



Highway Department

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

MEMORANDUM

TO: Cass County Commission

FROM: Tom Soucy, Cass County Deputy Engineer

DATE: October 24, 2024

SUBJECT: Agenda topic for November 4th, 2024 Commission Meeting: Request a public hearing for December 16th, 2024 for a resolution to grant permission to permanently obstruct the underlying section lines of portions of 112th Ave South and 174th Ave Southeast that will be impacted by SE-2B and SE-3 of the Southern Embankment.

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 and FMDA to prepare to close portions of 112th Ave South and 174th Ave Southeast that will be impacted by SE-2B and SE-3 of the Southern Embankment. (see map in the attached CCJWRD and FMDA Resolutions).

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 December 16th, 2024 during the regular meeting of the Cass County Commission. Following the public hearing the Commission will be asked to approve a resolution granting written permission to permanently obstruct the underlying section lines (see attached sample resolution).

SUGGESTED MOTION: Move that the Cass County Board of Commissioners set a public hearing for December 16th, 2024 during the regular meeting of the Cass County Commission for a resolution to grant written permission to permanently obstruct 112th Ave South and 174th Ave Southeast.

Manager Steen introduced the following resolution and moved its adoption:

**RESOLUTION REQUESTING AUTHORIZATION
TO PERMANENTLY OBSTRUCT
RIGHT-OF-WAY AND SECTION LINE (SE-2B, SE-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 southern embankment and associated infrastructure (“SEAI”); and

WHEREAS, that portion of the SEAI that is approximately located between 57th Street South and 173rd Avenue Southeast is known as SE-2B; and

WHEREAS, the location of SE-2B is set forth on Exhibit A, and it intersects that portion of 112th Avenue South that is depicted in the color red on Exhibit A; and

WHEREAS, that portion of the SEAI that is approximately located between Interstate 29 and County Road 81 is known as SE-3; and

WHEREAS, the location of SE-3 is set forth on Exhibit B, and it intersects that portion of 174th Avenue Southeast that is depicted in the color red on Exhibit B; 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 112th Avenue South that will be impacted by SE-2B and the road right-of-way of 174th Avenue Southeast that will be impacted by SE-3 (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 SE-2B and SE-3.

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 Exhibits A and B for SE-2B and SE-3, with the

actual timing of obstruction dependent upon the commencement of construction of SE-2B and SE-3, respectively, 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.

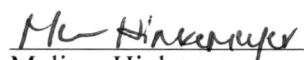
(Signatures appear on the following page.)

APPROVED:



Ken Loughheed, Chair

ATTEST:



Melissa Hinkemeyer
Secretary

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

Date Approved: September 26, 2024.

EXHIBIT A

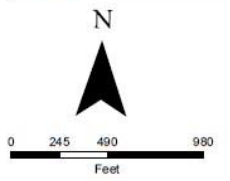
Reach SE-2B



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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		

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



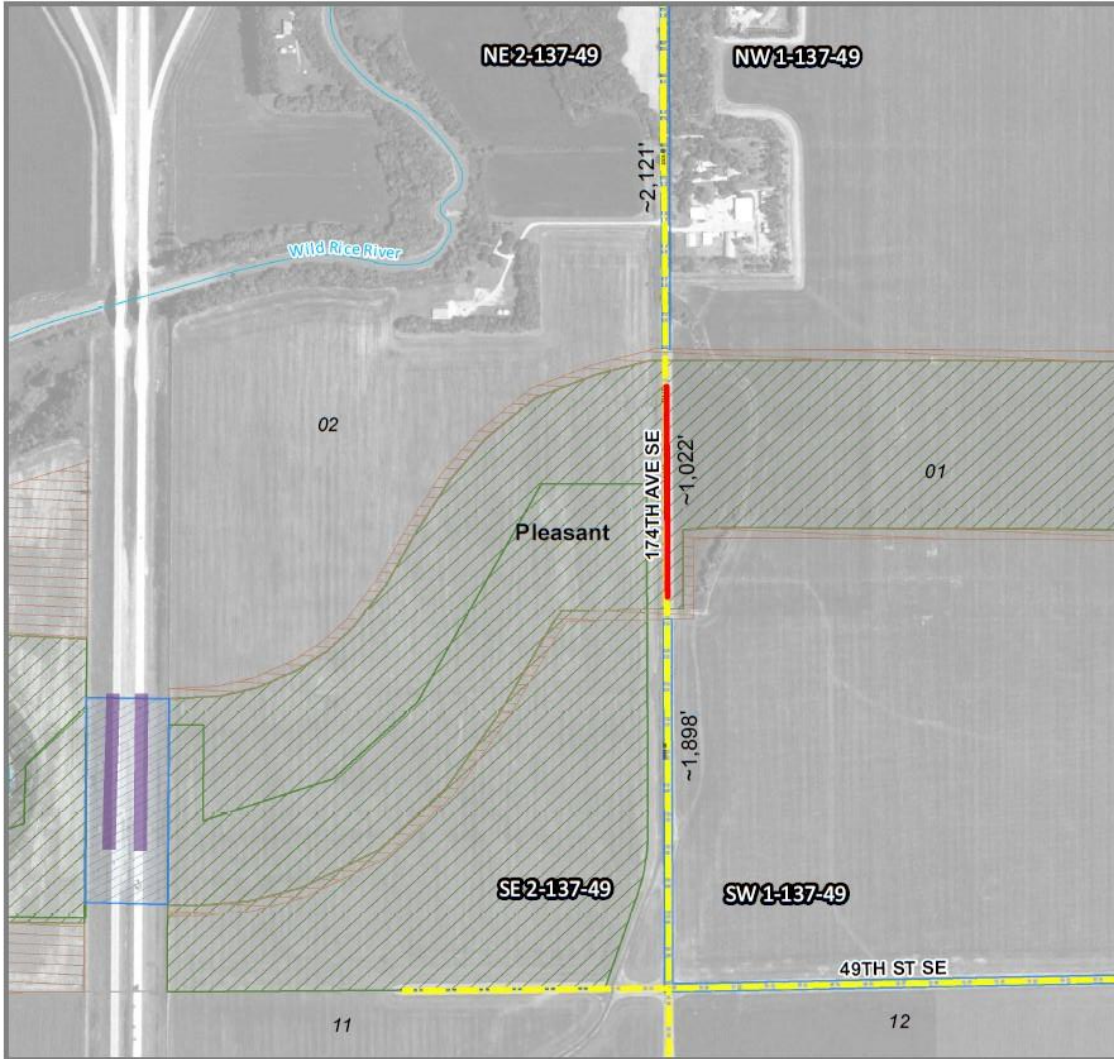
Stanley Township

FM Area Diversion
Map Date: 8/2/2024



EXHIBIT B

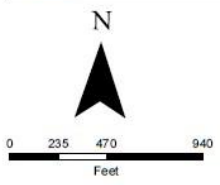
Reach SE-3



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Pleasant Township

FM Area Diversion
 Map Date: 8/2/2024



**RESOLUTION REQUESTING THAT CASS COUNTY
ACQUIRE ROAD RIGHTS-OF-WAY
(SE-2B, SE-3)**

of the

METRO FLOOD DIVERSION AUTHORITY

Approved on September 26, 2024

This resolution was drafted by:
Ohnstad Twichell, P.C.
P.O. Box 458
West Fargo, North Dakota 58078

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Member Mahoney introduced the following resolution and moved for its adoption:

**RESOLUTION REQUESTING THAT CASS COUNTY
ACQUIRE ROAD RIGHTS-OF-WAY
(SE-2B, SE-3)**

WHEREAS, the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District (the “Member Entities”) entered into a Joint Powers Agreement (“JPA”), dated June 1, 2016, creating the Metro Flood Diversion Authority (the “Authority”); and

WHEREAS, section 4.04 of the JPA provides that the North Dakota Member Entities will be responsible for certain elements of the Comprehensive Project, including:

- (a) An approximately thirty (30) mile, 20,000 cubic feet per second (cfs) storm water diversion channel and associated features (“SWDCAI”);
- (b) The channel outlet;
- (c) The Rush and Lower Rush River hydraulic structures;
- (d) The Maple River aqueduct;
- (e) The Sheyenne River aqueduct;
- (f) The tie-in to USACE’s diversion inlet structure project;
- (g) Railroad bridges;
- (h) In-town levees located in the City of Fargo;
- (i) Road raises within the protected area, outside of any city limits;
- (j) The Oxbow-Hickson-Bakke levee;
- (k) Recreation features located in North Dakota;
- (l) Environmental mitigation features and associated structures for the SWDCAI located in North Dakota specifically within the channel mitigation features; and
- (m) Lands, easements, and rights-of-way; and

WHEREAS, Article 12 of the JPA provides the Authority with the authorization to request that a Member Entity undertake certain elements of the Comprehensive Project; and

WHEREAS, on April 22, 2021, the Authority, Cass County, and the Cass County Joint Water Resource District (“CCJWRD”) entered into a Memorandum of Understanding (the “ROW MOU”), which outlined the roles and responsibilities of the Authority, Cass County, and CCJWRD regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Project; and

WHEREAS, pursuant to the JPA and the ROW MOU, the Authority now desires to request that Cass County, as a North Dakota Member Entity, acquire certain rights-of-way that will be impacted by the construction of SE-2B and SE-3.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Metro Flood Diversion Authority:

Section 1. Definitions.

All capitalized terms used and not otherwise defined herein shall have the meanings given them in this resolution and as defined in this Section unless a different meaning clearly applies from the context.

“Authority” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota.

“Cass County” means Cass County, a political subdivision of the State of North Dakota.

“CCJWRD” means the Cass County Joint Water Resource District, a political subdivision of the State of North Dakota.

“Comprehensive Project” means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief’s Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

“JPA” means the Joint Powers Agreement, dated June 1, 2016, by and between the Member Entities.

“Member Entity” means the City of Moorhead, the City of Fargo, Cass County, Clay County, or CCJWRD.

“North Dakota Member Entity” means the City of Fargo, Cass County, or CCJWRD.

“ROW” means the road rights-of-way designated on Exhibit A as “Road Controlled by Cass County” on 112th Avenue South where 112th Avenue South intersects SE-2B and on 174th Avenue Southeast where 174th Avenue Southeast intersects SE-3.

“ROW MOU” means the Memorandum of Understanding, attached hereto as Exhibit B, by and between the Authority, Cass County, and CCJWRD, dated April 22, 2021, outlining the roles and responsibilities of the parties regarding road rights-of-way acquired in North Dakota as part of land acquisition for the Comprehensive Project.

“SE-2B” means that portion of the SEAI between approximately 57th Street South and 173rd Avenue Southeast.

“SE-3” means that portion of the SEAI between approximately Interstate 29 and County Road 81.

“SEAI” means the Southern Embankment and Associated Infrastructure, including the diversion inlet structure, the connection channel, Red River structure, the Wild Rice structure, and the southern embankment in its entirety, to be constructed as part of the Comprehensive Project.

“SWDCAI” shall have the same meaning as how it is defined in the recitals in this resolution.

Section 2. ROW Acquisition.

(a) The Authority hereby formally requests that Cass County acquire the ROW through the process set forth in the ROW MOU for SE-2B and SE-3.

(b) Following the Effective Date, the Authority will notify all landowners, by certified mail, within a minimum distance of one thousand (1,000) feet of the ROW of its request to Cass County.

Section 3. Permanent Obstruction Authorization.

In conjunction with the Authority’s request to Cass County, pursuant to the terms of the ROW MOU, CCJWRD will file a request with Cass County to permanently obstruct the ROW with SE-2B and SE-3. CCJWRD will also notify all landowners within a minimum distance of one thousand (1,000) feet of the ROW of its request to Cass County.

Section 4. Reimbursement.

The Authority will reimburse Cass County for any reasonable costs or expenses related to acquisition of the ROW following the submission of a payment request from Cass County.

Section 5. Joint Powers Agreement and ROW MOU.

Nothing herein is intended to conflict with the terms and conditions of the JPA or the ROW MOU; rather, this resolution is intended to supplement the JPA and ROW MOU. In the event there is a

conflict between this resolution, the JPA, and/or the ROW MOU, the JPA takes precedence over this resolution and the ROW MOU and the ROW MOU takes precedence over this resolution.

Section 6. 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 7. Effective Date.

This resolution will take effect immediately upon adoption.

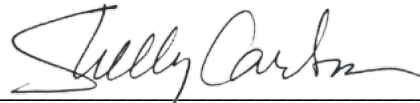
Section 8. Electronic Signatures.

Electronic signatures to this resolution shall be valid as original signatures and shall be valid to bind the Authority. 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.

Dated: _____, 2024.

METRO FLOOD DIVERSION AUTHORITY

APPROVED:



Michelle (Shelly) A. Carlson, Chair

ATTEST:

Dawn Lindblom
Dawn Lindblom, Secretary

The motion for adoption of the foregoing resolution was duly seconded by Member Ebinger and upon roll call vote, the following Members voted in favor thereof: Carlson, Dardis, Mahoney, Peterson, Hendrickson, Piepkorn, Kolpack, Campbell, Scherling, Grindberg, Steen and Seljevold. The following were absent and not voting: none. The following voted against the same: none. A majority of the Members having voted aye, the resolution was declared duly passed and adopted.

EXHIBIT A

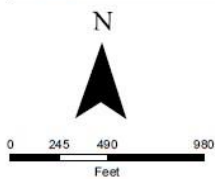
ROAD RIGHTS-OF-WAY



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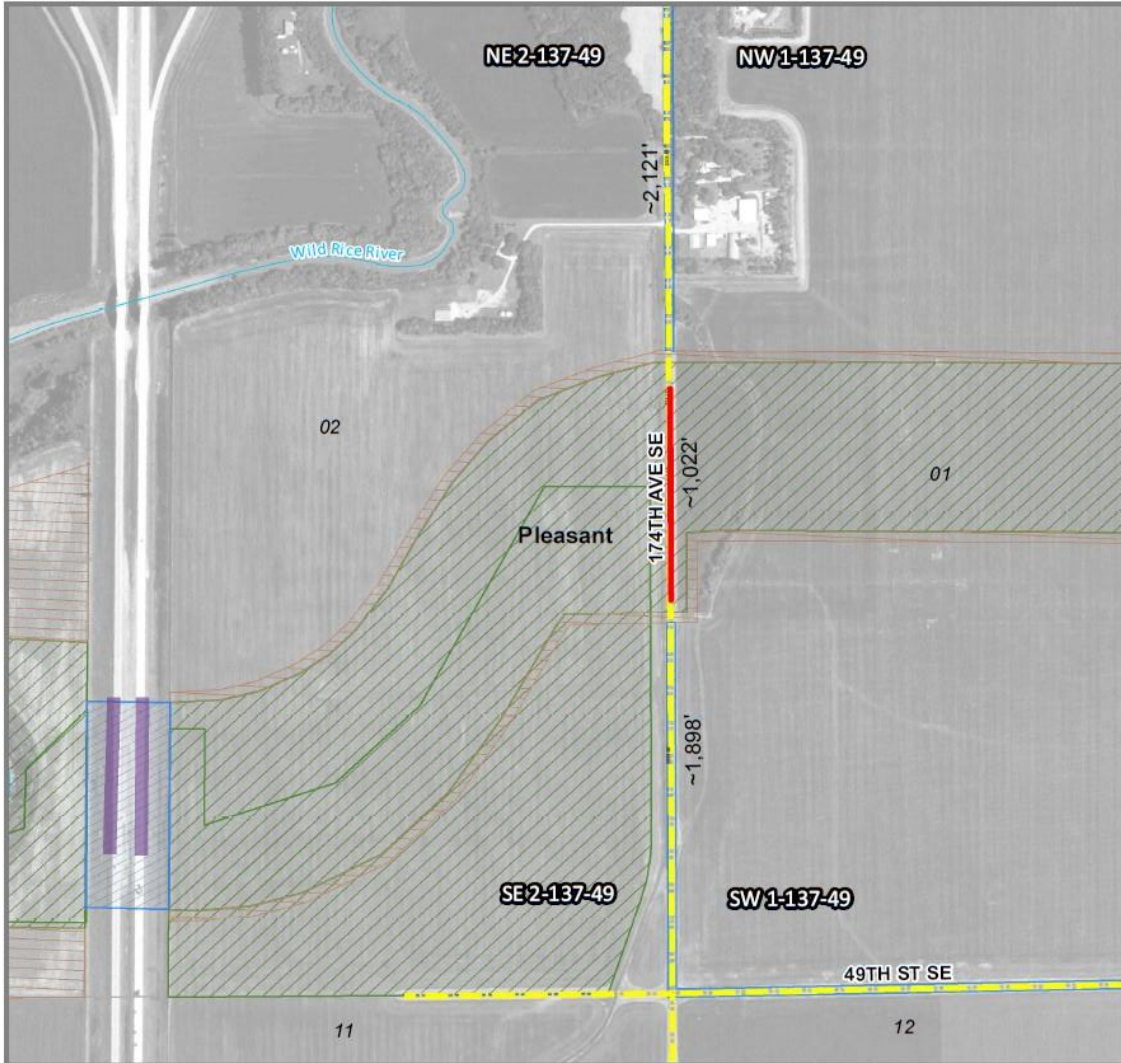
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Stanley Township

FM Area Diversion
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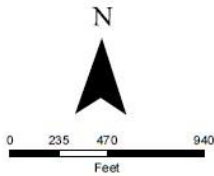




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Pleasant Township

FM Area Diversion
 Map Date: 8/2/2024



EXHIBIT B

ROW MOU

(Please see the following twenty-nine (29) pages.)



Highway Department

work: 701-298-2370

fax: 701-298-2395

November 4th, 2024

Dear Property Owner:

Notice is hereby given that the Cass County Commission will conduct a Public Hearing to consider approval or denial of a request from the Metro Flood Diversion Authority to designate the road rights-of-way identified on the attached map (the "ROW") as part of the County highway system.

Additionally, notice is hereby given that the Cass County Commission will conduct a Public Hearing to consider approval or denial of a request from the Cass County Joint Water Resource District to permanently obstruct the ROW and the underlying section lines within the **Southern Embankment** of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project.

As part of the request procedure, the County is notifying adjacent property owners within 1,000 feet of the ROW. If you have any comments, please submit them or attend the Commission meeting on **December 16th, 2024, at 3:30 P.M. at Cass County Courthouse**. This will be a in person as well as virtual meeting, and there will be both online and phone access.

For questions, please contact me at 701-298-2375 or hansenc@casscountynd.gov.

Sincerely,

Cole Hansen
Cass County Planner