

RESOLUTION R-44-16

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WHEATON AND
THE FOREST PRESERVE DISTRICT OF DuPAGE COUNTY PROVIDING FOR THE
EXTENSION OF WATER SUPPLY IMPROVEMENTS AND THE PROVISION OF
WATER TO ST. JAMES FARM**

WHEREAS, the Forest Preserve District of DuPage County has requested that the City of Wheaton provide municipal water to their property at St. James Farm Forest Preserve, located in unincorporated DuPage County, Winfield Township; and

WHEREAS, the Wheaton City Council has determined that it is willing to extend water to St. James Farm under the terms of an Intergovernmental Agreement between the City of Wheaton and the Forest Preserve District of DuPage County.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to execute an Intergovernmental Agreement between the City of Wheaton and the Forest Preserve District of DuPage County to extend municipal water to St. James Farm.

ADOPTED this 19th day of September, 2016.

ATTEST:


City Clerk


Mayor

Ayes:

Roll Call Vote:

Councilman Scalzo
Councilman Suess
Councilwoman Fitch
Councilman Prendiville
Councilman Rutledge
Mayor Gressk

Nays:

None

Absent:

Councilman Saline

Motion Carried Unanimously

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WHEATON AND THE
FOREST PRESERVE DISTRICT OF DUPAGE COUNTY PROVIDING FOR THE EXTENSION
OF WATER SUPPLY IMPROVEMENTS AND THE PROVISION OF WATER TO THE ST.
JAMES FARM FOREST PRESERVE**

This Intergovernmental Agreement is made between the City of Wheaton, an Illinois home rule municipality (hereinafter "City") and the Forest Preserve District of DuPage County, a body politic incorporate (herein "District").

RECITALS

WHEREAS, the City is an Illinois home rule municipality which owns and operates a water system; and

WHEREAS, the District is a body politic and corporate which owns and operates a forest preserve known as St. James Farm (hereinafter "St. James") which is located approximately at the intersections of Butterfield and Winfield Roads, and Winfield and Mack Roads, in unincorporated DuPage County; and

WHEREAS, in the past St. James has obtained its water from underground wells; and

WHEREAS, the District wants to improve the reliability and quality of the domestic water supply for human consumption, animal consumption, and fire suppression at St. James by using municipal water to be supplied by the City; and

WHEREAS, the District is willing to pay for all improvements necessary to extend City water system to St. James, as well as the cost of the water upon connection, subject to the terms of this Agreement; and

WHEREAS, the District desires to recapture a portion of the costs for the construction of the connection whenever any other property taps into the connection.

WHEREAS, the City and District are authorized to enter into this Intergovernmental Agreement pursuant to the powers confirmed by Article VII, Section 10 of the Illinois Constitution of 1970 and the Illinois Intergovernmental Agreement Act, 5 ILCS 220/1 et seq.

NOW THEREFORE, based upon the foregoing recitals, mutual promises, and other considerations recited herein the City and District agree as follows:

1. **INCORPORATION.** The foregoing recitals are incorporated into this Agreement as representing the intent of the parties and as substantive provisions.

2. **PROVISION OF WATER.** The City shall allow the District to extend and connect the City's water system to St. James and thereafter the City shall provide St. James with a supply of potable water in conformance with the terms of this Agreement; as well as applicable City ordinances and laws.

3. **DISTRICT OBLIGATIONS.** As a condition of extension and connection of the City's water system and the City's provision of water to St James Farm, the District shall at its sole cost and expense:

- a. Design; engineer; secure all permits; acquire all piping, valves, hardware, connections, fixtures and appurtenances; contract for or perform any and all construction, installations, charging and testing, and restoration work required to extend and connect to the City water system, including all connections to service lines at St. James, (hereinafter comprehensively the "Work"), in conformance with the engineering drawings prepared by Strand Associates, Inc. of Joliet, Illinois and dated July 20, 2016. The drawings shall be deemed incorporated herein by reference but without attaching said document hereto due to its size. The District shall require its contractors to undertake and complete all Work in conformance with this Agreement and all applicable laws and ordinances in a timely, good, workmanlike, and safe manner; and
- b. Secure any and all easements, temporary easements, licenses, approvals, Intergovernmental Agreements, permits or inspections required by another, or by any other unit or agency of government for the Work; and
- c. Deed, dedicate and convey to the City any and all property and permanent easements acquired by the District for the Work from the Wiesbrook Road/Butterfield Road intersection to the St. James' east property line, along the Hoy Avenue right-of-way as well as any and all right, title and interest to the water lines and their appurtenances, but excluding service lines. The aforesaid transfer shall be accomplished by recordable legal document. During construction and after dedication the District shall provide any cooperation to the City reasonably necessary to satisfy the City's IEPA obligations; and
- d. Restore the work site to its pre-Work condition or better, or as may be stipulated by permit; and
- e. Pay the actual purchase price for all water meters which shall be installed as part of the extension and connection of the City's water system and which shall remain the property of the City. The water meters shall meet with the approval of the City Water Superintendent.
- f. Upon connection, pay the City any and all customary and usual water rates as are charged, and as may be charged from time to time, to any other water customers of the City.
- g. Be responsible at its sole cost and expense for any and all repairs and maintenance of its service lines at St. James. For purposes of this Agreement the term "Service Lines" shall mean the point beginning at the buffalo box at the St. James property and connecting to any and all pipes located after the water main valve which provides water service within St. James.
- h. Provide for, any and all testing required by law in order to allow use of the water as potable after it enters the Service Lines.
- i. Appropriately size the Service Lines based upon plumbing fixture counts in conformance with the Illinois State Plumbing Code.

- j. Provide for water use metering, backflow protection to City water system, and low chlorine residual flushing of the St. James' Service Lines.

4. CITY'S RIGHTS. The City as the public water supply agency regulated by the Illinois Environmental Protection Act, shall have sole responsibility and right to control, manage, supervise, operate, maintain, repair and replace the water system from the water main to the buffalo box at St. James subsequent to the completion and acceptance of the work by the City.

5. ANNEXATION. The City is not requiring annexation of St. James as a pre-condition of providing water pursuant to the terms and conditions of this Agreement since St. James is not contiguous to the corporate limits of the City. If contiguity is achieved and the Corporate Authorities of the City determine at some future date that the annexation of St. James is in the best interests of the City, the District shall allow the annexation.

5. FUTURE LOOPING. The current design for the Work contemplates a "dead-end" water system. If at some future date looping the system becomes reasonably practical the District shall allow the looping so long as it is not at the District's expense.

6. EXISTING WELLS. One existing ground water well at St. James will be abandoned and sealed by the District in conformance with applicable law. The other existing ground water well may remain active but only for on-site irrigation purposes. After the improvements are completed, the District shall not use well water from the remaining active groundwater well for any public or domestic consumption. The locations of the two (2) existing wells are depicted on Exhibit 1. The abandoned well shall not be reactivated without written permission from the City, and only after receipt of a well permit from the DuPage County Department of Health.

7. INDEMNIFICATION AND HOLD HARMLESS. To the greatest extent permitted by law the District hereby agrees to defend, indemnify, protect and hold harmless the City, its elected officials, officers and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and clean up actions of any kind, all costs and expenses incurred in connection therewith, including but not limited to attorney's fees incurred as a result of the District retaining defense attorneys on behalf of the City, expert witness fees, and costs of defense, proximately resulting from the District, its officers, employees, agents or assigns, or the District contractor's acts or omissions related to the Work or use of and work on its water system upon completion. The District shall secure on behalf of the City a signed indemnification agreement from its contractor(s) providing the City with an identical indemnification/hold harmless prior to the contractor(s) commencing any Work. This indemnification and hold harmless shall survive termination of this Agreement until all potentially applicable statutes of limitation and repose have expired or which have been adjudicated as having expired.

8. INSURANCE. Prior to commencing Work and at all times during Work, the District shall obtain and maintain by self-insurance, governmental insurance risk pool or a commercial carrier: general liability insurance in an amount not less than three million dollars (\$3,000,000.00) per occurrence (combined single limit) including bodily injury and property damage and in an amount not less than five million dollars (\$5,000,000.00) annual aggregate per each additional personal injury and products completed operations; employers liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence; and general commercial automobile liability insurance in an amount not less than one million dollars

(\$1,000,000.00) annual aggregate per personal liability. The insurance shall include coverage for collapse or underground failure. Any contractor(s) hired by the District to perform work under terms of this Agreement shall obtain and maintain at all times during the construction process similar coverages as well as products completed operations coverage and an umbrella liability policy in the amount of \$2,000,000.00. All insurance shall be subject to the reasonable approval of the City. All insurance policies shall name the City, and the District, as an additional insured, in respect to all coverage. Coverage shall be on a per occurrence basis and in accordance with limits and provisions specified herein. Claims made policies are unacceptable. All insurance shall provide that it will not be cancelled or materially changed to reduce the policy limits until the City, and the District, have received at least thirty (30) days written notice prior to the cancellation or change. If at any time insurance coverage is cancelled or materially altered, all Work shall cease, except that Work which may be necessary to provide temporary safety measures may be done, until such time as it is restored or approved to the satisfaction of the City:

9. ADDITIONAL INSURANCE REQUIREMENTS. The required original certificates of insurance and endorsements shall clearly state the following:

- a. The policy number; name of company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and
- b. That the District's and the District's contractor's insurance are primary in respect to any other valid or collectible insurance that City may possess, including any self-insured retentions that City may have; and
- c. Any other insurance the City possesses shall be considered excess insurance only and shall not be required to contribute with the District's or District's contractor's insurance;
- d. The District and/or its contractor(s) shall obtain and maintain prior to commencing and at all times during the performance of the Work and/or repair and maintenance of the services lines during the term of this Agreement statutory Workman Compensation insurance in amounts not less than that required under Illinois law and shall furnish the City with a certificate showing proof of such coverage.
- e. All insurance carriers providing coverage under this Agreement shall be authorized to do business in the State of Illinois and shall be rated at least A:X in A.M. Best and Companies Insurance Guide. Insurance policies and certificates issued by non-admitted insurance companies are unacceptable.
- f. Any deductibles or self-insured retention shall be stated on the certificates of insurance provided to the City.
- g. All policies shall waive subrogation claims against the City.
- h. Contractor's certificates of insurance with required endorsements shall be provided to the City prior to commencement of any work.

10. DISTRICT'S CONTRACTS. The District shall provide the City with all contracts for the Work, and contractor's indemnifications prior to permitting.

11. WAIVER AND RELEASE. The District on behalf of itself, its elected officials, appointees, employees, agents and assigns, hereby waives and releases any and all claims, actions, damages, costs and causes of action against the City which may arise in consequence of the disruption, reduced water pressure, or inadequate flow, for any reason, of the City water supply to St. James.

12. NO TAP-ONS TO SERVICE LINES. The District shall not allow any person or entity to tap on to any of its service lines without the written permission of the City which shall have sole discretion in determining whether such service line tap on will be allowed.

13. REIMBURSEMENT. The District shall be entitled to receive recapture reimbursement in the amount of $\text{Reimbursement} = (\text{number of Equivalent Dwelling Units (EDU) design use}) / \text{Total District daily design use} \times \text{Total District project cost}$, EDU assumed to be 210 gallons per day, Total District design use equals 10 EDU + 120 minutes of design fire flow, for any property owner tapping on to the constructed water main. The highlighted areas subject to recapture are depicted on Exhibit 2. This reimbursement shall not carry interest regardless of when paid. Payment shall be made by the person requesting the tap on prior to the issuance of the tap on permit by the City. The City shall retain 5% of the tap on fee as an administrative fee for collection and distribute the remaining fee to the District. This reimbursement fee shall not be subject to a recapture public hearing and is imposed pursuant to the City's home rule authority and this Agreement. No person shall tap into the new water main without payment of the tap on fee.

14. MISCELLANEOUS ENGINEERING COSTS. Should the City, in its sole discretion, retain an outside engineer to inspect the plans prior to permitting, or during or after the Work for compliance with a permit and other applicable laws and regulations, the District shall reimburse the City the actual cost of the engineer's services. The fees for outside engineers shall be consistent with customary engineering fees charged in the market place for similar work.

15. INSPECTION EASEMENT. The District hereby grants a perpetual inspection easement to the City, during regular business hours, to inspect any and all water facilities located at St. James to determine compliance with the Illinois State Plumbing Code and any and all ordinances of the City applicable to the operation and use of the water system. The City shall further have a perpetual easement to replace any and all water meters used at St. James as the City in its judgment deems necessary.

16. IMMUNITIES. Nothing in this Agreement shall be interpreted to waive or release any common law or statutory privileges or immunities which are all reserved by the City and District to the greatest extent permitted by law. There are no third party beneficiaries to this Agreement.

17. MISCELLANEOUS.

- a. Each party hereby warrants and represents to the other that all appropriate action has been taken to authorize entry into this Agreement

and execution of this Agreement by each of the parties and by the person signing below has been authorized in conformance with law by their respective board or council.

- b. This Agreement may only be amended in writing and executed by all the parties as authorized by the parties' respective boards or councils.
- c. This Agreement may be executed in one or more counterparts each of which so executed and delivered shall be deemed an original, but all of which shall be taken to the other and shall constitute one in the same instrument.
- d. All notices related to this Agreement shall be delivered as follows:

City of Wheaton
City Manager
303 W. Wesley Street
Wheaton, Illinois 60187

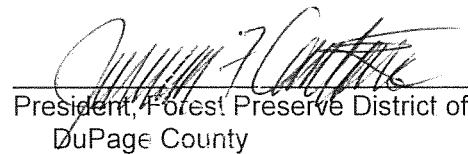
Forest Preserve District of DuPage County
Executive Director
35580 Naperville Road
PO Box 5000
Wheaton, Illinois 60189

City Clerk
303 W. Wesley Street
Wheaton, Illinois 60187

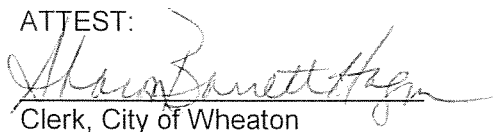
City Attorney
Walsh, Knippen, Pollock & Cetina, Chartered
2150 Manchester Road, Suite 200
Wheaton, Illinois 60187



Mayor, City of Wheaton



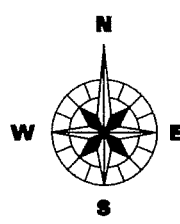
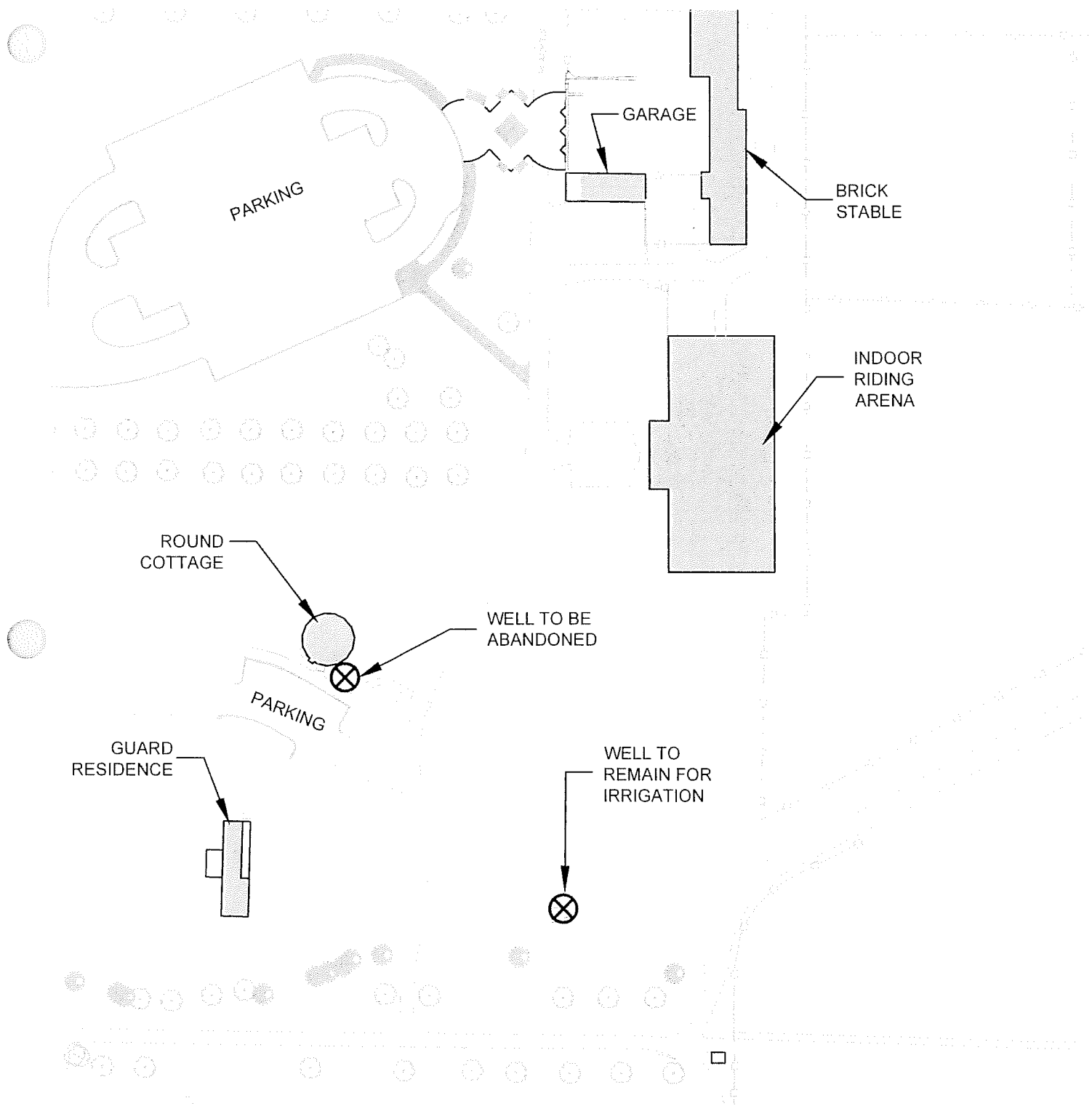
President, Forest Preserve District of
DuPage County

ATTEST:


Clerk, City of Wheaton

ATTEST:


Secretary, Forest Preserve District of
DuPage County



SCALE IN FEET

EXHIBIT 1 ST. JAMES FARM WELL LOCATIONS

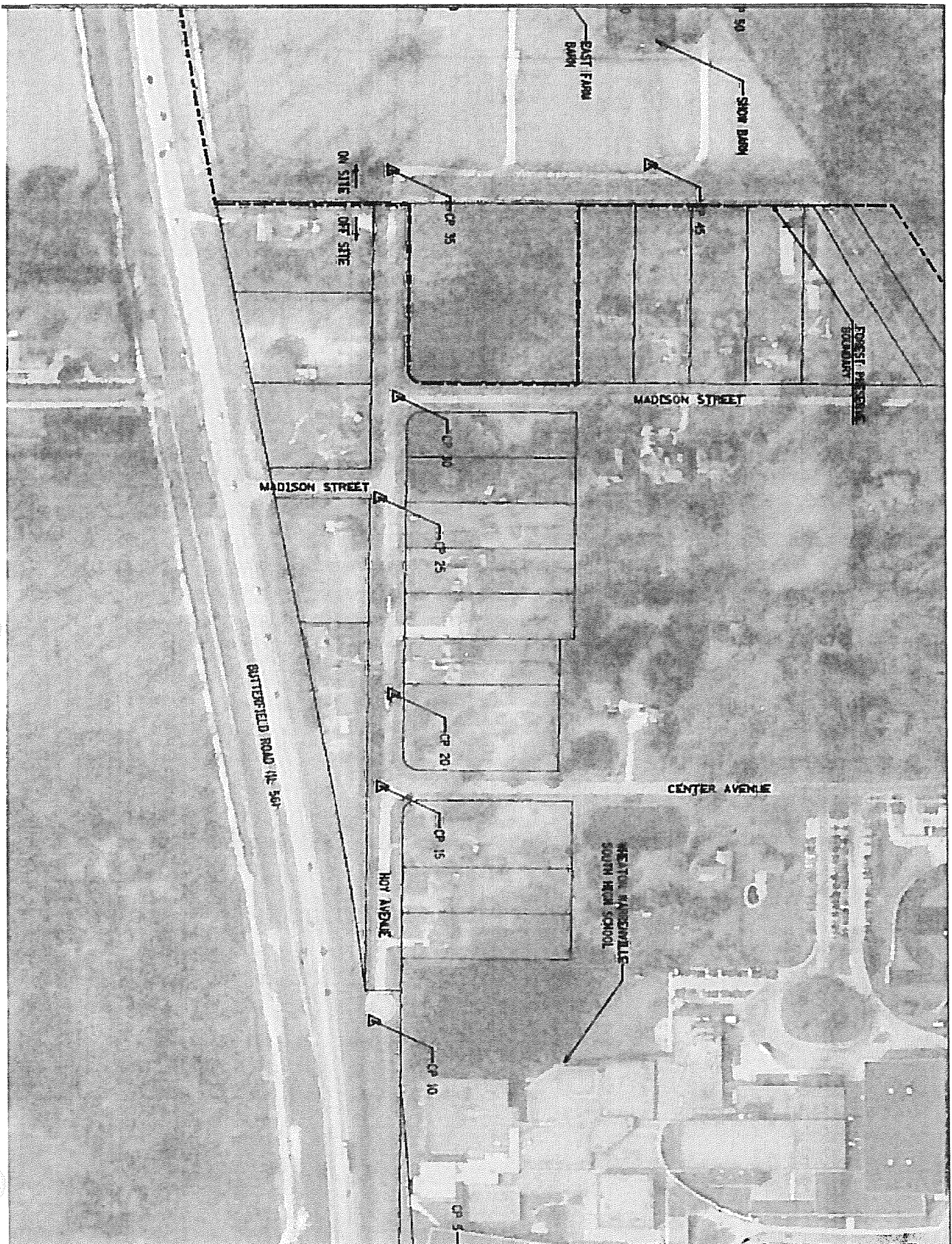


EXHIBIT 2
ST. JAMES FARM
RECAPTURE AREA