

**Zoning Board of Appeals  
May 23, 2012 Regular Meeting**

**STAFF REPORT**

**Subject:** ZBA12-007, 841 Broadway

**Summary:** Michigan Consolidated Gas Company is requesting one variance from Chapter 47 (Streets), Section 4:20(2):

1. A variance to permit onsite environmental remediation and Natural Features modification without providing additional onsite storm water management system as required by City Code.

**Standards for Approval - Chapter 63 (Storm Water Management and Soil Erosion Control and Sedimentation Control) Variance**

The Zoning Board of Appeals has all the power granted by State law and by Section 5:99, Application of the Variance Power, from the City of Ann Arbor Zoning Ordinance and Chapter 63, Section 5:566. The following criteria shall apply:

***The Zoning Board of Appeals shall have the authority to interpret this chapter and may in specific cases grant variances to these requirements providing such variance is in harmony with the general purpose and intent of the requirements. The procedural requirements for appeals under Chapter 55 shall be applicable to appeals under this chapter. In addition to the procedures of Chapter 55, when variances are requested from the storm water management system section of this chapter, the applicant shall show that storm water management systems have been provided to the maximum extent feasible with the goals of meeting the rules of the WCWRC (Washtenaw County Water Resources Commissioner).***

**Background:**

The parcel is zoned M1 (Limited Manufacturing) and is located on the north side of Broadway in between the Huron River and the Ann Arbor Railroad. This location is the site of a historical coal gasification plant that operated through the early part of the 20<sup>th</sup> century. During that time, the soils became contaminated. The gasworks operation ended decades ago and Michcon removed many of the older structures and eventually replaced them with a service center in the middle to latter part of the 20<sup>th</sup> century. Over the past few years, Michcon has removed all of the structures on the site. The access drive, parking lots, and building pads remain.

### **Description and Discussion:**

As part of an ongoing environmental remediation of the site, MichCon is proposing to remove contaminated soil in some locations of the site, replace the soil with clean fill, and construct a containment cap along the Huron River. The work will require the removal of landmark trees along the riverbank in order to remove contaminated soil underneath them. Some of the work will take place in the Huron River where the petitioner will remove contaminated soil. This work and the resulting disturbance to the protected Natural Features (landmark trees, river buffer) on the site require approval from the Planning Commission. The proposed work also triggers the need for a storm water detention system to be provided on the site. The petitioner has indicated that because contaminated soil will remain on the site after remediation, installing a new detention system will be harmful to groundwater and the Huron River. The petitioner could avoid providing detention systems if they remove the impervious surface on the site. However, removing impervious surfaces will allow contaminants in the soil to leach into the Huron River and ground water. The petitioner is proposing that the existing impervious surfaces continue to provide a cap on top of the contaminated soils that will remain after this remediation. The plan proposed by MichCon is consistent with Part 201 of the Michigan Natural Resources and Environmental Protection Act

On May 15, 2012 the Planning Commission granted approval of the natural features disturbance plan contingent upon a variance being granted by the ZBA for providing required storm water detention on the site.

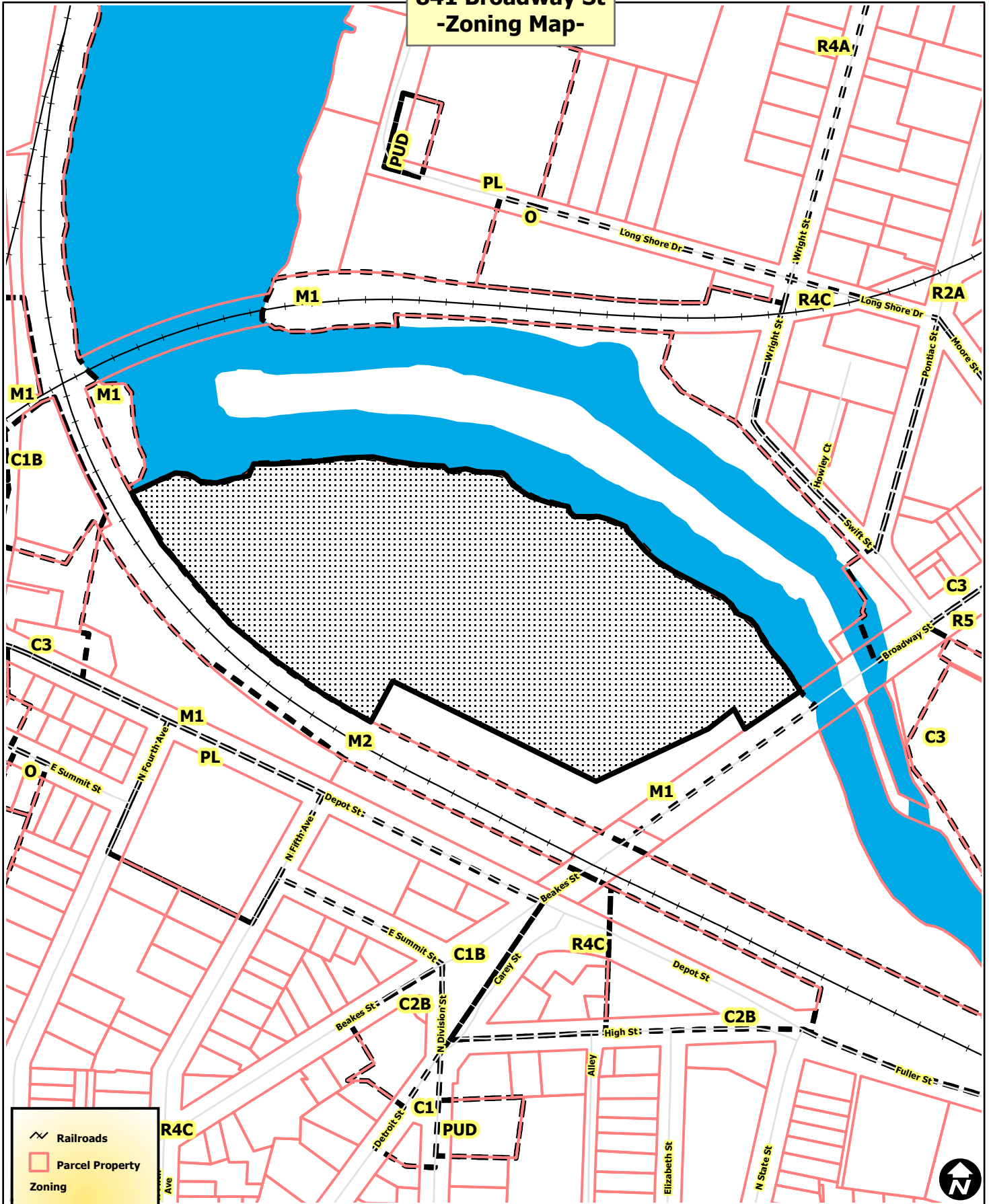
The variance request has been reviewed and is supported by staff responsible for environmental and storm water review. Planning staff feels that the request meets the general purpose and intent of the storm water section and storm water is being provided to the maximum extent possible according to the rules of the WCWRC.

Respectfully submitted,



**Matthew J. Kowalski, AICP**  
**City Planner**

# 841 Broadway St -Zoning Map-





Railroads  
 Parcel Property  
**Zoning**  
 Township  
 Zoning  
 Huron River



City of Ann Arbor Map Disclaimer:  
 No part of this product shall be reproduced or transmitted in any form or by any means, electronic or mechanical, for any purpose, without prior written permission from the City of Ann Arbor.  
 This map complies with National Map Accuracy Standards for mapping at 1 Inch = 100 Feet. The City of Ann Arbor and its mapping contractors assume no legal representation for the content and/or inappropriate use of information on this map.  
 Map Created: 4/24/2012

# 841 Broadway St -Aerial Map-



 Railroads  
 Parcel Property



City of Ann Arbor Map Disclaimer:  
 No part of this product shall be reproduced or transmitted in any form or by any means, electronic or mechanical, for any purpose, without prior written permission from the City of Ann Arbor.  
 This map complies with National Map Accuracy Standards for mapping at 1 inch = 100 Feet. The City of Ann Arbor and its mapping contractors assume no legal representation for the content and/or inappropriate use of information on this map.  
 Map Created: 4/24/2012

# APPLICATION FOR VARIANCE OR NON-CONFORMING STRUCTURE ZONING BOARD OF APPEALS

## Section 1: Applicant Information

Name of Applicant: Michigan Consolidated Gas Company

Address of Applicant: One Energy Plaza, 655 G.O., Detroit, MI 48226

Daytime Phone: 313-235-3147 - Shayne Wiesemann

Fax: 313-235-5018

Email: wiesemanns@dteenergy.com

Applicant's Relationship to Property: Owner

## Section 2: Property Information

Address of Property: 841 Broadway Street, Ann Arbor, Michigan

Zoning Classification: M1

Tax ID# (if known): 09-09-20-403-023

\*Name of Property Owner: Michigan Consolidated Gas Company

*\*If different than applicant, a letter of authorization from the property owner must be provided.*

## Section 3: Request Information

Variance

Chapter(s) and Section(s) from which a variance is requested:

Chapter 63, Section 5:566

\_\_\_\_\_

\_\_\_\_\_

*Example: Chapter 55, Section 5:26*

Required dimension: PROPOSED dimension:

Installation of new on-site

storm water management

systems

*Example: 40' front setback*

Use of existing on-site

storm water management

systems

*Example: 32'*

Give a detailed description of the work you are proposing and why it will require a variance (attach additional sheets if necessary)

See attached.

\_\_\_\_\_

## Section 4: VARIANCE REQUEST (If not applying for a variance, skip to section 5)

The City of Ann Arbor Zoning Board of Appeals has the powers granted by State law and City Code Chapter 55, Section 5:98. A variance may be granted by the Zoning Board of Appeals only in cases involving practical difficulties or unnecessary hardships when **ALL** of the following is found **TRUE**. Please provide a complete response to each item below. These responses, together with the required materials in Section 5 of this application, will form the basis for evaluation of the request by staff and the Zoning Board of Appeals. (continued...)

**1. Are there hardships or practical difficulties to complying with the ordinance? Are these hardships or practical difficulties an exception or unique to the property compared to other properties in the City?**

Installing new on-site storm water management that comply with the Ordinance would result in exacerbation of existing contamination, and potentially result in unacceptable exposures in violation of Section 20107a(1)(a) of Part 201, of the Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

This practical difficulty is limited to private brownfield sites within the City.

**2. Are the hardships or practical difficulties more than mere inconvenience, inability to obtain a higher financial return? (explain)**

Yes. The installation would result in: disruption of the existing asphalt barrier, potential exposure to subsurface contamination, infiltration of storm water through contaminated soils, exacerbation of the existing contamination and violation of Michigan environmental laws that regulate contaminated properties.

**3. What effect will granting the variance have on the neighboring properties?**

The variance will help protect groundwater and surface water quality in the area.

**4. What physical characteristics of your property in terms of size, shape, location or topography prevent you from using it in a way that is consistent with the ordinance?**

The property was used from 1900 until the early 1950's as a coal gasification plant. Operation of the plant resulted in contamination of the site soils with byproducts of the coal gasification process. As a result, storm water must be managed carefully to prevent contact with and leaching of contaminants.

**5. Is the condition which prevents you from complying with the ordinance self-imposed? How did the condition come about?**

MichCon purchased the coal gasification plant and property in 1938 from the Washtenaw Gas Company. At the time of the purchase the coal gasification plant had been operating for nearly 40 years. However, MichCon is liable for the contamination and has diligently been conducting cleanup activities since the 1980s.

**Section 5: ALTERATION TO A NON-CONFORMING STRUCTURE**

Current use of the property \_\_\_\_\_

The proposed change is allowed in accordance with Structure Non-Conformance, Section 5:87 (1) (a) & (b), which reads as follows:

- (1) A non-conforming structure may be maintained or restored, but no alteration shall be made to a non-conforming structure unless one of the following conditions is met:
  - a. The alteration is approved by the Zoning Board of Appeals upon finding that it complies as nearly as practicable with the requirements of this Chapter and that it will not have a detrimental effect on neighboring property.
  - b. The alteration conforms to all the requirements of this Chapter and is made to a building which will be a single-family dwelling on completion of the alteration and is located in an R1, R2, R3, or R4 district.
  - c. The structure is considered non-conforming due to the following reasons

(continued . . . . .)

Existing Condition

Code Requirement

Lot area \_\_\_\_\_  
Lot width \_\_\_\_\_  
Floor area ratio \_\_\_\_\_  
Open space ratio \_\_\_\_\_  
Setbacks \_\_\_\_\_  
Parking \_\_\_\_\_  
Landscaping \_\_\_\_\_  
Other \_\_\_\_\_

Describe the proposed alterations and state why you are requesting this approval:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The alteration complies as nearly as is practicable with the requirements of the Chapter and will not have a detrimental effect on neighboring property for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Wherefore, Petitioner requests that permission be granted from the above named Chapter and Section of the Ann Arbor City Code in order to permit \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 6: Required Materials**

The following materials are required for all variance requests. Failure to provide these materials will result in an incomplete application and will delay staff review and Zoning Board of Appeals consideration of the request. The materials listed below must accompany the application and constitute an inseparable part of the application.

All materials must be provided on **8 1/2" by 11" sheets**. (Continued.....)

- Survey of the property including all existing and proposed structures, dimensions of property, and area of property.
- Building floor plans showing interior rooms, including dimensions.
- Photographs of the property and any existing buildings involved in the request.
- Any other graphic or written materials that support the request.

**Section 7: Acknowledgement**

**SIGNATURES MUST BE SIGNED IN PRESENCE OF NOTARY PUBLIC**

I, the applicant, request a variance from the above named Chapter(s) and Section(s) of the Ann Arbor City Code for the stated reasons, in accordance with the materials attached hereto.

313 235 3147  
 Phone Number  
wiesemanns@ateenergy.com Shayne A. Wiesemann  
 Email Address Signature  
 Print Name

I, the applicant, hereby depose and say that all of the aforementioned statements, and the statements contained in the materials submitted herewith, are true and correct.

[Signature]  
 Signature

Further, I hereby give City of Ann Arbor Planning & Development Services unit staff and members of the Zoning Board of Appeals permission to access the subject property for the purpose of reviewing my variance request.

[Signature]  
 Signature

I have received a copy of the informational cover sheet with the deadlines and meeting dates and acknowledge that **staff does not remind the petitioner of the meeting date and times.**

[Signature]  
 Signature

On this 25 day of APRIL, 2012, before me personally appeared the above named applicant and made oath that he/she has read the foregoing application by him/her subscribed and knows the contents thereof, and that the same is true as to his/her own knowledge except as to those matters therein stated to be upon his information and belief as to those matters, he/she believes them to be true.

Gina G Newell  
 Notary Public of Michigan  
 Washtenaw County  
 Expires 05/10/2017  
May 10 2017 in the County of Washtenaw  
 Notary Commission Expiration Date  
[Signature]  
 Notary Public Signature  
Gina G. Newell  
 Print Name



**Staff Use Only**

Date Submitted: \_\_\_\_\_ Fee Paid: \_\_\_\_\_  
 File No.: \_\_\_\_\_ Date of Public Hearing \_\_\_\_\_  
 Pre-filing Staff Reviewer & Date \_\_\_\_\_ ZBA Action: \_\_\_\_\_  
 Pre-Filing Review: \_\_\_\_\_  
 Staff Reviewer & Date: \_\_\_\_\_



---

## ATTACHMENT 1

### Detailed Description of Work and Reason Why it Requires a Variance

The Michigan Consolidated Gas Company (MichCon) purchased the Washtenaw Gas Company in 1938. As part of the purchase MichCon assumed the environmental liability for the coal gasification plant and property located at 841 Broadway Street in Ann Arbor, Michigan. The property is impacted with residuals from the coal gasification process. Since the 1980s, MichCon has been working diligently in cooperation with the Michigan Department of Environmental Quality (DEQ) to investigate and remediate the site environmental impacts. As part of this process, MichCon has submitted a plan and a permit application to the DEQ to clean up the impacts located along the shoreline of the property and from sediment in the Huron River. A copy of the project plan is attached. We anticipate the project plans and permit will be approved in May and the clean-up project will be successfully executed during the summer and fall of 2012.

Chapter 57 of the City of Ann Arbor Ordinance (Ordinance) requires review and City approval of the Natural Features Plan for the clean-up project. As a result, the Ordinance also requires that MichCon comply with the storm water management system criteria of Chapter 63 because natural features are being removed and subsequently mitigated. However, it is technically impractical to comply with the storm water management system criteria. Removing the existing site impervious surfaces and/or creating storm water detention basins have the potential effect of creating new exposure pathways to the remaining subsurface contamination. Allowing storm water to infiltrate instead of flow off the impervious surfaces would result in additional leaching and migration of the subsurface impacts into groundwater and toward the Huron River.

Section 20107a of Part 201 of the Michigan Natural Resources and Environmental Protection Act requires that owners or operators of a contaminated property prevent exacerbation of the existing contamination and mitigate unacceptable exposures (see Attachment 2). MichCon is seeking a variance from Chapter 63, Section 5:566 in order to comply with Section 20107a and prevent exacerbation of and exposures to the remaining contamination. The existing storm water management systems purposefully prevent infiltration into and exposures to site soils and storm water management systems have been provided to the maximum extent feasible. The existing storm water management systems will be temporarily utilized until the final property land use is determined and a final remediation plan is submitted, likely in the next few years.

---

## ATTACHMENT 2

### Excerpt from Section 20107a of Part 201 of the Natural Resources and Environmental Protection Act, PA 451, as amended

**324.20107a Duties of owner or operator having knowledge of facility; hazardous substances; obligations based on current numeric cleanup criteria; liability for costs and damages; compliance with section; applicability of subsection (1)(a) to (c) to state or local unit of government; "express public purpose" explained.**

Sec. 20107a.

(1) A person who owns or operates property that he or she has knowledge is a facility shall do all of the following with respect to hazardous substances at the facility:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

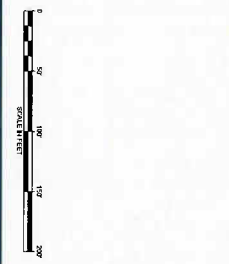
(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct response activities at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response activity at the facility. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resource use restrictions established or relied on in connection with the response activities at the facility.

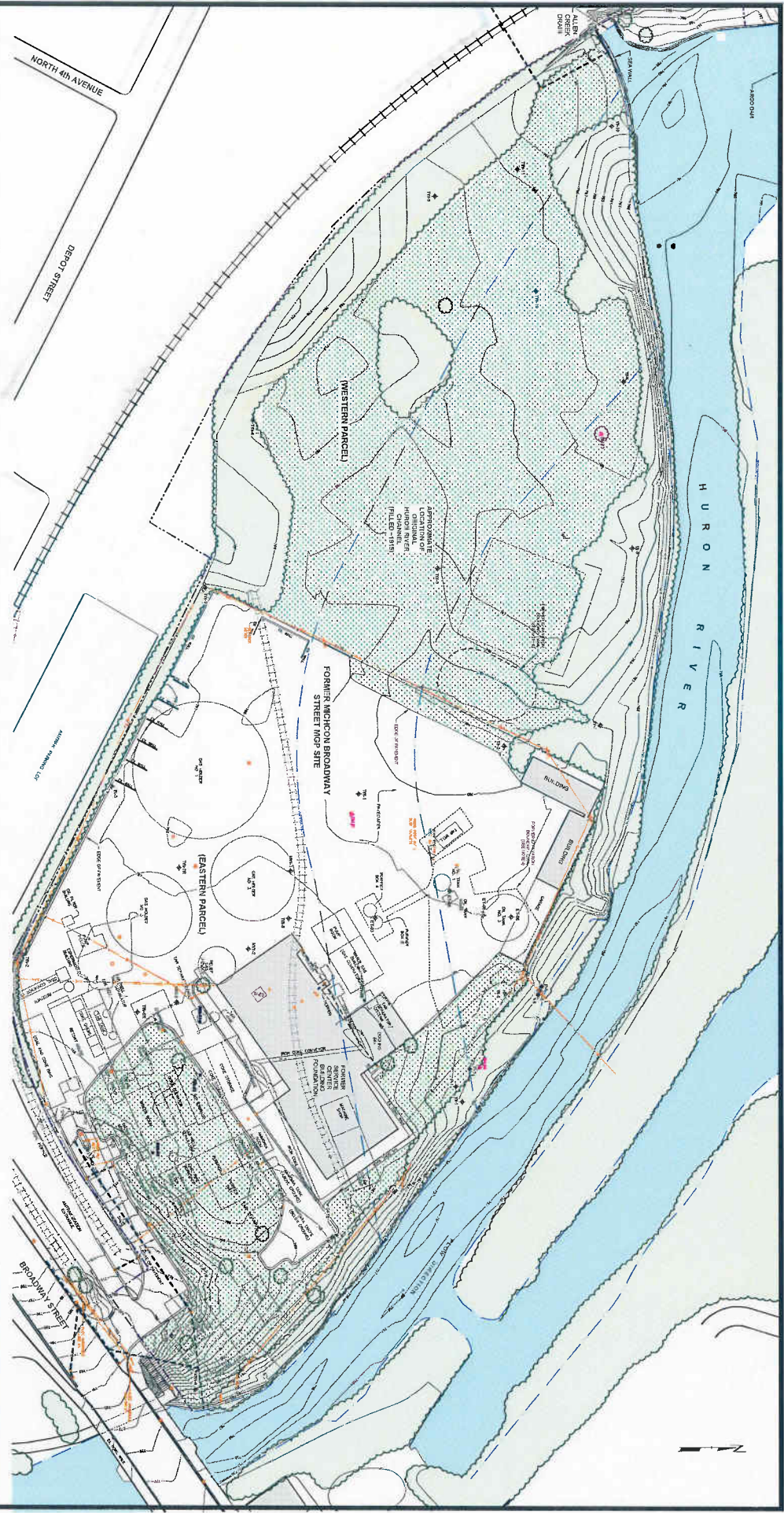
(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the facility in connection with response activities.

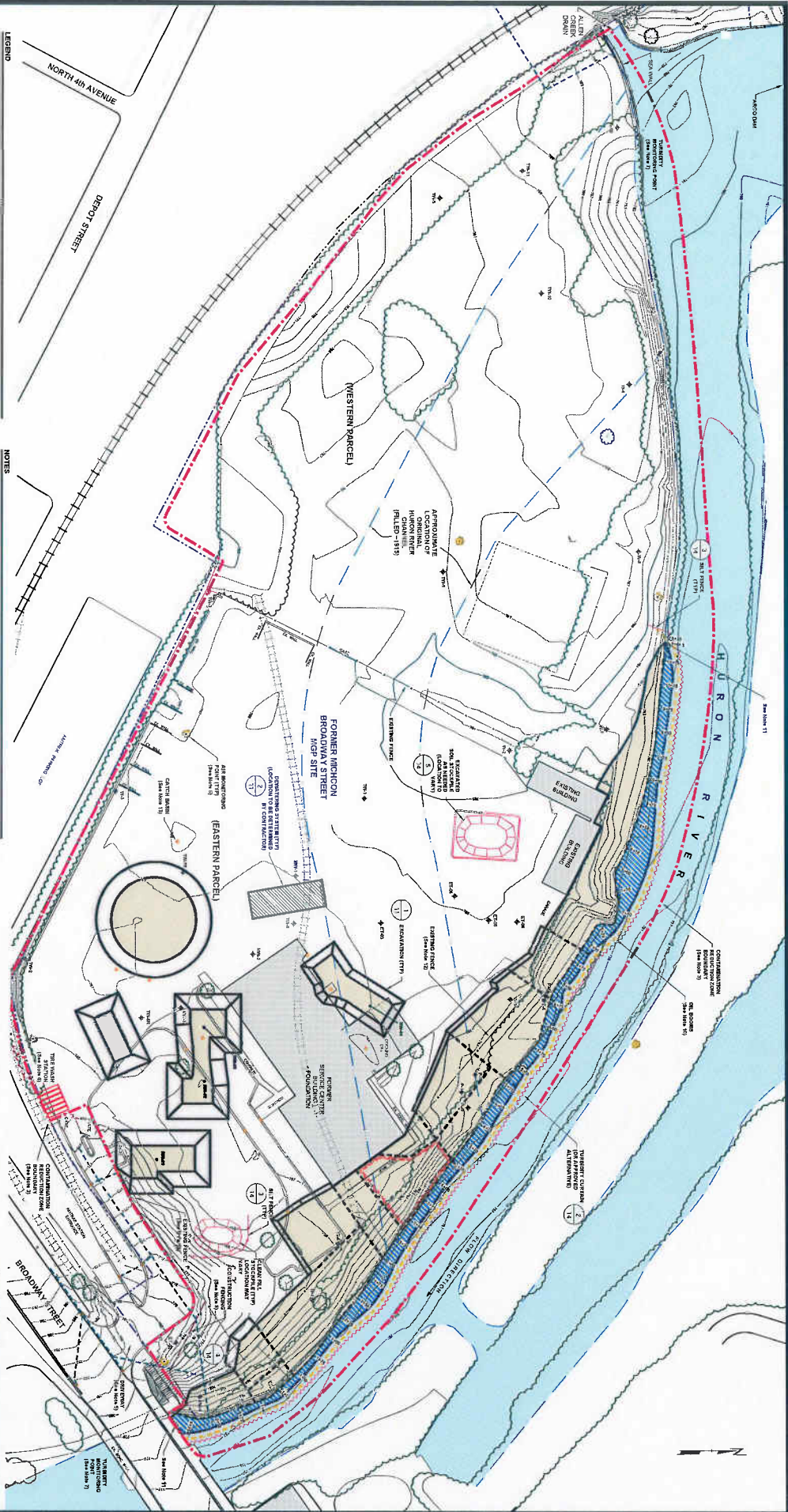
- ### LEGEND
- APPROXIMATE EXISTING ELEVATION**  
 --- Dotted line with elevation values  
**APPROXIMATE EXISTING ROADWAY PERFORMANCE**  
 --- Solid line with pavement texture symbol  
**APPROXIMATE EXISTING DRIVEWAY PERFORMANCE**  
 --- Dotted line with pavement texture symbol  
**EXISTING UTILITIES**  
 --- Solid line with symbol  
**APPROXIMATE LOCATION OF EXISTING STRUCTURES**  
 --- Dotted line with structure symbol  
**APPROXIMATE LOCATION OF EXISTING FOUNDATIONS**  
 --- Dotted line with foundation symbol  
**APPROXIMATE LOCATION OF EXISTING FOUNDATION FLOORS**  
 --- Dotted line with floor symbol  
**APPROXIMATE LOCATION OF EXISTING FOUNDATION WALLS**  
 --- Dotted line with wall symbol
- APPROXIMATE EXISTING SIDEWALK**  
 --- Solid line with texture symbol  
**APPROXIMATE EXISTING DRIVEWAY**  
 --- Solid line with texture symbol  
**APPROXIMATE EXISTING DRIVEWAY**  
 --- Solid line with texture symbol  
**APPROXIMATE EXISTING DRIVEWAY**  
 --- Solid line with texture symbol
- APPROXIMATE EXISTING DRIVEWAY**  
 --- Solid line with texture symbol  
**APPROXIMATE EXISTING DRIVEWAY**  
 --- Solid line with texture symbol  
**APPROXIMATE EXISTING DRIVEWAY**  
 --- Solid line with texture symbol

- ### NOTES
1. APPROXIMATE EXISTING ELEVATIONS ARE BASED ON THE 1988 SURVEY.
  2. APPROXIMATE EXISTING ROADWAY PERFORMANCE IS BASED ON THE 1988 SURVEY.
  3. APPROXIMATE EXISTING DRIVEWAY PERFORMANCE IS BASED ON THE 1988 SURVEY.
  4. APPROXIMATE EXISTING DRIVEWAY PERFORMANCE IS BASED ON THE 1988 SURVEY.
  5. APPROXIMATE EXISTING DRIVEWAY PERFORMANCE IS BASED ON THE 1988 SURVEY.
  6. APPROXIMATE EXISTING DRIVEWAY PERFORMANCE IS BASED ON THE 1988 SURVEY.
  7. APPROXIMATE EXISTING DRIVEWAY PERFORMANCE IS BASED ON THE 1988 SURVEY.
  8. APPROXIMATE EXISTING DRIVEWAY PERFORMANCE IS BASED ON THE 1988 SURVEY.
  9. APPROXIMATE EXISTING DRIVEWAY PERFORMANCE IS BASED ON THE 1988 SURVEY.
  10. APPROXIMATE EXISTING DRIVEWAY PERFORMANCE IS BASED ON THE 1988 SURVEY.



<b>CTRC</b> 1506 Elmwood Place Ann Arbor, MI 48106 Phone: 734.515.8822			
DATE:	DESIGNED BY:	DRAWN BY:	CHECKED BY:
11/18/15	J. M. HARRIS	M. J. KELLY	J. M. HARRIS
SHEET 2			
EXISTING CONDITIONS M.A.P.			
FORMER MICHIGAN BROADWAY STREET M.P.P.			
ANN ARBOR, MICHIGAN			





### LEGEND

- EASEMENTS**
  - APPROPRIATE EASEMENT
  - UNLAWFUL EASEMENT
  - UNLAWFUL EASEMENT (RETRACTED)
  - APPROPRIATE EASEMENT (RETRACTED)
  - APPROPRIATE EASEMENT (RETRACTED) (RETRACTED)
  - APPROPRIATE EASEMENT (RETRACTED) (RETRACTED)
- UTILITIES**
  - APPROPRIATE EASEMENT
  - UNLAWFUL EASEMENT
  - APPROPRIATE EASEMENT (RETRACTED)
  - UNLAWFUL EASEMENT (RETRACTED)
- OTHER**
  - APPROPRIATE EASEMENT
  - UNLAWFUL EASEMENT
  - APPROPRIATE EASEMENT (RETRACTED)
  - UNLAWFUL EASEMENT (RETRACTED)

- ### NOTES
1. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  2. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  3. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  4. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  5. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  6. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  7. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  8. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  9. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  10. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  11. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  12. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  13. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  14. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.
  15. THE SHOWN EASEMENT ARE SUBJECT TO THE REVISIONS IN THE ATTACHED SHEETS.

**CTRC**

**FORMER MICHON BRONOVIA STREET IICP**

**AWANABOR, MICHIGAN**

**SITE CONTROL MEASURES**

**SHEET 3**

1848 Edinburgh Park  
 Grand Rapids, MI 49508  
 Phone: 616.318.1188  
 Fax: 616.318.1023

