



Highway Department

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MEMORANDUM

TO: Cass County Commission

FROM: Tom Soucy, Cass County Engineer

DATE: May 09, 2024

SUBJECT: Agenda topic for May 20th, 2024 Commission Meeting: Hold a public hearing on May 20th, 2024 for a resolution to grant permission to permanently obstruct the underlying section lines of portions of 45th Street Southeast, 81st Street South, 112th Avenue South that will be impacted by Phase 4 of the FM Diversion SWDCAI.

On April 15th, the Cass County Commission approved a motion that the Cass County Board of Commissioners set a public hearing for May 20th, 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 45th Street Southeast, 81st Street South, 112th Avenue South.

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, FMDA, and the City of Horace to prepare to close 45th Street Southeast, 81st Street South, 112th Avenue South (see map in the attached Cass County Resolution). These closures are required for the construction of Phase 4 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 45th Street Southeast, 81st Street South, 112th Avenue South 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).

SUGGESTED MOTION: Move that the Cass County Board of Commissioners adopts Resolution #2024-06 to grant written permission to permanently obstruct the portions of 45th Street Southeast, 81st Street South, 112th Avenue South

RESOLUTION 2024-06

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 4)**

WHEREAS, on or about April 15, 2024, 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 15, 2024, 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 fourth phase of the stormwater diversion channel and associated infrastructure (“Phase 4 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, on or about April 15, 2024, the Cass County Commission additionally received a request from the City of Horace (the “City”) to take over and designate the road rights-of-way identified on Exhibit A that are under the jurisdiction of the City as part of the Cass County highway system; 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, the City’s, and CCJWRD’s requests on May 20, 2024, at 3:30 p.m.; and

WHEREAS, the Cass County Commission now desires to grant the Authority’s and the City’s requests 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 45th Street Southeast presently located upon Sections 13 and 24 of Township 138 North, Range 50 West, Cass County, North Dakota, LESS the westerly 1850.36' AND ALSO LESS the easterly 1280.08' thereof.

and

That portion of the roadway commonly referred to as 81st Street South presently located upon Section 25 of Township 138 North, Range 50 West, Cass County, North Dakota, and Section 30 of Township 138 North, Range 49 West, Cass County, North Dakota LESS the northerly 2646.17' thereof.

and

That portion of the roadway commonly referred to as 112th Avenue South presently located upon Sections 30 and 31 of Township 138 North, Range 49 West, Cass County, North Dakota, LESS the easterly 3022.81' 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 4 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 _____, 2024.

CASS COUNTY, NORTH DAKOTA

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

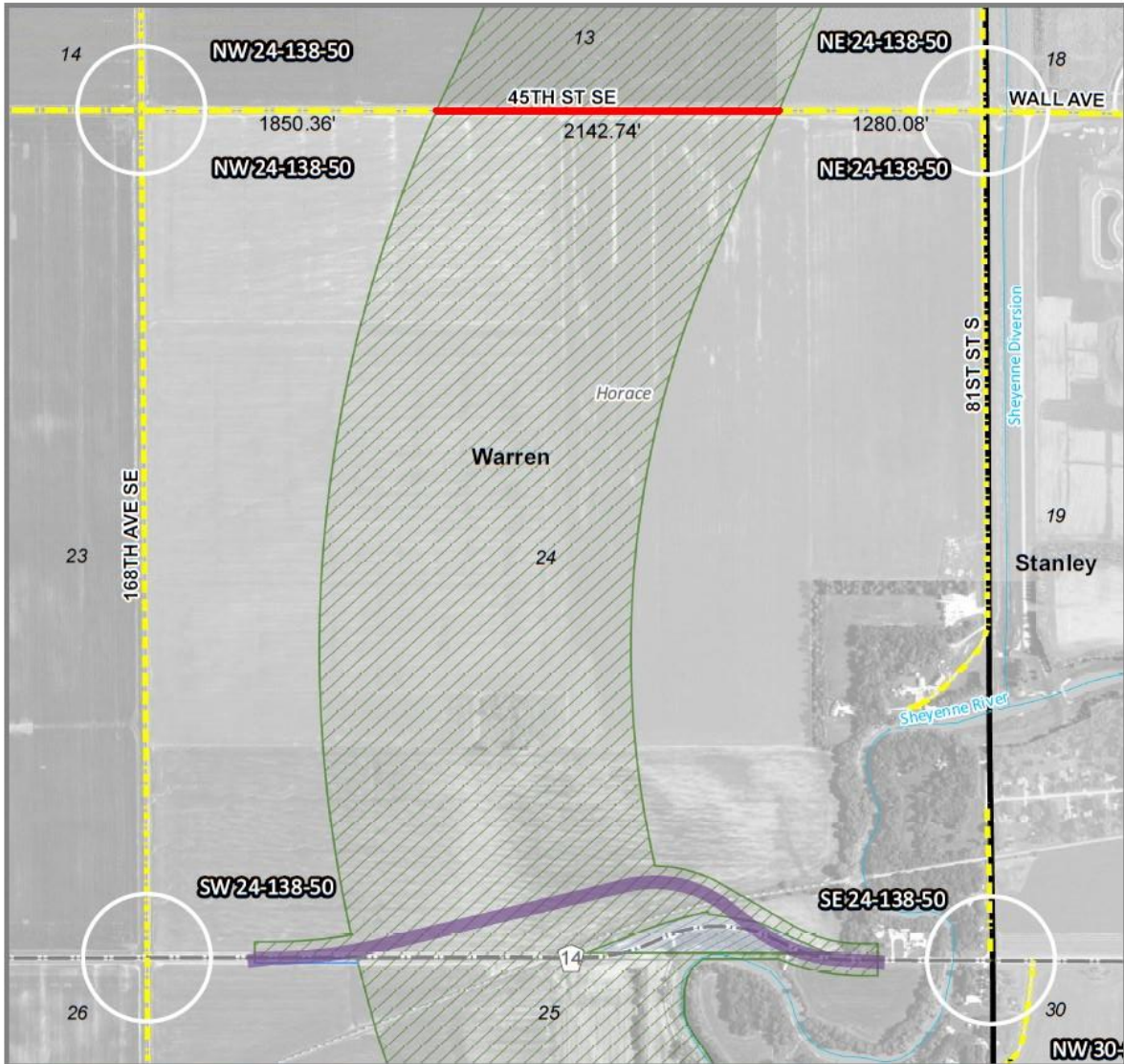
ATTEST

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

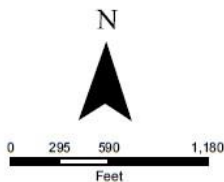


Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined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

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: hrcords - AE2S, Inc. | C:\Data\Projects\GIS\Projects\FM Area Diversion\02 Lands Program\Property Acquisition\Project Wide\Overlaid LA Maps\County Res Mapbook MOU Revisions Dec 2024.mxd

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

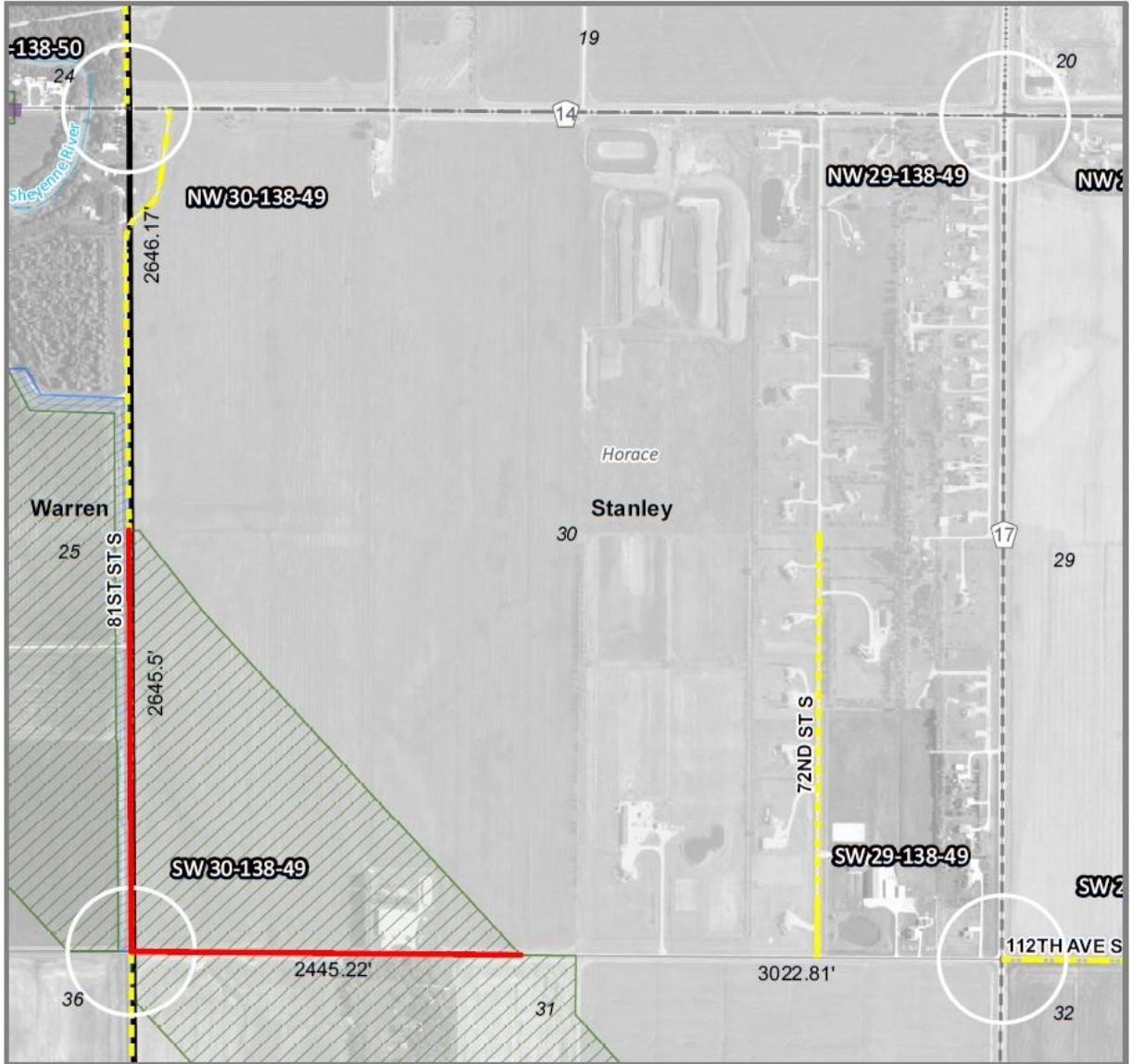
Vacated portions will be defined by plat. Dimensions are GIS measurements.



Warren Township

FM Area Diversion
Map Date: 2/12/2024





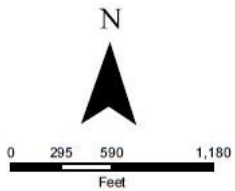
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	Channel/SE Crossings		Road Controlled by Cass County
	Township Boundary		Road Controlled by Township or City
	Project Limits		County Road
	Temporary Construction		State or US Highway
	MOU		

Page: 2

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



Stanley Township

FM Area Diversion
Map Date: 2/12/2024

