



Highway Department

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MEMORANDUM

TO: Cass County Commission

FROM: Tom Soucy, Deputy Cass County Engineer

DATE: December 6th, 2024

SUBJECT: Agenda topic for December 16th, 2024 Commission Meeting: Hold a public hearing on December 16th, 2024, 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 112th Ave S and 174th Ave SE.

On November 4th, the Cass County Commission approved a motion that the Cass County Board of Commissioners set a public hearing for December 16th 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 112th Ave S and 174th Ave SE.

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 112th Ave S and 174th Ave SE (see map in the attached Cass County Resolution). These closures are required for the construction of SE-2B and SE-3 of the Southern Embankment. The County will take control of 112th Ave S and 174th Ave SE immediately following the approval of the County Commission. The closure of this road would take place in sections as the Southern Embankment continues its construction this spring. All properties along 112th Ave S and 174th Ave SE 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 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 #2024-11 to take over road right of way and grant written permission to permanently obstruct the same of portions of 112th Ave S and 174th Ave SE.

RESOLUTION #2024-11

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
(SE-2B, SE-3)**

WHEREAS, on or about November 4, 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 November 4, 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 SE-2B and SE-3 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 December 16, 2024, 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 112th Avenue South presently located upon Sections 27 and 34 of Township 138 North, Range 49 West, Cass County, North Dakota, LESS the westerly 3793.00’ AND ALSO LESS the easterly 948’ thereof

and

That portion of the roadway commonly referred to as 174th Avenue Southeast presently located upon Sections 1 and 2 of Township 137 North, Range 49 West, Cass County, North Dakota, LESS the northerly 2121.00' AND ALSO LESS the southerly 1898.00' 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 SE-2B and SE-3 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: _____
Tony Grindberg, Chairman
Board of County Commissioners

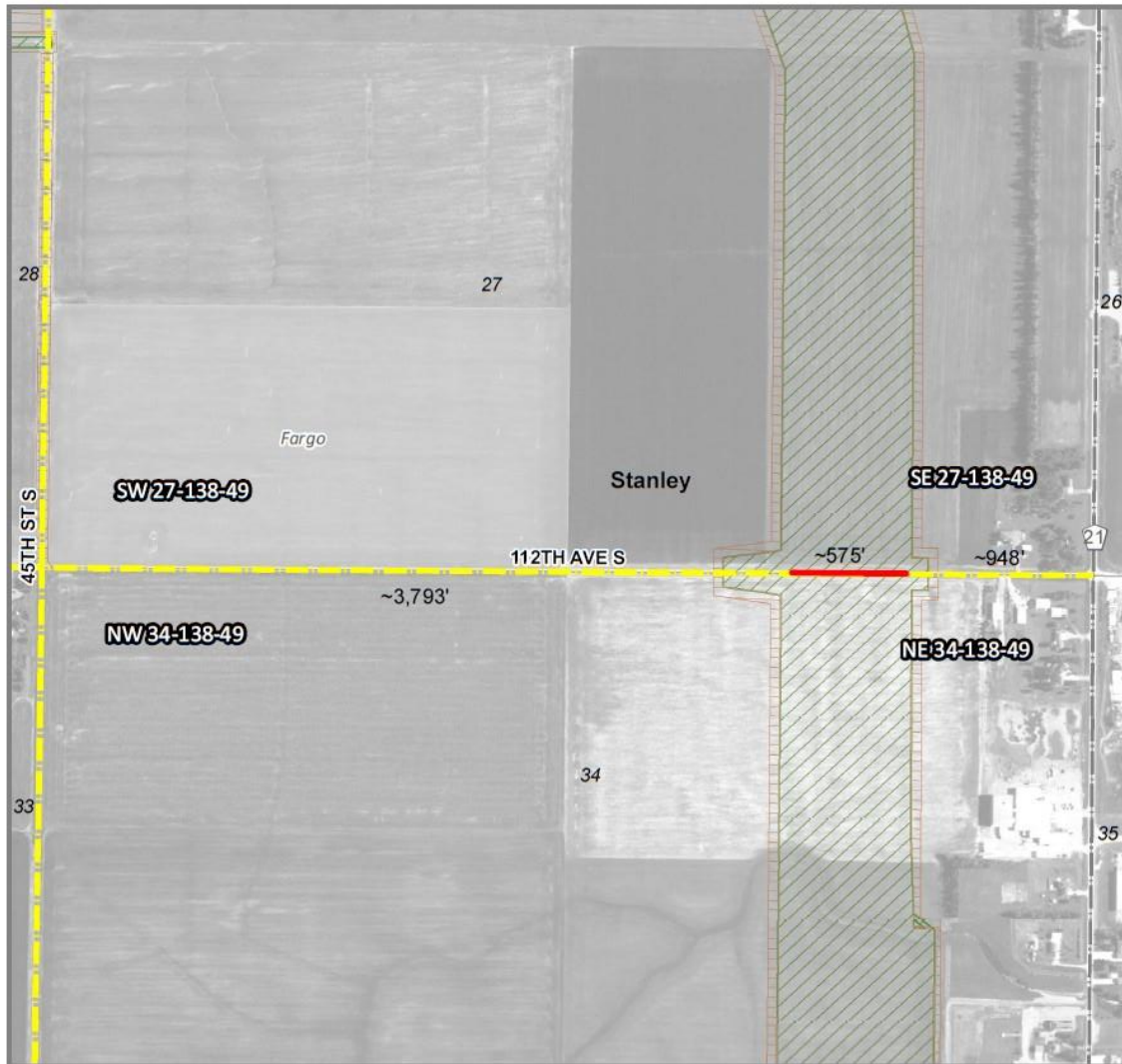
ATTEST

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

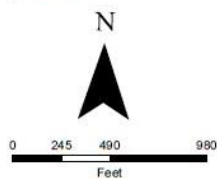


Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced By: hrecords - AE2S, LLC | C:\Data\Projects\GIS Projects\FM Area Diversion\012 Lands Program\Property Acquisition\Project Wide\Overall LA Maps\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		

Page: 1

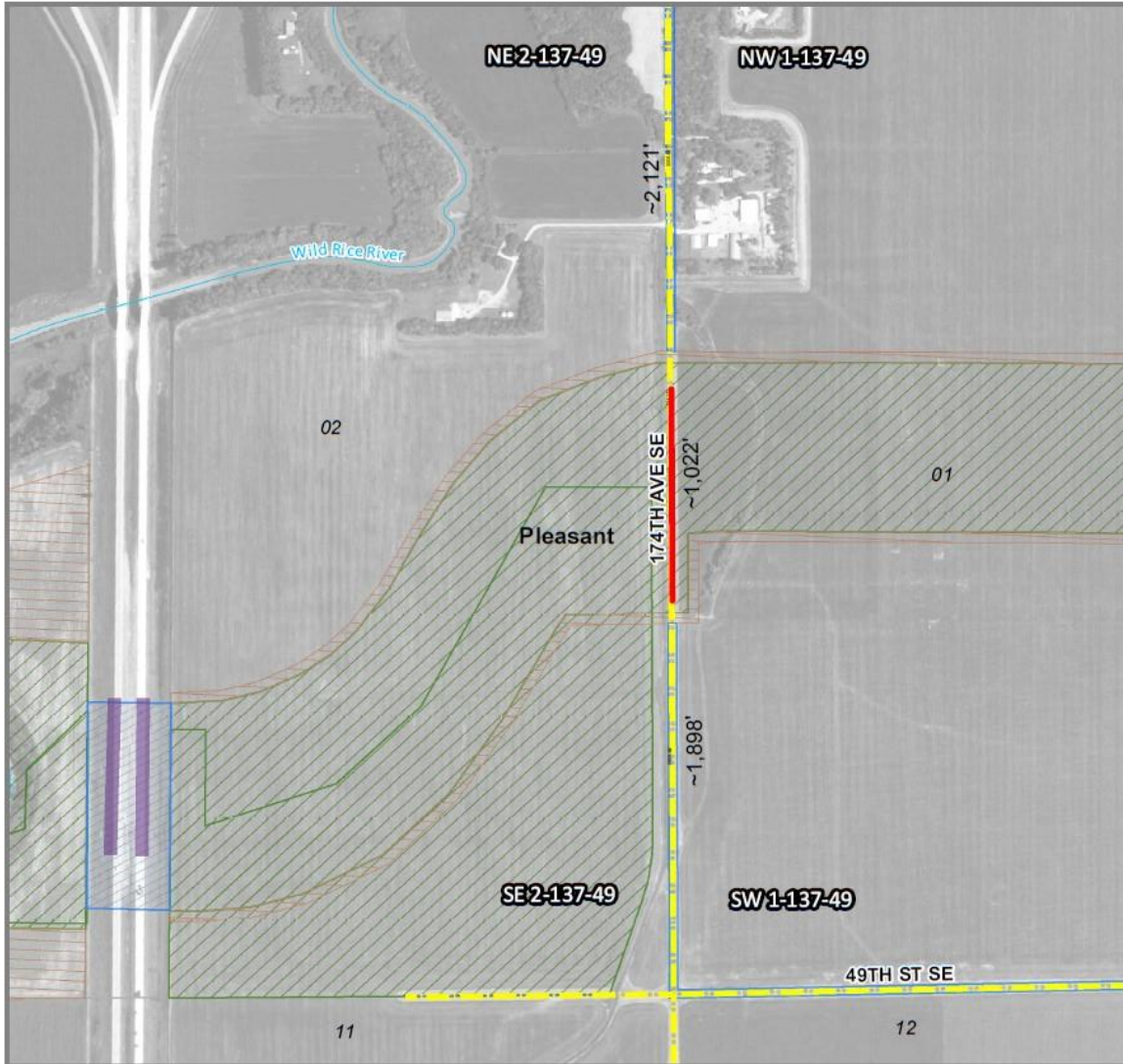
Vacated portions will be defined by plat.
Dimensions are GIS measurements.



Stanley Township

FM Area Diversion
Map Date: 8/2/2024



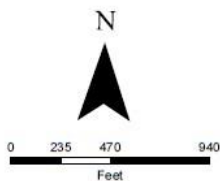


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	Channel/SE Crossings		Road Controlled by Cass County
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	Temporary Construction		State or US Highway
	MOU		

Page: 2

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Pleasant Township

FM Area Diversion
Map Date: 8/2/2024

