

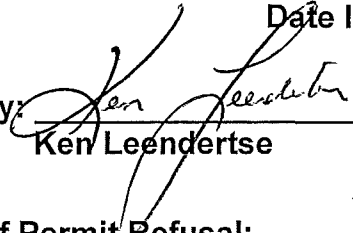
City of Hamilton By-Law No. 14-212
Hamilton Urban Woodland Conservation By-law

NOTICE OF REFUSAL OF PERMIT

Property: CON 2 PT LOT 57, PLAN 699 PCL A RP 62R17555, PARTS 1 TO 11
(municipal addresses of 820, 828, 870 Scenic Drive and 801 Sanatorium Road)

Owner: Valery (Chedoke Browlands) Development Inc

Date Issued: March 29th, 2017

Issued By:  _____, Director Municipal Law Enforcement
Ken Leendertse

Appeal of Permit Refusal:

If you wish to appeal this Notice of Refusal to the City of Hamilton's Planning Committee, deliver your appeal in writing to Ida Bedioui, Planning Committee Legislative Coordinator, on or before April 17, 2017. There is currently no fee payable for the appeal. You will receive a Notice of Appeal Date from Ida Bedioui, Planning Committee Legislative Coordinator.

Background:

We have received various submissions from you including:

- Brow Lands Tree Inventory and Preservation Plan by GeoProcess Research Associates, January 13, 2017;
- Notice of Intent to Cut Application, as updated January 13, 2017; and,
- Browlands Forest Operating Prescription by Williams and Associates Forestry Consulting Ltd., February 14, 2017.

We have reviewed these submissions in consideration of your application under Section 7 of the Hamilton Urban Woodland Conservation By-law to cut trees in the woodland located on the Property.

The woodland is shown as stands 1, 2, 3, and 4 on the attached Map 1 and the area where you are applying to cut trees is shown as stands 3 and 4 on Map 1.

Grounds for Refusal:

The cutting of the trees meets the criterion in Section 11 of the Urban Woodland Conservation By-law, under which a permit shall be refused. The trees are in a woodland that is a Sensitive Natural Area, namely:

- Core Areas, as identified by the City of Hamilton in its Official Plan (attached as Map 2, Schedule B)

- A Significant Woodland, as identified by the City of Hamilton in its Official Plan (attached as Map 3, Schedule B-2)
- An Environmentally Significant Area, as identified by the City of Hamilton in its Official Plan (attached as Map 4, Schedule B-6).

The Sensitive Natural Area would not be adequately protected or preserved as stands 3 and 4 would be clear-cut, eliminating this portion of the Sensitive Natural Area.

In addition:

The cutting of the trees does not fall under any of the exemptions listed in Section 5 of the Urban Woodland Conservation By-law.

The cutting of the trees does not meet the criteria in Section 10 of the Urban Woodland Conservation By-law, under which a permit may be issued if the cutting of the trees is in accordance with good forestry practices. Clear-cutting is not in accordance with good forestry practices and:

- The trees have not been damaged by disease, insects, wind, ice, fire, lightning, or other natural causes, to the extent that the health of the trees is likely to further deteriorate. No specific data on trees in poor condition was provided.
- The trees should not be cut or removed to prevent disease or insects from spreading to other trees. Some trees are affected by Emerald Ash Borer and *Diplodia* shoot blight, but the majority of trees are in good health, based on the limited data provided.
- The trees have not been marked to be cut back or removed as part of a Forest Management Prescription. A Brownlands Forest Operating Prescription was submitted and recommends removal of stands 3 and 4 and replacement plantings in a different location. This is not a Forest Management Prescription, but a plan for the removal and replacement (offsetting) of the trees.
- The proposed injuring or destruction of the trees is not necessary to protect the health or safety of the public. No specific data on hazardous trees was provided.

The cutting of the trees does meet the criteria in Section 12 of the Urban Woodland Conservation By-law, under which a permit may be refused because:

- The trees are healthy. Some trees are affected by Emerald Ash Borer and *Diplodia* shoot blight, but the majority of trees are in good health, based on the limited data provided.
- No inventory of the trees within the ESA has been provided, so it cannot be determined if any nationally, provincially, or locally rare, threatened, endangered, or special concern tree species are present. Butternut, an endangered tree species, is commonly found on the Niagara Escarpment, and may occur in the woodland.

- Since a clear-cut is proposed, the total basal area of the woodland would be reduced below 20 metres squared per hectare on trees greater than 10 centimetres dbh.
- Since a clear-cut is proposed, the minimum number of trees will be reduced to below the minimum number of trees necessary to constitute a woodland.

Comments:

- The trees do not constitute a plantation, which, under the Urban Woodland Conservation By-law, is not a woodland. The trees have not been actively or continuously managed as a plantation. Both the Notice of Intent to Cut and the Forest Operating Prescription confirm that the plantation has not been managed. The trees within the plantation are mature and include a variety of deciduous and coniferous species.
- If there are dying and dead Ash trees affected by the Emerald Ash Borer in the woodland, these trees, and only these trees, may be eligible for a permit. Only trees that are a threat to the health and safety of the public can be removed (Section 10). Otherwise, dying and dead trees are to remain in situ, to provide downed woody debris, wildlife habitat, and establish canopy openings in the forest ecosystem.
- A portion of the Property is regulated by the Hamilton Conservation Authority which has authority over protecting life and property from natural hazards such as erosion, flooding, and unstable slopes. The Hamilton Conservation Authority also protects, restores and manages impacts on water resources and protects natural resources and promotes watershed stewardship practices that lead to healthy, sustainable communities. A permit may be required for any development or site alteration proposed in the regulated area. Also, the Hamilton Conservation Authority advises City of Hamilton staff on protection of Core Areas.
- The development of the Property was the subject of a Ontario Municipal Board decision, dated June 22, 2012 and passed as By-law No. 12-166, in which the Board found that:

. . . the plan which allows only town homes fronting onto Scenic Drive in Area A, with 50% open space to a depth of 25 m, provides sufficient open space to maintain the character of the area. The development will be on a distinct parcel, separated by Scenic Drive to the south, the brow to the north, and the woodlot to the east, with a connection to the low density area by Scenic Drive. (Page 15)

. . . significant natural areas have been identified and protected (such as the creek) and will continue to be protected during the ongoing development. (Page 16)

The Ontario Municipal Board decision specifically stated that trees in the following areas were to be protected:

There are large Norway Maples along the west side of Scenic Drive that are to be preserved as long as they are healthy. (Page 9)

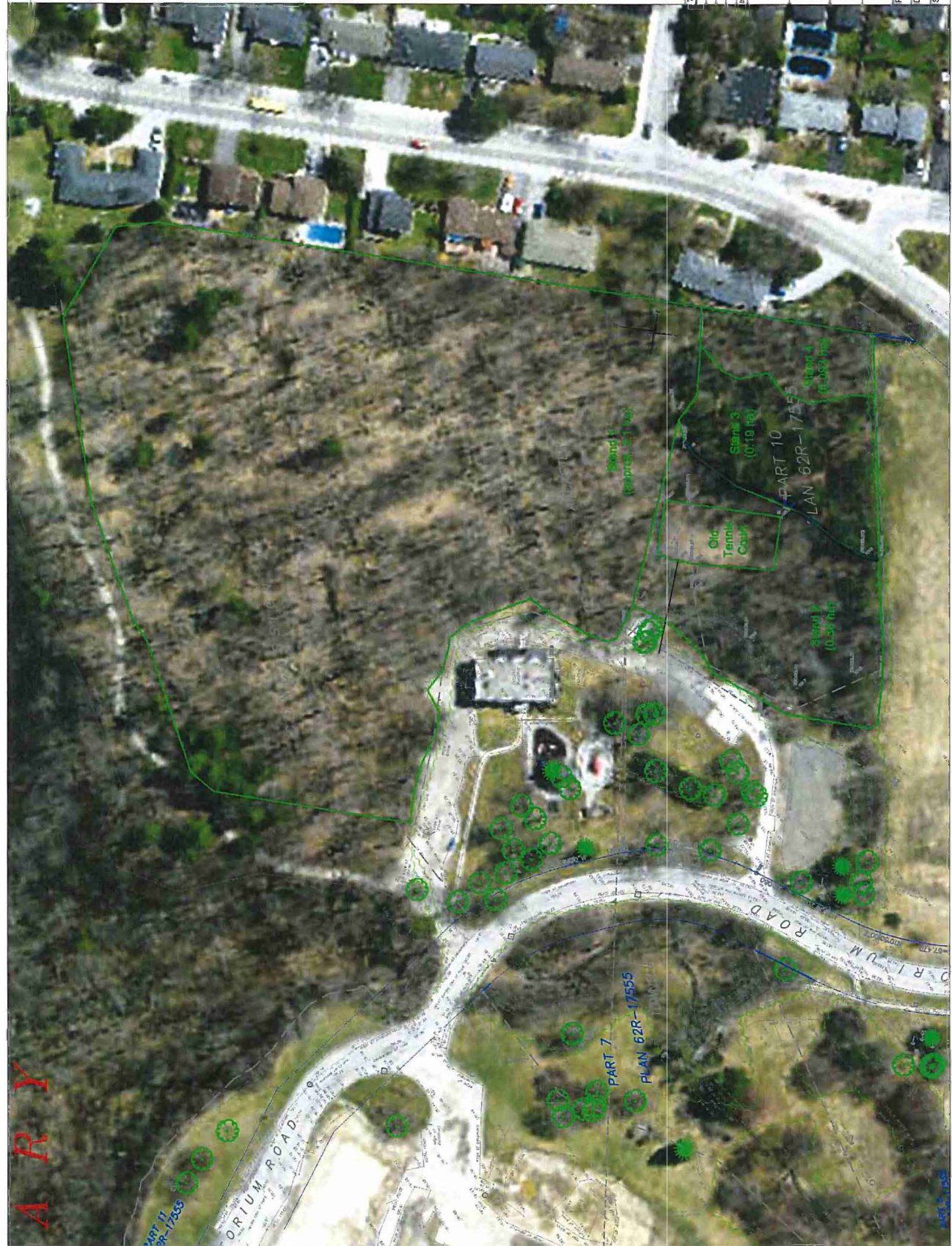
The large woodlot on the east portion of the site has been identified as an ESA. This woodlot, along with a buffer, will remain as private open space." (page 10)

The trees as shown stands 3 and 4 on Map 1 can be preserved and the development can proceed as was set out in this Board decision.

LEGEND

Stand Boundary

MAP 1



No.	Stand Name	Area (Acres)	Date	By
1	Stand 1	0.10 (60)		
2	Stand 3	0.10 (60)		
3	Stand 4	0.10 (60)		
4	Stand 7	0.10 (60)		
5	Stand 10	0.10 (60)		

Drawn by: A. Clark and Associates Ltd. (2017) Version: Map (2017) 01

KUNTZ FORESTRY CONSULTING INC.

Valley Homes of
 Valley Forestry Associates
 139 King Street West, PO Box 65508 Dundas, Ontario, ON L9H 0Y6
 Phone: 519-271-1111
 Fax: 519-271-1112
 Email: info@kuntzforestry.com
 Website: www.kuntzforestry.com

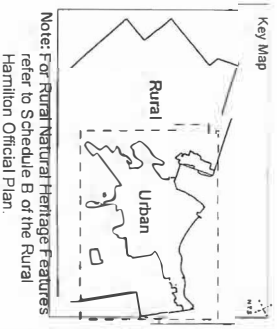
Client: Valley Homes of
 Valley Forestry Associates
 139 King Street West, PO Box 65508 Dundas, Ontario, ON L9H 0Y6
 Project: Stand 1, Stand 3, Stand 4, Stand 7, Stand 10
 Location: Stand 1, Stand 3, Stand 4, Stand 7, Stand 10
 Hamilton, Ontario

Existing Conditions
 Forest Operating Prescription Stands

Project: P1360
 Date: 15 February 2017
 Scale: 1:1000

Figure: 1

MAP 2



Note: For Rural Natural Heritage Features refer to Schedule B of the Rural Hamilton Official Plan.

APPEAL

The southern urban boundary that generally extends from Upper Centennial Parkway and Mud Street East in the east following the hydro corridor and encompassing the Red Hill Business Park, the Mount Hope area, and the Airport Business Park, and following Twenty Road and Garner Road to Fiddlers Green Road in the west remains under appeal – see illustration on Schedules E and E-1, Volume 1

Lands Under Appeal

☆ 305 Stone Church Road West - 313 Stone Church Road East & lands bounded by Stone Church Road East, Upper Wellington Street, Lincoln M Alexander Parkway and Upper Wentworth Street

Legend

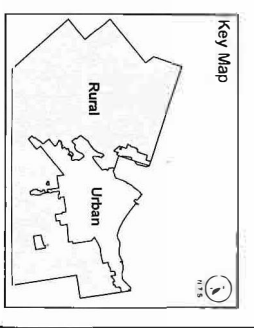
- Core Areas
- Area Specific Policy - USC-1, USC-2 and USC-3 in Volume 3
- Linkages
- Parks & General Open Space (Excluding Parkettes)
- Streams
- Other Features**
- Rural Area
- John C. Munro Hamilton International Airport
- Niagara Escarpment
- Urban Boundary
- Municipal Boundary

Council Adoption: July 9, 2009
 Ministerial Approval: March 16, 2011
 Effective Date: August 16, 2013

Urban Hamilton Official Plan Schedule B
 Natural Heritage System



MAP 3



Note: For Rural Detailed Natural Heritage Features refer to Schedule B-2 of the Rural Hamilton Official Plan.

APPEAL

The southern urban boundary that generally extends from Upper Centennial Parkway and Mud Street East in the east, following the hydro corridor and encompassing the Red Hill Business Park, the Mount Hope area, and the Airport Business Park, and following Twenty Road and Garner Road to Fiddlers Green Road in the west remains under appeal – see illustration on Schedules E and E-1, Volume 1

Lands Under Appeal

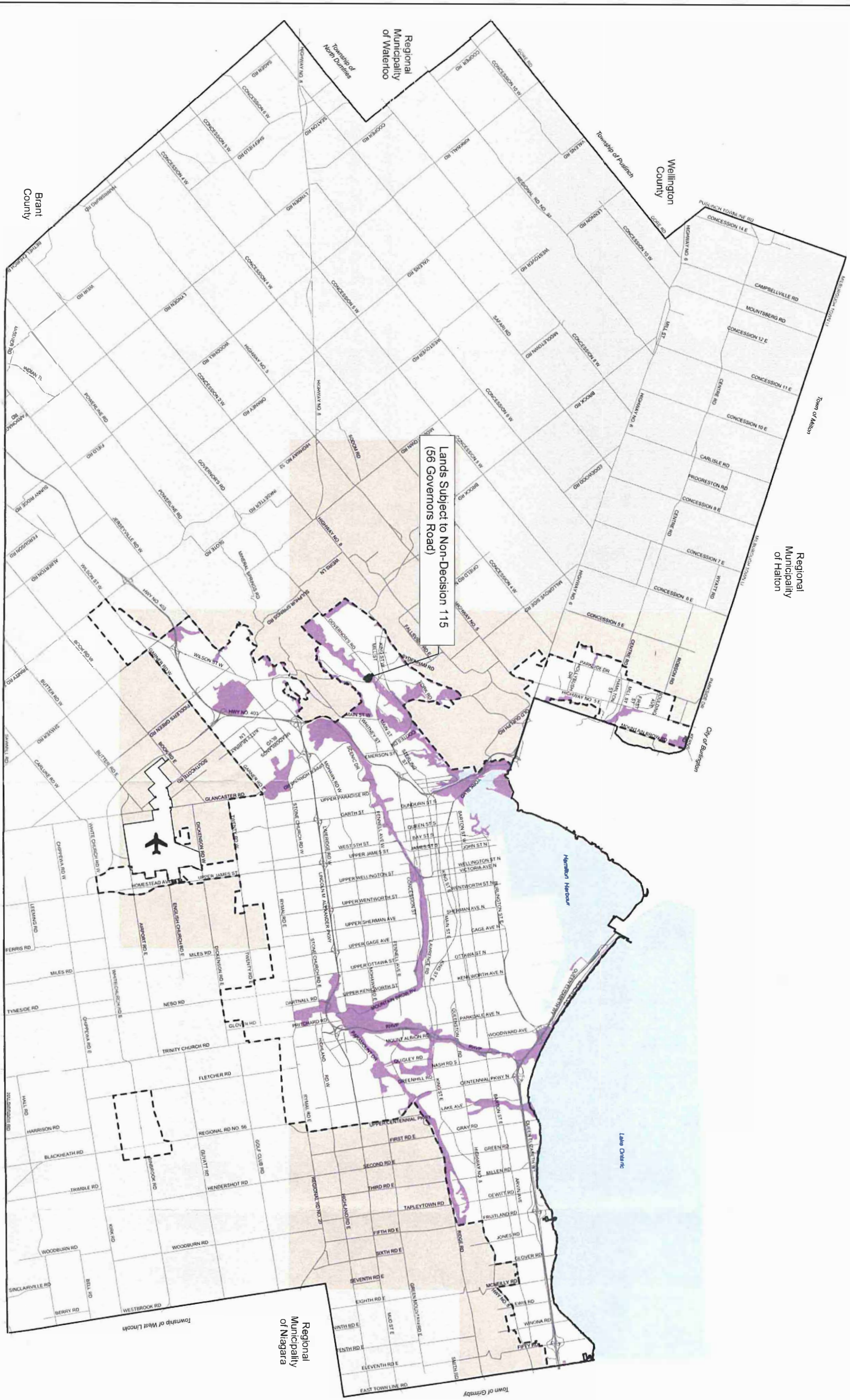
- 305 Stone Church Road W
- 313 Stone Church Road E & lands bounded by Stone Church Road East, Upper Wellington Street, Lincoln M. Alexander Parkway and Upper Wentworth Street

Legend

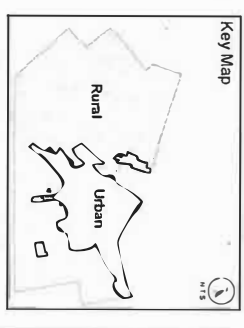
- Key Natural Heritage Feature Significant Woodlands
- Rural Area
- John C. Munro Hamilton International Airport
- Niagara Escarpment
- Urban Boundary
- Municipal Boundary

Council Adopted: July 9, 2009
 Ministerial Approval: March 16, 2011
 Effective Date: August 16, 2013

Urban Hamilton Official Plan Schedule B-2
 Detailed Natural Heritage Features
 Key Natural Heritage Feature
 Significant Woodlands



MAP 4



Note: For Rural Detailed Natural Heritage Features refer to Schedule B-5 of the Rural Municipality Official Plan
APPEAL

The southern urban boundary that generally extends from Upper Centennial Parkway and Mud Street East in the east, following the hydro corridor and encompassing the Red Hill Business Park, the Mount Hope area, and the Airport Business Park, and following Twenty Road and Garner Road to Fiddlers Green Road in the west remains under appeal – see illustration on Schedules E and E-1, Volume 1

Legend

- Local Natural Area
- Environmentally Significant Area
- Other Features**
- Rural Area
- John C. Munro Hamilton International Airport
- Niagara Escarpment
- Urban Boundary
- Municipal Boundary

Council Adopted: July 9, 2009
 Ministerial Approval: March 16, 2011
 Effective Date: August 16, 2013

Urban Hamilton Official Plan Schedule B-6
 Detailed Natural Heritage Features
 Environmentally Significant Areas

Not To Scale

PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
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 Prepared for the Rural Municipality of Halton, 1110 15th Avenue, Hamilton, Ontario, Canada L8N 4A7