

April 23, 2018

PB-04-18
505-08
Delegation correspondence

Delivered via email: cityclerks@burlington.ca

Planning and Development Committee
City of Burlington
426 Brant Street
Burlington, ON
L7R 3Z6

Dear Committee Members:

**Re: Proposed City of Burlington Official Plan update;
1761 Old Waterdown Road;
City of Burlington Staff Report PB-04-18;
Our Clients: Don Johnson and Ann Funnell**

SmithValeriotte Law Firm LLP acts for Donald Johnson and Ann Funnell, the executors for the Estate of Charles Walter Johnson, which owns the above-noted lands (the "Subject Lands"). The Subject Lands are within the North Aldershot area of the City of Burlington and are generally bounded by Old Waterdown Road and Waterdown Road to the west, Mountain Brow Road to the north and King Road to the east.

Background:

Portions of the Subject Land have been designated 'North Aldershot Policy Area' in the Region of Halton Official Plan since Regional Official Plan Amendment No. 2 in 1998. This designation allowed development in accordance with the North-Aldershot Interagency Review (NAIR) document. NAIR was prepared for the Region of Halton and City of Burlington Council. NAIR was funded by, and received involvement from many contributors, including the Ministry of Municipal Affairs and Housing.

The City of Burlington approved development regulations and zoning based on the regional designation allowing for development. These regulations have been carried forward into the New OP, as indicated in a letter sent to the City of Burlington from GSP Group, the planning consultants for our Clients, on June 29th, 2017 (**Appendix A**).

Without having regard to the above development designation, approximately 21 hectares of the Subject Land identified for future development within the 'North Aldershot Policy Area' were designated within 'Protected Countryside' and 'Natural Heritage System' overlay identified within in the Greenbelt Plan. Section 5 of the Greenbelt Plan provides direction for the implementation of the Greenbelt Plan. Specifically, Policy 5.2.1 recognizes previous approvals or designations

Reply to Guelph Office: ☒

MAILING ADDRESS
P.O. Box 1240, Guelph, ON N1H 6N6

ADDRESS
105 Silvercreek Pkwy. N., Suite 100, Guelph, ON N1H 6S4
T 519 837 2100 TF 800 746 0685 F 519 837 1617

Reply to Fergus/Elora Office: ☐

MAILING ADDRESS
P.O. Box 128, Fergus, ON N1M 2W7

ADDRESS
294 East Mill Street, Unit 108, Centre Wellington, ON N0B 1S0
T 519 843 1960 F 519 843 6888

that were in place prior to December 16, 2004 and indicates that those approvals or designations may continue to be recognized. Additionally, the policy notes that in these instances further applications under the Planning Act or Condominium Act that implement the previous Official Plan permissions are not required to conform to the Greenbelt Plan.

The grandfathering policy and its application to the Subject Land is further acknowledged by a letter from the Ministry of Municipal Affairs and Housing dated July 4, 2005 (**Appendix B**). This letter, which was addressed to Mr. Don Johnson and signed by Mr. Victor Doyle (Manager of Provincial Planning and Environmental Services Branch) indicates that attempts were made to ensure that the Greenbelt Plan mapping not intrude onto lands which had existing designations that allowed for urban development. The letter also notes that despite the best efforts of the MMAH, there were instances where the mapping inadvertently extended onto such lands. However, to deal with such issues, Section 5.2.1 of the Greenbelt Plan was created as a means to recognize these instances.

A portion of the letter states:

“As such, the lands at 1761 Old Waterdown Road will continue to be governed by the Region of Halton and the City of Burlington Official Plans. Having discussed and received correspondence on this matter from both Halton region and Burlington planning staff..., it is apparent that they share and/or concur with the Ministry’s perspective.

In closing, I would encourage you to continue to deal with both the Halton and Burlington planning departments in terms of the forms and locations of development that can occur on this property based on the official plans in effect.”

In addition, an OMB settlement dated March 17th, 2016 details the appeal of Regional Official Plan Amendment No. 38 (ROPA 38), which resulted in mapping modifications to the Subject Lands with regard to the Regional Natural Heritage System. This is detailed in the OMB decision, attached (**Appendix C**). It is not clear whether this ROPA 38 revised mapping is being effectively and properly incorporated into the City’s updated OP.

Provincial NHS:

The City has included Schedule M-1: Provincial Natural Heritage System for the Greater Golden Horseshoe into the Draft OP. This schedule identifies the Subject Lands in its entirety as *Provincial Natural Heritage System*. The City of Burlington Staff Report PB-04-18, indicates that this Plan was released by the Province while the City of Burlington (“the City”) was concluding its Official Plan conformity exercise to ensure conformity with the Region of Halton Official Plan Amendment (ROPA) No. 38.

The City continues to state that they cannot complete a conformity exercise to be consistent with the updated provincial plans until Halton Region has completed its own conformity review. As stated in the Staff Report, “in a two-tier municipality the upper tier municipality must undertake the conformity exercise first. There is one exception to this approach, and it relates to the recent release of provincial mapping for natural heritage systems and agricultural systems on February 9, 2018”. The Provincial Growth Plan permits municipalities to refine this new Provincial mapping through a Municipal Comprehensive Review (i.e. the Region’s Official Plan review). The mapping is now in full force and effect and is therefore applicable to all planning matters and designates the subject property as within the Natural Heritage System.

Our concern is in that the Province has indicated that where upper tier municipalities have not completed a Municipal Comprehensive Review, such as is the case in Burlington, the new

provincial mapping shall be incorporated into lower tier mapping as an overlay. On this basis we want to reinforce the outcome of the attached OMB decision (Appendix C), which provides development potential to the subject property. While we understand that Burlington must implement the Provincial NHS as an overlay at this stage to conform to the Feb. 9th NHS mapping, but we explicitly wish to state our Client's disagreement with this approach, and reserve their right to seek refinement through the forthcoming Regional MCR and subsequent conformity exercise at the lower-tier level to ensure consistency with the Regional NHS as accepted through ROPA 38.

Yours very truly

SMITHVALERIOTE LAW FIRM LLP



Kevin M. Thompson, B.Sc. (Hons.), J.D.
KT

telephone: 519-837-2100 ext. 315
email: kthompson@svlaw.ca

CC: Clients, via email
wanda.tolone@burlington.ca
joanne.rudy@burlington.ca

APPENDIX A



SHAPING GREAT COMMUNITIES

June 29, 2017

File No: 14079

City of Burlington
Official Plan Review
Planning and Building Department
426 Brant Street, PO Box 5013
Burlington, ON L7R 3Z6

Attn: Ms. Andrea Smith, MCIP, RPP
Manager, Policy and Research

Dear Ms. Smith:

**Re: 1761 Old Waterdown Road, Burlington
Draft Official Plan**

GSP Group Inc. is the planning consultant to Mr. Don Johnson, executor for the estate of Charles Johnson, owner of the lands at 1761 Old Waterdown Road, Burlington.

We understand that the maps and policies that apply to the North Aldershot area are not proposed to be changed as part of the City's new draft Official Plan and that the North Aldershot Inter-Agency Review ("NAIR") remains the foundation of planning for the lands at 1761 Old Waterdown Road and the Rennick/Shih adjoining lands. We further understand that any future updates to the maps and policies as they pertain to North Aldershot will be considered through the Region of Halton's North Aldershot Policy Review, as a part of their Official Plan Review.

Mr. Johnson intends to participate in the Region's process, and we request that we are informed of any future studies and plans undertaken by the City as well as they pertain to Mr. Johnson's property. We would also like to be put on the notification list for any future consultation and decisions on the City of Burlington's new Official Plan.

Please feel free to contact me if you have any questions. I can be reached in our Kitchener Office via phone at 519-569-8883 or via email at hhandy@gspgroup.ca.

Yours truly,

GSP Group

A handwritten signature in black ink that reads "Hugh Handy".

Hugh Handy, MCIP, RPP
Senior Associate

cc.: Mr. Don Johnson
Mr. Dan Tovey, Manager of Policy Planning, Region of Halton

PLANNING | URBAN DESIGN | LANDSCAPE ARCHITECTURE

APPENDIX B

**Ministry of Municipal
Affairs and Housing**
Provincial Planning and
Environmental Services Branch
777 Bay St 14th Flr
Toronto ON M5G 2E5
Telephone: (416) 585-6014
Fax: (416) 585-4245

**Ministère des Affaires
municipales et du Logement**
Direction des services provinciaux pour
l'aménagement et l'environnement
777, rue Bay 14^e étage
Toronto ON M5G 2E5
Téléphone: (416) 585-6014
Télécopieur: (416) 585-4245



July 4, 2005

Mr. Don Johnson
1419 Headon Road
Burlington, Ontario
L7M 3N8

Dear Mr. Johnson:

I am writing further to your emails regarding the potential impacts of the final Greenbelt Plan, 2005 on property at 1761 Old Waterdown Road

The *Greenbelt Act, 2005* and Greenbelt Plan are one of the key elements of the government's agenda to protect greenspace in the Golden Horseshoe. The Act received Royal Assent on February 24, 2005, and the Plan was released on February 28, 2005. The Act authorizes the designation of a Greenbelt Area and the establishment of the Greenbelt Plan. As such, the Greenbelt Plan is now final and changes can only occur through formal amendment to the Plan which is not contemplated until the 10 year review required by the Act.

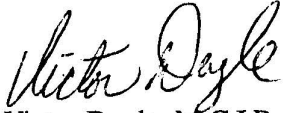
In regard to the subject property, the Greenbelt was laid out with the intent of not intruding into designated (ie. approved) urban areas. As such, efforts were undertaken to converse with municipalities to ensure the Ministry had accurate urban area boundaries. In some cases, given the scale of the Greenbelt, it appears that it inadvertently extended onto lands which were within an approved urban area.

Anticipating some issues arising between the differences in scale between municipal official plans and the Greenbelt Plan, and also in keeping with the principle of recognizing previously approved urban expansions, a new Section 5.2.1 was included in the final Greenbelt Plan. This section recognizes all previously approved urban uses and allows municipalities to continue to identify these urban uses within their official plans, even once they are brought into conformity with the Greenbelt Plan, 2005. As such, the lands at 1761 Old Waterdown Road will continue to be governed by the Region of Halton and the City of Burlington Official Plans. Having discussed and received correspondence on this matter from both Halton Region and Burlington planning staff (copies enclosed), it is apparent that they share and/or concur with the Ministry's perspective.

In closing, I would encourage you to continue to deal with both the Halton and Burlington planning departments in terms of the forms and locations of development that can occur on this property based on the official plans in effect.

If you continue to have questions, please call me directly at 416-585-6109 or toll free at 1-800-668-0230.

Yours Truly,

A handwritten signature in cursive script, appearing to read "Victor Doyle".

Victor Doyle, M.C.I.P., R.P.P.
Manager

attachment

c.c. B. Krushelnicki, Director of Planning, City of Burlington
J. Clohecy, Director, Planning and Transportation Services, Region of Halton
T. Peterson, M.P.P., Mississauga South

APPENDIX C

PL111358

ONTARIO MUNICIPAL BOARD Commission des affaires municipales de l'Ontario

IN THE MATTER OF Subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellants:	See Attachment "1"
Subject:	Proposed Official Plan Amendment No. 38
Municipality	Regional Municipality of Halton
O.M.B. Case No.:	PL111358
O.M.B. File No.:	PL111358

MINUTES OF SETTLEMENT

BETWEEN:

THE REGIONAL MUNICIPALITY OF HALTON
(hereinafter referred to as "**Halton Region**")

- and -

DON JOHNSON
(hereinafter referred to as "**Johnson**")

WHEREAS in 2006 Council for Halton Region commenced a multi-year work plan called Sustainable Halton to bring the Regional Official Plan (the "**Plan**") into conformity with the Province's Growth Plan, Greenbelt Plan and other Provincial Plans and to conduct a five-year review of the Plan;

WHEREAS on December 16, 2009 Halton Region adopted Regional Official Plan Amendment No. 38 ("**ROPA 38**");

WHEREAS on November 24, 2011, the Minister of Municipal Affairs and Housing approved with modifications ROPA 38;

WHEREAS Johnson filed an appeal of ROPA 38, identified by the Ontario Municipal Board (the "**Board**") as appeal No. PL111358 – 8 (the "**Appeal**");

WHEREAS Phase 4 of the ROPA 38 hearing dealing with the site-specific appeal of the Subject Lands, as shown on **Schedule "A"**, was scheduled to take place in June 2015, and has since been deferred by the Board to be resolved at a later date;

WHEREAS in accordance with the Board's Procedural Order for Phase 4 and 5 issued on March 17, 2015, Johnson filed an issues list and Halton Region consolidated the issues filed by Johnson (and as further scoped by Johnson) and the other parties on a consolidated issues list dated April 14, 2015 (the "**Consolidated Issues List**") and filed as Exhibit 213 in these proceedings;

WHEREAS as a result of negotiations between the parties hereto (the "**Parties**" and each a "**Party**"), the Parties have agreed to resolve the Appeal on the terms and conditions contained herein;

NOW THEREFORE the Parties in consideration of the mutual covenants set out below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. The Parties agree that the recitals are true.
2. The Parties shall jointly request that the Board approve the modifications to Map 1G for the Subject Lands as set out on Map 1G in **Schedule "B"** attached hereto at a settlement hearing in Phase 4 or at a motion for partial approval brought by Halton Region. In particular, the Parties agree that
 - a. the "Key Features" on Schedule "B" are based on a delineation of woodland and wetland edges as agreed upon between Mirek Sharp (on behalf of Halton Region) and Jim Dougan (on behalf of Johnson). The presence of other possible Key Features as described in s.115.3(1) of the Plan will be investigated as part of future studies to be undertaken in support of a development application in accordance with the policies of the Plan.
 - b. the "Enhancement Areas, Linkages and Buffers" on Schedule "B" recognize that certain areas on the Subject Lands designated as Agricultural Area on Map 1 may be more appropriately designated as Regional Natural Heritage System instead of Agricultural Area.
3. As a result of the modifications to Map 1G as set out in Schedule "B", the parties shall jointly request that the Board approve the revisions to Maps 1, 1C, 1D, 1E and 1F for the Subject Lands as set out on the maps in **Schedule "C"** attached hereto.

4. In the event that the approval of the maps set out in Schedules “B” and “C” for the Subject Lands is being contested by other parties, the Parties agree to support the approval of such mapping as set out in these Minutes of Settlement (the “**Minutes**”) at the Phase 4 hearing or at the hearing of the motion for partial approval, as appropriate.
5. Section 116.1 will apply to permit refinements (additions, deletions and/or boundary adjustments) to all aspects of the Regional Natural Heritage System, in conjunction with an Environmental Impact Assessment (“**EIA**”) completed as part of a development application on the Subject Lands.
6. The Natural Heritage Characterization Report completed by Dougan & Associates dated March 31, 2015 (the “**Dougan Report**”) may be used as an input to the EIA to be completed as part of a development application on the Subject Lands. The Parties agree that the Region in its sole discretion will determine the scope and nature of the EIA required for the development proposed for the Subject Lands and that this EIA may be broader in scope than an update to the Dougan Report.
7. Where refinements to the Regional Natural Heritage System occur as part of any development application and result in the removal of lands from the Regional Natural Heritage System within the Subject Lands, the lands removed from the Regional Natural Heritage System shall be designated North Aldershot Policy Area, if such lands are immediately adjoining lands in the North Aldershot Policy Area.
8. Since Regional Official Plan Amendment No. 2 (“**ROPA 2**”) specifically designated land uses prior to December 16, 2004, the transitional policies in Section 5.2.1 of the Greenbelt Plan apply to the Subject Lands such that
 - a. for the purpose of interpreting ROPA 38, the land uses permitted in ROPA 2 for the Subject Lands shall continue to be recognized through the conformity exercise addressed in section 5.3 of the Greenbelt Plan;
 - b. no modifications will be necessary to the internal boundaries of the Greenbelt Plan;
 - c. no amendment to the Plan will be required if Johnson is seeking to implement the land use permissions for the lands designated North Aldershot Policy Area in

ROPA 2 on the Subject Lands in accordance with Section 116.1, which permits refinements to the Regional Natural Heritage System designation; and

- d. an amendment to the Plan will be required if Johnson is seeking land use permissions beyond those established in ROPA 2 on the Subject Lands that fall within the Greenbelt Plan Protected Countryside, or if Johnson is seeking to develop lands that are not designated North Aldershot Policy Area in ROPA 2 on the Subject Lands that fall within the Greenbelt Plan Protected Countryside.
9. The Parties agree that while the City of Burlington Official Plan (“**Burlington OP**”) does not specifically designate land uses (particularly on lands designated North Aldershot Special Study Area), the primary land use planning document is the Plan. Accordingly, in the event that Johnson makes an application to amend the Burlington OP to implement the land use permissions for the lands designated as North Aldershot Policy Area in ROPA 2 on the Subject Lands, as contemplated in paragraph 8 above, the Region shall not oppose this application on the basis that portions of the Subject Lands are within the Greenbelt Plan area but reserves its rights to oppose this application on other grounds. The Parties agree that any development application on the Subject Lands and any amendment to the Burlington OP would still need to conform with the Plan.
10. Upon full execution of these Minutes, Johnson agrees to withdraw the Appeal in its entirety. Johnson further agrees to advise the Board that all of the outstanding issues on the Consolidated Issues List relating to the Appeal that are within the scope of the Board’s jurisdiction in this hearing have been resolved and that these Minutes are acceptable to him.
11. The Parties agree that the relevant policies of the Plan, as modified by ROPA 38, are most effectively applied in the context of a site specific development proposal if an application is made prior to a review of the North Aldershot area. If no such application is made by Johnson and deemed to be complete by December 31, 2018, the provisions of these Minutes have no further force and effect, save and except for
 - a. the agreement between the Parties with respect to the boundaries of the Key Features and mapping changes on the Subject Lands as set out in paragraphs 2 and 3, subject to paragraph 14; and

- b. the application of Section 116.1, subject to this section being in force and effect on a Region-wide basis and paragraph 14.
- 12. The Parties recognize that Halton Region has no authority over additional requirements of provincial and federal jurisdictions, matters that are subject to federal or provincial jurisdiction, additional requirements resulting from changes to environmental legislation or regulations or Board decisions that may affect the implementation of these Minutes.
- 13. The Parties shall each bear their own costs of this part of the Appeal and of all matters contemplated by these Minutes.
- 14. Nothing in these Minutes shall prejudice, limit or preclude Halton Region from adopting a new Official Plan pursuant to the five-year review or other comprehensive process or prevent Johnson from appealing any such amendment subject to applicable rights of appeal. For greater certainty, nothing in these Minutes will fetter the ability of Halton Region to undertake a review of the North Aldershot area as part of the next five-year review of the Plan, nor prevent Johnson from seeking a Regional Official Plan Amendment prior to or after the adoption of the next five-year review.
- 15. Nothing in these Minutes shall prejudice, limit or preclude Johnson from making applications to amend the Official Plan or the rights of Halton Region to respond to such applications, or any of the Parties from exercising their respective rights.
- 16. The Parties agree that these Minutes address all of the terms and conditions of their agreement and that there are no other written or oral terms which amend or modify or otherwise affect the provisions of this agreement.
- 17. The Parties acknowledge and agree that these Minutes may be executed by their solicitors, respectively, in counterpart, and if so executed, these Minutes shall be of force and effect as if executed by the Parties themselves.

DATED this 17th day of March, 2016 ^{PT} 2015.

THE REGIONAL MUNICIPALITY OF HALTON, by its
solicitors

DON JOHNSON, by his solicitors



Kevin Thompson

ATTACHMENT “1”

List of Appellants

ROPA 38 – OMB Case No. PL111358

1. 2220243 Ontario Inc.
2. Catholic Cemeteries of the Diocese of Hamilton
3. City of Brampton
4. City of Burlington
5. Clay Brick Association of Canada
6. Conservation Halton
7. Crosswinds Golf & Country Club (1652152 Ontario Inc.)
8. Don Johnson
9. Georgetown Shopping Centres Limited
10. Halton Region
11. Halton Region Federation of Agriculture
12. Holcim (Canada) Inc.
13. Joseph H. Richardson
14. Ken Woodruff (Stop Escarpment Highway Coalition)
15. Local 707 CAW
16. Mattamy Development Corporation
17. Melrose Properties Inc. and Ironrose Investments Limited
18. Memorial Gardens Canada Limited
19. Milton Business Park II Landowners Group
20. Milton Phase 3 Landowners Group Inc.
21. Monte Carlo Inn (1071253 Ontario Limited)
22. Munn's United Church
23. Nelson Aggregate Co.
24. Newmark Developments Limited and Rosko Investment and Development Limited
25. North Oakville Community Builders Inc.
26. Oak-Land Ford Lincoln
27. Ontario Stone, Sand & Gravel Association
28. Orlando Corporation
29. Paletta International Corporation and P&L Livestock Limited
30. Region of Peel
31. Shipp Corporation Limited
32. South Georgetown Landowners Group
33. Southwest Georgetown Landowners Group
34. Sundial Homes (3rd Line) Limited and Sundial Homes (4th Line) Limited
35. Swiss Chalet (1137528 Ontario Limited)
36. Town of Halton Hills
37. Town of Milton
38. Trafalgar Golf and Country Club
39. Trebbiano Trail Development, Orianna Glen Homes Corp., Sempronia Estate Inc. and Albanella Development Ltd., Mil Con Four Britannia Developments Limited & Mil Con Four Thomson Developments Limited, Trinison Management Corp. and Fieldgate Developments
40. TSI International Canada Inc.
41. United Parcel Services of Canada

Subject Lands

Schedule "A" - Subject Lands

0 62.5125 250 375 500 Meters

Greenbelt Plan Protected Countryside Boundary

Parkway Belt West Plan Boundary

Area Eligible For Urban Servicing

Niagara Escarpment Plan Boundary

Greenbelt Natural Heritage System (Overlay)

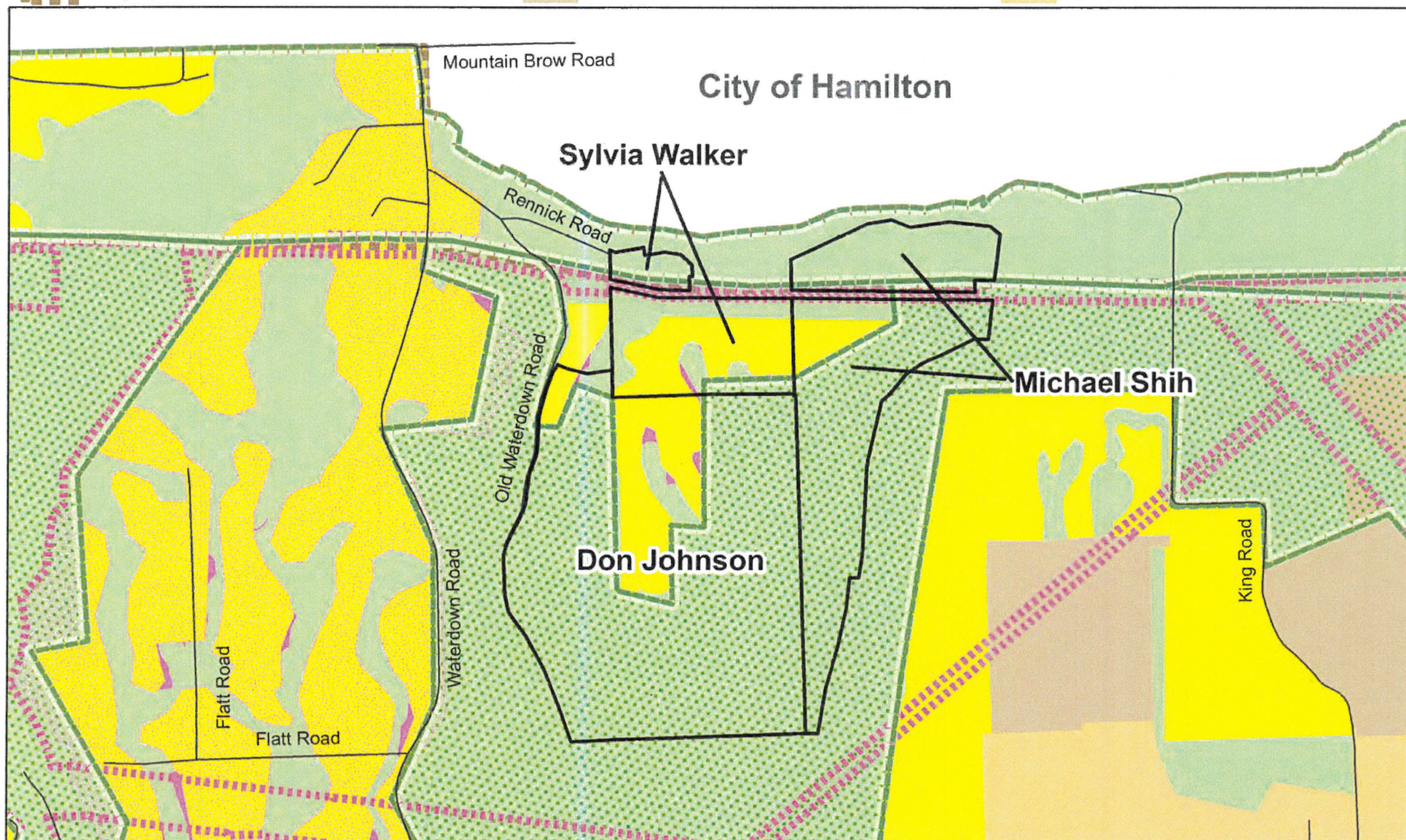
Agricultural Area

Mineral Resource Extraction Area









Regional Natural Heritage System

North Aldershot Policy Area

Urban Area



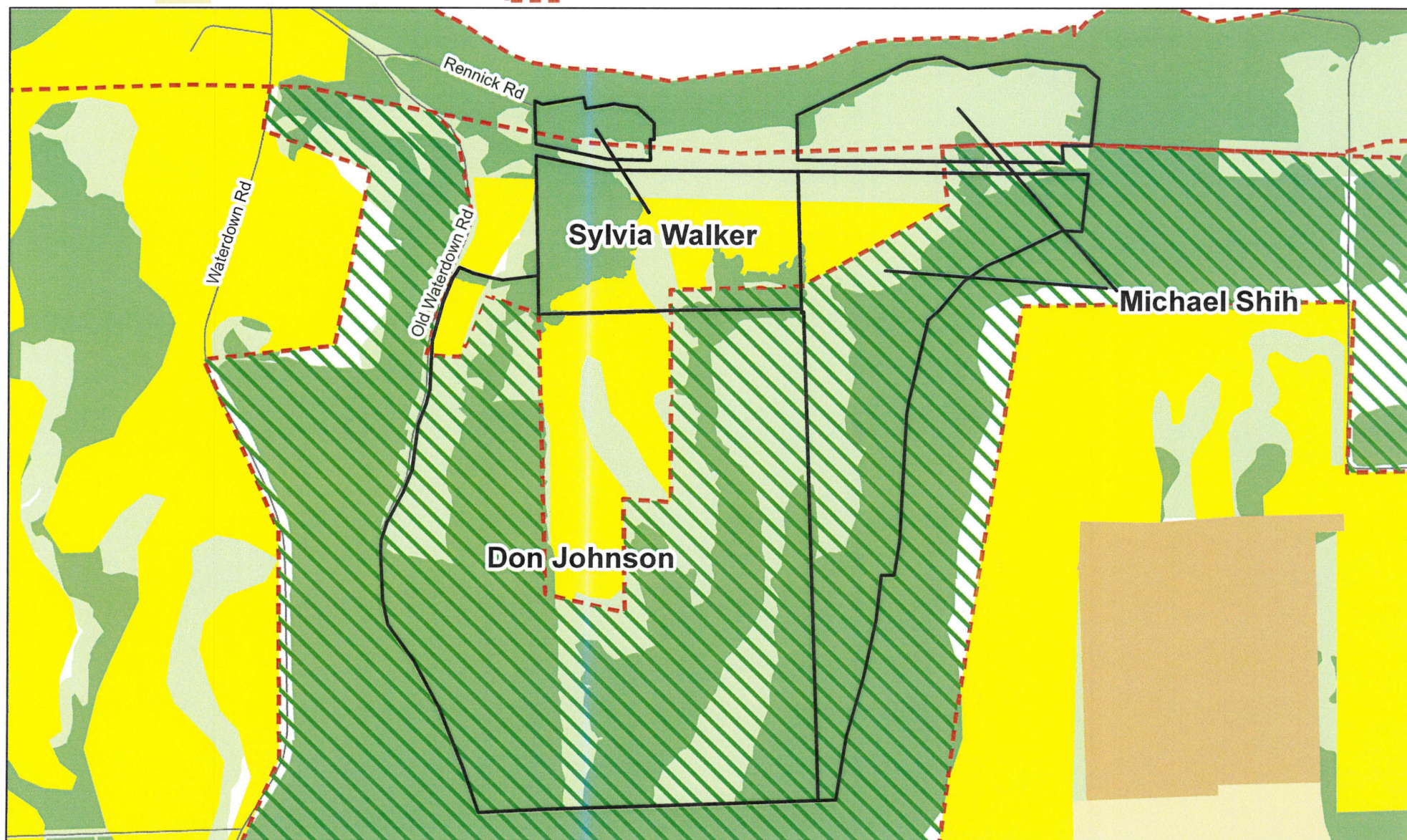
Schedule "B" – Map 1G

- | | | | |
|---|----------------------------------|---|---|
|  | Subject Lands |  | Key Features |
|  | Mineral Resource Extraction Area |  | Enhancement Areas, Linkages and Buffers |
|  | North Aldershot Policy Area |  | Greenbelt NHS |
|  | Urban Area |  | Greenbelt Plan Boundary |



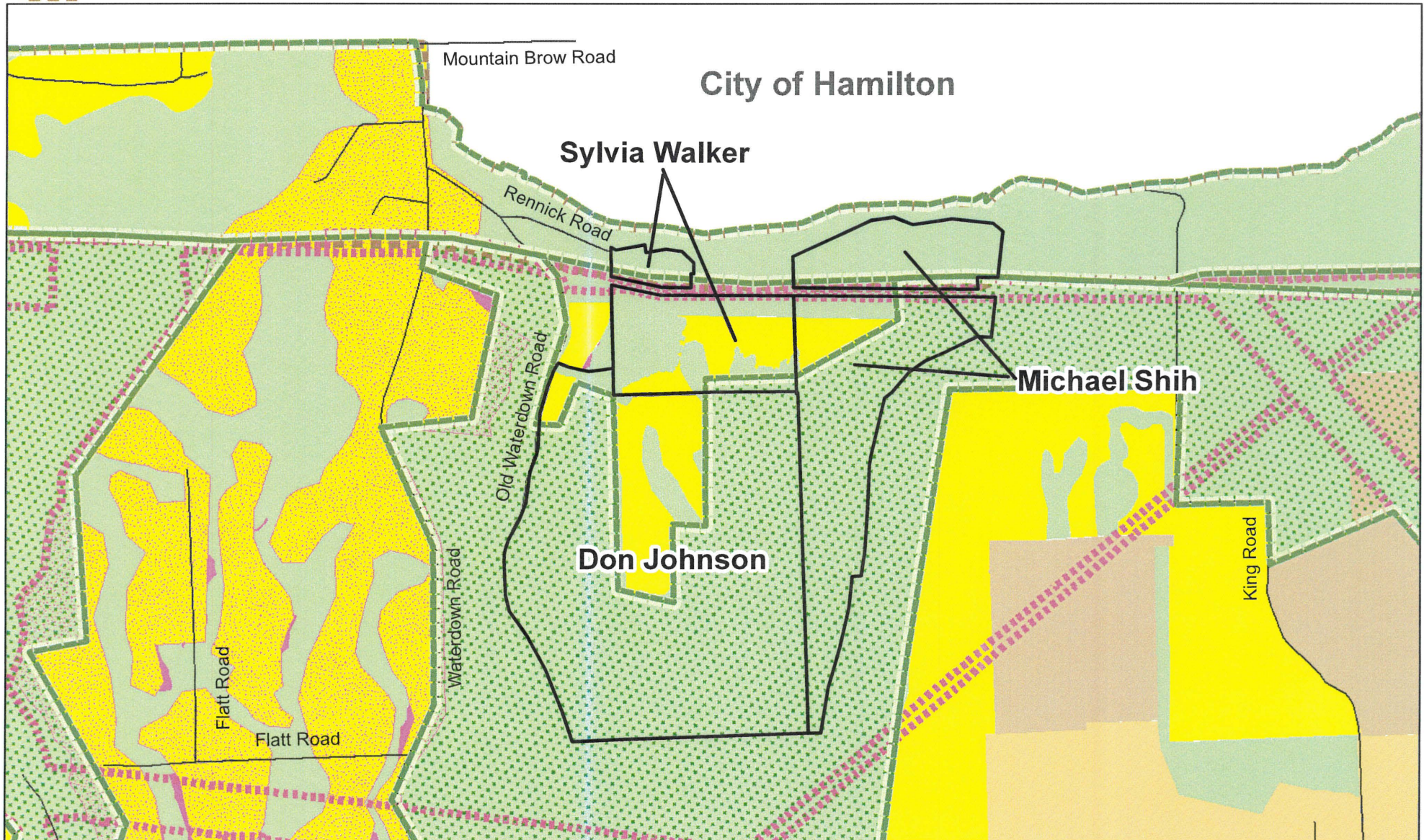
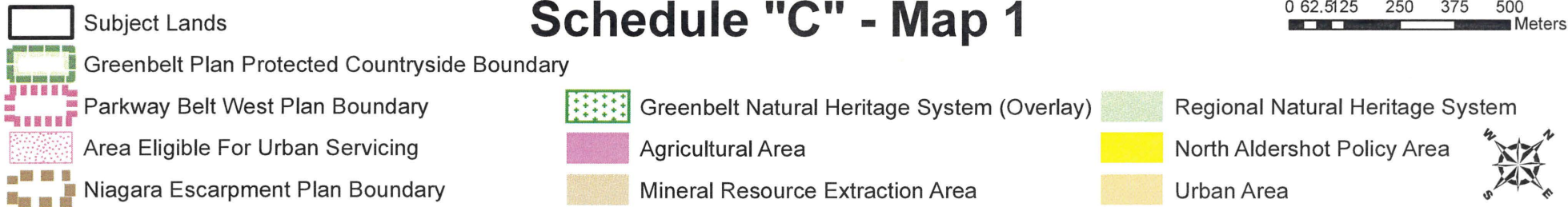
* It should be noted that ROPA38 layers are not meant to be viewed at this scale.

0 40 80 160 240 320 Meters



Schedule "C" - Map 1

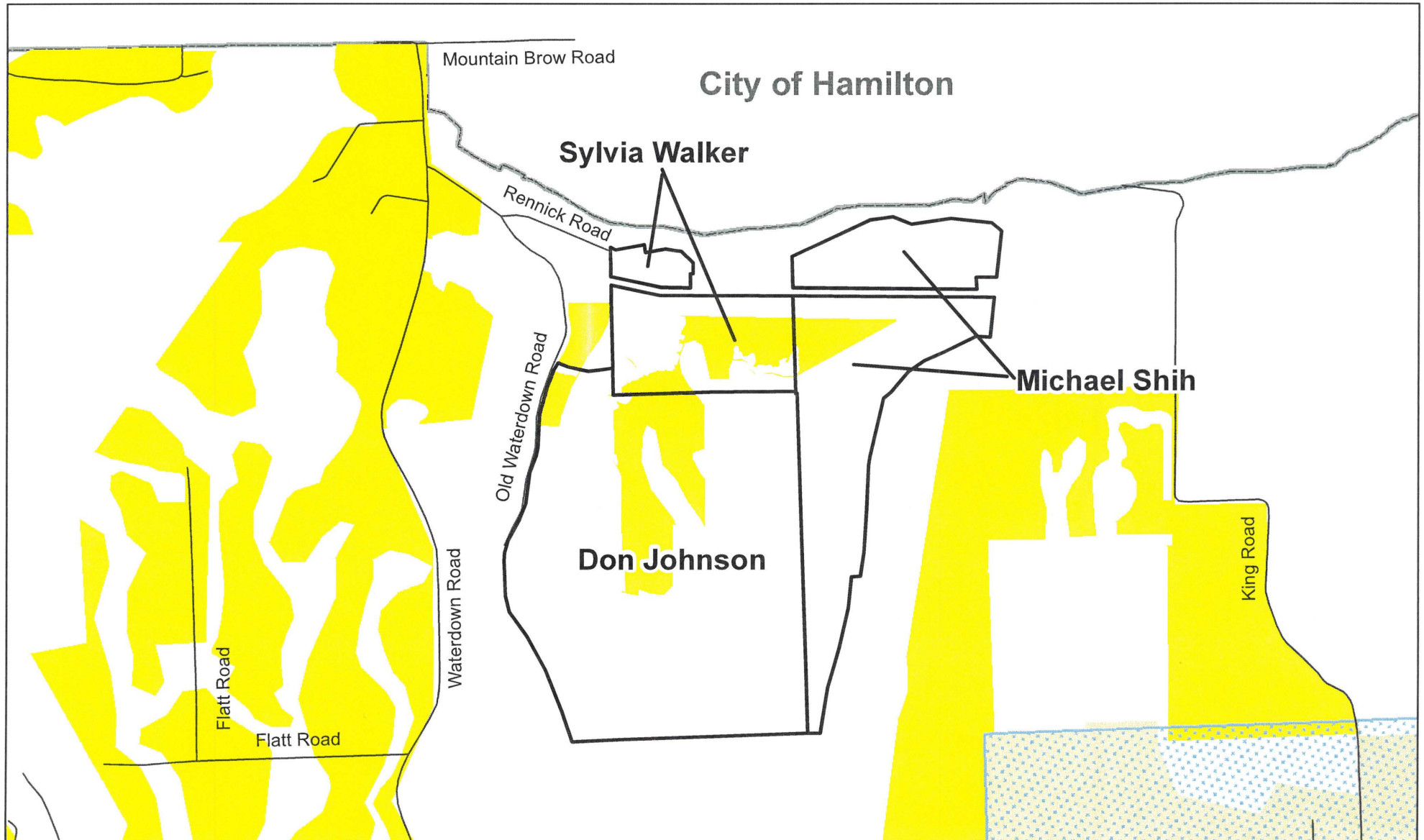
0 62.5125 250 375 500 Meters



Schedule "C" - Map 1C

0 62.5 125 250 375 500 Meters

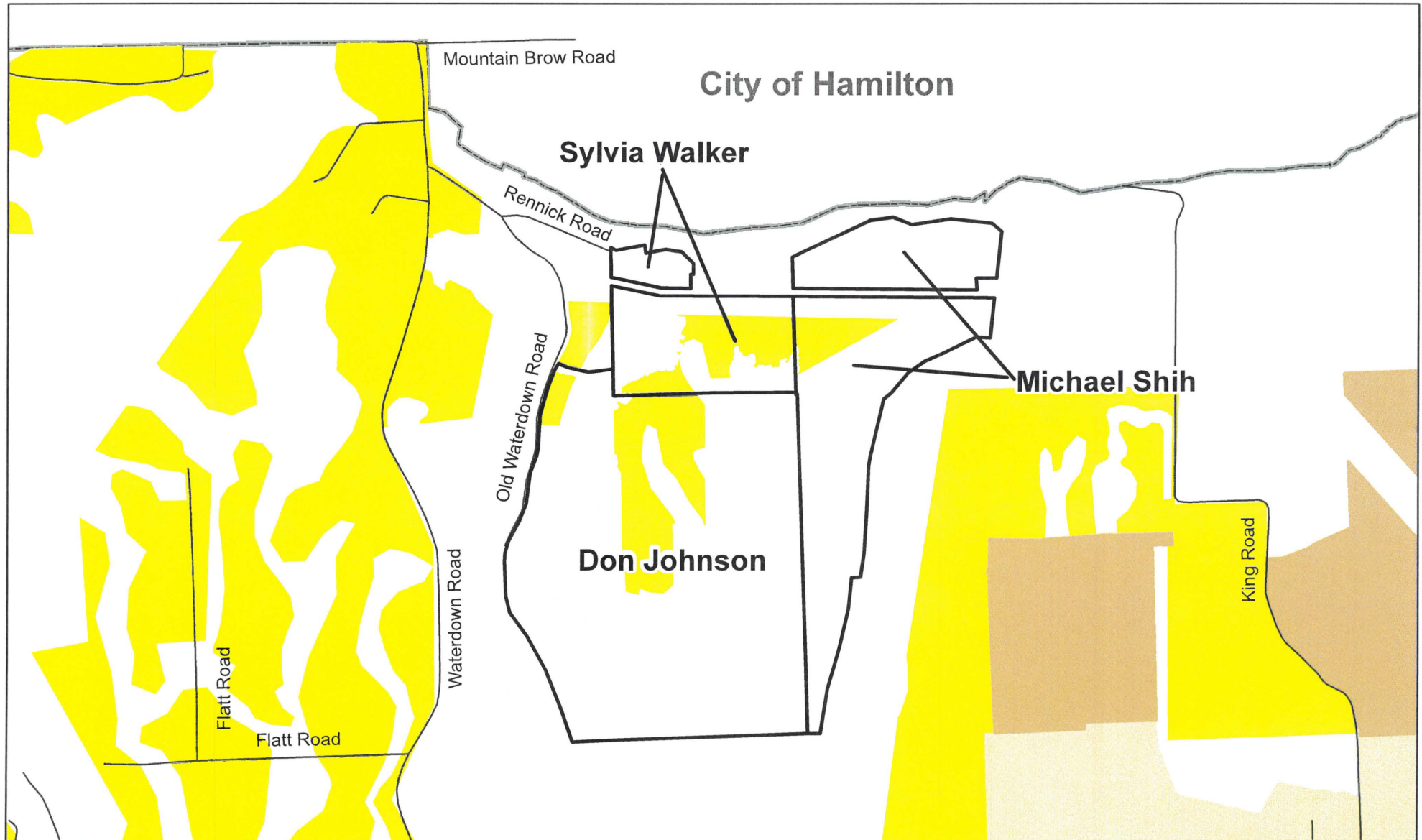
-  Subject Lands
-  North Aldershot Policy Area
-  Employment Area
-  Urban Area



Schedule "C" - Map 1D

0 62.5125 250 375 500 Meters

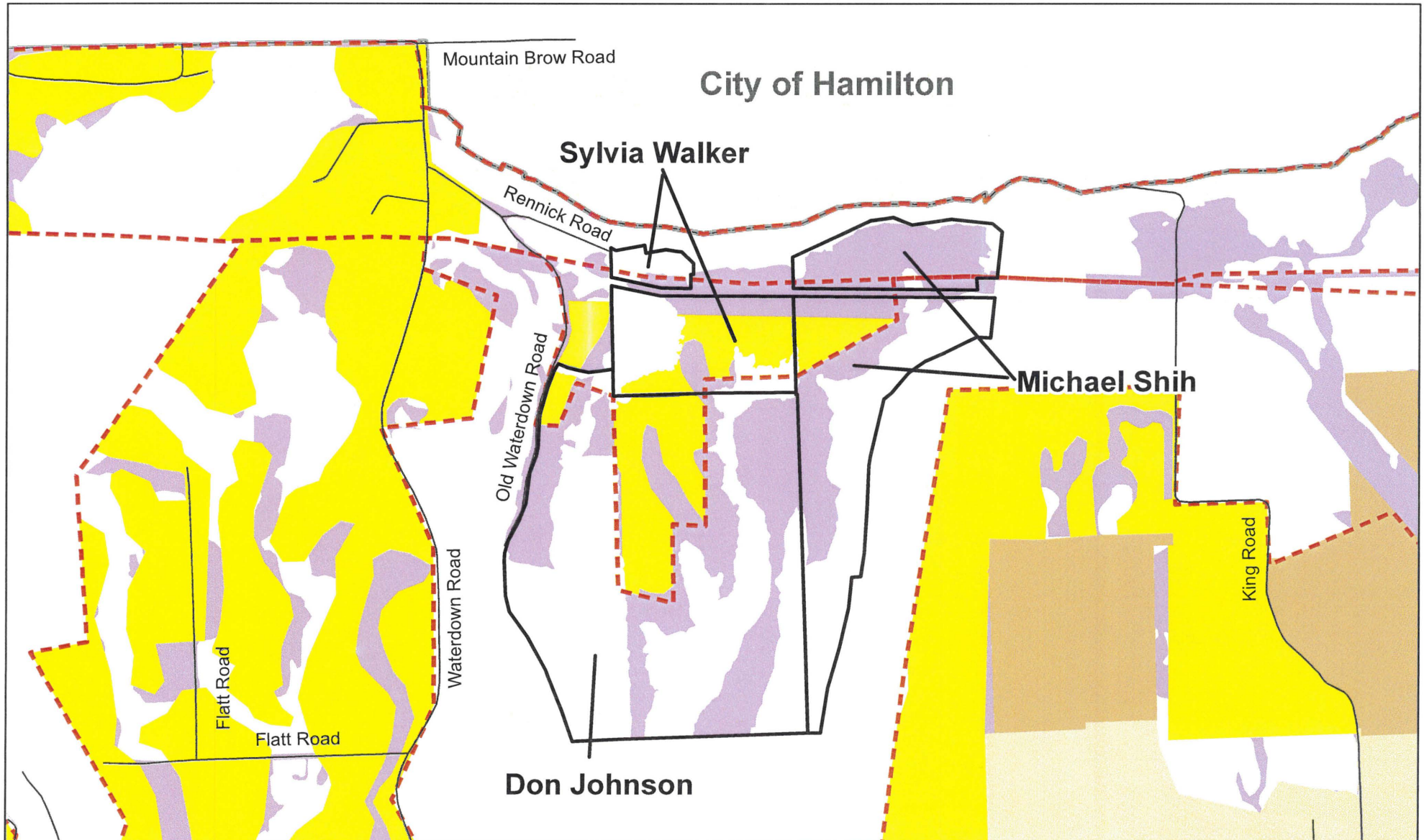
-  Subject Lands
-  North Aldershot Policy Area
-  Mineral Resource Extraction Area
-  Urban Area



Schedule "C" - Map 1E

0 62.5125 250 375 500 Meters

- Subject Lands
- North Aldershot Policy Area
- Greenbelt Plan Boundary
- Mineral Resource Extraction Area
- Urban Area
- Agricultural System outside Prime Agricultural Areas



Schedule "C" - Map 1F

0 62.5125 250 375 500 Meters

- Subject Lands
- North Aldershot Policy Area
- Mineral Resource Extraction Area
- Urban Area

