



## CITY of NOVI CITY COUNCIL

Agenda Item D  
June 2, 2014

**SUBJECT:** Acceptance of pathway easement from Walled Lake Consolidated School District for construction of the neighborhood connector pathway between East Lake Drive and Novi Road through Hickory Woods Elementary (parcel 22-02-128-005).

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division <sup>124</sup> BTC

**CITY MANAGER APPROVAL:** 

### BACKGROUND INFORMATION:

The 2011 Non-Motorized Master Plan identified several cross-country pathways to provide non-motorized connections between neighborhoods. One of those, identified in the master plan as Neighborhood Connector 1 (NC1), was planned to connect East Lake Drive to Novi Road through Hickory Woods Elementary School. Engineering staff has been working with the Walled Lake Consolidated School District since late 2012 to identify an alignment that would meet the goals of the City's master plan as well as the goals of the school district. The attached memo from October 2, 2013 provides additional background regarding the discussions with the school district related to the pathway alignment. In early 2014, the school district indicated that the proposed alignment along the north side of New Court would be acceptable.

The City Attorney drafted an easement for consideration by the school district. On May 1, 2014 the Walled Lake School Board approved the granting of a modified easement and passed a resolution that authorized the Superintendent to execute the easement document subject to changes authorized by the district's attorney. Since that time there have been several discussions between the City Attorney's office and the school district's attorney regarding the terms of the easement. Although the school district is willing to donate the requested easement, the attorney for the school district has included some non-standard provisions as part of the easement language. The non-standard provisions are generally acceptable to staff and the City Attorney with the exception of the indemnity language. The City Attorney would recommend accepting the current indemnity language only in exceptional circumstances. The school district's attorney will not authorize a change to the indemnity language.

Engineering staff has reviewed potential alternative alignments for the NC1 pathway and the most cost-effective and feasible option requires the use of school district property. If the City Council finds that based on the circumstances of the project, including the location of the easement, that the City can reasonably accept the non-standard provisions in the attached easement document, including the indemnity provision, staff would be able to commence with final design and construction of the pathway once signed by the City and the school district. Otherwise, a new pathway alignment would need to be evaluated and developed by staff.

**RECOMMENDED ACTION:** Acceptance of pathway easement from Walled Lake Consolidated School District for construction of the neighborhood connector pathway between East Lake Drive and Novi Road through Hickory Woods Elementary (parcel 22-02-128-005).

	1	2	Y	N
<b>Mayor Gatt</b>				
<b>Mayor Pro Tem Staudt</b>				
<b>Council Member Casey</b>				
<b>Council Member Fischer</b>				

	1	2	Y	N
<b>Council Member Markham</b>				
<b>Council Member Mutch</b>				
<b>Council Member Wrobel</b>				



# NEIGHBORHOOD CONNECTOR #1 East Lake Drive to Novi Road

Location Map



Proposed Pathway Route

City Owned Parcel  
1303 East Lake Drive

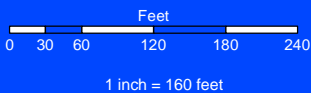
**Legend**

- CITY OF NOVI
- LOT 34
- WALLED LAKE SCHOOLS

Map Author: Coburn  
Date: 10/25/13  
Project: NC#1 (Route 2)  
Version #: v2.0

**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.



**City of Novi**  
Engineering Division  
Department of Public Services  
26300 Lee BeGole Drive  
Novi, MI 48375  
cityofnovi.org

## PATHWAY EASEMENT

Walled Lake Consolidated School District, a Michigan general powers school district ("Grantor"), whose address is 850 Ladd Road, Building D, Walled Lake, Michigan 48390 for and in consideration of One (\$1.00) Dollar, receipt and sufficiency of which is hereby acknowledged, hereby grants and conveys to the City of Novi, a Michigan Municipal Corporation ("Grantee"), whose address is 45175 West Ten Mile Road, Novi, Michigan 48375, being exempt pursuant to MCLA 207.505(a), and MCLA 207.526(a), a permanent, non-exclusive easement solely to construct, install operate, maintain, repair and/or replace, at Grantee's sole cost and expense, a public paved non-motorized pathway over, across and through a portion of Grantor's Property located in Section 27, T.1N., R.8E., City of Novi, Oakland County, State of Michigan, more particularly described as follows:

Parcel No. 50-22-02-128-005

{See Survey attached hereto and incorporated herein by reference as **Exhibit A**} (the "Grantor's Property")

The permanent easement for the public pathway is more particularly described as follows:

{See Survey attached hereto and incorporated herein by reference as **Exhibit A**} (the "Pathway Easement Area")

1. Temporary Easement. Grantee shall have the right to use areas of Grantor's Property within approximately ten (10) feet of the Pathway Easement Area as a temporary easement for construction, installation, maintenance, repair and/or replacement activities that are necessary and cannot be performed from within the Pathway Easement Area ("Temporary Easement Area").
2. Pathway Easement. Grantee may, construct, install, operate, maintain repair and/or replace, a public paved non-motorized pathway in the Pathway Easement Area. Construction activities required for the construction of the pathway, will consist of an 8-foot wide pathway, grading, fencing, tree removals and related activities. Any and all trees and/or shrubbery, removed, destroyed or disturbed in any manner shall be replaced upon completion of construction with like trees and shrubs in accordance with the size and ratio for replacement trees as set forth in the City of Novi Woodlands Protection Ordinance.
3. Notice. Grantee shall provide Grantor with advance notice of commencement and likely duration of construction, installation, maintenance, repair or replacement activities related to the Temporary Easement Area and Pathway Easement Area.
4. Grantor's Rights. Grantor agrees not to build or to convey to others the permission to build any permanent structures on, over, across, in, through, or under the above-described Pathway Easement Area, except that, subject to Grantee's approval as part of an approved site plan, Grantor may construct and/or install surface improvements to Grantor's Property, including paved driveways, parking and/or walkways; landscaping; utilities and/or similar improvements, which improvements do not interfere with use, operation, maintenance, repair and/or replacement of the Pathway Easement Area. Notwithstanding the above, Grantor also retains, reserves, and shall continue to enjoy the use of the surface of the Temporary Easement Area and Pathway Easement Area for any and all purposes which do not interfere with or prevent the use of the Easement as hereby granted.
5. Restoration. Grantee shall promptly (weather permitting) restore all portions of Grantor's Property disturbed or changed by construction, installation, maintenance, repair or replacement activities to the same or better condition than existed prior to the change or disturbance, at Grantee's sole cost and expense. Such restoration shall occur not later than sixty (60) days after completion of construction, installation, maintenance, repair, replacement, or any such work performed upon Grantor's Property. If, however, weather conditions and/or local frost laws prevent the timely restoration of Grantor's Property, such restoration shall occur not later than the first growing season after completion of the work performed.

6. Insurance. Grantee, at its sole cost and expense, shall maintain and keep in effect, general liability insurance on the Pathway Easement Area of Grantor's Property throughout the term of this Pathway Easement, with a company and in a form acceptable to Grantor with minimum limits of \$1,000,000.00 on account of bodily injuries to or death of one person, and minimum limits of \$2,000,000.00 on account of bodily injuries or death of more than one person, or such other amounts as Grantor may, from time to time, reasonably request, as a result of any one accident or occurrence; and property damage insurance with minimum limits of \$1,000,000.00, or such other amounts as Grantor may, from time to time, reasonably request. Such policies shall name Grantor as an additional insured and Grantee shall provide Grantor with a certificate of insurance or other written evidence of its coverage, including an endorsement which states that such insurance may not be cancelled except upon ten (10) days prior written notice to Grantor. In addition, Grantee shall require each contractor performing work on Grantor's Property to keep in force at its sole cost and expense during and until completion of any construction and installation or any such work performed upon Grantor's Property, in a form acceptable to Grantor, an Owner's and Contractor's Protective Policy naming Grantor as the principal insured and shall also require each contractor to name Grantor as an additional insured on all Contractor Policies of insurance with both policies having minimum limits of \$1,000,000.00 on account of bodily injuries to or death of one person, and minimum limits of \$2,000,000.00 on account of bodily injuries or death of more than one person, or such other amounts as Grantor may, from time to time, reasonably request, as a result of any one accident or occurrence; and property damage insurance with minimum limits of \$1,000,000.00, or such other amounts as Grantor may, from time to time, reasonably request. Prior to commencement of any work, Grantee shall provide Grantor with a certificate of insurance or other written evidence of Grantor's coverage as an additional insured, including an endorsement which states that such insurance may not be cancelled except upon ten (10) days prior written notice to Grantor.

7. Indemnity. To the extent permitted by law, Grantee, by acceptance and execution of this Easement, hereby agrees to indemnify, defend and hold harmless Grantor, its employees, administrators and Board of Education, from and against any and all claims, counter-claims, suits, debts, demands, actions, judgments, liens, liabilities, injuries, damages, costs, expenses, including actual attorneys' fees and actual expert witness' fees, for any injury to any person(s) on or within the Temporary Easement Area and Pathway Easement Area, or damage to any property, including but not limited to property of Grantor, paid or incurred by Grantor, arising out of, resulting from or incident to, any act or omission of Grantee, its successors, assigns, agents, guests, licensees, invitees, employees, contractors or any person(s) under oral or written contract with Grantee relative to the Temporary Easement Area and Pathway Easement Area or use thereof granted herein. Notwithstanding the foregoing, this Pathway Easement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty or immunity of either party and shall not be construed to waive the defense of governmental immunity held by any party to this Easement.

8. Grantee's Responsibility for Maintenance. Grantee shall maintain the public paved non-motorized pathway in good order and repair at all times at its sole cost and expense. Grantor shall provide immediate written notice to Grantee of any condition of the pathway or within the Temporary Easement Area or Pathway Easement Area Grantor believes is dangerous or unsafe. Grantor's failure to notify Grantee, however, shall not relieve Grantee of its duty to maintain the public paved non-motorized pathway, or Grantee's liability for same under this Easement.

9. Nonexclusive Easement. The easement, rights, and privileges granted herein are nonexclusive, and Grantor reserves and retains the right, after prior written notice to Grantee, to convey similar easements and rights to such other persons as Grantor may deem proper provided such similar easements do not affect Grantee's Easement or allow for or result in the placement or erection of temporary or permanent obstructions in the Pathway Easement Area.

10. Easement Runs with the Land. This Easement shall run with the land and be binding on Grantor's Property. Notwithstanding the foregoing, the parties acknowledge that Pathway Easement Area may be relocated to a different location with the approval of both parties in the event of a redevelopment of the Grantor's Property; provided that, Grantor, or the party making the request, pays all reasonable costs associated with the relocation.

**GRANTOR: WALLED LAKE CONSOLIDATED SCHOOL DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

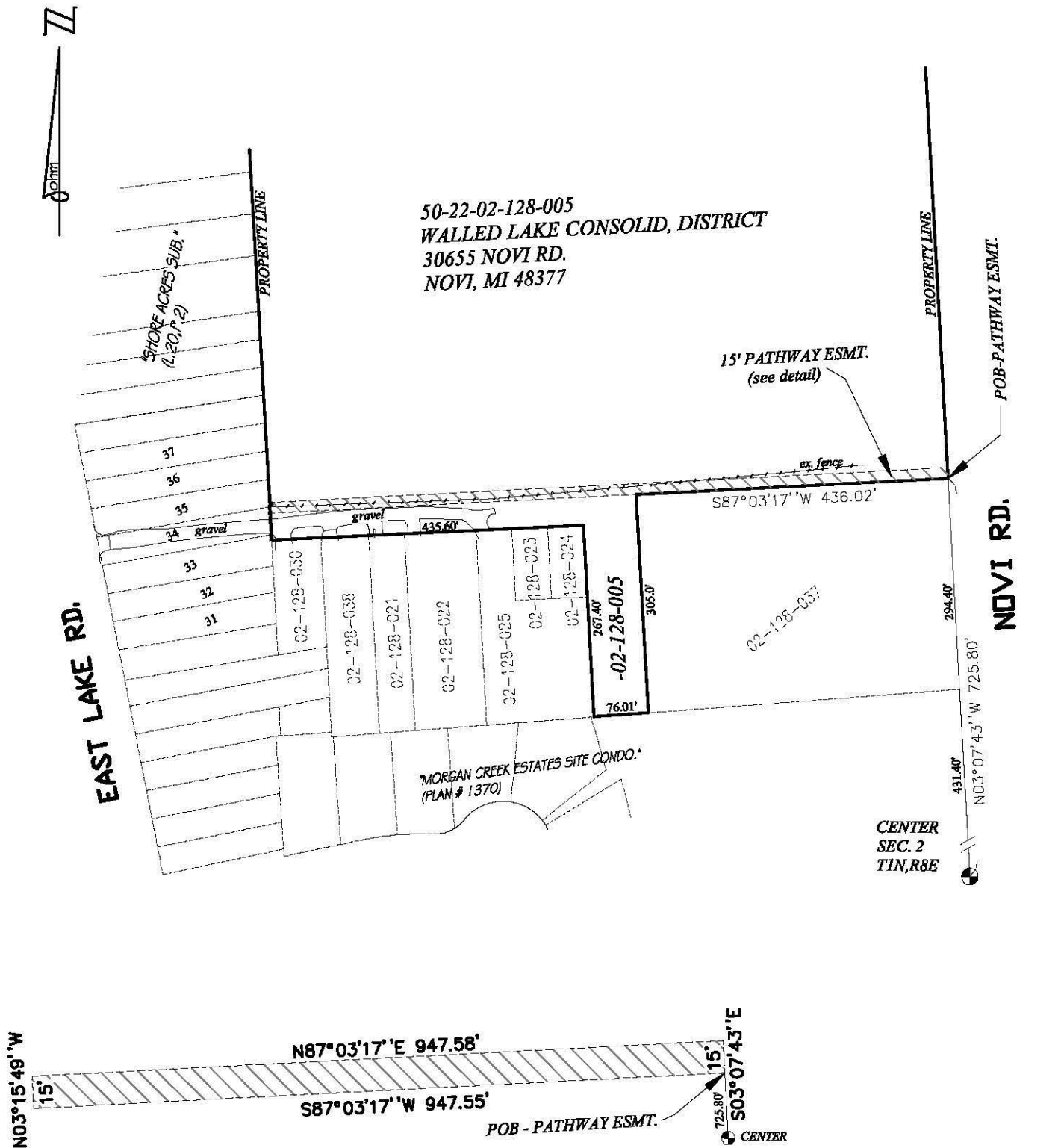
Dated: \_\_\_\_\_



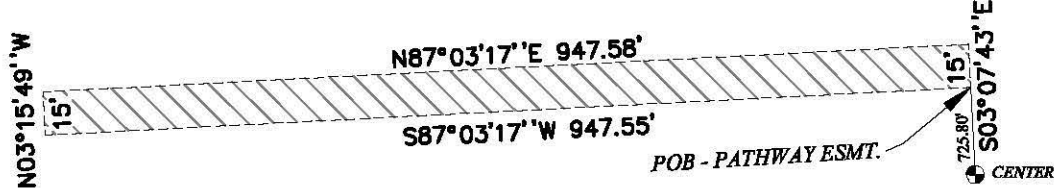


# PATHWAY EASEMENT SKETCH

Exhibit "A"



**DETAIL - 15' PATHWAY EASEMENT**  
(not to scale)



SCALE: 1" = 200'

- LEGEND**
- ROW RIGHT OF WAY
  - PUBLIC LAND CORNER
  - POB POINT OF BEGINNING
  - PATHWAY EASEMENT

## PATHWAY EASEMENT

PART OF THE NW 1/4 OF SECTION 2  
T. 1 N., R. 8 E., CITY OF NOVI, OAKLAND COUNTY  
TAX ID NO.: 50-22-02-128-005

CLIENT: CITY OF NOVI



34000 Plymouth Road | Livonia, MI 48150  
p (734) 522-6711 | f (734) 522-6427

Advancing Communities

DATE: 02-26-14  
DRAWN BY: SH  
DWG: 02-128-005

SHEET  
1 OF 2

JOB NO.  
0163-12-0170

# PATHWAY EASEMENT DESCRIPTION

Exhibit "A"

## PARCEL DESCRIPTION (50-22-02-128-005)

(PER OAKLAND COUNTY TAX ROLLS)

A parcel of land situated in the NW 1/4 of Section 2, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, more particularly described as:

The North 1736 feet of the South 2167.40 feet of the East 950 feet of the East 1/2 of the NW 1/4 of said Section 2. Except beginning at the SE corner of Lot 34, "Shore Acre Subdivision"; thence South 280.40 feet; thence East 435.61 feet; thence North 267.40 feet; thence West 435.60 feet to the Point of Beginning. Also except beginning at the SE corner of Lot 64 of said Subdivision; thence North 146.46 feet; thence East 435.60 feet; thence South 146.46 feet; thence West 435.60 feet; thence South 146.60 feet; thence West 435.60 feet to the Point of beginning. Also except beginning at point distant N 00°02'00" E 431.40 feet from the Center of said Section 2; thence N 00°02'00" E 294.40 feet; thence N 89°47'00" W 436.02 feet; thence South 305 feet; thence N 89°49'40" E 435.89 feet to the Point of Beginning. Also except beginning at the NE corner of Lot 57 of said Subdivision; thence North 105 feet; thence S 89°47'00" E 300 feet; thence South 260 feet; thence N 89°47'00" W 300 feet; thence North 155 feet to the Point of Beginning. Subject to all easements and restrictions of record, if any.

## **PATHWAY EASEMENT**

A 15 foot wide easement for pathway being part of land situated in the NW 1/4 of Section 2, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, more particularly described as:

Commencing at the Center of said Section 2; thence N 03°07'43" W 725.80 feet to the Point of Beginning; thence S 87°03'17" W 947.55 feet; thence N 03°15'49" W 15.0 feet; thence N 87°03'17" E 947.58 feet; thence S 03°07'43" E 15.0 feet to the Point of Beginning.

Contains 14,213 square feet or 0.33 acres of land, more or less. Subject to all easements and restrictions of record, if any.

### PATHWAY EASEMENT

PART OF THE NW 1/4 OF SECTION 2  
T. 1 N., R. 8 E., CITY OF NOVI, OAKLAND COUNTY  
TAX ID NO.: 50-22-02-128-005

CLIENT:

CITY OF NOVI



34000 Plymouth Road | Livonia, MI 48150  
p (734) 522-6711 | f (734) 522-6427

*Advancing Communities*

DATE: 02-26-14  
DRAWN BY: SH  
DWG: 02-128-005

SHEET

2 OF 2

JOB NO.

0163-12-0170



## MEMORANDUM



**TO:** ROB HAYES, P.E.; DIRECTOR OF PUBLIC SERVICES/CITY ENGINEER  
**FROM:** BRIAN COBURN, P.E.; ENGINEERING MANAGER *B/C*  
**SUBJECT:** EAST LAKE/HICKORY WOODS NEIGHBORHOOD CONNECTOR *To Mayor/City*  
**DATE:** OCTOBER 2, 2013 *10/2/13* *Carrie Myers*

*FYI*

The 2011 Non-Motorized Master Plan identified several cross-country pathways to provide non-motorized connections between neighborhoods. One of those, identified in the master plan as Neighborhood Connector #1 (NC1), was planned to connect East Lake Drive to Novi Road through Hickory Woods Elementary School. The engineering design for NC1 was funded in the FY12-13 budget and a design contract was awarded to Orchard, Hiltz & McCliment on November 26, 2012.

Since the cooperation and approval of the Walled Lake Consolidated School District (WLCSD) is necessary for the construction of the pathway on school property, there were discussions with WLCSD about the use of school property for the pathway prior to the design engineering award. A follow-up meeting was held on December 3, 2012 with Bill Chatfield, Director of Operations at WLCSD, to discuss potential pathway routes through school property. Staff presented the alignment that was included in the motion sheet for engineering award (also attached), which begins on the City owned parcel at 1285 East Lake Drive, proceeds east to the school property, and around the north side of the soccer field to connect to the existing pathways on school property. Since there were no major objections to the proposed alignment from WLCSD at that time, staff worked with the consultant to prepare a preliminary design.

A preliminary design plan showing a proposed alignment was sent to WLCSD for their review in mid-March 2013. In mid-April 2013, we were contacted by Bill Chatfield and he indicated that WLCSD had some security concerns related to public use of the pathway on school property during school hours. In subsequent meetings between City and WLCSD staff, it was determined that a lockable gate would be added to the final design so school grounds could be secured during recess times. With this approval from WLCSD, staff gave the consultant authorization to complete the final design of the pathway.

The final design was completed in early August 2013 and was routed to WLCSD for review and comment. In late August 2013, staff was contacted by Bill Chatfield and he informed us that WLCSD would no longer support the installation of the pathway in the vicinity of the playground. The entire design fee of \$6,491 was exhausted to complete the final design plans, but unfortunately we will be unable to construct the project as designed because of WLCSD's objections.

*Post-Sunday Hook*


We have had some additional conversations with WLCSD regarding a new alignment for NC1 along the south property line of the school (see attached map depicting "Route No. 2" and related correspondence) beginning at another City-owned parcel adjacent to New Court (a private street). Since we are basically starting over with respect to engineering

design with a new alignment in a new location, we are working with the consultant on a revised construction cost estimate so we can calculate the new design fee for the re-design of NC1. Based on our past experience, we intend to request more formal documentation from WLCSD stating their approval of the alignment before completing another final design for the project. The first step is to have the consultant prepare a preliminary design for discussion with WLCSD to seek formal approval by WLCSD before final design would commence.

The construction of the pathway is funded for FY13-14 in the amount of \$52,000; however the new alignment is longer, requires more tree removal and grading, and may require fencing to separate the pathway from the school grounds, likely causing the construction cost estimate to increase.



If you concur with this approach, we will prepare the engineering award for consideration on a future City Council agenda.



cc: Barb McBeth, Community Development Deputy Director  
Jason Mangum, Parks, Recreation and Cultural Services Director  
Ben Croy, P.E.; Civil Engineer



# NEIGHBORHOOD CONNECTOR #1 East Lake Dr to Hickory Woods Elementary

Location Map



Map Author: Croy  
Date: 11/9/12  
Project: NC#1  
Version #: v1.0



**City of Novi**  
Engineering Division  
Department of Public Services  
26300 Lee BeGole Drive  
Novi, MI 48375  
cityofnovi.org

#### MAP INTERPRETATION NOTICE

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1 inch = 125 feet



# NEIGHBORHOOD CONNECTOR #1 East Lake Drive to Novi Road Route No. 2

Location Map



Proposed Pathway Route

New Ct

City Owned Parcel  
1303 East Lake Drive

East Lake Dr

Morgan Creek Ct

Novi Rd

Map Author: Croy  
Date: 9/10/13  
Project: NC#1 (Route 2)  
Version #: v1.0



1 inch = 160 feet



**City of Novi**  
Engineering Division  
Department of Public Services  
26300 Lee BeGole Drive  
Novi, MI 48375  
cityofnovi.org

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## Coburn, Brian

---

**From:** Chatfield, William <WilliamChatfield@wlcsc.org>  
**Sent:** Monday, September 23, 2013 4:05 PM  
**To:** Croy, Ben  
**Cc:** Coburn, Brian  
**Subject:** RE: Neighborhood Connector No. 1 Pathway

Ben,

After speaking with some folks in the district, we like this concept and feel we can make it work. If it's tight to our property line, or even on it, we may need to install a second containment fence. Having the path through the woods doesn't appear to pose any problems for us. Please let me know if you wish to discuss further. Thanks.

Bill Chatfield, Director of Operations  
Walled Lake Consolidated Schools  
(248) 956-3060  
[williamchatfield@wlcsc.org](mailto:williamchatfield@wlcsc.org)

---

**From:** Croy, Ben [<mailto:bcroy@cityofnovi.org>]  
**Sent:** Wednesday, September 11, 2013 9:17 AM  
**To:** Chatfield, William  
**Cc:** Coburn, Brian  
**Subject:** Neighborhood Connector No. 1 Pathway

Bill

Attached is a figure showing a second potential route for our Neighborhood Connector Pathway to connect East Lake Drive to Novi Road. This route generally follows the southern limits of the school property. We briefly discussed this route the last time we talked, and I believe you indicated that this may be a route that WLCSD would consider.

Please review this proposed alignment and let me know if you see any major obstacles with this route. If you agree that a path in this location may be possible, we will have a survey completed to help us define the route. But we don't want to go through that effort until we hear from you first.

This pathway connection is considered a high priority in the City's Non-Motorized Master Plan, and we believe this connection would be beneficial to the school as well as other recreational users. Once you've had a chance to review this route, please give me a call to discuss.

Thank you  
Ben



**Ben Croy, PE** | Civil Engineer  
City of Novi | Department of Public Services  
Field Services Complex | 26300 Lee BeGole Drive | Novi, MI 48375  
t: 248.735-5635 f: 248.735.5659

[cityofnovi.org](http://cityofnovi.org) | [InvestNovi.org](http://InvestNovi.org)

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