

Ontario Municipal Board
 Commission des affaires municipales
 de l'Ontario



ISSUE DATE: April 06, 2016

CASE NO(S): PL111358
 PL110857
 PL091166

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 2220243 Ontario Inc.
 Appellant (jointly): Albanella Development Ltd., Mil Con Four Britannia Developments Limited, Mil Con Four Thomson Developments Limited, Orianna Glen Homes Corp., Sempronia Estate Inc., and Trebbiano Trail Development

Appellant: Catholic Cemeteries Of The Diocese Of Hamilton
 Appellant: City of Brampton; and others
 Subject: Proposed Official Plan Amendment No. 38
 Municipality: Regional Municipality of Halton
 OMB Case No.: PL111358
 OMB File No.: PL111358
 OMB Case Name: Johnson v. Ontario (Municipal Affairs & Housing)

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 2220243 Ontario Inc.
 Appellant (jointly): Coryville Construction Ltd. and Shelson Properties Ltd.

Appellant (jointly): Fieldgate Developments Limited and Trinison Development Corporation

Appellant: Georgetown Country Properties Ltd.; and others
 Subject: Proposed Official Plan Amendment No. 39
 Municipality: Regional Municipality of Halton
 OMB Case No.: PL110857
 OMB File No.: PL110857
 OMB Case Name: Coryville Construction Ltd. v. Halton (Regional Municipality)

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Georgetown Shopping Centres Ltd.
 Appellant: Mattamy Development Corporation
 Appellant: Southwest Georgetown Landowners Group
 Subject: Proposed Official Plan Amendment No. 37
 Municipality: Regional Municipality of Halton
 OMB Case No.: PL091166
 OMB File No.: PL091166
 OMB Case Name: Georgetown Shopping Centres Ltd. v. Ontario
 (Municipal Affairs & Housing)

Heard: June 2015 in Oakville, Ontario

APPEARANCES:

Parties

Counsel

Region of Halton

S. Waque and I. Tang

Evergreen Community
 (Burlington) Limited

D. Wood and S. Mahadevan

DECISION OF THE BOARD DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD

INTRODUCTION

[1] This decision pertains solely to the site-specific appeal launched by Evergreen Community (Burlington) Limited (“Evergreen”) against the Region (“Region”) of Halton’s Official Plan (“ROPA 38”) for Evergreen’s property located at the northwest corner of Tremaine Road and Dundas Street (“subject property) in the City of Burlington (“City”). The subject property is situated at the boundary between the City and the Town of Oakville (“Town”).

[2] Evergreen’s property is approximately 68 hectares (“ha”) in area and is

designated Urban in the Region's Official Plan. In the City's Plan, it is designated as "Land Use to be Determined." Toll Highway 407 is to the north and on the west are a school bus terminal, a brick and quarry operation and Bronte Creek. On the subject property are two large woodlots.

[3] No one from the City, the Town, nor the Conservation Authority participated at this hearing event.

[4] On behalf of the Region, I heard from the following witnesses with disciplines identified:

- i. Mr. Stirling Todd, qualified and accepted as an expert in land use planning;
- ii. Mr. Mirek Sharp, qualified and accepted as an expert in ecology;
- iii. Mr. Nick McDonald, qualified and accepted as an expert in land use planning.

[5] On behalf of Evergreen, I heard from the following witnesses with disciplines identified:

- i. Mr. Ken Ursic, qualified and accepted as an expert in ecology with a specialty in environmental impacts statements ("EIS");
- ii. Ms. Cyndi Rottenberg-Walker, qualified and accepted as an expert in land use planning;

[6] As the matter came closer to litigation, the parties narrowed the areas of dispute by removing Issue #43 which stated:

- i. In light of the development applications (Burlington Official Plan amendment including secondary plan, zoning by-law amendment and draft plan of subdivision) made in December

2007 and January 2008 by Evergreen, should the provisions of the Regional Official Plan in effect at that time be determinative of the matter of boundaries of the development lands rather than the Regional Natural Heritage System mapping, policies and definitions in regard to the development of the Evergreen lands?

[7] Further, following a meeting of experts, Ecologists Sharp and Ursic, filed an Agreed Statement [Exhibit 273]. Through that process, there were some areas of agreement.

[8] Pursuant to Schedule "C" attached to Exhibit 273, modification to Map1G was not necessary concerning key feature boundaries as the experts agreed that the "Key Features boundaries are subject to minor refinements that may occur as part of the feature limit confirmation (staking) process with the Region and Conservation Halton as it relates to regulated features, to be undertaken as part of the EIA process." [see Exhibit 272, page 2]

[9] These experts also agreed that it was appropriate to map linkages and enhancements to the key features with the proviso that the extent and limits of the linkages could be refined and that while some enhancements could be identified at this point, others may be identified at a later stage through the planning process.

[10] An outstanding area of disagreement was the issue of buffers and whether the Board should decide on this issue at this stage. [see Exhibit 273, page 2] Specifically it was the width of the buffers to be applied to the woodland key features on the Evergreen property that was at issue.

[11] Therefore enhancements and buffers were the remaining items in dispute, although buffers were the focus of the dispute. In the end, I prefer the evidence from the Region's witnesses and as such determine that Evergreen's appeal is dismissed. My reasons are set out below.

[12] The Region's position can be set out in summary fashion as follows:

- i. Buffers are integral to the systems based approach of assessing and mapping the Natural Heritage System and such an approach had been achieved through the ROPA 38 process.
- ii. The 30 metres (“m”) identified buffer for significant woodlands and 15 m identified buffer for wetlands and watercourses, as recommended in the Termaine-Dundas Secondary Plan Subwatershed Study (“TSSPSS”) as well as the Sustainable Halton Report should be respected and applied in this case. Flexibility had already been applied in the case of the recommended 15 m for wetlands and watercourses, and per policy 116.1 of ROPA 38, further flexibility existed to refine buffer widths. Doing anything else undermines the settlements achieved with other parties as well as the basis for earlier regional and future local processes.
- iii. The Region’s recommended 30 m and 15 m buffers were consistently applied throughout the Region and in this case, Evergreen was seeking a special exemption.

[13] Evergreen disagreed indicating that:

- i. While buffers are important to identify, their specific widths should be established at a later stage, for example through an EIS so the buffer could be tied to the science behind its requirement.
- ii. Buffers should only be included when a threat to a key feature is identified as the buffer is needed to protect the key feature from that threat. At this stage, no such threats are identified to warrant the Region’s suggested buffers.
- iii. The Region’s recommended buffers are in Evergreen’s view, excessive.
- iv. In short, the Board should not establish a buffer width as recommended by the Region at this stage and if compelled to do so, it should be 10 m for woodland features.

[14] Evergreen agrees with the Region to exercise caution but asserts that that exercise can be completed once threats (through specific development) are identified.

[15] So in addressing the specific details of the dispute on buffers, it came to a disagreement with buffers for woodlands with the Region suggesting 30 m and Evergreen suggesting 10 m was sufficient.

[16] I agree with exercising caution but disagree with Evergreen's suggestion of when it should be exercised. With respect, if one accepts that the approach to protecting natural heritage features and functions should be system based, and that is what I heard from both Ecologists, then as a starting point, one must accept that all components, namely key features, enhancements, linkages and buffers, are part of that system-based approach. This is the evidence I heard from Mr. Sharp. I agree and rely upon his opinions in this respect.

[17] The next step is to ensure adequacy of those components. I cannot forget that the matter before me is mapping at a regional level. For buffers, adequacy, taking Mr. Ursic's evidence, means not only widths of buffers but also other mitigation measures which could be used. And I agree with Mr. Ursic that such measures and specifically the necessary buffer width could be addressed at the local level when development applications are filed.

[18] However, the refining process is captured through policy 116.1 which the Board has already approved. That policy exists for the very purpose to refining the boundaries of the Regional Natural Heritage System, which system includes buffers as a component.

[19] Policy 116.1 reads as follows:

The boundaries of the Regional Natural Heritage System may be refined, with additions, deletions and/or boundary adjustments, through:

- a. A Sub-watershed Study accepted by the *Region* and undertaken in the context of an *Area-Specific Plan*;
- b. An individual Environmental Impact Assessment accepted by the *Region*, as required by this Plan; or
- c. Similar studies based on terms of reference accepted by the *Region*.

Once approved through an approval process under the Planning Act, these refinements are in effect on the date of such approval. The *Region* will maintain mapping showing such refinements and incorporate them as part of the Region's statutory review of its Official Plan.

[20] It should be noted that at the time of this hearing, there were no development applications filed by Evergreen. What I had before me was a concept plan which identified areas for residential lots with potential key features, linkages, buffers, enhancements, and enhancements within key features superimposed on aerial photography [see Revised Attachment "Q" to Ursic Reply Witness Statement filed as Exhibit 280(B)].

[21] Given this circumstance, the Region's Ecologist, Mr. Sharp agreed with Evergreen's Ecologist wherein Mr. Ursic opined that the extent of the buffer to be applied to features outside the Greenbelt Plan Area should be applied in a manner that considers both the intrinsic ecological sensitivities of a feature as well as the ability to mitigate potential impacts anticipated from a change in adjacent land uses on a site-specific basis.

[22] Mr. Sharp's comment was that because there was "no application for development on the Evergreen lands and the adjacent lands [*sic*] uses have not been agreed on. It is mainly because of this [he had] the opinion that finalizing the buffer widths is pre-mature at this time." [Exhibit 278, page 3, para. 5]

[23] However, in taking a cautious approach, Mr. Sharp indicates that while the adjacent land uses have not been determined, and therefore the final widths of the

buffers also not fixed, the proposed 10 m buffer to the central woodland area simply would not be adequate given the proposed concept.

[24] I agree with taking this cautious approach given that the mapping in question should be interpreted at a broader level to achieve the public policy goal of protecting the natural heritage system.

[25] The Region identified a 30 m buffer and this number, to use the vernacular was not simply “pulled out of the air.” It was rooted in data and processes of the TDSPSS and Sustainable Halton, both which included public and stakeholder input and participation including that of Mr. John Krypan, the principal of Evergreen.

[26] As Mr. Wood put it in his final submissions, if 30 m is identified at this stage, then the real concern of Evergreen is that 30 m becomes the starting point for negotiations, presumably to reduce the buffer once the development applications are made.

[27] Mr. Wood was candid to explain that his client worried that with 30 m as the starting point, the City may be unlikely to vary that amount citing the City’s policies must conform to regional policies.

[28] With respect, I disagree with this premise on a number of grounds.

[29] First, Evergreen seeks only a mapping amendment through this process. No relief is requested for any policy in ROPA 38 and I refer specifically to Mr. Wood’s written closing argument submissions at paragraphs 1 and 2. The mapping is at a regional level.

[30] Second, if the buffers should be based on science as Mr. Ursic recommends, then Evergreen will be preparing the requisite studies to justify whatever buffer it deems appropriate for the development it ultimately intends to pursue. At this stage, only a concept was provided.

[31] If a 10 m buffer for the woodland features on the Evergreen property is indeed appropriate, then that will be borne out through future processes available to Evergreen at the local level as well as pursuant to the flexibility provided through policy 116.1 of ROPA 38.

[32] Third, the approach that 30 m is viewed as a starting point for negotiations eviscerates the broader public policy purpose of such a buffer, namely the protection of key features and functions of the larger system. That protection is mandated not only in the Region's Plan but also in provincial policy (specifically the 2014 Provincial Policy Statement and the Greenbelt Plan).

[33] Finally, to deviate from a prudent 30 m buffer to either no buffer or 10 m as suggested by Evergreen, would unnecessarily constrain the local process yet to come. Mr. Waque argued that it was very difficult, if not impossible, to "add back" to buffer and I agree.

[34] By recognizing a 30 m buffer, the Region is applying a consistent approach which does not unduly prejudice Evergreen from taking advantage of policy 116.1. In fact, the buffers originally identified for the wetland and watercourses were reduced from 30 m to 15 m, indicative of the flexibility available to Evergreen. The same was true for the relocation of tributary 14W-17Cb located in the southeastern quadrant of the subject lands.

ORDER

[35] For the foregoing reasons, the Board orders that the appeal is dismissed.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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Agreed Statement

To: Ontario Municipal Board

From: Ken Ursic and Mirek Sharp

Date: June 4, 2015

Ref: OMB File No. PL111358, Evergreen Community (Burlington) Ltd. [Evergreen Appeal]

Re: **Natural Heritage Meeting of Experts**

Points of Agreement / Disagreement from Experts Meeting / Site Visit – June 3, 2015

A natural heritage experts' meeting was held on June 3rd, 2015 in regard to the Evergreen Appeal. In attendance were: Ken Ursic, Senior Ecologist from Beacon Environmental Ltd. representing Evergreen (the appellant) and Mirek Sharp, Senior Ecologist from North-South Environmental Inc. on behalf of the Region of Halton.

The meeting was held on the Evergreen site on June 3rd between 1 pm to 4 pm. The purpose of the meeting was to:

1. provide Mr. Sharp with an opportunity to review the site features;
2. to review the boundaries of features, enhancements and linkages for the purpose of considering refinements to Maps 1 and 1G in ROPA 38;
3. articulate points of agreement and disagreement with the intent of narrowing the issues for the benefit of the Board.

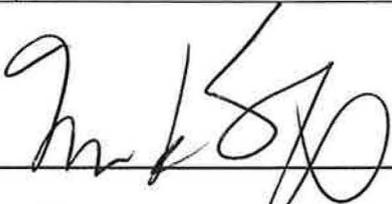
We agree that:

1. It will be necessary to undertake an Environmental Impact Assessment (EIA) pursuant to s. 118(3) of ROPA 38, if and when an application for development is submitted for the Evergreen Lands;
2. Feature boundaries as verified during the Expert's Meeting are for the purpose of considering refinements to Maps 1 and 1G;
3. Appropriate buffer widths are dependant in part on adjacent land uses.

The route walked is illustrated on the attached Site Walk Route map (Schedule A).

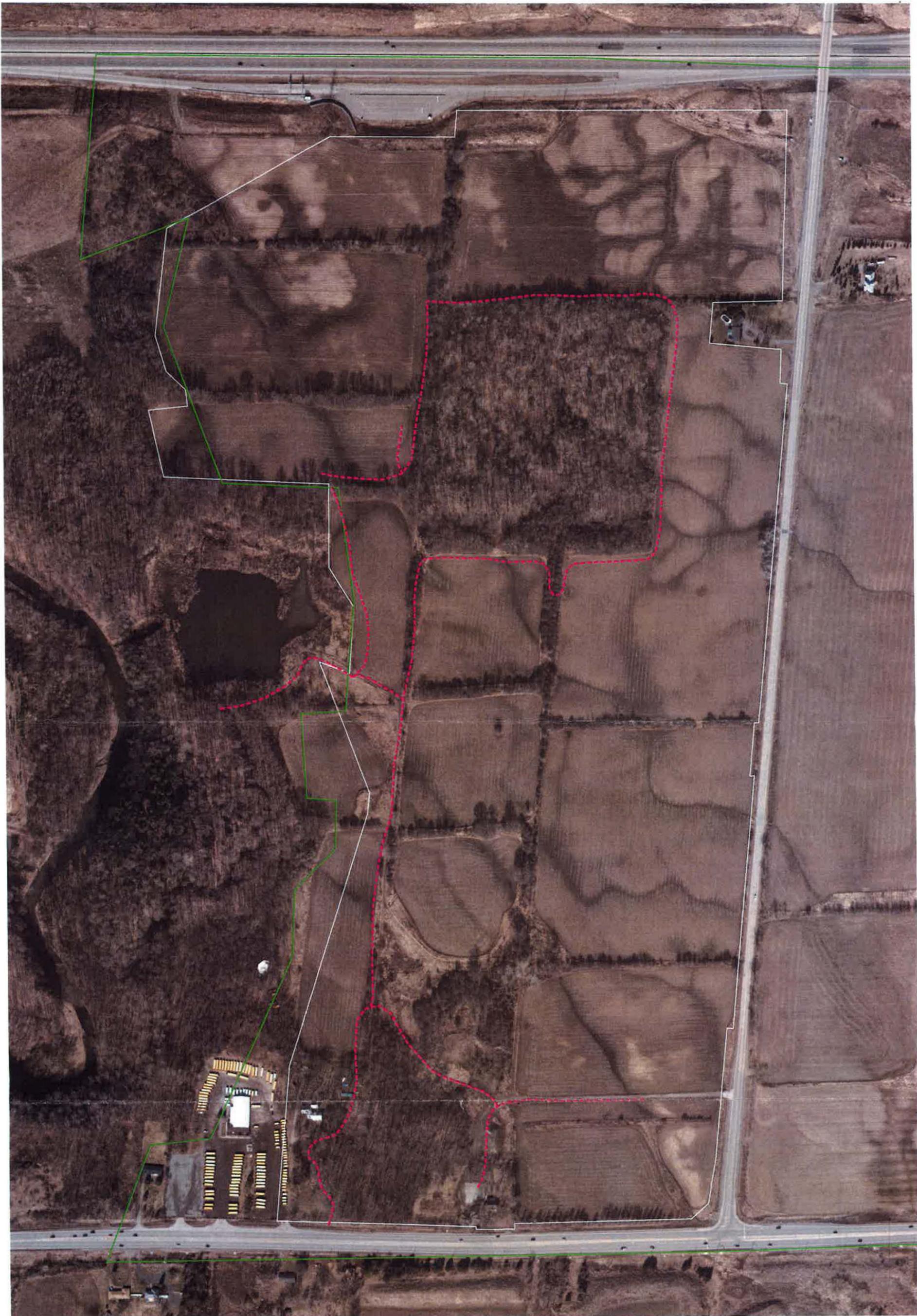
The following table summarizes points of agreement and disagreement from this meeting.

1. Key Features	<ul style="list-style-type: none"> • Agreement that the attached Key Features map (Schedule B) appropriately identifies the boundaries of all Key Features that are present on and immediately adjacent to the Evergreen Lands for the purpose of considering refinements to Maps 1 and 1G. The Key Features boundaries are subject to minor refinements that may occur as part of the feature limit confirmation (staking) process with the Region of Halton, and Conservation Halton (CH) as it relates to regulated features, to be undertaken as part of the EIA process. • Agreement that, based on the information provided to date, all Key Features on and immediately adjacent to the Evergreen Lands, including Significant Habitat of Endangered and Threatened Species, Significant Wetlands, Significant Woodlands, Significant Valleylands, Significant Wildlife Habitat, and Fish Habitat have been appropriately included in the attached Key Features map.
2. Watercourses (as per ROPA 38 115.3(5)) and Wetlands (as per ROPA 38 115.3(6))	<ul style="list-style-type: none"> • Agreement that the attached Key Features map (Schedule B) appropriately identifies the watercourses and wetlands that are present on the Evergreen Lands for the purpose of considering refinements to Maps 1 and 1G. The limits of these watercourses and wetlands are subject to minor refinements that may occur as part of feature limit confirmation (staking) process with the Region of Halton and Conservation Halton (CH) to be undertaken as part of the EIA process . • Agreement that Tributary 14W-17Cb can be relocated provided its hydrological and ecological functions are maintained and an appropriate naturalized Buffer / setback is provided as envisioned by the Subwatershed Study, and subject to CH review and all necessary permitting.
3. Linkages	<ul style="list-style-type: none"> • Agreement that the attached Key Features/Linkages map (Schedule C) appropriately identifies the location and extent of the two local Linkages and that the extent and limits of linkages will be refined, if necessary when the feature limits are confirmed through the EIA process.
4. Enhancements	<ul style="list-style-type: none"> • We agree that while some enhancements can be identified at this point in time (e.g. in the key features and linkage areas), other enhancements may be identified later through the planning process.
5. Buffers	<ul style="list-style-type: none"> • <u>We disagree as to whether buffers can be determined at this point in time.</u>

Mirek Sharp  Date: 8 June / 2015

Ken Ursic  Date: June 8, 2015

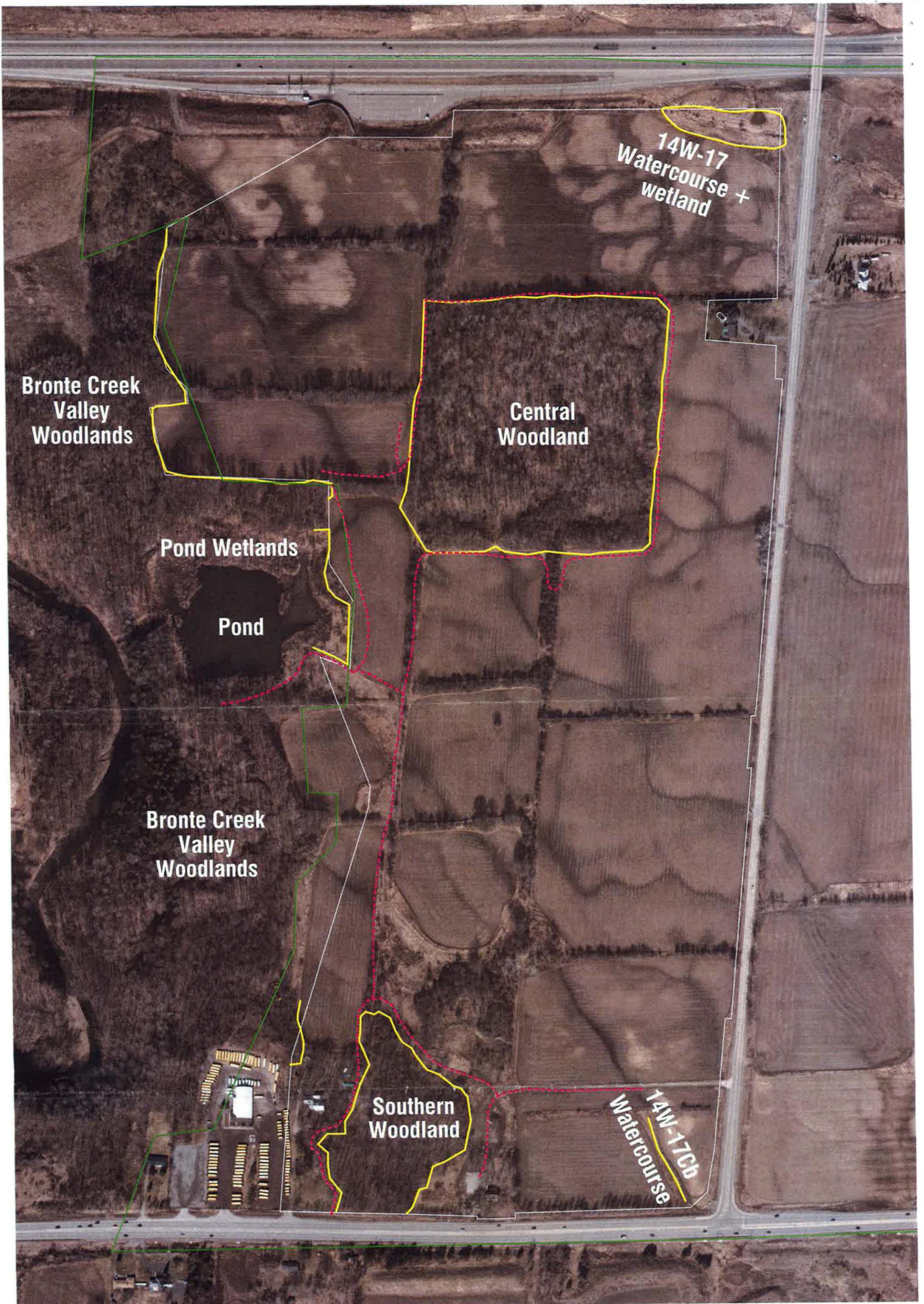
SCHEDULE A



- Evergreen Property Boundary
- - - Site Walk Route
- Greenbelt Limit (Approximate)

Graphic developed by Gerrard Design Associates Inc. under the direction of Ken Ursic / Margot Ursic of Beacon Environmental Ltd. for illustrative purposes in support of the evidence provided by the Evergreen team

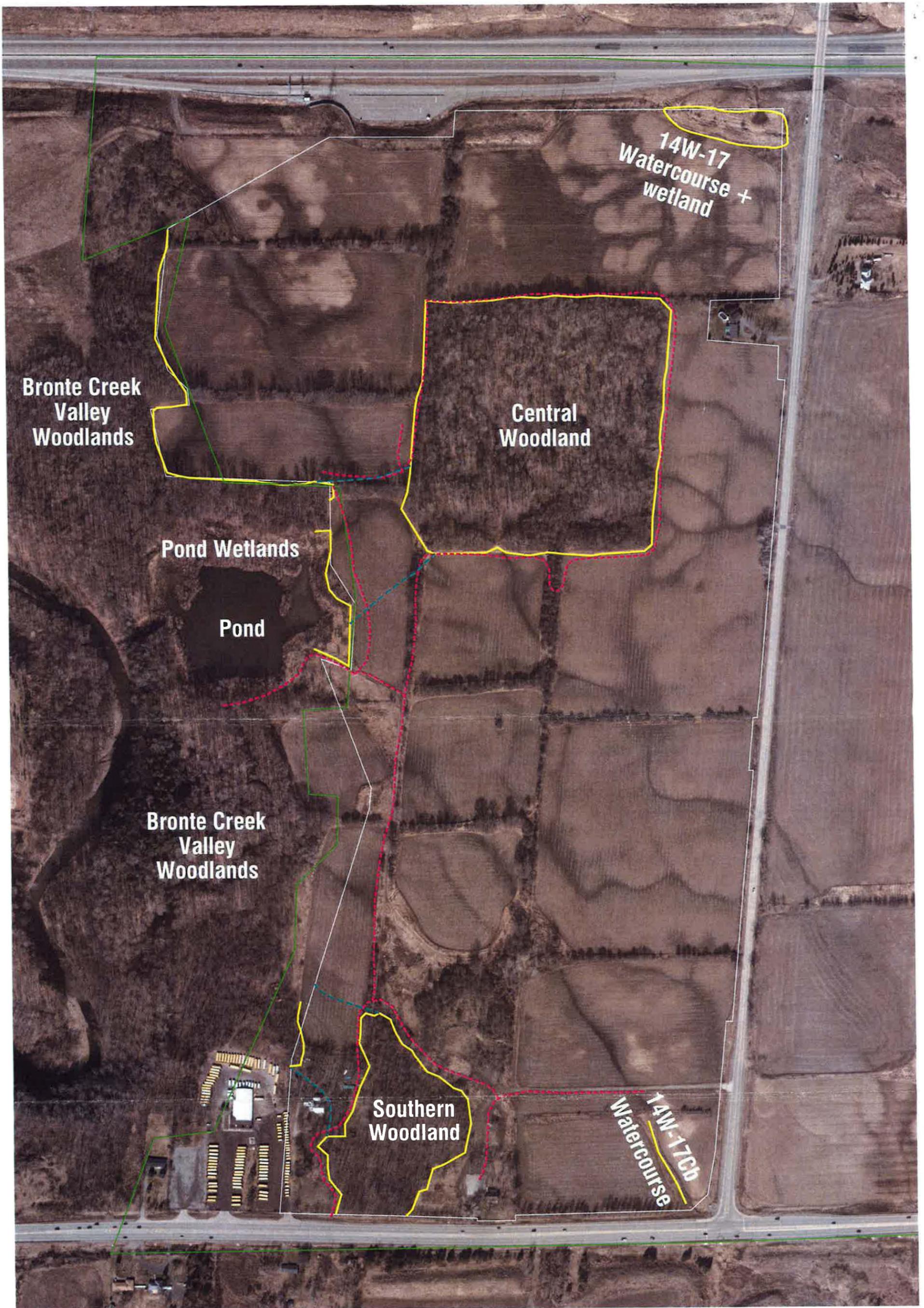
SITE WALK ROUTE (JUNE 3, 2015)



- Evergreen Property Boundary
- Site Walk Route
- Greenbelt Limit (Approximate)
- Key Features

Graphic developed by Gerrard Design Associates Inc. under the direction of Ken Ursic / Margot Ursic of Beacon Environmental Ltd. for illustrative purposes in support of the evidence provided by the Evergreen team

KEY FEATURES



- Evergreen Property Boundary
- Key Features
- Linkages
- Site Walk Route
- Greenbelt Limit (Approximate)

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KEY FEATURES + LINKAGES