

CASS COUNTY PLANNING COMMISSION AGENDA FOR JUNE 28, 2012

Cass County Highway Department Conference Room
7:00 AM
1201 Main Avenue West, West Fargo, ND 58078

1. Call to Order
Establish Quorum of Members
Approve January 26, 2012 Minutes
2. Cass County Comprehensive Highway Plan – 2013-2017
[Information/Action]
3. Question on legal authority to enforce density restrictions posed at January 26, 2012 Meeting
[Information]
4. Correspondence
5. Other Business and Citizen Comment
6. Adjournment

Additional copies of the agenda and Planning Commission materials are available at: <http://www.casscountynd.gov/county/Boards/PlanningCommission/>

Planning Commissioners:
Please call Highway Department Secretary
at 298-2370 if you are unable to attend.

Persons with Disabilities needing accommodations should call 298-2370 prior to the meeting.

**CASS COUNTY PLANNING COMMISSION
JANUARY 26, 2012**

1. MEETING TO ORDER

The meeting was called to order on January 26, 2012, at 7:00 AM in the Highway Department Conference Room with members present as follows: Ken Lougheed, Keith Monson, Todd Ellig, Mark Johnson, Chad Peterson, Lou Bennett, and Mark Williams. Vern Bennett and Brad Wimmer were absent. Also present was County Planner Tim Solberg.

2. MINUTES APPROVED

MOTION, passed

Mr. Lou Bennett moved and Mr. Johnson seconded that minutes from the December 15, 2011 meeting be approved as written. Motion carried unanimously.

3. Cass County Subdivision Ordinance #2006-1, Initiated revisions to Section 602.23 Underground Utility Lines and Section 308 Development Rights

Mr. Solberg indicated that there were some requested revisions after the first reading by the Cass County Commission. He provided everyone with a copy. The highlighted text indicates the revisions.

Regarding Section 602.23, Mr. Solberg stated that the way the ordinance stands, it would require any power lines in a new subdivision, as well as any lines leading to that new subdivision to be buried. This would be a tremendous cost as this would mean burying existing lines that run from the new subdivision back to the substation. Brad Schmidt with Cass County Electric spoke regarding the proposed changes to the ordinance. The change simply allows the substation development to be exempt from having to bury those lines. Mr. Ellig questioned which line is more expensive to maintain after installation, buried or overhead lines. Mr. Schmidt stated that it really depends upon the situation. Buried lines make it difficult to pinpoint the problem area as you cannot see where in the line the problem is. Overhead lines are susceptible to ice, wind, debris, etc. Underground lines pose a risk with lightning. From a safety and aesthetics standpoint, underground lines are the way to go.

Regarding Section 308, the terminology was changed to “legal lot” and a definition for that term was added. With regards to this ordinance in general, Mr. Ellig is concerned that townships are continuing to issue building permits for 10 acre lots, which is in conflict with the county’s ordinance requiring a 40 acre subdivision. Mr. Solberg realizes that this is a continuing problem but there is no real good solution either. State law gives certain powers to the township as it relates to zoning. Mr. Solberg states that the goal is to continue to try and work closely with the townships so that they can be involved as much as possible in the planning. Mr. Ellig feels that if we are going to pass an ordinance such as this we should be prepared to enforce the ordinance or it becomes ineffective. Townships are advised by their attorneys that the township has the authority to dictate lot size and

land use under their zoning authority. It seems a different interpretation of the law than what the board has received.

Mr. Peterson questioned the fees and what purpose they really serve as they are minimal. Mr. Solberg indicated that the fees are there to simply cover the costs associated, such as printing, postage, etc.

MOTION, passed.

Mr. Ellig moved and Mr. Monson seconded to move forward with the recommended changes as outlined by the County Planner in attachment to the Cass County Commission for formal adoption as a revision to Cass County Subdivision Ordinance #2006-1. Motion carried unanimously.

4. ADJOURNMENT

MOTION, passed

On motion by Mr. Peterson, seconded by Mr. Lou Bennett, and all voting in favor, the meeting was adjourned at 7:45 AM.

MEMORANDUM

TO: Cass County Planning Commission

FROM: Tim Solberg, County Planner

DATE: June 22, 2012

SUBJECT: 2013-2017 Comprehensive Highway Plan

The County Highway Department annually schedules next year's construction projects during the budget process. Although this process offers a great deal of flexibility in scheduling it can lead to some inefficiency in the planning process. In an effort to increase efficiency and maintain a high level of transparency, the County Engineer has directed the preparation of the Cass County Comprehensive Highway Plan.

The Plan acts as a document that more efficiently displays our data and serves as a 5 year Capital Improvement Plan (CIP). The plan is anticipated to be revisited annually. Included in the plan is a discussion of land use, highway safety, maintenance, and construction. A large amount of data is used for preparing the plan, but rather than displaying this data, maps are used to display what is most pertinent in an effort to make the plan more user-friendly and easier to update.

The Plan was presented in draft form to the Road Advisory Group Committee in March and is scheduled to be presented in final form to them again in July for adoption by the full County Commission thereafter. We have included a copy of the plan in your packet and will provide a short presentation by the County Engineer, followed by discussion at the June 28 meeting.

Recommended Motions:

Move to recommend approval of the 2013-2017 Comprehensive Highway Plan to the Cass County Board of Commissioners for formal adoption.

OR

Forward recommended changes to County Engineer and Road Advisory Group Committee for consideration prior to County Commission Action.

Cass County Comprehensive Highway Plan

2013-2017



Cass County Highway Department

Cass County, North Dakota

This document was prepared pursuant to NDCC 11-31-03.2 and is intended to be used for internal planning purposes. Data used herein is deemed to be accurate; however is not all-encompassing. Maps within are graphical displays of conditions at the time of preparation and are not to be used as a substitute for an accurate field survey.

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Plan Purpose

Cass County operates and maintains a highway system, which in conjunction with local, regional, and state systems, helps to serve the transportation needs of its residents and businesses. The Cass County Transportation Plan provides the framework for development of the long range highway and bridge planning guidance for 2013-2017. The Plan describes system principals and standards, evaluates the existing County transportation system, identifies future system needs, develops a maintenance plan, identifies funding sources, and outlines strategies to implement the Plan. This Plan provides the framework for decisions regarding the nature of roadway infrastructure improvements necessary to develop a safe and efficient roadway system.

Plan Updates and Proponent for Changes in this Plan

The Cass County Engineer is the chief proponent for updates to the Cass County Highway Transportation Plan. Working in conjunction with the Cass County Engineering Supervisor and County Planner, updates will be approved through the Road Advisory Committee and the Cass County Commission.

This five year plan will serve as a living document that will be updated annually to maintain a long range focus while allowing for flexibility due to flooding, changes in construction costs, and other considerations. This plan will be reviewed and updated in June of each year. The updated plan will then be forwarded to the Road Advisory Committee for approval during the July rotational meeting. This updated plan will then be sent to the County Commission for final approval. The updated plan will provide the future project costs and will serve as the basis for the Highway Department's annual highway and bridge budget line items.

Vision and Mission

Vision - To be recognized as a premiere county road program in the Northern Plains states.

Mission - To provide and maintain an efficient, safe, environmentally sensitive, and cost effective county road system that effectively meets the citizen's needs for personal mobility and the movement of freight consistent with the importance of the economy.

Summary

The 2013-2017 Cass County Highway Transportation Plan was prepared to assist staff and decision makers in planning for maintenance and capital improvements to the County Highway System. Funding for road improvements is very limited; therefore resources must be used carefully to ensure the highest return to taxpayers. The Cass County highway system consists of nearly 700 miles of roadway covering more than 1,700 square miles as well as responsibility of approximately 500 bridges of which 268 span a distance of 20 feet in length or greater.

Safe, efficient, and responsive transportation infrastructure is necessary to the incidents of commerce, public safety, recreation, and education. Two goals in the 2005 Cass County Comprehensive Plan describe Cass County's commitment to transportation:

2005 Cass County Comprehensive Plan Goal Two: *“To provide the citizens of Cass County with essential public facilities, services, and infrastructure.”*

2005 Cass County Comprehensive Plan Goal Three: *“To provide an efficient, safe, environmentally sensitive, and cost effective county transportation system to effectively meet citizen’s current and future needs for personal mobility and movement of goods.”*

This plan has been developed through compiling data from multiple sources including:

- State of North Dakota Department of Transportation (ND DOT)
- Fargo Moorhead Metropolitan Council of Governments (FM Metro COG)
- Braun Intertec Corporation (Braun)
- Cass County Highway Department
- Cass County Planning Department
- Cass County GIS Department
- Cass County Tax Equalization

The Highway Department is continuing to develop its inventory of data including an analysis of structures under 20 feet in length, inventory of signage on County Highways, geo-locating culverts and approaches on County Highways, inventory of ditch grades of all County Highways, and continued development of characteristics of each road segment. Collecting this data will further improve the County’s asset management program.

Further, the plan works in concert with various regional plans and corridor studies. Staff works closely with FM Metro COG, ND DOT, and other entities of the County in planning and programming new projects. The Metropolitan Long Range Transportation Plan guides development of the transportation system in the Fargo Moorhead Metropolitan Area, along with this larger plan FM Metro COG has completed a number of complimentary studies that offer guidance to programming.

The development of a Regionally Significant Transportation Infrastructure in the Traffic Operations Incident Management Strategy identifies the importance of moving traffic quickly in times of disaster. Some County Highways have been identified in this strategic plan and are noted as new projects are programmed. FM Metro COG through the Metro Bike/Ped Committee also creates a Bicycle and Pedestrian Master Plan every five years which helps to identify needs in the system for accommodating alternate modes of traffic. Along with these plans specific corridor studies assist most specifically for County highways in the Metro area in order to anticipate or respond to necessary improvements to the system.

Existing and Future Land Use

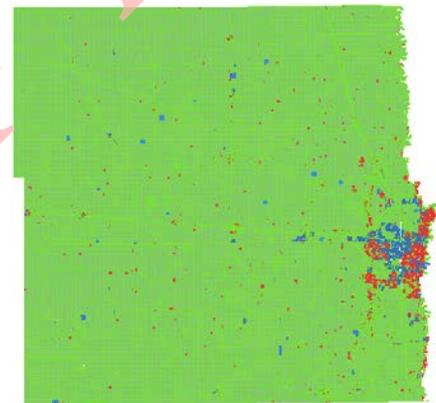
The Fargo Moorhead metropolitan area has seen tremendous growth in recent years. The economic prosperity of the metro has contributed to the growth in the surrounding communities along with the individual



successes of these communities of their own as well. The 1990 Census for Cass County was 102,874 growing to 123,138 in 2000, and grew at a 21.6% rate to 149,778 in 2010. In addition to utilizing Census data to project growth, Cass County participates with the Fargo Moorhead Metropolitan Council of Governments in researching demographic trends as part of its long range transportation planning and modeling. It is anticipated that by the year 2030 population in Cass County could grow to over 200,000. Table 1 illustrates population in the County's largest cities.

Table 1 - Population - US Census			
City	1990 Census	2000 Census	2010 Census
Fargo	75,111	90,559	105,549
West Fargo	12,287	14,940	25,830
Horace	662	915	2,430
Casselton	1,602	1,855	2,329
Mapleton	682	606	762
Harwood	590	607	718
Kindred	569	614	692

Despite the growth and importance of the metro area the County as a whole remains primarily agricultural. Ninety-seven percent of the approximately 1.13 million acres of land in Cass County are used for agricultural purposes. Map 1 illustrates this by showing agricultural land uses in green, commercial in blue, and residential in red. It becomes evident that the County's land use is predominately agricultural.



Map 1: Existing Land Use

Further, the County has committed to promote development only in areas that can adequately accommodate it. Goal One of the Cass County Comprehensive Plan: *“To achieve orderly,*

balanced, and sensible development” includes objectives that pursue that goal and prevent incompatible land uses thus preventing a need for large infrastructure improvements in areas that currently are rural in nature. Goal Five: *“To preserve and maintain Cass County’s rural heritage”* further emphasizes the desire of the County to continue its existing land use.

Highway Safety

Cass County and its agents have committed to maintaining the safest network of roads possible. The planning process takes into account road safety by implementing the most effective practices available. Commitment to educating the public, roadway safety improvements, sign maintenance and improved signing, routine road maintenance, and operational safety are all components of each project.



All new construction and maintenance overlays include the use of rumble strip installation to separate the roadway from the shoulder while leaving on-off gaps for bicycle safety. This method can help reduce accidents that occur from running off the road. Intersection improvements and safety enhancements also are implemented where collisions have historically happened or where it may be likely. Improvements such as flashing signals and stop signs, rumble strips, and improved signage have proven successful in past projects. Striping is performed annually on all paved County Highways.

Highway Access Ordinance #2007-1 was developed to reduce the amount of access to the County Highways for more efficient and safe operation. With design speeds on County Highways at 55 mph the reduction of access to one per ¼ mile a County Highway is able to operate with less interruption and more predictable intersections. In addition, the Ordinance regulates the design of the approach by increasing the slope of the approach to reduce severity in off road crashes.

Cass County uses crash data provided by ND DOT in planning and implementing safety enhancements. When significant crashes occur on Cass County Roads a general reconnaissance is performed by the County Engineer or Highway Superintendent to assess the road condition and variables that may be present.

Signs and Traffic Control Devices

Cass County utilizes the 2009 Edition of the Manual on Uniform Traffic Control Devices (MUTCD) from the US Department of Transportation, Federal Highway Administration. This MUTCD is the standard for traffic control devices and has been adopted by the NDDOT. Cass County maintains an inventory of their signs indicating condition and location in a geo-database.

Permitting

Related to safety and maintenance the County relies on various permitting procedures to uphold the mission of the Department. Ordinance #2005-2 regulates over dimension vehicles to ensure the safe practices and avoidance of damage to County Highways. Similarly the County annually enacts Spring Load Restrictions to avoid damage to the road surface and subgrade during the wet months of Spring. The County also permits use of its right of way for utilities which includes provisions to ensure safe operation during construction activities on or near the roadway. There is also a permitting process for ditch cleaning to better inventory what is being done and to ensure that the water resource district is adequately notified.

The County Planning Office also administers the Subdivision Ordinance which regulates growth in the County and efficiently accommodates for new roads and land use changes that may affect the County Highway System. The County Engineer reviews all new developments and assists in advising the Planning Commission. And as previously discussed, the County actively permits any new access to County Highways through Ordinance #2007-1, the Highway Access Ordinance.

Funding Maintenance and Construction

The County relies upon a combination of the 23 cent state fuel tax, state motor vehicle license fees, federal road and bridge funds, and local property tax. Other items such as permit fees make up a very small portion of the budget. Cass County also continually pursues grant funding opportunities as they become available.

The cost of rebuilding roads continues to increase. Rebuilding just one mile of road can cost up to one million dollars. In light of this reality it is important to maintain a road maintenance policy to reduce the need for reconstruction.

An asphalt highway generally requires a maintenance overlay every 15-20 years. Current costs of a typical asphalt overlay in Cass County can range from \$200,000 - \$450,000 per mile depending on road width and thickness of the asphalt overlay, with the most frequent 36' Top 2.5" overlay being approximately \$300,000 per mile. Under the desired maintenance schedule an overlay would occur every 17 ½ years. Given the current inventory in Cass County we could assume to schedule approximately 17 miles of asphalt overlay per year; using the rate of \$300,000 per mile we can estimate a cost of \$5.1 million per year. If pavements are not overlaid with a new asphalt surface before they deteriorate they will require full reconstruction.

Table 2 below shows the estimated revenue for the Cass County Highway Department from 2013 through 2017. This estimate is based on a 2% increase in annual revenues. It does not include any projections for special Legislative funding similar to what Cass County received in 2011 and 2012. Estimated annual Federal Aid Highway funding is \$1.22 million. This chart does not include the additional Federal Aid Funding for Bridge projects. Federal Aid Bridge funding is based on need as the NDDOT has \$5.0 million allocated state wide for county bridges.

Revenue Description	2013	2014	2015	2016	2017
Property Tax	\$4,287,621	\$4,373,373	\$4,460,841	\$4,550,058	\$4,641,059
Highway Distribution Tax	\$6,309,047	\$6,435,228	\$6,563,932	\$6,695,211	\$6,829,115
Other	\$151,863	\$154,901	\$157,999	\$161,158	\$164,382
Total Revenues	\$10,748,531	\$10,963,502	\$11,182,772	\$11,406,427	\$11,634,556
Federal Aid Highway Funding	\$1,220,000	\$1,220,000	\$1,220,000	\$1,220,000	\$1,220,000
Total Revenues & Federal Aid	\$11,968,531	\$12,183,502	\$12,402,772	\$12,626,427	\$12,854,556
Total Operating Cost (not including Road/Bridge Projects)	\$3,579,261	\$3,650,846	\$3,723,863	\$3,798,340	\$3,874,307
Total Available for Road/Bridge Projects	\$8,389,270	\$8,532,656	\$8,678,909	\$8,828,087	\$8,980,249

Cass County Highways: Design Standards for New or Reconstruction of Existing Facilities

The typical section of a County Highway is rural in nature with two lanes, either paved or gravel surface. Different modes of travel and location of roadway to population centers, agricultural points of traffic, or

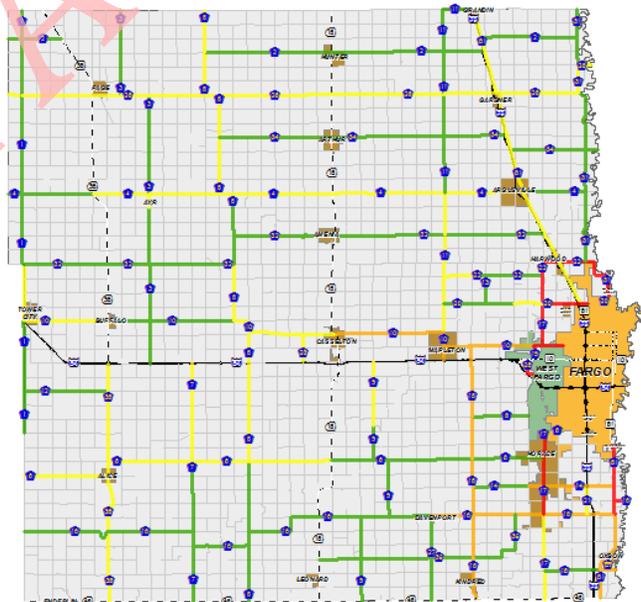
schools sometimes requires different needs. Further drainage needs may vary from roadway to roadway. Table 3 summarizes the Design Standards for New or Reconstruction of Existing Cass County Highways.

Table 3 - Minimum Design Standards for New or Reconstruction of Existing Infrastructure

Typical Section	Design Speed	Right of Way	Road Width	Turn Lanes	Min. Section Thickness	Access Controls	Bike/Ped Facilities
Two-Lane Township Gravel Section	55 mph	66 feet	28 ft	no	4" Gravel	1/4 mile spacing	N/A
Two-Lane Rural Gravel Section	55 mph	200 feet	28 ft	no	6" Gravel	1/4 mile spacing	N/A
Two-Lane Rural Paved Section	55 mph	200 feet	32 ft	no	12" Base + HBP	1/4 mile spacing	4 ft paved shoulder
Two-Lane Village Paved Section	25 mph	200 feet	32 ft	no	12" Base + HBP	Varies	4 ft paved shoulder
Two-Lane City Paved Section	25 mph	200 feet	36 ft	no	12" Base + HBP	Varies	6 ft paved shoulder
Two-Lane Metro Paved Section	40-55 mph	200 feet	36 ft	no	12" Base + HBP	1/4 mile spacing	6 ft paved shoulder
Three-Lane Metro Paved Section	40-55 mph	200 feet	50 ft	1/4 mile spacing	12" Base + HBP	1/4 mile spacing	6 ft paved shoulder and separated path

*Note: 4:1 minimum inslope, 3:1 minimum backslope, 0.05% ditch grade, 24" minimum culvert, 8' minimum ditch bottom width on all rural highway sections; minimum HS-25 design load, 5 year storm design on all bridges

Cass County has prioritized roads to assist in such issues as maintenance, striping, and snow removal. Priorities are used to determine which roads are plowed first and the schedule for which maintenance or construction projects will be completed. Priorities are developed by the County Engineer by considering average daily traffic volumes, pavement condition, as well as important points of need such as schools, cities, and commerce. Map 2 displays these priorities in a color code; red is priority 1, orange is priority 2, yellow is priority 3, and green is priority 4.



Map 2: Road Priorities

Cass County Highways: Current Status of Paved Highways

Cass County currently maintains approximately 375 miles of paved highways along the rural portions of the county. These highways vary in age and building materials (See appendix 2 for pavement age), and will deteriorate at varying rates due to these factors. To determine their condition, county roads are

inspected every 5 years by an independent testing consultant using a “Falling Weight Deflectometer” and given a PCI (Pavement Condition Index) rating from the results of this test. These results are used by county engineers help shape decisions for future roadway maintenance/rebuilding. The most recent PCI survey was completed in 2007 and results are shown in Appendix 3. Additionally, seal coats are applied to asphalt highways 2 years after paving or overlaying has been completed to increase the life of the pavement to 15-20 years. A map showing the most recent seal coat for each highway is shown in appendix 4.

Cass County Highways: Current Status of Gravel Highways

Cass County currently maintains approximately 320 miles of gravel highways within the rural portions of the county. These highways vary in age, and some have been widened for future paving. Currently, the roads are maintained with weekly or bi-weekly grading depending on usage. Additionally, a budget for road repairs is prepared every year and additional gravel is added to roads requiring repairs with the allotted funds on a priority system of damage and usage. A more uniform plan for the gravel roads has been adopted for the future, where a general standard of 28’ road tops with a 4% crown grade will be used for future gravel grading and reshaping projects. In addition to these dimensional standards, areas with weak subgrade are retrofitted with drain tile to remove excess moisture from the subgrade or cement reinforcement sections to increase the structural capacity of the road top. We also reshape gravel roads that have become widened or flatter over time from traffic. Reshaping returns the roadway back to its designed width and crown.

Bridge Maintenance and Construction

Cass County maintains approximately 500 structures of which 268 span a distance of 20 feet in length or greater. Inevitably these bridges will deteriorate over time. Maintenance, reconstruction, replacement, and removal needs to and does occur. ND DOT conducts bi-annual inspections of all structures greater than 20 feet in length giving County officials an accurate inventory of existing bridge conditions. This inventory is used to conduct planning for the most effective projects on bridges most in need. The inventory also includes structures that have been identified by inspectors with a “Code 3” status meaning that immediate attention is required.



Cass County Bridges: Current Status of 20 foot or longer Bridges on County Highways

Appendix 5 shows bridges of 20 feet or longer on County Highways. On average, these bridges are in fair condition. 7 bridges are posted for loads of 34 tons & below. These are priorities for replacing, modifying to increase load capacity or testing to verify an increase in load capacity. The North Dakota Department of Transportation inspects these bridges on a 2 year cycle & rates each on a 0-100 scale. When this sufficiency rating falls below 50, the bridge is eligible for Federal funding. Currently, there are no bridges on County Highways that are below 50. There are 5 bridges in the 50-58 range. These would be potential sites for replacement in the near future as their rating falls below 50.

Cass County Bridges: Current Status of 20 foot or longer Bridges on Township Roads

Appendix 6 shows bridges of 20 feet or longer on township highways. These structures vary in condition from poor and in need of replacement to very good. There are approximately 20 bridges with a sufficiency rating below 50. Several of these have a Code 3 rating which requires priority attention. These bridges are replaced or repaired on a priority basis with input from the township officials. Many of these bridges have been damaged during the floods of 2009-2011 and thus have been a priority for repair.

Cass County Bridges: Current Status of Bridges less than 20 feet in Length

There are many minor structures that are less than 20 feet in length. The NDDOT no longer inspects these bridges. The Cass County Highway Department is in the process of developing a 5 year rotation for inspecting these structures. A priority list will be established for repair or replacement. A map showing locations of these structures is being developed.

2013-2017 Paved Highway Improvement Plan

There are numerous factors that can be and are used to make decisions regarding improvements and maintenance on the County Highway System. Many variables go into prioritizing future projects such as average daily traffic as obtained from ND DOT and/or the Fargo Moorhead Metropolitan Council of Governments, PCI ratings, asphalt thickness, last year paved, last year sealed, population within the proximity, and points of commerce or increased traffic. These variables are taken into consideration when scheduling the most efficient construction schedules in upcoming years. Table 4 illustrates the proposed highway projects for the next five years that are a result of these components.

Table 4 - Proposed Paved Highway Improvements

Hwy	Project Location	Type of Project	Year to be Completed*	Funding Source (Local/Fed Aid)	Project Cost
4	C11 to C81	Bituminous Surfacing	2013	Local	\$3,710,000
15	Through Kindred	Grading & Surfacing	2013	Local	\$1,800,000
81	C20 North 0.4 Miles	Bituminous Overlay	2014	Local	\$116,800
20	C17 to I29	Bituminous Overlay	2014	Local	\$475,600
20	I29 to Unversity Dr (Fargo)	Bituminous Overlay and Add Turnlanes	2014	Local	\$1,000,000
31	C22 to C20	Bituminous Overlay	2014	Local	\$1,085,904
9	I94 to Durbin	Bituminous Overlay	2014	Local	\$900,000
22	C11 to Prosper	Bituminous Overlay	2014	Local	\$448,000
28	Main Ave (West Fargo) to 1.4 Miles South & East	Bituminous Overlay	2014	Local	\$280,000
21	C14 to C16	Bituminous Overlay	2014	Local	\$448,000
14	I29 to C81	Bituminous Overlay	2014	Federal	\$107,981
19	12th Ave N to Main Ave (West Fargo)	Bituminous Overlay	2014	Local	\$201,072
81	64th Ave S (Fargo City Limits) to C16 West	Bituminous Overlay	2014	Federal	\$324,690
7	I94 to C6	Bituminous Overlay	2015	Local	\$1,380,000
1	I94 to C32	Bituminous Overlay	2015	Local	\$860,000
6	C38 to C5	Bituminous Overlay	2015	Local	\$2,000,000
5	C4 to C34	Bituminous Overlay	2015	Local	\$848,000
10	C19 to City of Fargo Limits (12th Ave N.)	Grading & Concrete Surfacing	2015	Local	\$1,000,000
3	Ayr to C4	Bituminous Overlay	2016	Federal	\$29,200
4	C3 to C5 North	Bituminous Overlay	2016	Federal	\$29,200
20	C17 to 2 Miles West	Bituminous Overlay	2016	Local	\$584,000
38	I94 to C6 East	Grading	2016	Local	\$4,830,000
38	I94 to C6 East	Bituminous Overlay	2017	Local	\$4,830,000
15	I94 to C10	Grading	2017	Local	\$560,000

*Note: Years to be completed are illustrative and subject to change and approved annually and/or as necessary by Road Advisory Committee

2013-2017 Gravel Road Improvement Plan

Many factors are used to make decisions regarding improvements and maintenance of our gravel road system. Routine maintenance, motor grader operations, and annual gravelling programs are sufficient in maintaining a consistent, high quality gravel road. However, there are times where excessive moisture, poor drainage, soft subgrade, and other issues must be addressed. In addition, there are times when major reshaping or regrading of gravel roads must occur. Cass County is also proactively working to reduce soft roadbeds through drain tile and subgrade repair/cement stabilization. We will work significant soft spots and subgrade issues through near term drain tile and subgrade repair projects. Long term we will work to reshape gravel roads that have become widened or flattened over time from traffic. We will reshape up to 15 miles of gravel road annually. This reshaping will save money over time by reducing the width of the roadway back to County design standards, which in turn reduces the overall gravel required to resurface the roadway.

<i>Table 5 - Proposed Gravel Highway Improvements</i>					
Hwy	Project Location	Type of Project	Year to be Completed*	Funding Source (Local/Fed Aid)	Project Cost
None	None	Drain Tile	2013	Local	\$0
UNK	To Be Determined	Drain Tile	2014	Local	\$500,000
UNK	To Be Determined	Drain Tile	2015	Local	\$500,000
UNK	To Be Determined	Drain Tile	2016	Local	\$500,000
UNK	To Be Determined	Drain Tile	2017	Local	\$500,000
10	Buffalo to C5	Subgrade Repair	2013	Local	\$1,200,000
UNK	To Be Determined	Subgrade Repair	2014	Local	\$300,000
UNK	To Be Determined	Subgrade Repair	2015	Local	\$300,000
UNK	If Needed	Subgrade Repair	2016	Local	\$300,000
UNK	If Needed	Subgrade Repair	2017	Local	\$300,000
20	Various Locations C11 to RR Xing	Reshaping	2012	Local	\$100,000
UNK	To Be Determined	Reshaping	2013	Local	\$100,000
UNK	To Be Determined	Reshaping	2014	Local	\$100,000
UNK	To Be Determined	Reshaping	2015	Local	\$100,000
UNK	To Be Determined	Reshaping	2016	Local	\$100,000
UNK	To Be Determined	Reshaping	2017	Local	\$100,000

*Note: Years to be completed are illustrative and subject to change and approved annually and/or as necessary by Road Advisory Committee

2013-2017 Bridge Improvement Plan

The County utilizes bi-annual inspection reports provided by the North Dakota Department of Transportation to identify necessary improvements to County and township structures. \$1,000,000 is allocated annually to account for these necessary improvements. In addition to these improvements the County includes in the construction schedule necessary flood repairs which combine local and federal funds. There are approximately 30 bridges currently slated for improvements.

2013-2017 Revenues vs Project Costs

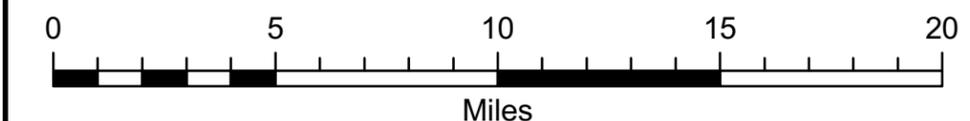
The following table illustrates the revenue stream and estimated costs of the 2013-2017 Plan. Appendix 1 illustrates the proposed capital improvements with the exception of structures which are awaiting results of the 2011/2012 ND DOT bridge inspections.

<i>Table 6 - Revenue vs. Project Costs</i>					
Revenue Description	2013	2014	2015	2016	2017
Property Tax	\$4,287,621	\$4,373,373	\$4,460,841	\$4,550,058	\$4,641,059
Highway Distribution Tax	\$6,309,047	\$6,435,228	\$6,563,932	\$6,695,211	\$6,829,115
Other	\$151,863	\$154,900	\$157,998	\$161,158	\$164,381
Total Revenues	\$10,748,531	\$10,963,502	\$11,182,772	\$11,406,427	\$11,634,556
Federal Aid Highway Funding	\$1,220,000	\$1,220,000	\$1,220,000	\$1,220,000	\$1,220,000
Total Revenues & Federal Aid	\$11,968,531	\$12,183,502	\$12,402,772	\$12,626,427	\$12,854,556
Total Operating Cost (not including Road/Bridge Projects)	\$3,579,261	\$3,650,846	\$3,723,863	\$3,798,340	\$3,874,307
Total Available for Road/Bridge Projects	\$8,389,270	\$8,532,656	\$8,678,909	\$8,828,087	\$8,980,249
Total Paved Highway Project Costs	\$5,510,000	\$5,388,047	\$6,088,000	\$5,735,200	\$5,390,000
Total Gravel Highway Costs	\$1,200,000	\$800,000	\$800,000	\$800,000	\$800,000
County Bridge Project Costs	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Chipseal, Crackseal, & Striping	\$625,000	\$1,225,000	\$575,000	\$1,325,000	\$1,025,000
Total Project Costs	\$8,335,000	\$8,413,047	\$8,463,000	\$8,860,200	\$8,215,000
Differences (Revenues-Costs)	\$54,270	\$119,609	\$215,909	(\$32,113)	\$765,249

Cass County Highway Department 2013-2017 Five-Year Capital Improvement Plan



Hwy	Project Location	Type of Project	Year to be Completed*	Funding Source (Local/Fed Aid)	Project Cost
4	C11 to Drain 13	Bituminous Surfacing	2013	Local	\$3,710,000
15	Through Kindred	Grading & Concrete Surfacing	2013	Local	\$1,800,000
81	C20 North 0.4 Miles	Bituminous Overlay	2014	Local	\$116,800
20	C17 to I29	Bituminous Overlay	2014	Local	\$475,600
20	I29 to University Dr (Fargo)	Bituminous Overlay and Add Tumlans	2014	Local	\$1,000,000
31	C22 to C20	Bituminous Overlay	2014	Local	\$1,085,904
9	I94 to Durbin	Bituminous Overlay	2014	Local	\$900,000
22	C11 to Prosper	Bituminous Overlay	2014	Local	\$448,000
28	Main Ave (West Fargo) to 1.4 Miles South & East	Bituminous Overlay	2014	Local	\$280,000
21	C14 to C16	Bituminous Overlay	2014	Local	\$448,000
14	I29 to C81	Bituminous Overlay	2014	Federal	\$107,981
19	12th Ave N to Main Ave (West Fargo)	Bituminous Overlay	2014	Local	\$201,072
81	64th Ave S (Fargo City Limits) to C16 West	Bituminous Overlay	2014	Federal	\$324,690
10	C19 to City of Fargo Limits (12th Ave N.)	Grading & Concrete Surfacing	2015	Local	\$1,000,000
7	I94 to C6	Bituminous Overlay	2015	Local	\$1,380,000
1	I94 to C32	Bituminous Overlay	2015	Local	\$860,000
6	C38 to C5	Bituminous Overlay	2015	Local	\$2,000,000
5	C4 to C34	Bituminous Overlay	2015	Local	\$848,000
38	I94 to C6 East	Grading	2016	Local	\$4,830,000
3	Ayr to C4	Bituminous Overlay	2016	Federal	\$29,200
4	C3 to C5 North	Bituminous Overlay	2016	Federal	29,200
20	C17 to 2 Miles West	Bituminous Overlay	2016	Local	\$584,000
15	I94 to C10	Grading	2017	Local	\$560,000
38	I94 to C6 East	Bituminous Surfacing	2017	Local	\$4,830,000



Jason Benson
County Engineer, P.E.

Richard Sieg
Highway Superintendent

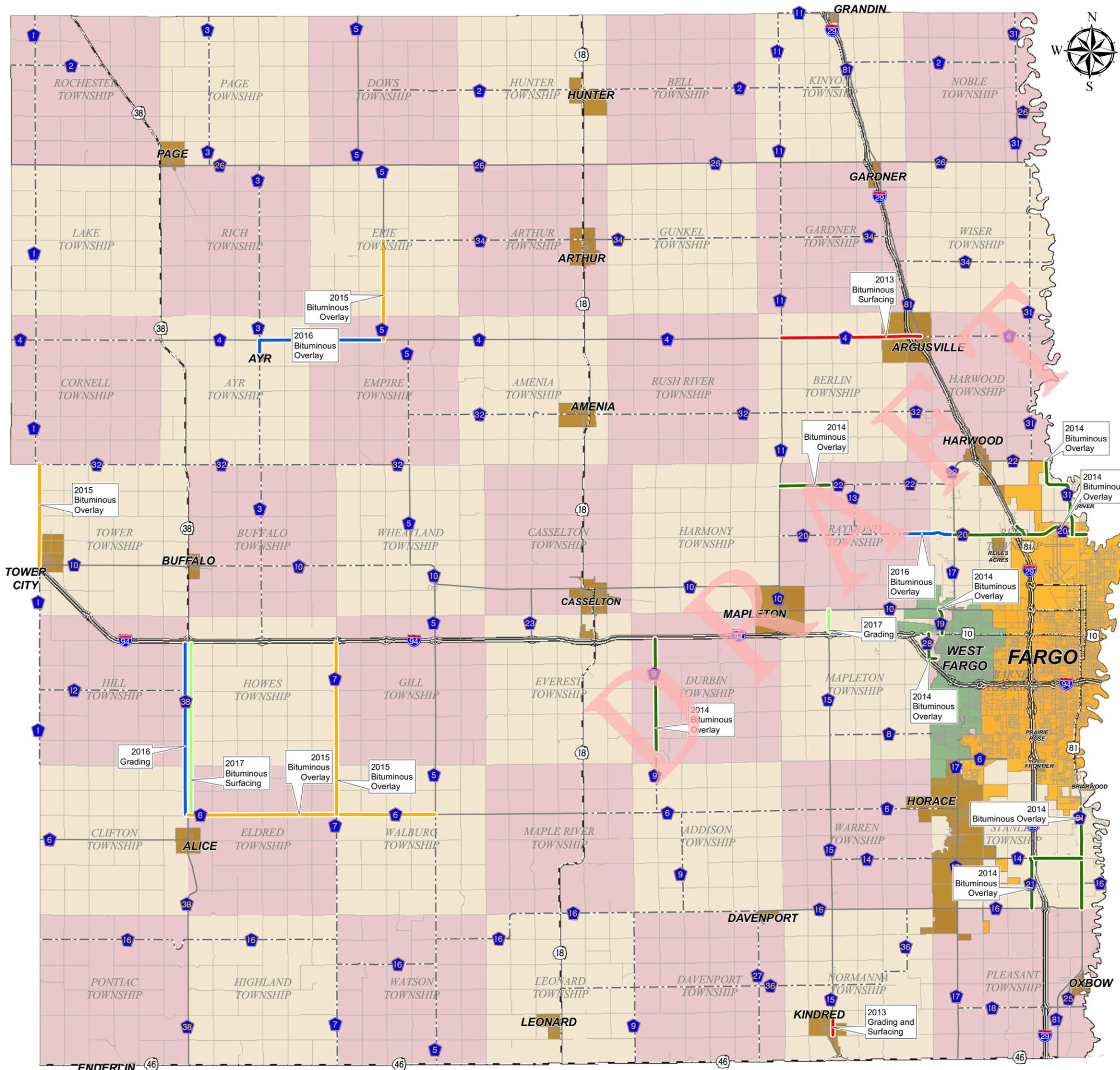
DATE: March, 2012



Cass County Highway Dept.
1201 West Main Ave.
West Fargo, ND 58078

(701) 298-2370

Web: <http://www.casscountynd.gov>
Email: highway@casscountynd.gov



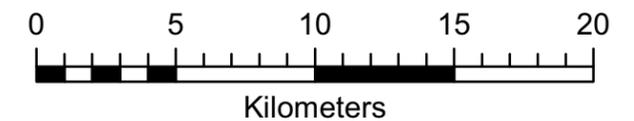
Cass County Highway Department Pavement Condition Index (PCI) *



* based on Braun Intertec PCI Scale

	Poor 0-40	Fair 41-55	Good 56-70	Very Good 71-85	Excellent 86-100
Miles	0	0	26	101	248
Average PCI	0	0	60.9	77.9	95.96
High PCI	0	0	70	85	100
Low PCI	0	0	56	71	86

*Pavement Evaluation completed by Braun Intertec Corporation in 2007. The evaluation consisted of deflection testing with a Model 8000E Cynatest Falling Weight Deflectometer. Pavement surface condition assessment based on the Pavement Condition Index (PCI) method developed by the Army Corps of Engineers. The resulting data is analyzed to evaluate the structural and surface condition of the existing pavements on the tested road segments.



Jason Benson
County Engineer, P.E.

Richard Sieg
Highway Superintendent

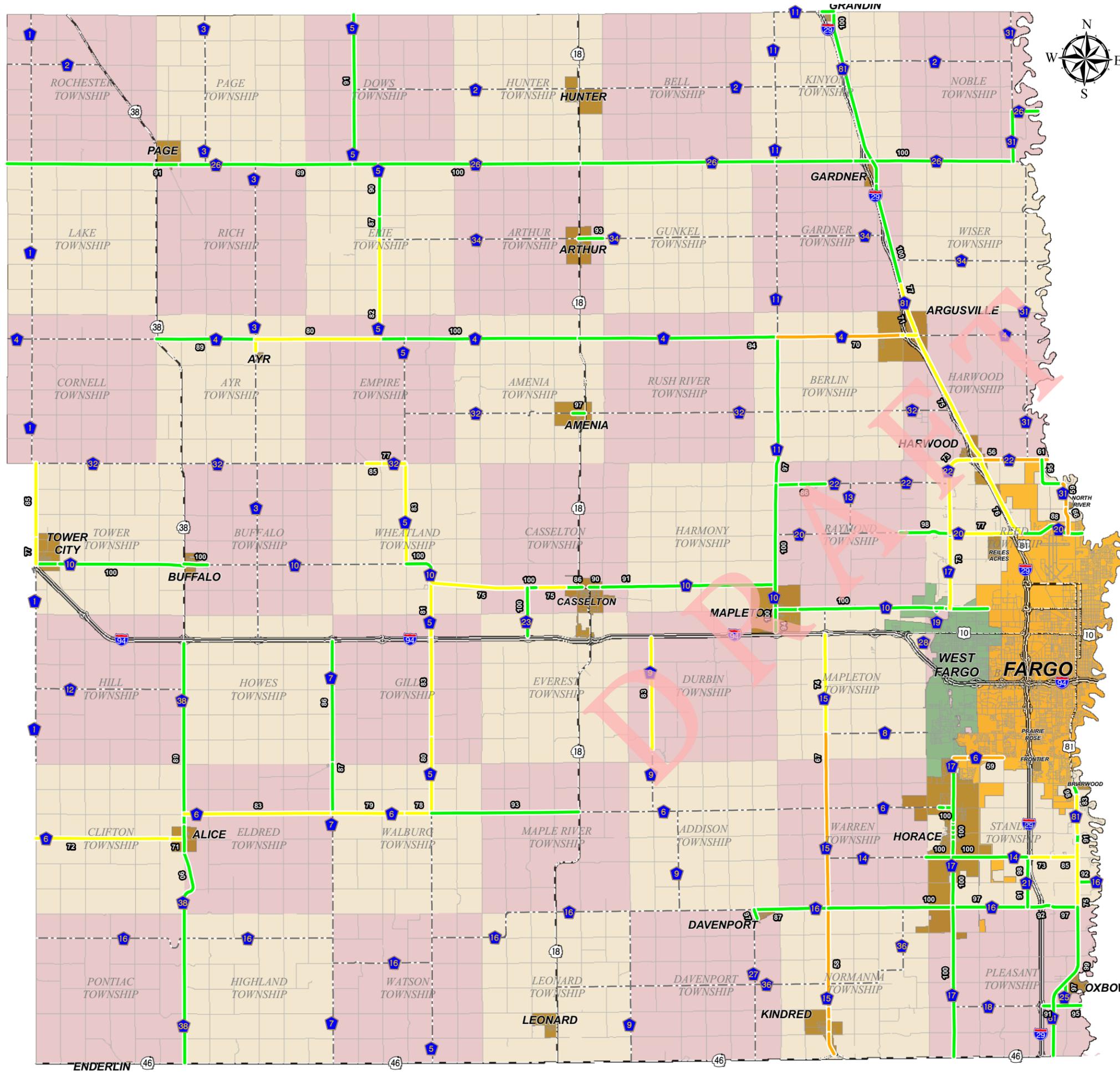
DATE: March, 2012



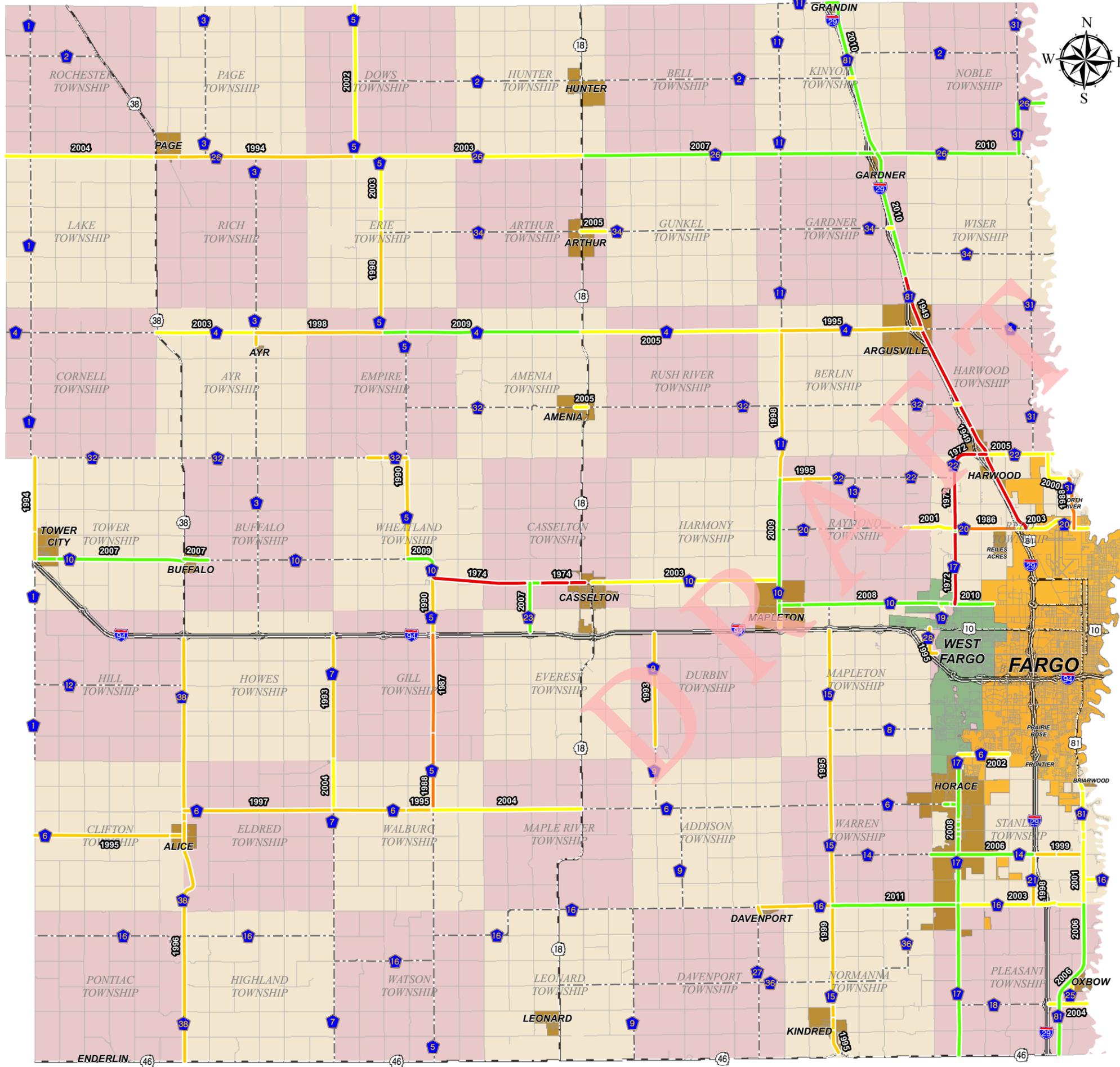
Cass County Highway Dept.
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Email: highway@casscountynd.gov



Cass County Highway Department Paving Projects

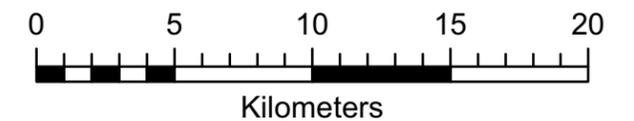


Year of Last Paving Project

- 1949 - 1979
- 1980 - 1989
- 1990 - 1999
- 2000 - 2005
- 2006 - 2011
- - - - Gravel

	1949-1979	1980-1989	1990-1999	2000-2005	2006-2011
Miles	37	11.55	113	96	135
Average PCI *	75.6	73	76.1	71.81	99.98

*Pavement Evaluation completed by Braun Intertec Corporation in 2007. The evaluation consisted of deflection testing with a Model 8000E Cynatest Falling Weight Deflectometer. Pavement surface condition assessment based on the Pavement Condition Index (PCI) method developed by the Army Corps of Engineers. The resulting data is analyzed to evaluate the structural and surface condition of the existing pavements on the tested road segments.



Jason Benson
County Engineer, P.E.

Richard Sieg
Highway Superintendent

DATE: March, 2012

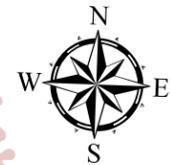
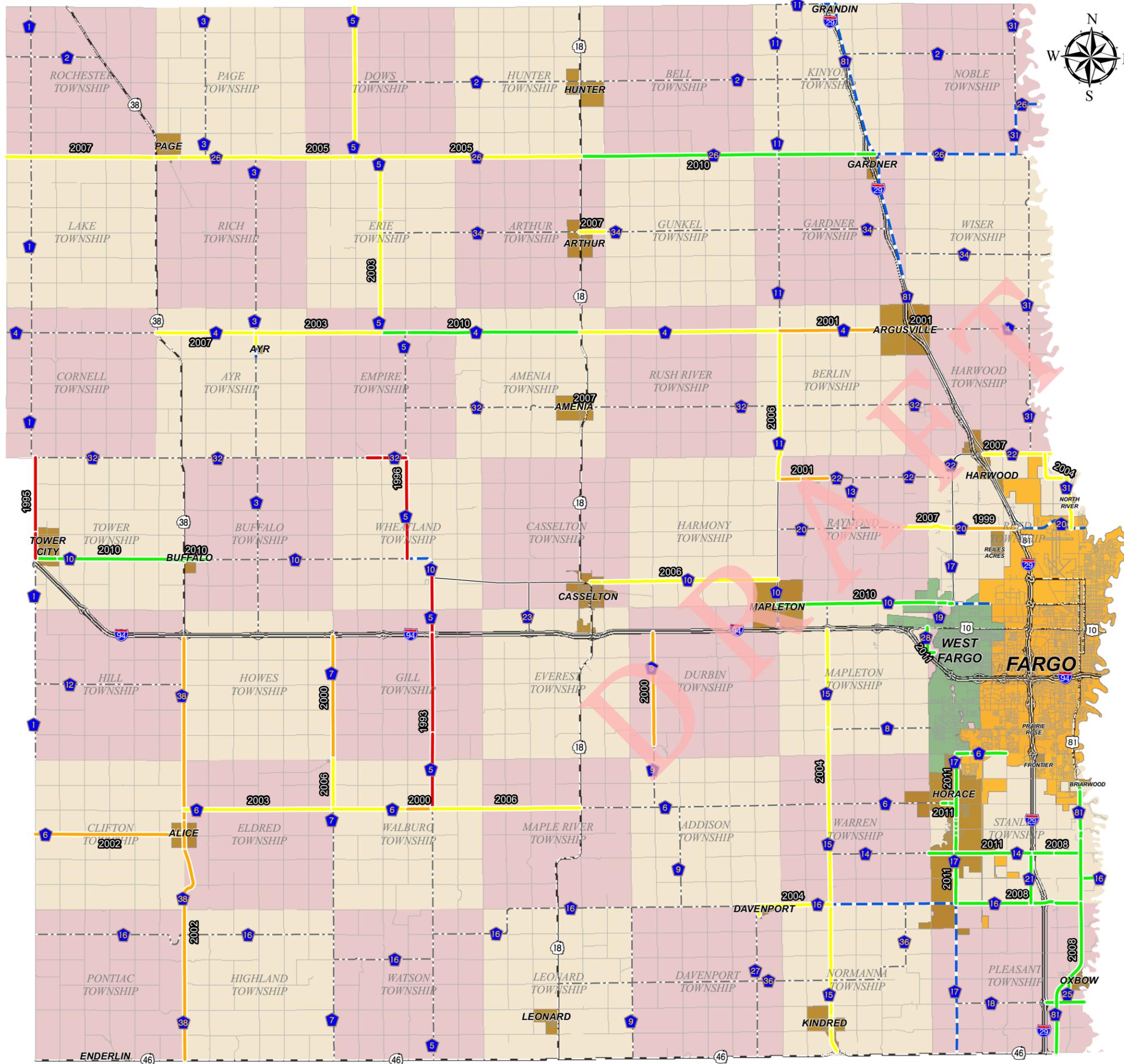


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Cass County Highway Department Seal Coat Projects

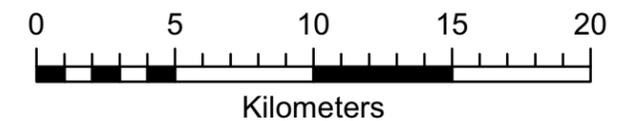


Year of Last Seal Coating

- 1993 - 1998
- 1999 - 2002
- 2003 - 2007
- 2008 - 2011
- Asphalt - No Seal Coat
- Concrete Surface
- Gravel

Category	Miles	Average PCI *
1993-1998	20	83
1999-2002	43	81
2003-2007	126	83
2008-2011	93	92
Asphalt - No Seal Coat	38	71
Concrete Surface	56	83

*Pavement Evaluation completed by Braun Intertec Corporation in 2007. The evaluation consisted of deflection testing with a Model 8000E Cynatest Falling Weight Deflectometer. Pavement surface condition assessment based on the Pavement Condition Index (PCI) method developed by the Army Corps of Engineers. The resulting data is analyzed to evaluate the structural and surface condition of the existing pavements on the tested road segments.



Jason Benson
County Engineer, P.E.



Cass County Highway Dept.
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Highway Superintendent

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DATE: March, 2012

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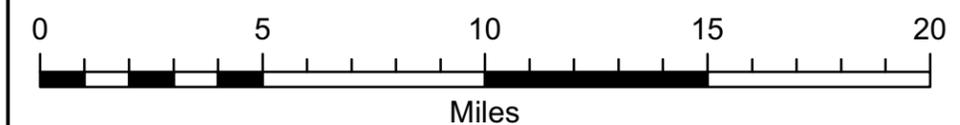
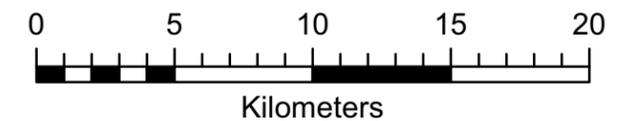
Cass County Highway Department

ND DOT 2009/2010
 Bridge Inspection & Appraisal
 Bridges on County Roads

Bridge Sufficiency Rating Categories

- ▲ 80 + Sufficiency
- ▲ 50-79.9 Sufficiency
- ▲ 0-49.9 Sufficiency
- ★ Code Three Structure

	80+	50-79.9	0-49.9	Code 3
Total	61	22	0	1
Average	94.8	66.72	N/A	67.3
Low	81.4	50.8	N/A	N/A
High	100	79.9	N/A	N/A



Jason Benson
 County Engineer, P.E.



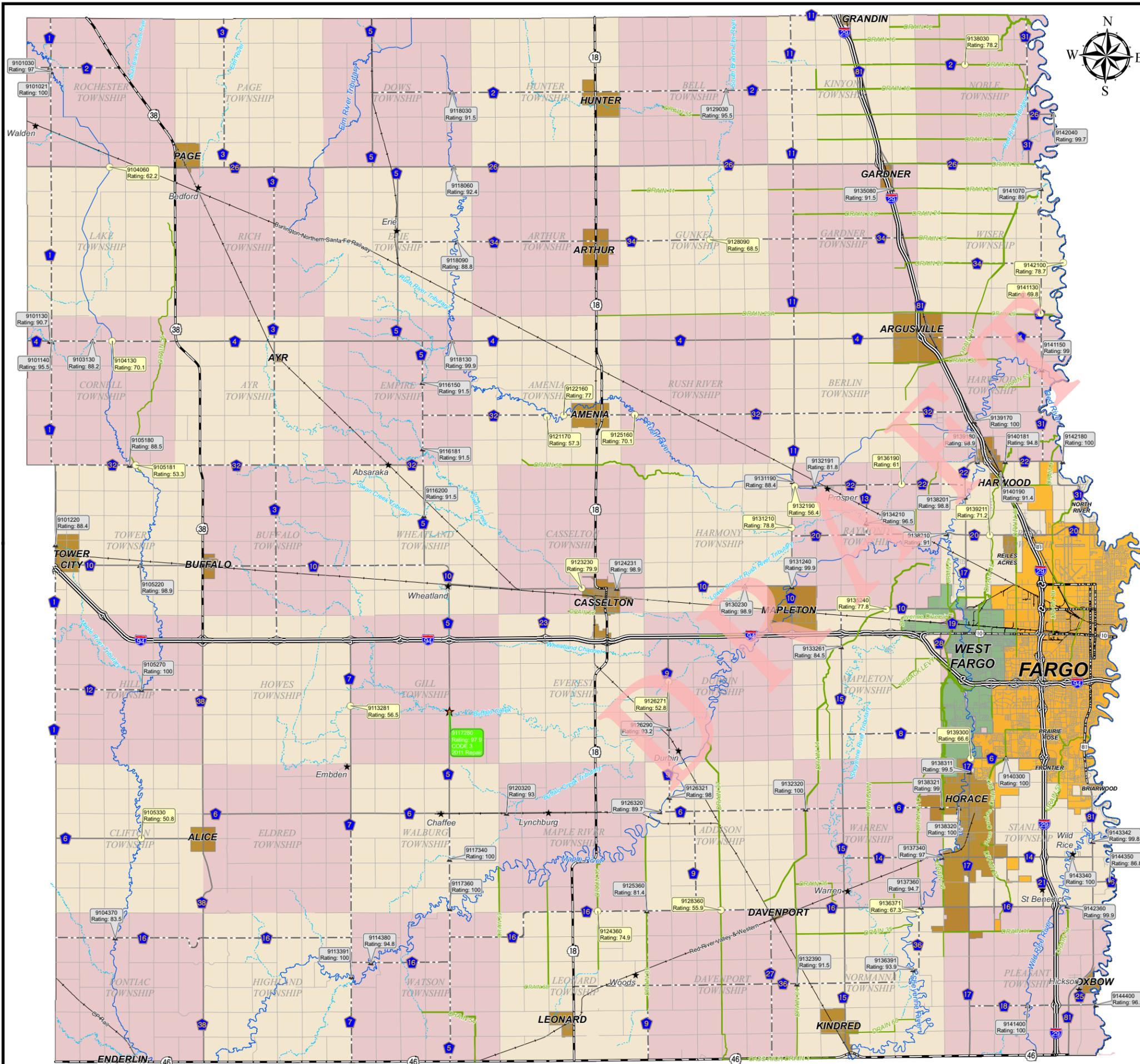
Cass County Highway Dept.
 1201 West Main Ave.
 West Fargo, ND 58078

Richard Sieg
 Highway Superintendent

(701) 298-2370

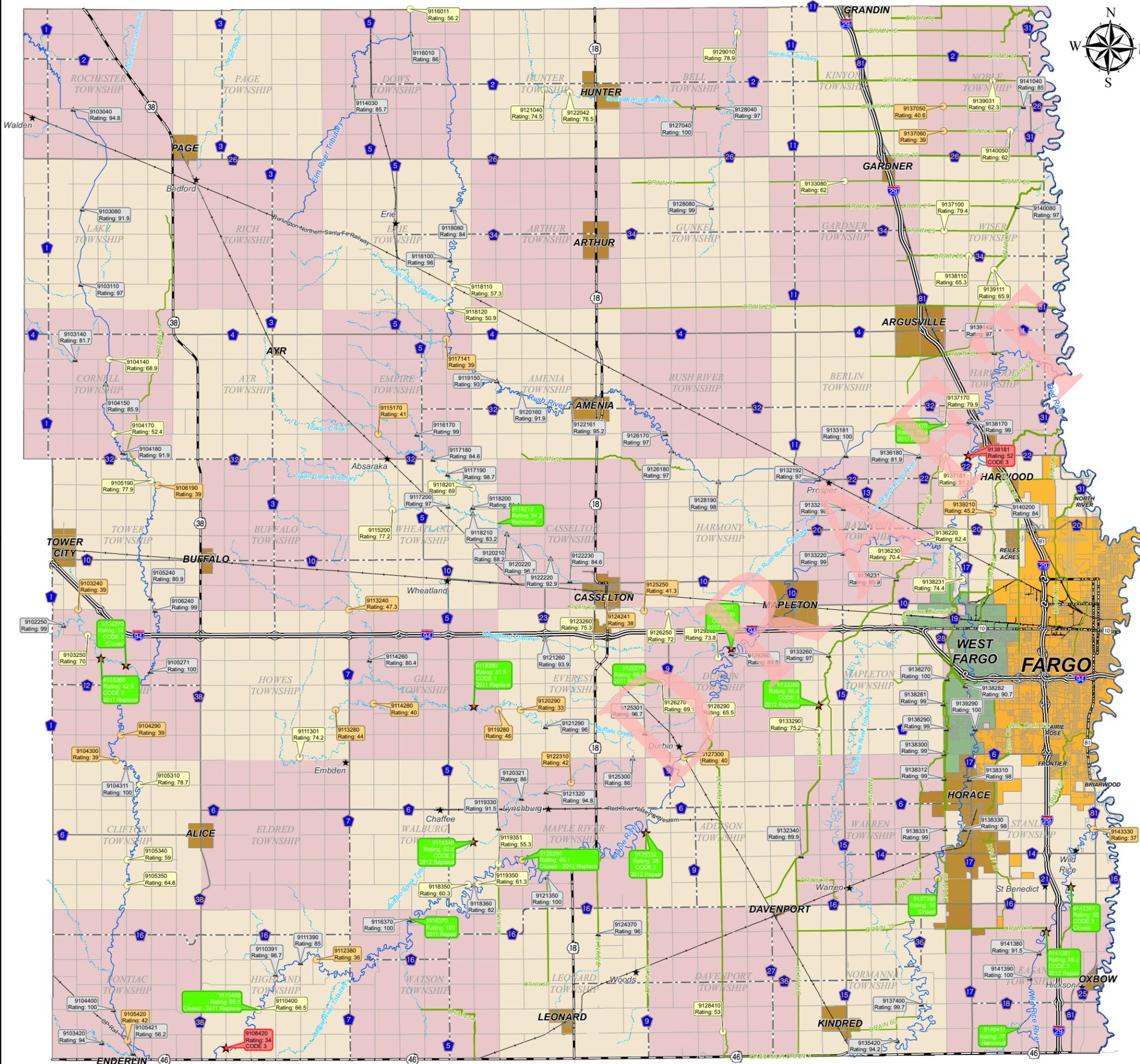
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Cass County Highway Department

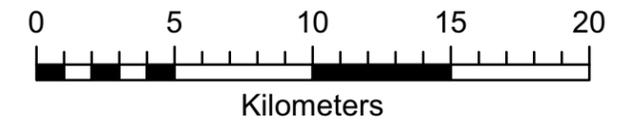
ND DOT 2009/2010
 Bridge Inspection & Appraisal
 Bridges on Township Roads



Bridge Sufficiency Rating Categories

- ▲ 80 + Sufficiency
- ▲ 50-79.9 Sufficiency
- ▲ 0-49.9 Sufficiency
- ★ Code Three Structure

	80+	50-79.9	0-49.9	Code 3
Total	79	38	23	11
Average	93.7	67	40.4	45.2
Low	80.4	50.9	33	32
High	100	79.9	47.3	69.2



Jason Benson
 County Engineer, P.E.



Cass County Highway Dept.
 1201 West Main Ave.
 West Fargo, ND 58078

Richard Sieg
 Highway Superintendent

(701) 298-2370

DATE: March, 2012

Web: <http://www.casscountynd.gov>
 Email: highway@casscountynd.gov

MEMORANDUM

TO: Cass County Planning Commission

FROM: Tim Solberg, County Planner

DATE: June 22, 2012

SUBJECT: Questions on Legal Authority to Enforce Density
Restrictions through Subdivision Ordinance

This memo is intended to serve as a response to questions raised at the January 26, 2012 Planning Commission Meeting regarding the legality of the use of density restrictions regulated in Cass County Subdivision Ordinance #2006-1. Included in your packet please find related documents as follows:

- Section 307, 308, and 309 of Cass County Subdivision Ordinance #2006-1 which specifically regulate density restrictions.
- Correspondence between former County Engineer Keith Berndt and Mr. William Delmore of the law firm Kelsch Kelsch Ruff & Kranda regarding the legal basis for density standards in Cass County subdivision regulations.
- Correspondence between former County Planner Mike Zimney and Mr. Birch Burdick, Cass County State's Attorney regarding a State's Attorney opinion concerning the legality of the use of density restrictions in the Cass County Subdivision Ordinance.

To summarize the documents, it appears to be the opinion of these two attorneys that Cass County does indeed have the legal authority to enforce density restrictions as we do in our current form.

provisions of Section 303 and 304 of this Ordinance.

- 306.05. Commission Approval and Recordation.** All minor subdivision plans shall conform to the provisions of Section 304 of this Ordinance to gain Final Plat approval by the Board of County Commissioners and record the plat.

SECTION 307 Lot Density Restrictions.

For the purpose of encouraging orderly and economically-feasible growth, preventing new developments from creating economic strains on county residents, protecting the county's valuable farmland and agricultural traditions, promoting development that will more easily convert to an urban environment and implementing the goals and objectives established by the Cass County Comprehensive Plan (2005) the following lot density restriction is established. This density restriction will promote small, truly rural developments that will mesh more easily with existing agricultural land and activities and will encourage larger urban style subdivisions to develop in the urban fringe and other areas with supportive infrastructure. Developments built beyond the density restriction will be constructed with full supportive urban infrastructure, ensuring developments that will more easily transition into an urban development upon annexation without extensive and costly infrastructure upgrades.

Except as noted in the exemptions below, no subdivision of land shall exceed one (1) buildable lot per quarter-quarter section (40 acres).

- A. If the development has followed the transfer of development rights pursuant to Section 308 of this Ordinance and in accordance with all other required provisions of this Ordinance; or
- B. If the subdivision will be built to full urban design standards and the strictest requirements outlined within Article VI of this Ordinance; including but not limited to paved roads with curb and gutter, a paved access road, municipal sewer system, public water supply system with functioning fire hydrants, storm water facilities, street lights, street trees, street signs, sidewalks, bike paths and park dedications.

SECTION 308 Development Rights.

Except as noted below, every quarter-quarter section or existing legally subdivided lot or "legal lot" as of the effective date of Subdivision Ordinance #2006-1 is granted one (1) Development Right to create a buildable lot. Development Rights can be used, held or transferred to contiguous properties under common ownership. Development Rights may not be transferred if the land has any one of the following characteristics:

- A. Land that has an existing dwelling, either residential or agricultural. In these situations, the Development Right has been used.
- B. Land that has an existing commercial use or other non-agricultural use.
- C. Land that is not under complete and common ownership.
- D. Land that does not have a suitable building site due to a covenant, easement, conservation easement or deed restriction, unless and until such time as said covenant, easement or restriction is dissolved or rescinded.
- E. Land not having a suitable building site due to natural features, such as but not limited to wetlands, floodplains, high water and steep slopes.
- F. Land that does not have a conforming building site without a variance issued by the applicable township.
- G. Land deemed as unbuildable based on the applicable townships ordinances and/or regulations.

308.01. Using Transferred Development Rights.

- A. Development Rights can be used to increase a permitted density on contiguous land that is under common ownership. The maximum number of development rights that can be transferred onto a quarter-quarter section or Legal Lot is eleven (11), therefore limiting each quarter-quarter section or Legal Lot to a maximum of twelve (12) buildable lots (*i.e.*, one permitted existing buildable lot per quarter-quarter section or Legal Lot and up to eleven (11) additional transferred developable rights).
- B. For each development right that is transferred, the said receiving property and subdivision is entitled to an increase of one (1) additional buildable lot.
- C. All lots permitted through transferred development rights are subject to meet all applicable regulations of this Ordinance.
- D. All lots permitted through transferred development rights shall be contiguous and preferably orientated in such a manner to allow for the maximum agricultural use of the surrounding land.
- E. If a Development Right is being transferred, the owner of the property

must submit the following materials to the County Planner during the subdivision and platting process:

- (1) A copy of the Deed Restriction, as outlined in Section 309 of this Ordinance, expressing that a development right has been transferred to the proposed building site from a contiguous quarter-quarter section or Legal Lot under common ownership.
- (2) A map showing the location of the proposed building site's quarter-quarter section or Legal Lot (the receiving property) and the quarter-quarter section or Legal Lot from which the development right was transferred from (the sending property) on a standard 8 > by 11 inch sheet of paper.

SECTION 309

Deed Restriction.

The following section outlines the requirements, procedures and implications of the Deed Restriction as it relates to the transfer of development rights in Section 308 of this Ordinance.

309.01.

The transfer of development rights as outlined in Section 308 of this Ordinance requires the sending property to be deed restricted, limiting future development on said property until said property is no longer under the jurisdiction of the county based on the following scenarios:

- A. The Deed Restricted property is completely within the extraterritorial (ET) boundaries of an incorporated city of Cass County.
- B. The Deed Restricted property is completely annexed by an incorporated city of Cass County.

At which point the Deed Restricted property is completely annexed or within the ET boundaries of an incorporated city of Cass County the restriction on the land will be retired and the property will follow the necessary procedures for development of the applicable incorporated city.

309.02.

The Deed Restriction shall limit any further residences, divisions, or nonagricultural development on such property except for the following provisions:

- A. At such time the Deed Restricted property is completely within the extraterritorial (ET) boundaries of an incorporated city of Cass County.

- B. The property is completely annexed by an incorporated city of Cass County.
- C. The subdivision will be built to full urban design standards and the strictest requirements outlined within Article VI of this Ordinance; including but not limited to paved roads with curb and gutter, a paved access road, municipal sewer system, public water supply system with function fire hydrants, storm water facilities, street lights, street trees, street signs, sidewalks, bike paths and park dedications.

309.03.

The Deed Restriction as it related to the transfer of development rights as outlined in Section 308 of this Ordinance requires the following:

- A. The restriction shall limit any further residences, divisions or nonagricultural development on the quarter-quarter section or Legal Lot. The restriction shall be on a form provided by the County Planner (*see Appendix 14*) and shall include the following information:
 - (1) Record Fee Owner(s) legal name.
 - (2) Legal Description of Restricted Parcel.
 - (3) Agreement Description stating the following:
 - (a) The land meets the criteria established in Section 308 of this Ordinance.
 - (b) A legal description of the receiving property on the adjacent quarter-quarter section or Legal Lot.
 - (c) The Deed Restriction shall limit any further residences, divisions or nonagricultural development on the quarter-quarter section or Legal Lot in accordance with Section 309 of this Ordinance.
 - (d) Date and signature of Fee Owner(s).
 - (e) Date and signature of Notary Public.
 - (f) Date and signature of County Engineer.



**Cass County
Planning
Commission**

Commissioners

John Meyer
Don Hanson
Chad Peterson
Bryan Schulz
Jean Rayl
Todd Ellig
Ken Loughheed
Mark Johnson
Keith D. Monson

Planning Consultant

Joel Quanbeck

Engineer

Keith D. Berndt

14 October 2002

Bill Delmore
Kelsch Kelsch Ruff & Kranda
P O Box 1266
103 Collins Avenue
Mandan, ND 58554-7266

FILE COPY

Subject: Legal basis for density standards, and general review of
subdivision regulation amendments

Dear Mr. Delmore,

Thank you for the opportunity to briefly discuss our subdivision regulation issues with you this morning. Please let this letter serve as authorization to proceed with services for the following purposes:

1. Research and respond to questions regarding the legal basis for density standards in Cass County's subdivision regulations, and appropriate tools & procedures to implement such requirements; and,
2. Complete legal review of proposed subdivision regulation amendments.

It would be helpful if you could provide a not to exceed cost estimate. But, please begin your work on item #1 at your earliest convenience.

We are including some background information to allow you to orient yourself to our issues. Essentially, the existing County subdivision regulations are applicable to all areas of the County that are outside any city's zoning authority. Since the implementation of the 4 and 2 mile extraterritorial zoning authority in 1998 by the Cities of Fargo and West Fargo, respectively, we have seen a reduction of platting proposals. However, in the past year we have seen an increase that seems to be fueled by a desire for cheaper land than is found closer to the metropolitan area, and by a desire to avoid being regulated by "big city" zoning and subdivision rules. Additionally, we have seen several developers purchase extremely large tracts of land with the original intent of developing rural subdivisions (with lot sizes of 1 acre or more). The ensuing development potential has caused the County Commission to be concerned about increased infrastructure costs for roads and drainage. Some of these potential rural subdivisions are in areas being proposed for annexation by Fargo and West Fargo. However, we anticipate the trend will continue and lead to increased demands for services which are not available and which will lead to more sprawl.

P.O. Box 698
1201 W. Main Ave.
West Fargo, ND 58078-0698

701-282-2226
FAX 701-282-2047

Therefore, a County Commission appointed committee has been reviewing county policy and regulations to develop standards to address these concerns. As County staff, we are recommending an approach to subdivision control that provides two options to potential developers:

1. A developer can construct a subdivision with gravel roads, open ditches, onsite individual sewer and water if all of the following three criteria are met:
 - a. The sum of the acreage of all contiguous lots in the development is at least 10 acres. (This requirement is not intended to prevent cluster development so long as the density standard and on-site sewer requirements can be met.)
 - b. The density standard of 1 house per 40 acres. (This standard is to be applied to original government survey quarter quarters and contiguous property under the same ownership. Therefore, acreages may vary slightly depending on the actual size of the section. Also, land not in the same section does not count as contiguous property under the same ownership.)
 - c. The plat must meet the minor subdivision criteria of 4 or less lots which meet the applicable township's zoning requirements for development.

(or)

2. A developer can construct a subdivision to small lot development standards if it does not meet all of the criteria outlined in #1 above. Development standards will include urban street sections within the subdivision, sidewalks or alternate pedestrian paths, waterlines in the development sized for fire standards, and community sewer that could be connected to city service in the future. (The complete list of applicable standards are outlined in the standards section of the Cass County subdivision regulations.)

Please contact us with any questions you may have.

Thank you,



Keith D. Berndt, P.E.
Cass County Engineer

Kelsch Kelsch Ruff & Kranda

C.F. Kelsch
1890-1987

Attorneys at Law
Mandan, North Dakota

William C. Kelsch
Retired

THOMAS F. KELSCH
ARLEN M. RUFF, P.C.
THOMAS D. KELSCH, P.C.
TODD D. KRANDA, P.C.*
ROB FORWARD, P.C.
WILLIAM J. DELMORE
CYNTHIA WAGNER GOULET
ANNETTE BENDISH

 MERITAS LAW FIRMS WORLDWIDE

103 Collins Avenue
P.O. Box 1266
Mandan, ND 58554-7266
Phone (701) 663-9818
1-888-663-9818
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Website www.kelschlaw.com

*Also Licensed in Minnesota

January 7, 2003

KEITH D BERNDT
CASS COUNTY ENGINEER
1201 W MAIN AVE PO BOX 698
WEST FARGO ND 58078-0698

RE: Review of Subdivision Regulation Amendments and Proposed Density Standards
Our File No. 10280

Dear Mr. Berndt:

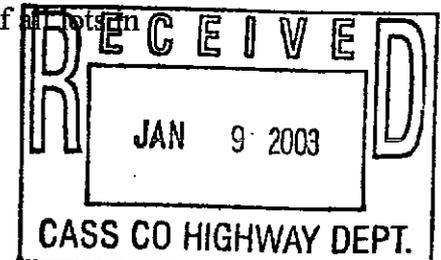
We have completed our review of your subdivision regulations and find that they are within the authority delegated to the county in Chapter 11-33.2 of the North Dakota Century Code, and specifically, within the authority of North Dakota Century Code §11-33.2-02 and §11-33.2-03. We did not have the procedures utilized for adoption for our general review, but assume that the County has and will follow procedures as outlined in North Dakota Century Code Chapter 11-33.2. We will be happy to provide the specific authority for any of the referenced sections upon request and indicate that all provisions are within the general authority as well as in scope as referenced in Chapter 11-33.2.

Density Standards.

The primary difficulty in establishing density standards is to ensure compatibility with growth and development goals while not having an adverse effect on the "normal incidents of farming" as referenced in North Dakota Century Code §11-33.2-03. In order to accomplish the purposes outlined in your correspondence while not adversely impacting the incidents of normal farming, we suggest the following language to effect the desired density restrictions.

A developer can construct a subdivision with gravel roads, open ditches, on-site individual sewer and water if the following criteria are met:

1. If multiple houses exist or are to be built, the sum of the acreage of all lots in development must be at least ten (10) contiguous acres; and



January 7, 2003

Page 2

2. There may be only one house per forty (40) acres of current individual ownership and the 40 acres must be delineated for each house as built. If any portion of the 40 acres is later sold to another owner, the deed must indicate that additional houses cannot be built unless they comply with small lot development standards; and
3. The plat must meet the minor subdivision criteria of four or less lots, which meet the applicable township's zoning requirements for development.

OR

A developer can construct a subdivision to small lot development standards. Small lot development standards are referenced as "design standards" in the "platting and land subdivision regulations for Cass County".

To accomplish the purposes referenced above, a special use designation must exist so that the limitations are placed on the area under individual ownership at the time the houses are to be built. Thus, a person would not be able to build four houses, sell the 10 acres, and then utilize the other 150 acres for further development unless such development met appropriate standards. In this instance, institutional control (limitation that runs with the deed), would have to be placed on the land which is not within the contiguous lot acreage. The only way to ensure that the "normal incidents of farming" is not abrogated, is to place the one house per 40 acre limitation clearly on the deed with knowledge of the owner at the time of permitting or special use delegation.

Enclosed is our statement for attorney's fees and costs through December 13, 2002.

Please contact me with any questions.

Respectfully,



William J. Delmore

WJD:mkd

Enc.



December 15, 2005

FILE COPY

Highway Department

Keith D. Berndt, P.E.
County Engineer

Richard S. Sieg
Superintendent

Thomas B. Soucy, P.E.
Design and Construction
Supervisor

Cass County Commissioners
County Commission
P.O. Box 2806
Fargo, North Dakota 58108-2806

Mr. Birch Burdick
Cass County State's Attorney
P.O. Box 2806
Fargo, North Dakota 58108-2806

SUBJECT: Cass County Subdivision Ordinances

Dear Commissioners and Mr. Burdick:

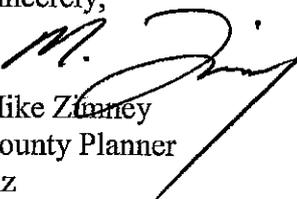
The Subdivision Ordinance Committee has completed the review and rewrite of the Cass County Subdivision Ordinance. At the committee's request, the draft is being forwarded to the County Commission for review.

Prior to the placement of this document on the County Commission agenda, the Highway Department is requesting the State's Attorneys Office draft the document into the format consistent with other county ordinances.

The Committee has also requested the State's Attorneys Office provide recommended language for the Penalties and Violations (Section 906) and the Deed Restriction (Appendix 14) sections. Prior to the formation of the committee, the Highway department sought legal opinion on the legality of a density restriction (see enclosures). The committee has requested the State's Attorney also provide an opinion on the proposed density restriction.

This item will be placed on the January 17, 2006 Commission agenda, if you anticipate any conflict please contact me.

Sincerely,


Mike Zimney
County Planner
mz

Enclosure

cc: Bonnie Johnson, Heather Worden, Rich Sieg

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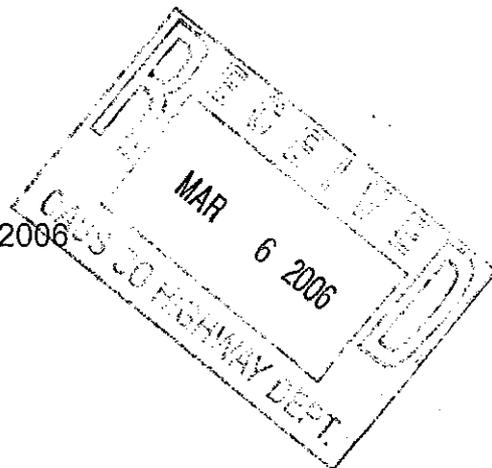
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March 6, 2006



Mike Zimney
County Planner
Cass County Highway Dept.
1201 Main Avenue West
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Dear Mike:

This letter will address the authority of Cass County to enact the lot density restriction for the subdivision of land under Section 307 of the Cass County Subdivision Ordinance. It is my opinion Cass County has the authority pursuant to the Cass County Home Rule Charter to create the lot density restriction as a limitation on the subdivision of land, in order to implement the planning goals and objectives outlined in the Cass County Comprehensive Plan 2005.

I understand the lot density restriction provided under Section 307 of the Cass County Subdivision Ordinance prevents the subdivision of land from exceeding one (1) buildable lot per a quarter-quarter section of land (40 acres). However, a landowner may avoid the lot density restriction in two ways. First, each quarter-quarter section of land has one "development right" (the right to create a buildable lot), and development rights may be transferred between contiguous properties under common ownership pursuant to Section 308. The maximum number of development rights which may be transferred onto one quarter-quarter section of land is eleven, which means the total number of buildable lots possible on a quarter-quarter section is twelve. Second, the lot density restriction does not apply to any quarter-quarter section of land, if the subdivision will be built to full urban design standards and the strictest requirements outlined within Article VI of the Subdivision Ordinance.

The proposed Cass County Subdivision Ordinance would be enacted pursuant to the home rule powers established under the Cass County Home Rule Charter and the enabling statute under Chapter 11-09.1 of the North Dakota Century Code. The Board of County Commissioners has the authority under Article 2 of the Home Rule Charter to implement an ordinance to "provide for zoning, planning, and subdivision of public or private property within the county limits but

outside the zoning authority of any city or organized township." The power to regulate the subdivision of land enumerated in the Cass County Home Rule Charter is taken directly from the enabling statute, N.D.C.C. § 11-09.1-05(7).

The subdivision of land, together with zoning and a master plan, are integral components of adequate land planning. 83 Am.Jur.2d Zoning and Planning § 4. Generally, the State had broad authority to regulate or restrict land use. Eck v. City of Bismarck, 302 N.W.2d 739, 741 (N.D., 1981) (reviewing municipal zoning ordinance). However, the authority to regulate land use is not boundless and must be reasonable. Eck v. City of Bismarck, 302 N.W.2d 739, 741 (N.D., 1981) (reviewing municipal zoning ordinance); cf. Village of Los Ranchos De Albuquerque v. Shiveley, 110 N.M. 15, 18, 791 P.2d 466, 469 (N.M.App., 1989) (stating a property owner must comply with reasonable conditions imposed by a municipality or county in order to acquire the advantage of lot subdivision). The land regulation must bear a reasonable relationship to a legitimate governmental purpose, and also cannot be arbitrary or capricious, or deprive a property owner of all or substantially all reasonable uses of his land. Eck v. City of Bismarck, 302 N.W.2d 739, 741 (N.D., 1981) (reviewing municipal zoning ordinance).

I understand the lot density restriction under Section 307 is an attempt to implement and serve the planning goals and objectives established in the Cass County Comprehensive Plan 2005. These goals and objectives include the following:

1. To achieve orderly, balanced, and sensible development;
2. To provide the citizens with Cass County with essential public facilities, services, and infrastructure;
3. To provide an efficient, safe, environmentally sensitive, and cost effective county transportation to effectively meet citizens' current and future needs for personal mobility and movement of goods;
4. To use and preserve natural resources in an environmentally sound manner;
5. To preserve and maintain Cass County's rural heritage.

I believe these goals and objectives established under the comprehensive plan are legitimate interests to the citizens of Cass County. The attempt to use a zoning ordinance to achieve orderly growth and development through a comprehensive plan was recognized as a legitimate government interest by the North Dakota Supreme Court in Eck v. City of Bismarck, 302 N.W.2d 739, 743 (N.D.,

1981). I believe the same conclusion applies to the general goals and specific objectives outlined under the Cass County Comprehensive Plan 2005. 83 Am.Jur.2d Zoning and Planning § 424 (stating the general validity of subdivision controls is well recognized and it is recognized that there are similarities between zoning and subdivision controls).

I understand the lot density restriction is also intended to protect farming and the normal incidents of farming in Cass County. This is consistent with the clear directive from the North Dakota Legislature that any land regulation enacted by a county or township may not prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming. N.D.C.C. §§ 11-33-02 (county zoning), 11-33.2-03 (county subdivision), 58-03-11 (township zoning).

It should be noted that neither the Cass County Home Rule Charter, Article 2, nor the enabling statute under N.D.C.C. § 11-09.1-05(7), authorize any *specific* content or provision which may be included in a home rule county subdivision ordinance. Under N.D.C.C. § 11-33.2-04(2)(a), a county subdivision regulation may include provisions to ensure "the location, layout, or arrangement of a proposed subdivision shall conform to the comprehensive plan of the county." The purpose of the lot density restriction to implement the goals and objectives of the Cass County Comprehensive Plan 2005 is consistent with the clear authority under N.D.C.C. § 11-33.2-04(2)(a) for all counties to require the subdivision of land to conform with a comprehensive plan.

Finally, the lot density restriction must be reasonably related to achieving the goals and objectives of the Cass County Comprehensive Plan 2005, without being unduly restrictive on the rights of landowners to develop their property. The decision to use the ratio of one buildable lot per quarter-quarter section of land (40 acres) must be reasonably related to the important planning goals and objectives of Cass County. I recommend you describe to the Board of County Commissioners how the lot density restriction is reasonably related to implementing the goals and objectives of the Cass County Comprehensive Plan 2005 while not being unduly restrictive on the rights of landowners to develop their property within Cass County.

Yours truly,



Birch P. Burdick

Cass County State's Attorney

BPB/JHPA/vlm
JA

cc: Cass County Commission