



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 19, 2023

SUBJECT: Agenda topic for June 5th, 2023 Commission Meeting: Hold a public hearing on June 5th, 2023 for a resolution to grant permission to permanently obstruct the underlying section lines of portions of County Road 40/37th Street Southeast and County Road 8/40th Avenue West that will be impacted by Phase 3 of the FM Diversion SWDCAI.

On May 1st, the Cass County Commission approved a motion that the Cass County Board of Commissioners set a public hearing for June 5th, during the regular meeting of the Cass County Commission for a resolution to grant written permission to permanently obstruct the underlying section lines of portions of County Road 40/37th Street Southeast and County Road 8/40th 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 CCJWRD to prepare to close County Road 40/37th Street Southeast and County Road 8/40th 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 closure of these roads would take place in phases as the FM Diversion SWDCAI will continue construction this spring. All properties along County Road 40/37th Street Southeast and County Road 8/40th 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.

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 closures. Following the public hearing, the Commission is asked to adopt a resolution granting written permission to permanently obstruct the underlying section lines (see attached resolution).

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

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



SUGGESTED MOTION: Move that the Cass County Board of Commissioners adopts Resolution #2023-07 to grant written permission to permanently obstruct the portions of County Road 40/37th Street Southeast and County Road 8/40th Avenue West.

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[https://casscounty-my.sharepoint.com/personal/stanmessin_casscountynd_gov/Documents/Desktop/ROAD CLOSURE PROJECT DOCUMENTS CHANNEL CLOSURE SOUTH OF 194 COUNTY ROAD 40 AND COUNTY ROAD 8/Agenda Memo Cass Public Hearing for Diversion Road Closure 06-05-23.docx](https://casscounty-my.sharepoint.com/personal/stanmessin_casscountynd_gov/Documents/Desktop/ROAD%20CLOSURE%20PROJECT%20DOCUMENTS/CHANNEL%20CLOSURE%20SOUTH%20OF%20194%20COUNTY%20ROAD%2040%20AND%20COUNTY%20ROAD%208/Agenda%20Memo%20Cass%20Public%20Hearing%20for%20Diversion%20Road%20Closure%2006-05-23.docx)

RESOLUTION #2023-07

Commissioner _____ introduced the following resolution and moved its adoption:

**RESOLUTION GRANTING WRITTEN PERMISSION TO
PERMANENTLY OBSTRUCT ROAD RIGHTS-OF-WAY AND
THE UNDERLYING SECTION LINES
(SWDCAI – County Roads)**

WHEREAS, on or about May 1, 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 identified on Exhibit A and the underlying section lines with the stormwater diversion channel and associated infrastructure (the “SWDCAI”) of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project; and

WHEREAS, in conjunction with its above-described request, 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 request, the Cass County Commission scheduled a public hearing to consider the request 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 CCJWRD’s request on June 5, 2023, at 3:30 p.m.; and

WHEREAS, the Cass County Commission now desires 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. Permanent Obstruction. Pursuant to N.D.C.C. § 24-06-28(1), Cass County hereby grants CCJWRD’s request to permanently obstruct the following rights-of-way as shown on Exhibit A and their underlying section lines with the SWDCAI of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project:

That portion of the roadway commonly referred to as County Road 8 presently located upon Sections 25 and 36 of Township 139 North, Range 50 West, Cass County, North Dakota, LESS the westerly 2969.17’ AND ALSO LESS the easterly 474.95’ thereof.

and

That portion of the roadway commonly referred to as County Road 40 presently located upon Sections 3 and 10 of Township 139 North, Range 50 West, Cass County, North Dakota, LESS the westerly 1475’ AND ALSO LESS the easterly 1891’ thereof.

(the “ROW”).

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

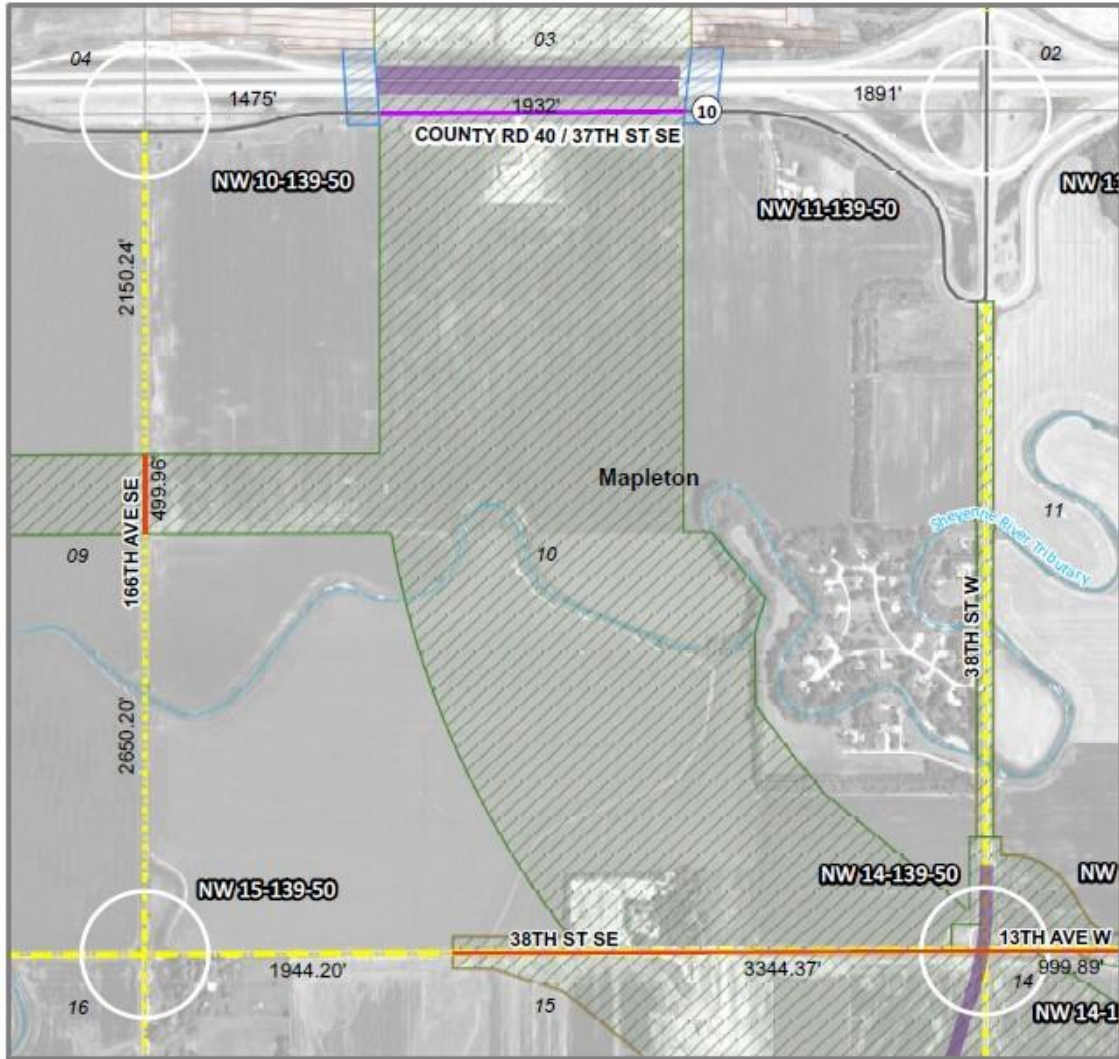
The motion for adoption of the foregoing resolution was duly seconded by Commissioner _____, and upon roll call vote, the following voted in favor thereof: _____.

The following were absent and not voting: _____.

The following voted against the same: _____. The majority having voted aye, the resolution was duly passed and adopted.

EXHIBIT A

MAP OF ROAD RIGHTS-OF-WAY



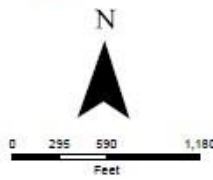
Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined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

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: freemove - AE2S, Inc. | C:\Data\Projects\GIS\Projects\FM Area Diversion\GIS_Lands_Program\Property_Acquisition\Project_Wide\Overall_LA_Map\County_Road_Mapbook_MOU_Revision_April_2023.mxd

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

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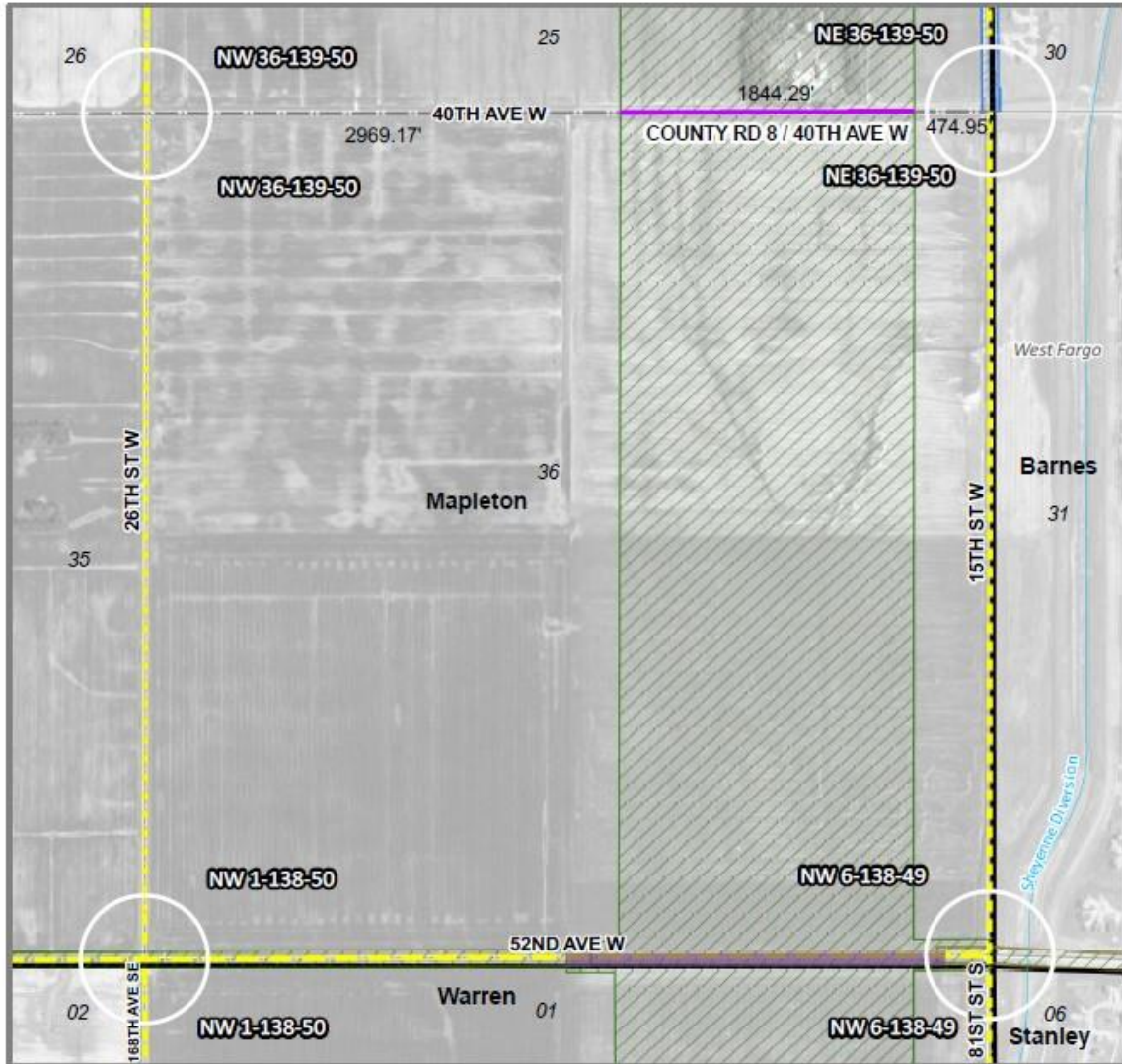
Vacated portions will be defined by plat.
Dimensions are GIS measurements.



Mapleton Township

FM Area Diversion
Map Date: 4/13/2023





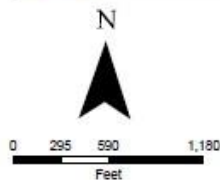
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	Temporary Construction		County Road
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Mapleton Township

FM Area Diversion
Map Date: 4/4/2023

