

cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item Q
October 6, 2014

SUBJECT: Acceptance of a Conservation Easement from Mirage Development LLC for woodland and wetland conservation areas on the Orchard Hills North development, located on the south side of Ten Mile Road, between Meadowbrook Road and the CSX Railroad tracks in Section 26 of the City.

SUBMITTING DEPARTMENT: Department of Community Development, Planning Division *Baugh*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Mirage Development LLC is developing Orchard Hills North, a 12-unit residential development on 9.1 acres of land located on the south side of Ten Mile Road, between Meadowbrook Road and the CSX Railroad tracks. The current zoning of the property is R-4, One-Family Residential. The Preliminary Site Plan, Wetland Permit, Woodland Permit and Stormwater Management Plan were approved by the Planning Commission on March 12, 2014.

The applicant has provided a conservation easement over the undisturbed natural areas including regulated woodlands and wetlands located on the property. The easement covers approximately 2.07 acres of the site, amounting to 22.7 percent of the total site area. Exhibit B graphically depicts the area being preserved, primarily along the north property line.

The easement has been reviewed by the City's professional staff and consultants. The easement is currently in a form acceptable to the City Attorney's office for acceptance by the City Council.

RECOMMENDED ACTION: Acceptance of a Conservation Easement from Mirage Development LLC for woodland and wetland conservation areas on the Orchard Hills North development, located on the south side of Ten Mile Road, between Meadowbrook Road and the CSX Railroad tracks in Section 26 of the City.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

LOCATION MAP

JSP14-01 Orchard Hills North

Location



Map Legend

 Subject Property



City of Novi

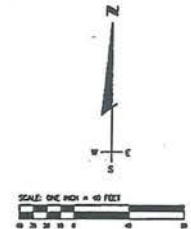
Planning Division
Community Development Dept.
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org

Map Author: Sara Roediger
Date: 4-14-14

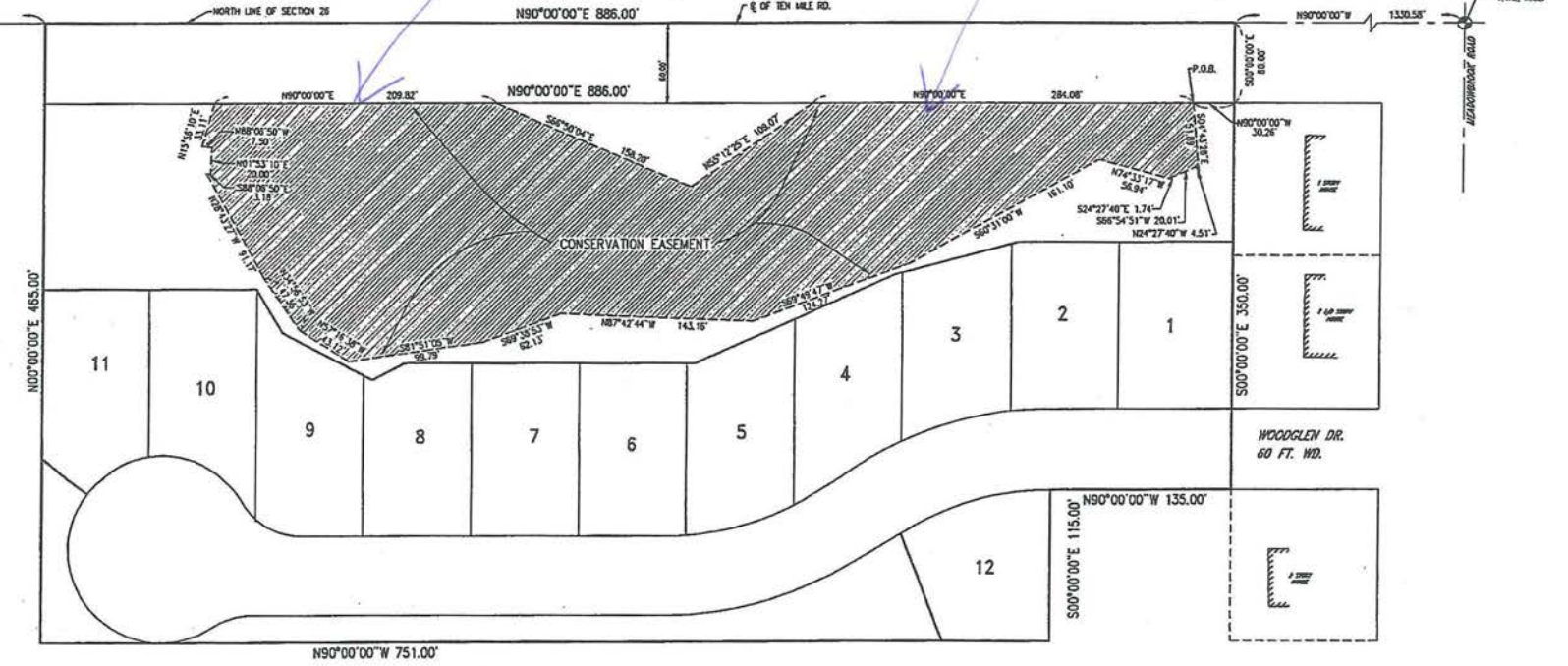
MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

CONSERVATION EASEMENT



TEN MILE ROAD (93 FEET WIDE)



WOODGLEN DR.
60 FT. WD.



FOR
SERAGE DEVELOPMENT, L.L.C.
PART OF TEN MILE ROAD
T.1 N., R.B.E., CITY OF NOKIA
DARLAND COUNTY, MICHIGAN

DATE:	MAY 28, 2014
REVISIONS:	
BY:	

EXHIBIT "C" CONSERVATION EASEMENT

ORCHARD HILLS NORTH CONDOMINIUM
PART OF THE N.E. 1/4 OF SECTION 26,
T.1 N., R.B.E., CITY OF NOKIA,
DARLAND COUNTY, MICHIGAN

WARRIER, CANTRELL & PADMOS, INC. CIVIL ENGINEERS & LAND SURVEYORS 2000 Pleasant Road, Suite #2 Farmington Hills, MI 48334 248-858-8800	
STATE FILE: 20130714-0000000000-01 CONSERVATION EASEMENT	
JOB NO.: 20130714	
PLAN FILE: 13-08-PT13	SHEET 1 of 1

SCALE: 1" = 40'

DRAWN: HSCGA/LS

CITY ATTORNEY LETTER



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.jrsjlaw.com

September 16, 2014

Barb McBeth
Deputy Community Development Director
City of Novi
45175 Ten Mile Road
Novi, MI 48375-3024

**RE: Orchard Hills North
Conservation Easement**

Dear Ms. McBeth:

We have received and reviewed the final executed Conservation Easement for the Orchard Hills North residential site condominium. The Conservation Easement has been provided for the purpose of preserving the existing wetlands along Ten Mile Road, as well as any woodland replacement trees planted on-site. The terms of the Conservation Easement are acceptable for this purpose. Subject to the City Planner's review and approval of the description and drawing of the Conservation Easement area for consistency with the approved site plan, the Conservation Easement should be placed on an upcoming City Council Agenda for acceptance. Once accepted, it should be recorded in the usual manner with the Oakland County Register of Deeds.

Should you have any questions or concerns relating to the issues set forth above, please feel free to contact me I that regard.

Sincerely,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Elizabeth K. Saarela

EKS

C: Maryanne Cornelius, Clerk
Charles Boulard, Community Development Director
Kristen Kapelanski, Planner
Adam Wayne, Construction Engineer
Sheila Weber and Kristin Pace, Treasurer's Office
Sarah Marchioni, Building Permit Coordinator
Sue Troutman, City Clerk's Office
Peter Hill, ECT
Claudio Rossi and Mark Paulson, Mirage Development
Thomas R. Schultz, Esquire

CONSERVATION EASEMENT

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (the "**Conservation Easement**") made this 26th day of AUGUST, 2014, by and between Mirage Development, L.L.C., a Michigan limited liability company whose address is 45380 W. Ten Mile Road, Ste. 135, Novi, MI 48375 (hereinafter the "**Grantor**"), and the City of Novi, and its successors or assigns, whose address is 45175 Ten Mile Road, Novi, Michigan 48375 (hereinafter the "**Grantee**").

RECITATIONS:

A. Grantor owns a certain parcel of land situated in Section 26 of the City of Novi, Oakland County, Michigan, described in **Exhibit A**, attached hereto and made a part hereof (the "**Property**"). Grantor has received final site plan approval for construction of a 12-unit single family residential site condominium development on the Property (the "**Development**"), subject to provision of an appropriate easement to permanently protect the woodlands, wetlands and wooded wetland areas located thereon from destruction or disturbance. Grantor desires to grant such an easement in order to protect the area.

B. The Conservation Easement Areas (the "**Easement Areas**") situated on the Property are more particularly described on **Exhibits B and C**, attached hereto and made a part hereof, the second page of which contains a drawing depicting the protected area.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), in hand paid, the receipt and adequacy of which are hereby acknowledged, Grantor hereby reserves, conveys and grants the following Conservation Easement, which shall be binding upon Grantor and Grantee, and their respective heirs, successors, assigns and/or transferees and shall be for the benefit of the Grantee, all Grantors and purchasers of the Property and their respective heirs, successors, assigns and/or transferees. This Conservation Easement is dedicated pursuant to subpart 11 of part 21 of the Natural Resources and Environmental Protection Act being MCL324.2140, *et seq.*, upon the terms and conditions set forth herein as follows:

1. The purpose of this Conservation Easement is to protect the woodlands, wetlands and wooded wetland areas as shown on the attached and incorporated **Exhibit B**. The subject areas shall be perpetually preserved and maintained, in their natural and undeveloped condition, unless authorized by permit from the Grantee, and, if applicable, the Michigan Department of Environmental Quality and the appropriate federal agency.

2. Except for and subject to the activities which have been expressly authorized by permit, there shall be no disturbance of the woodlands, wetlands and wooded wetland areas

and/or vegetation within the Easement Areas, including altering the topography of; placing fill material in; dredging, removing or excavating soil, minerals, or trees, and from constructing or placing any structures on; draining surface water from; or plowing, tilling, cultivating, or otherwise altering or developing, and/or constructing, operating, maintaining any use or development in the Easement Areas.

3. No grass or other vegetation shall be planted in the Easement Areas after the date of this Conservation Easement with the exception of plantings approved, in advance, by Grantee in accordance with all applicable laws and ordinances.

4. This Conservation Easement does not grant or convey to Grantee, or any member of the general public, any right of ownership, possession or use of the Easement Areas, except that, upon reasonable written notice to Grantor, Grantee, and its authorized employees and agents, may enter upon and inspect the Easement Areas to determine whether the Easement Areas are being maintained in compliance with the terms of the Conservation Easement.

5. In the event that the Grantor shall at any time fail to carry out the responsibilities specified within this Conservation Easement, and/or in the event of a failure to preserve and/or maintain the woodlands, wetlands and wooded wetland areas in reasonable order and condition, in accordance with the terms of this Conservation Easement or applicable City Ordinance or state statute or regulation, Grantee may serve written notice upon Grantor setting forth the deficiencies in maintenance and/or preservation. Notice shall also set forth a demand that the deficiencies be cured within a stated reasonable time period, and the date, time and place of the hearing before the City Council, or such other Council, body or official delegated by the City Council, for the purpose of allowing the Grantor to be heard as to why Grantee should not proceed with the maintenance and/or preservation which has not been undertaken. At the hearing, the time for curing the deficiencies and the hearing itself may be extended and/or continued to a date certain. If, following the hearing, the City Council, or other body or official, designated to conduct the hearing, shall determine that maintenance and/or preservation have not been undertaken within the time specified in the notice, the Grantee shall thereupon have the power and authority, but not obligation, to enter upon the Easement Areas, or cause its agents or contractors to enter upon the Easement Areas, and perform such maintenance and/or preservation as reasonably found by the Grantee to be appropriate. The cost and expense of making and financing such maintenance and/or preservation including the cost of notices by the Grantee and reasonable legal fees incurred by the Grantee, plus an administrative fee in the amount of 25% of the total of all costs and expenses incurred, shall be paid by the Grantor, and such amount shall constitute a lien on the Property. Grantee may require the payment of such monies prior to the commencement of work. If such costs and expenses have not been paid within 30 days of a billing to Grantor, all unpaid amounts may be placed on the delinquent tax roll of Grantee, pro rata as to each unit in the Development, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of Grantee, in the event Grantee prevails in such litigation, such costs and expenses may be collected by suit initiated against Grantor, and, in such event, Grantor shall pay all court costs and reasonable attorney fees incurred by Grantee in connection with such suit.

GRANTEE

CITY OF NOVI
A Municipal Corporation

By: _____

Its:

By: _____

Its:

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, on behalf of the City of Novi, a Municipal Corporation.

Notary Public
Acting in Oakland County, Michigan
My Commission Expires: _____

Drafted By:
Elizabeth K. Saarela, Esquire
Johnson, Rosati, Schultz & Joppich, P.C.
27555 Executive Drive Suite 250
Farmington Hills, Michigan 48331

After Recording, Return to:
Maryanne Cornelius, Clerk
City of Novi
45175 Ten Mile Road
Novi, Michigan 48375

WARNER, CANTRELL & PADMOS, INC.

CIVIL ENGINEERS & LAND SURVEYORS

27300 Haggerty Road, Suite F2

Farmington Hills, MI 48331

Phone: (248) 848-1666

Fax: (248) 848-9896

EXHIBIT "A"

PROPOSED ORCHARD HILLS NORTH

PART OF THE NORTHEAST 1/4 OF SECTION 26, T.1N., R.8E., CITY OF NOVI, OAKLAND COUNTY, MICHIGAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 26, T.1N., R.8E., CITY OF NOVI, OAKLAND COUNTY, MICHIGAN; THENCE ALONG THE NORTH LINE OF SAID SECTION 26 ALSO BEING THE CENTERLINE OF TEN MILE ROAD (93' WIDE), N.90°00'00"W, 1330.58' TO THE POINT OF BEGINNING, THENCE IN PART ALONG THE WESTERLY LINE OF "ORCHARD HILLS" SUBDIVISION, AS RECORDED IN LIBER 86, OF PLATS, PAGE 40, OAKLAND COUNTY RECORDS, S.00°00'00"E., 350.00'; THENCE N.90°00'00"W., 135.00'; THENCE S.00°00'00"E., 115.00'; THENCE N.90°00'00"W., 751.00'; THENCE, N.00°00'00"E., TO THE SAID NORTH LINE OF SECTION 26 ALSO BEING THE CENTERLINE OF TEN MILE ROAD (93' WIDE), 465.00'; THENCE ALONG THE SAID NORTH LINE OF SECTION 26 AND SAID CENTERLINE OF TEN MILE ROAD, N.90°00'00"E., 886.00' TO THE POINT OF BEGINNING CONTAINING 9.10 ACRES AND BEING SUBJECT TO THE RIGHTS OF THE PUBLIC IN THE NORTHERLY 33.00' (TEN MILE ROAD) AND ALL EASEMENTS AND RESTRICTONS OF RECORD.

WARNER, CANTRELL & PADMOS, INC.

CIVIL ENGINEERS & LAND SURVEYORS

27300 Haggerty Road, Suite F2

Farmington Hills, MI 48331

Phone: (248) 848-1666

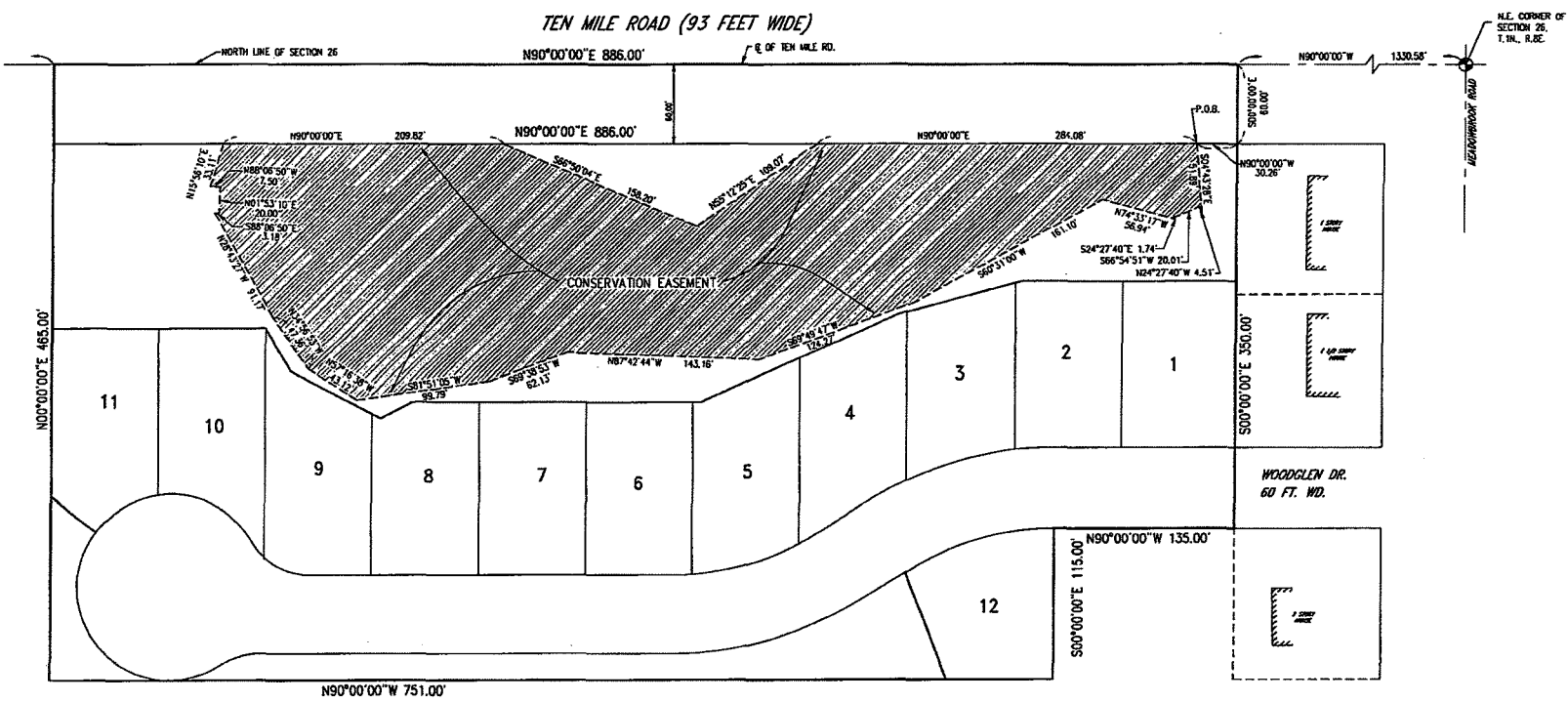
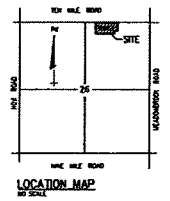
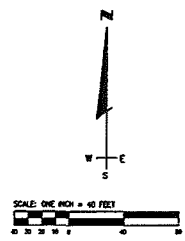
Fax: (248) 848-9896

EXHIBIT "B"

**EASEMENT FOR WETLANDS CONSERVATION
PROPOSED ORCHARD HILLS NORTH**

AN EASEMENT FOR WETLANDS CONSERVATION ON, OVER, ACROSS AND THROUGH PART OF THE NORTHEAST 1/4 OF SECTION 26, T.1N., R.8E., CITY OF NOVI, OAKLAND COUNTY, MICHIGAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 26, T.1N., R.8E., CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, THENCE, ALONG THE NORTH LINE OF SAID SECTION 26, ALSO BEING THE CENTERLINE OF TEN MILE ROAD (93' WIDE), N.90°00'00"W., 1330.58'; THENCE S.00°00'00"E., 60.00'; THENCE N.90°00'00"W., 30.26' TO THE POINT OF BEGINNING OF THE CONSERVATION EASEMENT HEREIN DESCRIBED, THENCE S.04°43'28"E., 51.89'; THENCE N.24°27'40"W., 4.51'; THENCE S.66°54'51"W., 20.01'; THENCE S.24°27'40"E., 1.74'; THENCE N.74°33'17"W., 56.94'; THENCE S.60°31'00"W., 161.10'; THENCE S.69°49'47"W., 124.27'; THENCE N.87°42'44"W., 143.16'; THENCE S.69°38'53"W., 62.13'; THENCE S.81°51'05"W., 99.79'; THENCE N.57°16'38"W., 43.12'; THENCE N.34°56'53"W., 47.36'; THENCE N.28°43'27"W., 91.17'; THENCE S.88°06'50"E., 3.18'; THENCE N.01°53'10"E., 20.00'; THENCE N.88°06'50"W., 7.50'; THENCE N.15°56'10"E., 33.11'; THENCE N.90°00'00"E., 209.82'; THENCE S.66°50'04"E., 158.20'; THENCE N.55°12'25"E., 109.07'; THENCE N.90°00'00"E., 284.08' TO THE POINT OF BEGINNING CONTAINING 2.07 ACRES.



FOR:
 HERAGE DEVELOPMENT, LLC.
 6430 N. W. MILE ROAD
 SUITE 105
 WALKER, MI 49640
 APPROVED REPRESENTATIVE
 MICHAEL J. BROWN

DATE:	MAY 20, 2014
REVISION:	
AS SHOWN:	

EXHIBIT "C" CONSERVATION EASEMENT

ORCHARD HILLS NORTH CONDOMINIUM
 PART OF THE N.E. 1/4 OF SECTION 26,
 T.1 N., R.8 E., CITY OF WALKER,
 OAKLAND COUNTY, MICHIGAN

WARNER, CANTRELL & PADAKOS, INC. <small>CIVIL ENGINEERS & LAND SURVEYORS 20000 WOODGLEN ROAD WALKER, MI 49640</small>	
PLAT FILE:	UNDEVELOPED CONSERVATION EASEMENT CONSERVATION EASEMENT
JOB NO.:	20090026
PLAT FILE:	13-02-P113
SHEET:	1 of 1