT: Agenda topic for May 15<sup>th</sup>, 2023 Commission Meeting: Hold a public hearing on 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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On April 3<sup>rd</sup>, the Cass County Commission approved a motion that the Cass County Board of Commissioners set a public hearing for May 15<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 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.

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 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 (see map in the attached Cass County Resolution). These closures are required for the construction of Phase 3 of the FM Diversion SWDCAI. The County will take control 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 immediately following the approval of the County Commission. The closure of this road would take place in phases as the FM Diversion SWDCAI will continue construction this spring. All properties along 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 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.

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

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Fax: 701-298-2395

As per the MOU, a **public hearing to gather input from the public must take place prior to the County Commission adopting the resolution.** I request that you open a public meeting to allow for public comment on the road

[https://casscounty-my.sharepoint.com/personal/stamnessm\\_casscountynd\\_gov/Documents/Desktop/ROAD CLOSURE PROJECT DOCUMENTS CHANNLE CLOSURES SOUTH WEST OF I29 BUT SOUTH OF I94/Agenda Memo Cass Public Hearing for Diversion Road Closure 05-15-23.docx](https://casscounty-my.sharepoint.com/personal/stamnessm_casscountynd_gov/Documents/Desktop/ROAD%20CLOSURE%20PROJECT%20DOCUMENTS%20CHAN/NLE%20CLOSURES%20SOUTH%20WEST%20OF%20I29%20BUT%20SOUTH%20OF%20I94/Agenda%20Memo%20Cass%20Public%20Hearing%20for%20Diversion%20Road%20Closure%2005-15-23.docx)



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closures. 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).

**SUGGESTED MOTION:** Move that the Cass County Board of Commissioners adopts Resolution #2023-04 to take over road right of way and grant written permission to permanently obstruct the same 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.

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**RESOLUTION 2023-04**

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  
(SWDCAI – Phase 3)**

**WHEREAS**, on or about April 3, 2023, 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 April 3, 2023, 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 the third phase of the stormwater diversion channel and associated infrastructure (“Phase 3 of the SWDCAI”) 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 May 15, 2023, 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 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:

That portion of the roadway commonly referred to as 166th Avenue Southeast presently located upon Sections 9 and 10 of Township 139 North, Range 50 West,

Cass County, North Dakota, LESS the northerly 2150.24' AND ALSO LESS the southerly 2650.20' thereof.

and

That portion of the roadway commonly referred to as 38th Street Southeast presently located upon Sections 10 and 15 of Township 139 North, Range 50 West, Cass County, North Dakota, LESS the westerly 1944.20' thereof.

and

That portion of the roadway commonly referred to as 13th Avenue West presently located upon Sections 11 and 14 of Township 139 North, Range 50 West, Cass County, North Dakota, LESS the easterly 4307.37' thereof.

and

That portion of the roadway commonly referred to as 26th Street West presently located upon Sections 13 and 14 of Township 139 North, Range 50 West, Cass County, North Dakota, LESS the northerly 3133.75' AND ALSO LESS the southerly 62.99' thereof.

and

That portion of the roadway commonly referred to as 21st Avenue West presently located upon Sections 13 and 24 of Township 139 North, Range 50 West, Cass County, North Dakota LESS the easterly 2651.80' AND ALSO LESS the westerly 79.10' thereof.

and

That portion of the roadway commonly referred to as 64th Avenue West presently located upon Sections 1 and 12 of Township 138 North, Range 50 West, Cass County, North Dakota LESS the westerly 2926.60' AND ALSO LESS the easterly 474.95' thereof.

(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 and the underlying section lines with Phase 3 of the SWDCAI 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 Cass County. 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 \_\_\_\_\_, 2023.

**CASS COUNTY, NORTH DAKOTA**

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

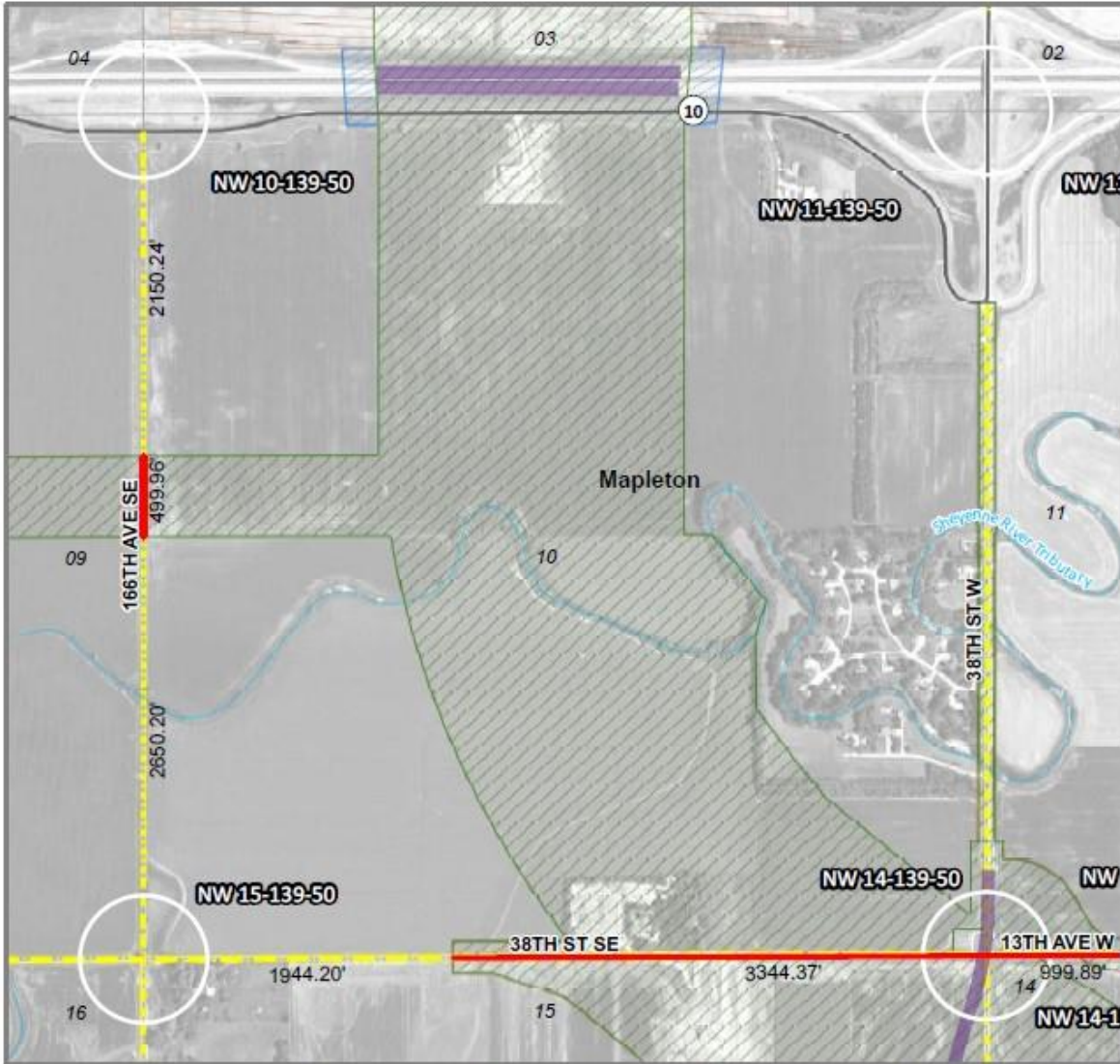
**ATTEST**

\_\_\_\_\_  
Brandy Madrigga, County 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



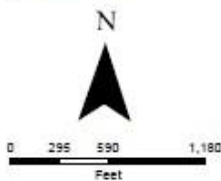
*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined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

Coordinate System: NAD 1983 DataPlane North Dakota South FIPS 3302 Feet | Produced by hrcorcora - AE2S, Inc. | C:\Data\Projects\GIS\Project\FM Area Diversion\GIS Landa Program\Property Acquisition\Project Wide\Overall LA Map\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		State or US Highway
	MOU		

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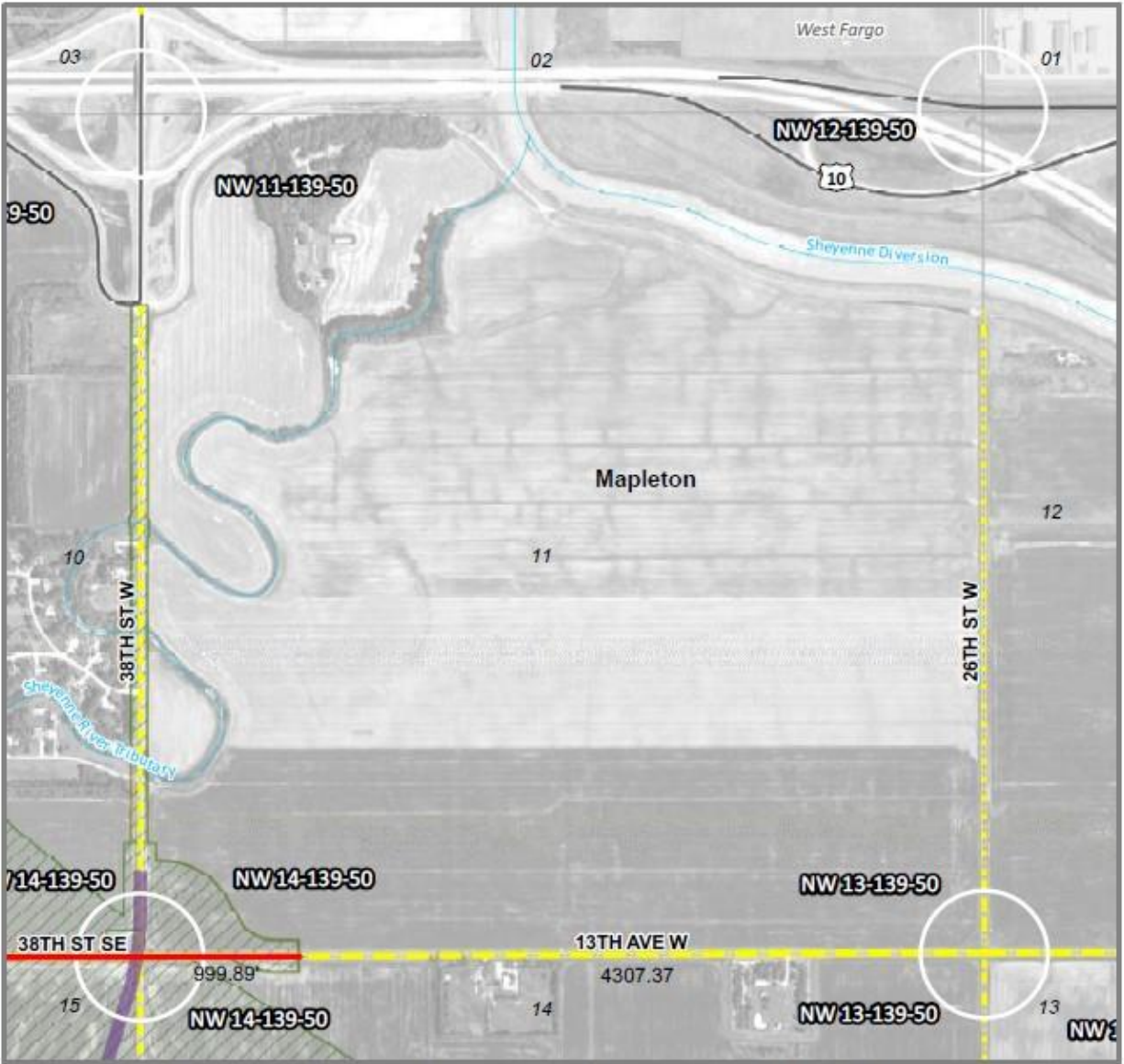
Vacated portions will be defined by plat.  
Dimensions are GIS measurements.



### Mapleton Township

FM Area Diversion  
Map Date: 3/9/2023





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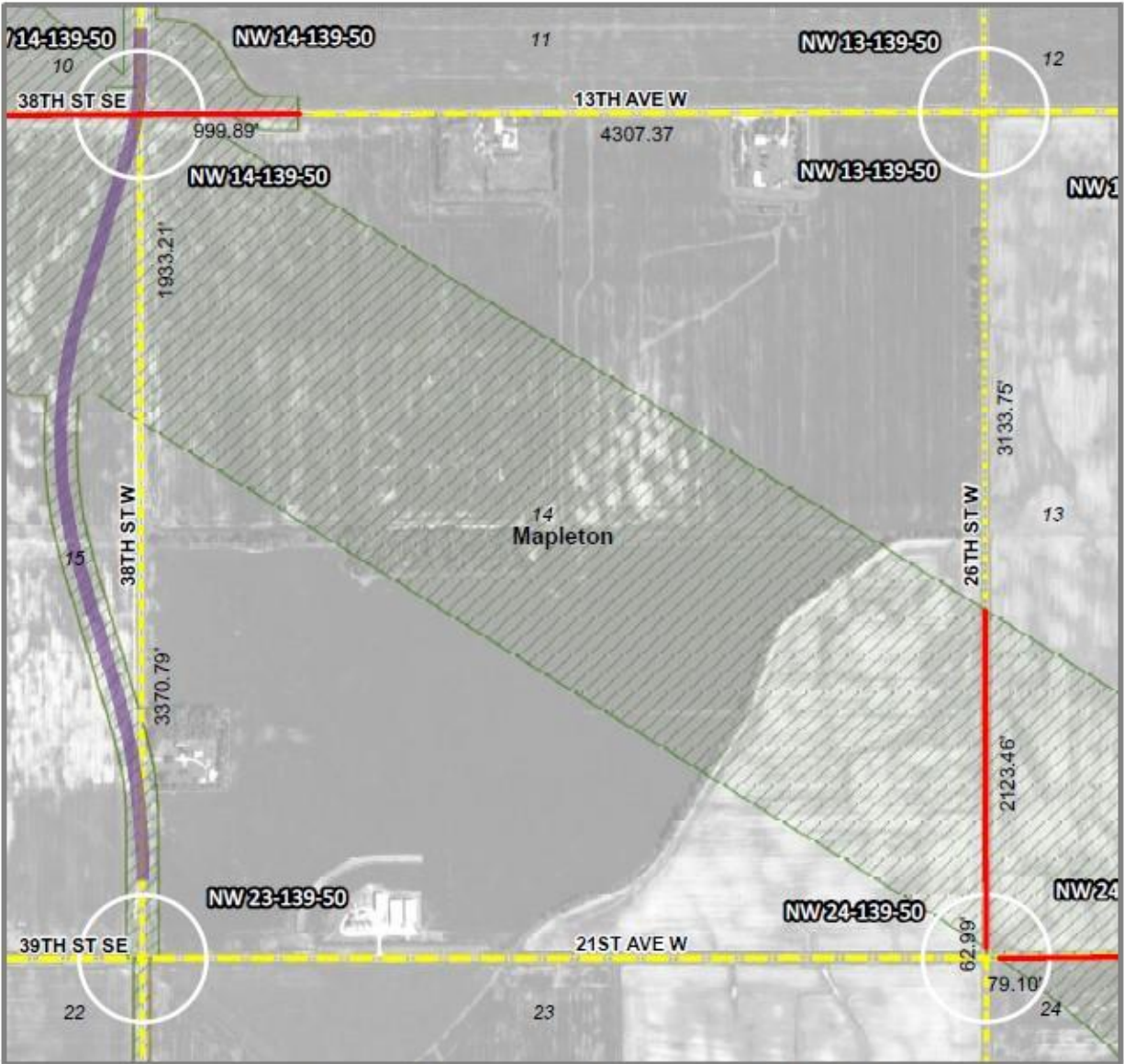
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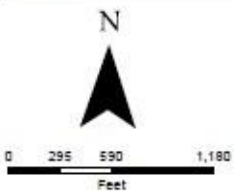


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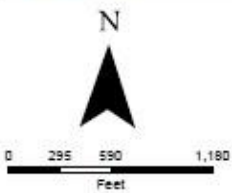


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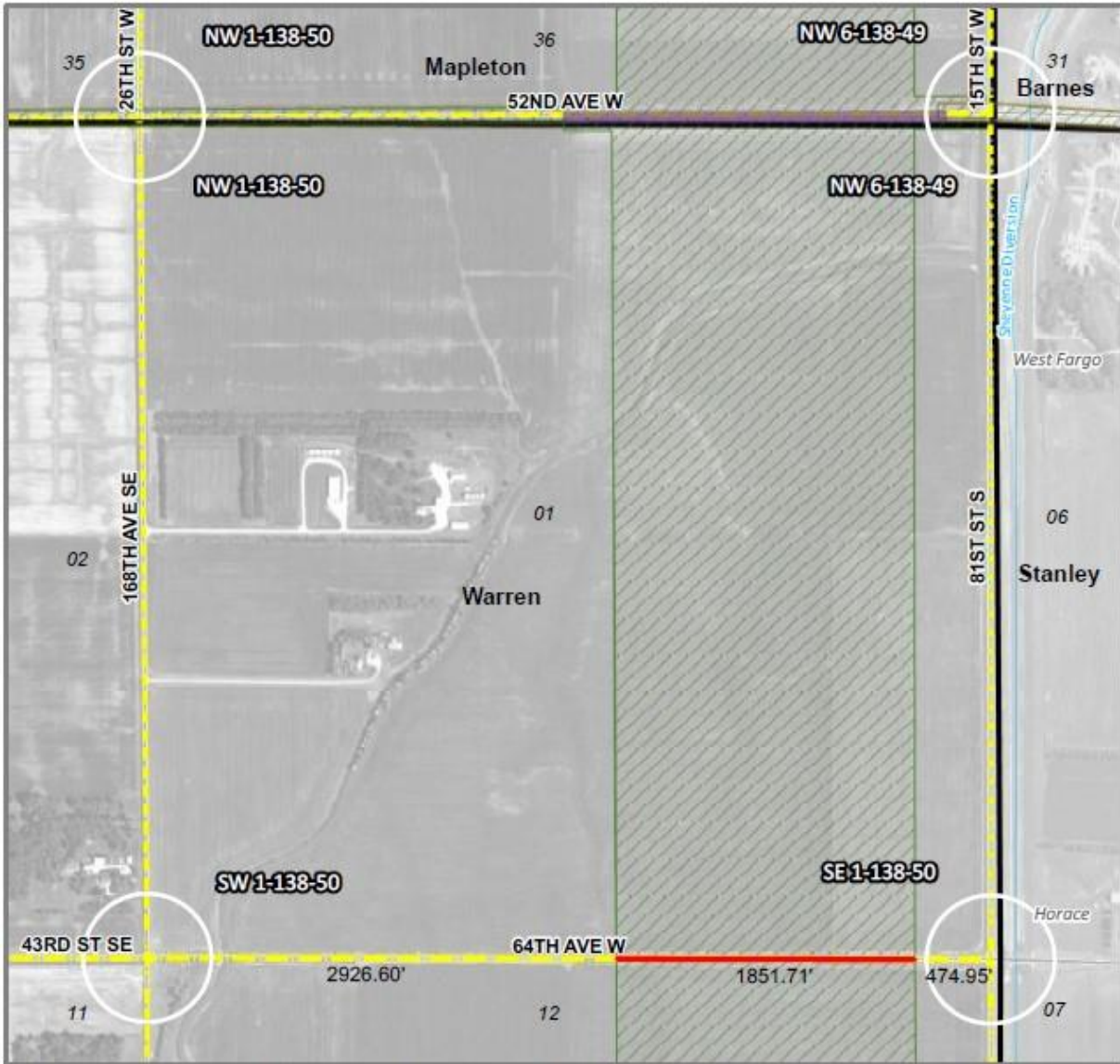
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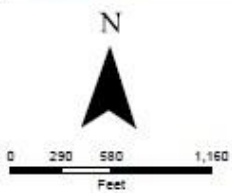


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### Warren Township

FM Area Diversion  
Map Date: 3/9/2023

