

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of February 19, 2009

**SUBJECT: Foxfire Phase 2C Site Plan for Planning Commission Approval, Revision to an Approved Natural Features Mitigation Plan. (Area west of Birchwood Drive, south of US-23 and east of Ann Arbor Railroad)
File No. SPPC08-002**

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby approves the Foxfire Phase 2C Site Plan for Planning Commission Approval to revise the natural features mitigation plan including alternative mitigation measures.

STAFF RECOMMENDATION

Staff recommends **approval** of the site plan, including alternative mitigation measures, because the Michigan Department of Environmental Quality and the City of Ann Arbor Natural Resources and Environmental Planning Coordinator support the proposal.

LOCATION

The site is south of US-23/M-14, east of the Ann Arbor Railroad, north of Dhu Varren Road and west of Birchwood Drive, in Section 09-10 (Northeast Area; Traver Creek watershed).

DESCRIPTION OF PETITION

The petitioner requests to revise the approved natural features mitigation plan for the Foxfire Phase 2C development to reflect the existing conditions. The plan is proposed to be revised in two ways: 1) to increase the amount of alternative mitigation credit, and 2) to provide off-site wetland mitigation.

Background – Over one acre of wetland disturbance was approved as part of the Foxfire Phase 2C site plan and, as typical, approximately one and one-half acres of wetland mitigation was required. The approved mitigation plan included the majority of required mitigation to be provided by constructing several new or expanded wetland areas and the remaining portion to be provided alternatively in the form of parkland dedication. As required, the parkland was dedicated and the wetland construction took place in 2002. All appeared well at the time.

However, a 2006 inspection of the site found that some of the on-site wetland mitigation areas were unsuccessful. While one mitigation area developed larger than anticipated (Area A), one mitigation area was smaller than anticipated (Area G) and another failed to establish entirely (Area N). The net result was that the existing conditions did not provide the required amount of wetland mitigation. Not enough water flows to the unsuccessful areas to support wetland plants.

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The Foxfire developer worked with City and Michigan Department of Environmental Quality (MDEQ) staff to identify other areas within the Foxfire site for new wetland mitigation, and then looked at other areas in the Traver Creek creekshed. No other site in these two areas has been found to accommodate new wetland mitigation because of development conflicts – land already contains existing developments – or hydrology – the conditions do not support wetlands. Since compliance with the approved natural features mitigation plan now seems impossible, the petitioners propose to revise the plan. By proposing a new plan, the proposal must comply with all current code standards. Detention ponds can no longer be considered part of a wetland mitigation plan; therefore, in addition to needing to address the unsuccessful wetland areas, the proposed plan must deduct the detention pond (Area F) from the existing conditions.

The existing on-site conditions provide 30,701 square feet less than what is necessary.

Alternative Mitigation Proposal – The approved natural features mitigation plan includes 16,617 square feet of alternative mitigation from the dedication of 53,579 square feet of parkland adjacent to Foxfire West Park. The 16,617-square foot credit represented 21% of the total required mitigation amount.

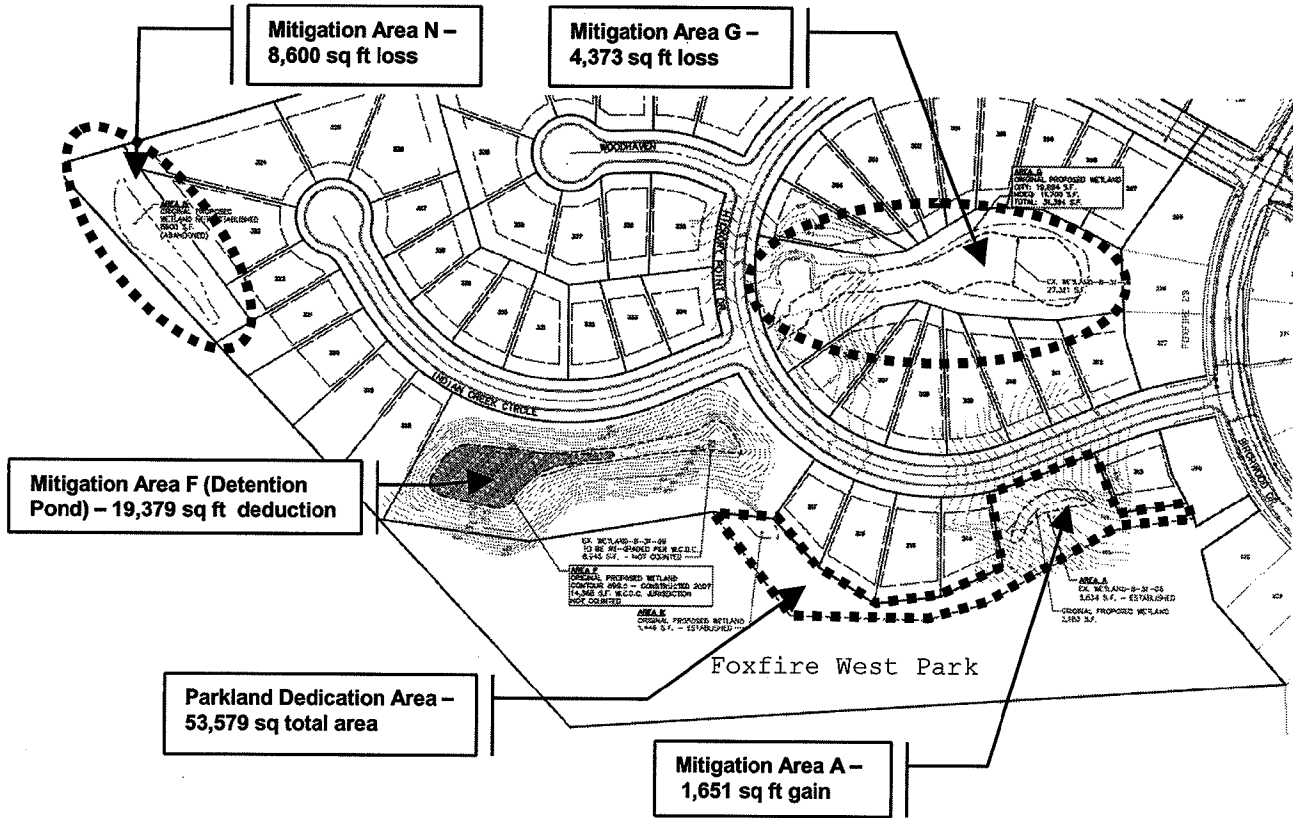
To address the present shortfall from the unsuccessful wetland construction and the deduction of the detention pond, the petitioners request that an additional 22,132 square feet of the previous parkland dedication be applied as alternative mitigation credit. This additional amount will increase the alternative mitigation from 21% of the total required amount to 50%, the maximum permitted by code.

Off-Site Mitigation Proposal – As explained above, it is most likely that attempts to reconstruct the wetlands will fail again and no other area on-site or within the creekshed has been found. The petitioner owns a 148-acre site in Dexter Township and has received preliminary site plan approval for a 70-lot single-family residential development, to be called Hartman Farms. The Hartman Farms Site Plan already includes a wetland protection and mitigation plan under the jurisdiction of the MDEQ. The petitioner proposes to revise the Hartman Farms plan and provide the remaining 8,874 square feet of wetland mitigation there, to make up for the area that cannot be mitigated at Foxfire Phase 2C or within the Traver Creek creekshed.

The proposed mitigation area in Hartman Farms is located along the west side of the site, adjacent to Dexter Town Hall Road, and will be placed within a wetland conservation easement conveyed to the MDEQ.

Role of MDEQ – The MDEQ has jurisdiction over some, but not all, of the wetlands in Foxfire Phase 2C. Some of the wetland construction that was part of the approved natural features mitigation plan satisfied the MDEQ's requirements, and the net loss of wetland mitigation area means that the site no longer complies with the MDEQ requirements as well. The MDEQ imposes penalties when wetland mitigation is unsuccessful (City Code does not). Since the MDEQ does not accept alternative mitigation, the petitioner has proposed to construct additional wetland area in Hartman Farms specifically to address MDEQ requirements. A total of 27,800 square feet of wetlands will be created in Hartman Farms by the petitioner, 8,874 square feet to satisfy the outstanding City requirements and the remaining to satisfy the MDEQ.

ILLUSTRATION OF WETLAND MITIGATION AREA NET LOSS OR GAIN



COMPARISON CHART

	Approved 2000/2002 Natural Features Mitigation Plan	Proposed Revisions	2009 Natural Features Mitigation Plan
Wetland Disturbance	51,665 sq ft		51,665 sq ft
Required Mitigation	77,498 sq ft		77,498 sq ft [a]
On-Site Mitigation	60,817 sq ft	-30,701 sq ft	30,118 sq ft
Alternative Mitigation	16,617 sq ft (21% of total)	+22,132 sq ft (+29%)	38,749 sq ft (50% of total)
Off-Site Mitigation	None	+8,874 sq ft	8,874 sq ft [c]
Provided Mitigation	77,436 sq ft [b]		77,741 sq ft [d]

- [a] Does not include additional penalty imposed by MDEQ.
- [b] For unknown reasons, approved plan provided slightly less mitigation than required. Now considered irrelevant since proposed provided mitigation exceeds required mitigation.
- [c] Does not include additional amount provided for MDEQ.
- [d] Does not include additional amount provided for MDEQ.

HISTORY

- | | |
|-------------------|--|
| 1970 | Annexation of 206-acre Foxfire site. |
| 1979 | Area plan for single-family detached dwellings, multiple-family dwellings, townhouse dwellings and public parkland approved, along with corresponding zoning districts. |
| 1990 | Foxfire Phase I Site Plan and Rezoning petition approved. |
| July 20, 1992 | Foxfire Site Condominium Phase II Site Plan approved. For construction of 191 single-family lots in three sub-phases on 60-acre site. Construction of sub-phase 2A begins soon thereafter, followed by construction of sub-phase 2B. |
| October 1998 | Grading permit for construction of sub-phase 2C issued then revoked because site plan had expired and because City and MDEQ staff found the existing wetlands extended beyond what was shown on plans. |
| November 9, 2000 | Foxfire Phase 2C Revised Site Condominium Site Plan approved. Approval renewed site plan and included wetland use permit and natural features mitigation plan that incorporated dedication of parkland as an alternative mitigation measure. |
| April 2, 2002 | Foxfire Phase 2C Site Plan for Planning Commission Approval approved. Amended the natural features protection and mitigation plan but did not change total amounts. |
| Summer 2003 | Wetland mitigation areas, including Areas G and N on approved plan, graded and seeded as required. Site complied with approved plan. |
| December 18, 2003 | Foxfire Phase 2C Administrative Amendment (to 2002 Site Plan for Planning Commission Approval). Substituted woodland and landmark trees to be removed and saved on approved natural features protection and mitigation plan. Site assumed to comply with approved plans. |
| January 22, 2004 | Foxfire Phase 2C Site Plan for Planning Commission Approval. Removed one additional landmark tree, with required replacement. Site assumed to comply with approved plans. |
| Summer 2006 | Field inspections found Area N failed to establish and Area G partially established. Site out of compliance. |

STAFF COMMENTS

Natural Resources/Environmental Planning Coordinator – Wetland mitigation construction took place at the Foxfire 2C site several years ago. Unfortunately several of the mitigation areas were unsuccessful, mostly due to poor hydrology. Therefore, the petitioner is proposing to relocate the required mitigation areas that were unsuccessful. Chapter 63, Section 5:213(5), provides the requirement for the location of wetland mitigation. According to subsection (a) the mitigation shall be on-site where practical and beneficial to the wetland resource. However, subsection (b) allows for off-site mitigation, within the same creekshed, when on-site mitigation is not practical.

The Foxfire 2C petitioner, Michigan Department of Environmental Quality (MDEQ), and City staff have worked together over the past two years to determine that it is not practical, due to development conflicts and insufficient hydrology, to construct the remaining required mitigation on-site. The Foxfire 2C petitioner, MDEQ, and City staff also worked unsuccessfully to locate an appropriate mitigation area within the Traver Creek watershed. Subsection (c) allows wetland mitigation to be located outside the creekshed when the public services area administrator determines that it is inappropriate and impractical to mitigate on-site or off-site within the creekshed.

As the person designated to make this decision by the public services area administrator, I support the proposed wetland mitigation location in Dexter Township provided the following two conditions are met:

- A. Provide evidence of an MDEQ Wetland Permit for the proposed wetland mitigation.

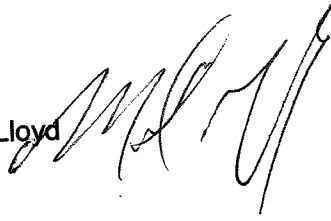
[A copy of the MDEQ's Wetland Use Permit approval letter, issued on December 17, 2008, has been received and is attached. The approval letter notes that a signed conservation easement has been submitted for recording as well as a letter of credit. The MDEQ is requiring that the mitigation be installed in 2009 and yearly monitoring reports are submitted in years 2009 through 2013.]

- B. The proposed wetland mitigation is currently not shown on the Hartman Farms proposal submitted to Dexter Township for site plan approval. Provide evidence that Dexter Township has agreed to allow, approved and/or permitted the proposed wetland mitigation.

[Staff has spoken to and coordinated with Patrick Sloan, Dexter Township Planner. Mr. Sloan is aware of the petitioner's need to include the Foxfire Phase 2C mitigation requirements on the Hartman Farms final site plan. He has agreed to assist Planning & Development Services staff to ensure that the Hartman Farms final site plan and master deed include revisions to the existing conditions and open space calculations to reflect the presence of the new wetlands. Mr. Sloan indicated the Township would not prevent the petitioner from constructing the wetland mitigation area this summer which will likely be before final Hartman Farms site plan approval is granted.]

Planning and Development Services – The proposed petition satisfies both of the suggested conditions offered by Jerry Hancock, the Natural Resources/Environmental Planning Coordinator.

Prepared by Alexis DiLeo
Reviewed by Connie Pulcifer and Mark Lloyd
jsj/2/12/09



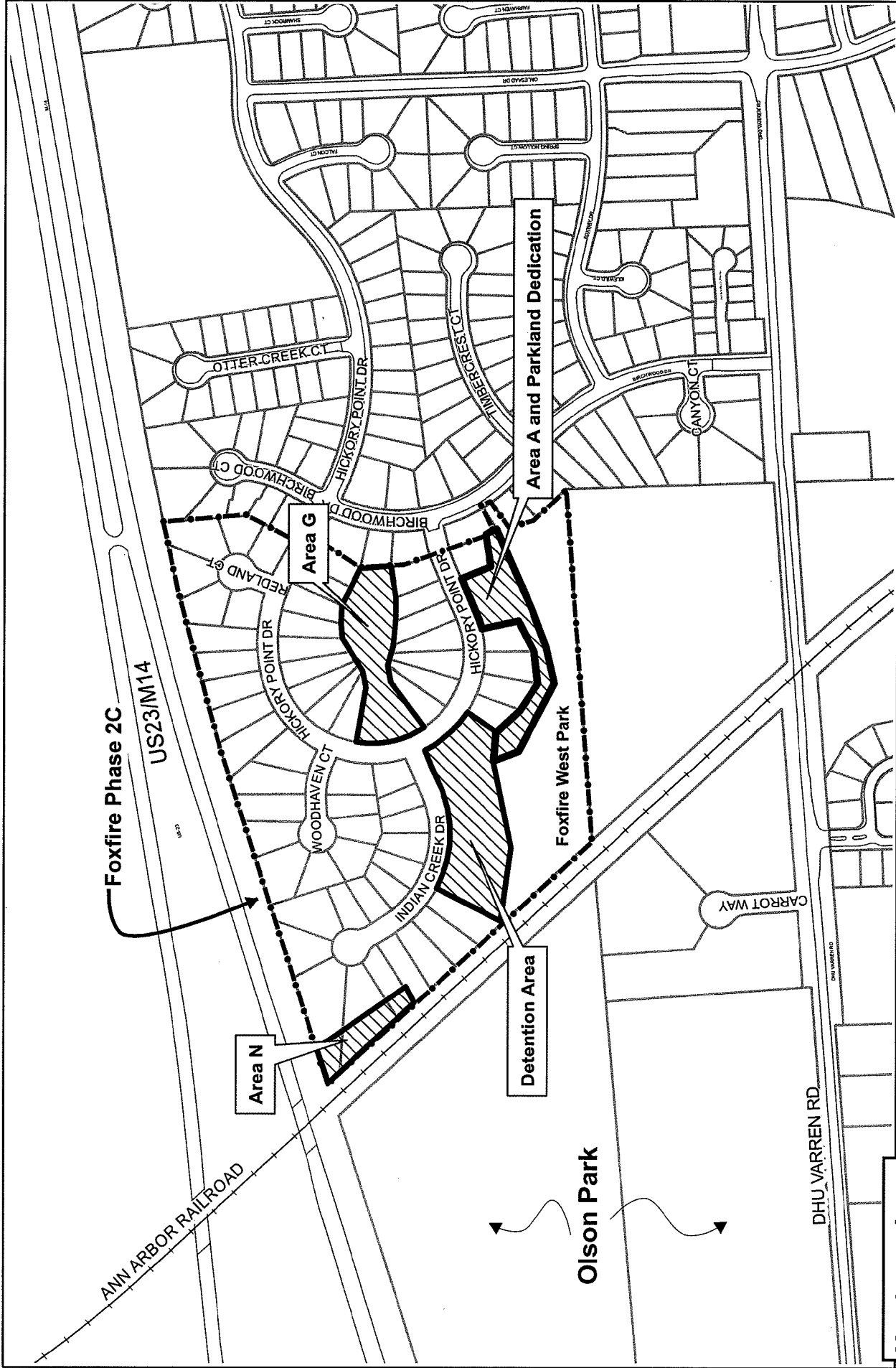
Attachments: Parcel Map
Aerial Photo
Site Plan
MDEQ Wetland Permit Approval Letter

c: Petitioner: Midwestern Consulting, Inc.
R. James Gorenflo
3815 Plaza Drive
Ann Arbor, MI 48108

Owner: Guenther Building Company
2864 Carpenter Road
Ann Arbor, MI 48105

Patrick Sloan, Dexter Township Planning Department, 6880 Dexter-Pinckney Road,
Dexter, MI 48130
Systems Planning
File No. SPPC08-002

Parcel Map: Foxfire Phase 2C Revised Natural Features Mitigation Plan



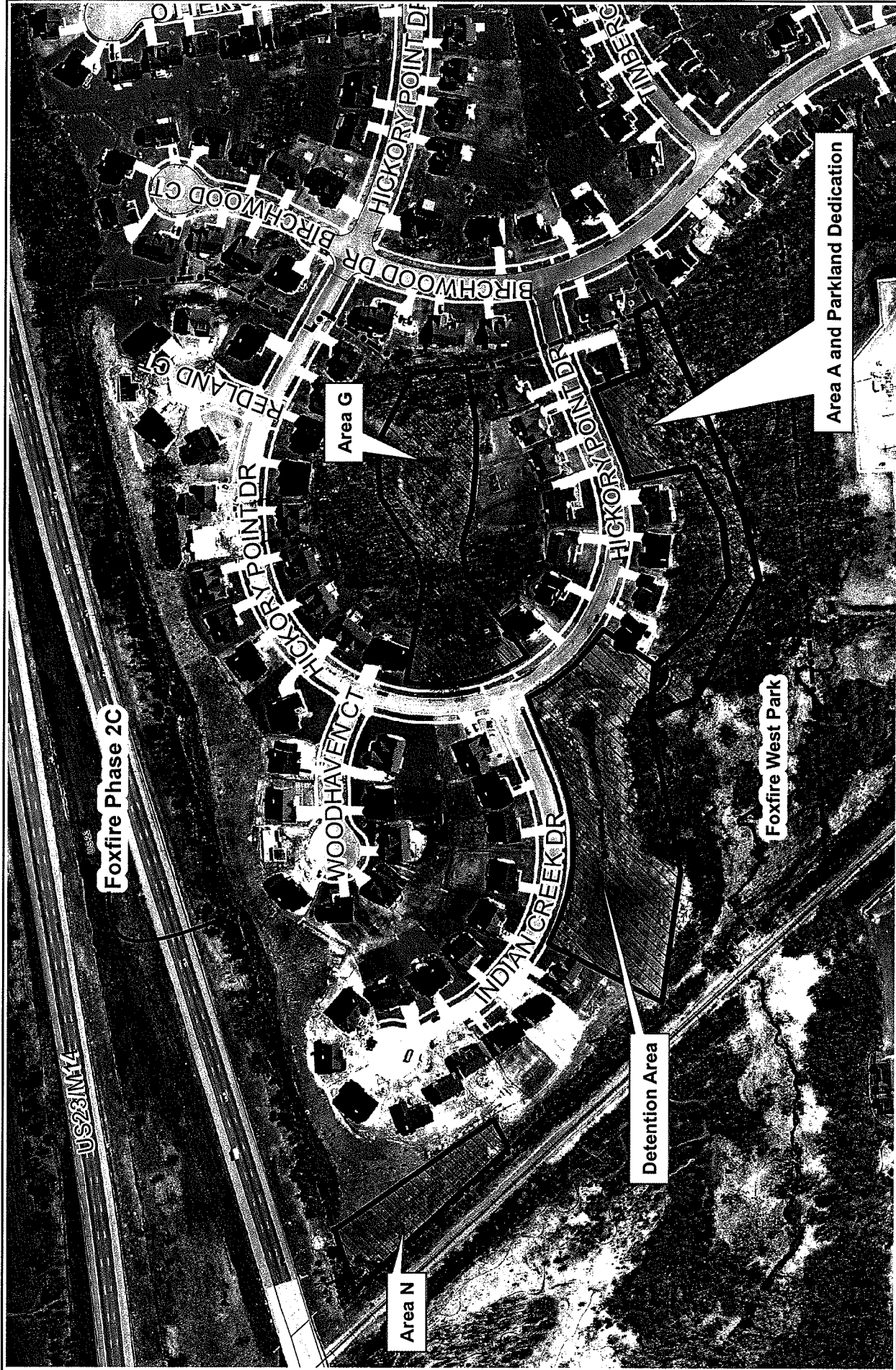
Map Legend

- Parcels
- Edge Of Pavement
- Railroads



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2006 Aerial Photo: Foxfire Phase 2C Revised Natural Features Mitigation Plan



Map Legend

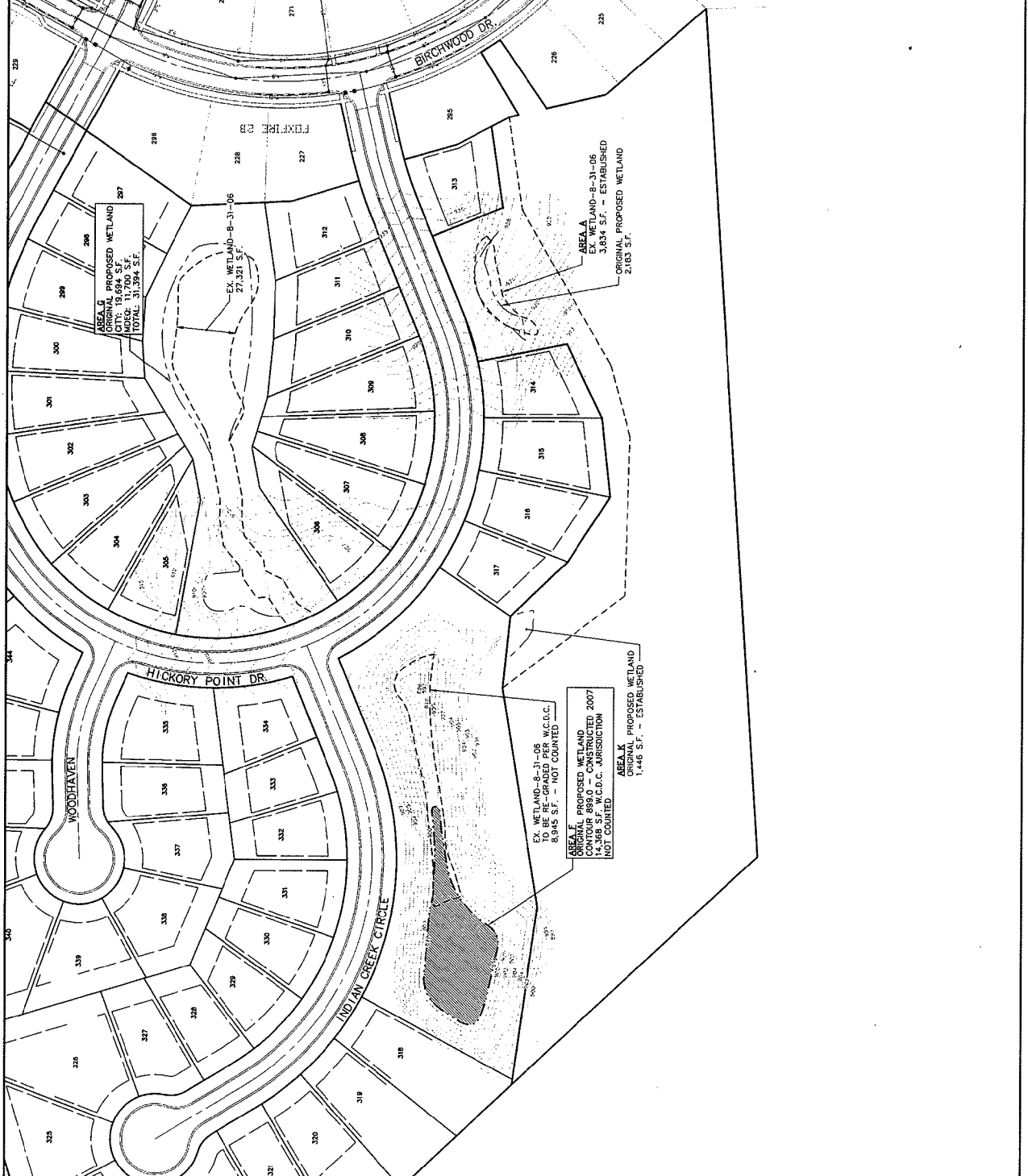
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Legend

- Original Proposed Wetland
- Established Wetland AD of 8-31-06
- Wetland Constructed in Fall 2007

Scale: 1" = 60'

Area F - Description

Description	Amount
Area F - Ditch Area (City AD Area)	53,379 s.f.
Area F - Wetland Area (City AD Area)	19,694
Area G - Wetland Area (MDEQ req.)	11,700
Area H - Wetland Area (MDEQ req.)	3,820
Total	88,613 s.f.

Area K - Description

Total City Mitigation Required	40,519 s.f.
Total MDEQ Mitigation Required	20,300 s.f.
Req. Mitigation Total (Calculated)	77,435 s.f.
Total Credits	-58,819 s.f.
Balance of Mitigation Required	18,617 s.f.

Area F - Description

Total City Mitigation Required	40,519 s.f.
Total MDEQ Mitigation Required	20,300 s.f.
Req. Mitigation Total (Calculated)	77,435 s.f.
Total Credits	-58,819 s.f.
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Area K - Description

Total City Mitigation Required	40,519 s.f.
Total MDEQ Mitigation Required	20,300 s.f.
Req. Mitigation Total (Calculated)	77,435 s.f.
Total Credits	-58,819 s.f.
Balance of Mitigation Required	18,617 s.f.

MDEQ Mitigation Provided - Based on field conditions as of April 18, 2007

Category	Amount
Area A - Wetland Area Established	19,694 s.f.
Area B - Wetland Area Established	27,221 s.f.
Area C - Wetland Area Established	31,394 s.f.
Provided Total	78,309 s.f.
City Required Mitigation for Area G	-19,694
Total MDEQ Mitigation Required	-20,300
Balance of MDEQ Mitigation to be Provided	-11,022 s.f.
Pay 20% additional penalty costs	-13,225 s.f.
City Mitigation Provided	36,992 s.f.

City Mitigation Provider

Category	Amount
Area A - Wetland Area Established	19,694 s.f.
Area B - Wetland Area Established	27,221 s.f.
Area C - Wetland Area Established	31,394 s.f.
Provided Total	78,309 s.f.
City Required Mitigation	-40,519
Balance of City Mitigation Required	-9,874 s.f.
Total Mitigation Area to be Provided:	22,100 s.f.



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
JACKSON DISTRICT OFFICE



STEVEN E. CHESTER
DIRECTOR

December 17, 2008

Mr. Todd Griffin
Guenther Building Company
2864 Carpenter Road
Ann Arbor, Michigan 48105

Dear Mr. Griffin:

SUBJECT: DEQ File Numbers 01-81-0026-P & 07-81-0023-P
T2S, R6E, Section 9, Ann Arbor Township, and T1S, R4E, Section 22, Dexter
Township Washtenaw County

The Department of Environmental Quality (DEQ) has completed its review of the off-site Wetland Mitigation Plan submitted by your consultant, Midwestern Consulting, for the Foxfire Subdivision. Approximately 0.49 acre of new mitigation wetland is proposed to be constructed at the Hartman Farms development located in Dexter Township, Washtenaw County. A signed Conservation Easement has been submitted to the DEQ for recording with the Washtenaw County Register of Deeds and a Letter of Credit in the amount of \$16,550.00 has also been submitted to the DEQ.

The mitigation plan is hereby approved. The plan will be kept on file with the DEQ. The mitigation wetland is to be monitored for five years, 2009 to 2013, consecutively. The first monitoring report will be due by no later than January 31, 2010. You are reminded that conservation easement signs must be installed around the perimeter of the easement area as soon as construction of the mitigation wetland is complete. A copy of the approved plan is attached to this letter.

Your effort to initiate construction of the remaining Foxfire mitigation wetland at Hartman Farms is appreciated. I look forward to the successful construction of the mitigation wetland in 2009.

If you have any questions regarding this project, please contact me.

Sincerely,

James Sallee
District Environmental Quality Analyst
Land and Water Management Division
517-780-7910

Attachment

cc/att: Ms. Alexis DiLeo, City of Ann Arbor

