

Agenda Including Addeds

Planning and Environment Committee

The 18th Meeting of the Planning and Environment Committee

November 16, 2020, 4:00 PM

Virtual Meeting - during the COVID-19 Emergency

City Hall is open to the public, with reduced capacity and physical distancing requirements.

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Members

Councillors M. Cassidy (Chair), J. Helmer, A. Hopkins, S. Turner, A. Kayabaga, Mayor E. Holder

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6. Confidential

6.1. Solicitor-Client Privilege

This report can be considered in a meeting closed to the public as the subject matter being considered pertains to advice that is subject to solicitor-client privilege, including communications necessary for that purpose from the solicitor and officers or employees of the Corporation; the subject matter pertains to litigation, or potential litigation with respect to an appeal at the Conservation Review Board (“CRB”) , and for the purpose of providing instructions and directions to officers and employees of the Corporation.

7. Adjournment

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee
From: Gregg Barrett
Director, City Planning and City Planner
Subject: Community Improvement Plans – Performance Measures
and Indicators of Success
Meeting on: November 16, 2020

Recommendation

That, on the recommendation of the Director, City Planning and City Planner, the following actions be taken with respect to amending Community Improvement Plans to add performance measures and indicators of success:

- (a) This staff report with respect to potential changes to the Downtown and the Old East Village Residential Development Charges Grant, Rehabilitation and Redevelopment Tax Grant, Upgrade to Building Code Loan, and Façade Improvement Loan **BE RECEIVED**;
- (b) Civic Administration **BE DIRECTED** to circulate this staff report for public review.

IT BEING NOTED that input received through the circulation will inform a recommendation on changes to the grant and loan programs that will be presented at a future meeting of the Planning and Environment Committee.

Executive Summary

This report outlines the proposed performance measures and indicators of success for the Residential Development Charges Grant, Rehabilitation and Redevelopment Tax Grant, Upgrade to Building Code Loan, and Façade Improvement Loan programs available in the Downtown and the Old East Village.

Preliminary targets have also been identified that, when met, will inform Civic Administration to modify the incentive programs, including potentially reducing grant or loan funding, or to discontinue the incentive program.

This report also discusses:

- How the grant and loan programs work and the up-take;
- Consultation to date;
- Research and data collection to date;
- The COVID-19 pandemic impacts generally on businesses in the Downtown and the Old East Village;
- The cost difference between constructing a building in the Downtown versus the suburbs.

This report recommends the proposed performance measures, indicators of success, and targets be circulated to specific individuals and organizations who use the programs on a regular basis, the general public, and standard planning application circulation recipients.

A report and a Public Participation Meeting at a future Planning and Environment Committee will discuss the input received during the circulation process and recommend amending the Downtown and the Old East Village Community Improvement Plans to add the refined performance measures, indicators of success, and targets.

2019-2023 Strategic Plan

Municipal Council's 2019-2023 Strategic Plan identifies "Building a Sustainable City" and "Growing our Economy" as strategic areas of focus. Revitalizing London's downtown and urban areas is a strategy within both those strategic areas.

The Downtown and Old East Village Community Improvement Plan grant programs help to revitalize these areas through incentivizing and encouraging the development of new residential units and as a result, increasing the population of these neighbourhoods. Further, the loan programs encourage and assist property owners in maintaining and improving the older building stock often found in these areas.

Climate Emergency

On April 23, 2019, Municipal Council declared a Climate Emergency. The grant and loan programs support the City's commitment to reducing and mitigating climate change by encouraging and incentivizing residential intensification in the Downtown and Old East Village. These grants and loans help support more intense and efficient use of existing urban lands and infrastructure, and the regeneration of existing neighbourhoods. The loans also help ensure older buildings are more energy efficient and sustainable through renovations and upgrades to the structure and mechanical systems.

Background

1.0 Previous Report Pertinent to this Matter

Planning and Environment Committee – April 27, 2017 – Service Review of Community Improvement Plan Incentives

Planning and Environment Committee – December 4, 2017 – Updated Program Guidelines for Community Improvement Plan Financial Incentive Programs

Planning and Environment Committee – May 13, 2019 – New Measures and Indicators of Success

Strategic Priorities and Policy Committee – December 17, 2019 – Review of City Services for Potential Reductions and Eliminations – Downtown and Industrial Lands Community Improvement Plans (CIPs)

2.0 Community Improvement Plan (CIP) Service Review

Civic Administration undertook an extensive Community Improvement Plan (CIP) Service Review in 2016 and 2017, which resulted in a May 2, 2017 Municipal Council resolution. The CIP Service Review recommended changes to existing financial incentive programs, introduced financial incentive programs to new or expanded areas, and requested the CIPs be amended to include performance measures and indicators of success.

This report will focus on the measures and indicators of success. The relevant clause of the May 2, 2017, Municipal Council resolution is provided below.

At its meeting held on May 2, 2017, Municipal Council resolved:

- n) that Community Improvement Plans for the following Community Improvement Plan Project Areas BE AMENDED to include performance measures and indicators of success to align with current City policies and Council strategic directions:
 - i.) Airport Area Community Improvement Plan;
 - ii.) Brownfield Community Improvement Plan;

- iii.) Downtown Area Community Improvement Plan (including the “Richmond Row” expansion area);
- iv.) Heritage Community Improvement Plan;
- v.) Industrial Community Improvement Plan;
- vi.) Old East Village Community Improvement Plan; and
- vii.) SoHo Area Community Improvement Plan.

This staff report will focus on clause n) iii.) and n) vi.), the introduction of performance measures and indicators of success for the grant and loan programs available through the Downtown and Old East Village CIPs (see maps in Appendix A and B).

3.0 Grant Programs

3.1 The Two Grant Programs

The Residential Development Charges Grant and the Rehabilitation and Redevelopment Tax Grant are available in the Downtown and Old East Village community improvement project areas (excluding Richmond Row). The objective of the two grant programs is to encourage residential development in these areas.

The Residential Development Charges Grant provides a grant equal to a rebate of development charges for residential units constructed. Development charges are required to be paid up-front at the time the building permit is issued or as agreed upon by a Development Charges Alternative Payment Agreement. The program grants back a portion of the residential development charges paid by the applicant over an approximately 10-year schedule until 100% of the residential development charges have been repaid to the applicant. This program works in conjunction with the Tax Grant program.

The Tax Grant provides a grant equal to a portion of the increase in municipal property taxes that results from renovating or adding onto an existing building, or constructing a new building. Upon completion of the development project and reassessment of the property by the Municipal Property Assessment Corporation, a 10-year grant schedule is calculated based on the incremental municipal property tax increase in pre-project and post-project assessment value. Only the municipal portion of property taxes is included (not the education portion).

3.2 Grant Applications to Date

Since the program changes came into effect at the beginning of 2018, no grants under the post-2018 Residential Development Charges Grant program have been issued.

There are four active commitments for the Residential Development Charges Grant program. One of these active commitments is the Youth Opportunities Unlimited application for 340 Richmond Street that was discussed at a Planning and Environment Committee meeting in October including a recommendation to direct Civic Administration to issue the grant. This recommendation was approved and the grant will be issued in November.

The final grandfathered applicant under the pre-2018 Residential Development Charges Grant program was issued in August 2020.

As of writing this report, there are 19 active Tax Grant applications in the Downtown and the Old East Village in various years of the 10-year grant period. There are 43 Tax Grant commitments in the Downtown and the Old East Village; however, it is estimated that less than 50% of these commitments will result in a grant agreement and grant schedule. The primary reason for this is the nature of the work completed (for example, façade only improvements or roof repairs) will likely not trigger a supplementary reassessment by the Municipal Property Assessment Corporation for the improvements made to the property.

4.0 Loan Programs

4.1 The Two Loan Programs

The Upgrade to Building Code Loan and Façade Improvement Loan are available in the Downtown and the Old East Village community improvement project areas (including Richmond Row). The objective of the two loan programs is to support the maintenance, improvement, beautification, and viability of the older building stock. Further, the Upgrade to Building Code Loan is often used to support the development of residential units through the renovation, conversion, or adaptive re-use of a property.

The Upgrade to Building Code Loan program provides loans to property owners who improve their buildings for items that relate to Ontario Building Code requirements, Fire Code requirements, addresses one or more health and safety issues, and accessibility and/or environmental sustainability issues. Loans are up to \$200,000 or half the value of work, whichever is less. Loans are paid back at 0% interest over a 10 year period.

The Façade Improvement Loan program provides loans to property owners for building façade improvements. For example, brick repair, lighting, signage, windows, doors, or a complete store-front reconstruction. The loan are up to a maximum of \$50,000 or half the value of work, whichever is less. Loans are paid back at 0% interest over a 10 year period.

Properties within a defined targeted area of the Downtown and the Old East Village are eligible for a portion of the loan repayments to be forgiven in the form of a grant if the ground floor of the property is actively occupied by a targeted use. For Façade Improvement Loans issued after 2018, 25% of the loan repayments are potentially forgivable if all the criteria are met. For the Upgrade to Building Code Loan, 12.5% of the loan repayments are potentially forgivable.

In 2020, the ability to defer loan repayment due to road construction projects was introduced. Further, for property owners who decided to defer, loan repayments have been deferred because of COVID-19 until January 2021.

4.2 Loan Applications to Date

As of writing this report, there are 48 active Upgrade to Building Code Loans in the Downtown and 38 active Upgrade to Building Code Loans in the Old East Village, for a total of 86 loans in various years of the 10-year repayment period.

There are 28 active Façade Improvement Loans (including two now discontinued Non-Street Façade Improvement Loans) in the Downtown and 22 active Façade Improvement Loans (including six now discontinued Non-Street Façade Improvement Loans) in the Old East Village, for a total of 50 loans in various years of the 10-year repayment period.

It being noted that because of the COVID-19 repayment deferrals, many of these loans will take an additional 10 months to repay in full.

As of writing this report, there are six Façade Improvement Loan commitments and 11 Upgrade to Building Code Loan commitments. Once the approved work is completed and paid for in full by the applicant, the City can move forward with issuing the loan for these commitments.

City Planning staff continue to meet virtually and safely-distanced on-site with property owners who are interested in the City's loan programs.

5.0 Consultation to Date

5.1 Development Industry

A meeting was held on September 11, 2020 with members of the London Development Institute, the London Home Builders' Association, and representatives from The Tricar

Group, and York Developments to discuss potential changes including reductions in the two grants program.

In addition to talking about the grant programs, the conversation also touched on the effects of COVID-19 on development and the Downtown, the cost differences between developing Downtown versus a suburban greenfield site (see Section 7.0), and land availability in the Downtown.

Discussions with the development industry will continue prior to the proposed changes to the grant programs being introduced at a future Planning and Environment Committee meeting.

5.2 Business Improvement Areas (BIAs)

A meeting was held on October 8, 2020 with members of the Downtown London BIA and the Old East Village BIA to discuss potential changes to the grant and loan programs.

The meeting discussed the benefits the incentives provide to the BIAs and the property owners, including qualitative aspects such as developing relationships with each other and the creation of complete communities in both these neighbourhoods.

The conversation also focused on the ways the incentives could be modified to help increase private-sector investment and up-take including, how to better allow tenants to access the programs, new tools to aid applicants in completing the application forms and providing the supporting documentation, and marketing opportunities.

Discussions with the BIAs will continue.

5.3 Future Consultation

If the recommendation is approved by Municipal Council, this staff report will be circulated for public review to:

- City Councillors;
- City Staff;
- Property owners who have an active Community Improvement Plan loan and/or grant in Downtown and/or Old East Village;
- Downtown and Old East Village Business Improvement Areas;
- London Development Institute;
- London Home Builders' Association;
- London Economic Development Corporation;
- Housing Development Corporation, London;
- Developers who construct apartment buildings in the city; and
- General public notice, including a Get Involved London webpage.

A Public Participation Meeting at a future Planning and Environment Committee meeting will be required to amend the Downtown and Old East Village Community Improvements Plans to introduce the performance measures and indicators of success, as well as any recommended changes to the grant and loan programs.

Discussion

6.0 Research and Data Collection

Research and data collection has been on-going since 2018, focused on:

- The annual collection of data related to the loan programs, including: ground floor vacancy rates and ground floor targeted uses across all community improvement project areas;
- How other municipalities have approached the development of measures and indicators for Community Improvement Plans and Official Plans;

- How the Ministry of Municipal Affairs and Housing approached the development of measures and indicators for the Growth Plan for the Greater Golden Horseshoe, 2006;
- A review and analysis of pertinent Census of Canada data, including: population, population density, and growth rate;
- A review and analysis of residential units being proposed and constructed in the Downtown and Old East Village;
- A review of 10 years of building permit data in the Downtown and Old East Village;
- The retention of urbanMetrics Inc. to undertake an independent assessment of expected residential absorption and construction activity in Downtown;
- A review of development pro forma and sensitivity analysis to help determine the impact of financial incentives on the internal rate of return and financial feasibility of a residential development project;
- A brief look at the population and other factors needed to help attract a grocery store to the Downtown;
- The (on-going) development of a Façade Evaluation Tool to help rate how well building façades meet design guidelines and policy;
- Research and data collection for other Community Improvement Plans (for example, Lambeth).

Research and data collection continues for this project and will be an annual or biennial exercise.

7.0 Key Considerations

7.1 COVID-19 Impacts

The impacts of COVID-19 on Downtown development was discussed during the September meeting with members of the development community. It was emphasised by these members that, in their opinion, the impacts of COVID-19 may not be truly felt for 12 to 24 months or longer. Some of the potential unknowns include, how will working from home affect the Downtown office market, how will parking lot operators handle the downturn in parking revenue (especially if office workers do not return — though this could potentially lead to the sale of surface parking lots, if they become unprofitable to operate), and how will businesses like retail and restaurants fair with the reduced Downtown foot traffic and the limits on the number of patrons permitted inside.

The City of London Back to Business action team was launched in June 2020 to support London businesses in reopening, as well the City continues to support long term economic recovery through a wide range of community relief measures and program, such as deferring Community Improvement Plan loan repayments.

7.2 Building in the Downtown versus the Suburbs

The objective of the two grant programs is to increase the residential population in the Downtown and the Old East Village. Building in these locations presents challenges and costs often not found when building in a greenfield suburban location. The grant programs help to level that playing field. During the September meeting with the development community, it was mentioned that other Ontario municipalities have cancelled Downtown incentive programs, such as development charges grants or waivers, leading to development applications coming to a halt in those places. Civic Administration has yet to verify this claim.

Examples of the extra costs include:

- Excavation methods. Downtown requires shoring and often dewatering;
- Constructing underground parking and structured parking versus surface parking; Land is generally more expensive per hectare in the Downtown.

7.3 Importance of Incentives to Development

Members of the development community also indicated that financial incentives for the Downtown and the Old East Village are in the top three reasons for constructing in these neighbourhoods.

On a related matter, a report on encouraging rental housing in York Region indicated that for the high density base case project having tax grant and development charge incentives added upwards of a 3% increase in the Internal Return of Return (IRR) for the project. The IRR being the means of measuring the feasibility of a project.

A “good” IRR is one which is higher than the alternative investments available. Condominium developers (build to sell) historically target an IRR of 15% or higher; whereas, long-term investors (build to hold) historically target ~10%. A 3% increase in the IRR from financial incentives can often be the difference between a project being feasible to construct or not.

The BIAs indicated how they use and market the financial incentives to attract businesses to their areas.

8.0 Grant Performance Measures

This Section outlines the two measures being proposed for the grant programs: population and assessment value. Population will also be separated into population density and growth rate, but total residential population will be the primary measure used to determine when the grant programs should be modified. Assessment value is also measured to help indicate the health and tax base growth of Downtown and Old East Village.

8.1 Population

Indicator

Residential population in the Downtown and the Old East Village.

Question

Has the Downtown and Old East Village residential population grown enough to support the needs — both daily and long-term — of the residential and commercial community?

Why it Matters

The Downtown in *The London Plan* is identified as becoming a neighbourhood rich with housing, services, and amenities targeted to serve a wide spectrum of lifestyles such as families, seniors, and young adults. The revitalization and regeneration of Downtown and other urban neighbourhoods and inward and upward growth are key themes throughout *The London Plan*.

Strategic Direction 5 ‘Build a great neighbourhood’ of *Our Move Forward: London’s Downtown Plan* is to support the development of a larger residential community in the downtown to foster a local trade market to offer a diverse array of neighbourhood “daily needs” commercial enterprises.

The Old East Village in *The London Plan* is identified as a Rapid Transit Corridor Main Street segment. Main Street segments will continue to provide local shopping and commercial options so that residents can walk to meet their daily needs. The *Old East Village Dundas Street Corridor Secondary Plan* area is envisioned as a vibrant commercial core with a unique heritage character that serves as a community hub for local residents and draws visitors as a distinct destination.

Baseline

Downtown (excluding Richmond Row):

- The 2016 Census of Canada indicated the population at 4,415 people;
- The 2016 residential population density is 43.5 people / hectare;

- The five-year residential population growth rate (2011 to 2016) is 10%

Old East Village:

- The 2016 Census of Canada indicated the population at 1,059;
- The 2016 residential population density is 64.2 people / hectare;
- The five-year residential population growth rate (2011 to 2016) is 85.8%

Proposed Targets

Downtown:

- A residential population of 12,000 people in the Downtown has been identified as the target needed for the Downtown to become a neighbourhood with the ability to support the needs of the residential and commercial communities.
- A population of 12,000 people is 118 people / hectare.
- Five-year Downtown residential population growth rates:
 - 2016 to 2021: 25%
 - 2021 to 2026: 25%
 - 2026 to 2031: 15%

Old East Village:

- A population of 3,000 people in the Old East Village community improvement project area has been identified as the target needed to achieve a substantial residential population better able to support the Dundas Street commercial corridor;
- A population of 3,000 people is 182 people / hectare;
- Five-year residential population growth:
 - 2016 to 2021: 25%
 - 2021 to 2026: 25%
 - 2026 to 2031: 25%

Considerations

The Protected Major Transit Station Areas Information Report presented at the August 10, 2020 meeting of the Planning and Environment Committee contained forecasted density (residents and jobs combined per hectare) for the Downtown up to 2034.

Based on that report and the City of London Population and Employment Growth Forecast by Traffic Zone data it uses, by 2034, the Downtown is projected to have a population of 9,701 or a residential density of 79 people / hectare. Noting that the size of the Downtown in the Protected Major Transit Station report is calculated by summing the area in hectares of the Traffic Zones that comprise the Downtown Place Type in the London Plan (122.6 hectares). Whereas, the Downtown community improvement project area equals 101.4 hectares and a similar population of 9,700 would have a density of 96 people / hectare.

An unknown for the future is how much the COVID-19 pandemic will affect residential population growth in Ontario and London. For example, will the recent drop in immigration to Canada be a blip in the short to mid-term or last much longer and how this decrease will affect residential population growth is yet to be determined.

Proposed Changes to Grant Programs

The Downtown Residential Development Grant and the Old East Village Development Charge Grant programs will reduce as follows as population targets are met, except that affordable housing units with an appropriate contribution agreement and/or Affordable Housing CIP loan agreement will remain a 100% Residential Development Charges Grant.

Downtown Population	Residential DC Grant (%)
7,500	75%
9,000	50%
10,500	25%
12,000	0%

Old East Village Population	Residential DC Grant (%)
1,500	75%
2,000	50%
2,500	25%
3,000	0%

As each population target is met as confirmed by Census of Canada data, a two-year grace period will be set before the grant percentage is reduced.

The trigger for a development project to be included in the program is the submission of a building permit application and the payment of the required development charges prior to the end of the grace period.

Upon reaching the final target population, the Residential Development Charges Grant program will conclude. At that time, Staff will make a recommendation if the program should continue for affordable housing units only.

The Downtown and Old East Village Rehabilitation and Redevelopment Tax Grant Program will continue to operate as outlined in the program guidelines for each applicable community improvement project area until the following population targets are met:

CIP	Population
Downtown	10,500
Old East Village	2,500

When the above population targets are met, the Level 3 grant for the development of vacant or cleared land will be reduced by 50% as shown below:

Level 3		
Vacant or Cleared Land		
Year	Existing	New
1	60%	30%
2	60%	30%
3	50%	25%
4	40%	20%
5	30%	15%
6	20%	10%
7	10%	5%
8	10%	5%
9	10%	5%
10	10%	5%

The Level 1 grant for Part IV heritage designated properties and the Level 2 grant for existing buildings will continue to offer the grant schedules as outlined in the program guidelines for each eligible community improvement project area.

Once the population target is met as confirmed by Census of Canada data, a two-year grace period will be set before the grant percentage is reduced.

The trigger for a development project to be included in the program is the submission of a building permit application prior to the end of the grace period.

8.2 Assessment Value

Indicator

The assessment value of the properties in the Downtown and the Old East Village community improvement project areas.

Question

Is the assessment value growing?

Why it Matters

An increasing assessment value can indicate that property values are increasing because of growth and investment in the community. This can help increase the tax base city-wide.

Baseline

Downtown Unweighted Assessment:

Year	Value (in millions)	Annual Growth Rate
2015	\$1,645.3	
2016	\$1,702.9	3.5%
2017	\$1,747.7	2.6%
2018	\$1,811.5	3.7%
2019	\$1,956.8	8.0%

Old East Village Unweighted Assessment:

Year	Value (in millions)	Annual Growth Rate
2015	\$86.4	
2016	\$92.6	7.2%
2017	\$137.3	48.3%
2018	\$126.8	-7.6%
2019	\$132.4	4.4%

Proposed Target

A 1% per year assessment value growth rate in the Downtown and Old East Village community improvement project areas.

Considerations

None at this time.

Proposed Changes to Grant Programs

Not applicable.

9.0 Loan Performance Measures

This Section outlines the measures being proposed for the loan programs: façade condition, targeted uses, ground floor vacancy, and the existing loan measures (private-sector investment vs. public-sector investment ratio and number of loans issued) used in such reports as the *State of the Downtown Report*. The first three measures will have targets that when met, may result in changes to the loan programs. The existing loan measures are used to report out on the success (or failure) of the loan programs to contribute to the revitalization of the Downtown and the Old East Village building stock and will help inform Civic Administration when undertaking any future Community Improvement Plan reviews.

9.1 Façade Condition

Indicator

Building façade condition.

Question

Are building façades being improved and upgraded?

Why It Matters

A well maintained building façade provides an interesting and aesthetically pleasing environment for people to enjoy while living in or visiting a neighbourhood. Further, the maintenance, improvement, and beautification of the exterior appearances of buildings is a key theme throughout the Downtown and the Old East Village Community Improvement Plans. The intent of the community improvement policies in the *London Plan* are to stimulate private sector property maintenance, repair, rehabilitation, redevelopment, and other forms of private sector investment and reinvestment activity. Specific community improvement policies also intend to foster the revitalization and continued improvement of the Downtown. Community improvement policies also encourage the conservation, restoration, adaptive re-use, and improvement of cultural heritage resources — including the façades of any heritage resource.

Baseline

A façade condition and compliance evaluation tool is being developed to determine the baseline data. Data collection has been delayed due to COVID-19.

Proposed Target

90% of façade condition being rated ‘does not need improvement.’ This target will be refined once the baseline data has been collected.

Considerations

The evaluation of a façade’s condition will be subjective. Civic Administration is developing an internal review process using the façade condition evaluation tool to account for this subjectivity, including potentially having multiple individuals review the same façade independently and taking the average of the results as the final value.

It is also important to note that the façade condition and compliance evaluation tool is for purposes only related to the Façade Improvement Loan Program and does not replace or overrule the City of London’s Property Standards By-Law.

Many properties may also be subject to specific processes or guidelines including the Downtown Heritage Conservation District Guidelines, the Old East Village Commercial Corridor Design Guidelines or a Heritage Alteration Permit process.

Some unique properties will likely not be subject to the façade condition review, for example, the London Courthouse at 80 Dundas Street.

Proposed Changes to Façade Improvement Loan Program

Civic Administration will complete a comprehensive review of façade condition and compliance on a biennial basis for the Downtown and Old East Village.

Once the target is met for façade conditions that are rated ‘does not need improvement’, Civic Administration will begin to transition the loan program to:

- Focus on the areas that are rated needs improvement;
- Focus on the parts of façades that are receiving the lowest scores (for example, upper façades, storefronts, or lighting);
- Continue to focus on Dundas Place in the Downtown and Dundas Street in the Old East Village.

The Façade Improvement Loan amount will remain at a maximum of \$50,000 until the next Community Improvement Plan Review for the 2024-2027 Multi-Year Budget.

9.2 Targeted Uses

Indicator

The percentage of targeted uses in the community improvement project areas.

Question

Are the financial incentive programs being used to establish businesses and uses that are in line with the objectives of each CIPs and key directions of *The London Plan*?

Why It Matters

Targeted Uses are uses that are considered pedestrian generators by helping increase the liveliness of a neighbourhood and encouraging shopping and eating in the Downtown and the Old East Village. Common examples include, restaurants, retail stores, and support services for the surrounding residential community and people who work in the area.

Targeted Uses play an important role in the City's Loan programs. In the Downtown and the Old East Village only properties with a Targeted Use are eligible to receive a Forgivable Loan. *The London Plan* Strategic Direction #5 discusses building a mixed-use compact city - mixing stores, restaurants, clean industry, live-work arrangements, and services in ways that respect the character of neighbourhoods, while enhancing walkability and generating pedestrian activity. By incentivizing for Targeted Uses, the City can help achieve this direction.

Baseline

Downtown – 144 storefronts and properties were measured in the Targeted Use Area. Three year (2017-2019) average: 66.5%

Old East Village – 165 storefronts and properties were measured in the Targeted Use Area.

Two year (2017 & 2019) average: 53.4%

2018 data for Old East Village was not collected due to resource constraints.

2020 data was not collected due to COVID-19.

Proposed Targets

Downtown – 75% to trigger a refinement; 90% to eliminate programs

Old East Village – 70% to trigger a refinement; 90% to eliminate programs

Considerations

To reach the proposed targets in the Downtown and the Old East Village, properties that are consistently vacant will require targeted use tenants, non-targeted uses will need to be replaced with targeted-uses, and in the Old East Village, numerous residential only buildings exist in the commercial corridor that will need to be converted to include a ground floor targeted commercial uses. Alternatively, existing ground floor residential uses could be removed from the calculation if Civic Administration is okay with the residential uses remaining.

Proposed Changes to the Loan Programs

Civic Administration will complete a comprehensive review of the targeted areas in both Downtown and the Old East Village on a biennial basis to determine the number of properties with a targeted use on the ground floor.

Once the 90% target is met, eliminate the Forgivable Façade Improvement Loan. If the target is not met, continue the program and refine the targeted area to encourage targeted uses where they are needed most.

Civic Administration is contemplating keeping Dundas Place in the targeted area until at least 2027.

The Forgivable Façade Improvement Loan amount will remain at a maximum of \$50,000 with 25% of the annual loan repayment being forgivable if the ground floor of the property is actively occupied by a targeted use. This will continue until the next Community Improvement Plan Review for the 2024-2027 Multi-Year Budget.

The Forgivable Upgrade to Building Code Loan amount will remain at a maximum of \$200,000 with 12.5% of the annual loan repayment being forgivable if the ground floor of the property is actively occupied by a Targeted Use. This will continue until the next Community Improvement Plan Review for the 2024-2027 Multi-Year Budget.

9.3 Ground Floor Vacancy Rate

A healthy ground floor vacancy rate in the Downtown and the Old East Village.

Question

Are the loan programs being used to renovate properties to help reduce ground floor vacancies?

Why It Matters

A healthy ground floor vacancy rate indicates there is choice in the market for interested business owners to locate in the neighbourhood.

A high vacancy rate may create gaps in the streetscape with little to no “eyes on the street” to help reduce undesirable behaviour.

Baseline

CIP	2017	2018	2019	Average
Downtown (Targeted Use Area only)	18.1%	17.4%	20.1%	18.5%
Old East Village	16.0%	N/A	14.1%	15.1%

2020 data was not collected due to COVID-19.

Proposed Target

A ground floor vacancy rate below 9%.

Considerations

The COVID-19 pandemic is having a significant impact on businesses across the city. At this time, it is too early to know how the pandemic, the resulting operating interruptions to local businesses, and the changing public behaviour around working from home, dining out, or gathering in large groups will affect the ground floor vacancy rate.

Civic Administration notes that the loan programs may contribute to reducing ground floor vacancies for property owners who are interested and motivated in finding tenants; however, there are property owners that do not always have that motivation.

Baseline data is a “snap-shot” of ground floor vacancies on the day the surveying was done.

Proposed Changes to the Loan Programs

Civic Administration will complete a comprehensive review of the ground floor businesses in both Downtown and the Old East Village on a biennial basis to determine the number of properties with a vacant ground floor.

If the target is not met, continue the program and refine the loan program to target areas of the Downtown and the Old East Village seeing the highest level of vacancies where they are needed most, prior to the adoption of the 2024-2027 Multi-Year Budget.

If the target is met, focus the loan programs to ensure the ground floor businesses are filled with targeted uses.

9.4 Existing Loan Measures

Indicators

1. The private sector investment generated by offering public sector loans for building improvements;
2. Number of loans issued per year.

Question

1. Are the loan programs generating a positive rate of return and incentivizing property owners to invest?
2. Are property owners and tenants continuing to use the loans?

Why It Matters

The City's Façade Improvement Loan and Upgrade to Building Code Loan offer private property owners with access to inexpensive funding (0% interest) to incentivize them to improve their properties.

Quality facades and storefronts will help conserve the built heritage and form of the Downtown and the Old East Village. Renovating facades, storefronts, roofs, and interiors will help ensure a buildings long-term viability. Renovated buildings may result in less vacancies.

Baseline

The minimum ratio is \$2 invested by the private sector for \$1 invested by the City.

The loan values were increased beginning in 2018 to reflect the increase in construction costs for renovation projects but this increase in loan value has a negative impact on the ratio. For example, prior to 2018, a \$200,000 investment in interior upgrades would result in a maximum \$50,000 loan for a 4.0 ratio; whereas post-2018, a \$200,000 investment would result in a \$100,000 loan for a 2.0 ratio.

Upgrade to Building Code

Year	Ratio	# of Loans Issued
2015	3.7:1	12
2016	2.5:1	12
2017	2.0:1	6
2018	2.8:1	10
2019	2.2:1	14
2020*	3.0:1	6
AVG	2.7:1	10

* As at October 1, 2020

Façade Improvement Loan

Year	Ratio	# of loans issued
2015	2.8:1	7
2016	3.6:1	7
2017	2.0:1	1
2018	2.1:1	8
2019	2.8:1	6
2020*	2.7:1	2
AVG	2.7:1	5

* As at October 1, 2020

Proposed Targets

1. A minimum of \$2.8 to \$1 for both loan programs (same as the Core Area Action Plan);
2. A minimum of 15 loans issued per year in total.

Considerations

Though Civic Administration continues to meet with prospective applicants, the number of new applications has declined in 2020, likely due to the COVID-19 pandemic.

Proposed Changes to the Loan Programs

Not applicable at this time, but up-take of both loan programs is constantly monitored. If up-take of the loan programs begins to decline and remain low in the Downtown and the Old East Village, as part of the Community Improvement Plan Review for the 2024-2027 Multi-Year Budget, Civic Administration will consider:

- Refining the loan programs to tackle other City priorities (for example, building retrofits to address climate change);
- Focusing the loan programs on areas of the Downtown and the Old East Village that have not seen much up-take;
- Removing a loan program from the Downtown and/or Old East Village.

Next Steps

The next steps include:

- Circulating this staff report for public review and input;
- Revising the measures, indicators, and targets (if warranted based on the public review and input) and bring to a future Public Participation Meeting at the Planning and Environment Committee to recommend formally amending the Downtown and Old East Village Community Improvement Plans to add the framework for changing the grant and loan programs. At this point, the Downtown and Old East Village CIPs will also be reformatted to bring into AODA compliance;
- Completing a similar staff report on the proposed measures, indicators, and targets for the Hamilton Road Area, Lambeth Area, and SoHo CIPs;
- Removing the Airport CIP and its community improvement project area from the *London Plan* and the *1989 Official Plan*. This project is already on the City Planning work program;
- Updating the Brownfield CIP and Heritage CIP. These projects are not on the City Planning work program yet. Both CIPs are dated and need to be refreshed. During this update would be the best time to add measures, indicators, and targets;
- Engaging with the London Economic Development Corporation and the Industrial Lands Development Strategy Implementation Team on developing measures, indicators, and targets for the Industrial Lands CIP grant programs.

Conclusion

This report identifies the proposed performance measures, indicators of success, and targets for the loan and grant programs available in the Downtown and the Old East Village community improvement project areas. Further, the report outlines the work and consultation done to date on the project. As directed by Municipal Council, this staff report will be circulated to the public including specific individuals and organizations for input prior to a future Public Participation Meeting at the Planning and Environment Committee where the CIPs would be amended.

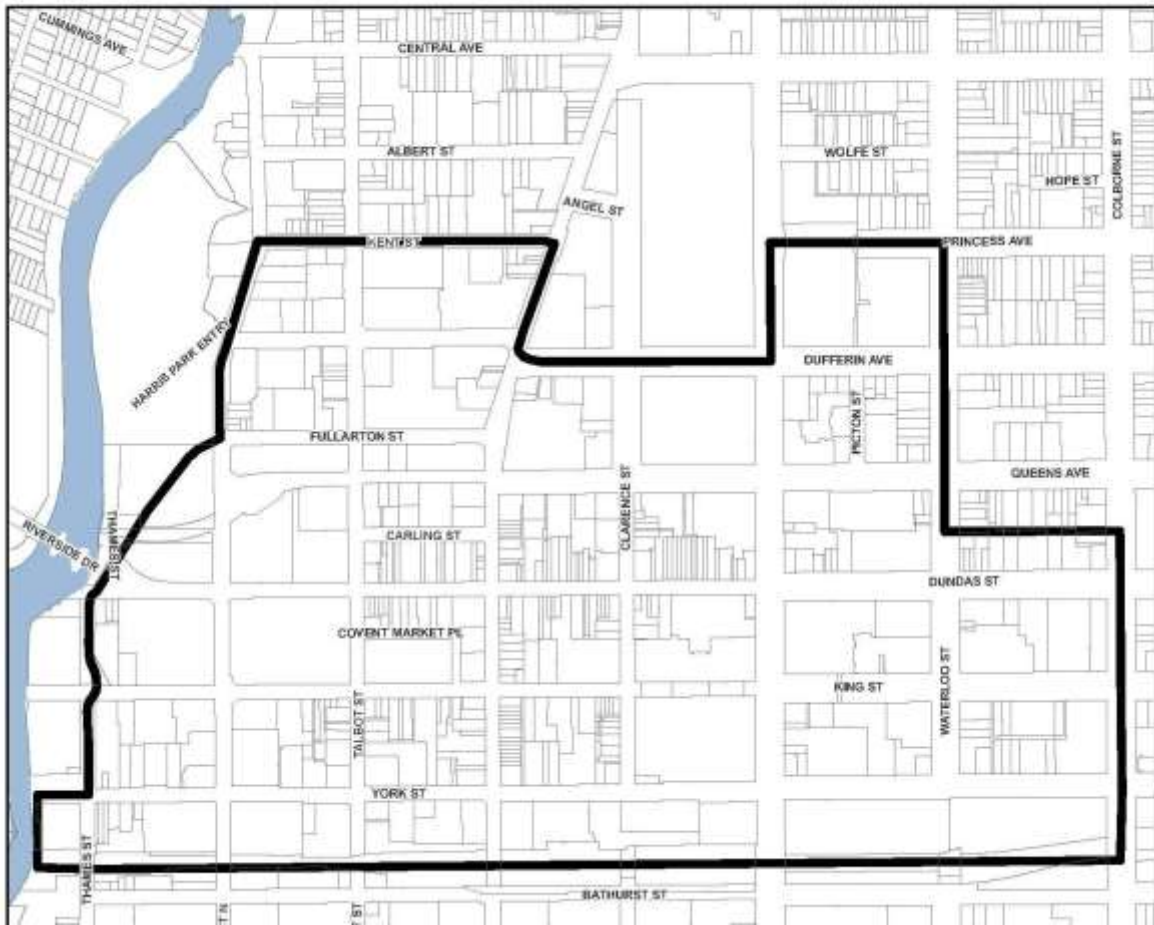
Prepared by:	Graham Bailey, MCIP, RPP Planner II, Urban Regeneration
Submitted by:	Britt O'Hagan, MCIP, RPP Manager, City Building and Design
Recommended by:	Gregg Barrett, AICP Director, City Planning and City Planner
<p>Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from City Planning.</p>	

November 9, 2020
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Appendix A – Downtown Maps

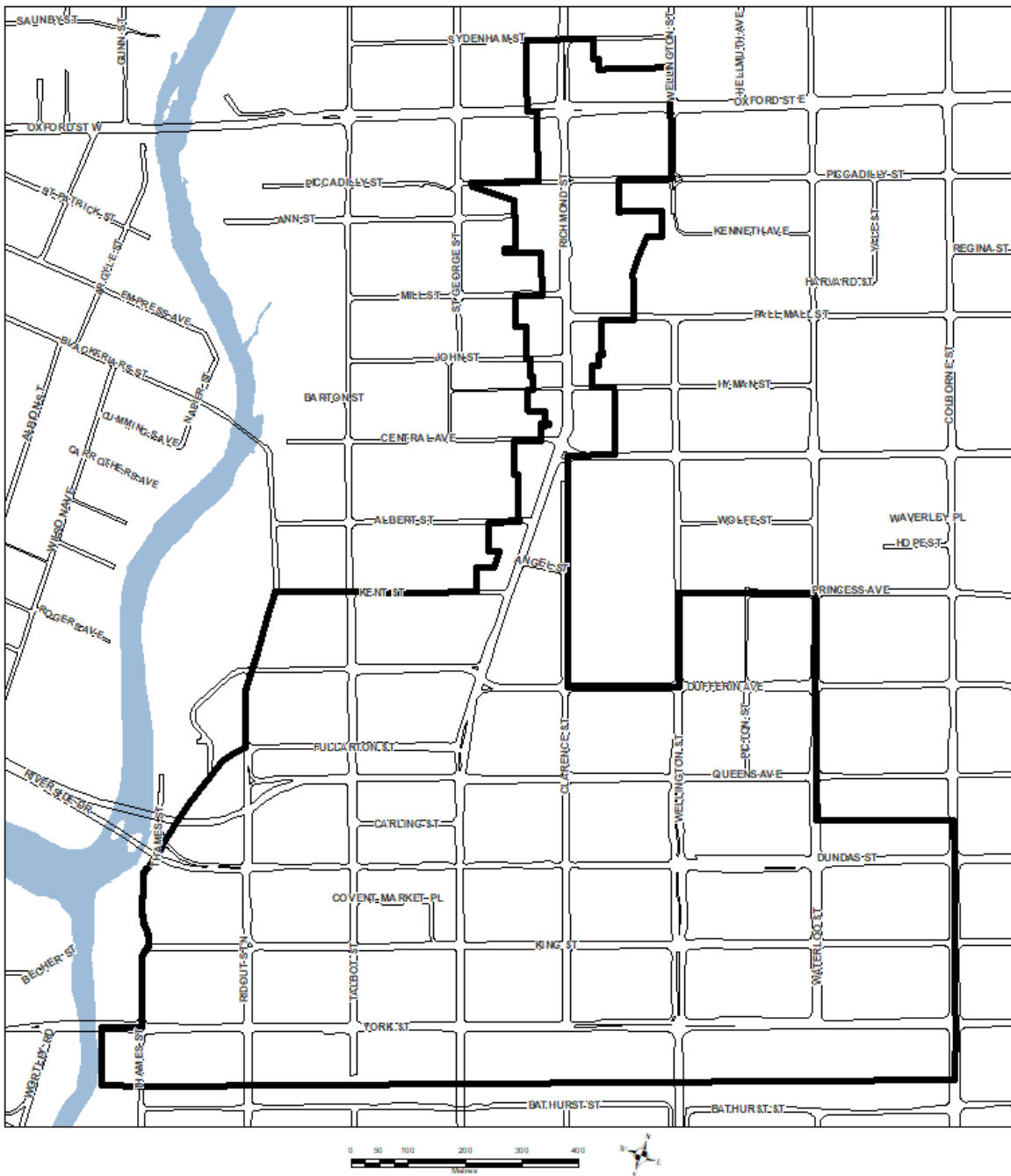
THE DOWNTOWN COMMUNITY IMPROVEMENT AREA



Number of hectares: 101.4

Figure 1

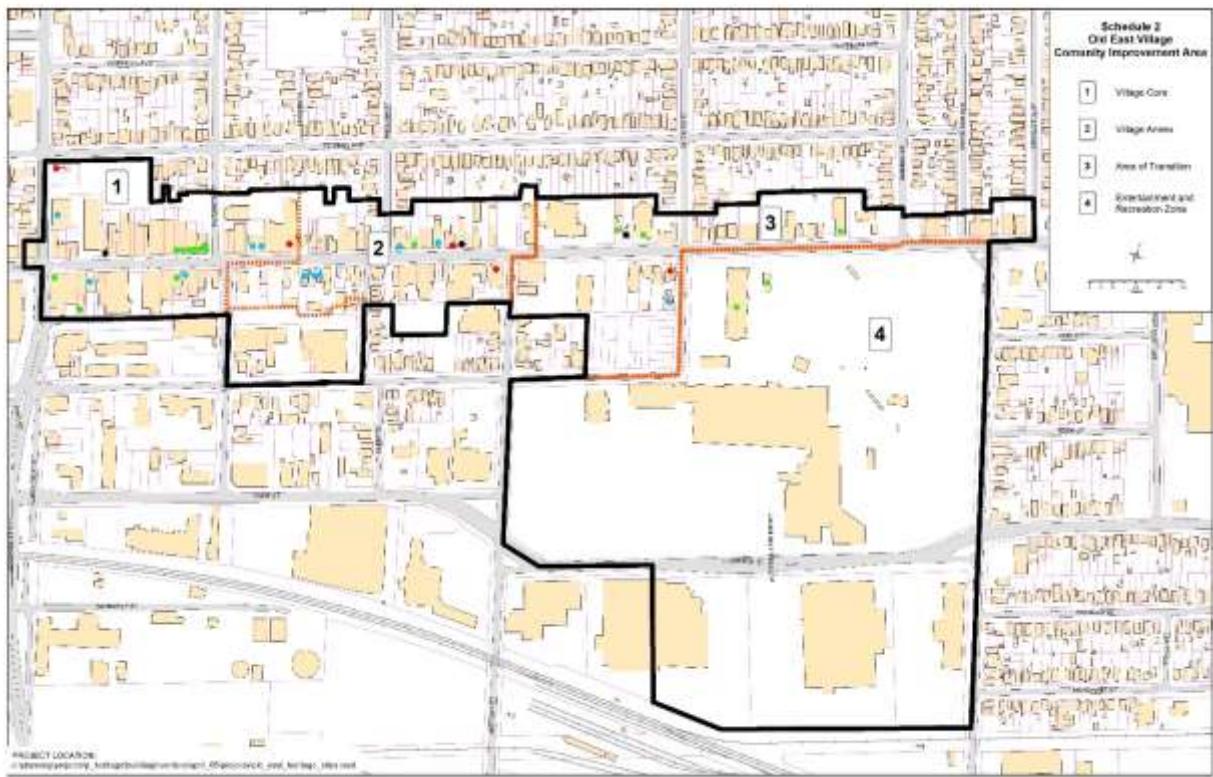
THE DOWNTOWN COMMUNITY IMPROVEMENT AREA



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Number of hectares: 119.9

Appendix B – Old East Village Map



Number of hectares total: 46.4

Number of hectares (excluding Area 4 – Western Fair): 16.5

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: George Kotsifas P. Eng.,
Managing Director, Development & Compliance Services and
Chief Building Official

Subject: 2019 Minor Variance Applications Considered by the
Committee of Adjustment – Information Report

Public Participation Meeting on: November 16, 2020

Recommendation

That, on the recommendation of the Director, Development Services, the following report relating to an overview of the nature of the 2019 Minor Variance applications received and considered in by the London Committee of Adjustment **BE RECEIVED**.

Executive Summary

Summary of Request

Municipal Council has directed staff to report annually on the nature of the Minor Variance applications considered by the London Committee of Adjustment.

Purpose and the Effect of Recommended Action

The purpose and effect of this Information Report is to provide an overview of the nature of the 2019 Minor Variance applications received by Development Services and considered by the London Committee of Adjustment. Where illustrative, a comparison of trends over a five-year period is provided.

Rationale of Recommended Action

Municipal Council has directed staff to report annually on the nature of the Minor Variance applications considered by the London Committee of Adjustment.

Analysis

1.0 Minor Variances

1.1 What is a Minor Variance?

A Minor Variance is a small change or “relief” from the regulations of the Zoning By-law. Because a zoning by-law cannot anticipate every circumstance that may affect the development or use of a particular property, Section 45 of the Planning Act, R.S.O 1990, c. P.13 (“Planning Act”) grants committees of adjustment authority to permit relief from the strict application of the regulations on a specific property.

1.2 Who Decides?

The Committee of Adjustment serves as a quasi-judicial body that has independent authority, as delegated by Municipal Council, to consider applications for Minor Variances under Section 45 of the Planning Act.

Municipal Council may, by by-law, constitute and appoint a Committee of Adjustment. London’s Committee of Adjustment presently consists of five members appointed for the term of Council (2018-2022). The Committee of Adjustment is empowered to approve with or without conditions, refuse or defer requests for variance.

1.3 Basis for Decisions of Minor Variance Applications

The Committee of Adjustment must base their decisions on the planning merits of the application after consideration of the request, the staff recommendation, and comments

from the applicant and members of the public. Section 45(1) and 45(2) of the Planning Act provides the basis for decisions. The Committee of Adjustment may authorize a Minor Variance from the regulations of the zoning by-law only if the Committee is satisfied that the application meets all four tests under Section 45(1) of the Planning Act, as follows:

1. Is the variance minor in nature?
2. Is the variance desirable for the appropriate development or use of the land, building or structure?
3. Does the variance meet the general intent and purpose of the by-law?
4. Does the variance meet the general intent and purpose of the Official Plan?

Section 45(2)(a) and Section 45(2)(b) of the Planning Act grants the Committee of Adjustment additional powers to permit an extension, enlargement or change to a legal non-conforming use; and to permit the use of any land, buildings or structures for a purpose that conforms with uses permitted in the Zoning By-law that are defined in general terms. Decisions related to the enlargement or extension of a building or structure used for legal non-conforming uses are to be based on the desirability of the development and the impact on the surrounding area. Decisions related to changes to legal non-conforming uses are to be based on whether the request is similar to the purpose for which the land, building or structure was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed.

1.4 Legislative Changes Related to Minor Variance Applications

As discussed previously in the November 4, 2019 annual information report on Minor Variance applications, Bill 73 – Smart Growth for our Communities Act, 2015 (“Bill 73”) came into force and effect on July 1, 2016 and introduced new provisions in the Planning Act that included a two-year moratorium on Minor Variance applications subsequent to the passing of a Zoning By-law amendment (Section 45(1.3)). The Planning Act permits a Municipal Council to waive the moratorium through a council resolution.

Since the two-year moratorium provision came into force and effect, there have been 12 requests for a council resolution. One request was submitted in 2017, six were submitted in 2019, and to date five were submitted in 2020. Council has allowed 10 requests and refused 1 request to allow a Minor Variance application within the moratorium period. One further request was received but no resolution was issued. The similar number of requests made in 2019 and in 2020 suggest that applicants are increasingly more willing to undertake this request process.

Bill 108 - More Homes, More Choice Act, 2019, came into force and effect on June 6, 2019. No changes were made to Section 45 of the Planning Act, which provides the basis for Minor Variances in Ontario.

2.0 Nature of Minor Variance Applications

2.1 Number of Minor Variance Applications

The five-year period from 2015 to 2019 witnessed an overall decline in the number of Minor Variance applications submitted year-over-year, with the exception of 2017.

In 2019, the City of London received 142 Minor Variance applications. This represents the fewest number of applications received within the five-year period and a decline of 6 applications from 2018. Over the five-year period from 2015 to 2019, Development Services received on average 170 Minor Variance applications a year.

Table 1: Total Number of Opened Minor Variance Applications from 2015 to 2019.

Year	Number of Minor Variance Applications	Year-over-year Change (by application)
2015	180	–
2016	176	↓ 4
2017	204	↑ 28
2018	148	↓ 56
2019	142	↓ 6
Total	850 (170 per year)	–

It should be noted that the Planning Act does not place a limitation on the number of variances an Applicant can request. As such, Minor Variance applications may include one or more variances. In 2018, for example, Minor Variance applications averaged 1.4 variances per application. In 2019, the average number of variances requested increased to 1.8 per application. The trend indicates that more variances are being requested on a per application basis.

Of the 142 Minor Variance applications, 115 applications were considered by the Committee of Adjustment during the 2019 calendar year. The outliers include 10 applications that were cancelled or withdrawn by the Applicant; and 16 applications that were scheduled for public hearings before the Committee of Adjustment in 2020 based on the date of submission. One application, associated with a Consent application, has been on hold since late 2019.

Of the 2019 Minor Variance applications considered by the Committee of Adjustment, 113 (86.3 percent) were granted; 15 (11.5 percent) were refused by the Committee; and three (2.3 percent) were adjourned sine die, meaning that the applications were deferred to a future date to allow the Applicant the opportunity to resolve issues or concerns with staff. On two occasions the application returned to the Committee of Adjustment for a decision following a sine die adjournment; one application is still pending a return to the Committee and a decision.

2.2 Categories of Minor Variance Applications

For the purposes of this report, the Minor Variance applications received in 2019 were broken down into five categories based on the most onerous or impactful variances requested. The categories include:

- Yard Setback Regulations for Main Buildings;
- Parking Regulations;
- Legal Non-Conforming Use;
- Accessory Use Regulations; and,
- Intensity of Development Regulations.

Table 2: Categories of Minor Variance Applications.

Categories of Minor Variance Applications	2015	2016	2017	2018	2019
Total Number of Applications	180	176	204	148	142
Yard Setback Regulations for Main Buildings	47 (26%)	58 (33%)	58 (28%)	29 (20%)	33 (23%)
Parking Regulations	37 (21%)	31 (18%)	24 (12%)	14 (9%)	39 (27%)
Legal-Non Conforming Use	20 (11%)	22 (12%)	8 (4%)	19 (13%)	15 (11%)
Accessory Uses	26 (14%)	26 (15%)	32 (16%)	32 (22%)	26 (18%)
Intensity of Development Regulations	50 (28%)	39 (22%)	82 (40%)	54 (36%)	29 (20%)

The five-year period presents two important trends for the Minor Variance Applications in 2019. The first trend is an overall reduction in the percentage-share of applications classified under Yard Setback Regulations for Main Buildings and Intensity of Development Regulations. The second trend is an increase in the number of parking-related applications received. The percentage-share of Legal Non-Conforming Use and Accessory Use applications remained relatively steady compared to 2015, 2016, and 2017.

As stated above, the Planning Act does not place a limitation on the number of variances an Applicant can request. As such, Minor Variance applications may include one or more variances. Appendix A provides a detailed breakdown of the nature of individual variances requested in 2019 in four out of five categories (excluding legal non-conforming uses) and the specific nature of each individual variance.

2.3 Yard Setback Regulations for Main Buildings

Variances for yard setback regulations for main buildings consist of requests for relief from the locational standards of main buildings. This includes minimum front yard, exterior and interior side yard and rear yard setbacks. Requests for this form of relief are often required to facilitate urban design objectives for the siting of buildings closer to streetlines. The category also includes variances from the Regulations for Low-rise Residential Development in the Primary Transit Area (“PTA”) (Section 4.23 of the Zoning By-law).

Individual variances related to yard setback regulations for main buildings are broken down in detail under Table 4 in Appendix A. In 2019, there were 71 individual variances requesting relief from the main building locational regulations (35.4 percent of all individual variances). The most commonly requested variance in this category were reductions to the minimum required interior side yard setback, constituting nearly half of all individual variances in the category.

2.4 Parking Regulations

Parking variances consist of various requests for relief from the parking regulations in subsection 4.19 of the Zoning By-law, as shown on Table 2. Individual variances related to parking regulations are broken down in detail under Table 5 in Appendix A. In 2019, there were 45 individual variances requesting relief parking regulations. The most common variances in this category were reductions to the minimum number of parking spaces required, constituting more than half of all individual variances in the category. Reductions to the minimum number of parking spaces required were often triggered by changes in use, building expansions or increased gross floor area. Despite the introduction of regulations which relax minimum parking regulations within strategic areas (i.e. Downtown and Hamilton Road corridor), parking difficulties continue to arise.

2.5 Legal Non-Conforming Uses

Legal Non-Conforming Uses are uses that were lawfully established prior to the passing of a by-law and permitted to continue. Under subsection 45(2)(a) of the Planning Act,

the Committee of Adjustment is granted the power to enlarge, extend, or change a legal non-conforming use. In 2019, there were 16 individual variances requesting relief to enlarge, extend, or change a legal non-conforming use.

2.6 Accessory Uses

Accessory uses are incidental, subordinate and exclusively devoted to the main use on the lot. Variances under this category often relate to buildings or structures such as decks, open private swimming pools, sheds, and detached garages or carports and requests for relief from these buildings or structures yard locations height or lot coverage. Accessory uses are regulated by the General Provisions (Section 4) of the Zoning By-law.

Individual variances related to accessory uses are broken down in detail under Table 6 in Appendix A. In 2019, there were 58 individual variances requesting relief from accessory uses regulations.

The most commonly variances requested in this category were for reductions in the yard setbacks (interior and exterior side yard, front yard and rear yard setbacks combined) for accessory buildings or structures. Variances from the maximum permitted lot coverage for accessory buildings and structures were also prominent.

2.7 Intensity of Development

This category of variances speaks to intensity of development permitted on a property. Specifically, the category includes such things as lot area, lot frontage, lot coverage, gross floor area ("GFA"), floor area ratio ("FAR"), residential density, dwelling unit area, and landscaped open space. Individual variances within this category often trigger variances in other categories. For example, decreasing the minimum lot area or minimum lot frontage are often associated with requests for reduced setbacks or parking.

Individual variances related to the intensity of development are broken down in detail under Table 7 in Appendix A.

The most common variances requested in this category were for increases in density and reductions in minimum lot frontage and minimum lot area. Variances for reduced lot frontage and reduced lot area were often triggered as a condition of consent for lot creation, or by adding units to single detached dwellings which often triggered greater lot frontage and lot area requirements than the single detached dwelling.

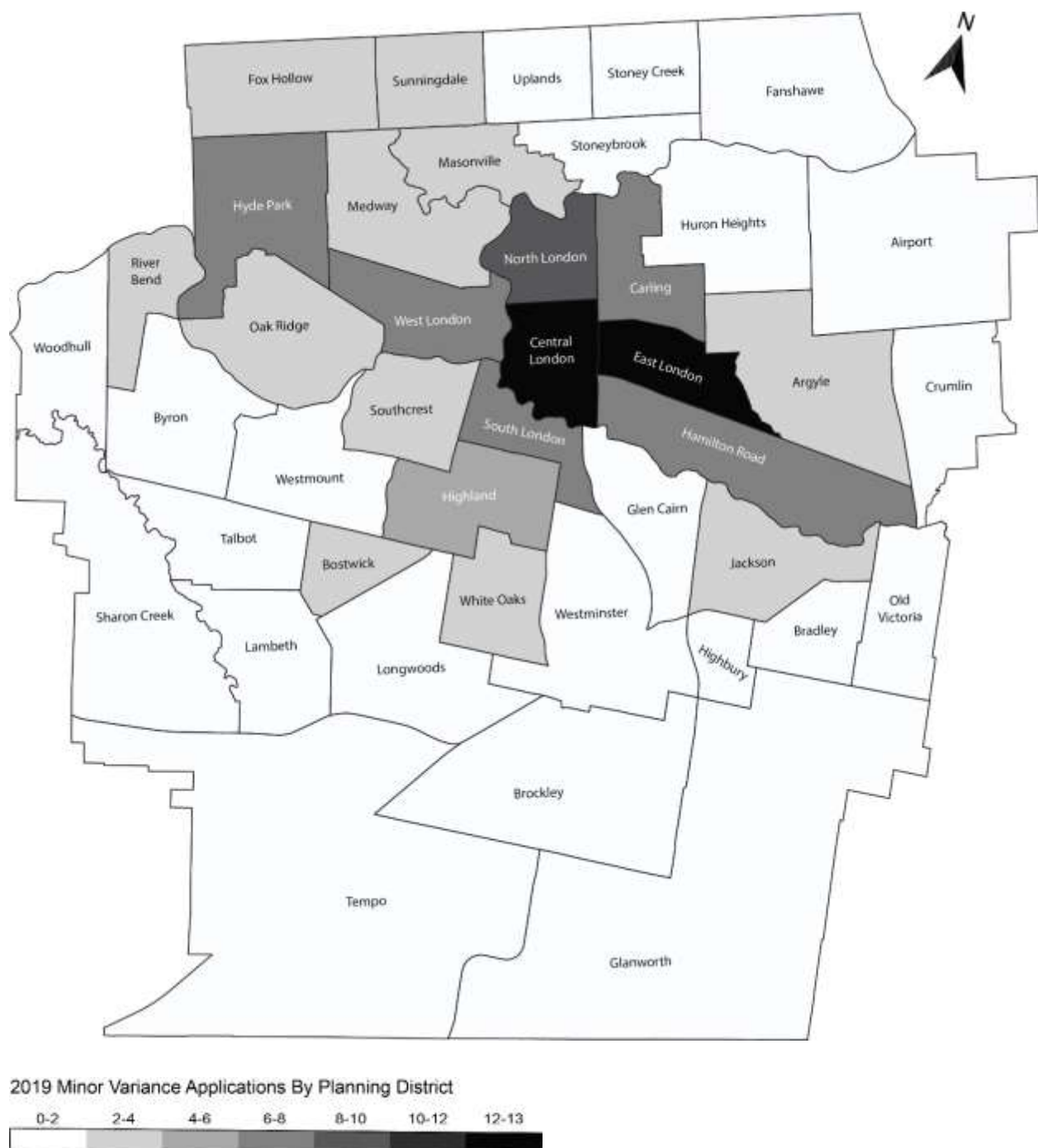
3.0 Spatial Trends of 2019 Minor Variance Applications

3.1 2019 Minor Variance Applications by Planning District

London is composed of a collection of neighbourhoods with varying histories, densities, pressures, and opportunities. The City's neighbourhoods can further be grouped into Planning Districts that are larger geographic areas consisting of clusters of neighbourhoods that have many similar characteristics. Figure 19 in The London Plan identifies 42 Planning Districts.

Figure 2 in this report presents where Minor Variance applications submitted in 2019 were located by Planning District. Planning Districts representative of inner-city areas experienced the greatest number of Minor Variance applications in 2019. This trend may correspond with denser lot fabric within the older, more established neighbourhoods that pre-date current zone regulations and infill and intensification proposals that require greater flexibility.

Figure 2: 2019 Minor Variance Applications by Planning District. (Not to scale.)

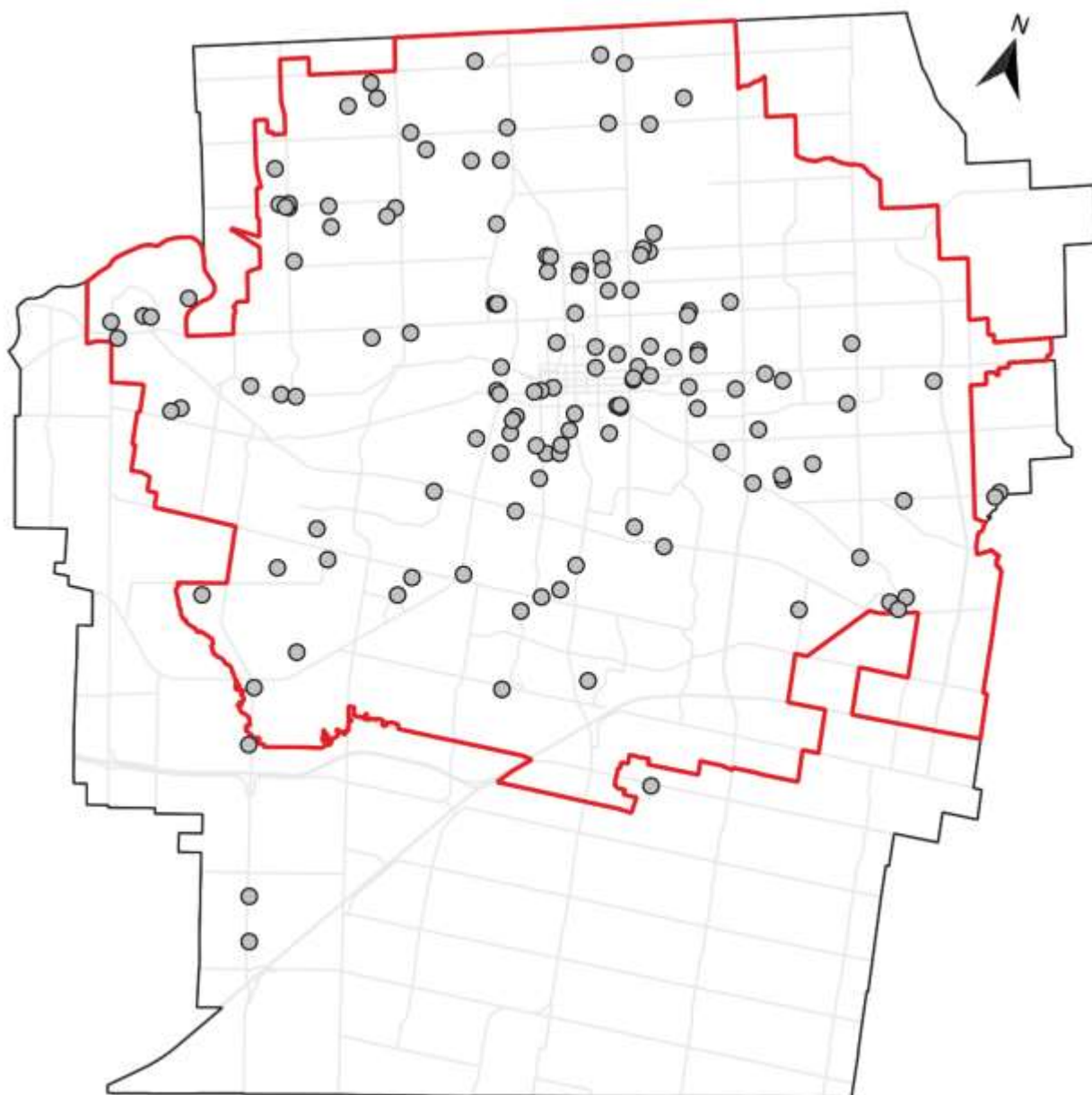


3.2 Minor Variance Applications within the Urban Growth Boundary

The majority of Minor Variance applications were for properties located within the Urban Growth Boundary. The Urban Growth Boundary separates the urban parts from the rural parts of the City. Of the 142 Minor Variance applications received in 2019, 137 applications were for properties located within the Urban Growth Boundary. The

remaining five applications were for properties located outside of the boundary.

Figure 3: 2019 Minor Variance Applications in relation to the Urban Growth Boundary. The Urban Growth Boundary is delineated in red. (Not to scale.)

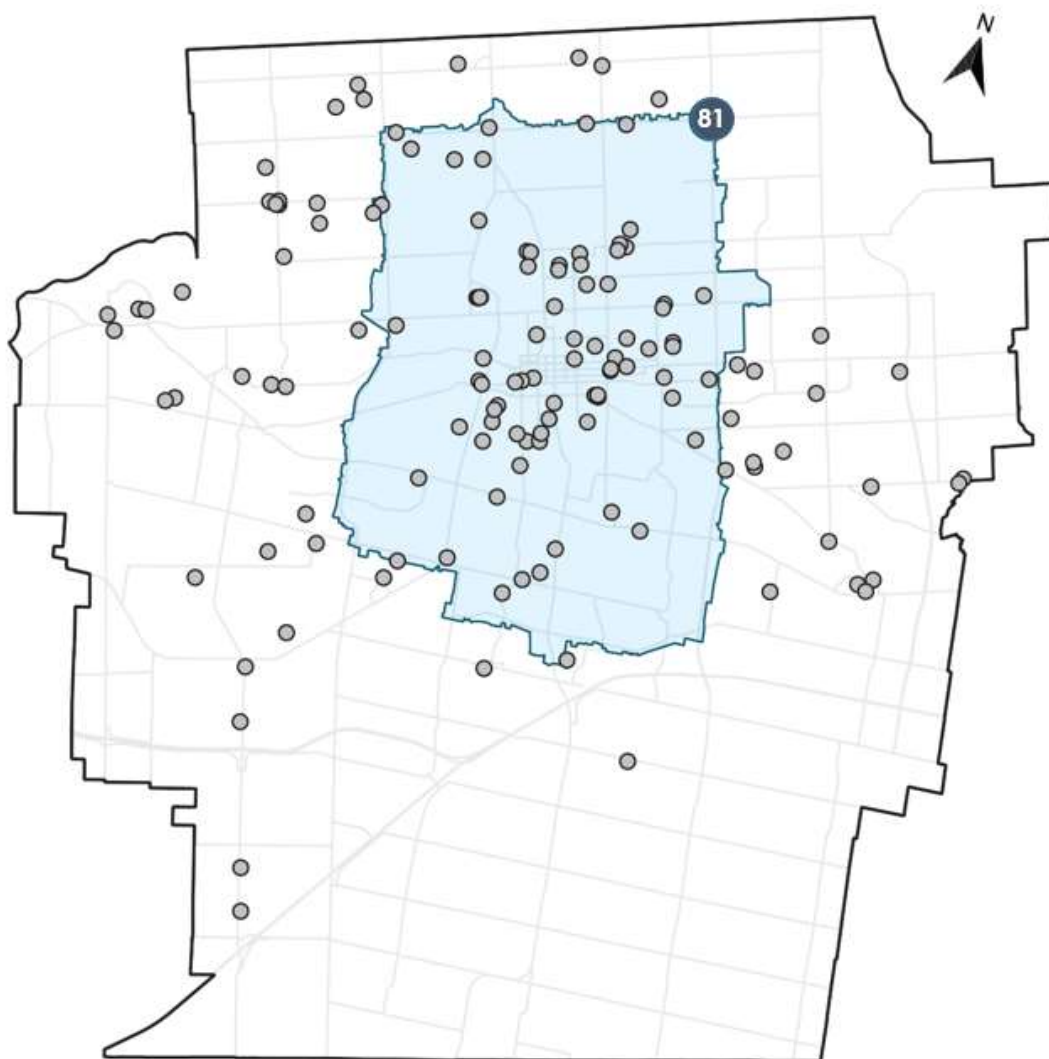


3.3 2019 Minor Variance Applications in the Primary Transit Area

The London Plan delineates a Primary Transit Area (“PTA”) generally bounded by Fanshawe Park Road to the north, Wonderland Road to the west, Southdale Road (west of White Oak Road) and Bradley Avenue (east of White Oak Road) to the south, and Highbury Avenue to the east. The PTA delineates the geographic limit of rapid transit infrastructure to the year 2035 and the area of focus for residential infill and intensification to encourage transit ridership. Section 4.23 of the Zoning By-law contains specific regulations for the PTA to ensure that new residential development within existing low-rise residential areas is compatible with the existing neighbourhood and streetscape character.

Of the 142 Minor Variance applications received in 2019, 81 applications related to properties located within the PTA. In total, 19 of the 81 applications correspond with relief from the PTA regulations. Although only a minority of applications involved relief from the regulations for low-rise residential development in the primary transit area at Section 4.23 of the Zoning By-law, it does correspond with the frequency of applications within the central city.

Figure 4: 2019 Minor Variance Applications within the Primary Transit Area. The Primary Transit Area is delineated in blue. (Not to scale.)



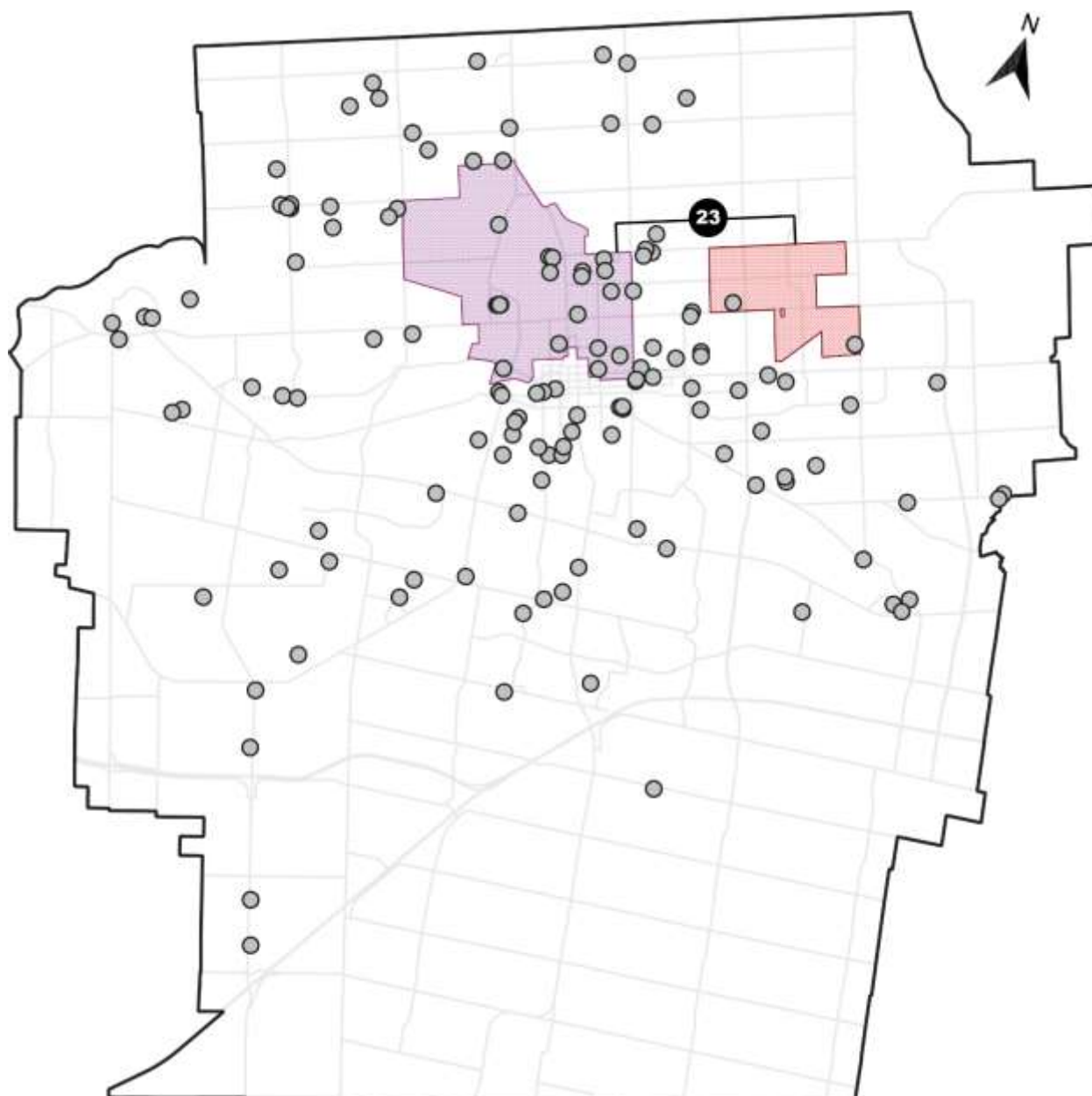
3.4 2019 Minor Variance Applications in the Near-Campus Neighbourhoods

The London Plan and the 1989 Official Plan establish boundaries corresponding to neighbourhoods in proximity to Western University and Fanshawe College, referred to as the Near-Campus Neighbourhoods (“NCN”) Area.

The NCN policies seek to maintain the vibrancy, culture, and sense of place of the neighbourhoods in proximity to Western University and Fanshawe College, while planning for measured and strategically located intensification and growth. The policies call for new development to have special consideration for the context and character of the receiving area specifically relating to the form, size, scale, mass, density, and intensity of new development. Particular mention is made to development where proposed lots and buildings require multiple variances.

A total of 32 Minor Variance applications received in 2019 were for properties located within the NCN Area. The majority – 21 applications – were located within the area around Western University. Only two applications were located within the area around Fanshawe College. Only 12 of the 32 applications related to substantive consideration of the NCN policies, either relating to the intensification facilitating an increase in the number of dwelling units on the property or an increase in the built intensity of development. Among the 12 applications, five were cancelled and withdrawn prior to a public hearing before the Committee of Adjustment, reducing the number of applications with substantive impacts related to the NCN policies to seven.

Figure 5: 2019 Minor Variance Application in the Near Campus Neighbourhoods. (Not to scale.)



3.5 2019 Minor Variance Applications by Place Type, Official Plan Designation, and Zone

The London Plan and the 1989 Official Plan apply Place Types and Land Use Designations across the whole of the City of London. Each Place Type and Land Use Designation has associated policies that provide direction on the use and development of land related to a wide array of matters, including permitted uses, the expected intensity of development, and the envisioned built form. 80 percent of all applications for Minor Variance were located in Neighbourhoods Place Type, and 71 percent of all applications for Minor Variance were located in the Residential Land Use Designations, as identified on Tables 8 and 9 in Appendix A.

The City of London Zoning By-law No. Z.-1 establishes 47 different zone classes across the City to implement and regulate the policy direction of the City's official plans. The regulatory objectives for each zone class vary, as individual zones permit certain uses, building forms, and building intensity. More than 60 percent of the Minor Variance applications received in 2019 were for properties located within a Residential zone; and three quarters of those variances occurred in low to medium-low density residential zones, specifically the R1, R2, and R3 Zones, as identified on Table 10 in Appendix A.

Minor Variance applications most often pertain to low-rise residential issues since the majority of the Minor Variance applications pertain to properties located in the Neighbourhoods Place Type, the Low Density Residential designation, and low-rise Residential zones.

4.0 Appeals to the Local Planning Appeals Tribunal

4.1 Appeals to the Decisions of the Committee of Adjustment

Decisions of the Committee of Adjustment can be appealed to the Local Planning Appeals Tribunal (“LPAT”) by an applicant, a resident, a public body or other interested party.

During 2019, there were three appeals of the Committee’s decisions. Two applications were refused by the Committee. Both were informed by Development Services’ recommendation for refusal. The appeals were all submitted by the Applicant. The remaining appeal was initiated by Municipal Council.

A.040/19 – 585 Colborne Street

On May 6, 2019, under File Number A.040/19, the Committee of Adjustment heard an application to add a fourth unit to a converted dwelling. In order to facilitate the internal modifications, variances were requested. Variance 1 requested to permit a lot area of 240 square metres (2,583.3 square feet), whereas 720 square metres (7,750.0 square feet) is the minimum required. Variance 2 requested to maintain two parking spaces, whereas three are the minimum required. Development Services recommended refusal of the application for the reasons that the requested variances represented an over-intensification of lands with the Near Campus Neighbourhoods Area and failed to meet the four tests under Section 45(1) of the Planning Act. The Committee of Adjustment refused the requests. The Applicant subsequently appealed the decision. On September 11, 2019, the Application withdrew the appeal from further deliberation.

A.046/19 – 149 Huron Street

On June 10, 2019, under File Number A.046/19, the Committee of Adjustment heard an application to construct two dwellings as a result of a consent. In order to facilitate the proposed development, variances were requested to permit a reduced lot frontage of 9.4 metres (30.8 feet), whereas 12.0 metres (39.4 feet) is the minimum required; and an increased front yard setback of 10.3 metres (33.8 feet), whereas 8.3 metres (27.2 feet) is the maximum permitted for both the severed and retained lots.

Development Services recommended refusal as the requests did not maintain the general intent and purpose of the Official Plan nor the Zoning By-law (namely policies for the Near Campus Neighbourhoods Area, and regulations for Low-rise Residential [Infill] Development in the Primary Transit Area), and were not considered minor in nature nor desirable for the appropriate use or development of the lands. As of November 2020, a decision has not yet been issued by the LPAT.

A.058/19 – 66 Grand Avenue

On June 17, 2019, under File Number A.058/19, the Committee of Adjustment heard an application to construct an addition at 66 Grand Avenue. The proposed development required six variances, including variances to permit a fourth storey addition with a reduced interior side yard setback of 2.6 metres (8.5 feet), whereas 3.0 metres (9.8 feet) is required; an increased lot coverage of 44 percent, whereas 40 percent is the maximum permitted; an increased building depth of 27.9 metres (91.5 feet), whereas 22.8 metres (74.8 feet) is the maximum permitted; a third storey deck with an east interior side yard setback of 1.4 metres (4.6 feet), whereas a 2.4 metres (7.9 feet) is the minimum required; a fourth storey deck with an east interior side yard setback of 2.6 metres (7.9 feet), whereas 3.0 metres (9.8 feet) is the minimum required; and a reduced lot area of 464.2 square metres (4,996.6 square feet) whereas 550 square metres (5,920.2 square feet) is the minimum required. Development Services recommended all six variances be refused as the cumulative impacts of the variances were assessed to be inconsistent with the intent and purpose of the Zoning By-law and not minor in nature. The Committee of Adjustment refused the requests. The Applicant subsequently appealed the decision.

On November 13, 2019, the LPAT issued its decision, granting in part the Applicants requests to permit a reduced lot area, increased lot coverage, and increased building depth.

5.0 Conclusion

The purpose and effect of this Information Report is to provide an overview of the nature of Minor Variance applications considered in 2019 by the Committee of Adjustment, and to provide an overview of trends, categories, and characteristics of Minor Variance applications received. Development Services will continue to provide an annual update to Council on the breakdown by various categories of Minor Variance applications considered by the Committee of Adjustment. Looking ahead, the 2020 information report will include a summary on the impacts of the COVID-19 Emergency.

Prepared by:	Daniel Hahn Planner I, Development Services
Recommended by:	Paul Yeoman, RPP, PLE Director, Development Services
Submitted by:	George Kotsifas, P.ENG Managing Director, Development and Compliance Services and Chief building Official
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

November 9, 2020

cc: Michael Tomazincic, MCIP, RPP, Manager, Current Planning

cc: Melissa Campbell, MCIP, RPP, Manager, Development Planning (Current Planning)

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Appendix A

Table 3: Categories of Minor Variance Applications in 2019.

Variance Categories	Total
All Variances	256
Yard Setback Regulations for Main Buildings	71 (35.7%)
Parking Regulations	45 (17.5%)
Legal-Non Conforming Use	16 (6.2%)
Accessory Uses	58 (22.6%)
Intensity of Development Regulations	67 (26.1%)

Table 4: Number of Yard Setback Regulations for Main Buildings Variances in 2019.

Variances	Total
All Yard Setback Regulations for Main Buildings	71
Interior Side Yard Setback	34 (47.9%)
Front Yard Setback	16 (22.5%)
Rear Yard Setback	10 (14.0%)
Exterior Side Yard Setback	10 (14.0%)
Building Orientation	1 (1.4%)

Table 5: Number of Parking Regulation Variances in 2019.

Variances	Total
All Parking Regulation Variances	45
Required Number of Parking Spaces	26 (57.8%)
Parking Area Coverage	3 (6.7%)
Parking in the Front or Exterior Side Yard	5 (11.1%)
Parking Area Setback	5 (11.1%)
Reduced Stacked Parking	3 (6.7%)
Required Number of Bicycle Parking Spaces	2 (4.4%)
Location of Parking Access	1 (2.2%)

Table 6: Number of Accessory Use Variances in 2019.

Variances	2019
All Accessory Use Variances	58
Deck Encroachment	12 (20.7%)
Interior Yard Setback	11 (19.0%)
Lot Coverage	10 (17.2%)
Swimming Pool Setback	6 (10.3%)

Location of Accessory Structure in a Front or Exterior Side Yard	6 (10.3%)
Building/Structure Height	3 (5.1%)
Exterior Yard Setback	3 (5.1%)
Front Yard Setback	2 (3.5%)
Rear Yard Setback	2 (3.5%)
Maximum Permitted GFA	1 (1.7%)
Increased GFA for Home Occupation	1 (1.7%)
Home Occupation in an Accessory Structure	1 (1.7%)

Table 7: Number of Intensity of Development Variances in 2019.

Variances	2019
All Intensity of Development Variances	67
Lot Area	12 (17.9%)
Lot Frontage	10 (14.9%)
Residential Density	10 (15.0%)
Lot Coverage	8 (11.9%)
Gross Floor Area (GFA)	6 (9.0%)
Building Height	5 (7.5%)
Main Building Depth	4 (6.0%)
Landscaped Open Space	3 (4.5%)
Dwelling Unit Area	3 (4.5%)
Floor Area Ratio (FAR)	2 (3.0%)
Maximum Garage Width	2 (3.0%)
Habitable Space	1 (1.5%)
Number of Shipping Containers	1 (1.5%)
Garage in the Front Yard	0 (0.0%)

Table 8: 2019 Minor Variance Applications Categorized by Place Type.

Place Type	Urban, Rural, or City-Wide Place Type	Number of Minor Variance Applications*	Share of Total (%)
Neighbourhoods	Urban	100	80%
Main Street	Urban	7	6%
Urban Corridors	Urban	6	5%
Rapid Transit Corridors	Urban	5	4%
Light Industrial	Urban	4	3%
Shopping Area	Urban	4	3%

Farmland	Rural	5	4%
Commercial Industrial	Urban	2	2%
Downtown	Urban	2	2%
Transit Village	Urban	2	2%
Heavy Industrial	Urban	1	1%
Environmental Review	City-Wide	1	1%

*Included are Place Types with 1 or more instances.

Table 9: 2019 Minor Variance Applications Categorized by Official Plan Designation.

Official Plan Designation	Land Use Designation	Number of Minor Variance Applications*	Share of Total (%)
Low Density Residential	Residential	76	56%
Multi-Family, Medium Density Residential	Residential	18	13%
Main Street Commercial Corridor	Commercial	12	9%
Auto-Oriented Commercial Corridor	Commercial	7	5%
Community Commercial Node	Commercial	4	3%
Light Industrial	Industrial	4	3%
Multi-Family, High Density Residential	Residential	3	2%
Agricultural	Agricultural, Rural Settlement, and Urban Reserve	5	2%
Downtown	Commercial	2	2%
Neighbourhood Commercial Node	Commercial	2	2%
General Industrial	Industrial	2	2%
Open Space	Open Space	2	2%
Enclosed Regional Commercial Node	Commercial	1	1%
Regional and Community Facilities	Regional and Community Facilities	1	1%
Transitional Industrial	Industrial	1	1%
Rural Settlement	Agricultural, Rural Settlement, and Urban Reserve	1	1%

*Included are Official Plan designations with 1 or more instances.

Table 10: Number of Minor Variance Applications Categorized by Zone, 2019

Zone	Class	Number of Minor Variance Applications	Share of Total (%)
Residential R1 Zone	Residential	46	28%
Residential R2 Zone	Residential	22	13%
Residential R3 Zone	Residential	18	11%
Residential R8 Zone	Residential	9	5%
Business District Commercial Zone	Commercial	9	5%
Residential R5 Zone	Residential	6	4%

Residential R6 Zone	Residential	6	4%
Restricted Office Zone	Office	5	3%
Community Shopping Area Zone	Commercial	5	3%
Light Industrial Zone	Industrial	5	3%

*Included are zones with more than 5 applications.

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: George Kotsifas, P. Eng.
Managing Director, Development & Compliance Services and
Chief Building Official

Subject: Application By: Sifton Properties Ltd.
3620 Southbridge Avenue

Meeting on: November 16, 2020

Recommendation

That, on the recommendation of the Director, Development Services, with respect to the application by Sifton Properties Ltd., the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting on November 24, 2020 to exempt Block 124, Plan 33M-785 from the Part-Lot Control provisions of Subsection 50(5) of the *Planning Act*, for a period not exceeding three (3) years.

Executive Summary

Summary of Request

Request for approval to exempt Block 124, Plan 33M-785 from the Part Lot Control provisions of the *Planning Act*.

Purpose and Effect of Recommended Action

Exemption from Part-Lot Control will facilitate the creation of twenty-three (23) street townhouse units, with access provided by means of Southbridge Avenue.

Rationale for Recommended Action

The conditions for passing the Part-Lot Control By-law have been satisfied and it is appropriate to allow the exemption from Part-Lot Control. The cost of registration of the by-law is to be borne by the applicant, all in accordance with the previous Council Resolution.

1.0 Analysis

At its meeting held on September 15, 2020, Municipal Council resolved:

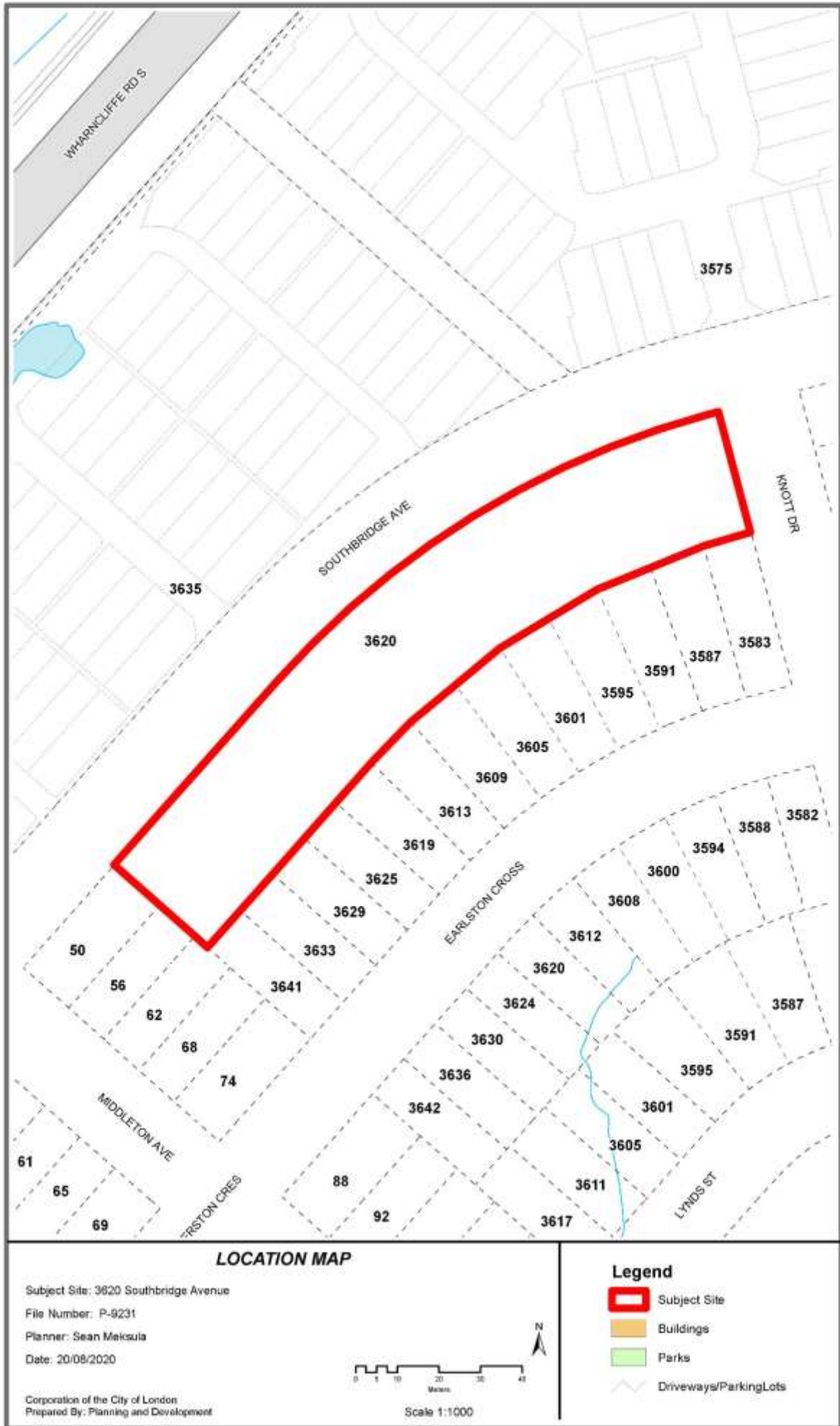
That, on the recommendation of the Director, Development Services, the following actions be taken with respect to the application by Sifton Properties Limited to exempt Block 124, Plan 33M-785 from Part-Lot Control:

- (a) Pursuant to subsection 50(7) of the *Planning Act*, R.S.O. 1990, c. P.13, the attached proposed by-law **BE INTRODUCED** at a future Council meeting, to exempt Block 124, Plan 33M-785 from the Part-Lot Control provisions of subsection 50(5) of the said Act, **IT BEING NOTED** that these lands are subject to registered subdivision agreements and are zoned holding Residential R4 Special Provision (h*h-100 R4-6(8)) in Zoning By-law No. Z.-1, which permits street townhouse dwellings with a minimum lot frontage of 7.0m;
- (b) The following conditions of approval **BE REQUIRED** to be completed prior to the passage of a Part-Lot Control By-law for Block 124, Plan 33M-785 as noted in clause (a) above:
 - i. The applicant be advised that the costs of registration of the said by-laws are to be

borne by the applicant in accordance with City Policy;

- ii. *The applicant submit a draft reference plan to the Development Services for review and approval to ensure the proposed part lots and development plans comply with the regulations of the Zoning By-law, prior to the reference plan being deposited in the land registry office;*
- iii. *The applicant submits to the Development Services a digital copy together with a hard copy of each reference plan to be deposited. The digital file shall be assembled in accordance with the City of London's Digital Submission / Drafting Standards and be referenced to the City's NAD83 UTM Control Reference;*
- iv. *The applicant submit each draft reference plan to London Hydro showing driveway locations and obtain approval for hydro servicing locations and above ground hydro equipment locations prior to the reference plan being deposited in the land registry office;*
- v. *The applicant submit to the City Engineer for review and approval prior to the reference plan being deposited in the land registry office; any revised lot grading and servicing plans in accordance with the final lot layout to divide the blocks should there be further division of property contemplated as a result of the approval of the reference plan;*
- vi. *The applicant shall enter into any amending subdivision agreement with the City, if necessary;*
- vii. *The applicant shall agree to construct all services, including private drain connections and water services, in accordance with the approved final design of the lots;*
- viii. *The applicant shall obtain confirmation from the Development Services that the assignment of municipal numbering has been completed in accordance with the reference plan(s) to be deposited, should there be further division of property contemplated as a result of the approval of the reference plan prior to the reference plan being deposited in the land registry office;*
- ix. *The applicant shall obtain approval from the Development Services of each reference plan to be registered prior to the reference plan being registered in the land registry office;*
- x. *The applicant shall submit to the City, confirmation that an approved reference plan for final lot development has been deposited in the Land Registry Office;*
- xi. *The applicant shall obtain clearance from the City Engineer that requirements iv), v) and vi) inclusive, outlined above, are satisfactorily completed, prior to any issuance of building permits by the Building Controls Division for lots being developed in any future reference plan;*
- xii. *The applicant shall provide a draft transfer of the easements to be registered on title for the reciprocal use of parts 2, 3, 4, 7, 11, 12, 15, 16, 18, 19, 20, 23, 27, 28, 29, 32, 33, 34, 37, 41, 42, 45 and 46 by parts 1, 5, 6, 8, 9, 10, 13, 14, 17, 21, 22, 24, 25, 26, 30, 31, 35, 36, 38, 39, 40, 43 and 44; and,*
- xiii. *That on notice from the applicant that a reference plan has been registered on a Block, and that Part-Lot Control be re-established by the repeal of the bylaw affecting the Lots/Block in question.*

LOCATION MAP



2.0 Description of Proposal

2.1 Development Proposal

The Applicant, Sifton Properties Limited, has requested exemption from part-lot control to create a total of twenty-three (23) two-storey freehold street townhouse dwelling units on a local street (Southbridge Avenue). The dwellings will be freehold street townhouse units, approximately two storeys in height, and accessed from Southbridge Avenue.

3.0 Revelant Background

3.1 Planning History

The application for Draft Plan of Subdivision Approval (file 39T-15501/Z-8470) was submitted for the lands located at 132, 146 and 184 Exeter Road on March 12, 2015. Municipal Council approved the plan and the associated zoning by-law amendment, and the Approval Authority granted draft approval on January 27, 2017.

Phase 1A consisted of two (2) medium density multi-family blocks, one future street block, and 6 reserve (0.3 m, 1 ft.) blocks, all served by two new local streets, Mia Avenue and Kennington Way, was registered on July 12, 2019 as 33M-765. Phase 1B, consisting of forty two (42) single family lots, one (1) medium density blocks, two (2) open space blocks, four (4) 0.3 metre reserves, all served by two (2) new streets, Middleton Avenue and Kennington Way, was registered on October 9, 2019 as 33M-769.

Phase 2, which includes the subject lands (Block 124), consists of one hundred twenty-three (123) single detached lots, four (4) multi-family blocks, two (2) street townhouse blocks, one (1) open space block, four (4) pathway blocks, one (1) park block, and six (6) one foot reserve blocks, all served by one (1) new secondary collector/neighbourhood connector road (Middleton Avenue), and six (6) new local/neighbourhood streets (Southbridge Drive, Southbridge Avenue, Somerston Crescent, Lynds Street, Knott Drive, Earlston Crossing), was registered on June 8, 2020 as plan 33M-785.

Through the original draft plan of subdivision, staff interpreted these lands to be within the Medium Density Residential designation of the SWAP and the (1989) Official Plan. The same interpretation has been applied to this application.

The exemption from Part-Lot Control will allow for lot lines for individual units (lots) to be established on the registered block in a registered plan of subdivision. The conditions noted above have been satisfied as follows:

- i. *The applicant be advised that the costs of registration of the said by-laws are to be borne by the applicant in accordance with City Policy;*

Acknowledged by the applicant on October 26, 2020.

- ii. *The applicant submit a draft reference plan to the Development Services for review and approval to ensure the proposed part lots and development plans comply with the regulations of the Zoning By-law, prior to the reference plan being deposited in the land registry office;*

Satisfied by registration of reference plan 33R-20856.

- iii. *The applicant submits to the Development Services a digital copy together with a hard copy of each reference plan to be deposited. The digital file shall be assembled in accordance with the City of London's Digital Submission / Drafting Standards and be referenced to the City's NAD83 UTM Control Reference;*

Satisfied by submission on October 26, 2020 and City staff confirmed by email on November 3, 2020 that a digital file has been submitted in a format acceptable to

the City of London.

- iv. *The applicant submit each draft reference plan to London Hydro showing driveway locations and obtain approval for hydro servicing locations and above ground hydro equipment locations prior to the reference plan being deposited in the land registry office;*

Satisfied by approval from London Hydro on October 23, 2020.

- v. *The applicant submit to the City Engineer for review and approval prior to the reference plan being deposited in the land registry office; any revised lot grading and servicing plans in accordance with the final lot layout to divide the blocks should there be further division of property contemplated as a result of the approval of the reference plan;*

Satisfied by the acceptance of Lot Grading and Servicing Plans submitted as per Site Plan Application SPA20-017.

- vi. *The applicant shall enter into any amending subdivision agreement with the City, if necessary;*

Satisfied as the subdivision agreement was registered and no further amendment was required.

- vii. *The applicant shall agree to construct all services, including private drain connections and water services, in accordance with the approved final design of the lots;*

The applicant agrees to fulfil this condition in its entirety related to the construction of all services and will be completed in accordance with the approved final designs of the lots through site plan approval.

- viii. *The applicant shall obtain confirmation from the Development Services that the assignment of municipal numbering has been completed in accordance with the reference plan(s) to be deposited, should there be further division of property contemplated as a result of the approval of the reference plan prior to the reference plan being deposited in the land registry office;*

Satisfied by municipal numbering assigned on September 24, 2020.

- ix. *The applicant shall obtain approval from the Development Services of each reference plan to be registered prior to the reference plan being registered in the land registry office;*

Satisfied by reference plan 33R-20856.

- x. *The applicant shall submit to the City, confirmation that an approved reference plan for final lot development has been deposited in the Land Registry Office;*

Satisfied by reference plan 33R-20856.

- xi. *The applicant shall obtain clearance from the City Engineer that requirements iv), v) and vi) inclusive, outlined above, are satisfactorily completed, prior to any issuance of building permits by the Building Controls Division for lots being developed in any future reference plan;*

Staff are satisfied that servicing will be in place prior to the issuance of building permits

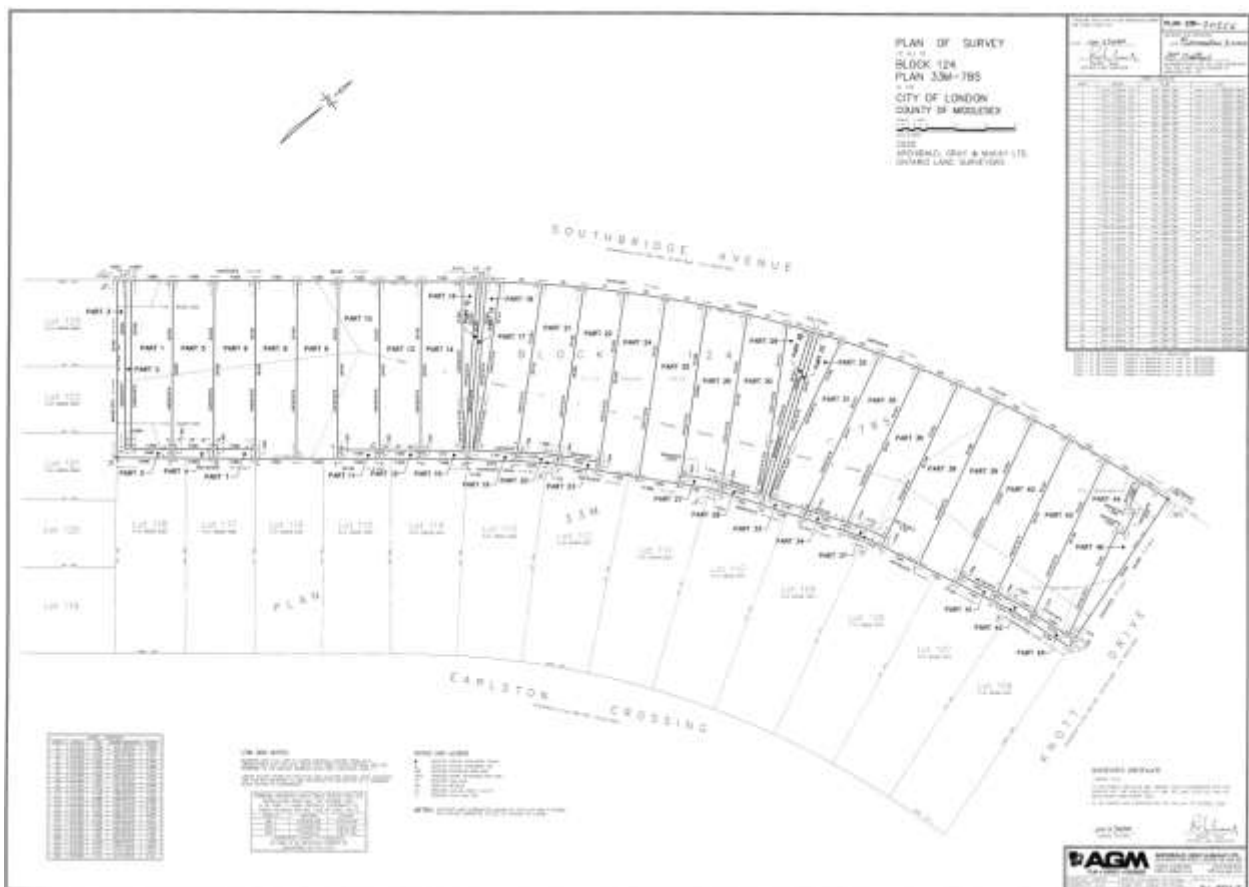
- xii. *The applicant shall provide a draft transfer of the easements to be registered on title for the reciprocal use of parts 2, 3, 4, 7, 11, 12, 15, 16, 18, 19, 20, 23, 27, 28, 29, 32, 33, 34, 37, 41, 42, 45 and 46 by parts 1, 5, 6, 8, 9, 10, 13, 14, 17, 21, 22, 24, 25, 26, 30, 31, 35, 36, 38, 39, 40, 43 and 44; and,*

Satisfied as the applicant has provided a draft transfer for the easements to be designated as Part 1 to 46 on Block 124 dated October 24, 2020.

- xiii. *That on notice from the applicant that a reference plan has been registered on a Block, and that Part-Lot Control be re-established by the repeal of the bylaw affecting the Lots/Block in question.*

Acknowledged by the applicant on October 26, 2020.

REFERENCE PLAN 33R-20856



Conclusion

The recommended exemption from Part-Lot Control is considered appropriate and in keeping with the planned intent of the Middleton Subdivision. In accordance with the Council Resolution, the conditions required to be completed prior to the passage of a Part-Lot Control By-law have been satisfied, and the applicant has been advised that the cost of registration of the by-law is to be borne by the applicant.

Prepared by:	Sean Meksula, MCIP, RPP Senior Planner, Development Services
Recommended by:	Paul Yeoman, RPP, PLE Director, Development Services
Submitted by:	George Kotsifas, P.ENG Managing Director, Development and Compliance Services and Chief Building Official
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

cc: Michael Pease, Manager, Development Services (Site Plan)
cc: Matt Feldberg, Manager, Development Services (Subdivisions)
cc: Ted Koza, Manager, Development Services (Subdivisions)

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Appendix A

Bill No. (*Number inserted by Clerk's Office*)
2020

By-law No. C.P.- (*Number inserted by Clerk's Office*)

A by-law to exempt from Part-Lot Control, lands located at 3620 Southbridge Avenue, legally described as Block 124 in Registered Plan 33M-785.

WHEREAS pursuant to subsection 50(7) of the *Planning Act, R.S.O. 1990, c. P.13*, as amended, and pursuant to the request from Sifton Properties Limited, it is expedient to exempt lands located at 3620 Southbridge Avenue, legally described as Block 124 in Registered Plan 33M-785, from Part Lot Control;

THEREFORE the Municipal Council of The Corporation of The City of London enacts as follows:

1. Block 124 in Registered Plan 33M-785, located at 3620 Southbridge Avenue, east of Middleton Avenue, are hereby exempted from Part-Lot Control, pursuant to subsection 50(7) of the *Planning Act, R.S.O. 1990, c.P.13*, as amended, for a period not to exceed three (3) years; it being noted that these lands are zoned to permit street townhouse dwellings in conformity with the Residential R4 Special Provision (R4-6(8)) Zone of the City of London Zoning By-law No. Z-1.
2. This by-law comes into force when it is registered at the Land Registry Office.

PASSED in Open Council on

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – November 24, 2020
Second Reading – November 24, 2020
Third Reading – November 24, 2020

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: George Kotsifas, P. Eng.
Managing Director, Development & Compliance Services and
Chief Building Official

Subject: Application By: Sifton Properties Ltd.
3740 Southbridge Avenue

Meeting on: November 16, 2020

Recommendation

That, on the recommendation of the Director, Development Services, with respect to the application by Sifton Properties Ltd., the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting on November 24, 2020 to exempt Block 130, Plan 33M-785 from the Part-Lot Control provisions of Subsection 50(5) of the *Planning Act*, for a period not exceeding three (3) years.

Executive Summary

Summary of Request

Request for approval to exempt Block 130, Plan 33M-785 from the Part Lot Control provisions of the *Planning Act*.

Purpose and Effect of Recommended Action

Exemption from Part-Lot Control will facilitate the creation of sixteen (16) street townhouse units, with access provided by means of Southbridge Avenue.

Rationale for Recommended Action

The conditions for passing the Part-Lot Control By-law have been satisfied and it is appropriate to allow the exemption from Part-Lot Control. The cost of registration of the by-law is to be borne by the applicant, all in accordance with the previous Council Resolution.

1.0 Analysis

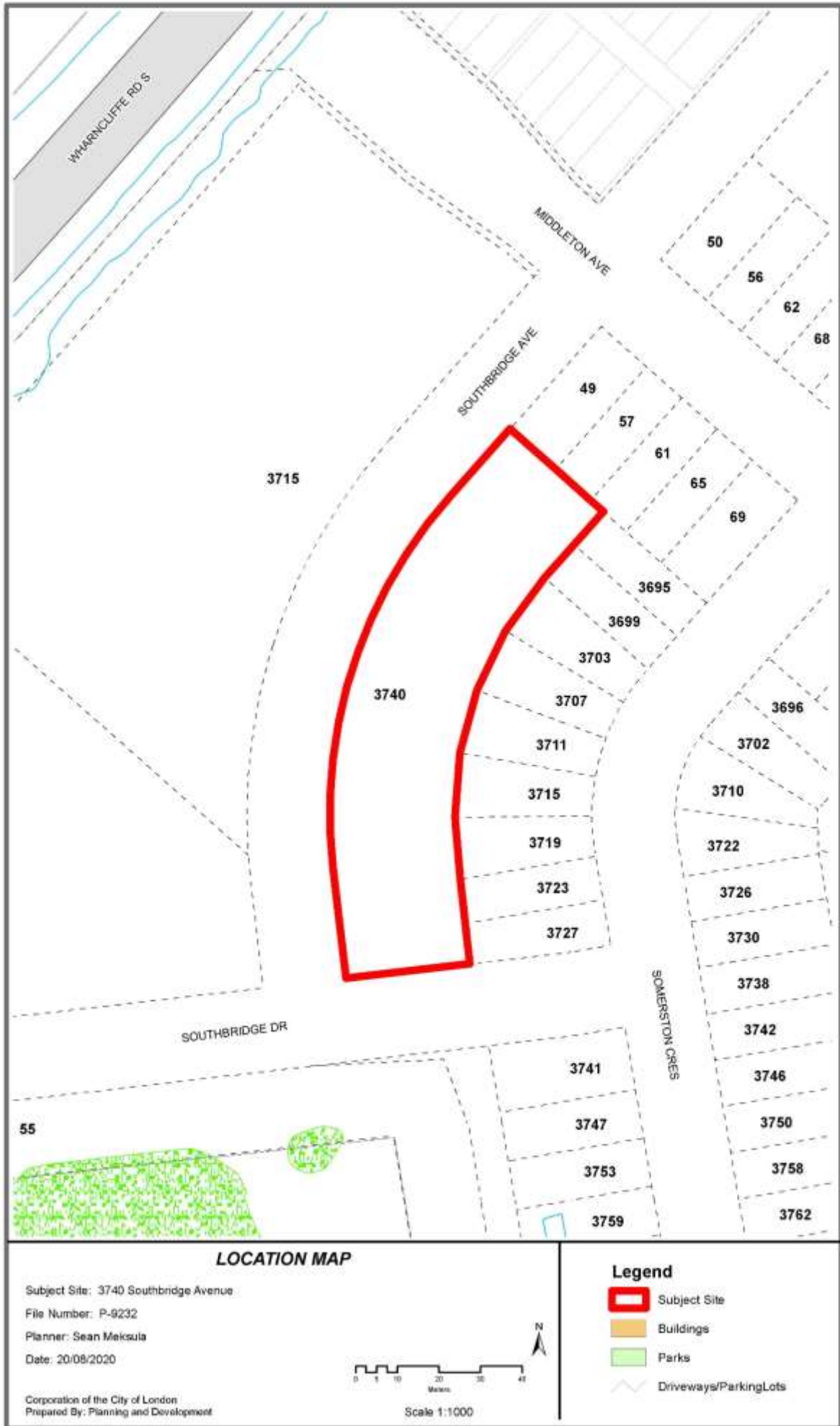
At its meeting held on September 15, 2020, Municipal Council resolved:

That, on the recommendation of the Director, Development Services, the following actions be taken with respect to the application by Sifton Properties Limited to exempt Block 130, Plan 33M-785 from Part-Lot Control:

- (a) Pursuant to subsection 50(7) of the *Planning Act*, R.S.O. 1990, c. P.13, the attached proposed by-law **BE INTRODUCED** at a future Council meeting, to exempt Block 130, Plan 33M-785 from the Part-Lot Control provisions of subsection 50(5) of the said Act, **IT BEING NOTED** that these lands are subject to registered subdivision agreements and are zoned holding Residential R4 Special Provision (h*h-100 R4-6(8)) in Zoning By-law No. Z.-1, which permits street townhouse dwellings with a minimum lot frontage of 7.0m;
- (b) The following conditions of approval **BE REQUIRED** to be completed prior to the passage of a Part-Lot Control By-law for Block 130, Plan 33M-785 as noted in clause (a) above:

- i. *The applicant be advised that the costs of registration of the said by-laws are to be borne by the applicant in accordance with City Policy;*
- ii. *The applicant submit a draft reference plan to the Development Services for review and approval to ensure the proposed part lots and development plans comply with the regulations of the Zoning By-law, prior to the reference plan being deposited in the land registry office;*
- iii. *The applicant submits to the Development Services a digital copy together with a hard copy of each reference plan to be deposited. The digital file shall be assembled in accordance with the City of London's Digital Submission / Drafting Standards and be referenced to the City's NAD83 UTM Control Reference;*
- iv. *The applicant submit each draft reference plan to London Hydro showing driveway locations and obtain approval for hydro servicing locations and above ground hydro equipment locations prior to the reference plan being deposited in the land registry office;*
- v. *The applicant submit to the City Engineer for review and approval prior to the reference plan being deposited in the land registry office; any revised lot grading and servicing plans in accordance with the final lot layout to divide the blocks should there be further division of property contemplated as a result of the approval of the reference plan;*
- vi. *The applicant shall enter into any amending subdivision agreement with the City, if necessary;*
- vii. *The applicant shall agree to construct all services, including private drain connections and water services, in accordance with the approved final design of the lots;*
- viii. *The applicant shall obtain confirmation from the Development Services that the assignment of municipal numbering has been completed in accordance with the reference plan(s) to be deposited, should there be further division of property contemplated as a result of the approval of the reference plan prior to the reference plan being deposited in the land registry office;*
- ix. *The applicant shall obtain approval from the Development Services of each reference plan to be registered prior to the reference plan being registered in the land registry office;*
- x. *The applicant shall submit to the City, confirmation that an approved reference plan for final lot development has been deposited in the Land Registry Office;*
- xi. *The applicant shall obtain clearance from the City Engineer that requirements iv), v) and vi) inclusive, outlined above, are satisfactorily completed, prior to any issuance of building permits by the Building Controls Division for lots being developed in any future reference plan;*
- xii. *The applicant shall provide a draft transfer of the easements to be registered on title for the reciprocal use of parts 1, 3, 4, 9, 10, 11, 14, 15, 19, 20, 22, 23, 24, 29, 30 and 31 by parts 2, 5, 6, 7, 8, 12, 13, 16, 17, 18, 21, 25, 26, 27, 28 and 32; and,*
- xiii. *That on notice from the applicant that a reference plan has been registered on a Block, and that Part-Lot Control be re-established by the repeal of the bylaw affecting the Lots/Block in question.*

LOCATION MAP



2.0 Description of Proposal

2.1 Development Proposal

The Applicant, Sifton Properties Limited, has requested exemption from part-lot control to create a total of sixteen (16) two-storey freehold street townhouse units on a local street (Southbridge Avenue). The dwellings will be freehold street townhouse units, approximately two storeys in height, and accessed from Southbridge Avenue.

3.0 Revelant Background

3.1 Planning History

The application for Draft Plan of Subdivision Approval (file 39T-15501/Z-8470) was submitted for the lands located at 132, 146 and 184 Exeter Road on March 12, 2015. Municipal Council approved the plan and the associated zoning by-law amendment, and the Approval Authority granted draft approval on January 27, 2017.

Phase 1a consisted of two (2) medium density multi-family blocks, one future street block, and 6 reserve (0.3 m, 1 ft.) blocks, all served by two new local streets, Mia Avenue and Kennington Way, was registered on July 12, 2019 as 33M-765. Phase 1b, consisting of forty two (42) single family lots, one (1) medium density blocks, two (2) open space blocks, four (4) 0.3 metre reserves, all served by two (2) new streets, Middleton Avenue and Kennington Way, was registered on October 9, 2019 as 33M-769.

Phase 2, which includes the subject lands (Block 130), consists of one hundred twenty-three (123) single detached lots, four (4) multi-family blocks, two (2) street townhouse blocks, one (1) open space block, four (4) pathway blocks, one (1) park block, and six (6) one foot reserve blocks, all served by one (1) new secondary collector/neighbourhood connector road (Middleton Avenue), and six (6) new local/neighbourhood streets (Southbridge Drive, Southbridge Avenue, Somerston Crescent, Lynds Street, Knott Drive, Earlston Crossing), was registered on June 8, 2020 as plan 33M-785.

Through the original draft plan of subdivision, staff interpreted these lands to be within the Medium Density Residential designation of the SWAP and the (1989) Official Plan. The same interpretation has been applied to this application.

The exemption from Part-Lot Control will allow for lot lines for individual units (lots) to be established on the registered block in a registered plan of subdivision. The conditions noted above have been satisfied as follows:

- i. *The applicant be advised that the costs of registration of the said by-laws are to be borne by the applicant in accordance with City Policy;*

Acknowledged by the applicant on October 26, 2020.

- ii. *The applicant submit a draft reference plan to the Development Services for review and approval to ensure the proposed part lots and development plans comply with the regulations of the Zoning By-law, prior to the reference plan being deposited in the land registry office;*

Satisfied by registration of reference plan 33R-20854.

- iii. *The applicant submits to the Development Services a digital copy together with a hard copy of each reference plan to be deposited. The digital file shall be assembled in accordance with the City of London's Digital Submission / Drafting Standards and be referenced to the City's NAD83 UTM Control Reference;*

Satisfied by submission on October 26, 2020 and City staff confirmed by email on November 3, 2020 that a digital file has been submitted in a format acceptable to the City of London.

- iv. *The applicant submit each draft reference plan to London Hydro showing driveway locations and obtain approval for hydro servicing locations and above ground hydro equipment locations prior to the reference plan being deposited in the land registry office;*

Satisfied by approval from London Hydro on October 23, 2020.

- v. *The applicant submit to the City Engineer for review and approval prior to the reference plan being deposited in the land registry office; any revised lot grading and servicing plans in accordance with the final lot layout to divide the blocks should there be further division of property contemplated as a result of the approval of the reference plan;*

Satisfied by the acceptance of Lot Grading and Servicing Plans submitted as per Site Plan Application SPA20-018.

- vi. *The applicant shall enter into any amending subdivision agreement with the City, if necessary;*

Satisfied as the subdivision agreement was registered and no further amendment was required.

- vii. *The applicant shall agree to construct all services, including private drain connections and water services, in accordance with the approved final design of the lots;*

The applicant agrees to fulfil this condition in its entirety related to the construction of all services and will be completed in accordance with the approved final designs of the lots through site plan approval.

- viii. *The applicant shall obtain confirmation from the Development Services that the assignment of municipal numbering has been completed in accordance with the reference plan(s) to be deposited, should there be further division of property contemplated as a result of the approval of the reference plan prior to the reference plan being deposited in the land registry office;*

Satisfied by municipal numbering assigned on September 24, 2020.

- ix. *The applicant shall obtain approval from the Development Services of each reference plan to be registered prior to the reference plan being registered in the land registry office;*

Satisfied by reference plan 33R-2020854.

- x. *The applicant shall submit to the City, confirmation that an approved reference plan for final lot development has been deposited in the Land Registry Office;*

Satisfied by reference plan 33R-2020854.

- x. *The applicant shall obtain clearance from the City Engineer that requirements iv), v) and vi) inclusive, outlined above, are satisfactorily completed, prior to any issuance of building permits by the Building Controls Division for lots being developed in any future reference plan;*

Staff are satisfied that servicing will be in place prior to the issuance of building permits

- xii. *The applicant shall provide a draft transfer of the easements to be registered on title for the reciprocal use of parts 1, 3, 4, 9, 10, 11, 14, 15, 19, 20, 22, 23, 24, 29, 30 and 31 by parts 2, 5, 6, 7, 8, 12, 13, 16, 17, 18, 21, 25, 26, 27, 28 and 32; and;*

Satisfied as the applicant has provided a draft transfer for the easements to be designated as Part 1 to 32 on Block 130 dated October 24, 2020.

- xiii. *That on notice from the applicant that a reference plan has been registered on a Block, and that Part-Lot Control be re-established by the repeal of the bylaw affecting the Lots/Block in question.*

Acknowledged by the applicant on October 26, 2020.

REFERENCE PLAN 33R-20854



Conclusion

The recommended exemption from Part-Lot Control is considered appropriate and in keeping with the planned intent of the Middleton Subdivision. In accordance with the Council Resolution, the conditions required to be completed prior to the passage of a Part-Lot Control By-law have been satisfied, and the applicant has been advised that the cost of registration of the by-law is to be borne by the applicant.

Prepared by:	Sean Meksula, MCIP, RPP Senior Planner, Development Services
Recommended by:	Paul Yeoman, RPP, PLE Director, Development Services
Submitted by:	George Kotsifas, P.ENG Managing Director, Development and Compliance Services and Chief Building Official
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

cc: Michael Pease, Manager, Development Services (Site Plan)
cc: Matt Feldberg, Manager, Development Services (Subdivisions)
cc: Ted Koza, Manager, Development Services (Subdivisions)

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Appendix A

Bill No. (Number inserted by Clerk's Office)
2020

By-law No. C.P.- (Number inserted by Clerk's Office)

A by-law to exempt from Part-Lot Control, lands located at 3740 Southbridge Avenue, legally described as Block 130 in Registered Plan 33M-785.

WHEREAS pursuant to subsection 50(7) of the *Planning Act, R.S.O. 1990, c. P.13*, as amended, and pursuant to the request from Sifton Properties Limited, it is expedient to exempt lands located at 3740 Southbridge Avenue, legally described as Block 130 in Registered Plan 33M-785, from Part Lot Control;

THEREFORE the Municipal Council of The Corporation of The City of London enacts as follows:

1. Block 130 in Registered Plan 33M-785, located at 3740 Southbridge Avenue, west of Middleton Avenue are hereby exempted from Part-Lot Control, pursuant to subsection 50(7) of the *Planning Act, R.S.O. 1990, c.P.13*, as amended, for a period not to exceed three (3) years; it being noted that these lands are zoned to permit street townhouse dwellings in conformity with the Residential R4 Special Provision (R4-6(8)) Zone of the City of London Zoning By-law No. Z-1.
2. This by-law comes into force when it is registered at the Land Registry Office.

PASSED in Open Council on

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – November 24, 2020
Second Reading – November 24, 2020
Third Reading – November 24, 2020

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee
From: Gregg Barrett
Director, City Planning and City Planner
Subject: Dancor Construction Ltd.
16035 Robin's Hill Road
Public Participation Meeting on: November 16, 2020

Recommendation

That, on the recommendation of the Director, City Planning and City Planner, the proposed by-law attached hereto as Appendix "A" with respect to the application of Dancor Construction Ltd. relating to the property located at 16035 Robin's Hill Road, **BE INTRODUCED** at the Municipal Council meeting November 24, 2020 to amend Zoning By-law No. Z.-1, in conformity with the Official Plan, to change the zoning of the subject property **FROM** a General Industrial (GI1) Zone and a General Industrial/Heavy Industrial (GI1*H16/HI1*H16) Zone, **TO** a General Industrial Special Provision (GI1) Zone and a General Industrial Special Provision/Heavy Industrial Special Provision (GI1()*H16/HI1()*H16) Zone.

Executive Summary

Summary of Request

The requested amendment to Zoning By-law Z.-1 for 16035 Robin's Hill Road is to amend the zoning applicable to the subject site to permit a waste transfer station, which is limited to medical and pharmaceutical waste, with a maximum of 600m² gross floor area, and with no outdoor storage permitted.

Purpose and the Effect of Recommended Action

The purpose and effect of the recommended action is to zone the subject site to allow for an additional industrial use through special provisions.

Rationale of Recommended Action

1. The recommended amendment is consistent with the Provincial Policy Statement (PPS), 2020;
2. The recommended amendment conforms to the in-force policies of the 1989 Official Plan, including but not limited to the policies of the General Industrial designation;
3. The recommended amendment conforms to the in-force policies of The London Plan, including but not limited to the policies of the Heavy Industrial Place Type; and
4. The recommended amendment will permit an appropriate use for the site which is compatible with the surrounding area and facilitates the continued operation and viability of the industrial area for current and future uses.

Analysis

1.0 Site at a Glance

1.1 Property Description

The subject site is located at the northeast corner of the intersection of Huron Street and Robin's Hill Road in the Airport District. The site is also located within the Skyway Industrial Park and the Airport Area Community Improvement Project Area.

The subject site is designated and utilized for a variety of industrial uses, including warehousing, distribution, and manufacturing, and is surrounded by other industrial uses, as well as the London International Airport and the Canadian National railway tracks.

The subject site includes five different municipal addresses for the various existing or planned buildings on the property. These addresses include 2240, 2244, and 2250 Huron Street; and 16025 and 16035 Robin's Hill Road. The proposed waste transfer station will be located within the existing building with the municipal address of 16035 Robin's Hill Road. The site is partially developed with two industrial buildings at 16025 and 16035 Robin's Hill Road, each comprises the gross floor area of 2,170m² in the northern portion of the site. The southern portion of the site is planned to be developed with two industrial buildings (2244 and 2250 Huron Street).



Figure 1. Building at 16035 Robin's Hill Road

1.2 Current Planning Information

- Official Plan Designation – General Industrial
- The London Plan Place Type – Heavy Industrial Place Type
- Existing Zoning – General Industrial (GI1) and General Industrial/Heavy Industrial (GI1*H16/HI1*H16)

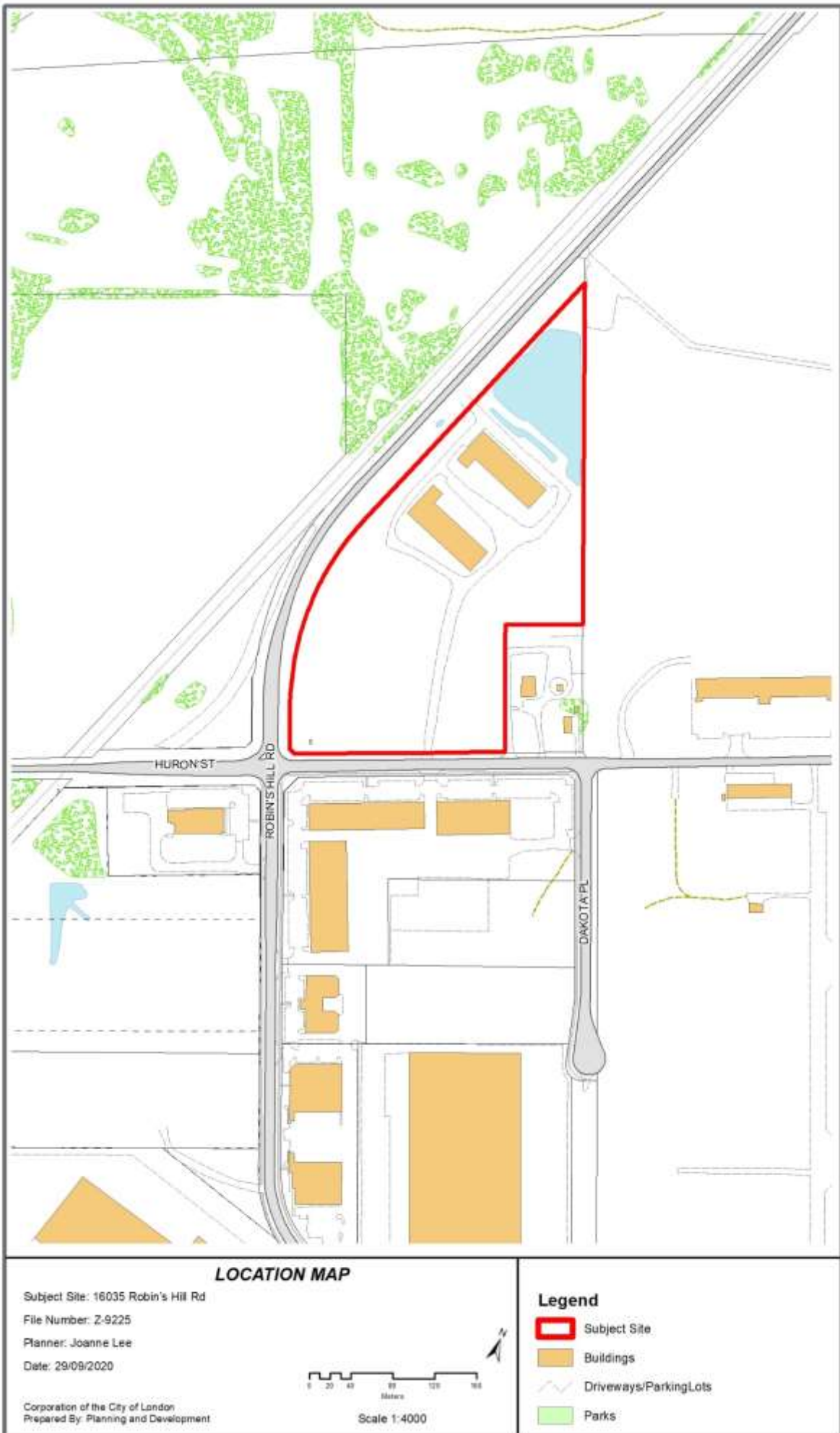
1.3 Site Characteristics

- Current Land Use – Industrial
- Frontage – 206.1m
- Depth – various
- Area – 7.33 hectares (18.11 acres)
- Shape – irregular

1.4 Surrounding Land Uses

- North – CN railway tracks, industrial (vacant), environmental review, open space
- East – London International Airport
- South – industrial (Fastenal Canada, Pierce Sound, E.H. Price)
- West – CN railway tracks, industrial (vacant)

1.5 Location Map



2.0 Description of Proposal

2.1 Development Proposal

Dancor Construction Ltd. has requested to amend the zoning for the property at 16035 Robin's Hill Road to permit a waste transfer station within the existing building, which is the northernmost building as shown below. Special provisions are requested to limit the waste transfer station such that it may only include medical and pharmaceutical waste, is restricted to the existing building, and may not have any outdoor storage.

2.2 Site Plan

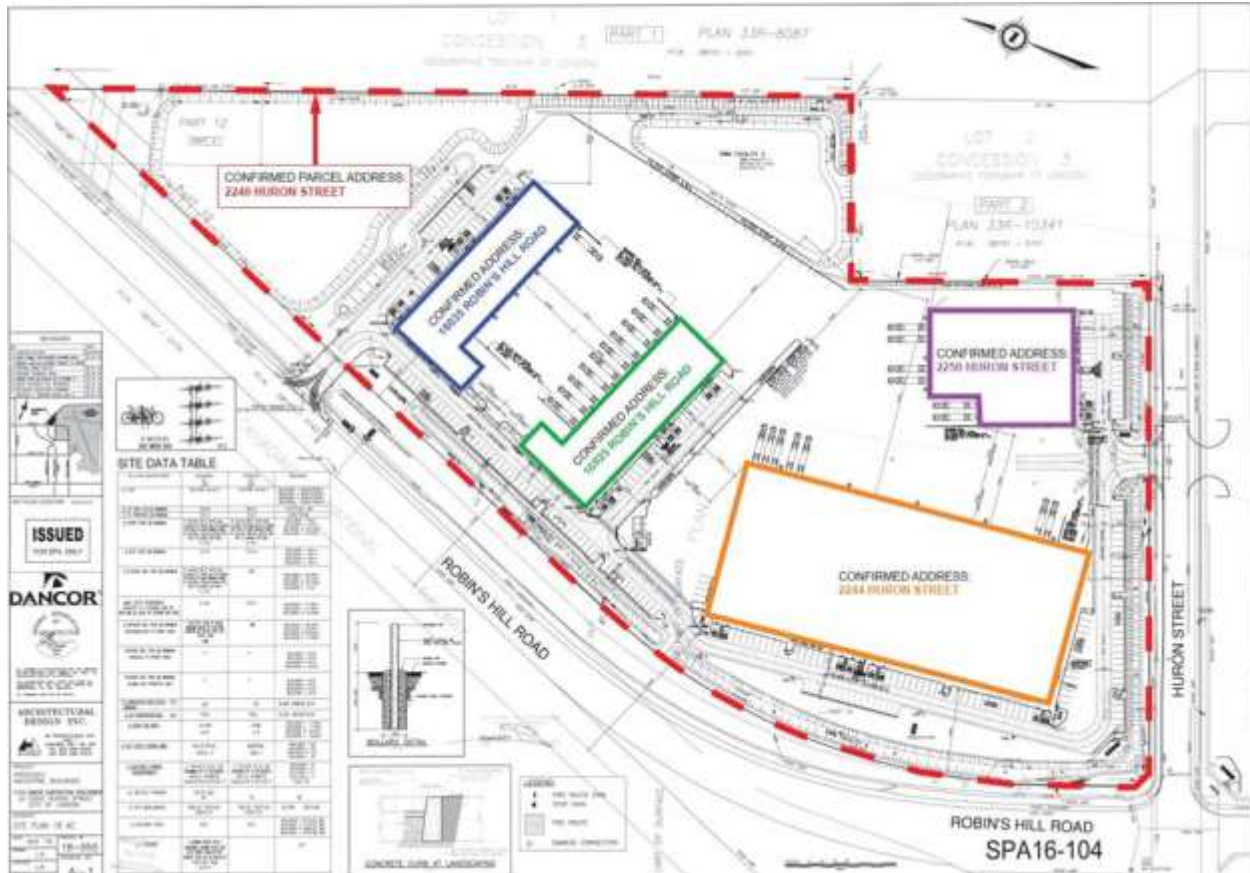


Figure 2. Site Plan

2.3 Detailed Description of Operation

ECS Cares Inc. is a tenant of the 16035 Robin's Hill Road building and provides medical waste disposal solutions and services, including sharps disposal and pharmaceutical disposal. The proposed waste transfer station will receive and store medical waste in secured containers inside the building for the purpose of shipping to another site. There will be no processing of liquid or hazardous materials on site. The waste transfer station does not require lands for outdoor storage. The waste will be restricted to materials that are medically or pharmaceutically derived, including used sharps.

3.0 Relevant Background

3.1 Planning History

The subject lands form part of the Skyway Industrial Park. On July 4, 2001, a plan of subdivision for the Skyway Industrial Park (39T-01501) was draft approved by the Approval Authority subject to conditions. A 3-year extension was granted by the Approval Authority on the recommendation of Council on June 3, 2004, resulting in a lapse date of July 4, 2007. Phase I of the Skyway Industrial Park subdivision was registered on August 17, 2005. On June 25, 2007, the Approval Authority approved another 3-year extension on the recommendation of Council, resulting in a lapse date of July 4, 2010. Phase II of the subdivision (Plan 33M-615) was registered on May 3, 2010 to proceed with developing the remainder of the draft plan, including the lands north of Huron Street and south of the CN railway. The registration of the plan includes a realignment of Robin's Hill Road where it intersects Huron Street to provide a safer and more efficient intersection design.

The subject lands also constitute part of the Airport Area Community Improvement Project Area. On January 30, 2006, Official Plan and zoning by-law amendments (OZ-7066) identified a framework for the Airport Area Community Improvement Plan (CIP) to offer incentives to aerospace companies located near London International Airport. On April 10, 2006, Council adopted the Airport Area CIP (By-law No. C.P.-1453-107). On January 22, 2007, this CIP was replaced by an amended Airport Area CIP (By-law No. C.P.-1461-33) adopted by Council to further refine eligibility criteria for program incentives. The amended CIP removed the eligibility for Brownfield incentives, which the previous CIP included to permit the Airport lands to participate in the Brownfields Incentive program.

On September 21, 2010, the subject site was rezoned General Industrial (GI1) from (h*GI1) through an application for removal of a holding provision (H-7804) to facilitate development of industrial uses within the site.

In December 2016, the City received a Site Plan application (SPA16-107) for development of four industrial buildings from Dancor Construction Ltd. On January 9, 2017, the conditional site plan control approval was approved, subject to the applicant satisfying their conditions of approval. All site plan control application matters were resolved and the conditions were met, and the Approval Authority approved the site plan control application on August 6, 2019.

3.2 Requested Amendment

Dancor Construction Ltd. has requested to change the zoning on the subject site from a General Industrial (GI1) and a General Industrial/Heavy Industrial (GI1*H16/HI1*H16) Zone to permit a waste transfer station as an additional permitted use, subject to limitations in a site specific zone. These special provisions will limit the proposed use to the transfer of only medical and pharmaceutical waste, with a maximum 600 m² of gross floor area, and without any outdoor storage.

3.3 Community Engagement and Department/Agency Comments (see more detail in Appendix B)

A Notice of Application was distributed and the application was advertised in the Londoner. No responses were received in response to these notices from the general public.

Through the circulation of the application comments were received from various departments and agencies, and no concerns were raised with regard to the proposed amendment.

Initial discussions with the London International Airport identified that the small scale of the waste transfer station will not pose adverse effects, such as noise, odour, particulates or vibration emissions, on the Airport, and the limitations in the site specific zone are sufficient to mitigate any of those emissions.

Similarly, discussions with Environmental Service staff included a discussion on the need to a holding provision requiring Environmental Compliance Approval from the Province prior to permitting the use, however this was also deemed unnecessary given the restrictions placed on the use through the requested site specific zone provisions.

3.4 Policy Context (see more detail in Appendix C) Provincial Policy Statement, 2020

The Provincial Policy Statement (PPS), 2020, provides policy direction on matters of provincial interest relating to land use planning and development. In accordance with Section 3 of the Planning Act, all decisions affecting land use planning matters shall be “consistent with” the policies of the PPS.

The PPS encourages healthy, liveable and safe communities that are sustained by accommodating an appropriate range and mix of employment uses, including industrial and commercial, to meet long-term needs (1.1.1.b).

1989 Official Plan

The site is designated as General Industrial on Schedule A – Land Use. The General Industrial designation is intended to promote a broad industrial base in the City through the provision of a choice of locations, lot sizes, services and road and rail access corridors, in order to accommodate a wide range of industrial uses, and to provide appropriate locations for industrial uses which have characteristics that may not be compatible with other land uses (7.1.2). The General Industrial allows for a broad range of industrial uses that could have a detrimental impact on residential or other sensitive uses (7.2).

The London Plan

The London Plan is the new Official Plan for the City of London (Council adopted, approved by the Ministry with modifications, and the majority of which is in force and effect). *The London Plan* policies under appeal to the Local Planning Appeal Tribunal (Appeal PL170100) and not in force and effect are indicated with an asterisk (*) throughout this report. *The London Plan* policies under appeal are included in this report for informative purposes indicating the intent of City Council, but are not determinative for the purposes of this planning application.

The site is located within the Heavy Industrial Place Type, in accordance with Map 1 – Place Types*. The intent of the Heavy Industrial Place Type is to accommodate industrial uses that generate significant planning impacts, such as noise, vibration, air emissions, hazardous materials, and unsightly outdoor storage. This Place Type is also to physically separate these uses from other uses to avoid land use conflicts and allow them to operate effectively without regular complaints from adjacent uses (1109).

The vision for the Industrial Place Type generally includes understanding the needs and demands of the industrial sectors (1113_2), accommodating a wide range of target industrial sectors and industrial uses (1113_3), attracting and establishing facilities and industrial-related centres of excellence that support the growth of industrial sectors (1113_7).

Zoning by-law

The existing zoning is a General Industrial (GI1) Zone and a General Industrial/Heavy Industrial (GI1*H16/HI1*H16) Zone. These zones provide for and regulate a broad range of industrial activities, which generally impact adjacent uses and should be separated from sensitive land uses. The General Industrial/Heavy Industrial Zone permits the maximum building height of 16 metres, while the maximum height in the General Industrial Zone is 50 metres.

4.0 Key Issues and Considerations

4.1 Issue and Consideration # 1 – Use

Provincial Policy Statement, 2020 (PPS)

The PPS provides that planning authorities shall promote economic development and competitiveness by providing for an appropriate mix and range of employment, institutional, and broader mixed uses to meet long-term needs (1.3.1.a). The PPS directs planning authorities to promote economic development and competitiveness by providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses (1.3.1.b). The requested amendment would broaden the range of permitted uses on the subject site and facilitate the adaptive use of the site that has experienced vacancies.

The PPS directs municipalities to provide waste management system at an appropriate size and type to accommodate present and future requirements, and facilitate,

encourage, and promote reduction, reuse and recycling objectives (1.6.10.1). This is consistent with facilitating a waste transfer station for medical and pharmaceutical waste.

1989 Official Plan

The General Industrial designation permits a broad range of industrial uses, including activities that could have a detrimental impact on residential or other uses (7.2). These uses include assembling, fabricating, manufacturing, processing, and repairing activities; service trades; public and private utilities and related facilities; large storage facilities, such as wholesale and warehouse establishments, contractors yards, transportation terminals, and heavy equipment sales and service; and residential and other source recycling facilities (7.2.1).

Waste transfer stations are permitted on lands designated General Industrial and lands within the Waste Management and Resource Recovery Area (17.5.3.i) and require an amendment to the Zoning By-law (17.5.3.ii). Furthermore, waste transfer stations are contemplated by site specific zoning, subject to the criteria in Section 7.8 – Planning Impact Analysis (7.2.2). The Planning Impact Analysis criteria in the Official Plan for industrial uses are to be used to evaluate the appropriateness of a proposed change in land use and identify ways to reduce any adverse impacts on surrounding land uses (7.8). The recommended amendment constitutes both a general proposal and a site-specific proposal to determine the appropriateness of the location of a waste transfer station. A Planning Impact Analysis for the site is attached in Appendix D. The requested waste transfer station, with the limitations identified in the site specific zone, has been found to be appropriate for the subject site based on the Planning Impact Analysis in conformity with the 1989 Official Plan.

The London Plan

The Heavy Industrial Place Type permits a broad range of industrial uses that may impose impacts on surrounding land uses due to their emissions such as noise, odour, particulates and vibration, and uses that have large amounts of outdoor storage (1109, 1114_1, 2). Within the Place Type, service trades, public and private utilities and related facilities, large storage facilities, contractors yards, transportation terminals and heavy equipment sales and services, and residential and other source recycling facilities may be permitted provided that they will not detract from the industrial operations of the heavy industrial area (1114_4).

The London Plan contemplates waste transfer stations only on lands in the Heavy Industrial and the Waste Management Resource Recovery Area Place Types, subject to a zoning by-law amendment application and full planning analysis (1114_10.h). The subject site is within the appropriate place type for the proposed use.

Waste transfer stations will be planned, designed, operated, and maintained in such a way as to promote compatibility with adjacent existing and future land use, and to minimize any adverse impacts on surrounding area (483, 1114_10.h). The proposed waste transfer station is a compatible land use to the adjacent land uses.

The proposed use is to store and transfer limited type of waste and does not include any kind of treatment or processing. Waste that will be stored on-site may include sharps, pharmaceutical products, cytotoxic waste, non-hazardous solid industrial waste including e-waste and other waste destined for recycling, as well as liquid industrial waste or hazardous waste. Based on available information at this stage, staff from Environment, Fleet and Solid Waste in the Environmental and Engineering Services indicated that there are no concerns with the materials provided that the materials are stored inside the building and meet the requirements of the Ministry of the Environment, Conservation, and Parks. Further details of the requirements are provided in the following section.

4.2 Issue and Consideration # 2 – Environmental Compliance Approval

Official Plan

Waste transfer stations may be permitted by site specific zoning, subject to meeting the requirements of the Ministry of the Environment, currently the Ministry of the Environment, Conservation and Parks, and other ministries in accordance with the *Environmental Assessment Act*, the *Environmental Protection Act*, and other guidelines and policies that apply (7.2.2.iii). The location of waste transfer stations or storage areas, and facilities for storing hazardous waste will require the approval of the Ministry of the Environment, including certification under the *Environmental Protection Act* (17.5.3.iii). All development proposals which may potentially generate or store hazardous waste require approvals from the appropriate authorities to ensure that the location and operation of such developments will not adversely affect the health and safety of the public or the natural environment (17.5.5).

The London Plan

The policies with respect to the requirements of the Ministry of the Environment, Conservation and Parks, formerly the Ministry of the Environment and Climate Change, in The London Plan parallel those of the 1989 Official Plan. Waste transfer stations are permitted in the Heavy Industrial Place Type subject to meeting the requirements of the Ministry of the Environment and Climate Change (1114_10.c). The approval of Ministry of the Environment and Climate Change, including certification under the *Environmental Protection Act* is required to permit waste transfer stations or storage areas, and facilities for storing hazardous waste (1114_10.h). Where they may potentially generate or store hazardous waste, they also require all necessary approvals from the appropriate authorities to ensure that the location and operation of these will not adversely affect the health and safety of the public and the natural environment (1114_10.i).

The London Plan also provides that uses requiring Environmental Compliance Approval (ECA) may have final reading of the Zoning By-law amendment withheld or a holding provision applied to ensure that the ECA is received prior to the use being permitted (1120). This is to ensure that any risks associated with hazardous waste will be managed appropriately before the use can be established. In this instance, however, given the limited scale of the proposed use and the restrictions that are recommended in the site specific zone, any risk associated with the use is minimal and will still require ECA issuance. This satisfies the intent of policy 1120 and it is therefore recommended that for this proposal no holding zone be applied.

Zoning By-law

The Zoning By-law defines waste transfer stations as “facilities used in the management and processing of liquid and hazardous wastes, wastes and recyclable materials which has a Provisional Certificate of Approval, for such purposes under the *Environmental Protection Act*”. Provisional Certificate of Approval is now known as an Environmental Compliance Approval (ECA). The proposed use of the site has been classified under the Zoning By-law as a waste transfer station, although the operation is different than what is typically defined under this use, in that it is at a small scale, is done completely within the building, and the medical and pharmaceutical waste is kept within secured containers at all times.

The Zoning By-law provides a holding provision (h-47) that may be applied for waste transfer stations (3.8.2). The holding provision may be applied to ensure that the development of the recycling facility will be planned, designed, operated and maintained in such a way as to promote compatibility with adjacent, existing and future land uses, and to minimize any adverse impacts on the natural environment, the h-47 symbol shall not be deleted until a Certificate of Approval has been granted by the Ministry of the Environment. The amendment, however, does not require the h-47 holding provision given the limitations on the proposed use.

The Ministry of the Environment, Conservation and Parks issues an ECA and establishes legally enforceable rules for operations through ECAs. The City is not involved in enforcement and compliance matters dealing with the ECA.

The proposed restrictions on the waste transfer station are adequate to ensure that the proposed use will not pose any significant public health and safety or environmental risks.

The tenant contacted with the Ministry of the Environment, Conservation and Parks for pre-application consultation to support the requested operation and use of the subject site through an ECA. The Ministry indicated that the application was generally complete and there were no major concerns based on a Design and Operation report prepared by the tenant, although City staff did not review the report. The Ministry, however, looks for assurance that the City is satisfied that the site is or will be in compliance with the 1989 Official Plan, the London Plan, and the Zoning By-law. Once the site is property zoned to permit the use, the Minister would address any concerns and govern the specific operation of the waste transfer station through the ECA.

5.0 Conclusion

The recommended amendment is consistent with the Provincial Policy Statement, 2020, which promotes a broader range and mix of employment opportunities. This amendment conforms with the General Industrial policies of the 1989 Official Plan and the Heavy Industrial Place Type policies in the London Plan. The specific nature of the waste transfer station and the limitations on it through the proposed site-specific zone are appropriate for the site and compatible with existing and planned industrial development in the surrounding area and will not have any adverse impacts on the environment.

Prepared by:	Joanne Lee Planner I, Planning Policy
Submitted by:	Justin Adema, MCIP, RPP Manager, Planning Policy
Recommended by:	Gregg Barrett, AICP Director, City Planning and City Planner
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Planning Services	

November 9, 2020
JL/jl

Appendix A

Bill No. (number to be inserted by Clerk's Office)
2020

By-law No. Z.-1-18 _____

A by-law to amend By-law No. Z.-1 to
rezone an area of land located at 16035
Robin's Hill Road.

WHEREAS Dancor Construction Ltd. has applied to rezone an area of land located at 16035 Robin's Hill Road, as shown on the map attached to this by-law, as set out below;

AND WHEREAS this rezoning conforms to the Official Plan;

THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

- 1) Schedule "A" to By-law No. Z.-1 is amended by changing the zoning applicable to lands located at 16035 Robin's Hill Road, as shown on the attached map comprising part of Key Map No. A104, from a General Industrial (GI1) Zone and a General Industrial/Heavy Industrial (GI1*H16/HI1*H16) to a General Industrial Special Provision (GI1(_)) Zone and a General Industrial/Heavy Industrial (GI1(_)*H16/HI1(_)*H16) Zone.
- 2) Section Number 41.4 of the General Industrial Zone (GI1) Zone is amended by adding the following Special Provision:

GI1(_) 16035 Robin's Hill Road

- a) Additional Permitted Use
 - i) Waste Transfer Station, subject to the following restrictions:
 - a. Limited to transfer of medical and pharmaceutical waste;
 - b. Limited to the existing building;
 - c. Maximum Gross Floor Area of 600m²; and
 - d. Outdoor storage shall be prohibited.

- 3) Section Number 42.4 of the Heavy Industrial Zone (HI1) Zone is amended by adding the following Special Provision:

HI1(_) 16035 Robin's Hill Road

- a) Additional Permitted Use
 - i) Waste Transfer Station, subject to the following restrictions:
 - a. Limited to transfer of medical and pharmaceutical waste;
 - b. Limited to the existing building;
 - c. Maximum Gross Floor Area of 600m²; and
 - d. Outdoor storage shall be prohibited.

The inclusion in this By-law of imperial measure along with metric measure is for the purpose of convenience only and the metric measure governs in case of any discrepancy between the two measures.

This By-law shall come into force and be deemed to come into force in accordance with Section 34 of the *Planning Act, R.S.O. 1990, c. P13*, either upon the date of the passage of this by-law or as otherwise provided by the said section.

PASSED in Open Council on November 24, 2020.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – November 24, 2020
Second Reading – November 24, 2020
Third Reading – November 24, 2020

AMENDMENT TO SCHEDULE "A" (BY-LAW NO. Z.-1)



Appendix B – Public Engagement

Community Engagement

Public liaison: On July 15, 2020, Notice of Application was sent to 10 property owners in the surrounding area. Notice of Application was also published in the *Public Notices and Bidding Opportunities* section of *The Londoner* on July 16, 2020. A “Planning Application” sign was also posted on the site.

0 replies were received.

Nature of Liaison: Possible change to the zoning from a General Industrial/Heavy Industrial (GI1*H16/HI1*H16) Zone to a General Industrial Special Provision/Heavy Industrial Special Provision (GI1(_)*H16/HI1(_)*H16) Zone.

Responses: A summary of the various comments received include the following:

- Restricted access to Robin’s Hill Road.

Agency/Departmental Comments

London Hydro – July 16, 2020

This is presently serviced by London Hydro. Contact the Engineering Department if a service upgrade is required to facilitate the new building. Any new and/or relocation of existing infrastructure will be at the applicant’s expense, maintaining safe clearances from L.H. infrastructure is mandatory. **Note:** Transformation lead times are minimum 16 weeks.

London Hydro has no objection to this proposal. However, London Hydro will require a blanket easement.

Development Services (Engineering) – August 17, 2020

The site has come in several times already this year (2240 Huron) and engineering has the same comments for a future application to pass along:

- Access to Robin’s Hill Road to be restricted to right in/right out consistent with the City’s Access Management Guidelines
- Detailed comments regarding access design will be made through the site plan process.

Upper Thames River Conservation Authority (UTRCA) – August 19, 2020

August 19, 2020
City of London – Development Services
P.O. Box 5035
London, Ontario N6A 4L9
Attention: Joanne Lee (via email)

Dear Ms. Lee:

Re: Application to Amend the Zoning By-law - File No. Z-9225
Applicant: Dancor Construction Ltd.
2240 Huron Street and 16035 Robin’s Hill Road London, ON

The Upper Thames River Conservation Authority (UTRCA) has reviewed this application with regard for the policies in the *Environmental Planning Policy Manual for the Upper Thames River Conservation Authority (June 2006)*. These policies include regulations made pursuant to Section 28 of the *Conservation Authorities Act*, and are consistent with the natural hazard and natural heritage policies contained in the

Provincial Policy Statement (2020, PPS). The *Upper Thames River Source Protection Area Assessment Report* has also been reviewed in order to confirm whether these lands are located in a vulnerable area. The Drinking Water Source Protection information is being disclosed to the Municipality to assist them in fulfilling their decision making responsibilities under the *Planning Act*.

PROPOSAL & BACKGROUND

The applicant is proposing to rezone the subject lands to a waste transfer station which is limited to medical and pharmaceutical waste; no outdoor storage; and, a building with a maximum of 600 m² gross floor area.

CONSERVATION AUTHORITIES ACT

The UTRCA has the provincially delegated responsibility for the natural hazard policies of the PPS, as established under the “Provincial One Window Planning System for Natural Hazards” Memorandum of Understanding between Conservation Ontario, the Ministry of Natural Resources and Forestry (MNR) and the Ministry of Municipal Affairs and Housing. This means that the Conservation Authority represents the provincial interest in commenting on *Planning Act* applications with respect to natural hazards and ensures that the proposal is consistent with the PPS.

The UTRCA’s role in the development process is comprehensive and coordinates our planning and permitting interests. Through the plan review process, we ensure that development proposals meet the tests of the *Planning Act*, are consistent with the PPS, conform to municipal planning documents as well as the policies in the UTRCA’s Environmental Planning Policy Manual (2006). Permit applications must meet the requirements of Section 28 of the *Conservation Authorities Act* and our policies as set out in our Environmental Planning Policy Manual. This approach ensures that the principle of development is established through the *Planning Act* approval process and that subsequently, the necessary approvals can be issued under Section 28 of the *Conservation Authorities Act* once all of the planning matters have been addressed.

Section 28 Regulations - Ontario Regulation 157/06

The subject lands are regulated by the UTRCA in accordance with Ontario Regulation 157/06, made pursuant to Section 28 of the *Conservation Authorities Act*. The regulation limit is comprised of:

- A riverine flooding hazard associated with the Piper Drain and its’ tributaries.

Please refer to the attached mapping for the location of the identified feature. It should be noted that where a discrepancy in the mapping occurs, the text of the regulation prevails and a feature determined to be present on the landscape is regulated by the UTRCA.

The UTRCA has jurisdiction over lands within the regulated area and requires that landowners obtain written approval from the Authority prior to undertaking any site alteration or development within this area including filling, grading, construction, alteration to a watercourse and/or interference with a wetland.

UTRCA ENVIRONMENTAL PLANNING POLICY MANUAL (2006)

The UTRCA’s Environmental Planning Policy Manual is available online at:

<http://thamesriver.on.ca/planning-permits-maps/utrca-environmental-policy-manual/>

NATURAL HAZARDS

As indicated, the UTRCA represents the provincial interest in commenting on Planning Act applications with respect to natural hazards. The PPS directs new development to locate and avoid natural hazards. In Ontario, prevention is the preferred approach for managing hazards in order to reduce or minimize the risk to life and property. This is achieved through land use planning and the Conservation Authority’s regulations with respect to site alteration and development activities.

The UTRCA’s natural hazard policies are consistent with the PPS and those which are applicable to the subject lands include:

2.2.4 Natural Hazard Features

An allowance of 15 metres has been added to the Riverine Hazard Limit for the purpose of maintaining sufficient access for emergencies, maintenance and construction activities. This allowance provides for an extra factor of safety providing protection against unforeseen conditions that may adversely affect the land located adjacent to a natural hazard area.

3.2.2 General Natural Hazard Policies

These policies direct new development and site alteration away from hazard lands. No new hazards are to be created and existing hazards should not be aggravated. The Authority also does not support the fragmentation of hazard lands which is consistent with the Provincial Policy (PPS) and is intended to limit the number of owners of hazardous land and thereby reduce the risk of unregulated development etc.

3.2.3 Riverine Flooding Hazard Policies

These policies address matters such as the provision of detailed flood plain mapping, flood plain planning approach and uses that may be allowed in the flood plain subject to satisfying the UTRCA's Section 28 permit requirements.

DRINKING WATER SOURCE PROTECTION: *Clean Water Act*

The subject lands have been reviewed to determine whether or not they fall within a vulnerable area (Wellhead Protection Area, Highly Vulnerable Aquifer, and Significant Groundwater Recharge Areas). Upon review, we can advise that the subject lands **are** within a vulnerable area. For policies, mapping and further information pertaining to drinking water source protection, please refer to the approved Source Protection Plan at: <https://www.sourcewaterprotection.on.ca/approved-source-protection-plan/>

RECOMMENDATION

As indicated, the subject lands are regulated by the UTRCA. A Section 28 permit application has been issued for development activity on these lands. All development must proceed in accordance with the terms and conditions of this permit. Should any amendments be proposed, we require that the applicant contact a UTRCA Land Use Regulations Officer to amend the permit. The UTRCA has no objections to this application to rezone the subject lands.

MUNICIPAL PLAN REVIEW FEE

Consistent with UTRCA Board of Directors approved policy, Authority Staff are authorized to collect fees for the review of *Planning Act* applications and associated technical peer reviews. Our fee for the review of the Official Plan and Zoning By-law Amendment application is \$275.00. These fees will be invoiced to the owner under separate cover.

Thank you for the opportunity to comment.

Yours truly,

UPPER THAMES RIVER CONSERVATION AUTHORITY

Stefanie Pratt

Land Use Planner

Enclosure: UTRCA Regulation Limit Mapping (please print on legal paper for accurate scales)

c.c.: Brent Verscheure, UTRCA Land Use Regulations Officer

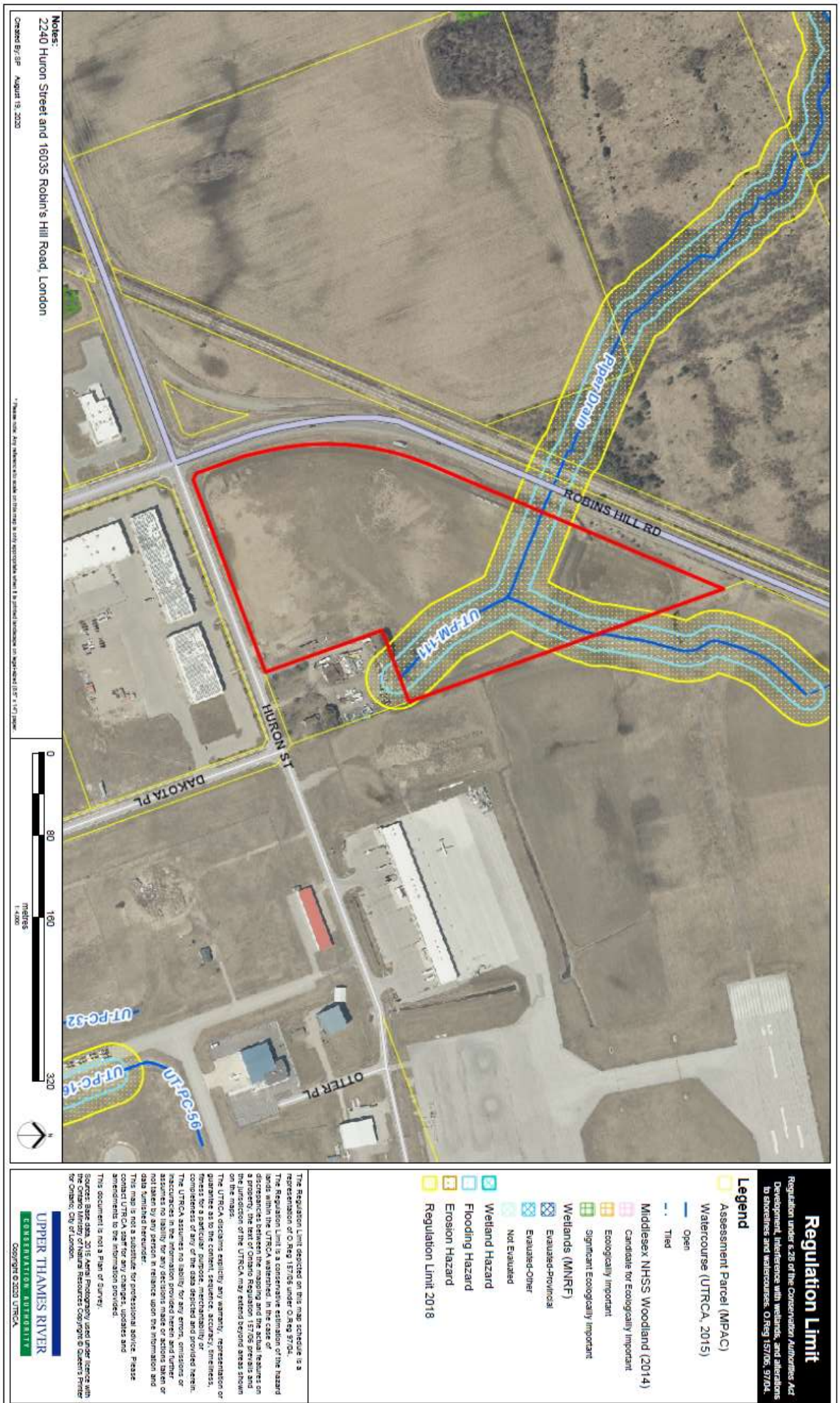


Figure 3. UTRCA Regulation Limit Mapping

London Fire Department – August 27, 2020

We have had a review and there are no concerns with this application.

Appendix C – Policy Context

The following policy and regulatory documents were considered in their entirety as part of the evaluation of this requested land use change. The most relevant policies, by-laws, and legislation are identified as follows:

Provincial Policy Statement, 2020

- 1.1.1.b – Appropriate range and mix of uses
- 1.3.1.a – Appropriate range and mix of employment and broader mixed uses
- 1.3.1.b – Opportunities for a diversified economic base
- 1.6.10.1 – Waste management systems

The 1989 Official Plan

- 7.1.1 – Objectives for all industrial designations
- 7.1.2 – General Industrial objectives
- 7.2 – General Industrial Designation
 - 7.2.1 – Main permitted uses in General Industrial
 - 7.2.2 – Uses permitted by site specific zoning in General Industrial
 - 7.2.2.iii) – Requirements of the Ministry of the Environment and other Ministries (e.g. Environmental Compliance Approval) for waste transfer stations
- 7.8 – Planning Impact Analysis
 - 17.5.1 – Cost-effective alternative waste methods of disposing of or utilizing solid wastes
 - 17.5.3 – Criteria for locating waste transfer stations

The London Plan

- 483 – Compatibility of waste transfer stations with adjacent existing and future land uses
- 1109 – Heavy Industrial Place Type
- 1113 – Vision for Industrial Place Type
- 1114_1 – Generally permitted uses in Heavy Industrial Place Type
- 1114_10.c – Approval from the Ministry of the Environment for waste transfer stations
- 1114_10.h – Appropriate place types for waste transfer stations and compatibility of waste transfer stations to surrounding land uses
- 1114_10.i – Necessary approvals from applicable authorities for facilities that potentially store hazardous waste
- 1120 – Holding provision as a pre-condition for Environmental Compliance Approval

Zoning By-law Z.-1

- Section 2 – Definitions (definition of waste transfer stations)
- Section 3.8.2) – Holding Zone Provision subject to waste transfer stations
- Section 41 – General Industrial (GI) Zone
- Section 42 – Heavy Industrial (HI) Zone

Site Plan Control By-law – C.P.-1455-541

Waste Discharge By-law – WM-16

Appendix D – Planning Impact Analysis

7.8 Planning Impact Analysis	
7.8.2.i) General Proposals	
Where an Official Plan amendment and/or zone change application is for a general change in land use and does not relate to a specific development proposal, or where site specific information on the future development of the site is not required, all or some of the following criteria may be considered:	
Criteria	Response
(a) Compatibility of proposed uses with surrounding land uses, and the likely impact of the proposed development on present and future land uses;	The requested waste transfer station is a compatible use with the surrounding land uses and is not anticipated to detract from the ability of the surrounding area to accommodate other industrial uses in the future.
(b) The size and shape of the parcel of land on which a proposal is to be located, and the ability of the site to provide adequate services for industrial development;	A gross floor area of 600m ² in the building at 16035 Robin's Hill Road is of sufficient size and shape to accommodate a waste transfer station. The addition of the waste transfer station will not require the provision of adequate services for industrial development.
(c) The supply of vacant land in the area which is already designated and/or zoned for the proposed use;	Waste transfer stations are permitted subject to a site-specific amendment, and the lands in the area are designated to accommodate general industrial uses that do not include the proposed use.
(d) The location of any proposal for industrial development where there is good access to arterial roads and/or rail lines;	The subject lands have easy access to two arterial roads (Robin's Hill Road and Huron Street). The subject lands are located in close proximity to Veteran Memorial Parkway interchange with Huron Street, and the Canadian National railway tracks.
(e) Impacts of the proposed change on the transportation system, including transit;	The study lands are not serviced by London Transit. The subject lands will not significantly impact any local streets and the railway tracks given their proximity to Highway 401.
(f) For non-industrial uses within industrial designations the potential of the proposed uses to deter future industrial development; and,	Not applicable
(g) Secondary uses which may be considered as sensitive land uses are not to be located within 300m of an area designed General Industrial and are located on either a primary collector or arterial road.	Not applicable
7.8.2.ii) Site Specific Proposals	
Where an Official Plan amendment and/or zone change is for a specific development proposal, or where more site specific detailed information on the type and nature of future development is required, all, or some of the following criteria may be considered:	
(a) All of the criteria listed in policy 7.8.2.i) of the Plan;	Responses to the criteria can be found above.
(b) Compliance with Ministry of the Environment standards and guidelines	The requested waste transfer station complies with these standards, and will

and the City's Waste Discharge By-law, relating to the compatibility of the proposed use with existing uses; and the potential impact of any noise, odour or other emissions on surrounding land uses;	not generate potential adverse impacts on surrounding land uses, including the London International Airport. The Airport is supportive of the requested use provided that there will be no adverse effects related to emissions, noise, odour, particulates or vibration on the Airport. These matters are controlled or limited through the site specific restrictions on the proposed use.
(c) The height, location and spacing of any buildings in the proposed development, and any potential impacts on surrounding land uses;	The requested waste transfer station will occupy the one-storey building at 16035 Robin's Hill Road on-site, without any physical changes to the built form and scale of the exterior.
(d) The extent to which the proposed development provides for the retention of any desirable vegetation or natural features that contribute to the visual character of the surrounding area;	No physical changes to the site are proposed as part of the requested amendment.
(e) The location of vehicular access points and their compliance with the City's road access policies and Site Plan Control by-law, and the likely impact of traffic generated by the proposal on City streets, on pedestrian and vehicular safety, and on surrounding properties;	The location of vehicular access points is not proposed to change as part of the requested amendment. The proposal is part of a much larger development that has received a site plan approval from the City and addressed access to Robin's Hill Road (a right-in/right-out access in accordance with the City's Access Management Guidelines). Further details of the access will be addressed through the Site Plan approval process.
(f) The exterior design in terms of the bulk, scale, and layout of buildings, and the integration of these uses with present and future land uses in the area;	The requested waste transfer station will not include outdoor storage and there are no proposed physical changes to the exterior design.
(g) The potential impact of the proposed development on surrounding natural features and heritage resources;	The requested waste transfer station functions as an indoor-storage facility without the processing of liquid or hazardous materials onsite. The waste transfer station will not have potential adverse impact on the natural features and heritage resources.
(h) Compliance of the proposed development with the provisions of the City's Official Plan and Zoning By-law, Site Plan Control By-law, and Sign Control By-law; and	The requested waste transfer station complies with the provisions of the 1989 Official Plan and The London Plan.
(i) Measures planned by the applicant to mitigate any adverse impacts on surrounding land uses and streets which have been identified as part of Planning Impact Analysis.	There are no adverse impacts on surrounding land uses and streets to be addressed as a result of the requested waste transfer station, and no mitigative measures are required.

Report to Planning and Environment Committee

To: Chair and Members
Planning and Environment Committee

From: Kelly Scherr, P. Eng., MBA, FEC
Managing Director, Environmental & Engineering Services and City Engineer

Subject: Public Participation Meeting - New Proposed City of London Tree Protection By-law

Date: November 16, 2020

Recommendation

That, on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, the attached proposed new Tree Protection By-law (Appendix "A") BE INTRODUCED at the November 23, 2020 meeting of Municipal Council to repeal and replace Tree Protection By-law C.P.-1515 – 228 (Appendix "C") with effect from March 1, 2021.

Executive Summary

On September 23, 2019, a public participation meeting was held regarding a proposed new Tree Protection By-law to replace the existing one. The recommendations at the time were informed by consultation including workshops, public surveys, stakeholder and Trees and Forests Advisory Committee discussions. Subsequent public comments and input from staff in other Divisions of the City have further informed the by-law development process, resulting in some further refinements to the proposed by-law as addressed in this report (Appendix "B").

This report addresses the items that were brought forward at the public participation meeting and identifies any new recommendations, with the goal of repealing Tree Protection By-law C.P.-1515-228 and replacing it with this new by-law on March 1, 2021. The most significant change since the 2019 report is updated mapping of Tree Protection Areas in response to issues identified at the previous meeting.

Necessary changes to forms and administrative processes are being developed by staff, in preparation for when the new by-law becomes "live".

Analysis

1.0 Previous Reports

September 23, 2019	Planning & Environment Committee Report and Public Participation Meeting – Proposed New City of London Tree Protection By-law
June 17, 2019	Planning & Environment Committee Report - Proposed New City of London Tree Protection By-law and Notice of PPM
June 18, 2018	Planning & Environment Committee Report – The City of London Tree Protection By-Law C.P.-1515-228 Amendments and Implementation Update
November 20, 2017	Planning & Environment Committee Report - The City of London Tree Protection By-law-C.P.1515-228 Implementation Review
July 17, 2017	Planning & Environment Committee Report – Staffing Resources to support the new Tree Protection By-law
August 22, 2016	Planning & Environment Committee Report – Adoption of the Tree Protection By-law and direction to monitor the

implementation of the by-law and provide a status report and any recommended amendments to the by-law within a period of one year

August 26, 2014

Planning & Environment Committee Report - Adoption of the Urban Forest Strategy and endorsement of an Implementation Plan that includes by-law revisions

2.0 Other Legislation and Policies

Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017

- Bill 68 amended subsection 270 (1) of the Municipal Act, 2001 by adding a new clause (7) that requires municipalities to adopt and maintain policies which sets out “the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.” This provision came into effect March 1, 2019.

The London Plan Policies, 2016

- Policy 389 (6) “We establish policies, by-laws, practice standards, and guidelines that clearly define what trees will be preserved and what trees may be removed, to ensure the structure and functions of the Urban Forest are not harmed.”
- Policy 392 “Engagement of the public to manage private trees and woodlands is crucial to achieving tree canopy coverage targets and will be implemented through education, promoting stewardship, planting programs, and the development of policies, by-laws, standards and guidelines.”
- Policy 399 (8) “A tree conservation by-law for private property will be established to prohibit the destruction of trees, unless and until such time as a tree cutting permit is obtained, where required.”

3.0 Rationale

Prior to 2014, and the adoption of the Urban Forest Strategy, canopy cover in the city was on a downward trend. London’s Urban Forest Strategy set a goal of 34% tree canopy cover by 2065. To help achieve this target it is important to protect existing large trees and areas of trees and woodlands. The Tree Protection By-law is designed to maintain healthy trees for as long as possible and is subject to various exemptions and considerations where healthy tree removal may be necessary.

Is the by-law achieving its goals?

The effectiveness of the by-law has been estimated from a number of sources such as data collected from applications and feedback from industry. The amount of tree canopy preserved since 2016 through denial of permits under the by-law, that remained unaffected by a contrary decision at a hearing, is estimated at 9 hectares. Of that 9 hectares that was preserved, 0.75 ha of tree canopy was later removed under a different approvals process such as site plan which is governed by the Planning Act.

Staff receive about 500 applications for permit every year of which about 10% are denied. For every application received, it is estimated by local arborists that four applications are never submitted, and instead the tree was pruned or left alone because of bylaw awareness. Based on the limited information that is available, staff estimate that each year around 2,000 Distinctive Trees with an average 14m crown diameter that could have been removed by will of the landowner are retained because of the by-law, whether directly administered through denial of a permit, or indirectly through no application being submitted. It is estimated that this has preserved 120 hectares of tree canopy since 2016.

One of the most effective ways to determine if the City is succeeding is through a canopy cover analysis. In 2019 this analysis was completed and showed that the city’s tree canopy cover has increased, from 23.7% (2015) to 26.8% (2019). Some of this 3.1% increase may be attributed to improved measurement methodology, utilising light detection and ranging (LiDAR). It is more likely, however, that it is an outcome of the comprehensive approach to managing the urban forest through the implementation of the Urban Forest Strategy. Much of the success of the Urban Forest Strategy can be attributed to the support of Municipal Council.

In addition to preserving trees on private land, programs for residents to participate in expanding the urban forest through tree planting have been implemented. The TreeME grant program and the annual National Tree Day giveaway event are both very successful.

4.0 City Response to Previous Public Participation Meeting – Informing and Improving the By-law

A public participation meeting about the proposed new private Tree Protection By-law was held on September 23, 2019 where a number of issues were raised. The following matters arising from the public participation meeting has been considered in the further development of the proposed new by-law with changes made to the proposed new by-law as appropriate.

Part 2 – Definitions

Distinctive Trees

(i) Adoption of a Reduced Size for a Distinctive Tree & Staffing Levels

While there has been public and industry support for reducing the size threshold below 50cm diameter at breast height (DBH), possibly to 20cm or greater, and the Trees and Forests Advisory Committee has supported a reduction in size, the predicted impact on workload remains a barrier; additional staff would be required to maintain minimum levels of service. Assuming new staff worked only on the Tree Protection By-law and no other matters, the number of Full Time Equivalents (FTEs) that would be required to maintain minimum levels of service is estimated as:

Distinctive Tree Size Threshold	Estimated percentage of protectable tree population protected %	Additional # FTEs required to maintain minimum service assuming they work on Tree Protection By-law only
No limit – all trees protected	100	18
20cm or greater	50	8
30cm or greater	21	4
40cm or greater	11	2
*50cm or greater	6	-

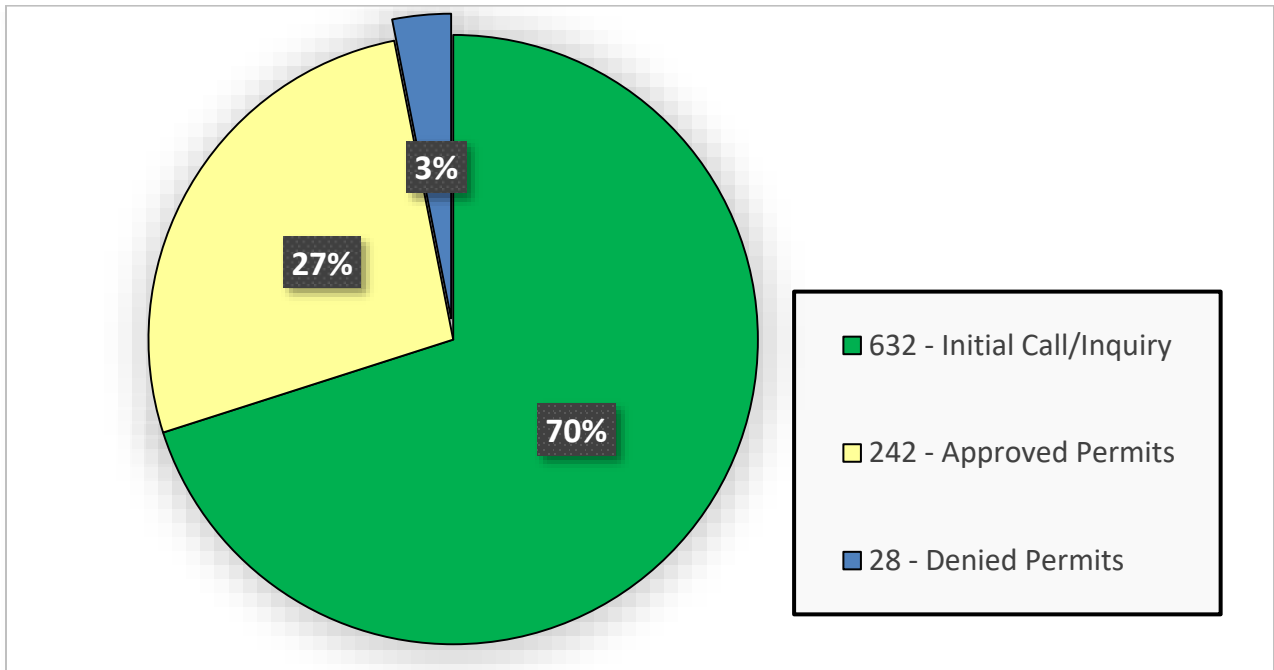
*Current staffing levels

While the number of permit applications is one indicator of workload, the enforcement of the by-law can be a far bigger commitment. Enforcement requires an immediate response (or as close to immediate response as possible) to reports of infractions every day of the week including weekends and holidays, and it absorbs considerable staff time to investigate each complaint.

The turnaround on applications where all required information has been submitted by the applicant is generally 2 weeks.

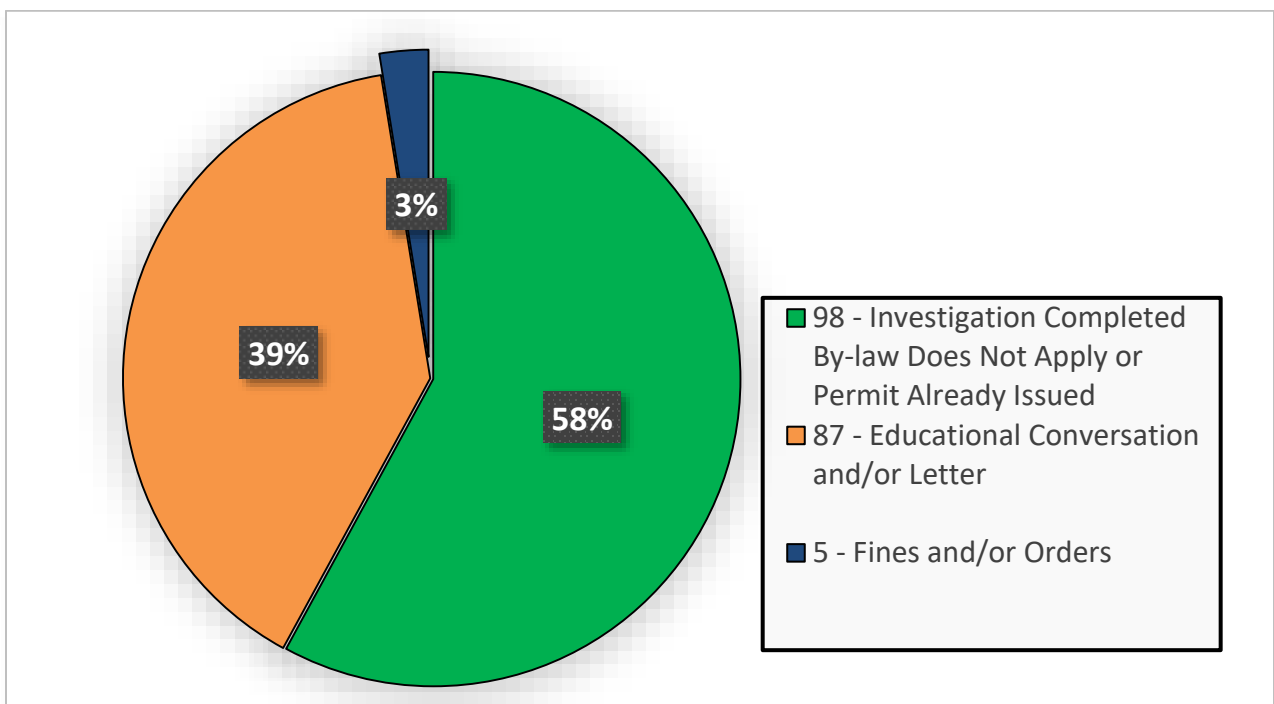
Recommendation: Consistent with the recommendation in 2019, no change to the Distinctive Tree definition size and maintaining the 50cm or greater diameter is recommended.

Fig. 1 Administration Activities of By-law from November 2019 to September 2020*



Total 916 Inquiries

Fig 2 Enforcement Activities of By-law from November 2019 to September 2020*



Total 195 Complaints

***Note that this timeframe was during the COVID-19 pandemic where the by-law was suspended for 3-4 months.**

(ii) Urban Growth Boundary Geographic Limitation

Public comment was received at the Public Participation Meeting regarding the arbitrary protection of individual large trees as Distinctive Trees based on a geographic marker, the Urban Growth Boundary. Those large trees inside the Urban Growth Boundary are protected as Distinctive Trees, while those outside the Urban Growth Boundary are not. The Urban Growth Boundary is invisible on the ground, which makes it difficult for the public to know where the by-law applies. Often, when the public complain about cutting of large trees outside the Urban Growth Boundary, they are surprised to learn the trees are not protected and may express confusion or exasperation as to why those trees outside the Urban Growth Boundary were not protected.

It is not recommended to remove the geographic limit (the Urban Growth Boundary) within which large trees are protected as Distinctive Trees, although this invisible line does create confusion for the public - particularly those reporting tree removals in the rural area. To remove this limit may impact staff workloads, particularly for enforcement. There are other factors that affect rural tree management decisions including normal farming practices; municipal drain maintenance; resource extraction; many of those are exempted activities or mandated through other legislation, but if there is a complaint they still have to be investigated to discover the details.

Recommendation: No change to the Distinctive Tree definition.

Add Hazardous Trees Definition

The Trees and Forests Advisory Committee asked that a definition of “hazardous” be included in the by-law. Staff did consider whether to include wording around high or extreme risk assessment, but as the assessment of trees is subjective this would likely become an area of contention. Further, the level of tolerance of risk varies from person to person, so what one landowner finds acceptable, another may not. For this by-law it is not appropriate for the City to determine that a tree is or is not hazardous. It is better that the applicant’s arborist makes that determination, substantiates the risk, and applies the landowner’s tolerance of risk. Staff will verify that the risk has been substantiated and ask for further information where necessary. As a general rule, proximity alone is not sufficient reason for a tree to be deemed hazardous.

Recommendation: Not to include “hazardous” as a definition in the by-law.

Part 5 – Exemptions

Exemption from By-law - Golf Courses

It is proposed to exempt golf courses from the by-law because golf courses are a business that need to adapt and continue to attract players, with new technology creating new standards, e.g. in the distance a ball can be struck, that requires golf courses to be modified over time. With the natural environment serving as a fundamental feature of these businesses, golf courses conduct a level of stewardship and are expected to conserve trees when possible.

Golf courses in the City may contain hazard lands, floodplains, with slope stability and erosion control risks, and concern was heard about providing golf courses with the freedom to determine their own tree removal. These terrestrial areas also provide habitat and conduits for urban wildlife. Staff looked at whether the Tree Protection By-law – which only protects trees - is the appropriate mechanism for controlling hazard lands and believe it is outside the scope of the by-law. Land-use conflicts may be addressed through the Zoning By-law. The Conservation Authorities have far greater controls in their regulated areas under the Conservation Authorities Act and are the appropriate bodies to address concerns with slope stability and soil erosion.

Recommendation: Consistent with the recommendation in 2019, exempt actively managed golf courses from by-law.

Exemption from By-law - Cemeteries

Cemeteries can have their own by-laws which sometimes may conflict with the Tree Protection By-law. This can be the case when replacement tree plantings are required. Cemeteries have received permits under the by-law, to create space for burial, or to manage a public safety issue. A hearing against the City’s decision to refuse to issue a permit for removal of a tree in a cemetery was upheld by Hearing Officer, to allow for building a new columbarium. The City Engineer is unlikely to refuse a permit that would interfere with public safety or the normal running of the cemetery. Therefore the by-law becomes a layer of extra bureaucracy, serving no useful purpose. For these reasons, cemeteries should be exempted from the by-law.

Recommendation: Consistent with the recommendation in 2019, exempt cemeteries from the by-law.

Part 7 - Application for Permits

Photographs

The Trees and Forests Advisory Committee has asked that photographs be submitted for every tree permit application. This is helpful, and many applications do include photographs or video, occasionally both - but in some instances a photograph may not be feasible, for example it may not be possible to clearly identify a tree or an issue in a tree due to poor light, bad weather, or physical obstructions – which may include other trees around it.

Recommendation: Currently, an Arborist Opinion requires photos and/or video and can be requested for other applications if needed.

Part 9 - Issuance of Permits

Successor Planting, Shadow-planting or Under-planting

The concept of successor planting was raised at the Public Participation Meeting. This would mean that a tree owner could, by anticipating the loss of a large Distinctive Tree, designate or plant a replacement tree on their own property as its successor, and ensure that it is established some years before the larger tree is removed. The tree owner would obtain a permit to remove the larger tree, whether it is healthy or not, by virtue of already having a successor ready to take over in approximately the same place.

Staff has considered that the mechanism to allow for a permit to be issued where a successor exists would be desirable in some cases, for example removing a species of tree that may be invasive or a tree that has a likelihood to do harm, and releasing a native species of tree that is close by.

The risk is that the successor tree, being smaller, may not be a Distinctive Tree and may not be protected by the by-law. Nevertheless, if a tree that is invasive or having potential to do harm is removed, that benefit may be sufficient to outweigh the risk of a landowner not upholding their commitment to retain the successor tree. This is no worse than requiring replacement planting, where the replacement tree is also not protected (see below).

Recommendation: There is flexibility in the proposed new by-law to permit this consideration.

Replacement Tree Planting

With the proposed by-law, replacement tree planting will be required where an otherwise healthy or safe tree is proposed to be removed. The number of replacement trees will be determined according to Schedule A in the proposed new by-law. During consultation with the Trees and Forests Advisory Committee, clarification on the protection of replacement trees was sought and recommendations were received to protect young trees or replacement trees that are not in a Tree Protection Area. Outside of Tree Protection Areas, replacement trees would not be automatically protected by the by-law as they would not meet the size threshold to be a Distinctive Tree.

Staff considered amending the by-law maps to include replacement trees as they are planted, but this is not a practical approach as it increases workload, risks the by-law becoming uncertain in scope during the interval between imposing the replacement planting condition and mapping it, and may mean returning to Committee frequently for approval of the new map.

While the planting of replacement trees can be enforced, the **retention** of replacement trees after planting remains at the discretion of the landowner.

Recommendation: There is not a practical approach to track replacement trees towards their long term protection after they have been planted and met the conditions of the permit.

Schedule A

Fees - Application; Appeal

No application fees are recommended to be collected under the Tree Protection By-law. A number of comments were received from the public about the unfairness of passing along all the costs within the by-law (including the then-proposed \$100 flat fee for an application for a permit; replacement trees, and arborist reports) to the owner of a protected tree, when the owner has often been maintaining a large tree for the benefit of society for years. This was described at the Public Participation Meeting as being a “big stick”, in effect punishing the people that do right by having cared for large trees, instead of incentivising actions as a “carrot”. Concerns were also expressed regarding harvesting in woodland, where the fee is a disincentive to managing the woodland properly and potentially could create unsafe conditions.

Staff has heard from the tree care industry that a modest fee is no deterrent to tree removal.

Staff consider it appropriate not to charge application fees for these various reasons. The financial impact of this change is minor and absorbable in the existing operating budget.

An appeal (hearing) fee of \$150, as amended, will still be required, per the sundry receipts described in the City's *Fees & Charges By-law*.

Recommendation: No application fees shall be required when applying for a permit however, fees for replacement trees may still apply.

Schedule B– Tree Protection Area maps

Over the past four years, since the adoption of the by-law, staff have monitored the practical application of administering and enforcing the part of the by-law that pertains to trees located in Tree Protection Areas. Edits to the maps have been necessary to address routine residential maintenance such as lawn mowing and making the physical location of the Tree Protection Area identifiable in the field. This will ensure that applicants and staff can be confident where the by-law applies for the purposes of submitting applications and enforcement.

The Public Participation Meeting highlighted where church yards and rear yards, often devoid of trees and laid to lawn, are part of a Tree Protection Area - where all trees would be protected, regardless of their size. The Tree Protection Area was intended to cover “trees in woodlands” - but was applied in most parts based on (2016) Official Plan designation as Environmental Review (ER) or Open Space (OS), and Zoning By-law OS5 and ER zones. Since land designation and zoning lines are not always matched by property lines, and zoning does not always reflect the current land-use (that may have been “grandfathered” at the passing of the Zoning By-law) in many places the Tree Protection Area spills over into yards where there are no or only a few trees. Apart from being difficult to interpret on the ground, this raises the issue of frequent and unavoidable infractions of the by-law by, for example, destroying tree seedlings while mowing the lawn. The ER zoning included drains and municipal drains. The City's Stormwater Management staff has advised that municipal drains were usually not designed to function with trees and, for reasons of overland flow interception, routine inspection and maintenance, trees are generally unwelcome in the vicinity of a municipal drain and should be removed or prevented from growing there.

Further, the ER or OS designation and zoning resulted in large swathes of City-owned lands being included in the by-law (e.g. parks, Environmentally Significant Areas), when

the intent of the by-law is to protect trees on private lands. The Parks & Recreation Area By-law already applies to trees on many of those City-owned lands.

A comprehensive review and update of maps has been completed that:

1. removed Tree Protection Area from City-owned lands; hydro power-line corridors; Conservation Authority lands; privately-owned golf courses; cemeteries and known tree farms and Christmas tree plantations;
2. removed Tree Protection Area where trees are absent, sparse, or grass is obviously mown; in essence, wherever it is not resembling woodland. This also removed some fruit-tree orchards;
3. removed Tree Protection Area over water, and municipal or managed drain corridors (mostly in the urban built-up areas and across agricultural fields);
4. removed Tree Protection Area where development approvals are known to be underway or completed;
5. added Tree Protection Area to fill in holes in woodland so to avoid the “Swiss Cheese effect” which is difficult to interpret on the ground;
6. added some new Tree Protection Area that had previously been omitted, capturing tree features 1ha or greater in area, or more-or-less continuous tree canopy connecting to or within 100m of a Tree Protection Area
7. if possible and reasonable, re-drew Tree Protection Area polygons to match with an identifiable feature e.g. terminating at a property line.

This mapping exercise can be summarised as:

- A: Tree Protection Area in original by-law (hectares): **9,909 ha**
- B: Tree Protection Area removed (ha) from the proposed by-law: **6,944 ha**
- C: New Tree Protection Area added: **151 ha**, on 255 parcels of land
- D: Total Tree Protection Area proposed (A minus B plus C): **3,116 ha**

Although Tree Protection Areas have been removed, large trees (50cm DBH or greater) within the Urban Growth Boundary remain protected as Distinctive Trees.

It is recommended that staff continue to revise the Tree Protection Area maps every four or five years to maintain accuracy and applicability with respect to development approvals, and consistency in protecting trees in woodland – which may add new sites with recent afforestation. These changes will be brought forward as a by-law amendment.

Recommendation: That the Tree Protection Area maps in Appendix A Schedule B be approved with the passing of the new Tree Protection By-law.

5.0 Issues Outside the By-law

The Public Participation Meeting reiterated the concerns that the public has with the inability of tree by-laws to effectively protect trees through many Planning Act development approvals processes. Discussions with Development Services are ongoing to find a practical approach and a strong deterrent to tree removal through existing policies and by-laws. For example, it may be possible to utilize a provision in the Site Plan Area Control By-law to withhold a required security as a penalty if there is a failure to comply with an approved Tree Protection Plan.

Incentives – the “carrot”

Regarding the incentivising of the by-law, staff are developing a Veteran Tree Incentive Program to respond to the concerns that nothing is offered to help landowners maintain protected trees. Retaining the largest trees could contribute some of the best tree canopy, environmental, social, cultural, ecological and emotive values for our community. The Trees and Forest Advisory Committee also commented on the need to retain habitat for wildlife, which may mean retaining dead branches on a large tree for raptors. Therefore, staff has worked on a program to support appropriate veteran tree care and management for large Distinctive Trees that reduces risk to a level tolerable to the landowner, short of cutting the tree down completely. It is hoped that some tree

owners will decide to keep a large and ageing tree for longer, supported by this program.

A veteran tree training event was to be held by the City on April 8, 2020, to which over 40 tree care company participants had planned to attend. Completion of that training could become a qualifying requirement for a company to be engaged by a landowner participating in the Veteran Tree Incentive Program. Due to the pandemic this event had to be cancelled however, staff plan to host the event when possible.

Licensing Tree Care Contractors

Concerns have been heard over the past several years of tree care contractors springing up and operating as “fly by nights”, often for cash, identified only by a cellphone number, ignoring or circumventing the by-law and doing poor work without concern for safety. It is often impossible to trace such contractors or individuals to a name or business address. It also appears to reward those companies that are not following the by-law. They are under-cutting prices of other tree care companies and able to respond to work quicker as they are not applying for needed permits.

Staff consider that licensing tree care contractors would be feasible and may be brought forward through a separate by-law. Some licensing requirements for tree care contractor could include proof of insurance, compliance with worker safety insurance (WSIB), and continuing industry qualifications. The purpose of the licensing would be to influence and improve on tree care standards across the City, reducing enforcement, and fostering better working relationships with a variety of tree care companies working in the City.

6.0 Conclusion

Communities with healthy trees and robust canopy cover create a sense of neighbourhood identity, have cleaner air and water, and can increase shopping times and expenditure in commercial districts by up to 20% more. Recently, the urban forest has moved from being considered green infrastructure to critical infrastructure. Trees sequester carbon, helping mitigate climate change, and people living in treed areas have better health outcomes with less impact to health services. A recent study has shown during the COVID-19 pandemic that parks and forested areas are being used three times as often, by a more varied population and for longer periods of time.

Changes that have been made to the proposed new by-law since the September 23, 2019 meeting are included in Appendix “B”. New language is underlined and deleted language is ~~struck through~~. Changes in the Tree Protection Area maps are identified as hatched orange for removed, purple for newly added, and green for no change.

The proposed new Tree Protection By-law strengthens and improves the existing Tree Protection By-law C.P.-1515-228, and public input received to date has informed its development. Staff recommend that this new Tree Protection By-law be approved. Protected trees will continue to be protected under the existing Tree Protection By-law C.P.-1515-228 until it is repealed and the new Tree Protection By-law is put in force and effect on March 1, 2021. The will allow for time to obtain set fine orders, finalize application forms and supporting documents and inform residents and contractors of any new processes.

Prepared by:	Sara Rowland, R.P.F. Urban Forestry Planner, Transportation, Roadside Operations & Forestry Division
Approved by:	Jill-Anne Spence Manager, Urban Forestry Transportation, Roadside Operations & Forestry Division
Submitted by:	John Parsons, CET Division Manager, Roads Operations & Forestry
Concurred by:	Doug MacRae, P.Eng., MPA Director, Roads & Transportation
Recommended by:	Kelly Scherr, P. Eng., MBA, FEC Managing Director, Environmental & Engineering Services and City Engineer

Y:\Shared\Urban
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Appendix A: Proposed New Tree Protection By-law

Appendix B: Changes to Proposed New Tree Protection By-law from Sept 23, 2019

Appendix C: Tree Protection By-law C.P.-1515-228

Bill No.
2020

By-law No.

A by-law to regulate the Injuring and Destruction of Trees and to encourage preservation and planting of Trees throughout the City of London

WHEREAS Municipal Council has determined that it is desirable to enact a By-law to generally prohibit the Injury and Destruction of Trees within the Urban Growth Boundary that have a diameter of at least 50 cm, and all trees located within Tree Protection Areas, and to allow for the Injury and Destruction of such Trees in limited circumstances with a Permit, and to encourage preservation and planting of Trees throughout the City of London;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended ("*Municipal Act, 2001*") provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001* or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality, including respecting climate change; in paragraph 6, Health, safety and well-being of persons; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property; in paragraph 9, Animals;

AND WHEREAS pursuant to subsection 135(1) of the *Municipal Act, 2001*, without limiting sections 9 and 10, a municipality may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS pursuant to subsection 135(7) of the *Municipal Act, 2001*, without limiting sections 9 and 10, a municipality may require that a permit be obtained to injure or destroy trees, and impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees;

AND WHEREAS subsections 151(1) to (4) of the *Municipal Act, 2001* apply with necessary modifications to a system of licences with respect to any activity, matter or thing for which a by-law may be passed under sections 9 and 10 as if it were a system of licences with respect to a business;

AND WHEREAS subsection 1(1) of the *Municipal Act, 2001* defines "licence" to include a permit;

AND WHEREAS section 23.2 of the *Municipal Act, 2001* permits a municipality to delegate certain legislative and quasi-judicial powers;

AND WHEREAS the Municipal Council for The Corporation of the City of London is of the opinion that the delegation of legislative powers under this By-law to the City

Engineer and the Hearings Officer including without limitation the power to issue, revoke, suspend and impose conditions on the permit and prescribe operational standards such as the format and content of forms or documents, are powers of a minor nature having regard to the number of people, the size of geographic area and the time period affected by the exercise of the power in accordance with subsection 23.2(4) of the *Municipal Act, 2001*;

AND WHEREAS subsection 391(1) of the *Municipal Act, 2001* provides that a municipality may impose fees and charges on persons;

AND WHEREAS sections 429, 431, 444 and 445 of the *Municipal Act, 2001* provide for a system of fines and other enforcement orders;

NOW THEREFORE the Council of The Corporation of the City of London enacts as follows:

Part 1 SHORT TITLE

1.1 This By-law may be cited as the "Tree Protection By-law".

Part 2 DEFINITIONS

2.1 For the purpose of this By-law:

"Applicant" means the Landowner or the Landowner's authorized representative who, pursuant to this By-law, applies for a Permit;

"Arborist" means an arborist qualified by the Ontario Ministry of Training, Colleges and Universities; a certified arborist with the International Society of Arboriculture; a consulting arborist registered with the American Society of Consulting Arborists; or a Registered Professional Forester;

"Arborist Opinion (Dead Distinctive Tree)" means a written opinion by an Arborist that contains the following:

- (a) the Arborist's opinion that the Tree is a Dead Distinctive Tree as that term is defined;
- (b) correct identification of the location, species and size of the Dead Distinctive Tree;
- (c) a photograph or video of the Tree; and
- (d) the professional accreditation of the Arborist (e.g. International Society of Arboriculture (ISA) Certification Number);

"Arborist Report" means a written report by an Arborist that contains the following:

- (a) correct identification of the location, species, size and condition of Trees;
- (b) states the Arborist's opinion why a Tree should be Injured or Destroyed, and whether it represents Good Arboricultural Practices or Good Forestry Practices;
- (c) describes how the Tree is proposed to be Injured or Destroyed;
- (d) an analysis and description of any reasonable alternatives to the Tree Injury or Destruction or an analysis and description as to why there are no reasonable alternatives to the Tree Injury or Destruction;
- (e) calculation of the number of Replacement Trees based on Schedule A, and suggest the species and location, and if in a Tree Protection Area, the Trees that may be planted or established through appropriate natural regeneration, the number of Replacement Trees that can be planted on the Site;
- (f) if Trees are to be Injured but not Destroyed, description of maintenance strategies and protection measures to be implemented;
- (g) if requested by the City Engineer, further information such as Tree or Trees on adjacent properties that may be affected, and an aerial map representation showing the Critical Root Zone of those Trees; and
- (h) the professional accreditation of the Arborist (e.g. International Society of Arboriculture (ISA) Certification Number);

"Boundary Tree" means a tree having any part of its trunk located on the boundary between adjoining lands. For the purposes of this definition, 'trunk' means that part of the tree from its point of growth away from its roots up to where it branches out to limbs and foliage;

"Building Permit" means a building permit issued under the *Building Code Act, 1992*, S.O. 1992, c. 23, or successor legislation;

"By-Law Enforcement Officer" means a person appointed pursuant to the *Police Services Act*, or any successor legislation, as a Municipal Law Enforcement Officer to enforce the provisions of this By-law;

"City" means The Corporation of the City of London;

"City Engineer" means the person who holds the position of City Engineer for The Corporation of the City of London or their written Designate who is authorized by the City Engineer to act on their behalf in respect of this By-law;

"Conservation Authority" has the same meaning as defined in the *Conservation Authorities Act*, R.S.O. 1990 c.C.27;

"Critical Root Zone" means the area of land within a radius of ten (10) cm from the trunk of a tree for every one (1) cm of trunk diameter;

"Dead Distinctive Tree" means a Distinctive Tree that, as a result of natural causes, is dead or, as a result of natural causes, is in advanced and irreversible decline in health or condition;

"Dead Distinctive Tree Permit" means a permit issued by the City Engineer to permit the Injury or Destruction of a Dead Distinctive Tree;

"Declared Emergency" means a situation or impending situation that has been declared an emergency under the *Emergency Management and Civil Protection Act*, R.S.O. 1990 c.E.9 or successor legislation;

"Designate" means any person acting with express authority conferred in writing by the City Engineer and may include but is not limited to City employees or Qualified Persons hired by the City;

"Destroy" means to cut down, remove, uproot, unearth, topple, burn, bury, shatter, poison, or in any way cause a Tree to die or be killed, or where the extent of Injury caused to a live Tree or disturbance of any part of its Critical Root Zone is such that it is likely to die or be killed, excepting where a Tree and/or its roots are killed by natural causes. The terms "Destroyed" and "Destruction" shall have a corresponding meaning;

"Distinctive Tree" means a Tree that has a Trunk Diameter of 50cm or greater, and that is located on a property within the Urban Growth Boundary, excluding a Tree Protection Area;

"Distinctive Tree Permit" means a permit issued by the City Engineer to permit the Injury or Destruction of a Distinctive Tree or Trees;

"Emergency Services" means the fire, police, or ambulance services when responding to an emergency event;

"Good Arboricultural Practices" means the implementation of the most recent techniques or methods of Tree management as recommended by the International Society of Arboriculture or their successor;

"Good Forestry Practices" has the same meaning as defined in the *Forestry Act* R.S.O. 1990 c. F.26;

“Hearings Officer” means a Hearings Officer appointed under the City’s Hearings Officer By-law A. 6653-121, as amended, or any successor by-law;

“Injure” means to harm, damage or impair the natural function or form of a Tree, including its roots within the Critical Root Zone, by any means excepting injury by natural causes, and includes but is not limited to carving, drilling, injection, exploding, shattering, improper Pruning that fails to meet Good Arboricultural Practices, removal of bark, deliberate introduction of decay fungi , inserting or driving foreign objects into or through the Tree or its roots, soil compaction, root excavation, suffocation, drowning, burying or poisoning. The terms “Injury”, “Injuring” and “Injured” shall have a corresponding meaning;

“Landowner” means a person having title in the land on which the Tree(s) are situated;

“Natural Ground Level” means the unaltered and original level of the soil around the base of a Tree that is supporting or did support the Tree during its early growth and establishment phase; where the ground level varies around the Tree, it shall be measured from the highest part of the soil;

“Normal Farm Practice” means a normal farm practice defined in the *Farming and Food Production Protection Act 1998*, S.O. 1998, c.1.

“Order” means an Order to Discontinue Activity or a Work Order, as the context requires;

“Permit” means a Tree Protection Area Permit or a Distinctive Tree Permit, or a Dead Distinctive Tree Permit, as the context requires;

“Permit Holder” means the Landowner to whom a Permit has been issued;

“Pest” means any thing that is injurious or potentially injurious, whether directly or indirectly, to a Tree, and includes any species that is invasive or new to Canada where the potential for harm is yet unknown or unpredictable;

“Pruning” means the removal of live or dead branches from a standing Tree. The terms “Prune” and “Pruned” shall have a corresponding meaning;

“Qualified Person” means a person who, in the opinion of the City Engineer, has satisfactory qualification, experience, education or knowledge to be an expert in the matter;

“Registered Professional Forester” means a person who is a registered and full member in good standing of the Ontario Professional Foresters Association and has the right to use the designation ‘Registered Professional Forester’ under the *Professional Foresters Act, 2000*, S.O. 2000, C. 18 or successor legislation;

“Replacement Tree” means a tree of a size and type determined by the City Engineer that is required to be planted to replace a tree Destroyed pursuant to a Permit;

“Security” means an agreement between the City and an Applicant where the Applicant arranges an irrevocable letter of credit from a financial institution to specify and lodge a sum of money as determined by the City Engineer as a condition of a Permit;

“Silvicultural Prescription” means an operational plan prepared by a Registered Professional Forester or Qualified Person that describes the existing conditions and the sustainable management objectives for Trees on a Site, and that prescribes the practice of controlling Tree establishment and the composition, growth and quality of Trees to achieve the objectives of management, the methods for managing the Trees and a series of silvicultural treatments and Good Arboricultural Practices that will be carried out to perpetuate Tree cover and establish a free-growing state for Trees that accommodates other resource, environmental and social values as may be identified;

“Site” means the general area where activities subject to this By-law are planned or executed, and in the case of a tract of land that extends over multiple landholdings, each separate landholding is a separate “Site”;

“Swimming Pool Fence Permit” means a swimming pool fence permit issued under the City’s Swimming Pool Fence By-law PS-5, or successor legislation;

“Tree” means a woody perennial plant, whether alive or dead, healthy or unhealthy, including saplings or seedlings and including the root system, where the plant has reached, could reach, or could have reached a height of at least 4.5 metres (15 feet) at physiological maturity;

“Tree Management Plan” means a written plan that sets out the scope, rationale and management intentions for managing an inventory of a Tree or Trees for a year or more. Other names for a Tree Management Plan include ‘Landscape Management Plan’, ‘Tree Protection Plan’, ‘Tree Planting Plan’, ‘Woodland Management Plan’ and ‘Forest Management Plan’;

“Tree Protection Area” means any geographic area of the City that appears as a Tree Protection Area on Schedule B of this By-law;

“Tree Protection Area Permit” means a permit issued by the City Engineer to permit the Injury or Destruction of a Tree or Trees within a Tree Protection Area;

“Trunk Diameter” means the diameter of the trunk of a Tree measured 1.4m above the Natural Ground Level;

“Urban Growth Boundary” means the Urban Growth Boundary as defined in the City’s Official Plan.

2.2. In this by-law, words importing the singular number include the plural and vice versa, unless the context requires otherwise.

Part 3 SCOPE

- 3.1 This By-law applies to private property in the City of London:
- (a) to Trees having a trunk diameter of 50cm or greater measured 1.4m above Natural Ground Level, within the Urban Growth Boundary; and
 - (b) to Trees of any size within a Tree Protection Area.

Part 4 ADMINISTRATION

- 4.1 The administration of this By-law shall be performed by the City Engineer who shall generally perform all of the administrative functions conferred upon them by this By-law.

Part 5 EXEMPTIONS FROM BY-LAW

Exemptions from By-law

- 5.1 This By-law does not apply to:
- (a) activities or matters undertaken by a municipality or a local board of a municipality;
 - (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
 - (c) the Injuring or Destruction of Trees by a person licensed under the *Surveyors Act*, to engage in the practice of cadastral surveying or his or her agent, while making a survey;
 - (d) the Injuring or Destruction of Trees imposed after December 31, 2002, as a condition to the approval of a site plan, a plan of subdivision or a consent under

- section 41, 51 or 53, respectively, of the *Planning Act*, or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (e) the Injuring or Destruction of Trees imposed after December 31, 2002, as a condition to a development permit or community planning permit authorized by regulation made under the *Planning Act* or as a requirement of an agreement entered into under the regulation;
 - (f) the Injuring or Destruction of Trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - (g) the Injuring or Destruction of Trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
 - (h) the Injuring or Destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
 - (ii) on which a pit or quarry is a permitted land use under a By-law passed under section 34 of the *Planning Act*;
 - (i) the Injuring or Destruction of Trees that are a noxious weed as defined in the *Weed Control Act, R.S.O. 1990, c. W.5* if the Injury or Destruction is being controlled by an appropriate method under the oversight or direction of a Qualified Person and no Trees other than a noxious weed are being Injured or Destroyed;
 - (j) the Injuring or Destruction of Trees undertaken by a Conservation Authority on its own lands or in response to a Declared Emergency;
 - (k) the Injuring or Destruction of Trees at the direction of Emergency Services;
 - (l) Pruning that is necessary to maintain the health and condition of the Tree and is carried out in accordance with Good Arboricultural Practices;
 - (m) Injury or Destruction of a Tree that is not a Distinctive Tree and is not located within a Tree Protection Area;
 - (n) Injury or Destruction of a Tree that is located within a building, a solarium, a rooftop garden or an interior courtyard;
 - (o) Injury or Destruction of a Tree located within an actively managed cultivated orchard, tree farm or plant nursery;
 - (p) Injury or Destruction of a Tree that is an immediate threat to health or safety;
 - (q) Injury or Destruction of the Tree that is required by a Property Standards Order issued under the *Building Code Act*;
 - (r) Injury or Destruction that is a Normal Farm Practice as defined in the *Farming and Food Production Protection Act, 1998, S.O. 1998, c.1.*;
 - (s) Injury or Destruction of a Tree that is located within a cemetery; or
 - (t) Injury or Destruction of a Tree that is located within an actively managed golf course.

Part 6 PROHIBITIONS

Injure or Destroy Tree – Tree Protection Area

- 6.1 Subject to section 5.1 and Part 8, and except under authority of a Permit, no person shall Injure or Destroy a Tree or cause or permit the Injury or Destruction of a Tree in a Tree Protection Area.

Injure or Destroy Tree – Distinctive Tree

- 6.2 Subject to section 5.1 and Part 8, and except under authority of a Permit, no person shall Injure or Destroy a Distinctive Tree or cause or permit the Injury or Destruction of a Distinctive Tree. This section 6.2 shall not apply to a Tree located in a Tree Protection Area and section 6.1 shall apply instead.

Injure or Destroy Tree – Not in Accordance with Permit Conditions

- 6.3 No Permit Holder or person acting under authority of a Permit shall Injure or Destroy a Tree or cause or permit the Injury or Destruction of a Tree unless the Injury or Destruction is carried out in accordance with all conditions of the Permit.

Fail to Protect Tree in Accordance with Permit Conditions

- 6.4 No Permit Holder or person acting under authority of a Permit shall fail to protect a Tree in accordance with all conditions of a Permit.

Fail to Comply with Conditions of Permit

- 6.5 No Permit Holder or person acting under authority of a Permit shall fail to comply with all conditions of a Permit.

Fail to Comply with Order to Discontinue Activity or Work Order

- 6.6 No person who has been issued an Order to Discontinue Activity or a Work Order shall fail to comply with the Order.

Part 7 APPLICATION FOR PERMITS

- 7.1 Applicants for a Permit should refer to Part 8 of this By-law, as Permits are only issued for the grounds set out in section 8.2 (and subject to all applicable requirements in this By-law including sufficient evidence of the grounds) for the Injury or Destruction of a Tree:

Application to City Engineer

- 7.2 (1) Every application for a Permit shall be made to the City Engineer in a format provided by the City Engineer.

Application – Requirements

- (2) Every application for a Permit shall include the following:
- (a) the name, municipal address, email address (if available) and telephone number (if available) of the Landowner, and if not the same, the Applicant;
 - (b) if the Applicant is not the Landowner, written confirmation that the Applicant is making the application as the Landowner's authorized agent;
 - (c) if the Applicant or the Landowner is a corporation, the address of its head office;
 - (d) the municipal address and legal description of the land, upon which the Tree or Trees are to be Injured or Destroyed;
 - (e) if known, the name, municipal address, email address, and phone number of any contractor anticipated to Injure or Destroy the Tree or Trees;
 - (f) for a Dead Distinctive Tree Permit, an Arborist Opinion;
 - (g) for a Distinctive Tree Permit or a Tree Protection Area Permit, an Arborist Report;
 - (h) for a Distinctive Tree Permit or a Tree Protection Area Permit, where any of the following grounds for the proposed Tree Injury or Destruction apply:
 - (i) an Arborist's written opinion that the Tree is unsafe;
 - (ii) an Arborist's, Professional Engineer's or Insurance Loss Adjuster's written opinion that the Tree is causing or is likely to cause structural damage to load-bearing structures or roof structures;
 - (iii) a "qualified person's" (as defined in the *Environmental Protection Act*, R.S.O. 1990, c. E.19) written opinion that Tree removal is required to remediate contaminated soil;
 - (iv) a Qualified Person's written opinion that the Tree Injury or Destruction is required to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the construction or use of a building or structure for which a Building Permit has been issued with no reasonable alternative to locating those utilities or infrastructure;
 - (v) an Arborist's written opinion that the Distinctive Tree Injury or Destruction represents Good Arboricultural Practices, or a

Registered Professional Forester's written opinion that the Injury or Destruction of a Tree within a Tree Protection Area represents Good Forestry Practices;

- (vi) a copy of the Building Permit if the Tree Injury or Destruction is required for purposes of a Building Permit;
- (vii) a copy of the Swimming Pool Fence Permit, where one is required, or other evidence that is satisfactory to the City Engineer that a pool is to be installed, if the Tree Injury or Destruction is required for purposes of locating a swimming pool.

Application – Additional Information May be Required

(3) In addition to the requirements in subsection (2), the City Engineer may require the Applicant to provide one or more of the following:

- (a) for a Tree Protection Area Permit, an inventory, tally or estimates from sample plots of the species and size classes of all Trees to be Injured or Destroyed, including a map of the location of sample plots, to the satisfaction of the City Engineer;
- (b) for a Tree Protection Area Permit, a Silvicultural Prescription that complies with Good Forestry Practices and is prepared by a Registered Professional Forester;
- (c) a drawing of the Site showing any proposed development, construction, works, excavation or site alteration that may require the Tree Injury or Destruction, and a schedule for this proposed activity, including start and end dates;
- (d) confirmation of any other matters (past or present Planning applications or otherwise) affecting the land upon which the Tree or Trees are to be Injured or Destroyed;
- (e) a Tree Management Plan, which may be for one or more Trees, prepared by a Qualified Person;
- (f) affidavits in support of an application.

Application – Further Information – Supplied within 60 days

(4) The Applicant must provide any further information requested by the City Engineer under subsection (3) to the City Engineer within 60 days of such request.

Application – Deemed Incomplete

- 7.3 An application that does not contain everything required in subsection 7.2(2) within 60 days of the receipt of the application by the City, or does not contain the information as further required under subsection 7.2 (3) within 60 days of the request, shall be deemed to be incomplete and will not be processed. The City Engineer shall notify the Applicant that the file has been closed for incompleteness.

Application – Permission for City to Inspect

- 7.4 By submitting an application, the Landowner shall be deemed to have granted permission for the City to enter on the Landowner's land for purposes of this By-law.

Boundary Tree

- 7.5 If the Tree to be Destroyed or Injured is a Boundary Tree, all owners of the Boundary Tree or their authorized agents would need to apply for a Permit, otherwise a Permit will not be issued. In the event that the City is an owner of a Boundary Tree (not on the City Boulevard) the written approval of the City Engineer would be required but such approval is entirely at the discretion of the City Engineer.

7.6 Boundary Tree - City Boulevard Tree

If one of the adjoining lands upon which the Boundary Tree is located is City-owned boulevard, then the City's Boulevard Tree By-law will apply and this By-law will not apply.

Part 8 POWERS OF THE CITY ENGINEER

- 8.1 The power and authority to issue a Permit, refuse to issue a Permit, to cancel, revoke or suspend a Permit, to impose terms and conditions on a Permit, including special conditions, are delegated to the City Engineer.

City Engineer – When Permit Shall Issue

- 8.2 The City Engineer shall issue a Permit where all of the following are satisfied:
- (1) the application is complete; and
 - (2) the City Engineer is satisfied that there are no reasonable alternatives to the proposed Tree Injury or Destruction; and
 - (3) the City Engineer has determined, in their discretion, that there are no grounds for refusing to issue a Permit under section 8.3; and
 - (4) the City Engineer is satisfied that one or more of the following grounds for issuing a Permit apply:
 - (a) the Tree is a Dead Distinctive Tree;
 - (b) based on the opinion of an Arborist, it is necessary to remove unsafe Trees;
 - (c) based on the opinion of a Professional Engineer, the Tree or Trees are causing or are likely to cause structural damage to load-bearing structures or roof structures;
 - (d) based on the opinion of a 'qualified person' (as defined in the *Environmental Protection Act*), the Tree Injury or Destruction is required to remediate contaminated soil;
 - (e) based on the opinion of a Qualified Person, the Tree Injury or Destruction is required to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the construction or use of a building or structure for which a Building Permit has been issued with no reasonable alternative to locating those utilities or infrastructure;
 - (f) the Tree Injury or Destruction is required for purposes of a Building Permit;
 - (g) the Tree Injury or Destruction is required for purposes of locating a swimming pool;
 - (h) based on the opinion of an Arborist, the Distinctive Tree Injury or Destruction represents Good Arboricultural Practices, or based on the opinion of a Registered Professional Forester, the Injury or Destruction of a Tree within a Tree Protection Area represents Good Forestry Practices.
- (5) The City Engineer shall refuse to issue a Permit if (1), (2), (3) and (4) are not satisfied.

City Engineer – May Refuse to Issue Permit, Revoke Permit, Suspend Permit, Impose Conditions on Permit

- 8.3 The City Engineer at their discretion may refuse to issue, may revoke, or may suspend a Permit or impose a term or condition on a Permit on any one or more of the following grounds:
- (a) the species of Tree is an endangered species or threatened species as defined in the *Endangered Species Act, 2007*, S.O. 2007, c. 6, or the *Species at Risk Act*, S.C. 2002, c. 29;
 - (b) the Tree is designated under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18;
 - (c) migratory birds are making use of the Tree, or migratory bird nests are in the Tree, as contemplated in the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22;
 - (d) the protection and preservation of ecological systems and their functions, including the protection and preservation of native flora and fauna;
 - (e) erosion, flood control and sedimentation of watercourses;

- (f) any information contained in the original application form or any other information provided to the City Engineer has ceased to be accurate and the Applicant, Landowner or Permit Holder has not provided up-to-date accurate information to allow the City Engineer to conclude that the Permit should continue;
- (g) an Applicant or Permit Holder does not meet one or more of the requirements of this By-law or a condition imposed on a Permit;
- (h) the Applicant or Landowner is carrying on activities that are in contravention of this By-law;
- (i) there are reasonable grounds to believe that an application or other documents provided to the City Engineer by or on behalf of the Applicant or Landowner contains a false statement.

City Engineer – Additional Reasons to Revoke

- 8.4 In addition to section 8.3 above, the City Engineer may revoke a Permit if:
- (a) the Permit was issued in error;
 - (b) the Landowner or Permit Holder requests, in writing, that it be revoked;
 - (c) the Landowner or Permit Holder fails to comply with any condition of the Permit or this By-law;
 - (d) the Permit Holder is no longer the owner of the land while the Permit is still valid or the owner on title to the lands has changed;
 - (e) the City Engineer is satisfied that there is a material change in circumstances in connection with or on the Site and the City Engineer is satisfied that the Permit needs to be revoked to avoid further Injury or Destruction of a Tree or Trees.

City Engineer – May Impose Conditions, Special Conditions

- 8.5 Notwithstanding any other provision of this By-law, the City Engineer may impose terms and conditions on any Permit at issuance or at any time during the term of the Permit, including special conditions, as are necessary in the opinion of the City Engineer to give effect to this By-law.

City Engineer – Permit Decisions – Refuse, Revoke, Suspend, Conditions

- 8.6 (1) Where the City Engineer is of the opinion that:
- (a) an application for a Permit should be refused;
 - (b) a Permit should be revoked;
 - (c) a Permit should be suspended for no more than 14 days; or
 - (d) a term or condition of a Permit should be imposed;
- the City Engineer shall make that decision.

City Engineer – Written Notice of Decision under ss. 8.6(1)

(2) Where the City Engineer has made a decision under subsection 8.6(1) of this By-law, the City Engineer shall give written notice of that decision to the Applicant or Permit Holder by electronic mail or regular mail to the last known address of that person and shall be deemed to have been given on the third day after it is mailed. Written notice to a corporation may be given by registered mail to the address of the corporation's registered head office, or by electronic mail if requested by the corporation.

Contents of Written Decision – Can Appeal

- (3) The written notice to be given under subsection 8.6(1) shall:
- (a) set out the grounds for the decision;
 - (b) give reasonable particulars of the grounds;
 - (c) be signed by the City Engineer; and
 - (d) state that the Applicant or Permit Holder is entitled to a hearing by the Hearings Officer if the Applicant or Permit Holder delivers a notice of appeal to the City Clerk, within thirty (30) days after the notice in subsection 8.6(1) is given, and the appeal fee as set out in the Fees and Charges By-law, as amended, and any successor by-law.

No Appeal – Decision Deemed Final

(4) Where no appeal is registered within the required time period, the decision of the City Engineer is deemed to be final. The provisions of the City's Hearings Officer By-law, as amended, and any successor by-law, apply to all hearings conducted by the Hearings Officer.

Permit Voluntarily Surrendered – Revoke – No Notice Required

(5) Despite subsection 8.6(2), where a Permit is voluntarily surrendered by the Permit Holder for revocation, the City Engineer may revoke the Permit without notice to the Permit Holder.

City Engineer – May Make Regulations – Forms, Documents

- 8.7 In addition to any other power, duty or function prescribed in this By-law, the City Engineer may make regulations under this By-law including prescribing the format and content of any forms or other documents required under this By-law.

Copy of Regulations to City Clerk – Available for Public Inspection

- 8.8 The City Engineer shall provide the City Clerk with copies of any regulations made under this By-law. The City Clerk shall maintain a record of all such regulations. The record of all regulations shall be available for public inspection at the office of the City Engineer and the office of the City Clerk during normal business hours.

Part 9 ISSUANCE OF PERMITS

Information on Permits

- 9.1 Every Permit issued under this By-law shall be in the form and manner as provided by the City Engineer and shall include on its face the following information:

- (a) the Permit number;
- (b) the name of the Permit Holder;
- (c) the date the Permit was issued and the date it expires;
- (d) the municipal address of the premises on which the Tree or Trees to be Injured or Destroyed is located;
- (e) the Tree or Trees that are permitted to be Injured or Destroyed;
- (f) the nature of the Injury or Destruction.

Permit – Automatic Conditions

- 9.2 Every Permit that is issued is subject to the following conditions of obtaining and continuing to hold a Permit, all of which shall be performed and observed by the Permit Holder and Landowner:
- (a) the Permit Holder shall ensure that the number of living Replacement Trees as determined by the City Engineer, and the species, or choice of species, size and location of Replacement Trees as determined by the City Engineer, are planted on the same Site by the date specified on the Permit;
 - (b) where there is insufficient space on the same Site to plant all the Replacement Trees, the Permit Holder shall plant as many Replacement Trees as the City Engineer determines the Site will allow and the Permit Holder shall forthwith pay the fee as determined by the City Engineer in Schedule A with respect to the number of Replacement Trees that could not be planted due to insufficient space (Fee for Off-Site Tree Planting);
 - (c) the Permit Holder or Landowner shall pay all fees related to this By-law;
 - (d) the Permit Holder or Landowner shall pay all other fees and fines owed by the Permit Holder or Landowner to the City;
 - (e) the Permit Holder or Landowner shall allow, at any reasonable time, the City to inspect the Site;

- (f) the use of the Site is permitted or conforms with the uses permitted under the applicable zoning by-law or is a legal non-conforming use;
- (g) the Permit Holder or Landowner shall meet all of the requirements of this By-law;
- (h) the Permit Holder or Landowner shall ensure that it complies with applicable law including the *Migratory Birds Convention Act, 1994*, and the *Endangered Species Act, 2007*.

Permit – Additional Conditions That May be Imposed

9.3 The City Engineer may impose other conditions on a Permit, including but not limited to:

- (a) the Permit Holder shall ensure that the Injury or Destruction of the Tree is carried out in accordance with Good Arboricultural Practices or Good Forestry Practices;
- (b) the Permit Holder shall ensure that the Injury or Destruction of the Tree is carried out in a particular manner or at or during a particular time;
- (c) the Permit Holder shall ensure that the Permit is posted in a public location for a time period before, during and after the Injury or Destruction of the Tree or Trees;
- (d) the Permit Holder shall ensure that the Injury or Destruction of the Tree is to be carried out by or under the supervision of a Qualified Person;
- (e) the Permit Holder shall ensure that measures are to be implemented to protect any retained Trees for the period the Permit remains valid;
- (f) the Permit Holder shall ensure that the City Engineer is informed within 48 hours of a change of Landowner;
- (g) the Permit Holder shall ensure that a Tree Management Plan satisfactory to the City Engineer is implemented by a required date;
- (h) the Permit Holder shall ensure posting of Security that the City may draw upon in full if the By-law is contravened or if there is a failure in the proper and complete execution of a Permit and its conditions, such that restoration of all or part of the Site has to be done by the City;
- (i) the Permit Holder shall ensure it complies with any requirements to protect or relocate wildlife (including bees) as determined by the City Engineer;
- (j) the Permit Holder shall ensure it implements the Silvicultural Plan or Tree Management Plan submitted with the application to the satisfaction of the City Engineer within a period of time specified by the City Engineer;
- (k) a condition recommended by a Qualified Person that the City Engineer determines is appropriate.

Permit – Valid For Time Issued – 6 Month Maximum

9.4 A Permit issued under this By-law shall be valid only for the period of time for which it is issued. Unless expressly stated on the face of the Permit, all Permits issued under this By-law shall expire 6 months after issuance.

Permit Issuance – Not permission to Contravene Laws

9.5 The issuance of a Permit under this By-law is not intended and shall not be construed as permission or consent by the City for the Permit Holder or Landowner to contravene or fail to observe or comply with any law of Canada, Ontario or any By-law of the City.

Permit – Owned by City – Valid only to Person and Site Named On It

9.6 Every Permit, at all times, is owned by and is the property of the City and is valid only in respect of the person and the Site named on it.

Permit – Cannot be Sold, Transferred, etc.

- 9.7 No Permit issued under this By-law may be sold, purchased, leased, mortgaged, charged, assigned, pledged, transferred, seized, distrained or otherwise dealt with.

Permit – Notify City Engineer if Change of Information

- 9.8 The Permit Holder shall notify the City Engineer of any change in their name, business, home address, Site ownership, or any other information relating to the Permit within fifteen (15) days after such change and, if the City Engineer determines it necessary, shall immediately return their Permit to the City Engineer for amendment.

Requirement to obtain all other approvals required by any level of government

- 9.9 A Permit issued pursuant to this By-law does not preclude the responsibility of the Applicant or Landowner or Permit Holder to obtain all other approvals which may be required by any level of government and agencies.

Part 10 APPEALS – HEARINGS BEFORE THE HEARINGS OFFICER

- 10.1 The power and authority to conduct hearings of appeals under this By-law are delegated to the Hearings Officer.
- 10.2 The provisions of the City's Hearings Officer By-law A.-6653-121, as amended, and any successor by-law, apply to all hearings conducted by the Hearings Officer.
- 10.3 The Hearings Officer may uphold or vary the decision of the City Engineer or make any decision that the City Engineer was entitled to make in the first instance.
- 10.4 The decision of the Hearings Officer is final.

Part 11 ENFORCEMENT

Enforced By

- 11.1 This By-law may be enforced by a By-law Enforcement Officer.

Powers of Entry

- 11.2 The provisions of the City's Inspections By-law A-30, as amended, and any successor by-law, apply to Powers of Entry for the purpose of carrying out inspections.

Prohibition - Hinder or Obstruct By-law Enforcement Officer

- 11.3 No person shall hinder or obstruct or attempt to hinder or obstruct the By-law Enforcement Officer in the discharge of duties under this By-law.

Part 12 POWER TO MAKE ORDERS – REMEDIAL ACTION

Order to Discontinue Activity

- 12.1 (1) Where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make an Order to Discontinue Activity requiring the person who contravened the By-law or a person that caused or permitted a contravention of the By-law or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.
- (2) The Order to Discontinue Activity shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date and time by which there must be compliance with the Order to Discontinue Activity.

Work Order

12.2 (1) Where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make a Work Order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.

(2) A Work Order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred, and the work to be done and the date by which the work must be done.

Service of Order to Discontinue Activity or Work Order

12.3 (1) An Order to Discontinue Activity or Work Order may be served personally by the By-law Enforcement Officer, may be sent by registered mail to the person contravening the By-law, or may be posted in a conspicuous place on the property where the contravention occurred.

(2) Where an Order to Discontinue Activity or Work Order under this By-law is served personally by the By-law Enforcement Officer, it shall be deemed to have been served on the date of delivery to the person or persons named.

(3) The posting of the Order to Discontinue Activity or Work Order at the Site shall be deemed to be sufficient service of the Order to Discontinue Activity on the person or corporation to whom the Order to Discontinue Activity is directed on the date it is posted.

(4) Where an Order to Discontinue Activity or Work Order issued under the By-law is sent by registered mail, it shall be sent to the last known address of one or more of the following, as applicable:

- (a) the Applicant;
- (b) the Permit Holder;
- (c) the Landowner;
- (d) the person contravening the By-law;
- (e) the person or company undertaking the Injury or Destruction,

and shall be deemed to have been served on the fifth day after the Order to Discontinue Activity or Order is mailed.

12.4 Remedial Action

If a person is required, under a Work Order under this By-law, to do a matter or thing, then in default of it being done by the person so required to do it, the matter or thing may be done at the person's expense under the direction of a By-law Enforcement Officer.

12.5 The City may recover the costs of doing a matter or thing under section 12.4 from the person required to do it, by adding the costs to the tax roll for the subject land and collecting them in the same manner as property taxes.

12.6 The amount of the costs under section 12.4, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien.

Part 13 PESTS - INSPECTION – REMOVAL OF INFESTED TREES

Inspection for Presence of Asian Long-Horned Beetles and Other Serious Pests; Removal of Infested Trees

13.1 The City Engineer is authorized to inspect for the presence of Asian Long-Horned Beetles and other Pests that may create serious widespread economic or ecological harm, and to remove such infested trees, on all public and private property, with the consent of the property owner.

13.2 Inspection for Pests; Right to Enter Private Property – Consent Not Required

Where the City Engineer has been designated as an “inspector” by the President of the Canadian Food Inspection Agency under section 13 of the *Canadian Food Inspection Agency Act*, S.C. 1997, c.6 for the purposes of enforcing the *Plant Protection Act*, S.C. 1990, c.22, the City Engineer has the authority to inspect for the presence of Pests and to take action including the removal of trees on all public and private property, with or without the consent of the property owner, if it is in accordance with the *Plant Protection Act*.

Part 14 OFFENCES AND PENALTIES

Offences

14.1 Any person who contravenes any provision of this By-law, or an Order to Discontinue Activity, or a Work Order, is guilty of an offence.

14.2 A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.

Penalties – Minimum and Maximum

14.3 A person convicted under this By-law is liable to a minimum fine of \$500.00 and a maximum fine of \$100,000.00, where the fine is not a set fine.

Penalties – Continuing Offence

14.4 Contravention of an Order to Discontinue Activity or a Work Order is a continuing offence, and a person who is convicted of an offence under this By-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000 and the total of all daily fines for the offence is not limited to \$100,000.

Penalties – Special Fines

14.5 A person convicted under this By-law is liable to a special fine of maximum \$200,000.00 which may be imposed in addition to the regular fine, to eliminate or reduce any economic advantage or gain from contravening the By-law.

Court Order - Additional Order to Discontinue or Remedy – s. 431 *Municipal Act, 2001*

14.6 Under section 431 of the *Municipal Act, 2001*, when this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order:

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and
- (b) in the case of a by-law described in section 135 of *Municipal Act, 2001*, requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

Part 15 MISCELLANEOUS

Transition

15.1 Any Permit issued under the provisions of By-law C.P.-1515-228 that has not expired or been revoked as of the date of this By-law coming into force shall be deemed to have been issued under this By-law and will be valid until such Permit is revoked, surrendered or expires.

Repeal

15.2 The Tree Protection By-law C.P.-1515-228 passed on August 30, 2016 is repealed.

Coming into force

15.3 This By-law shall come into force and effect on March 1, 2021.

Passed in Open Council on November 23, 2020.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – (Insert Council Meeting Date)
Second Reading – (Insert Council Meeting Date)
Third Reading – (Insert Council Meeting Date)

Schedule A

Calculation of Number of Distinctive Tree Replacement Trees & Calculation of Fees for Off-Site Tree Planting (insufficient space on Site to plant Replacement Trees)

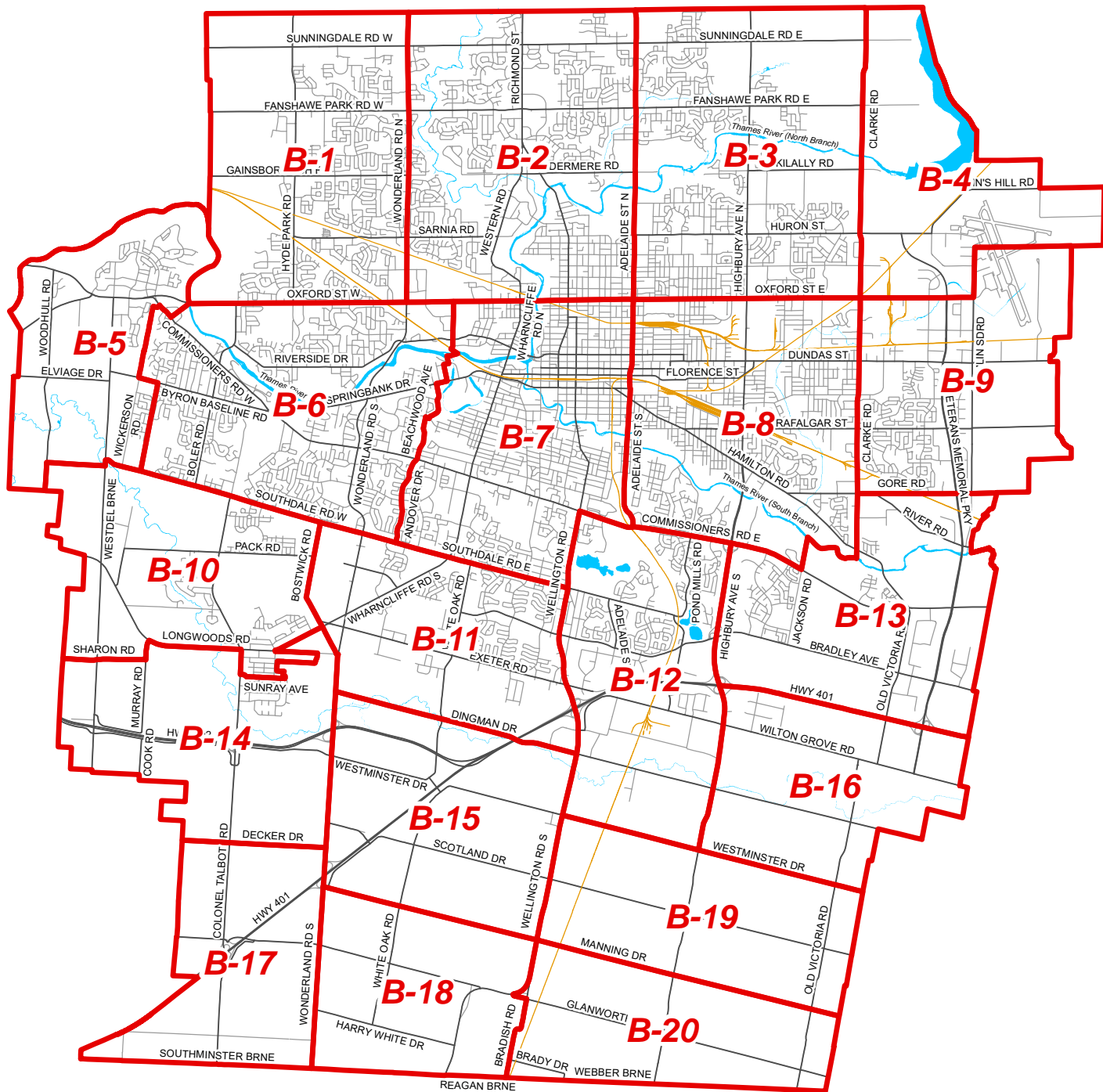
1. For the purposes of subsection 9.2(a) of this By-law with respect to a Distinctive Tree Permit, the City Engineer shall determine the number of living Replacement Trees that will be required based on the chart below. The diameter of the Tree to be Destroyed under a Distinctive Tree Permit, as set out in Column 1, shall correspond to the number of Replacement Trees required, as set out in Column 2.
2. For the purposes of subsection 9.2(b) of this By-law with respect to a Distinctive Tree Permit, where there is insufficient space on the same Site to plant all of the number of Replacement Trees as calculated for 9.2(a) of this By-law, the Permit Holder shall plant as many Replacement Trees as the site will allow as determined by the City Engineer, and with respect to the number of Replacement Trees that could not be planted due to insufficient space, the City Engineer shall calculate the amount of the fee by multiplying the number of Replacement Trees that could not be planted on site due to insufficient space by \$350 per tree. The diameter of the Tree to be Destroyed under a Distinctive Tree Permit, as set out in Column 1, shall correspond to the number of Replacement Trees, as set out in Column 2.

Column 1: Trunk Diameter of Distinctive Tree Destroyed	Column 2: Number of Replacement Trees Required
50 cm	1
51-60 cm	2
61-70 cm	3
71-80 cm	4
81-90 cm	5
91-100 cm	6
101-110 cm	7
111-120 cm	8
121-130 cm	9
131-140 cm	10
>141cm	11

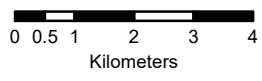
*NOTE: does not apply to Dead Distinctive Tree Permit

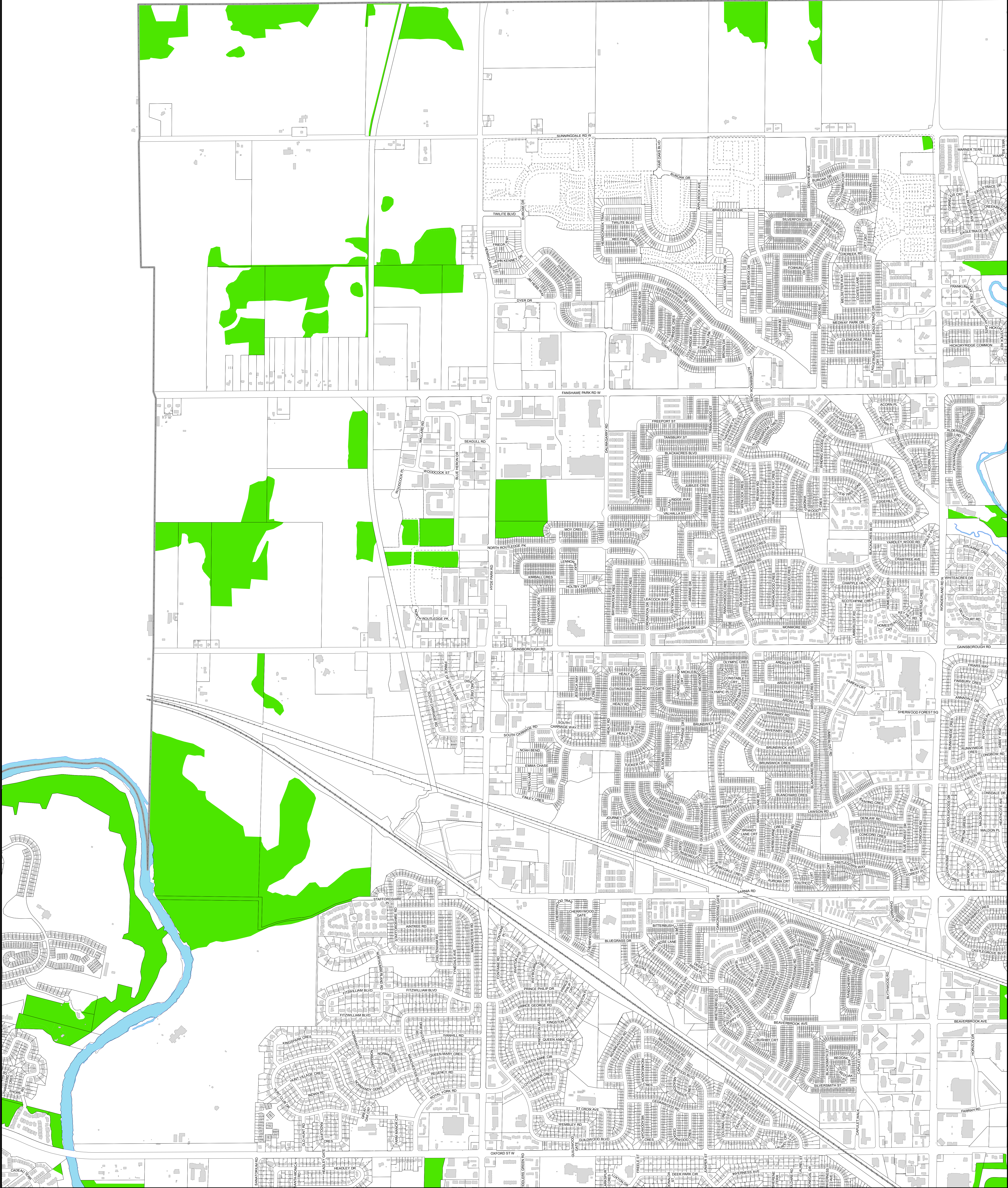
Schedule B

Tree Protection Area (TPA) Maps insert here.....



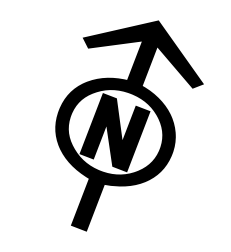
**CITY OF LONDON
TREE PROTECTION BY-LAW
SCHEDULE B
INDEX MAP**



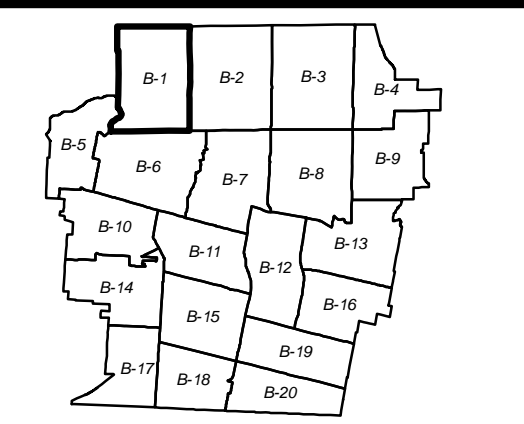


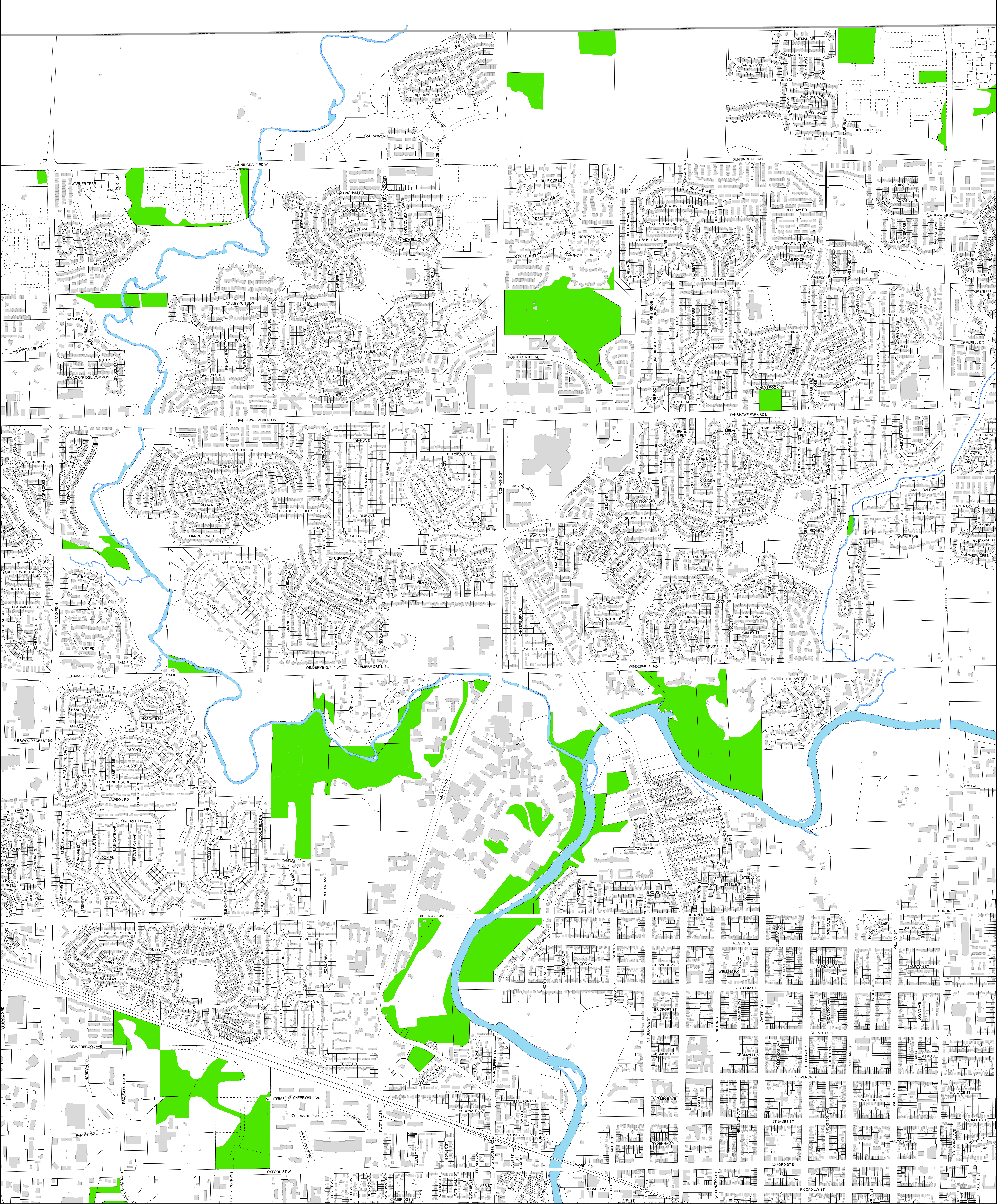
 Tree Protection Area

KEY MAP
B-1
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 Meters



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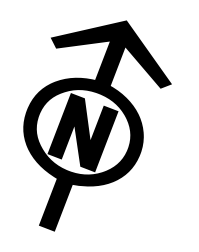
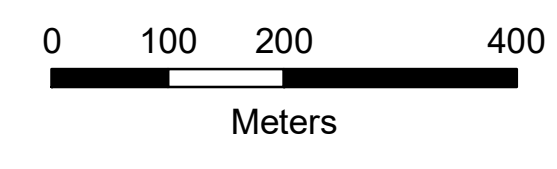




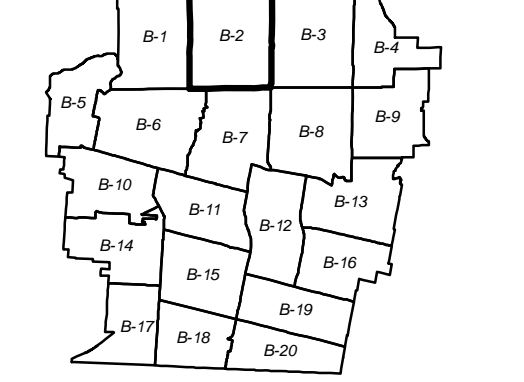
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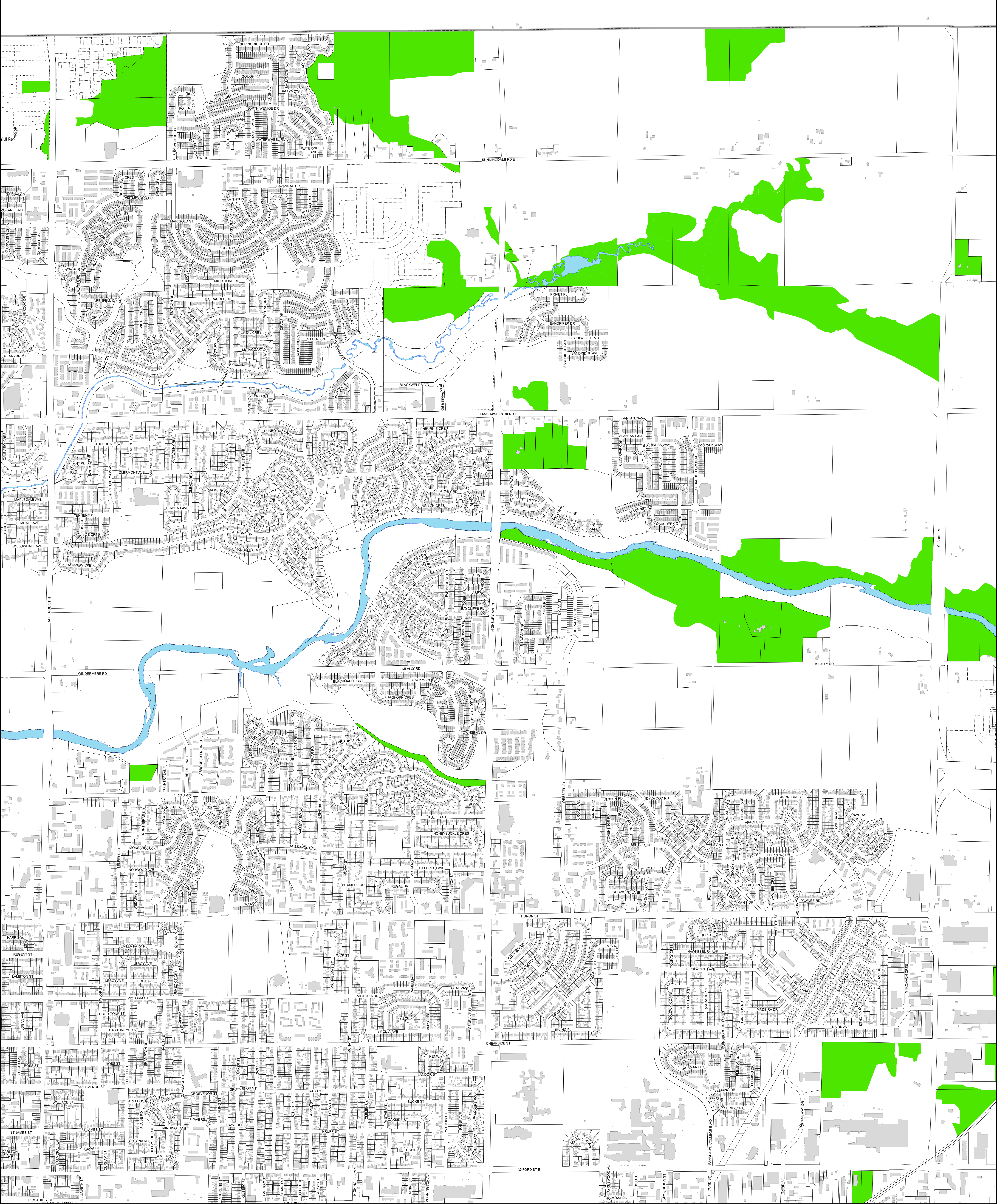
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B-2

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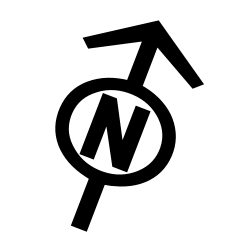
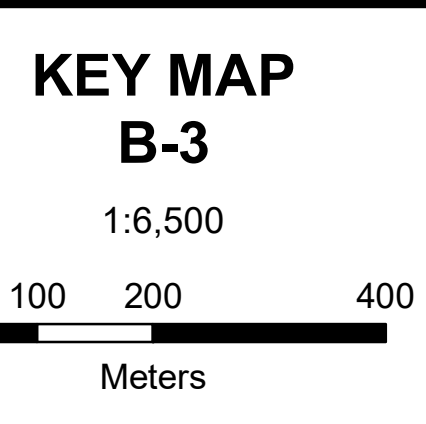


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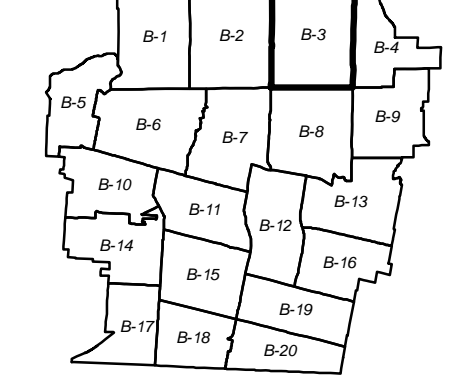


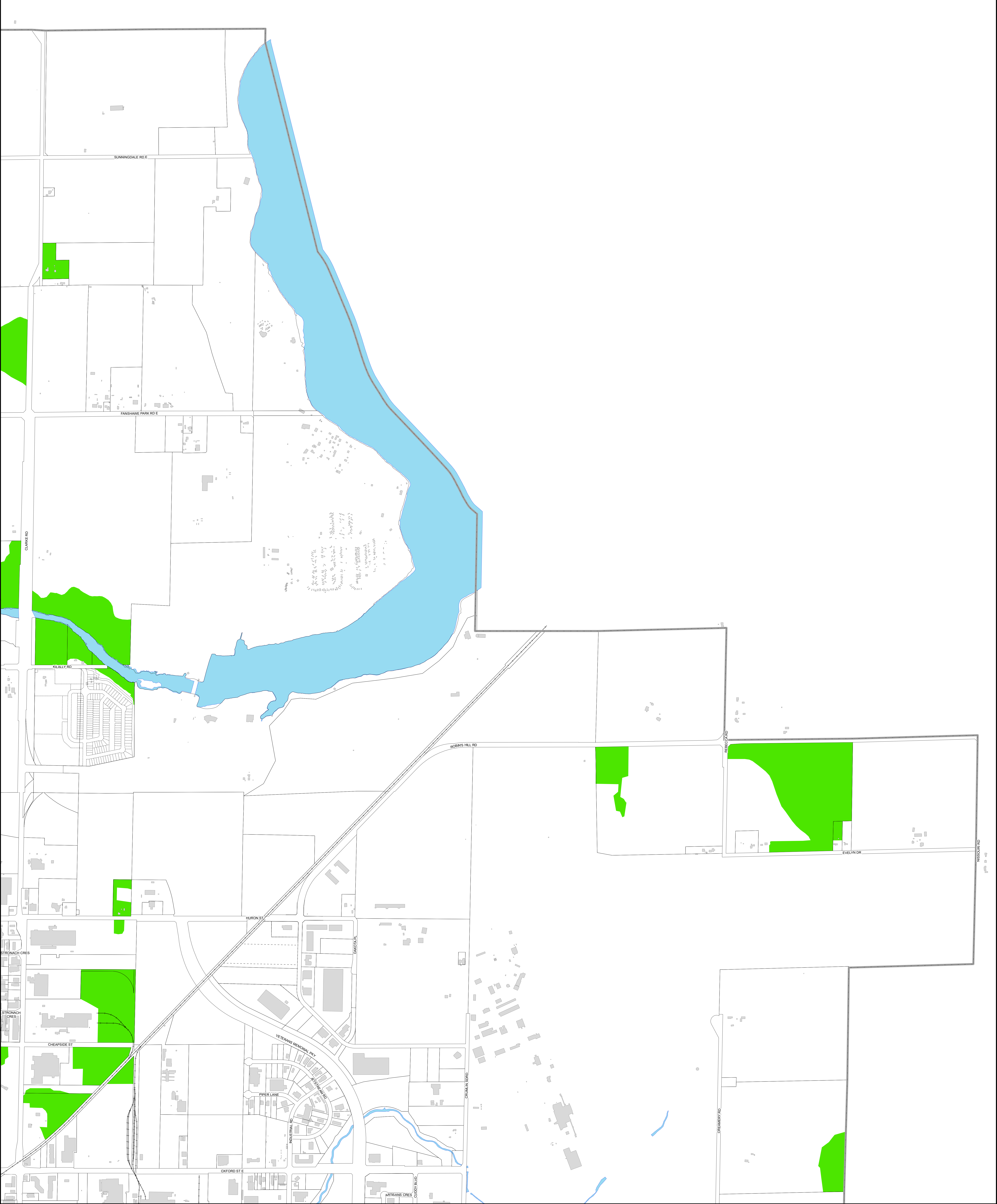


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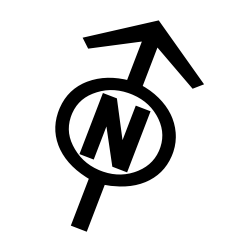




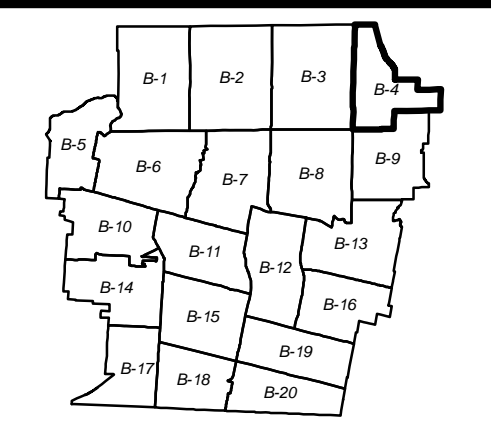
CITY OF LONDON
TREE PROTECTION BY-LAW
SCHEDULE B
 as of October 26, 2020

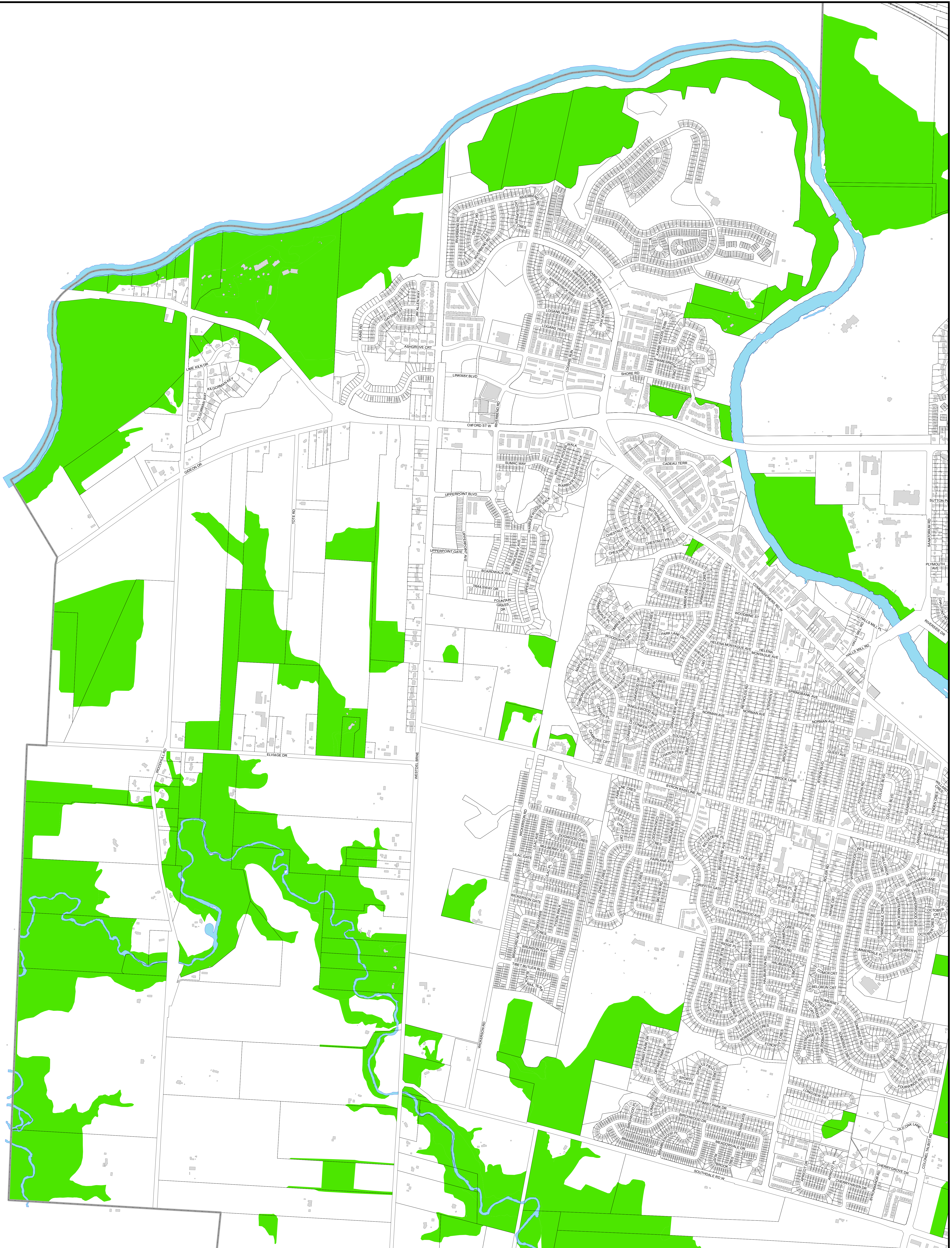
 Tree Protection Area

KEY MAP
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 Tree Protection Area

**KEY MAP
B-5**

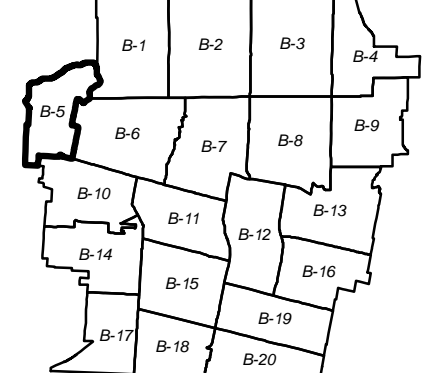
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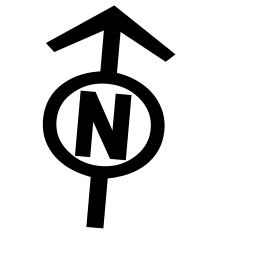
**CITY OF LONDON
TREE PROTECTION
BY-LAW**

SCHEDULE B
as of October 26, 2020



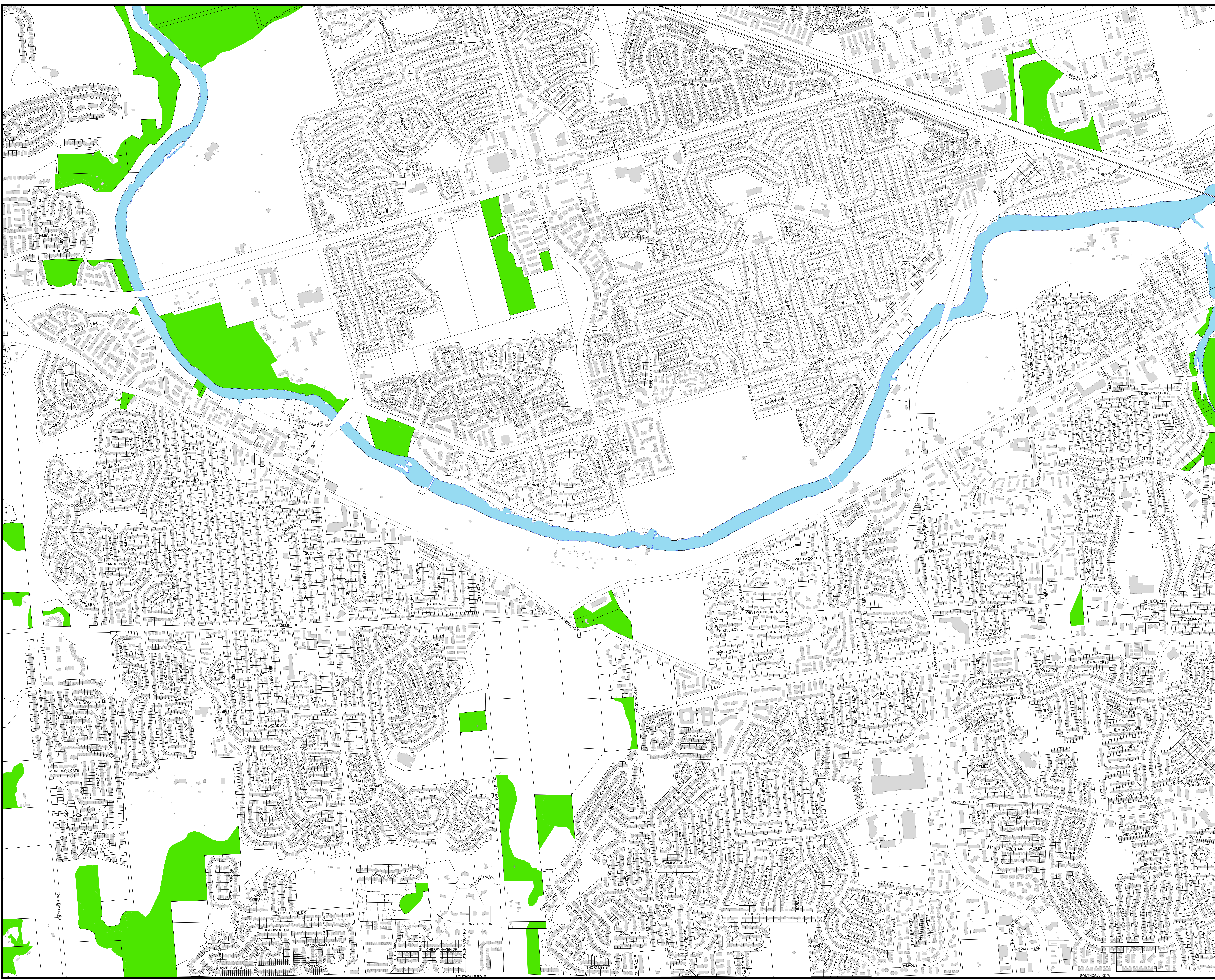
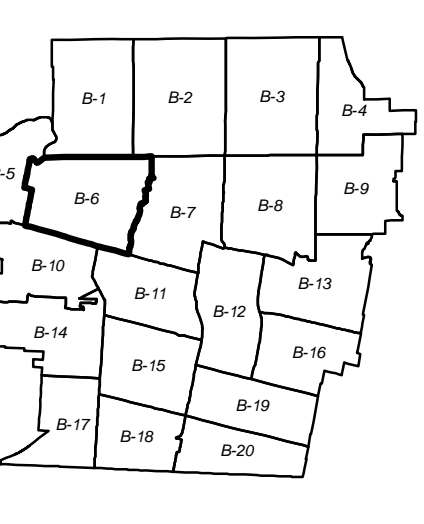
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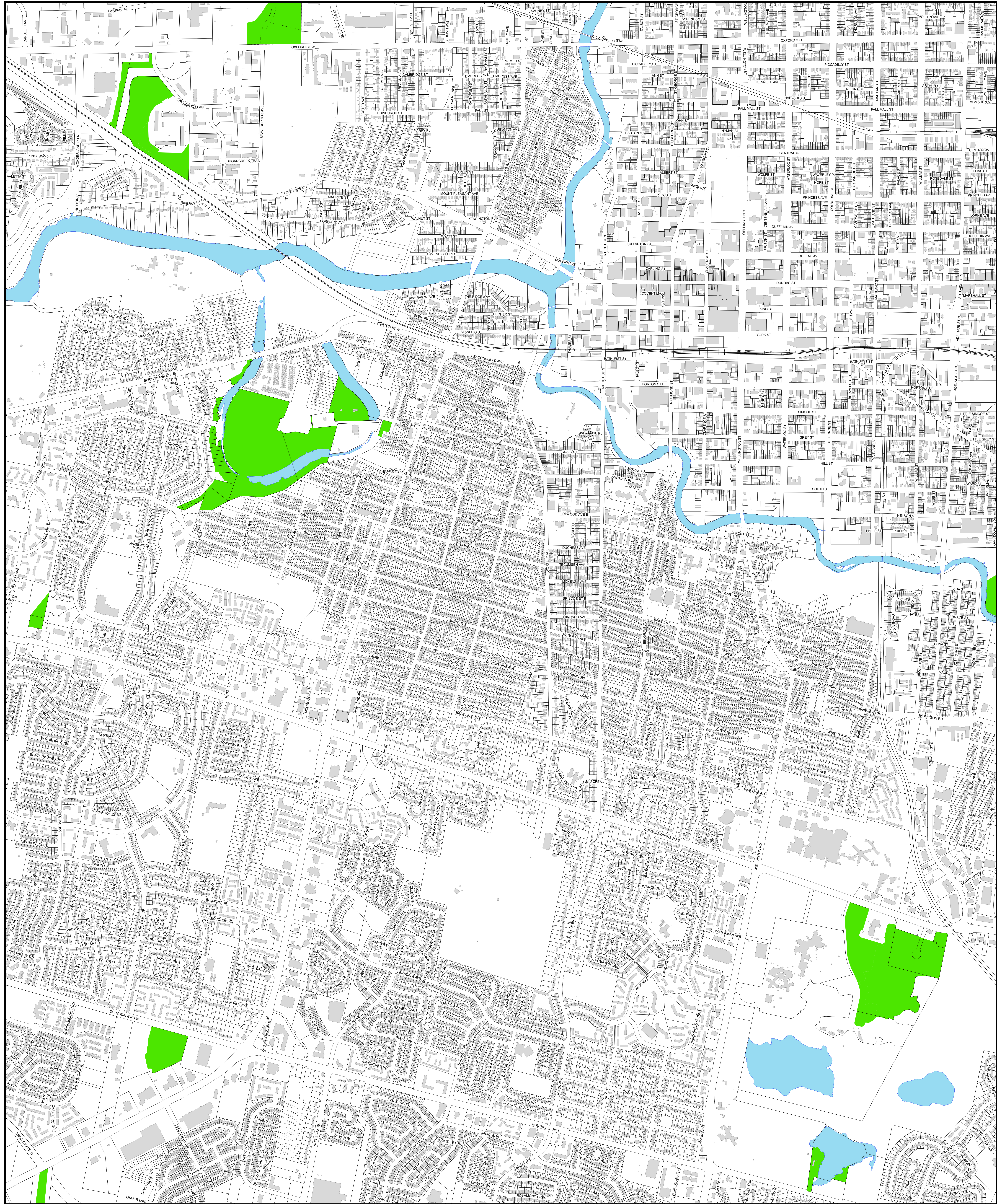
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B-6**



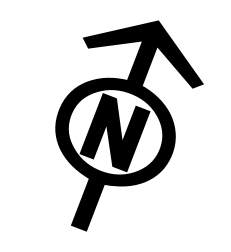
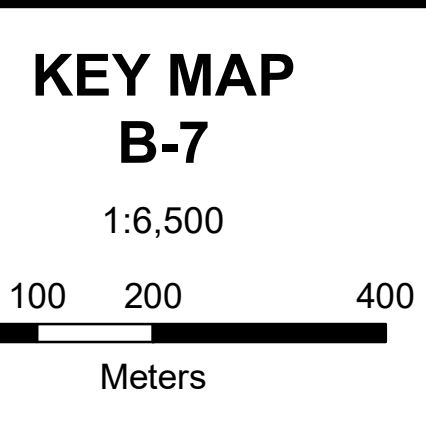
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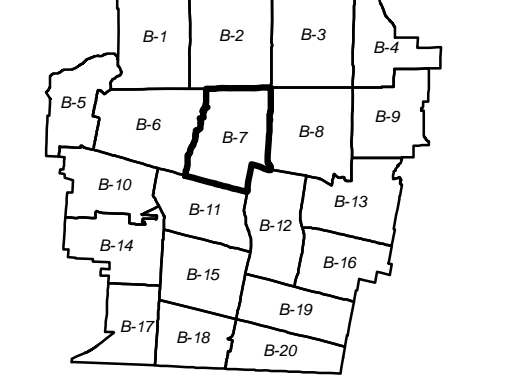


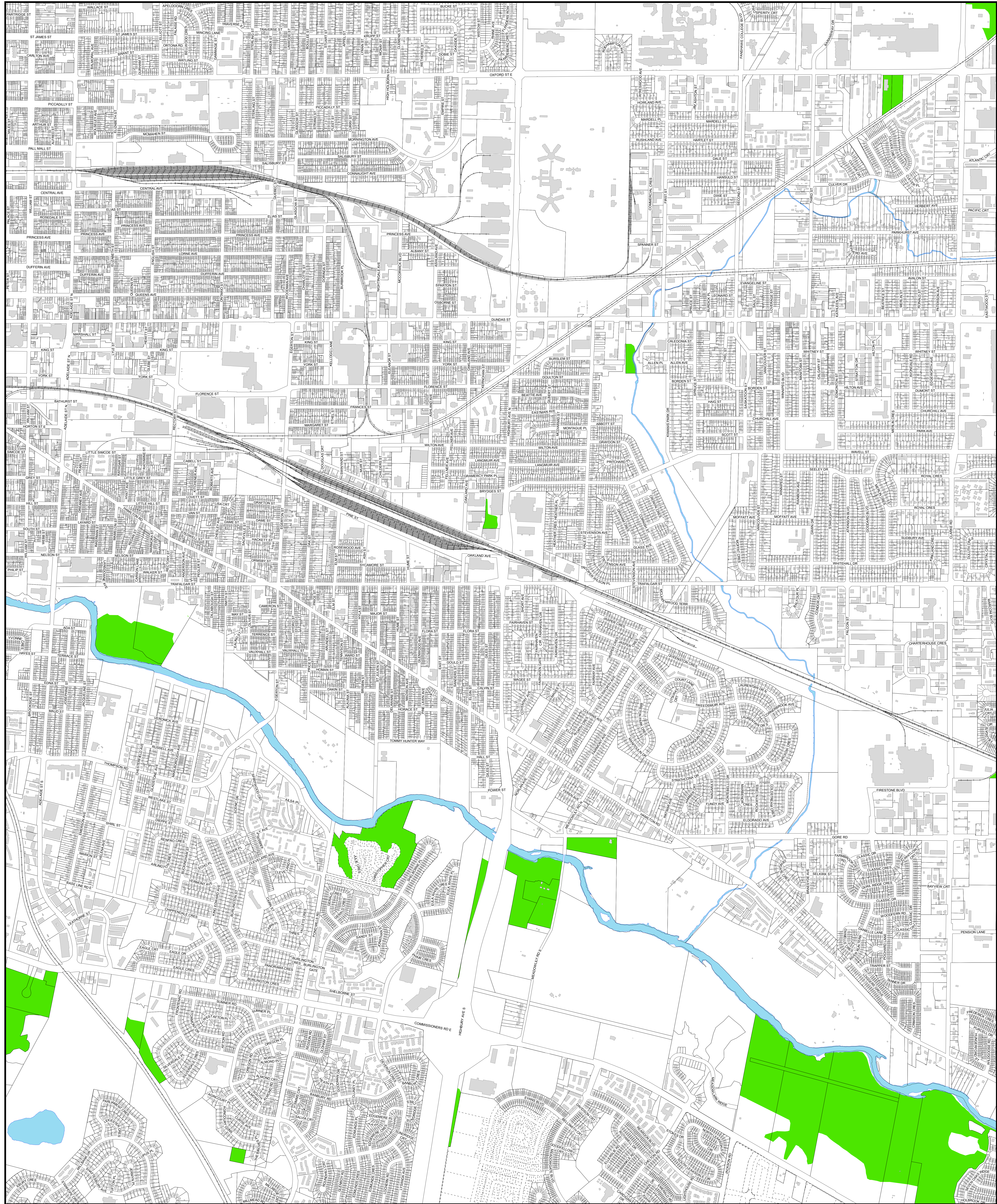


 Tree Protection Area



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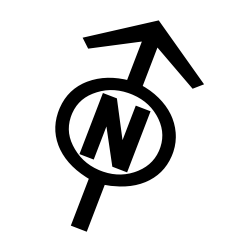




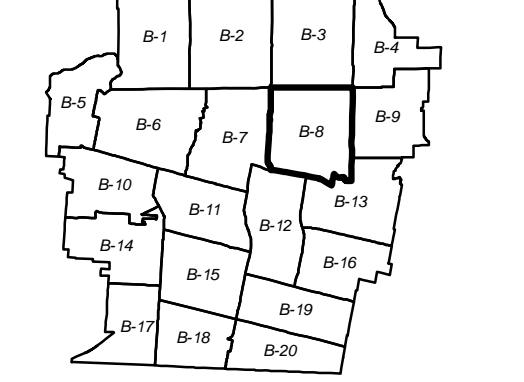
 Tree Protection Area

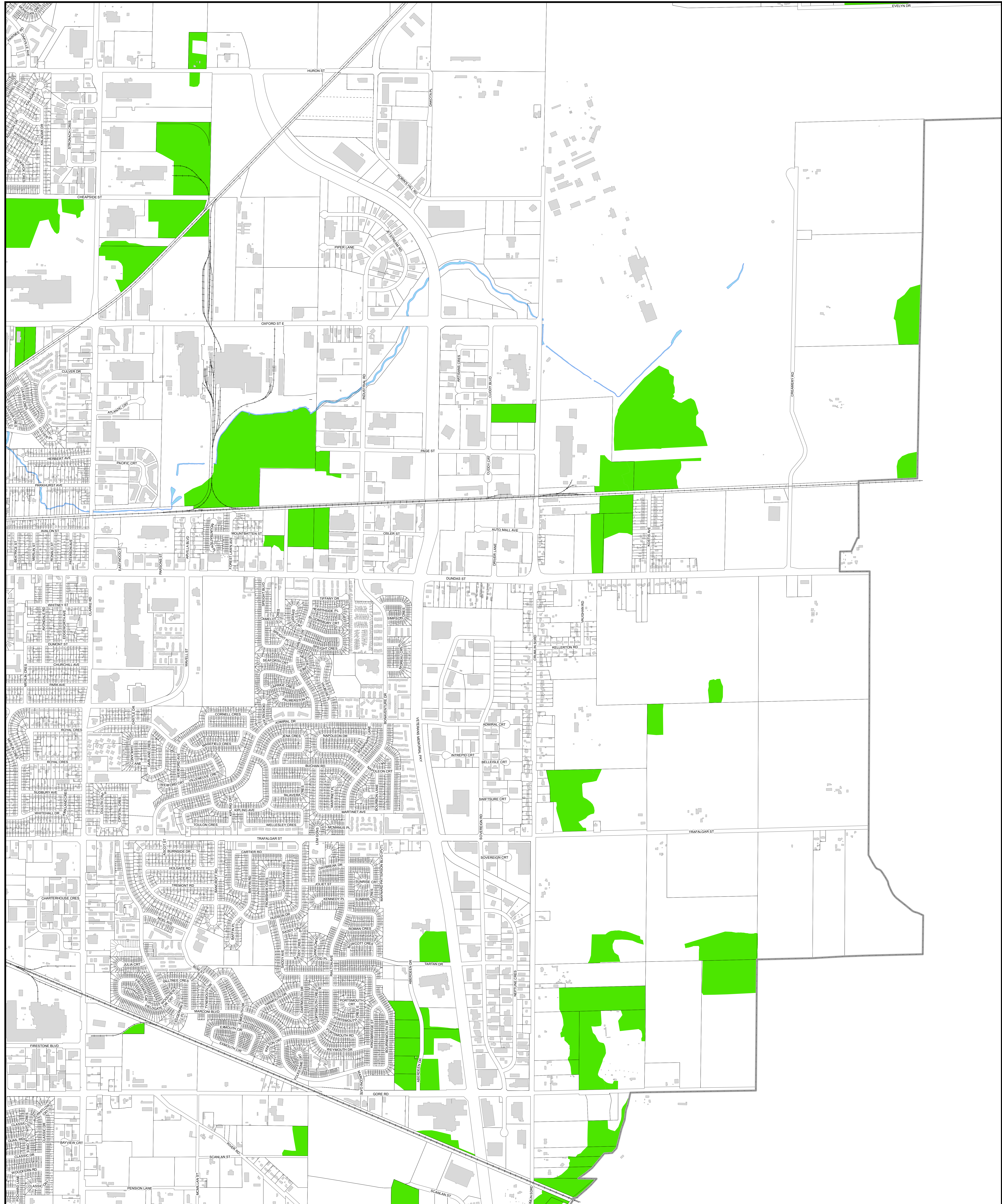
KEY MAP
B-8

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 Meters



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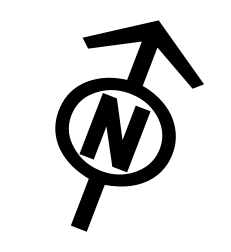




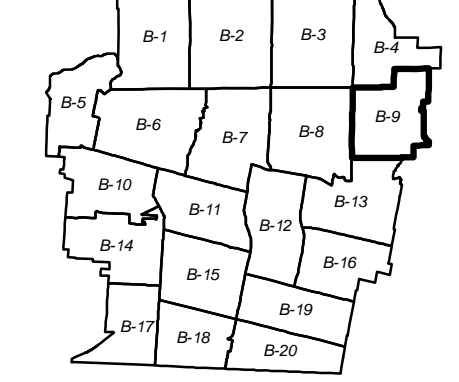
 Tree Protection Area

KEY MAP
B-9

1:6,500
 0 100 200 400
 Meters



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TREE PROTECTION
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SCHEDULE B
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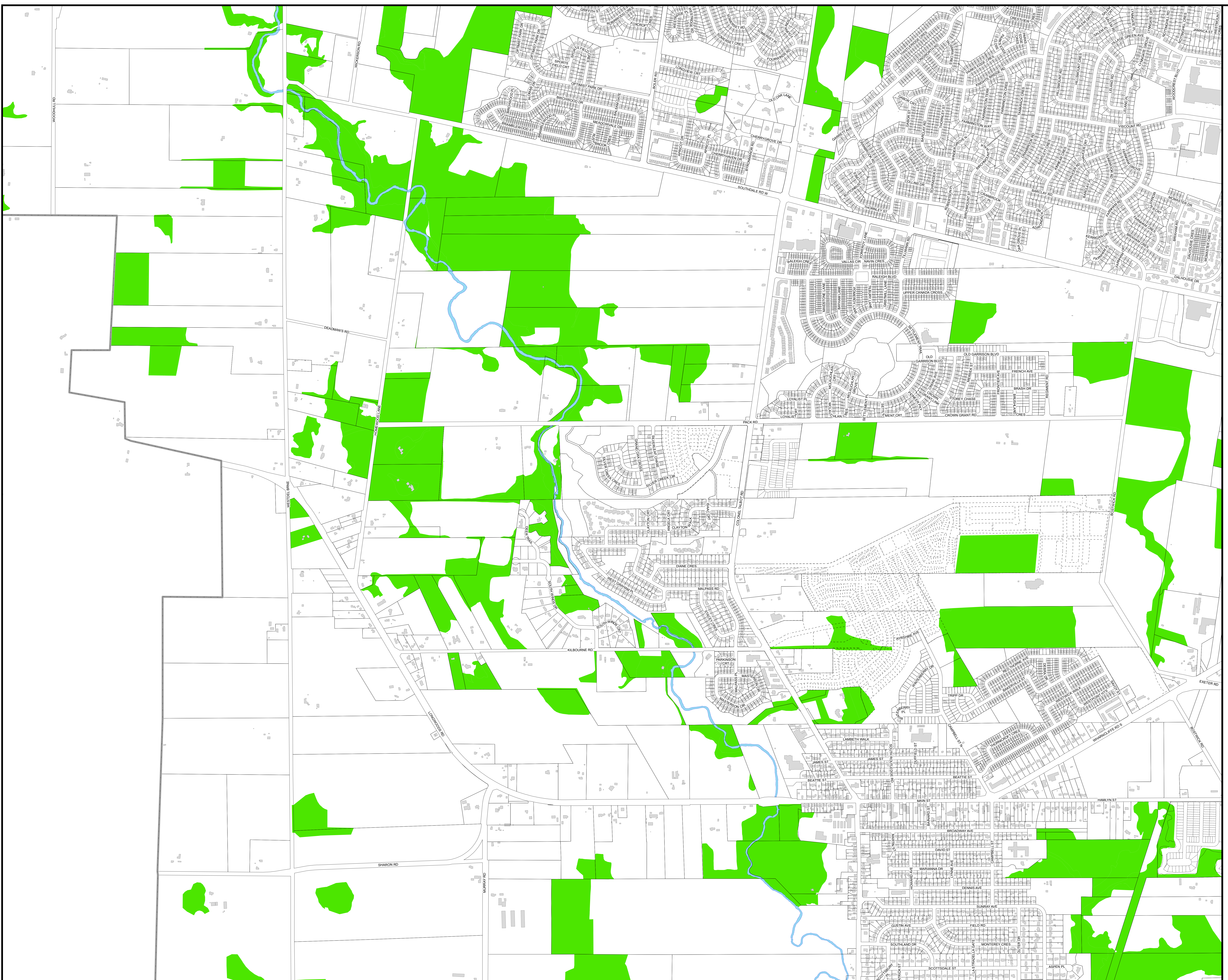
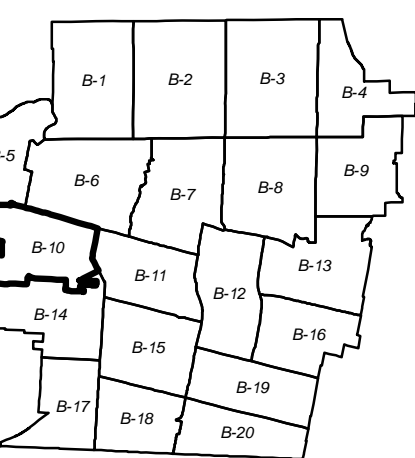
Tree Protection
Area

KEY MAP
B-10



1:6,500
0 50 100 200
Meters

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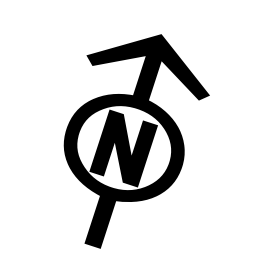
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CITY OF LONDON
TREE PROTECTION
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SCHEDULE B
as of October 26, 2020

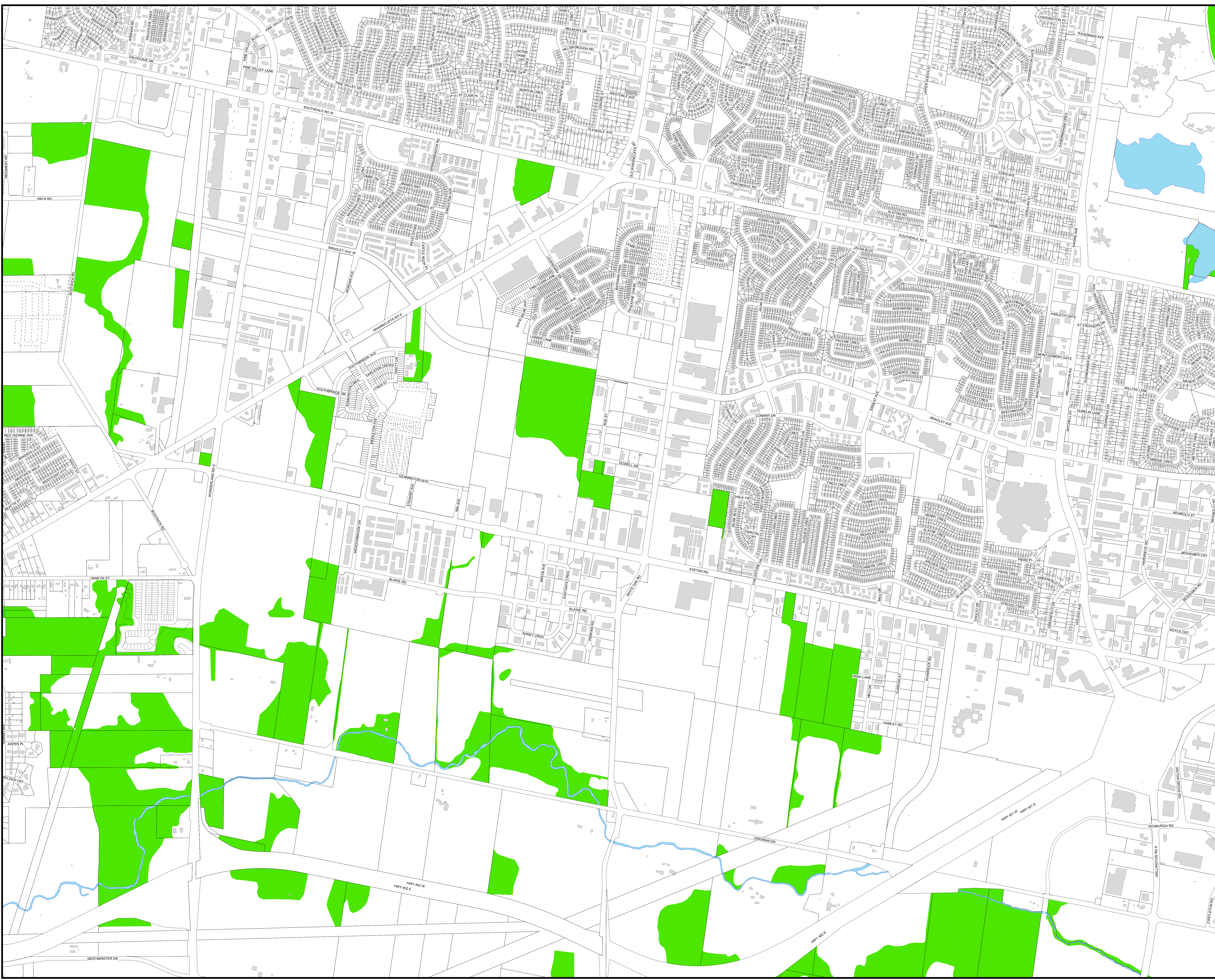
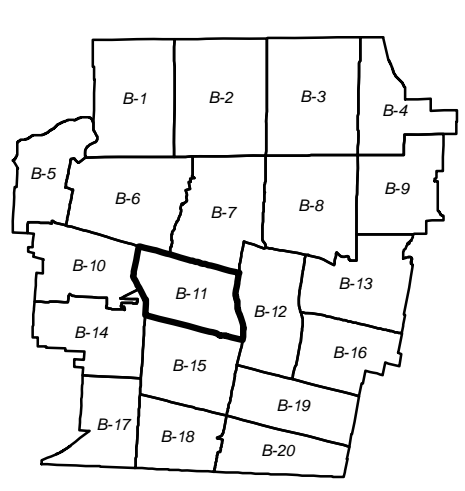
Tree Protection
Area

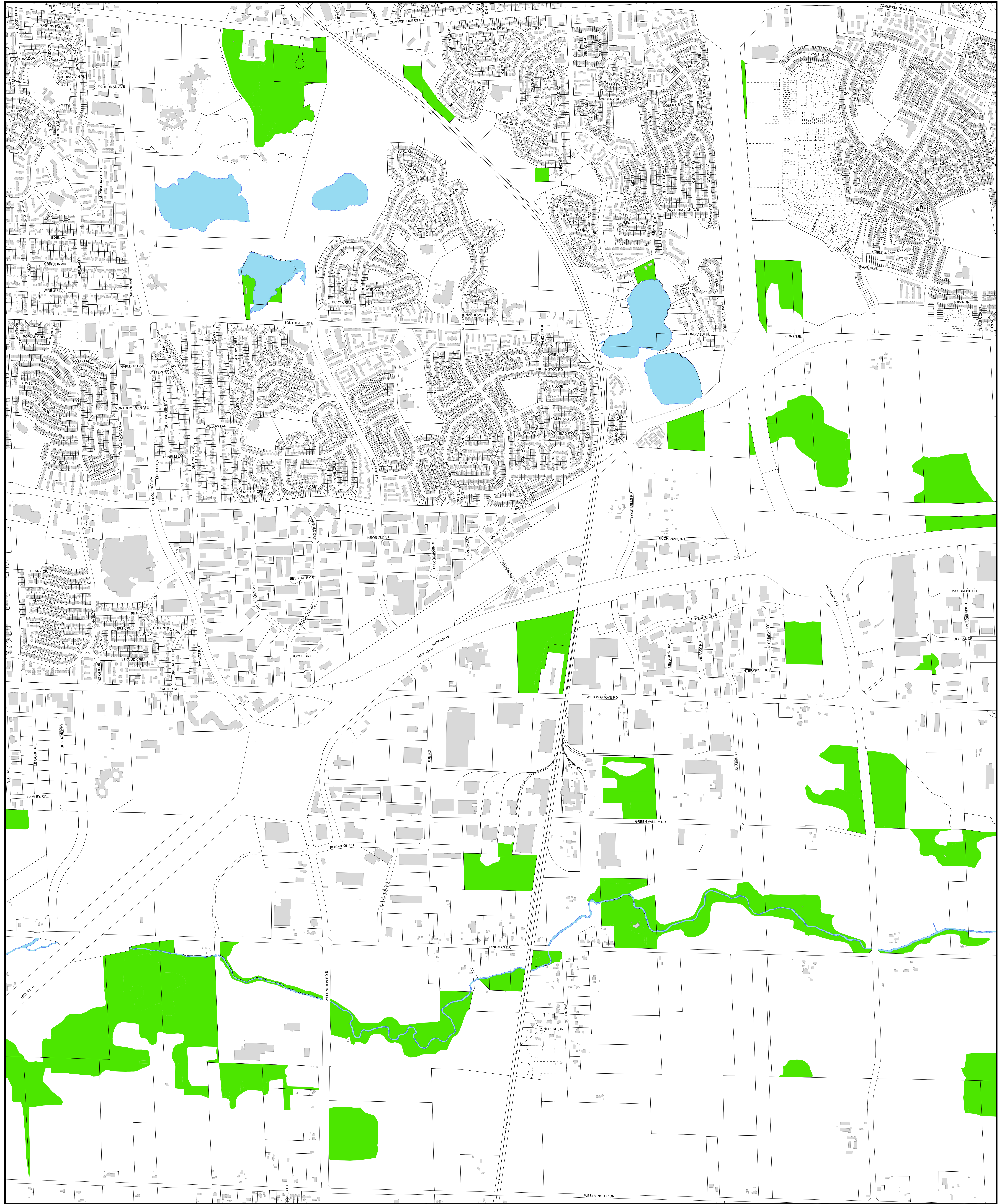
KEY MAP
B-11



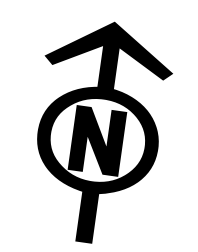
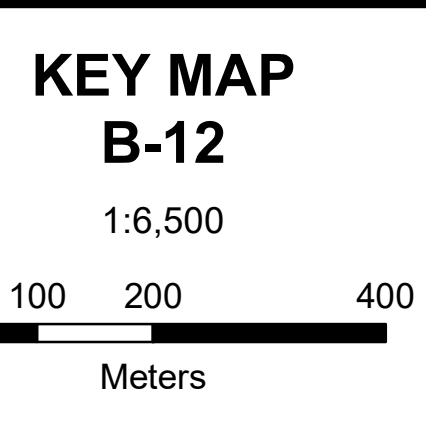
1:6,500
0 50 100 200
Meters

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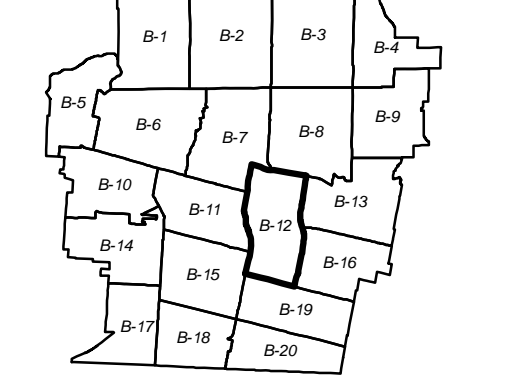




 Tree Protection Area



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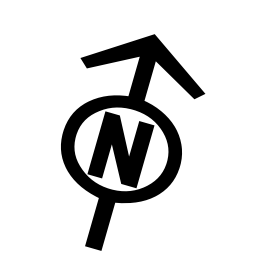
SCHEDULE B

as of October 26, 2020



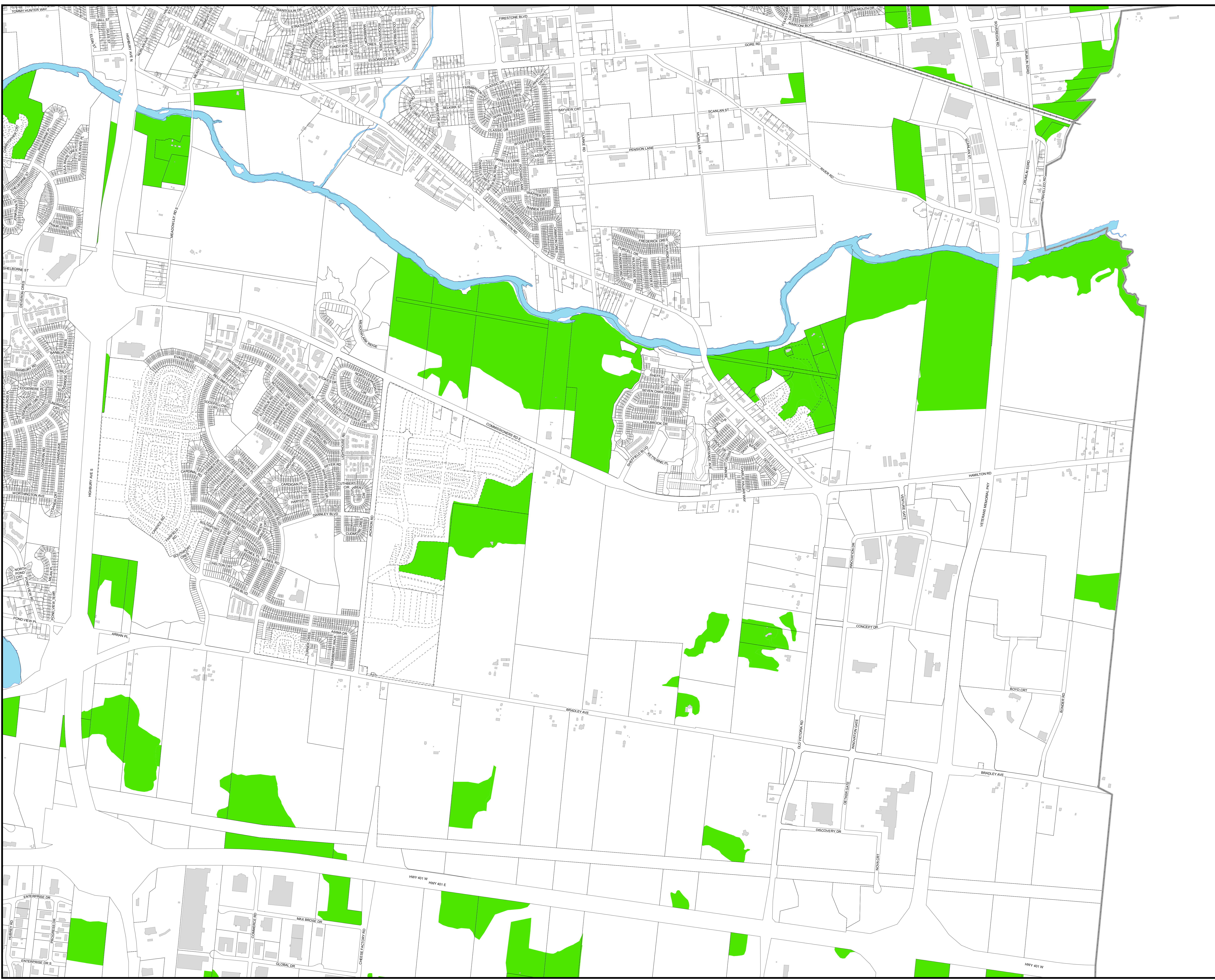
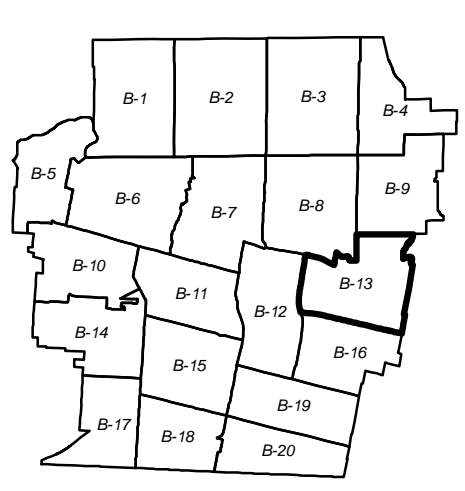
Tree Protection
Area

KEY MAP
B-13



1:6,500
0 50 100 200
Meters

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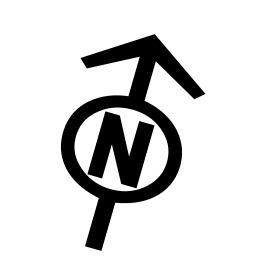
CITY OF LONDON
TREE PROTECTION
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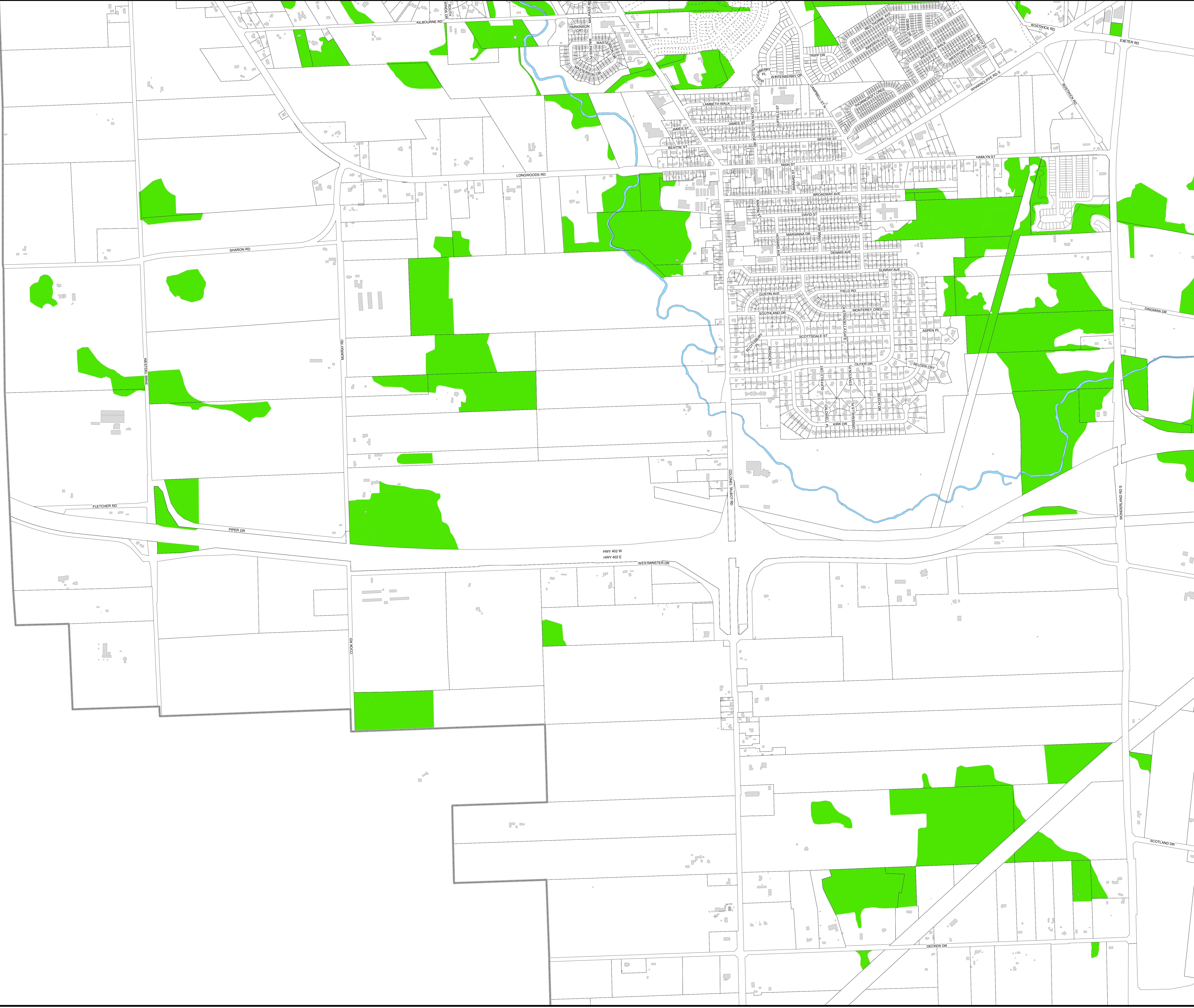
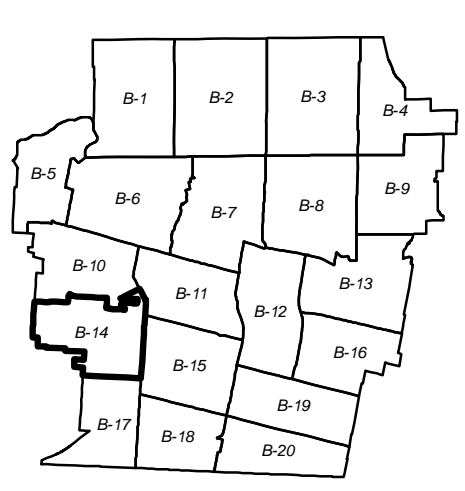
Tree Protection
Area

KEY MAP
B-14



1:6,500
0 50 100 200
Meters

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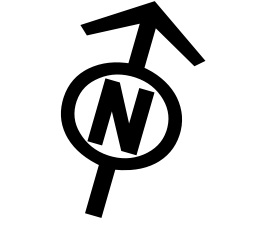
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TREE PROTECTION
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SCHEDULE B
as of October 26, 2020

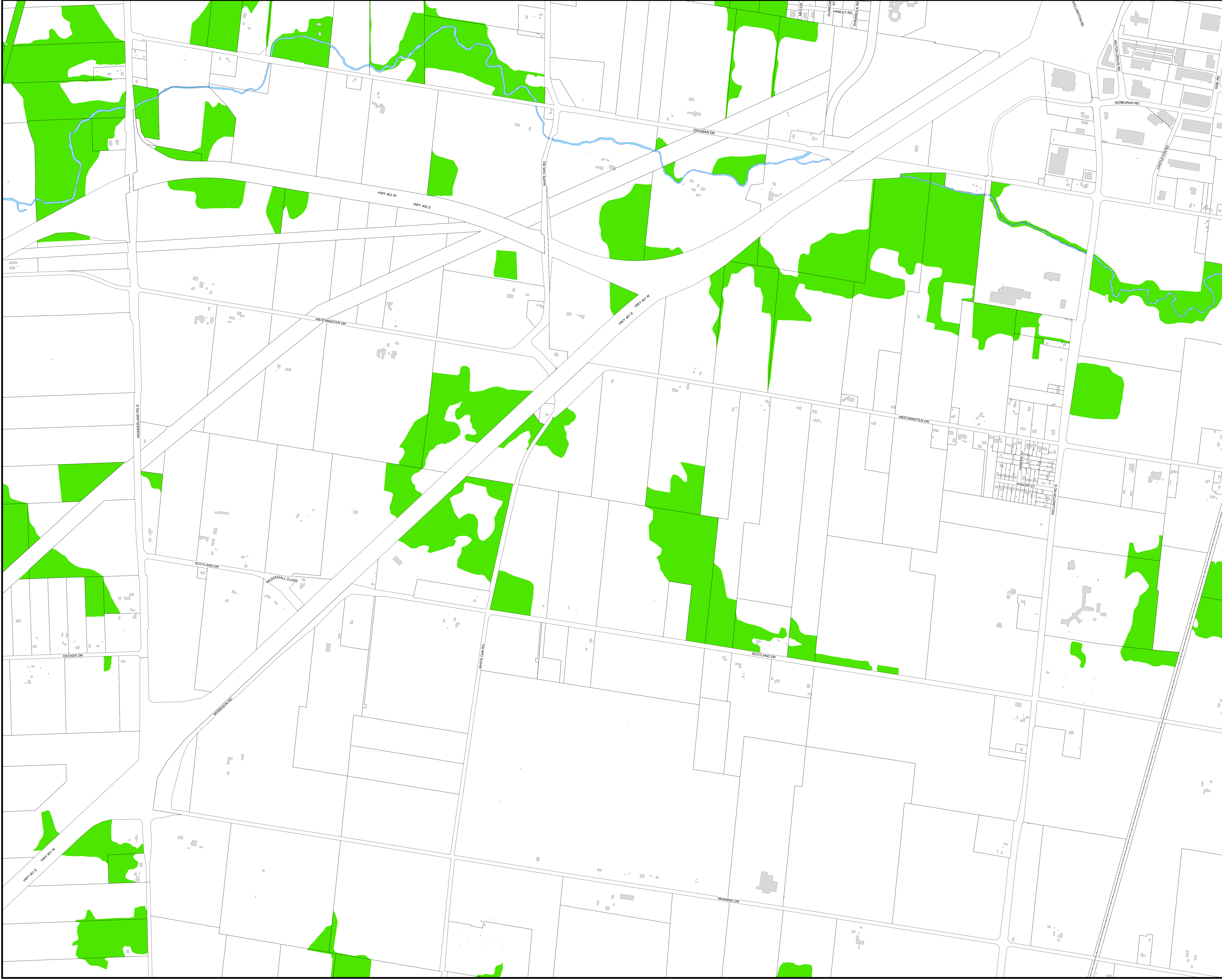
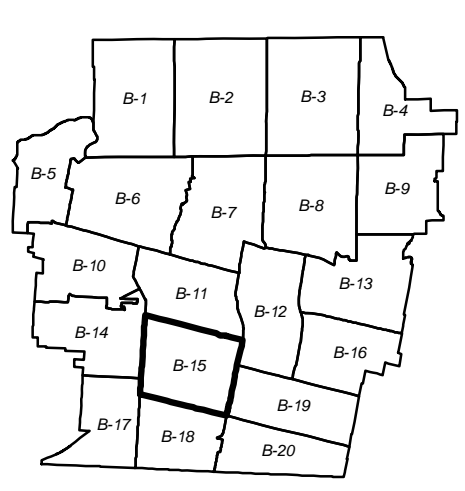
Tree Protection
Area

**KEY MAP
B-15**



1:6,500
0 50 100 200
Meters

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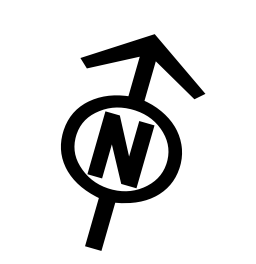
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TREE PROTECTION
BY-LAW**

SCHEDULE B
as of October 26, 2020

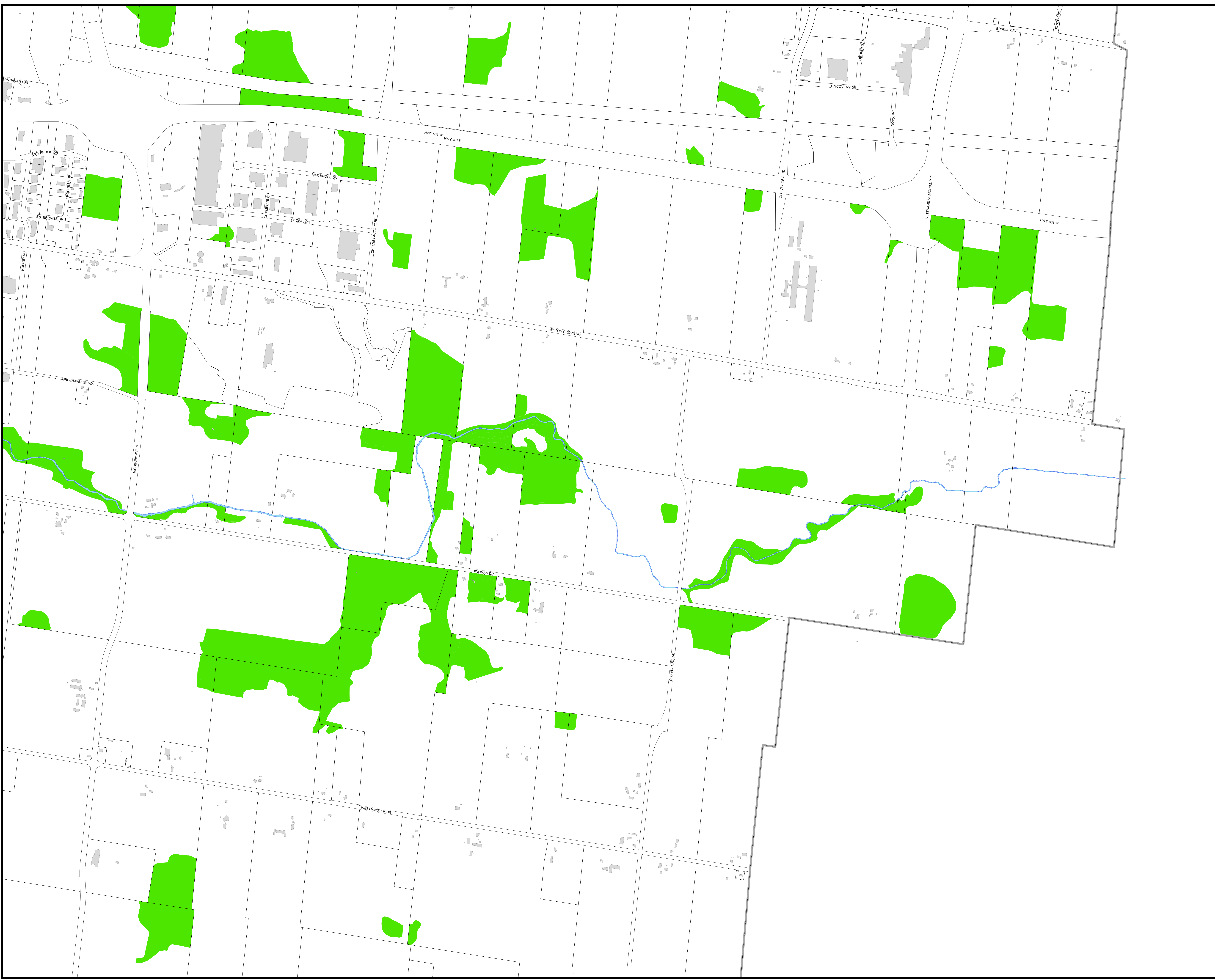
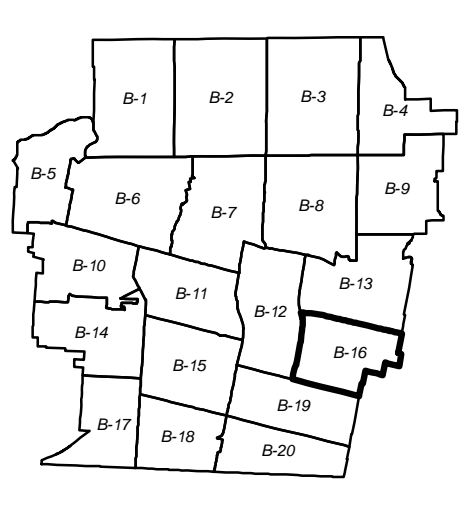


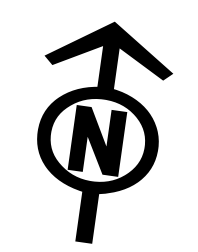
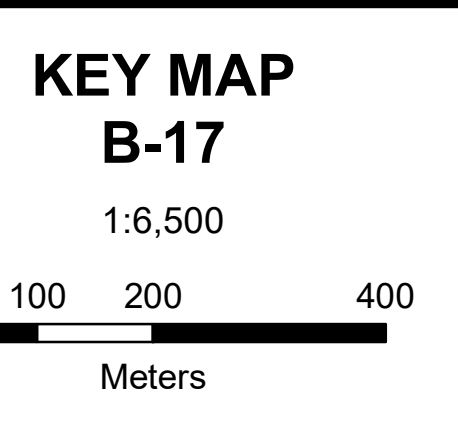
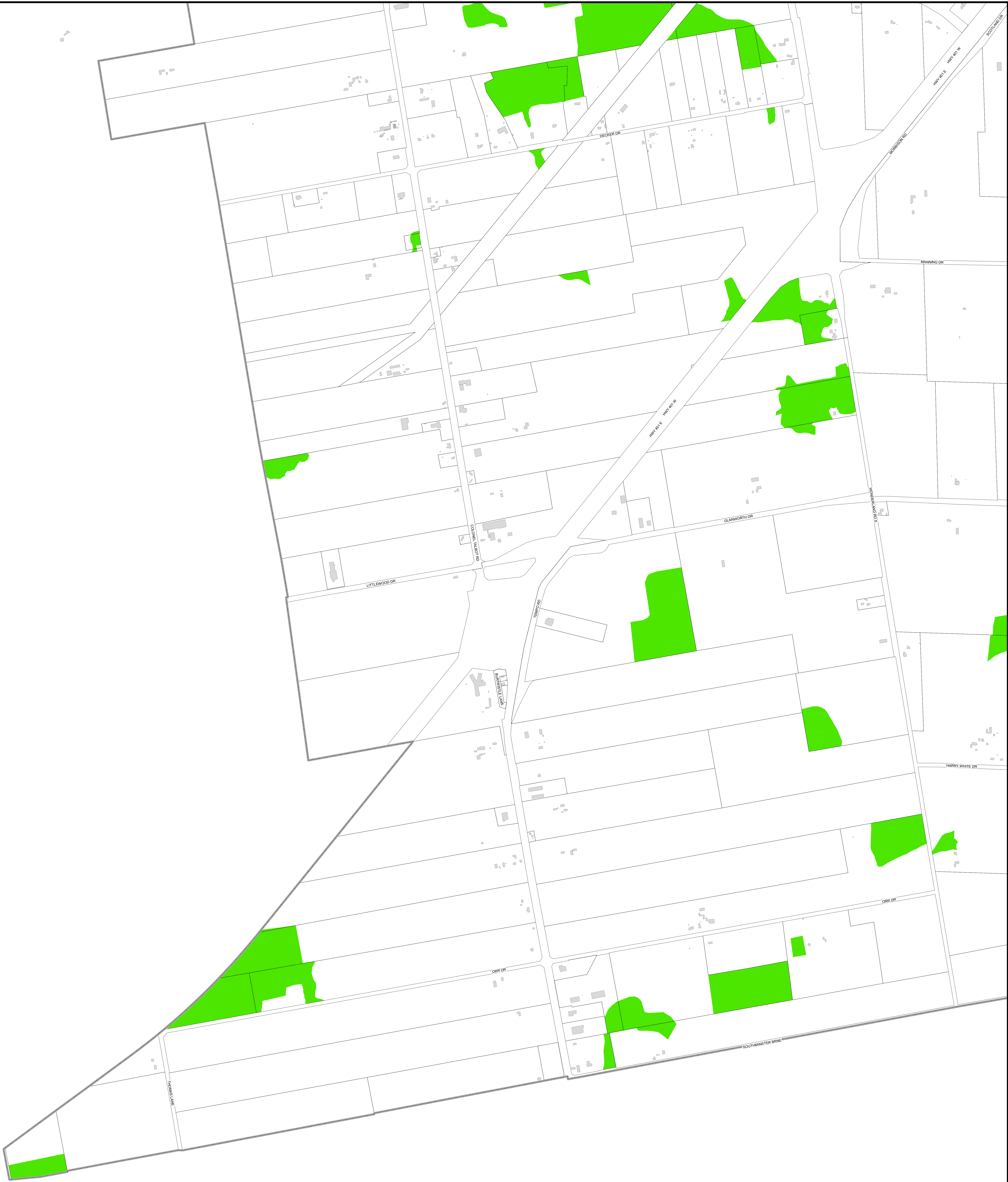
**KEY MAP
B-16**



1:6,500
0 50 100 200
Meters

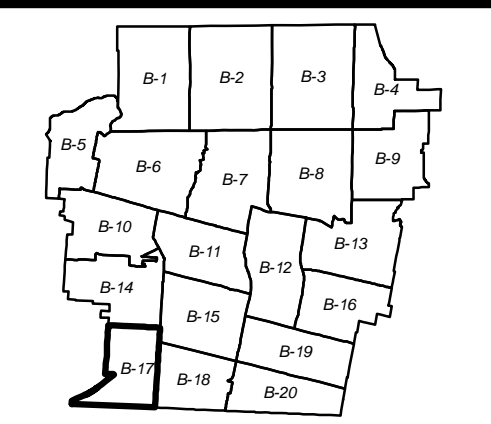
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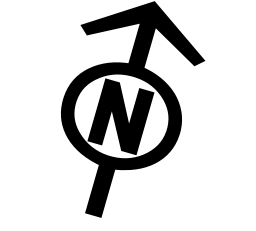
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**CITY OF LONDON
TREE PROTECTION
BY-LAW**

SCHEDULE B
as of October 26, 2020

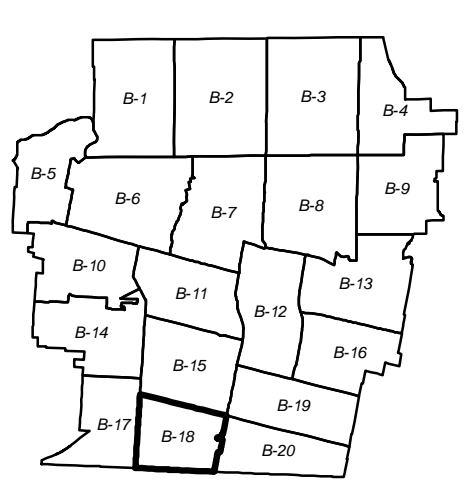
Tree Protection
Area

**KEY MAP
B-18**



1:6,500
0 50 100 200
Meters

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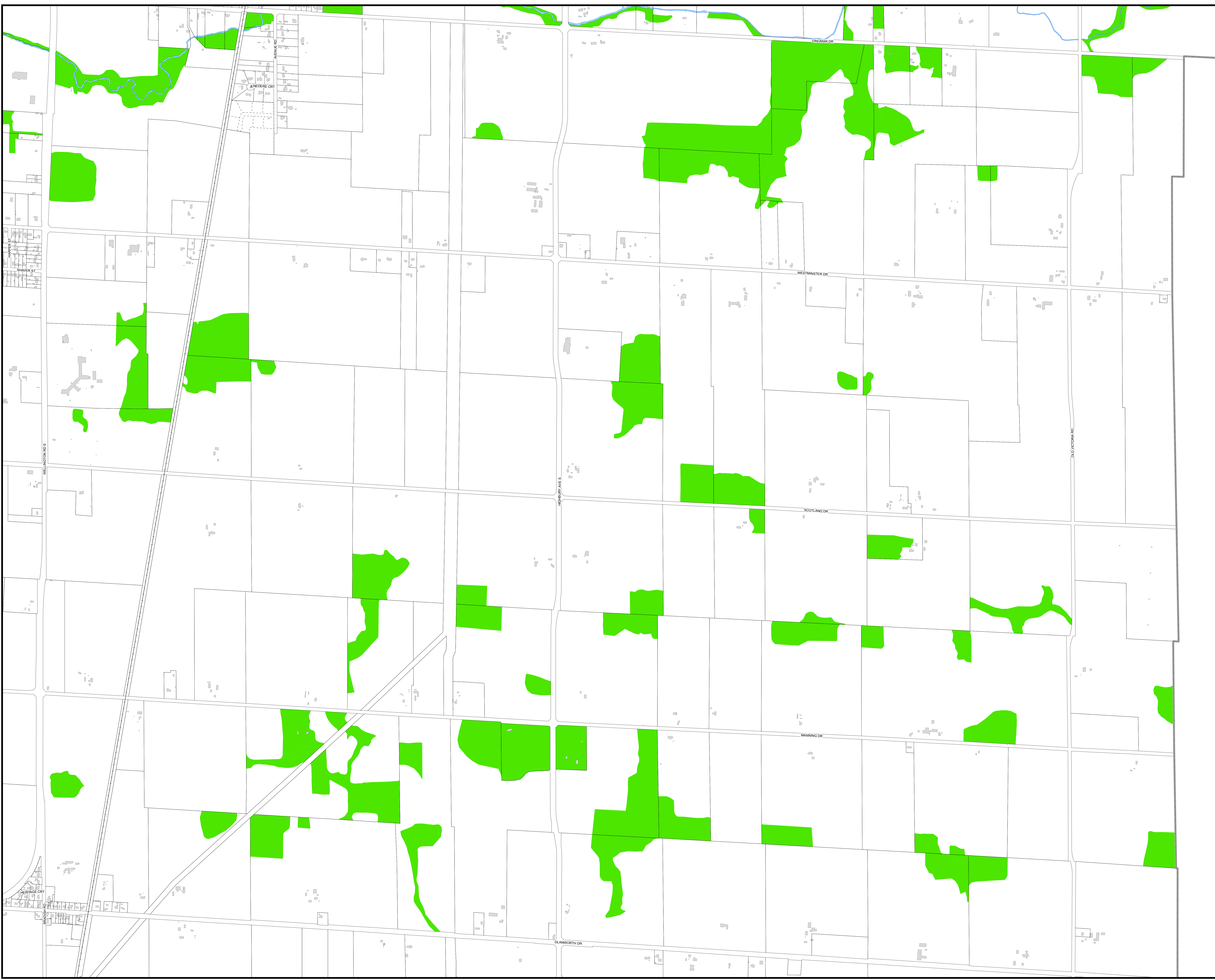
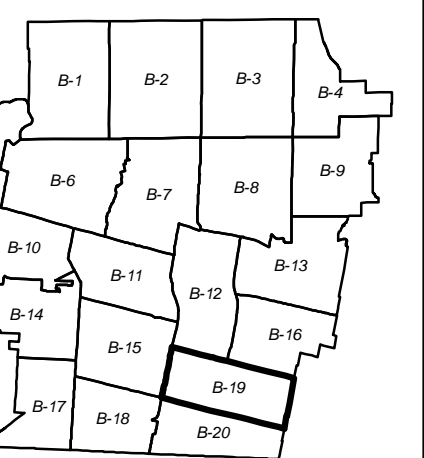
 Tree Protection Area

**KEY MAP
B-19**



1:7,000
0 55 110 220
Meters

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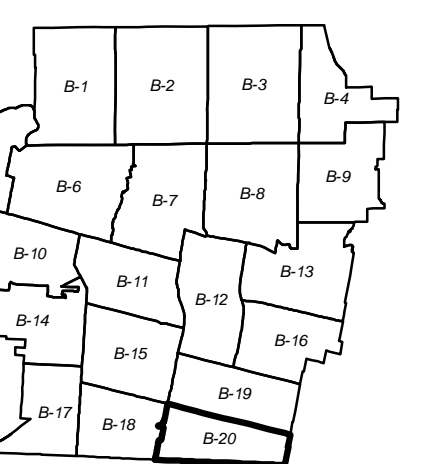
Tree Protection
Area

**KEY MAP
B-20**



1:7,000
0 55 110 220
Meters

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Bill No.
201920

By-law No.

A by-law to regulate the Injuring and Destruction of Trees and to encourage preservation and planting of Trees throughout the City of London

WHEREAS Municipal Council has determined that it is desirable to enact a By-law to generally prohibit the Injury and Destruction of Trees within the Urban Growth Boundary that have a diameter of at least 50 cm, and all trees located within Tree Protection Areas, and to allow for the Injury and Destruction of such Trees in limited circumstances with a Permit, and to encourage preservation and planting of Trees throughout the City of London;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended ("*Municipal Act, 2001*") provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001* or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality, including respecting climate change; in paragraph 6, Health, safety and well-being of persons; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property; in paragraph 9, Animals;

AND WHEREAS pursuant to subsection 135(1) of the *Municipal Act, 2001*, without limiting sections 9 and 10, a municipality may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS pursuant to subsection 135(7) of the *Municipal Act, 2001*, without limiting sections 9 and 10, a municipality may require that a permit be obtained to injure or destroy trees, and impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees;

AND WHEREAS subsections 151(1) to (4) of the *Municipal Act, 2001* apply with necessary modifications to a system of licences with respect to any activity, matter or thing for which a by-law may be passed under sections 9 and 10 as if it were a system of licences with respect to a business;

AND WHEREAS subsection 1(1) of the *Municipal Act, 2001* defines "licence" to include a permit;

AND WHEREAS section 23.2 of the *Municipal Act, 2001* permits a municipality to delegate certain legislative and quasi-judicial powers;

AND WHEREAS the Municipal Council for The Corporation of the City of London is of the opinion that the delegation of legislative powers under this By-law to the City

Engineer and the Hearings Officer including without limitation the power to issue, revoke, suspend and impose conditions on the permit and prescribe operational standards such as the format and content of forms or documents, are powers of a minor nature having regard to the number of people, the size of geographic area and the time period affected by the exercise of the power in accordance with subsection 23.2(4) of the *Municipal Act, 2001*;

AND WHEREAS subsection 391(1) of the *Municipal Act, 2001* provides that a municipality may impose fees and charges on persons;

AND WHEREAS sections 429, 431, 444 and 445 of the *Municipal Act, 2001* provide for a system of fines and other enforcement orders;

NOW THEREFORE the Council of The Corporation of the City of London enacts as follows:

Part 1 SHORT TITLE

1.1 This By-law may be cited as the "Tree Protection By-law".

Part 2 DEFINITIONS

2.1 For the purpose of this By-law:

"Applicant" means the Landowner or the Landowner's authorized representative who, pursuant to this By-law, applies for a Permit;

"Arborist" means an arborist qualified by the Ontario Ministry of Training, Colleges and Universities; a certified arborist with the International Society of Arboriculture; a consulting arborist registered with the American Society of Consulting Arborists; or a Registered Professional Forester;

"Arborist Opinion (Dead Distinctive Tree)" means a written opinion by an Arborist that contains the following:

- (a) the Arborist's opinion that the Tree is a Dead Distinctive Tree as that term is defined;
- (b) correct identification of the location, species and size of the Dead Distinctive Tree;
- (c) a photograph or video of the Tree; and
- (d) the professional accreditation of the Arborist (e.g. International Society of Arboriculture (ISA) Certification Number);

"Arborist Report" means a written report by an Arborist that contains the following:

- (a) correct identification of the location, species, size and condition of Trees;
- (b) states the Arborist's opinion why a Tree should be Injured or Destroyed, and whether it represents Good Arboricultural Practices or Good Forestry Practices;
- (c) describes how the Tree is proposed to be Injured or Destroyed;
- (d) an analysis and description of any reasonable alternatives to the Tree Injury or Destruction or an analysis and description as to why there are no reasonable alternatives to the Tree Injury or Destruction;
- (e) calculation of the number of Replacement Trees based on Schedule ~~B~~A, and suggest the species and location, and if in a Tree Protection Area, the Trees that may be planted or established through appropriate natural regeneration, the number of Replacement Trees that can be planted on the Site;
- (f) if Trees are to be Injured but not Destroyed, description of maintenance strategies and protection measures to be implemented;
- (g) if requested by the City Engineer, further information such as Tree or Trees on adjacent properties that may be affected, and an aerial map representation showing the Critical Root Zone of those Trees; and
- (h) the professional accreditation of the Arborist (e.g. International Society of Arboriculture (ISA) Certification Number);

"Boundary Tree" means a tree having any part of its trunk located on the boundary between adjoining lands. For the purposes of this definition, 'trunk' means that part of the tree from its point of growth away from its roots up to where it branches out to limbs and foliage;

"Building Permit" means a building permit issued under the *Building Code Act, 1992*, S.O. 1992, c. 23, or successor legislation;

"By-Law Enforcement Officer" means a person appointed pursuant to the *Police Services Act*, or any successor legislation, as a Municipal Law Enforcement Officer to enforce the provisions of this By-law;

"City" means The Corporation of the City of London;

"City Engineer" means the person who holds the position of City Engineer for The Corporation of the City of London or their written Designate who is authorized by the City Engineer to act on their behalf in respect of this By-law;

"Conservation Authority" has the same meaning as defined in the *Conservation Authorities Act*, R.S.O. 1990 c.C.27;

"Critical Root Zone" means the area of land within a radius of ten (10) cm from the trunk of a tree for every one (1) cm of trunk diameter;

"Dead Distinctive Tree" means a Distinctive Tree that, as a result of natural causes, is dead or, as a result of natural causes, is in advanced and irreversible decline in health or condition;

"Dead Distinctive Tree Permit" means a permit issued by the City Engineer to permit the Injury or Destruction of a Dead Distinctive Tree;

"Declared Emergency" means a situation or impending situation that has been declared an emergency under the *Emergency Management and Civil Protection Act*, R.S.O. 1990 c.E.9 or successor legislation;

"Designate" means any person acting with express authority conferred in writing by the City Engineer and may include but is not limited to City employees or Qualified Persons hired by the City;

"Destroy" means to cut down, remove, uproot, unearth, topple, burn, bury, shatter, poison, or in any way cause a Tree to die or be killed, or where the extent of Injury caused to a live Tree or disturbance of any part of its Critical Root Zone is such that it is likely to die or be killed, excepting where a Tree and/or its roots are killed by natural causes. The terms "Destroyed" and "Destruction" shall have a corresponding meaning;

"Distinctive Tree" means a Tree that has a Trunk Diameter of 50cm or greater, and that is located on a property within the Urban Growth Boundary, excluding a Tree Protection Area;

"Distinctive Tree Permit" means a permit issued by the City Engineer to permit the Injury or Destruction of a Distinctive Tree or Trees;

"Emergency Services" means the fire, police, or ambulance services when responding to an emergency event;

"Good Arboricultural Practices" means the implementation of the most recent techniques or methods of Tree management as recommended by the International Society of Arboriculture or their successor;

"Good Forestry Practices" has the same meaning as defined in the *Forestry Act* R.S.O. 1990 c. F.26;

“Hearings Officer” means a Hearings Officer appointed under the City’s Hearings Officer By-law A. 6653-121, as amended, or any successor by-law;

“Injure” means to harm, damage or impair the natural function or form of a Tree, including its roots within the Critical Root Zone, by any means excepting injury by natural causes, and includes but is not limited to carving, drilling, injection, exploding, shattering, improper Pruning that fails to meet Good Arboricultural Practices, removal of bark, deliberate introduction of decay fungi , inserting or driving foreign objects into or through the Tree or its roots, soil compaction, root excavation, suffocation, drowning, burying or poisoning. The terms “Injury”, “Injuring” and “Injured” shall have a corresponding meaning;

“Landowner” means a person having title in the land on which the Tree(s) are situated;

“Natural Ground Level” means the unaltered and original level of the soil around the base of a Tree that is supporting or did support the Tree during its early growth and establishment phase; where the ground level varies around the Tree, it shall be measured from the highest part of the soil;

“Normal Farm Practice” means a normal farm practice defined in the *Farming and Food Production Protection Act 1998*, S.O. 1998, c.1.

“Order” means an Order to Discontinue Activity or a Work Order, as the context requires;

“Permit” means a Tree Protection Area Permit or a Distinctive Tree Permit, or a Dead Distinctive Tree Permit, as the context requires;

“Permit Holder” means the Landowner to whom a Permit has been issued;

“Pest” means any thing that is injurious or potentially injurious, whether directly or indirectly, to a Tree, and includes any species that is invasive or new to Canada where the potential for harm is yet unknown or unpredictable;

“Pruning” means the removal of live or dead branches from a standing Tree. The terms “Prune” and “Pruned” shall have a corresponding meaning;

“Qualified Person” means a person who, in the opinion of the City Engineer, has satisfactory qualification, experience, education or knowledge to be an expert in the matter;

“Registered Professional Forester” means a person who is a registered and full member in good standing of the Ontario Professional Foresters Association and has the right to use the designation ‘Registered Professional Forester’ under the *Professional Foresters Act, 2000*, S.O. 2000, C. 18 or successor legislation;

“Replacement Tree” means a tree of a size and type determined by the City Engineer that is required to be planted to replace a tree Destroyed pursuant to a Permit;

“Security” means an agreement between the City and an Applicant where the Applicant arranges an irrevocable letter of credit from a financial institution to specify and lodge a sum of money as determined by the City Engineer as a condition of a Permit;

“Silvicultural Prescription” means an operational plan prepared by a Registered Professional Forester or Qualified Person that describes the existing conditions and the sustainable management objectives for Trees on a Site, and that prescribes the practice of controlling Tree establishment and the composition, growth and quality of Trees to achieve the objectives of management, the methods for managing the Trees and a series of silvicultural treatments and Good Arboricultural Practices that will be carried out to perpetuate Tree cover and establish a free-growing state for Trees that accommodates other resource, environmental and social values as may be identified;

“Site” means the general area where activities subject to this By-law are planned or executed, and in the case of a tract of land that extends over multiple landholdings, each separate landholding is a separate “Site”;

“Swimming Pool Fence Permit” means a swimming pool fence permit issued under the City’s Swimming Pool Fence By-law PS-5, or successor legislation;

“Tree” means a woody perennial plant, whether alive or dead, healthy or unhealthy, including saplings or seedlings and including the root system, where the plant has reached, could reach, or could have reached a height of at least 4.5 metres (15 feet) at physiological maturity;

“Tree Management Plan” means a written plan that sets out the scope, rationale and management intentions for managing an inventory of a Tree or Trees for a year or more. Other names for a Tree Management Plan include ‘Landscape Management Plan’, ‘Tree Protection Plan’, ‘Tree Planting Plan’, ‘Woodland Management Plan’ and ‘Forest Management Plan’;

“Tree Protection Area” means any geographic area of the City that appears as a Tree Protection Area on Schedule C B of this By-law;

“Tree Protection Area Permit” means a permit issued by the City Engineer to permit the Injury or Destruction of a Tree or Trees within a Tree Protection Area;

“Trunk Diameter” means the diameter of the trunk of a Tree measured 1.4m above the Natural Ground Level;

“Urban Growth Boundary” means the Urban Growth Boundary as defined in the City’s Official Plan.

2.2. In this by-law, words importing the singular number include the plural and vice versa, unless the context requires otherwise.

Part 3 SCOPE

- 3.1 This By-law applies to private property in the City of London:
- (a) to Trees having a trunk diameter of 50cm or greater measured 1.4m above Natural Ground Level, within the Urban Growth Boundary; and
 - (b) to Trees of any size within a Tree Protection Area.

Part 4 ADMINISTRATION

- 4.1 The administration of this By-law shall be performed by the City Engineer who shall generally perform all of the administrative functions conferred upon them by this By-law.

Part 5 EXEMPTIONS FROM BY-LAW

Exemptions from By-law

- 5.1 This By-law does not apply to:
- (a) activities or matters undertaken by a municipality or a local board of a municipality;
 - (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
 - (c) the Injuring or Destruction of Trees by a person licensed under the *Surveyors Act*, to engage in the practice of cadastral surveying or his or her agent, while making a survey;
 - (d) the Injuring or Destruction of Trees imposed after December 31, 2002, as a condition to the approval of a site plan, a plan of subdivision or a consent

- under section 41, 51 or 53, respectively, of the *Planning Act*, or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (e) the Injuring or Destruction of Trees imposed after December 31, 2002, as a condition to a development permit or community planning permit authorized by regulation made under the *Planning Act* or as a requirement of an agreement entered into under the regulation;
 - (f) the Injuring or Destruction of Trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - (g) the Injuring or Destruction of Trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
 - (h) the Injuring or Destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
 - (ii) on which a pit or quarry is a permitted land use under a By-law passed under section 34 of the *Planning Act*;
 - (i) the Injuring or Destruction of Trees that are a noxious weed as defined in the *Weed Control Act*, R.S.O. 1990, c. W.5 if the Injury or Destruction is being controlled by an appropriate method under the oversight or direction of a Qualified Person and no Trees other than a noxious weed are being Injured or Destroyed;
 - (j) the Injuring or Destruction of Trees undertaken by a Conservation Authority on its own lands or in response to a Declared Emergency;
 - (k) the Injuring or Destruction of Trees at the direction of Emergency Services;
 - (l) Pruning that is necessary to maintain the health and condition of the Tree and is carried out in accordance with Good Arboricultural Practices;
 - (m) Injury or Destruction of a Tree that is not a Distinctive Tree and is not located within a Tree Protection Area;
 - (n) Injury or Destruction of a Tree that is located within a building, a solarium, a rooftop garden or an interior courtyard;
 - (o) Injury or Destruction of a Tree located within an actively managed cultivated orchard, tree farm or plant nursery;
 - (p) Injury or Destruction of a Tree that is an immediate threat to health or safety;
 - (q) Injury or Destruction of the Tree that is required by a Property Standards Order issued under the *Building Code Act*; ~~or~~
 - (r) Injury or Destruction that is a Normal Farm Practice as defined in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1.;
 - (s) Injury or Destruction of a Tree that is located within a cemetery; or
 - (t) Injury or Destruction of a Tree that is located within an actively managed golf course.

Part 6 PROHIBITIONS

Injure or Destroy Tree – Tree Protection Area

- 6.1 Subject to section 5.1 and Part 8, and except under authority of a Permit, no person shall Injure or Destroy a Tree or cause or permit the Injury or Destruction of a Tree in a Tree Protection Area.

Injure or Destroy Tree – Distinctive Tree

- 6.2 Subject to section 5.1 and Part 8, and except under authority of a Permit, no person shall Injure or Destroy a Distinctive Tree or cause or permit the Injury or f a Distinctive Tree. This section 6.2 shall not apply to a Tree located in a Tree Protection Area and section 6.1 shall apply instead.

Injure or Destroy Tree – Not in Accordance with Permit Conditions

6.3 No Permit Holder or person acting under authority of a Permit shall Injure or Destroy a Tree or cause or permit the Injury or Destruction of a Tree unless the Injury or Destruction is carried out in accordance with all conditions of the Permit.

Fail to Protect Tree in Accordance with Permit Conditions

6.4 No Permit Holder or person acting under authority of a Permit shall fail to protect a Tree in accordance with all conditions of a Permit.

Fail to Comply with Conditions of Permit

6.5 No Permit Holder or person acting under authority of a Permit shall fail to comply with all conditions of a Permit.

Fail to Comply with Order to Discontinue Activity or Work Order

6.6 No person who has been issued an Order to Discontinue Activity or a Work Order shall fail to comply with the Order.

Part 7 APPLICATION FOR PERMITS

7.1 Applicants for a Permit should refer to Part 8 of this By-law, as Permits are only issued for the grounds set out in section 8.2 (and subject to all applicable requirements in this By-law including sufficient evidence of the grounds) for the Injury or Destruction of a Tree:

Application to City Engineer

7.2 (1) Every application for a Permit shall be made to the City Engineer in a format provided by the City Engineer.

Application – Requirements

(2) Every application for a Permit shall include the following:

- ~~(a) — payment of the Application Fee as set out in Schedule A of this By-law;~~
- (a) the name, municipal address, email address (if available) and telephone number (if available) of the Landowner, and if not the same, the Applicant;
- (b) if the Applicant is not the Landowner, written confirmation that the Applicant is making the application as the Landowner's authorized agent;
- (c) if the Applicant or the Landowner is a corporation, the address of its head office;
- (d) the municipal address and legal description of the land, upon which the Tree or Trees are to be Injured or Destroyed;
- (e) if known, the name, municipal address, email address, and phone number of any contractor anticipated to Injure or Destroy the Tree or Trees;
- (f) for a Dead Distinctive Tree Permit, an Arborist Opinion;
- (g) for a Distinctive Tree Permit or a Tree Protection Area Permit, an Arborist Report;
- (h) for a Distinctive Tree Permit or a Tree Protection Area Permit, where any of the following grounds for the proposed Tree Injury or Destruction apply:
 - (i) an Arborist's written opinion that the Tree is unsafe;
 - (ii) an Arborist's, Professional Engineer's or Insurance Loss Adjuster's written opinion that the Tree is causing or is likely to cause structural damage to load-bearing structures or roof structures;
 - (iii) a "qualified person's" (as defined in the *Environmental Protection Act*, R.S.O. 1990, c. E.19) written opinion that Tree removal is required to remediate contaminated soil;
 - (iv) a Qualified Person's written opinion that the Tree Injury or Destruction is required to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the

- construction or use of a building or structure for which a Building Permit has been issued with no reasonable alternative to locating those utilities or infrastructure;
- (v) an Arborist's written opinion that the Distinctive Tree Injury or Destruction represents Good Arboricultural Practices, or a Registered Professional Forester's written opinion that the Injury or Destruction of a Tree within a Tree Protection Area represents Good Forestry Practices;
- (vi) a copy of the Building Permit if the Tree Injury or Destruction is required for purposes of a Building Permit;
- (vii) a copy of the Swimming Pool Fence Permit, where one is required, or other evidence that is satisfactory to the City Engineer that a pool is to be installed, if the Tree Injury or Destruction is required for purposes of locating a swimming pool.

Application – Additional Information May be Required

(3) In addition to the requirements in subsection (2), the City Engineer may require the Applicant to provide one or more of the following:

- (a) for a Tree Protection Area Permit, an inventory, tally or estimates from sample plots of the species and size classes of all Trees to be Injured or Destroyed, including a map of the location of sample plots, to the satisfaction of the City Engineer;
- (b) for a Tree Protection Area Permit, a Silvicultural Prescription that complies with Good Forestry Practices and is prepared by a Registered Professional Forester;
- (c) a drawing of the Site showing any proposed development, construction, works, excavation or site alteration that may require the Tree Injury or Destruction, and a schedule for this proposed activity, including start and end dates;
- (d) confirmation of any other matters (past or present Planning applications or otherwise) affecting the land upon which the Tree or Trees are to be Injured or Destroyed;
- (e) a Tree Management Plan, which may be for one or more Trees, prepared by a Qualified Person;
- (f) affidavits in support of an application.

Application – Further Information – Supplied within 60 days

(4) The Applicant must provide any further information requested by the City Engineer under subsection (3) to the City Engineer within 60 days of such request.

Application – Deemed Incomplete

7.3 An application that does not contain everything required in subsection 7.2(2) within 60 days of the receipt of the application by the City, or does not contain the information as further required under subsection 7.2 (3) within 60 days of the request, shall be deemed to be incomplete and will not be processed. The City Engineer shall notify the Applicant that the file has been closed for incompleteness. ~~The Schedule A fees paid shall not be returned to the Applicant.~~

Application – Permission for City to Inspect

7.4 By submitting an application, the Landowner shall be deemed to have granted permission for the City to enter on the Landowner's land for purposes of this By-law.

Boundary Tree

7.5 If the Tree to be Destroyed or Injured is a Boundary Tree, all owners of the Boundary Tree or their authorized agents would need to apply for a Permit, otherwise a Permit will not be issued. In the event that the City is an owner of a Boundary Tree (not on the City Boulevard) the written approval of the City

Engineer would be required but such approval is entirely at the discretion of the City Engineer.

7.6 **Boundary Tree - City Boulevard Tree**

If one of the adjoining lands upon which the Boundary Tree is located is City-owned boulevard, then the City's Boulevard Tree By-law will apply and this By-law will not apply.

Part 8 POWERS OF THE CITY ENGINEER

- 8.1 The power and authority to issue a Permit, refuse to issue a Permit, to cancel, revoke or suspend a Permit, to impose terms and conditions on a Permit, including special conditions, are delegated to the City Engineer.

City Engineer – When Permit Shall Issue

- 8.2 The City Engineer shall issue a Permit where all of the following are satisfied:
- (1) the application is complete ~~and all fees paid~~; and
 - (2) the City Engineer is satisfied that there are no reasonable alternatives to the proposed Tree Injury or Destruction; and
 - (3) the City Engineer has determined, in their discretion, that there are no grounds for refusing to issue a Permit under section 8.3; and
 - (4) the City Engineer is satisfied that one or more of the following grounds for issuing a Permit apply:
 - (a) the Tree is a Dead Distinctive Tree;
 - (b) based on the opinion of an Arborist, it is necessary to remove unsafe Trees;
 - (c) based on the opinion of a Professional Engineer, the Tree or Trees are causing or are likely to cause structural damage to load-bearing structures or roof structures;
 - (d) based on the opinion of a 'qualified person' (as defined in the *Environmental Protection Act*), the Tree Injury or Destruction is required to remediate contaminated soil;
 - (e) based on the opinion of a Qualified Person, the Tree Injury or Destruction is required to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the construction or use of a building or structure for which a Building Permit has been issued with no reasonable alternative to locating those utilities or infrastructure;
 - (f) the Tree Injury or Destruction is required for purposes of a Building Permit;
 - (g) the Tree Injury or Destruction is required for purposes of locating a swimming pool;
 - (h) based on the opinion of an Arborist, the Distinctive Tree Injury or Destruction represents Good Arboricultural Practices, or based on the opinion of a Registered Professional Forester, the Injury or Destruction of a Tree within a Tree Protection Area represents Good Forestry Practices.
 - (5) The City Engineer shall refuse to issue a Permit if (1), (2), (3) and (4) are not satisfied.

City Engineer – May Refuse to Issue Permit, Revoke Permit, Suspend Permit, Impose Conditions on Permit

- 8.3 The City Engineer at their discretion may refuse to issue, may revoke, or may suspend a Permit or impose a term or condition on a Permit on any one or more of the following grounds:
- (a) the species of Tree is an endangered species or threatened species as defined in the *Endangered Species Act, 2007*, S.O. 2007, c. 6, or the *Species at Risk Act*, S.C. 2002, c. 29;
 - (b) the Tree is designated under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18;

- (c) migratory birds are making use of the Tree, or migratory bird nests are in the Tree, as contemplated in the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22;
- (d) the protection and preservation of ecological systems and their functions, including the protection and preservation of native flora and fauna;
- (e) erosion, flood control and sedimentation of watercourses;
- (f) any information contained in the original application form or any other information provided to the City Engineer has ceased to be accurate and the Applicant, Landowner or Permit Holder has not provided up-to-date accurate information to allow the City Engineer to conclude that the Permit should continue;
- (g) an Applicant or Permit Holder does not meet one or more of the requirements of this By-law or a condition imposed on a Permit;
- (h) the Applicant or Landowner is carrying on activities that are in contravention of this By-law;
- (i) there are reasonable grounds to believe that an application or other documents provided to the City Engineer by or on behalf of the Applicant or Landowner contains a false statement.

City Engineer – Additional Reasons to Revoke

8.4 In addition to section 8.3 above, the City Engineer may revoke a Permit if:

- (a) the Permit was issued in error;
- (b) the Landowner or Permit Holder requests, in writing, that it be revoked;
- (c) the Landowner or Permit Holder fails to comply with any condition of the Permit or this By-law;
- (d) the Permit Holder is no longer the owner of the land while the Permit is still valid or the owner on title to the lands has changed;
- (e) the City Engineer is satisfied that there is a material change in circumstances in connection with or on the Site and the City Engineer is satisfied that the Permit needs to be revoked to avoid further Injury or Destruction of a Tree or Trees.

City Engineer – May Impose Conditions, Special Conditions

8.5 Notwithstanding any other provision of this By-law, the City Engineer may impose terms and conditions on any Permit at issuance or at any time during the term of the Permit, including special conditions, as are necessary in the opinion of the City Engineer to give effect to this By-law.

City Engineer – Permit Decisions – Refuse, Revoke, Suspend, Conditions

8.6 (1) Where the City Engineer is of the opinion that:

- (a) an application for a Permit should be refused;
- (b) a Permit should be revoked;
- (c) a Permit should be suspended for no more than 14 days; or
- (d) a term or condition of a Permit should be imposed;

the City Engineer shall make that decision.

City Engineer – Written Notice of Decision under ss. 8.6(1)

(2) Where the City Engineer has made a decision under subsection 8.6(1) of this By-law, the City Engineer shall give written notice of that decision to the Applicant or Permit Holder by electronic mail or regular mail to the last known address of that person and shall be deemed to have been given on the third day after it is mailed. Written notice to a corporation may be given by registered mail to the address of the corporation's registered head office, or by electronic mail if requested by the corporation.

Contents of Written Decision – Can Appeal

(3) The written notice to be given under subsection 8.6(1) shall:

- (a) set out the grounds for the decision;
- (b) give reasonable particulars of the grounds;
- (c) be signed by the City Engineer; and

- (d) state that the Applicant or Permit Holder is entitled to a hearing by the Hearings Officer if the Applicant or Permit Holder delivers a notice of appeal to the City Clerk, within thirty (30) days after the notice in subsection 8.6(1) is given, and the appeal fee as set out in the applicable Fees and Charges By-law A-55, as amended, and any successor by-law. ~~Schedule A attached to this By-law.~~

No Appeal – Decision Deemed Final

(4) Where no appeal is registered within the required time period, the decision of the City Engineer is deemed to be final. The provisions of the City's Hearings Officer By-law A.-6653-121, as amended, and any successor by-law, apply to all hearings conducted by the Hearings Officer.

Permit Voluntarily Surrendered – Revoke – No Notice Required

(5) Despite subsection 8.6(2), where a Permit is voluntarily surrendered by the Permit Holder for revocation, the City Engineer may revoke the Permit without notice to the Permit Holder.

City Engineer – May Make Regulations – Forms, Documents

- 8.7 In addition to any other power, duty or function prescribed in this By-law, the City Engineer may make regulations under this By-law including prescribing the format and content of any forms or other documents required under this By-law.

Copy of Regulations to City Clerk – Available for Public Inspection

- 8.8 The City Engineer shall provide the City Clerk with copies of any regulations made under this By-law. The City Clerk shall maintain a record of all such regulations. The record of all regulations shall be available for public inspection at the office of the City Engineer and the office of the City Clerk during normal business hours.

Part 9 ISSUANCE OF PERMITS

Information on Permits

- 9.1 Every Permit issued under this By-law shall be in the form and manner as provided by the City Engineer and shall include on its face the following information:
 - (a) the Permit number;
 - (b) the name of the Permit Holder;
 - (c) the date the Permit was issued and the date it expires;
 - (d) the municipal address of the premises on which the Tree or Trees to be Injured or Destroyed is located;
 - (e) the Tree or Trees that are permitted to be Injured or Destroyed;
 - (f) the nature of the Injury or Destruction.

Permit – Automatic Conditions

- 9.2 Every Permit that is issued is subject to the following conditions of obtaining and continuing to hold a Permit, all of which shall be performed and observed by the Permit Holder and Landowner:
 - (a) the Permit Holder shall ensure that the number of living Replacement Trees as determined by the City Engineer, and the species, or choice of species, size and location of Replacement Trees as determined by the City Engineer, are planted on the same Site by the date specified on the Permit;
 - (b) where there is insufficient space on the same Site to plant all the Replacement Trees, the Permit Holder shall plant as many Replacement Trees as the City Engineer determines the Site will allow and the Permit Holder shall forthwith pay the fee as determined by the City Engineer in ~~Schedule B~~ Schedule BA with respect to the number of Replacement Trees that could not be planted due to insufficient space (Fee for Off-Site Tree Planting);

- (c) the Permit Holder or Landowner shall pay all fees related to this By-law;
- (d) the Permit Holder or Landowner shall pay all other fees and fines owed by the Permit Holder or Landowner to the City;
- (e) the Permit Holder or Landowner shall allow, at any reasonable time, the City to inspect the Site;
- (f) the use of the Site is permitted or conforms with the uses permitted under the applicable zoning by-law or is a legal non-conforming use;
- (g) the Permit Holder or Landowner shall meet all of the requirements of this By-law;
- (h) the Permit Holder or Landowner shall ensure that it complies with applicable law including the *Migratory Birds Convention Act, 1994*, and the *Endangered Species Act, 2007*.

Permit – Additional Conditions That May be Imposed

9.3 The City Engineer may impose other conditions on a Permit, including but not limited to:

- (a) the Permit Holder shall ensure that the Injury or Destruction of the Tree is carried out in accordance with Good Arboricultural Practices or Good Forestry Practices;
- (b) the Permit Holder shall ensure that the Injury or Destruction of the Tree is carried out in a particular manner or at or during a particular time;
- (c) the Permit Holder shall ensure that the Permit is posted in a public location for a time period before, during and after the Injury or Destruction of the Tree or Trees;
- (d) the Permit Holder shall ensure that the Injury or Destruction of the Tree is to be carried out by or under the supervision of a Qualified Person;
- (e) the Permit Holder shall ensure that measures are to be implemented to protect any retained Trees for the period the Permit remains valid;
- (f) the Permit Holder shall ensure that the City Engineer is informed within 48 hours of a change of Landowner;
- (g) the Permit Holder shall ensure that a Tree Management Plan satisfactory to the City Engineer is implemented by a required date;
- (h) the Permit Holder shall ensure posting of Security that the City may draw upon in full if the By-law is contravened or if there is a failure in the proper and complete execution of a Permit and its conditions, such that restoration of all or part of the Site has to be done by the City;
- (i) the Permit Holder shall ensure it complies with any requirements to protect or relocate wildlife (including bees) as determined by the City Engineer;
- (j) the Permit Holder shall ensure it implements the Silvicultural Plan or Tree Management Plan submitted with the application to the satisfaction of the City Engineer within a period of time specified by the City Engineer;
- (k) a condition recommended by a Qualified Person that the City Engineer determines is appropriate.

Permit – Valid For Time Issued – 6 Month Maximum

9.4 A Permit issued under this By-law shall be valid only for the period of time for which it is issued. Unless expressly stated on the face of the Permit, all Permits issued under this By-law shall expire 6 months after issuance.

Permit Issuance – Not permission to Contravene Laws

9.5 The issuance of a Permit under this By-law is not intended and shall not be construed as permission or consent by the City for the Permit Holder or

Landowner to contravene or fail to observe or comply with any law of Canada, Ontario or any By-law of the City.

Permit – Owned by City – Valid only to Person and Site Named On It

- 9.6 Every Permit, at all times, is owned by and is the property of the City and is valid only in respect of the person and the Site named on it.

Permit – Cannot be Sold, Transferred, etc.

- 9.7 No Permit issued under this By-law may be sold, purchased, leased, mortgaged, charged, assigned, pledged, transferred, seized, distrained or otherwise dealt with.

Permit – Notify City Engineer if Change of Information

- 9.8 The Permit Holder shall notify the City Engineer of any change in their name, business, home address, Site ownership, or any other information relating to the Permit within fifteen (15) days after such change and, if the City Engineer determines it necessary, shall immediately return their Permit to the City Engineer for amendment.

Requirement to obtain all other approvals required by any level of government

- 9.9 A Permit issued pursuant to this By-law does not preclude the responsibility of the Applicant or Landowner or Permit Holder to obtain all other approvals which may be required by any level of government and agencies.

Part 10 APPEALS – HEARINGS BEFORE THE HEARINGS OFFICER

- 10.1 The power and authority to conduct hearings of appeals under this By-law are delegated to the Hearings Officer.
- 10.2 The provisions of the City's Hearings Officer By-law A.-6653-121, as amended, and any successor by-law, apply to all hearings conducted by the Hearings Officer.
- 10.3 The Hearings Officer may uphold or vary the decision of the City Engineer or make any decision that the City Engineer was entitled to make in the first instance.
- 10.4 The decision of the Hearings Officer is final.

Part 11 ENFORCEMENT

Enforced By

- 11.1 This By-law may be enforced by a By-law Enforcement Officer.

Powers of Entry

- 11.2 The provisions of the City's Inspections By-law A-30, as amended, or any successor by-law, apply to Powers of Entry for the purpose of carrying out inspections.

Prohibition - Hinder or Obstruct By-law Enforcement Officer

- 11.3 No person shall hinder or obstruct or attempt to hinder or obstruct the By-law Enforcement Officer in the discharge of duties under this By-law.

Part 12 POWER TO MAKE ORDERS – REMEDIAL ACTION

Order to Discontinue Activity

- 12.1 (1) Where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make an Order to Discontinue Activity requiring the person who contravened the By-law or a person that caused or permitted a contravention of the By-law or the owner or

occupier of the land on which the contravention occurred to discontinue the contravening activity.

(2) The Order to Discontinue Activity shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date and time by which there must be compliance with the Order to Discontinue Activity.

Work Order

12.2 (1) Where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make a Work Order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.

(2) A Work Order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred, and the work to be done and the date by which the work must be done.

Service of Order to Discontinue Activity or Work Order

12.3 (1) An Order to Discontinue Activity or Work Order may be served personally by the By-law Enforcement Officer, may be sent by registered mail to the person contravening the By-law, or may be posted in a conspicuous place on the property where the contravention occurred.

(2) Where an Order to Discontinue Activity or Work Order under this By-law is served personally by the By-law Enforcement Officer, it shall be deemed to have been served on the date of delivery to the person or persons named.

(3) The posting of the Order to Discontinue Activity or Work Order at the Site shall be deemed to be sufficient service of the Order to Discontinue Activity on the person or corporation to whom the Order to Discontinue Activity is directed on the date it is posted.

(4) Where an Order to Discontinue Activity or Work Order issued under the By-law is sent by registered mail, it shall be sent to the last known address of one or more of the following, as applicable:

- (a) the Applicant;
- (b) the Permit Holder;
- (c) the Landowner;
- (d) the person contravening the By-law;
- (e) the person or company undertaking the Injury or Destruction;

and shall be deemed to have been served on the fifth day after the Order to Discontinue Activity or Order is mailed.

12.4 Remedial Action

If a person is required, under a Work Order under this By-law, to do a matter or thing, then in default of it being done by the person so required to do it, the matter or thing may be done at the person's expense under the direction of a By-law Enforcement Officer.

12.5 The City may recover the costs of doing a matter or thing under section 12.4 from the person required to do it, by adding the costs to the tax roll for the subject land and collecting them in the same manner as property taxes.

12.6 The amount of the costs under section 12.4, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien.

Part 13 PESTS - INSPECTION – REMOVAL OF INFESTED TREES

Inspection for Presence of Asian Long-Horned Beetles and Other Serious Pests; Removal of Infested Trees

13.1 The City Engineer is authorized to inspect for the presence of Asian Long-Horned Beetles and other Pests that may create serious widespread economic or ecological harm, and to remove such infested trees, on all public and private property, with the consent of the property owner.

13.2 Inspection for Pests; Right to Enter Private Property – Consent Not Required

Where the City Engineer has been designated as an “inspector” by the President of the Canadian Food Inspection Agency under section 13 of the *Canadian Food Inspection Agency Act*, S.C. 1997, c.6 for the purposes of enforcing the *Plant Protection Act*, S.C. 1990, c.22, the City Engineer has the authority to inspect for the presence of Pests and to take action including the removal of trees on all public and private property, with or without the consent of the property owner, if it is in accordance with the *Plant Protection Act*.

Part 14 OFFENCES AND PENALTIES

Offences

14.1 Any person who contravenes any provision of this By-law, or an Order to Discontinue Activity, or a Work Order, is guilty of an offence.

14.2 A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.

Penalties – Minimum and Maximum

14.3 A person convicted under this By-law is liable to a minimum fine of \$500.00 and a maximum fine of \$100,000.00, where the fine is not a set fine.

Penalties – Continuing Offence

14.4 Contravention of an Order to Discontinue Activity or a Work Order is a continuing offence, and a person who is convicted of an offence under this By-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000 and the total of all daily fines for the offence is not limited to \$100,000.

Penalties – Special Fines

14.5 A person convicted under this By-law is liable to a special fine of maximum \$200,000.00 which may be imposed in addition to the regular fine, to eliminate or reduce any economic advantage or gain from contravening the By-law.

Court Order - Additional Order to Discontinue or Remedy – s. 431 *Municipal Act, 2001*

14.6 Under section 431 of the *Municipal Act, 2001*, when this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order;:

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and
- (b) in the case of a by-law described in section 135 of *Municipal Act, 2001*, requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

Part 15 MISCELLANEOUS

Transition

- 15.1 Any Permit issued under the provisions of By-law C.P.-1515-228 that has not expired or been revoked as of the date of this By-law coming into force shall be deemed to have been issued under this By-law and will be valid until such Permit is revoked, surrendered or expires.

Repeal

- 15.2 The Tree Protection By-law C.P.-1515-228 passed on August 30, 2016 is repealed.

Coming into force

- 15.3 This By-law shall come into force and effect on ~~August 1, 2020~~ March 1, 2021

Passed in Open Council on November 23, 2020.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – (Insert Council Meeting Date)
Second Reading – (Insert Council Meeting Date)
Third Reading – (Insert Council Meeting Date)

Schedule A - Fees

1. The following fees apply to this By-law:

DESCRIPTION OF FEE	FEE AMOUNT
Fee for Dead Distinctive Tree Permit	\$0
Fee for Application for Distinctive Tree Permit	\$100
Fee for Application for Tree Protection Area Permit	\$100
Fee for Appeal Hearing Request	\$100

Schedule ~~B~~ A

Calculation of Number of Distinctive Tree Replacement Trees & Calculation of Fees for Off-Site Tree Planting (insufficient space on Site to plant Replacement Trees)

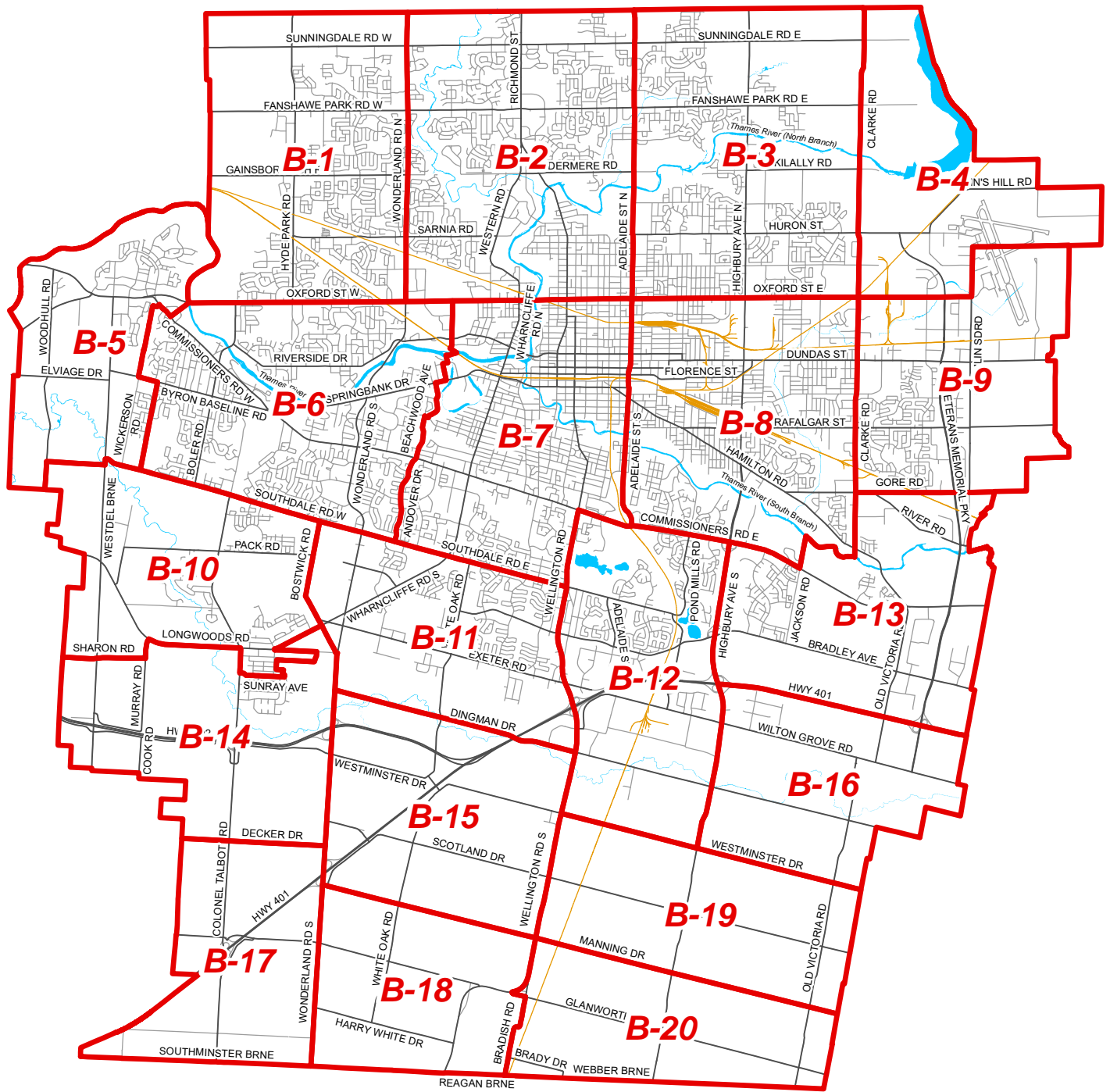
1. For the purposes of subsection 9.2(a) of this By-law with respect to a Distinctive Tree Permit, the City Engineer shall determine the number of living Replacement Trees that will be required based on the chart below. The diameter of the Tree to be Destroyed under a Distinctive Tree Permit, as set out in Column 1, shall correspond to the number of Replacement Trees required, as set out in Column 2.
2. For the purposes of subsection 9.2(b) of this By-law with respect to a Distinctive Tree Permit, where there is insufficient space on the same Site to plant all of the number of Replacement Trees as calculated for 9.2(a) of this By-law, the Permit Holder shall plant as many Replacement Trees as the site will allow as determined by the City Engineer, and with respect to the number of Replacement Trees that could not be planted due to insufficient space, the City Engineer shall calculate the amount of the fee by multiplying the number of Replacement Trees that could not be planted on site due to insufficient space by \$350 per tree. The diameter of the Tree to be Destroyed under a Distinctive Tree Permit, as set out in Column 1, shall correspond to the number of Replacement Trees, as set out in Column 2.

Column 1: Trunk Diameter of Distinctive Tree Destroyed	Column 2: Number of Replacement Trees Required
50 cm	1
51-60 cm	2
61-70 cm	3
71-80 cm	4
81-90 cm	5
91-100 cm	6
101-110 cm	7
111-120 cm	8
121-130 cm	9
131-140 cm	10
>141cm	11

*NOTE: does not apply to Dead Distinctive Tree Permit

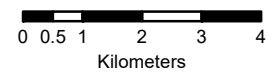
Schedule CB

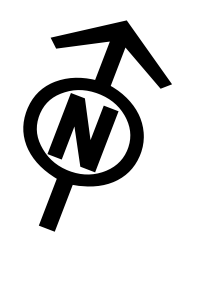
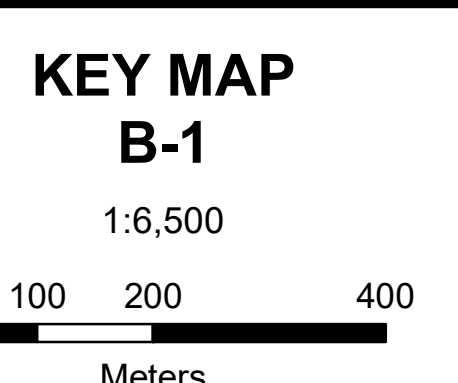
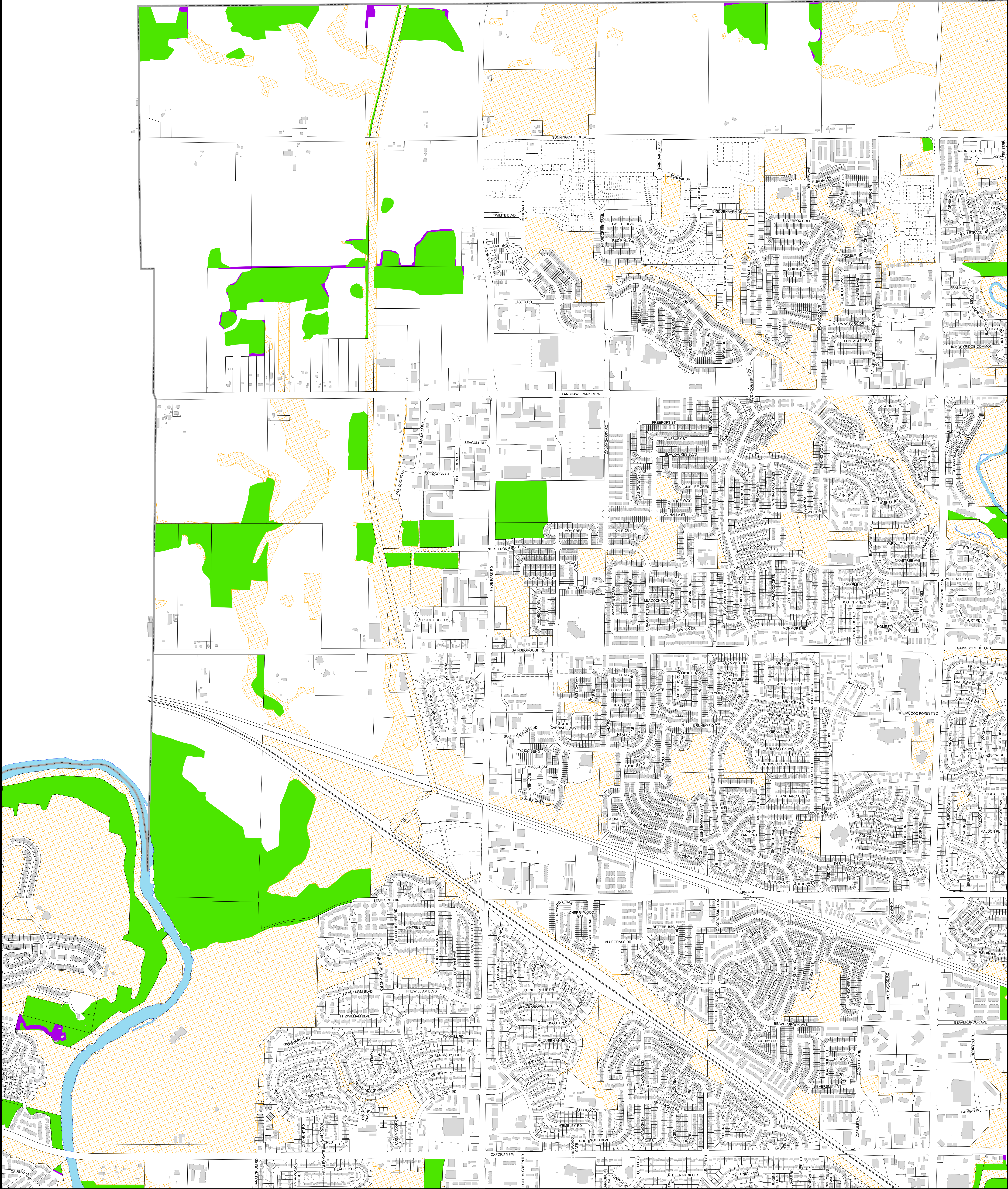
Tree Protection Area (TPA) Maps



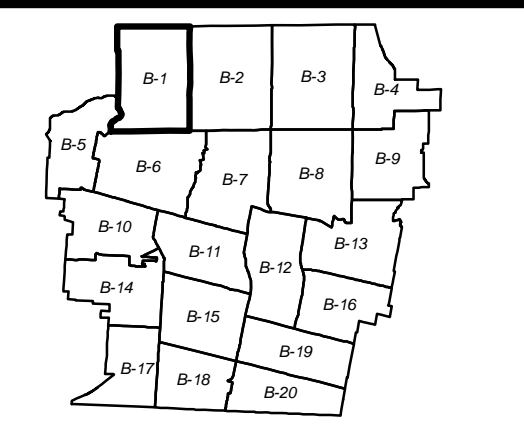
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TREE PROTECTION BY-LAW**

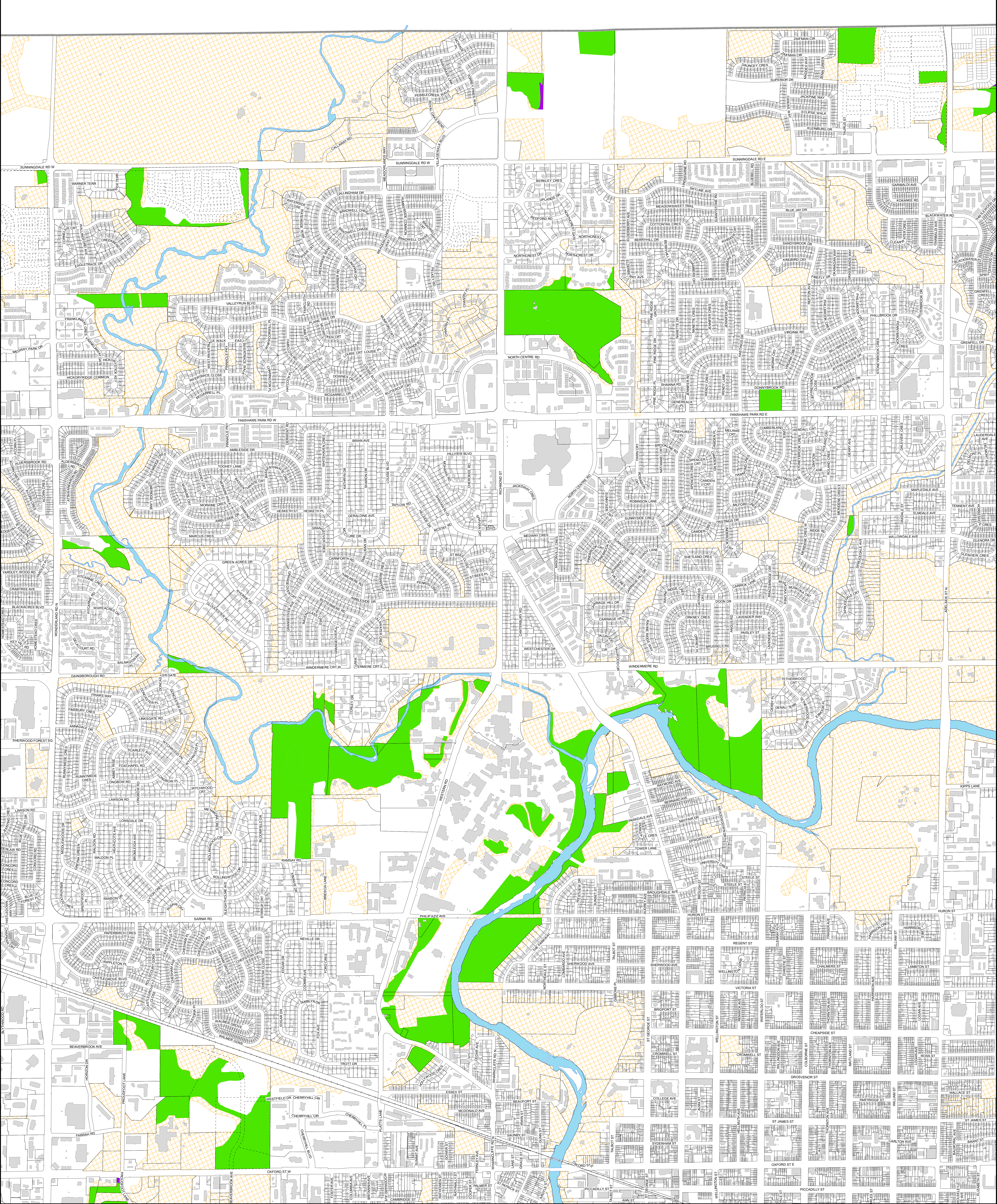
**PROPOSED CHANGES TO SCHEDULE B TPA MAPS
INDEX MAP**





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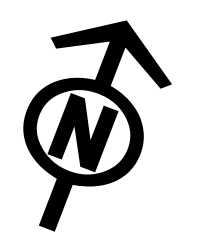
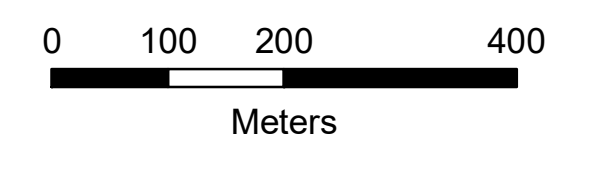


**CITY OF LONDON
TREE PROTECTION BY-LAW**
SCHEDULE B
as of October 22, 2020

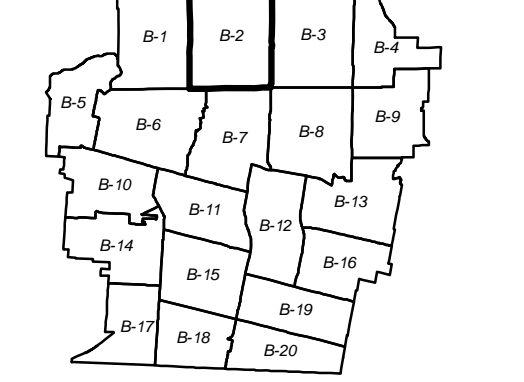


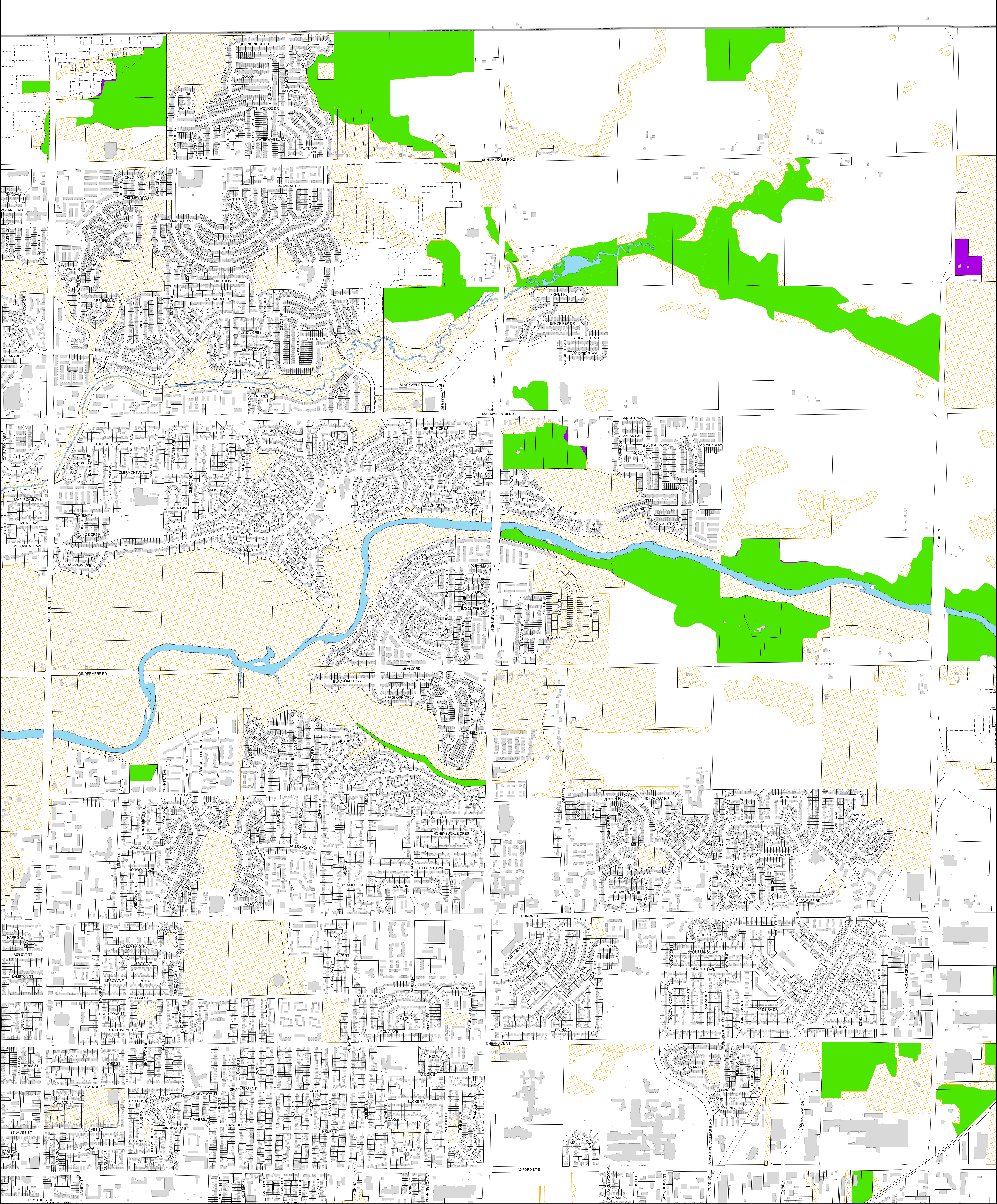
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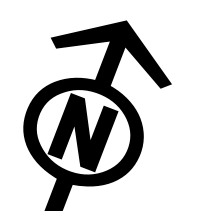
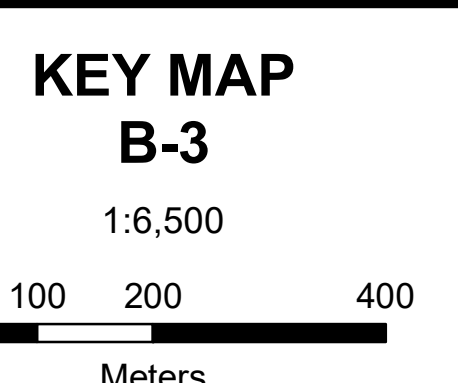
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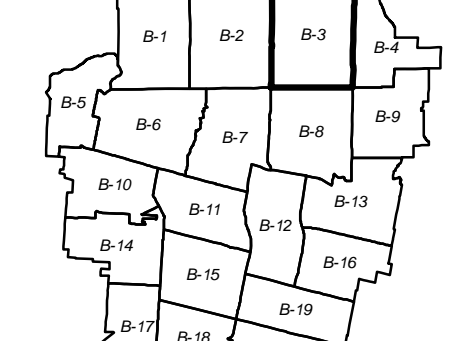


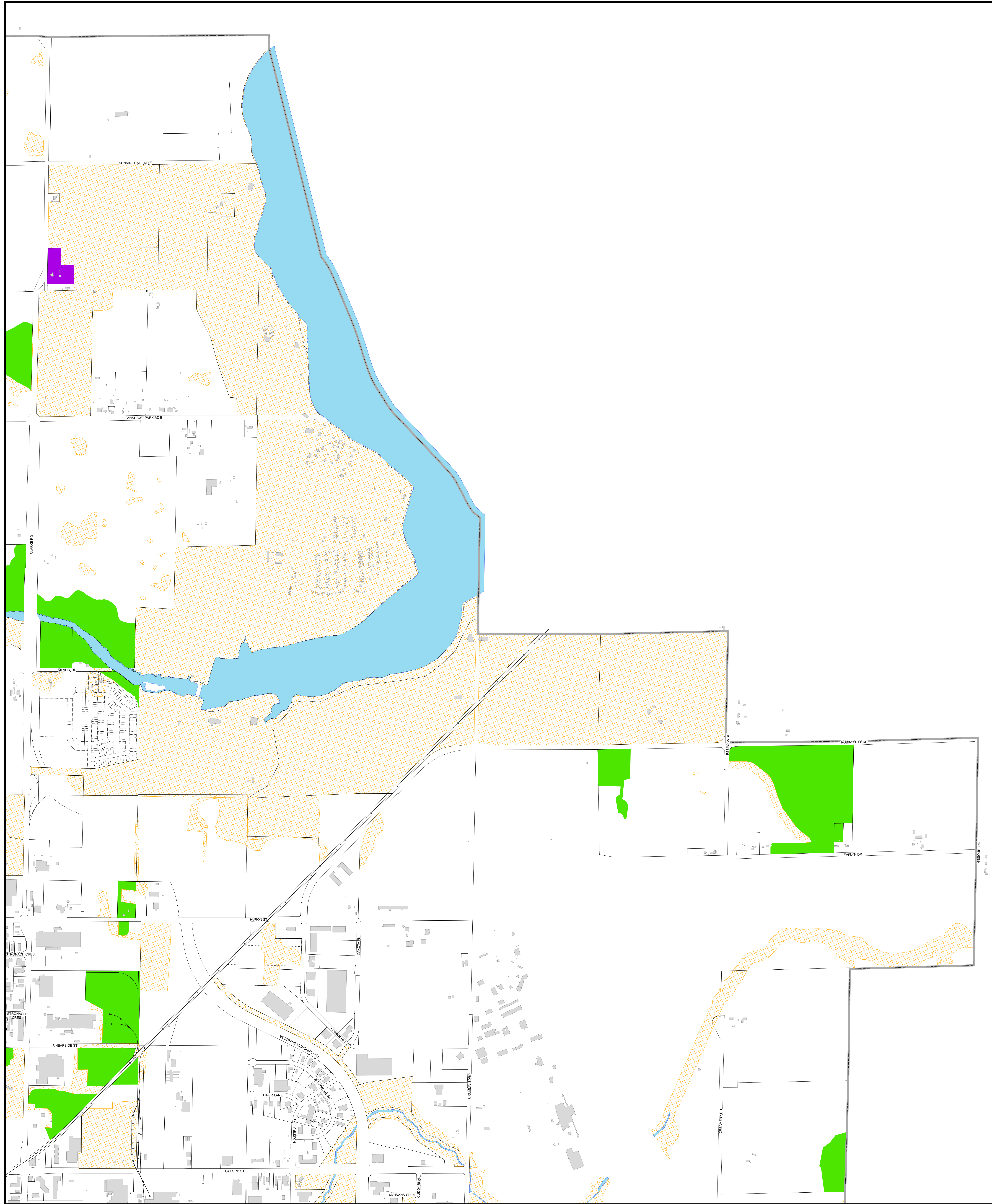
**CITY OF LONDON
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SCHEDULE B
as of October 22, 2020

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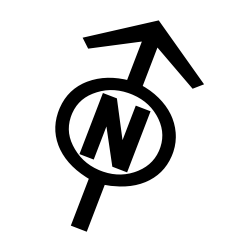




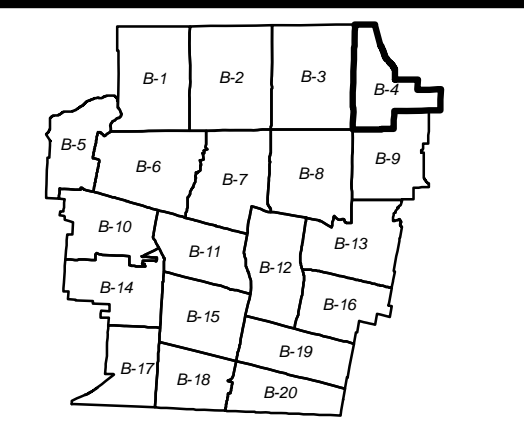
CITY OF LONDON
TREE PROTECTION BY-LAW
SCHEDULE B
 as of October 22, 2020

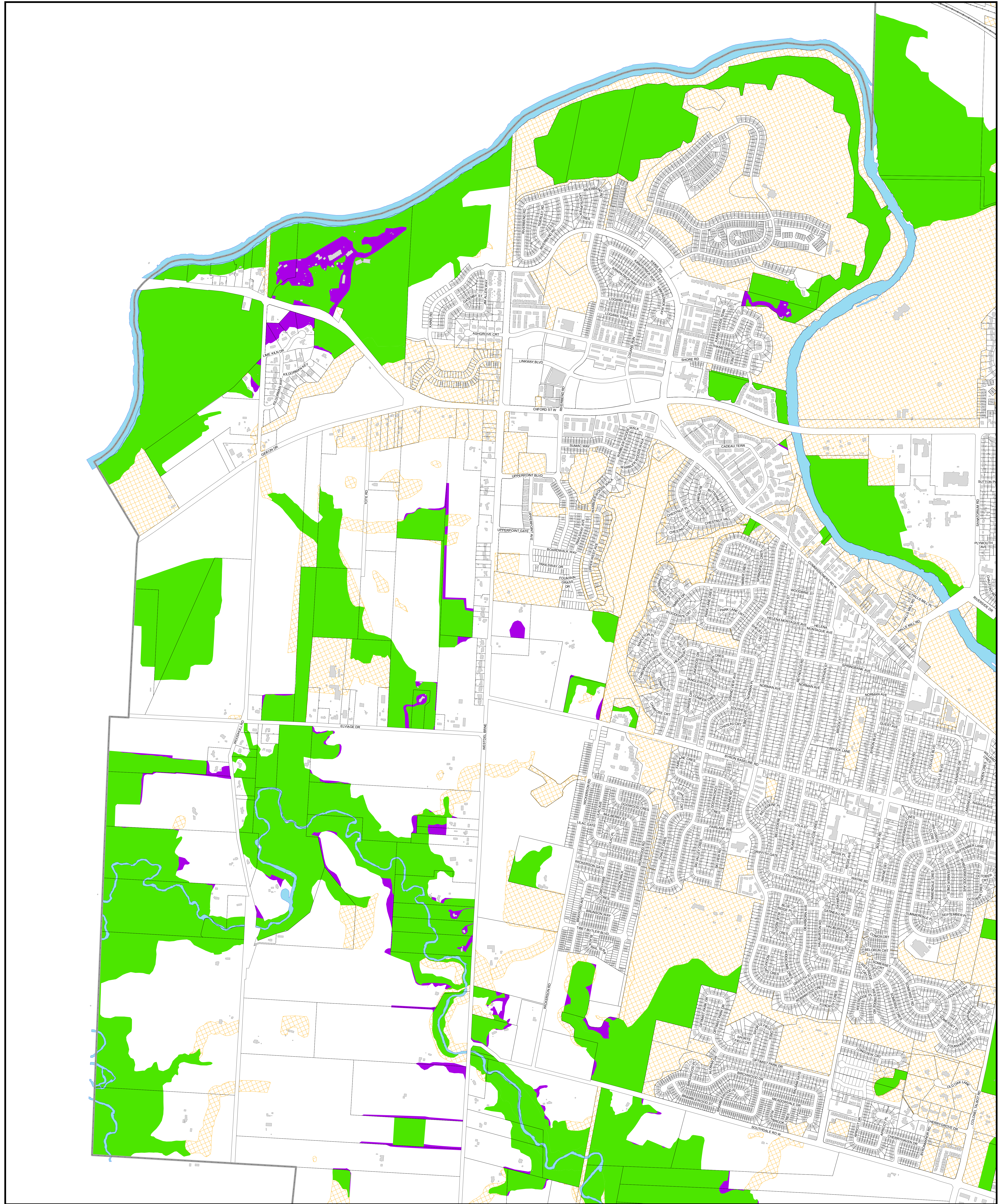
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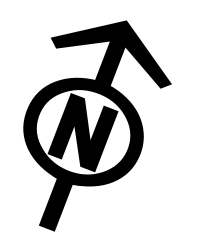
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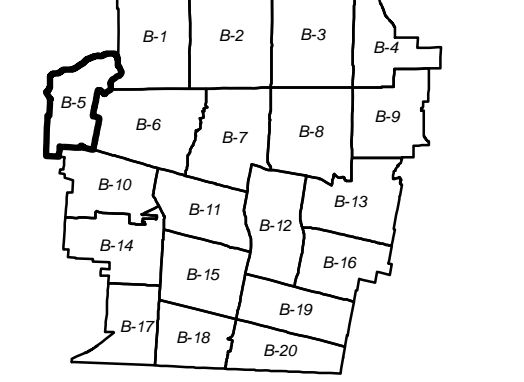


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B-5
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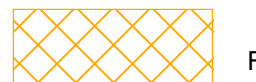


London
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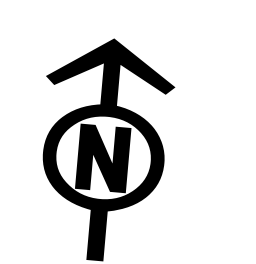
**CITY OF LONDON
TREE PROTECTION
BY-LAW**

SCHEDULE B

as of October 22, 2020

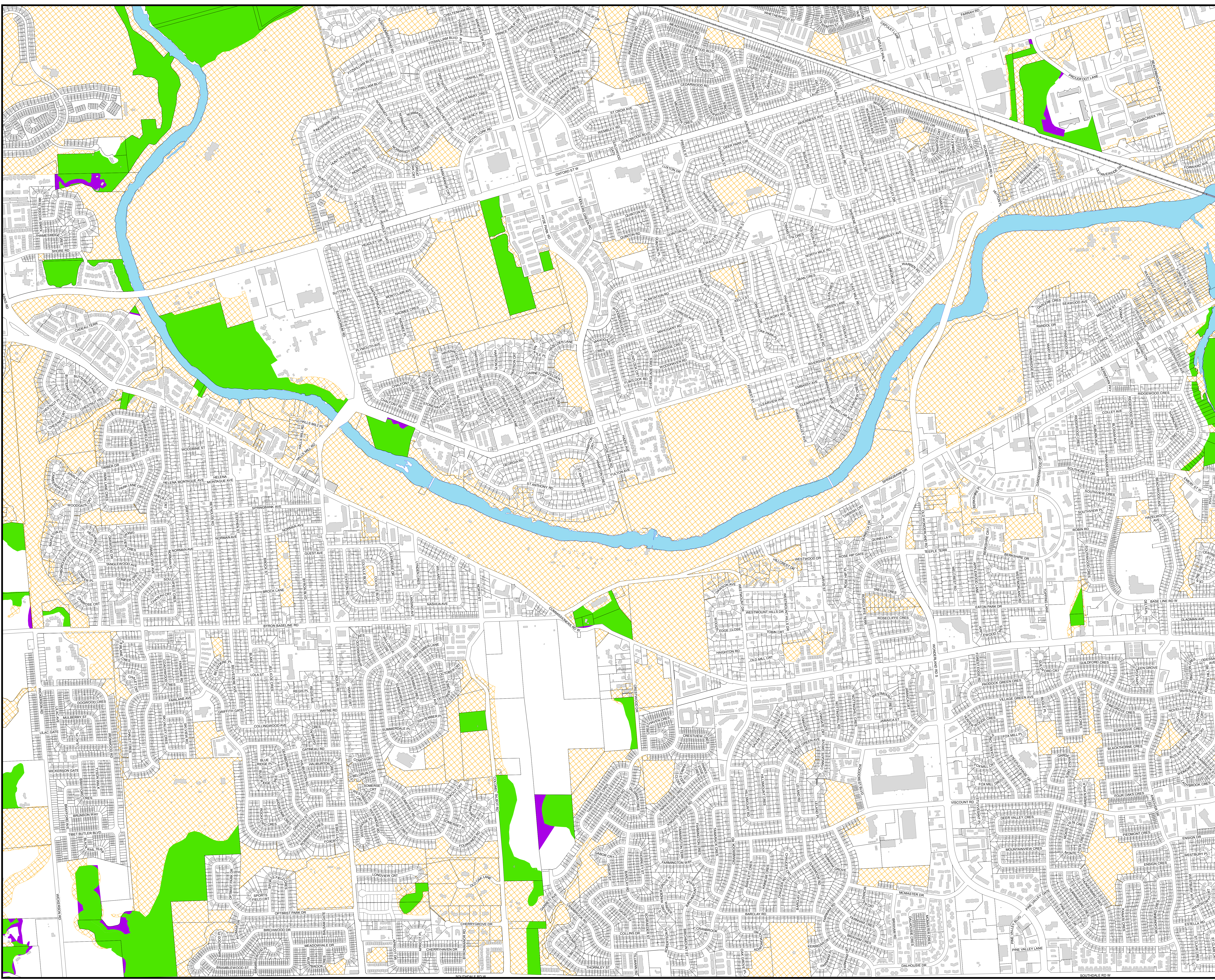
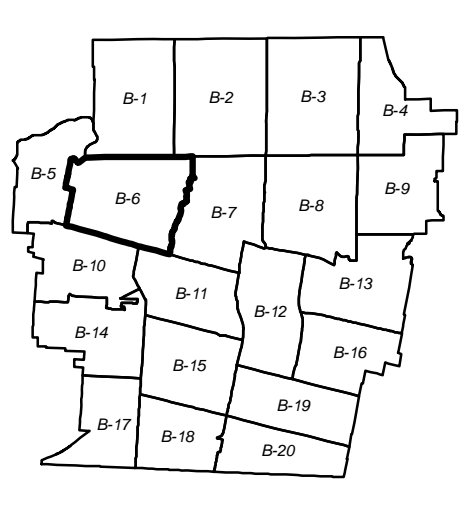
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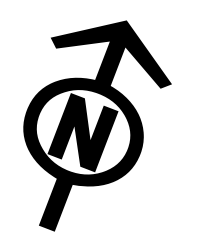
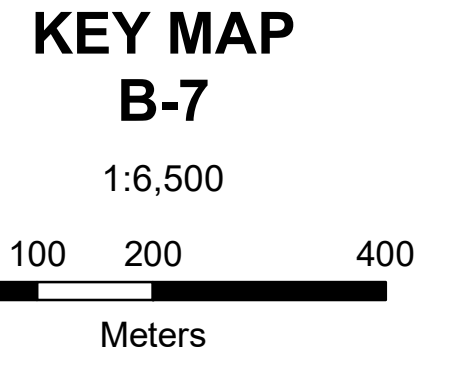
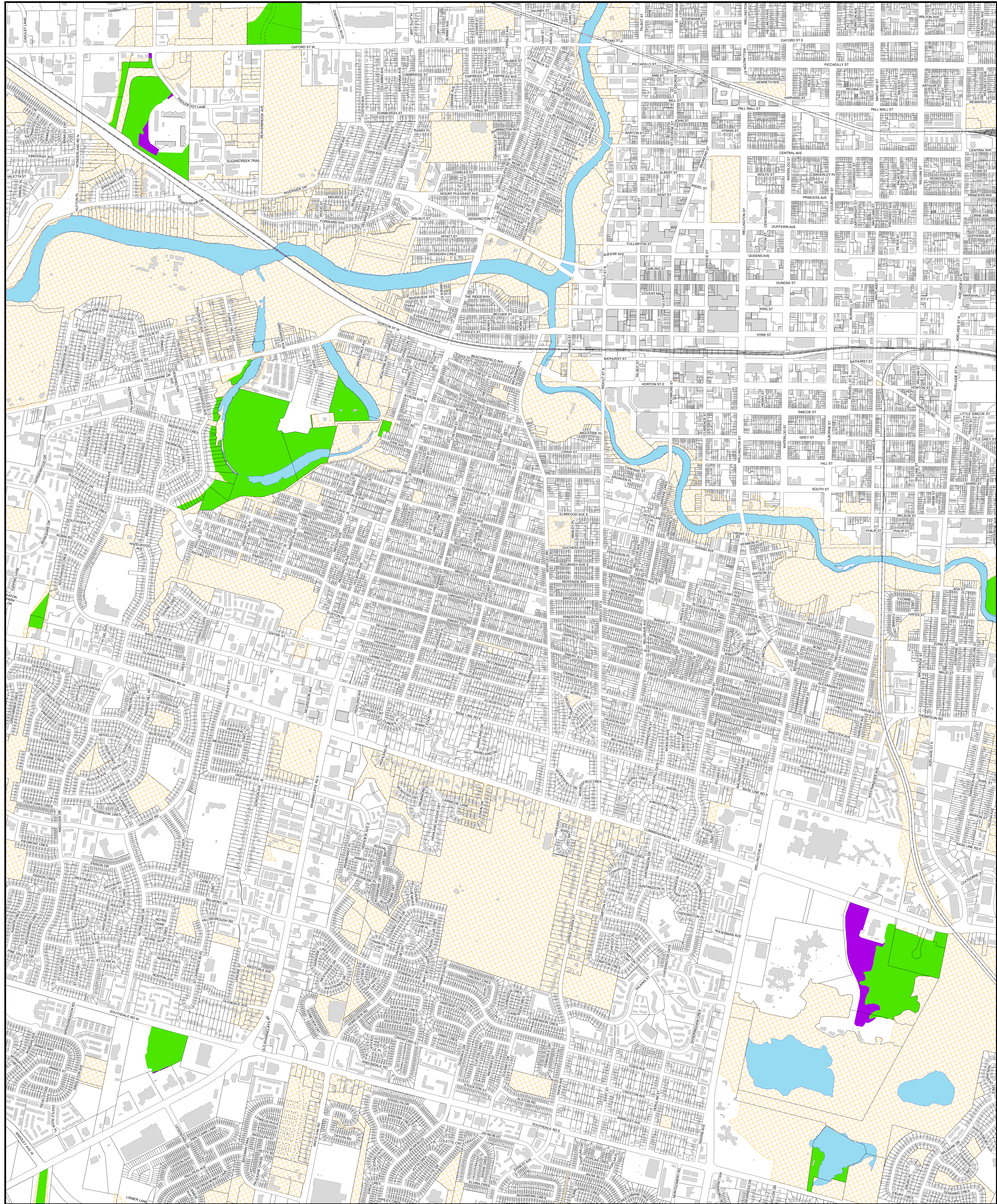
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B-6**



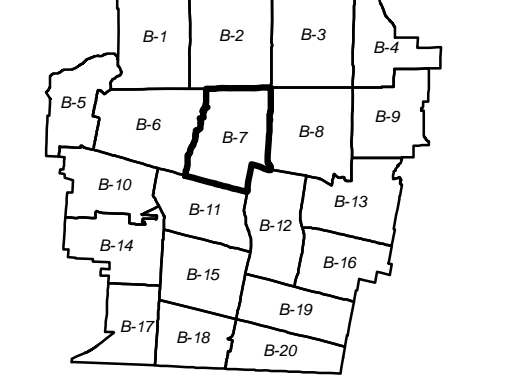
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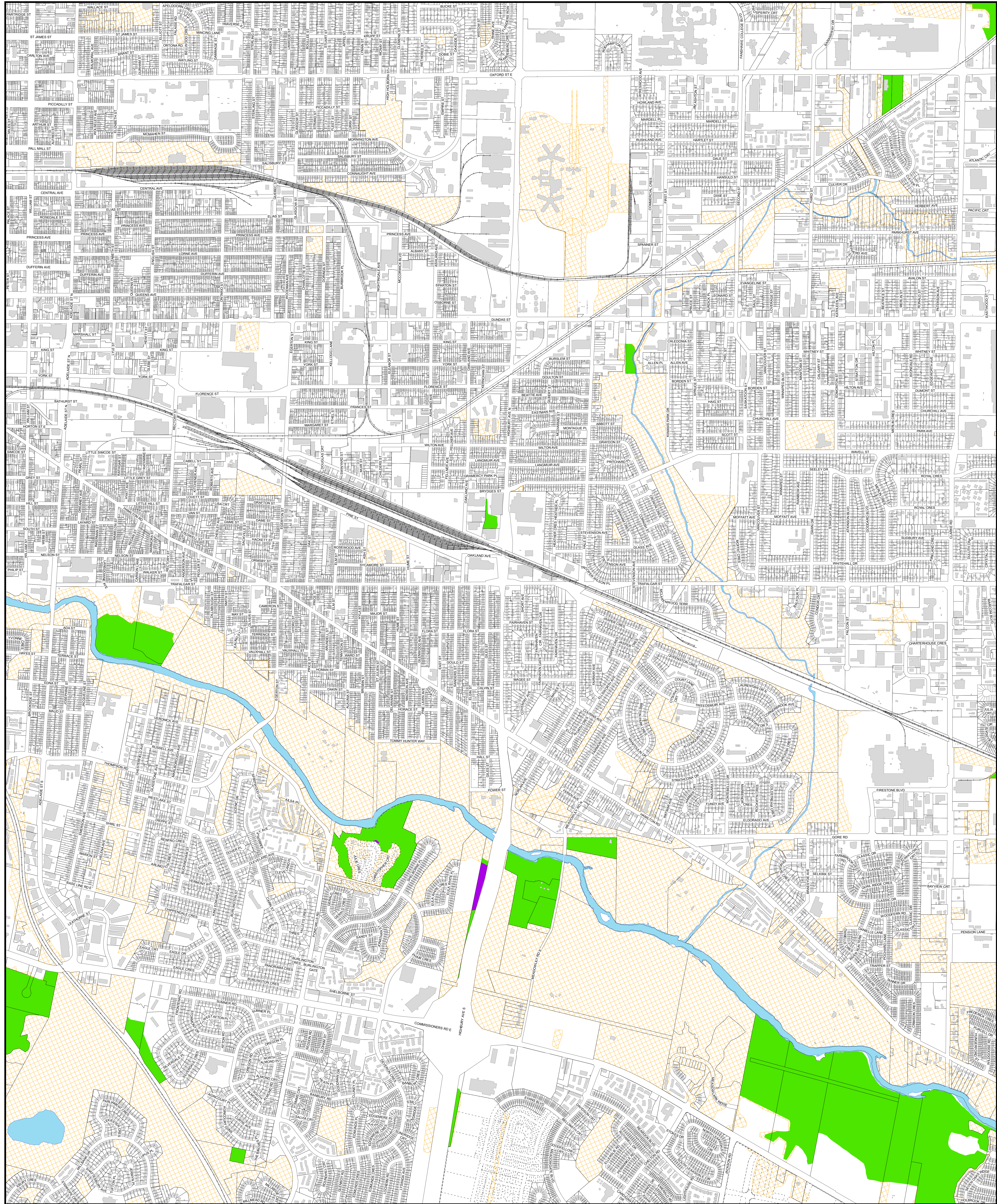
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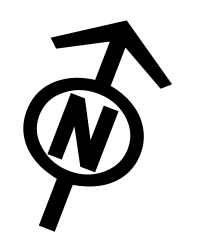
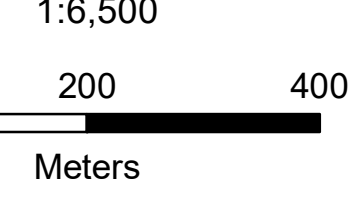




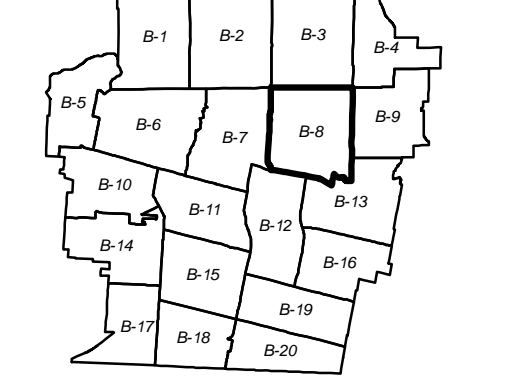
**CITY OF LONDON
TREE PROTECTION BY-LAW**
SCHEDULE B
as of October 22, 2020

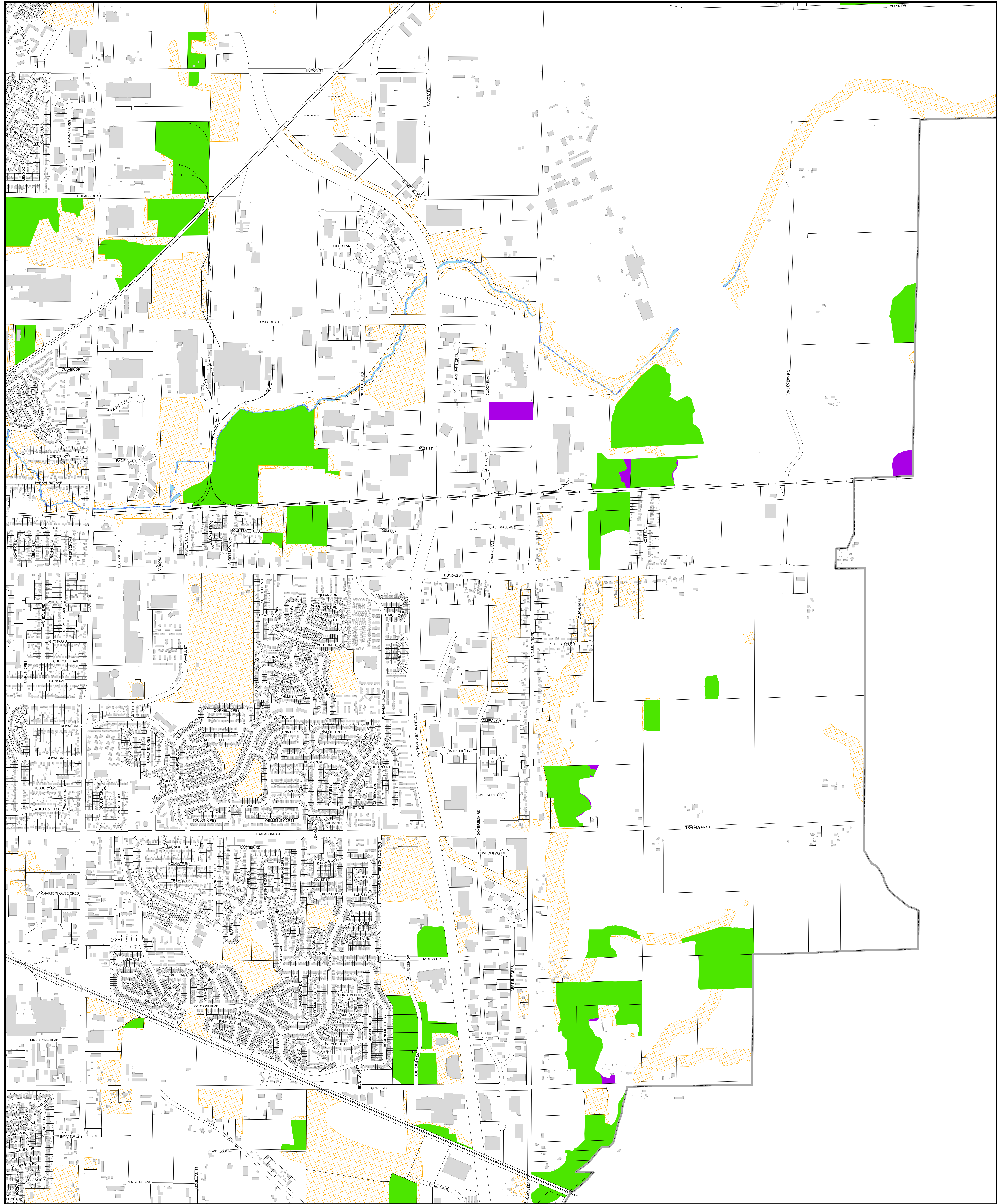
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**KEY MAP
B-8**



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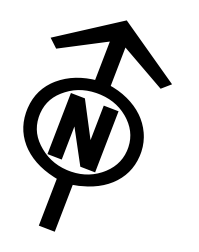




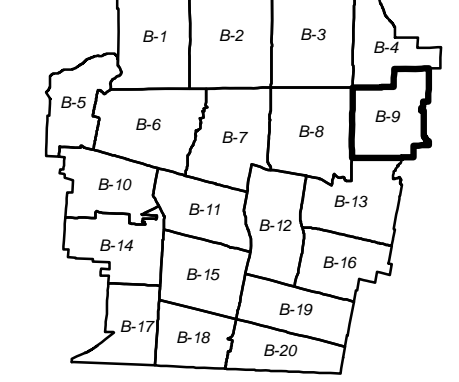
**CITY OF LONDON
TREE PROTECTION BY-LAW**
SCHEDULE B
as of October 22, 2020

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**KEY MAP
B-9**
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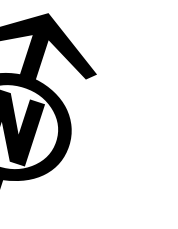


**CITY OF LONDON
TREE PROTECTION
BY-LAW**

SCHEDULE B
as of October 22, 2020

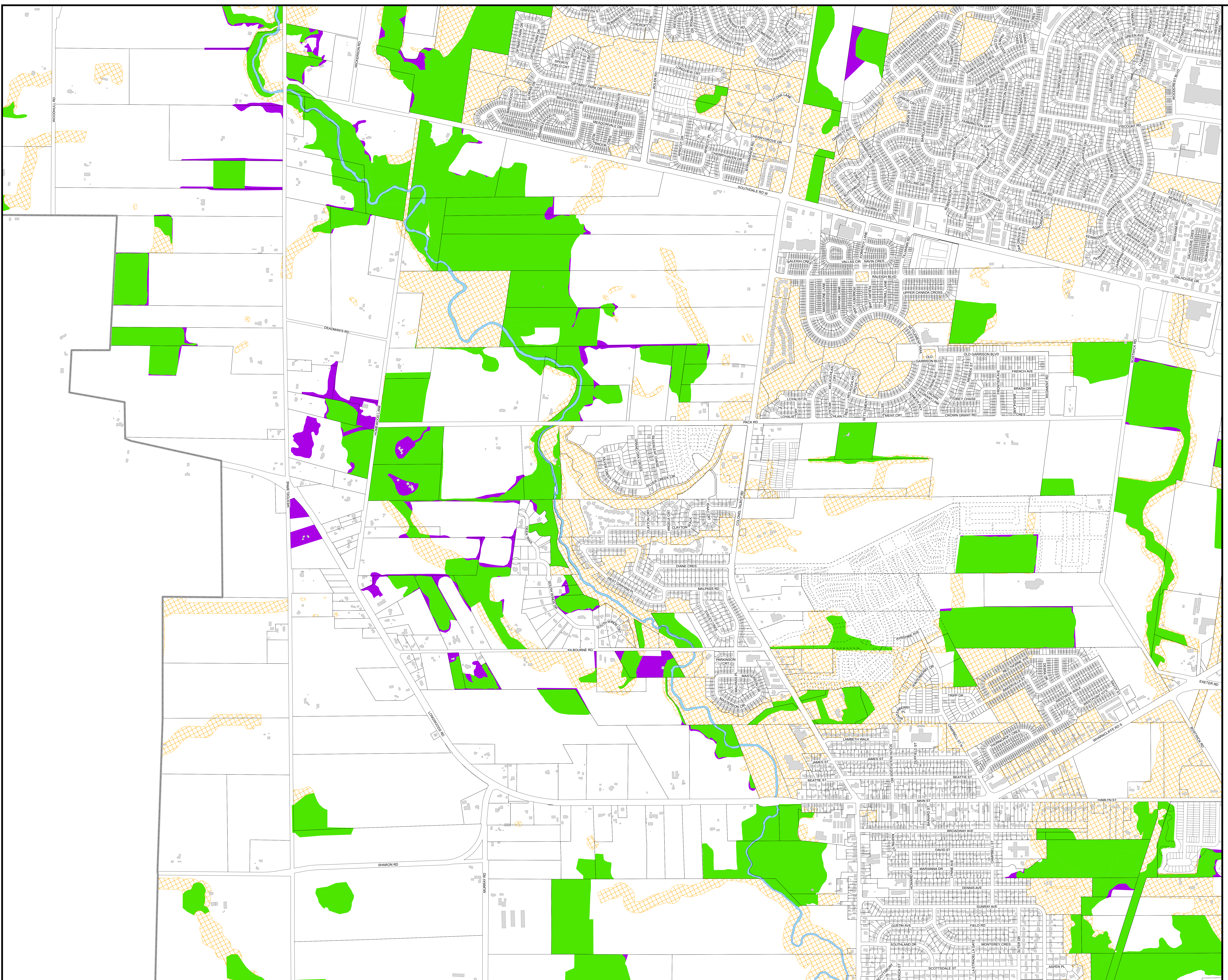
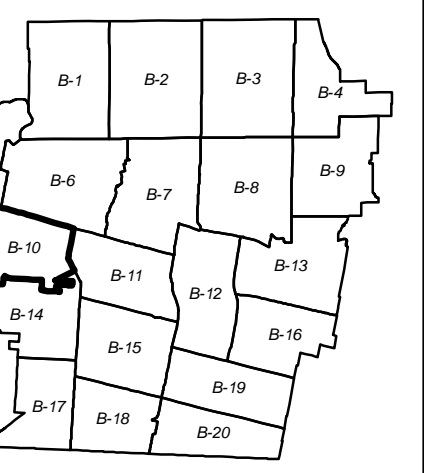
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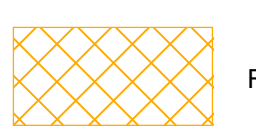




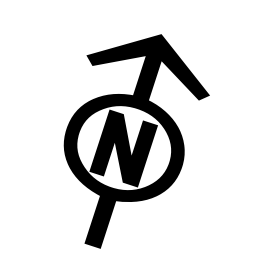
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**CITY OF LONDON
TREE PROTECTION
BY-LAW**

SCHEDULE B
as of October 22, 2020

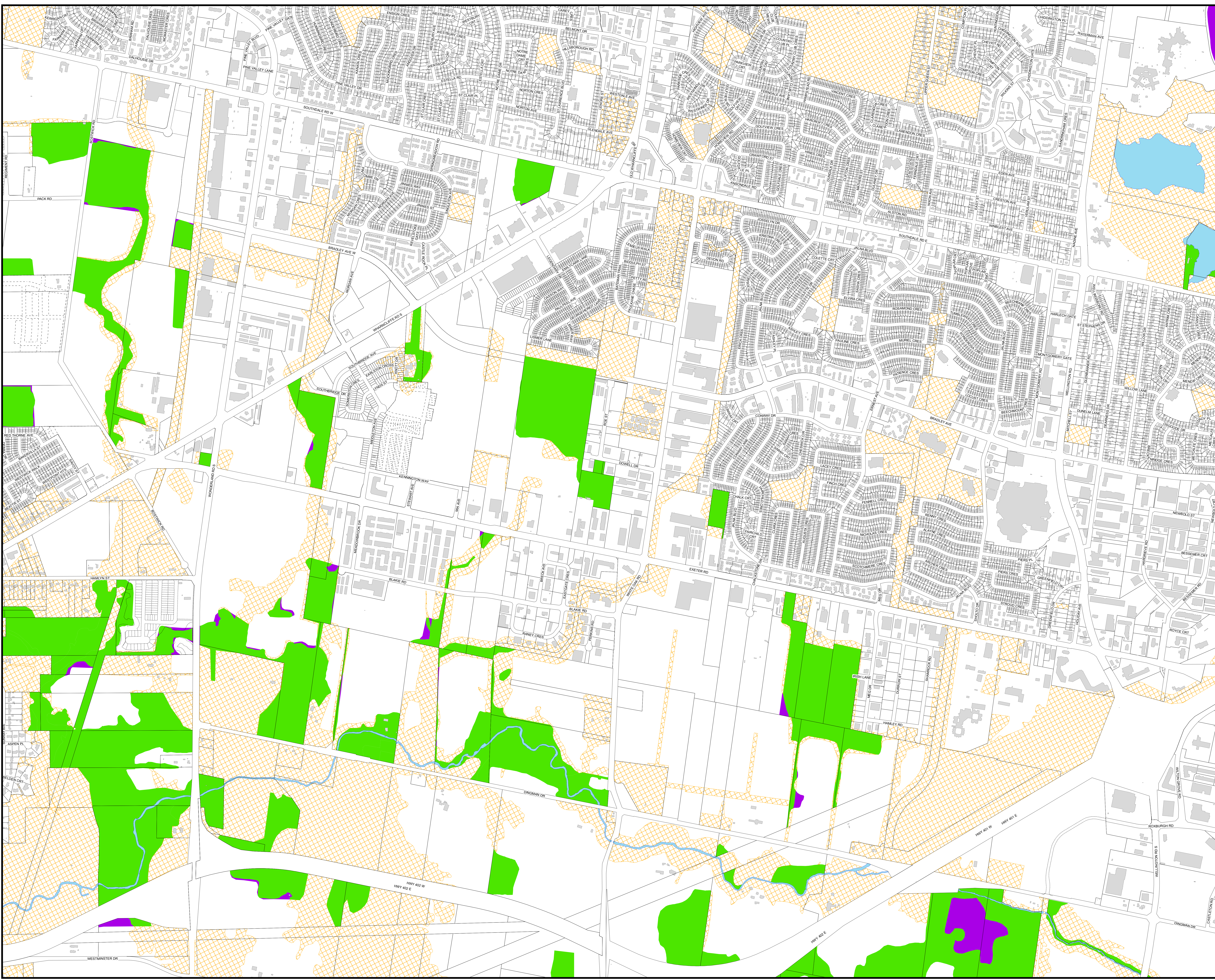
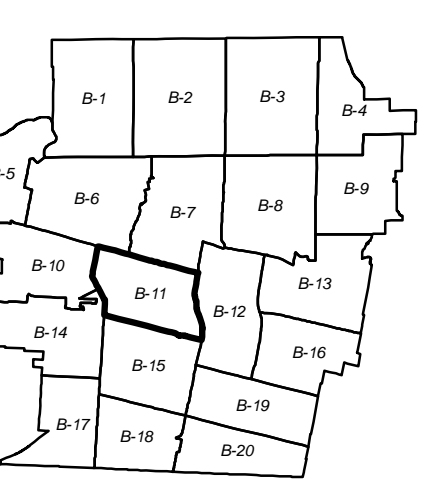
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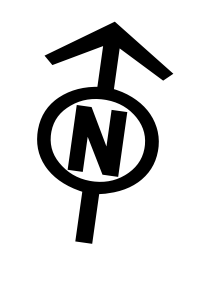
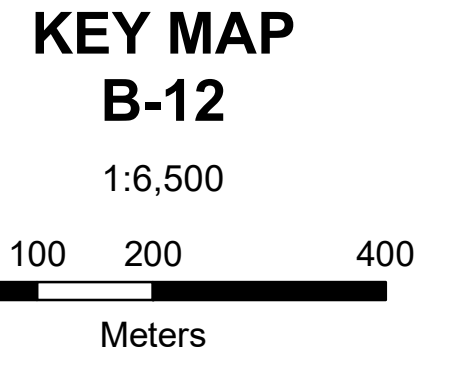
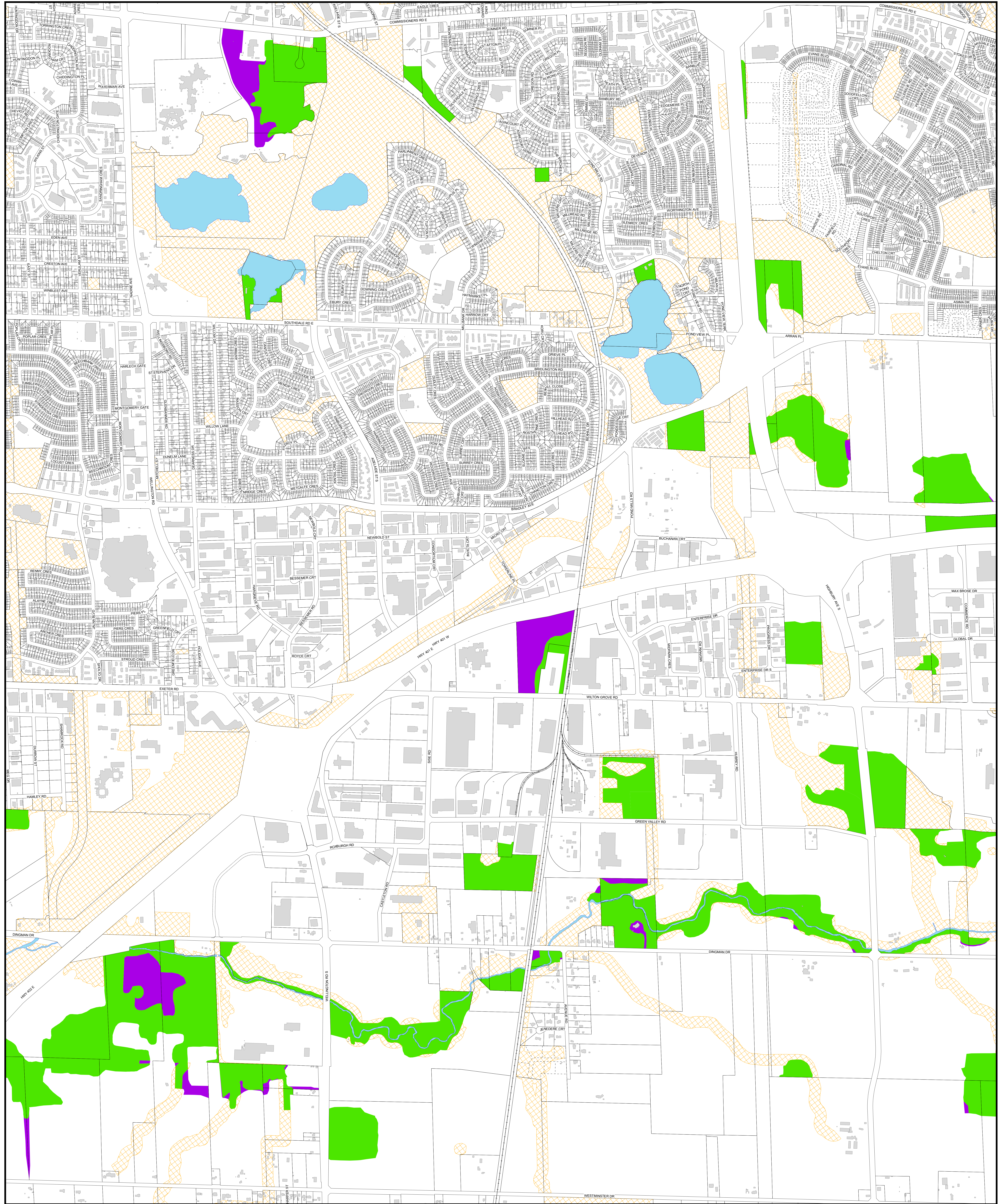
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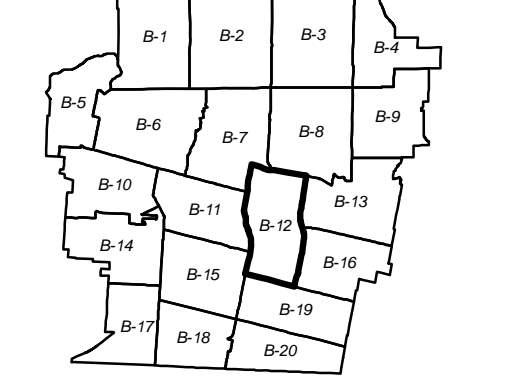
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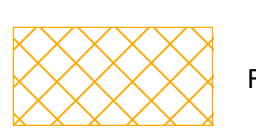


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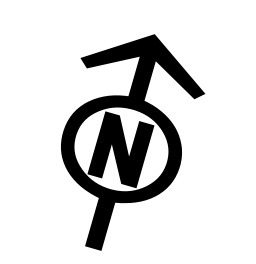
**CITY OF LONDON
TREE PROTECTION
BY-LAW**

SCHEDULE B

as of October 22, 2020

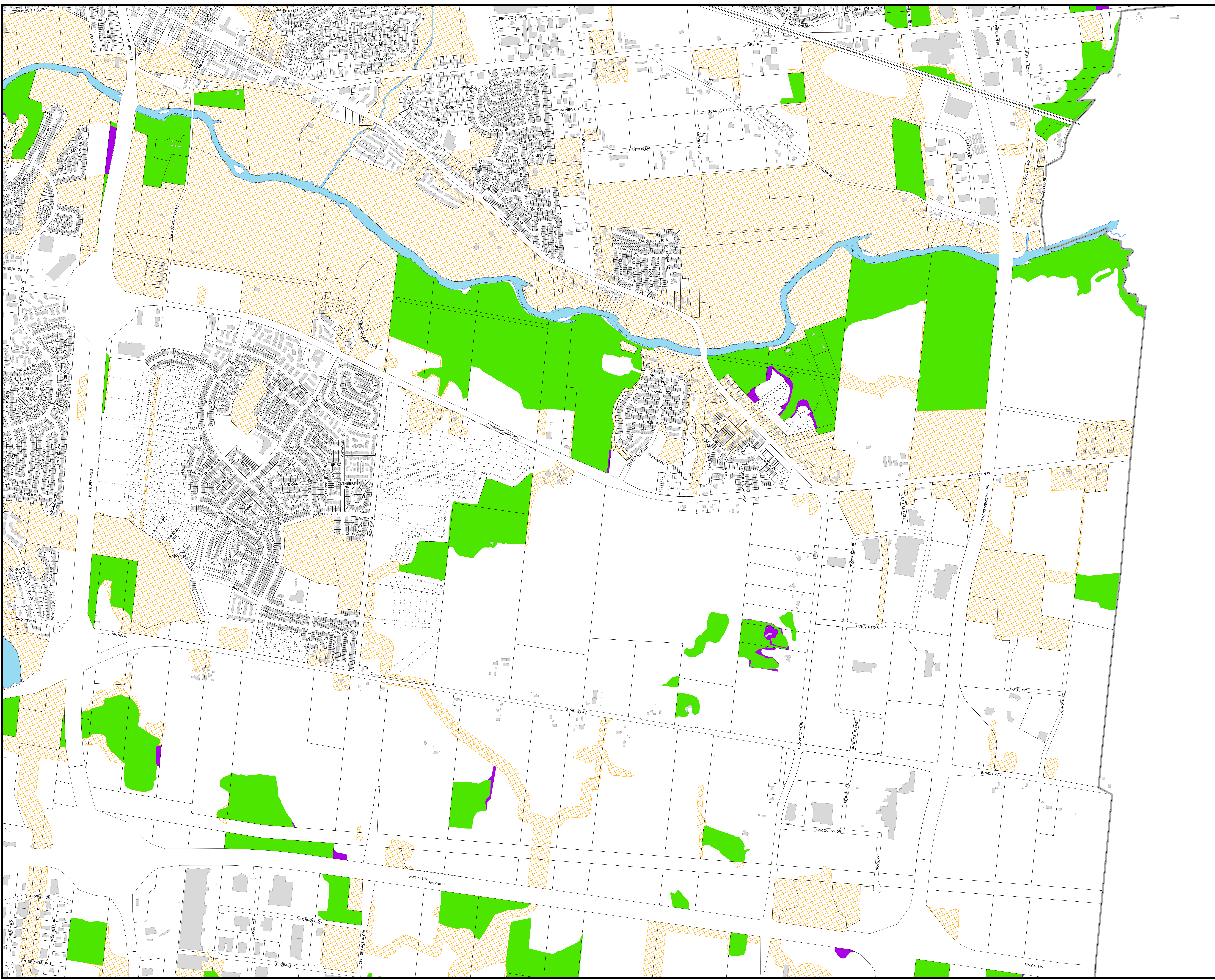
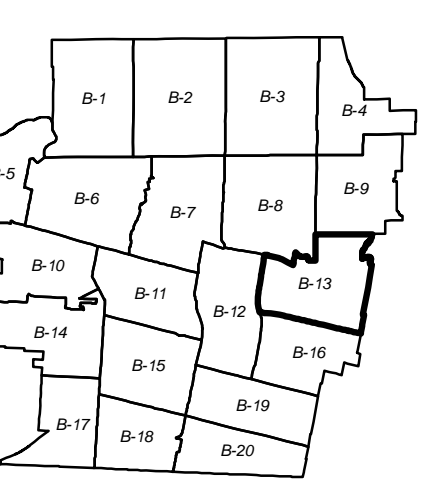
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**KEY MAP
B-13**



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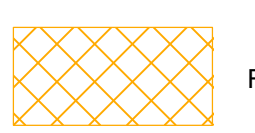


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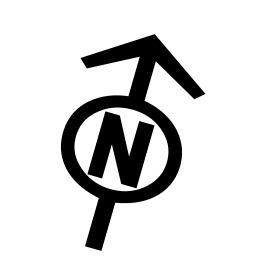
**CITY OF LONDON
TREE PROTECTION
BY-LAW**

SCHEDULE B

as of October 22, 2020

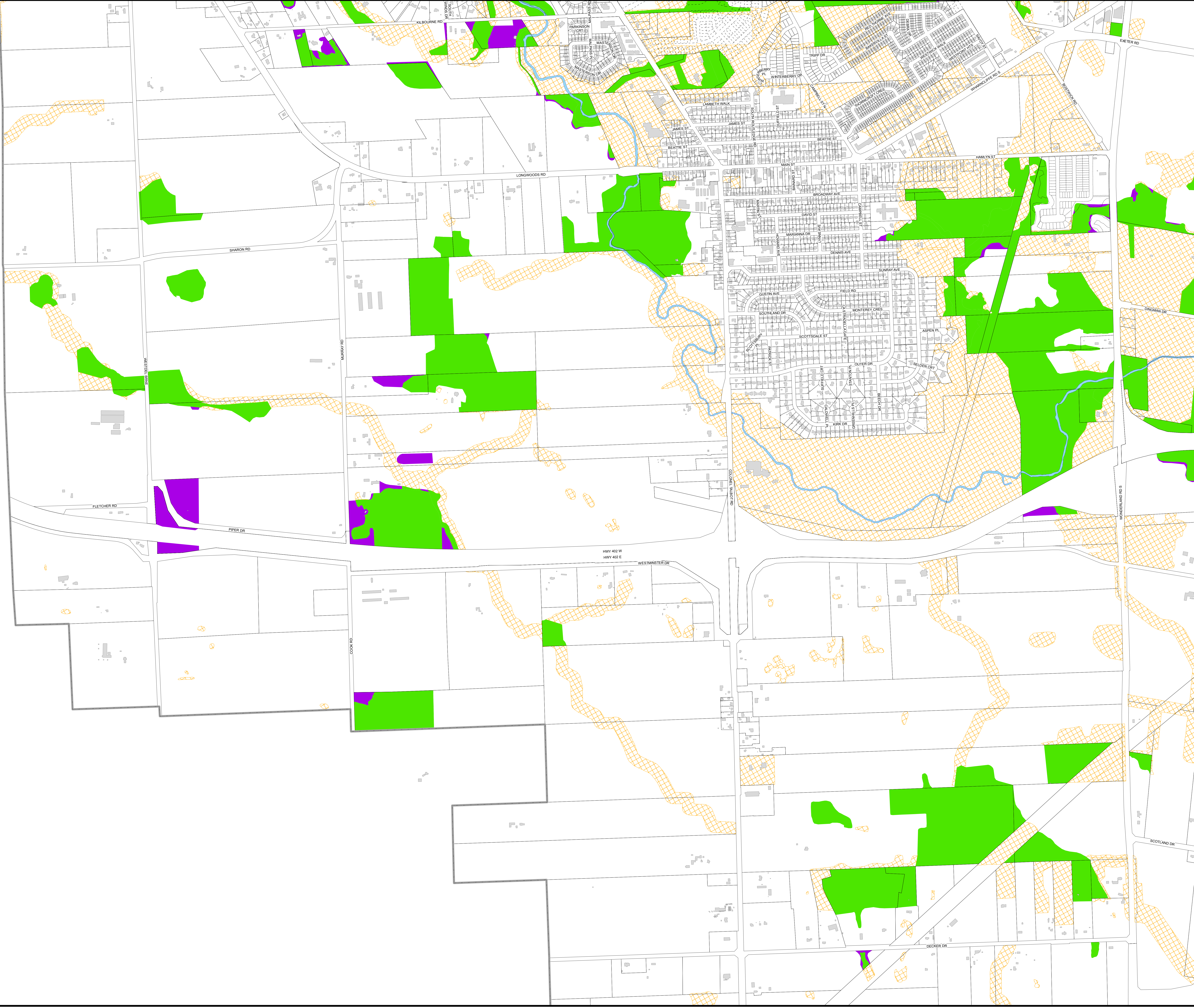
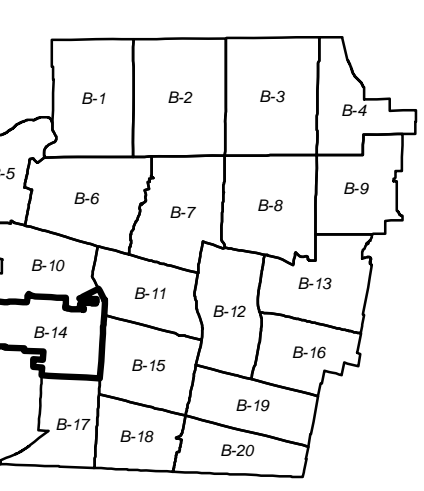
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**KEY MAP
B-14**



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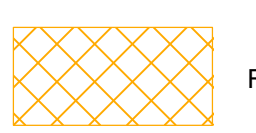




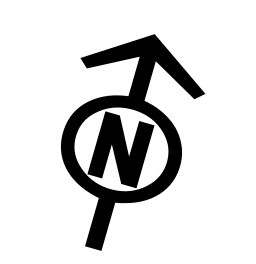
CITY OF LONDON
CANADA

**CITY OF LONDON
TREE PROTECTION
BY-LAW**

SCHEDULE B
as of October 22, 2020

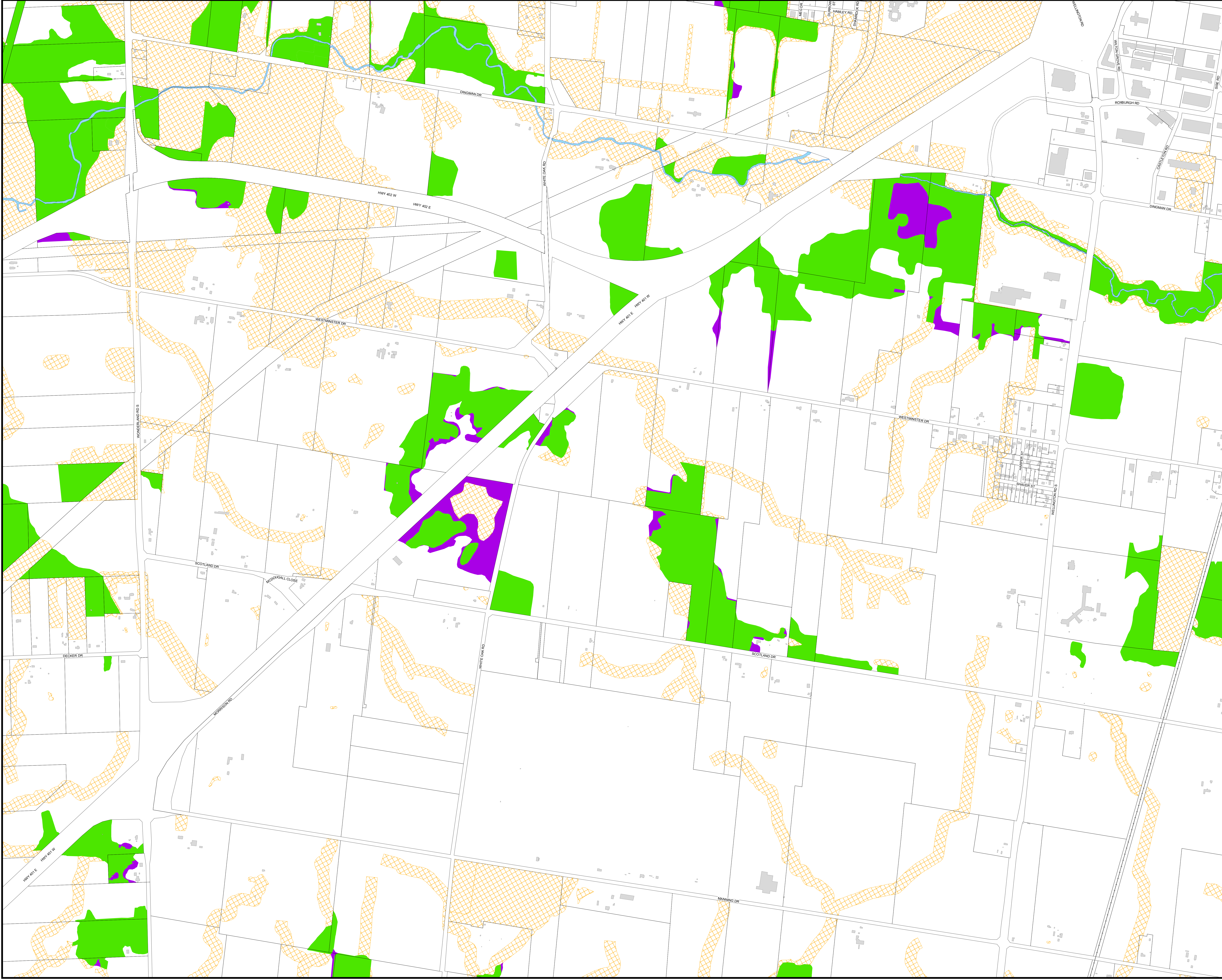
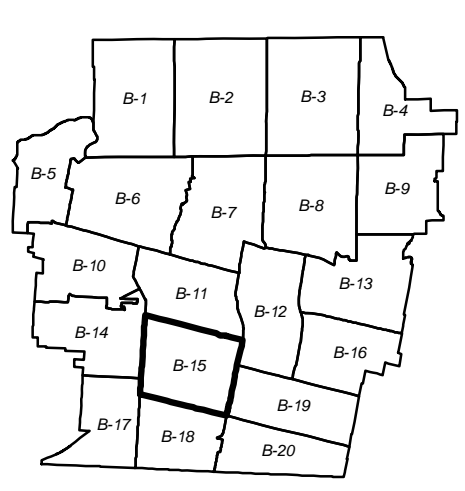
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**KEY MAP
B-15**



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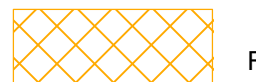




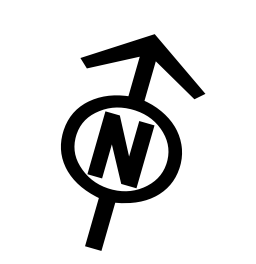
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**CITY OF LONDON
TREE PROTECTION
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SCHEDULE B
as of October 22, 2020

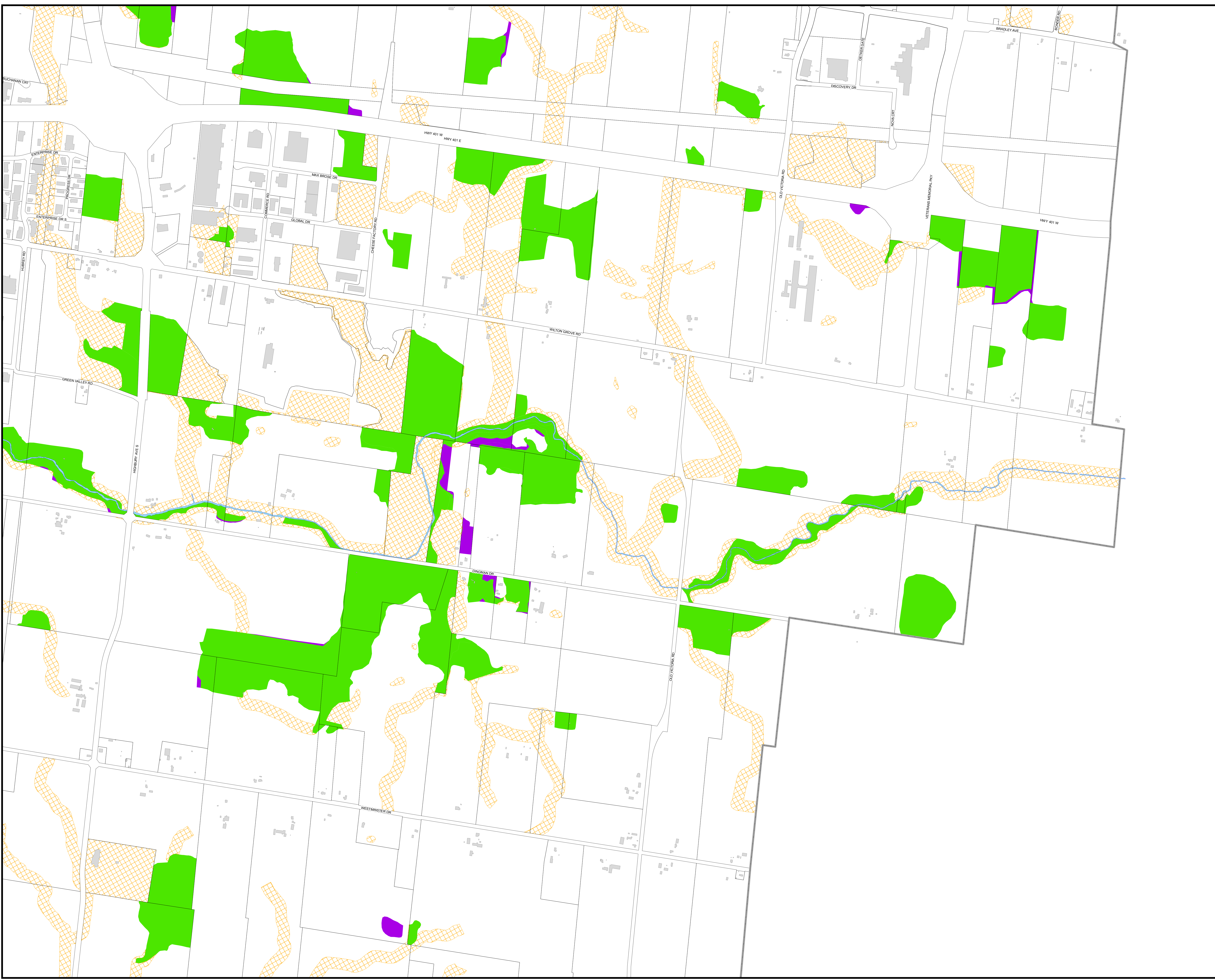
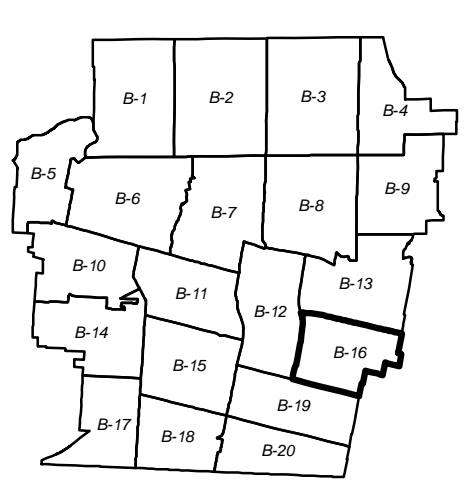
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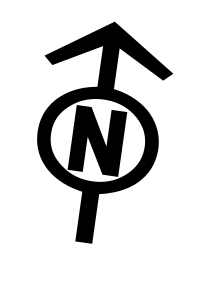
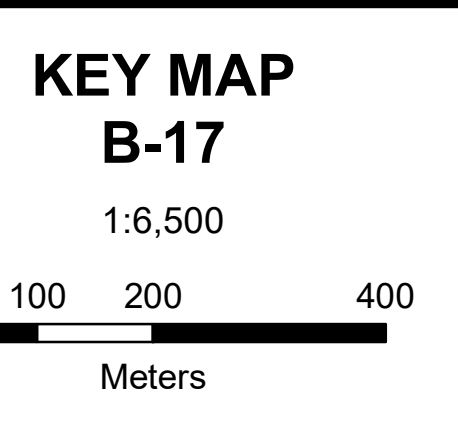
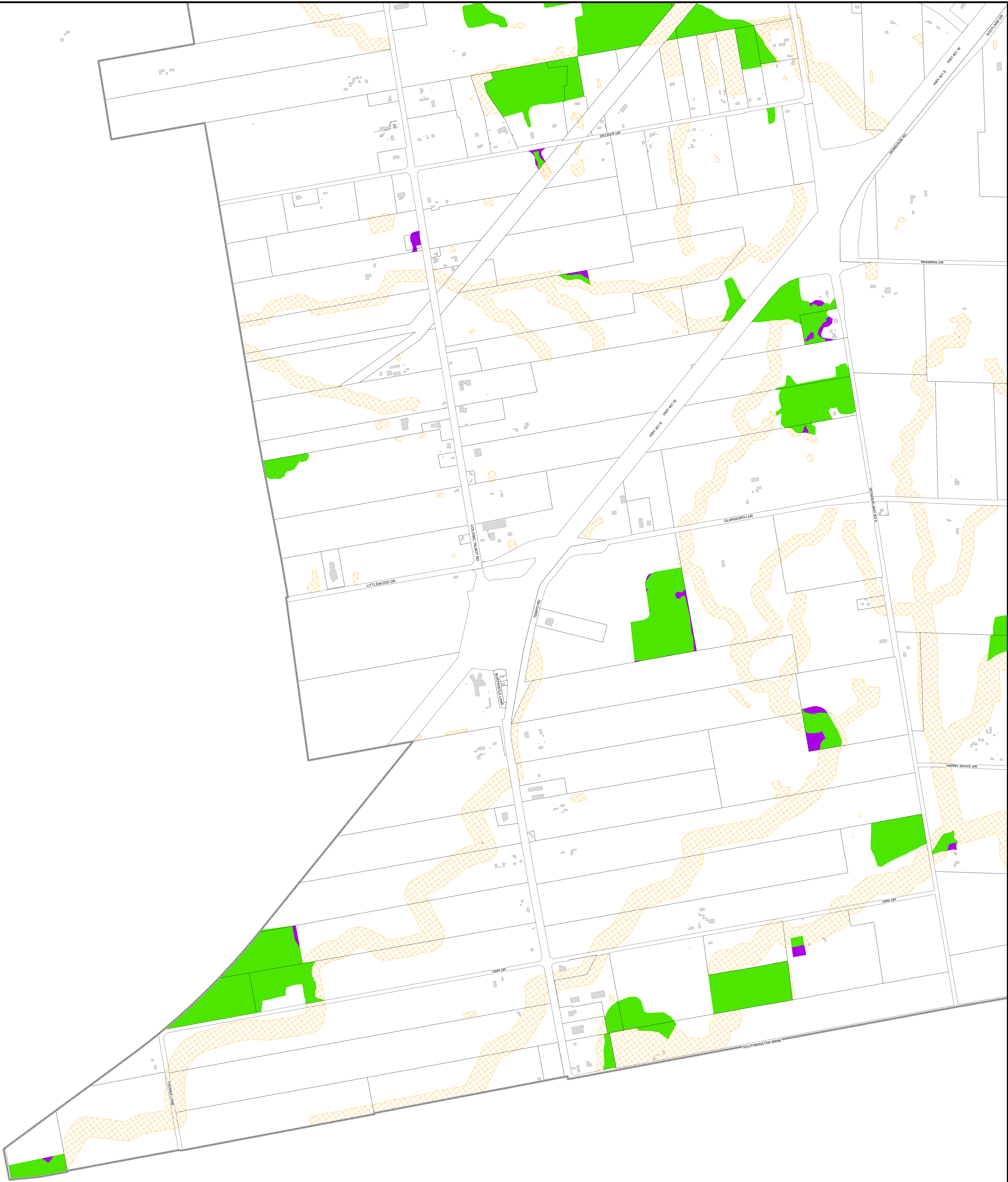
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B-16**



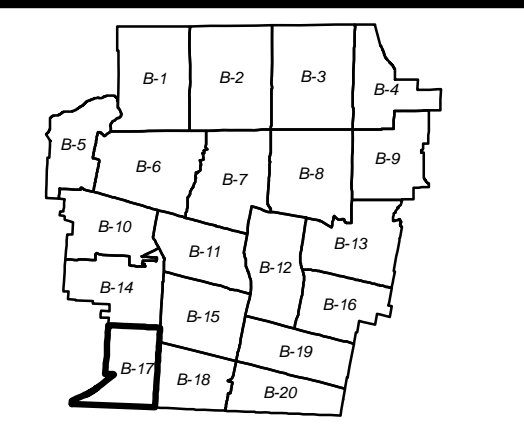
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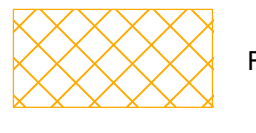




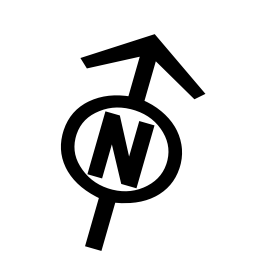
London
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SCHEDULE B
as of October 22, 2020

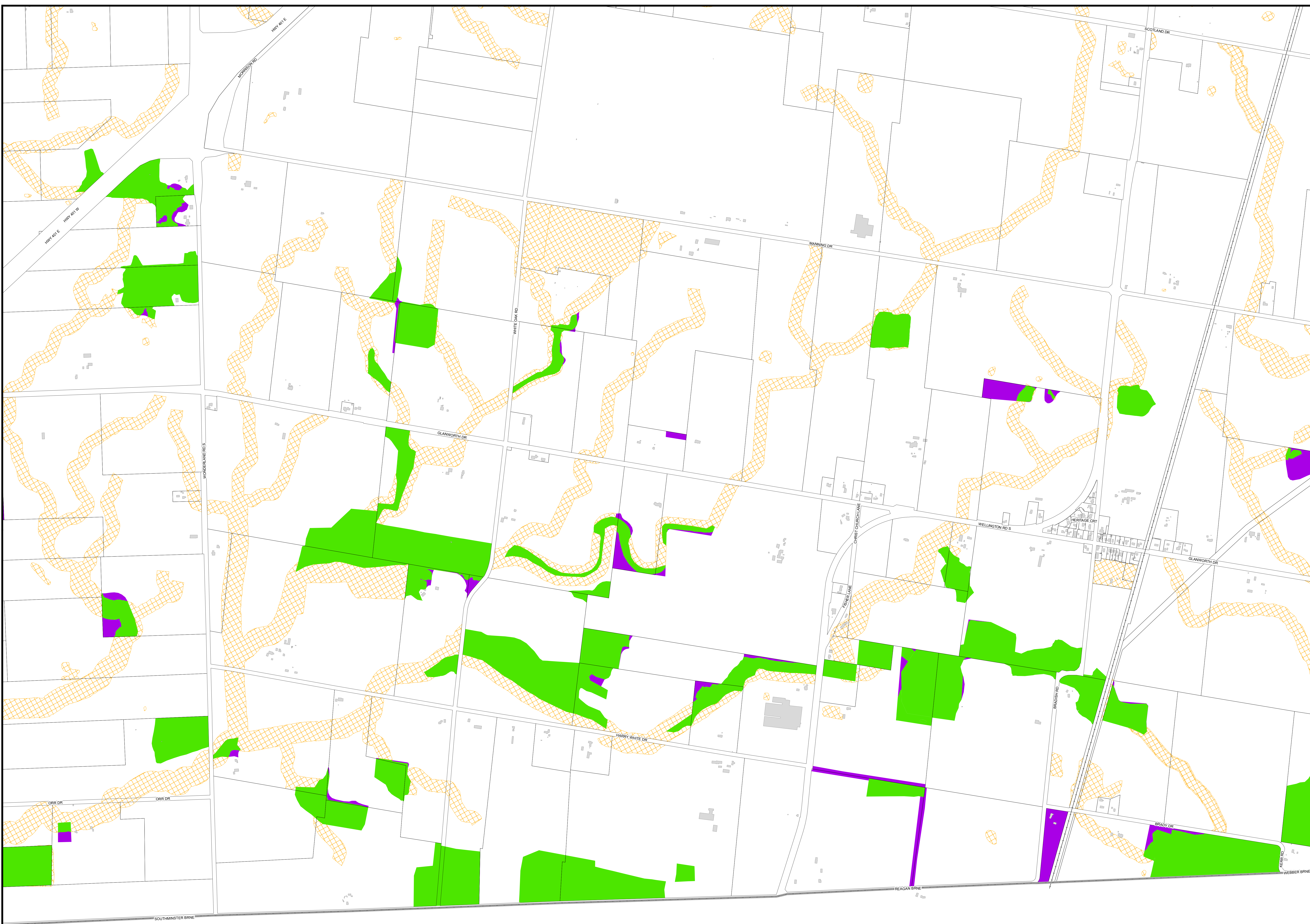
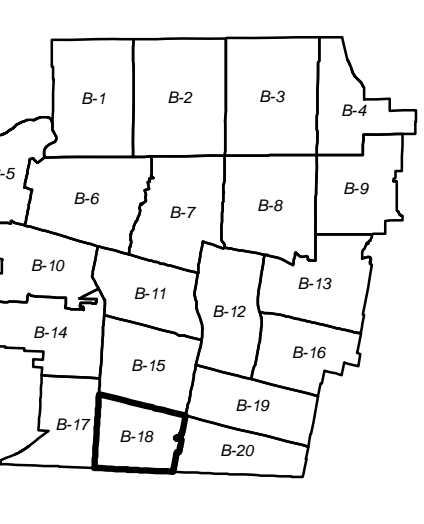
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**KEY MAP
B-18**



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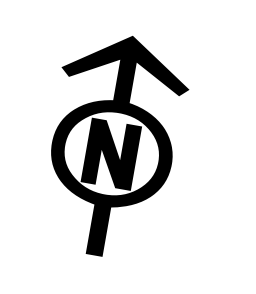
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**CITY OF LONDON
TREE PROTECTION
BY-LAW**

SCHEDULE B
as of October 22, 2020

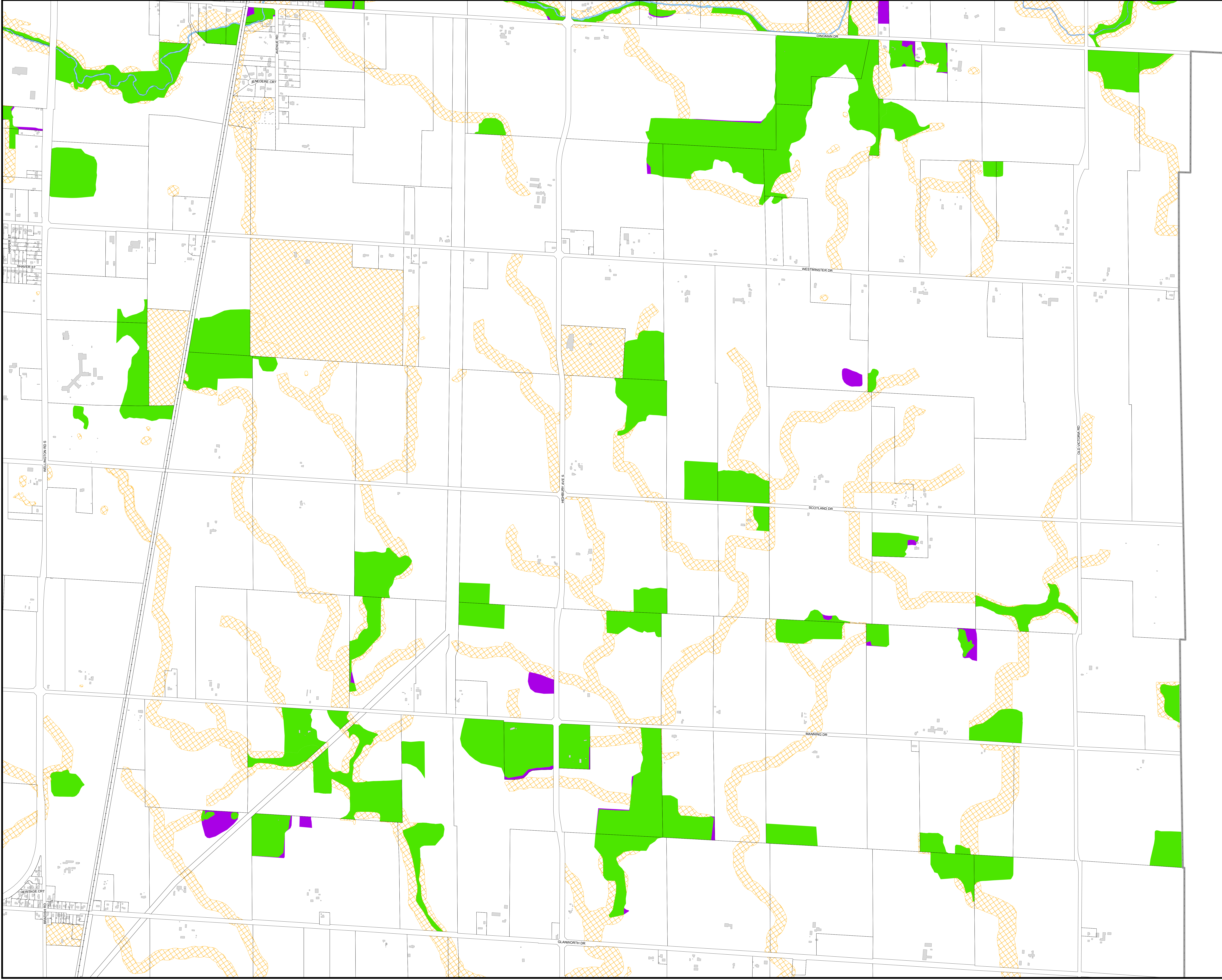
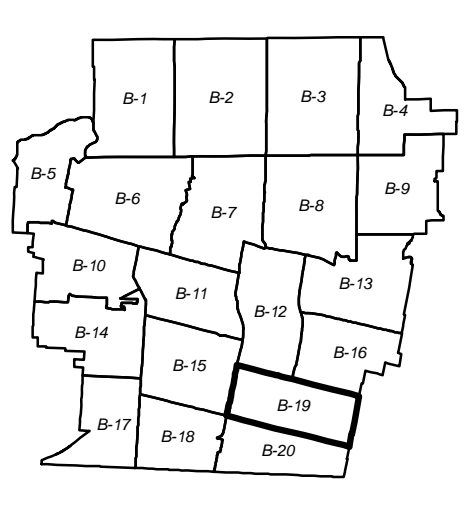
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**KEY MAP
B-19**



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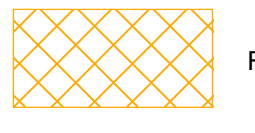




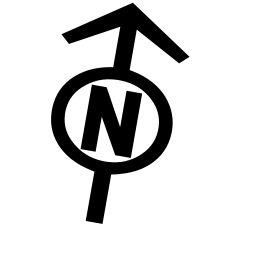
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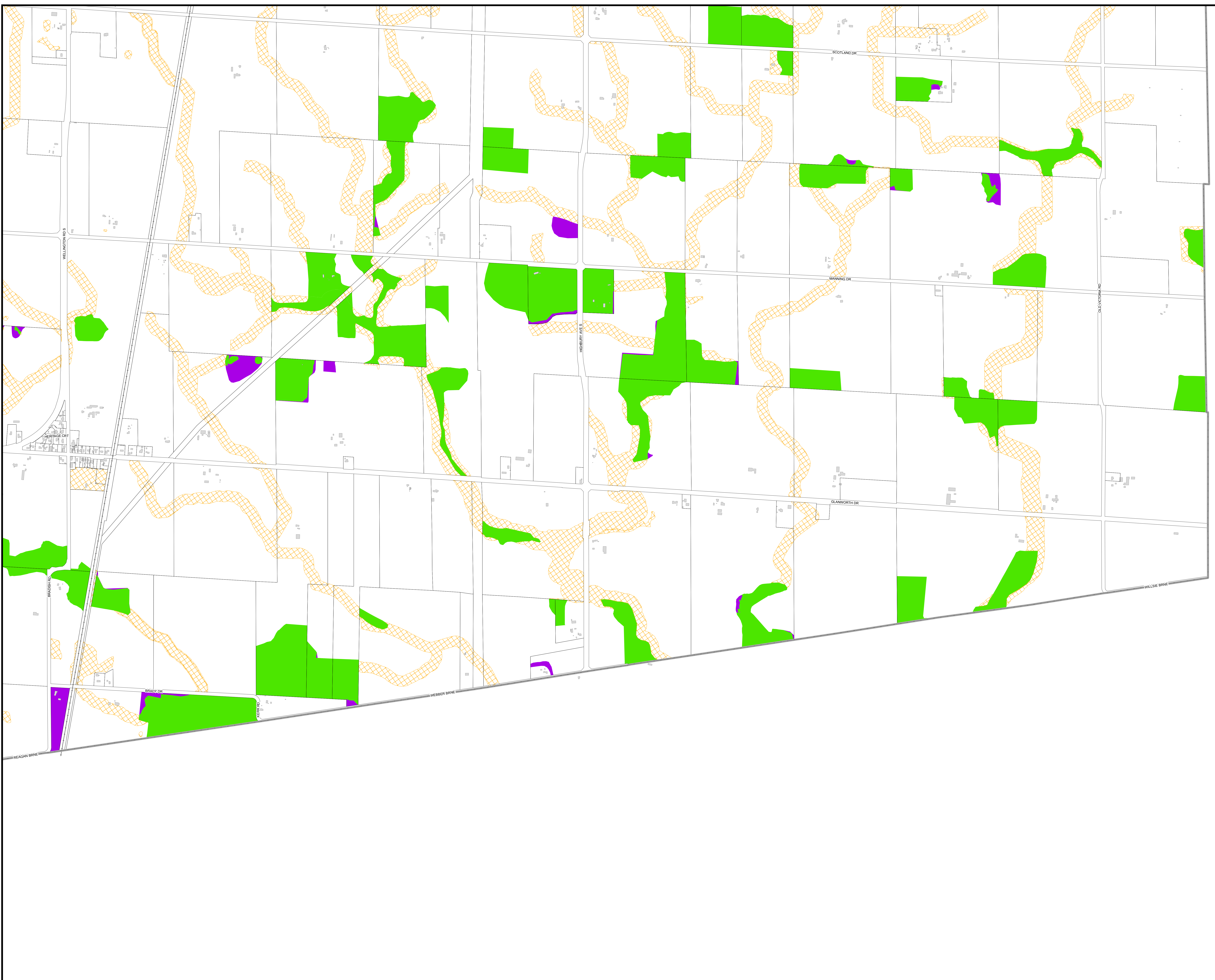
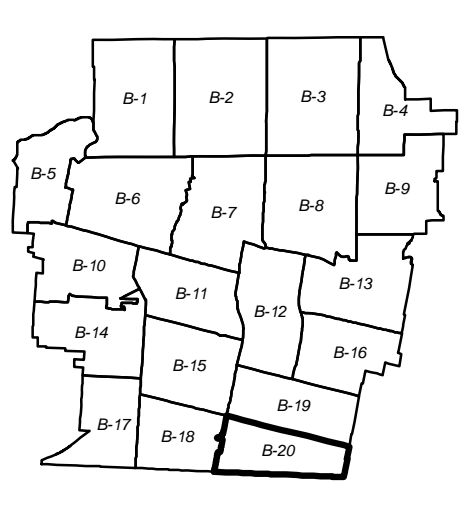
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**KEY MAP
B-20**



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Tree Protection By-law

C.P.-1515-228 – Passed August 30, 2016
Consolidated as of July 25, 2017

As Amended by

By-law No.	Date Passed at Council
C.P.-1515(a)-270	July 25, 2017

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**OFFICE CONSOLIDATION
INCLUDING AMENDMENT C.P.-1515(a)-270 (July 25, 2017)**

Bill No. 313
2016

By-law No. C.P.-1515-228

A by-law to regulate the Injuring and Destruction of Trees and to encourage preservation and planting of Trees throughout the City of London, and to repeal By-law No. C.P.-1466-249 entitled, "A by-law to prohibit and regulate the destruction or injuring of trees in the City of London."

WHEREAS The Corporation of the City of London is authorized by subsection 11.(1), paragraph 11.(2)5, subsections 135.(1) and (7), and sections 429, 431 and 444 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, to pass By-laws to sustain and promote environmental and social benefits to the community as a whole through preservation and planting of Trees throughout the municipality, to regulate the Injury and Destruction of Trees, to require a Permit for the removal of Trees, to impose conditions on Permits and to provide for a system of fines and other enforcement orders;

AND WHEREAS Municipal Council has determined that it is desirable to enact a By-law to regulate the Injury and Destruction of Trees and to encourage preservation and planting of Trees throughout the City of London

NOW THEREFORE the Council of the Corporation of the City of London hereby enacts as follows:

1 SHORT TITLE

1.1 This By-law may be cited as the "City of London Tree Protection By-law".

2 DEFINITIONS

2.1 For the purpose of this By-law:

"Agricultural Operation" means an agricultural, aquacultural, horticultural or silvicultural operation that is carried out with the expectation of gain or reward as defined in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1.

"Applicant" means the Person who submits an application to the City for a Permit under this By-law.

"Arborist" means an expert in the care and maintenance of Trees and includes an Arborist qualified by the Ontario Ministry of Training, Colleges and Universities, a certified Arborist with the International Society of Arboriculture, a consulting Arborist registered with the American Society of Consulting Arborists, a Registered Professional Forester or a Person with other similar qualifications as approved by the City Planner.

"By-law Enforcement Officer" means a Person appointed by the Council of the City of London as a Municipal Law Enforcement Officer to enforce the provisions of this By-law.

"Boundary Tree" shall have the same meaning as defined by the *Forestry Act*, R.S.O. 1990 c.F.26.

"City" means The Corporation of the City of London.

"City Planner" shall mean the Person who holds the position of City Planner for The Corporation of the City of London or their written Designate who is authorised by the City Planner to act on their behalf in respect of this By-law.

“City Property” shall mean any property of value owned by the City or its Boards and Commissions and includes real estate, storage yards, vehicles, animals or equipment.

“Conservation Authority” shall have the same meaning as defined in the *Conservation Authorities Act*, R.S.O. 1990 c.C.27.

“Critical Root Zone” shall mean an area defined by a measured circle around a living Tree that is deemed to contain the portion of Tree roots that are essential for the Tree’s structural integrity and capability to remain alive and upright, and shall be determined as described in Schedule C of this By-law.

“Declared Emergency” shall mean a situation that has been identified and declared an emergency under the *Emergency Management and Civil Protection Act*, R.S.O. 1990 c.E.9.

“Designate” shall mean any Person acting on behalf of, under direction of or with express authority conferred in writing by the City Planner and may include but is not limited to City employees or Qualified Persons hired by the City.

“Destroy” in relation to Tree or Trees means to cut down, remove, uproot, unearth, topple, burn, bury, shatter, poison, or in any way cause a Tree to die or be killed, or where the extent of Injury caused to a live Tree or disturbance of any part of its Critical Root Zone is such that it is likely to die or be killed, excepting where a Tree and/or its roots are killed by natural causes. The terms “Destroyed” and “Destruction” shall have a corresponding meaning.

“Distinctive Tree” means a Tree that has attained a trunk diameter of 50cm or greater, measured from Natural Ground Level to 1.4m above Natural Ground Level, that is located on a property within the geographic area of the Urban Growth Boundary excluding the Tree Protection Area.

“Emergency Services” shall mean any of the fire, police, and ambulance services, acting as first responders during an incident where life, limb or property may be in peril.

“Forest Management Plan” shall mean a plan signed and sealed by a Qualified Person, for Trees in Woodland that are to be managed for a number of years and which may include harvesting, planting and tending of Trees.

“Forestry Purposes” shall have the same meaning as defined by the *Forestry Act* R.S.O. 1990 c. F.26.

“Good Arboricultural Practices” means the implementation by any Qualified Person of the most recent techniques or methods of Tree management as recommended by the International Society of Arboriculture or their successor.

“Good Forestry Practices” shall be as defined by the *Forestry Act* R.S.O. 1990 c. F.26.

“Habitat” by reference to wildlife or Species at Risk shall have the same definition as that defined in the *Endangered Species Act, 2007*, S.O. 2007, c. 6.

“Hearings Officer” means a Hearings Officer appointed under the City’s Hearings Officer By-law A.-6653-121, as amended.

“Injure” means to harm, damage or impair the natural function, form or Habitat of a living Tree, including its roots within the Critical Root Zone, by any means excepting Injury by natural causes, and includes but is not limited to carving, drilling, injection, exploding, shattering, improper pruning that fails to meet Good Arboricultural Practices, removal of bark, deliberate inoculation of decay fungi, Pest or disease, inserting or driving foreign objects into or through the Tree or its roots, soil compaction, root excavation, suffocation, drowning, burying or poisoning. The terms “Injury”, “Injuring” and “Injured” shall have a corresponding meaning.

“Landowner” means any Person having title in the land on which the Tree(s) are situated, and in the case of Boundary Trees this shall be as defined by the *Forestry Act*, R.S.O. 1990 c.F.26 section 10(2) – Trees Common Property; the term “Landowners” shall have the same meaning, plural.

“Natural Ground Level” for the purposes of this By-law shall mean the unaltered and original level of the soil around the base of a Tree that is supporting or did support the Tree during its early growth and establishment phase; where the Natural Ground Level varies around the Tree any measurement that is referenced from Natural Ground Level shall be measured from the highest part of the soil.

“Normal Farm Practice” shall mean a normal farm practice defined in the *Farming and Food Production Protection Act 1998*, S.O. 1998, c.1.

“Normal Property Maintenance” shall mean the accepted local standards or practices for the care and repair of a property experiencing normal wear and tear, and may include but is not limited to the brushing, sweeping or blowing of leaf, flower or other vegetative litter, the repair or replacement of parts or things at the end of their expected useful life, washing and painting of exterior surfaces, and washing of driveways, windows or vehicles.

“Noxious Weed” shall have the same meaning as that defined in the *Weed Control Act*, R.S.O.1990 c.W.5.

“Permit” means a written permit or a written Emergency Permit issued by the City Planner pursuant to this By-law that authorises the Injury, Destruction or removal of a Distinctive Tree or the Injury or Destruction of a Tree or Trees within a Tree Protection Area.

“Permit Holder” means a Person to whom a Permit has been issued.

“Person” means a natural Person, a recognised community group or special interest group, a corporation, partnership, association, firm, trust, charity, any agency or office of government and any other lawful entity, includes any Person acting on behalf of or under authority of such entity; the term “Persons” shall have the same meaning, plural.

“Pest” includes but is not limited to animals, plants, insects, fungi, bacteria, viruses or any other organism having the potential to do harm to a Tree and may include any species that is invasive or new to Canada where the potential for harm is as yet unknown or unpredictable.

“Pruning” means the removal of live or dead branches from a standing Tree, where the manner or method of cutting and the location of cuts accord with Good Arboricultural Practices and without harm to the physiological requirements of that Tree in the short or long term. The terms “Prune” and “Pruned” shall have a corresponding meaning.

“Qualified Person” shall mean a Person who, in the opinion of the City Planner, has satisfactory qualification, experience, education and knowledge to be an expert in the matter at hand.

“Registered Professional Forester” means a Person who is a registered and currently active full member in good standing of the Ontario Professional Foresters Association and has the right to use the designation “Registered Professional Forester” under the *Professional Foresters Act, 2000*, S.O. 2000, c. 18.

“Restore” shall mean to bring back damaged or disturbed land to a previous normal or better condition, in order to achieve specific targets or goals, such as, but not limited to enhanced biodiversity, enhanced future timber production and improved hydrological function. The condition may be achieved by various methods including but not limited to soil improvement, topographic alteration, site preparation, planting, mimicking of natural disturbance, placement of coarse woody debris, natural regeneration, seeding, weeding and thinning. The term “Restoration” shall have the same meaning.

“Security” means an agreement between the City and an Applicant where the Applicant shall arrange an irrevocable letter of credit from a financial institution to specify and lodge a requisite sum of money that the City may draw upon in full if the By-law is contravened or if a failure occurs in the proper and complete execution of a Permit and its conditions, such that Restoration has to be done by the City. The Security may be required before a Permit can be issued for Sites that, in the opinion of a Qualified Person, contain or support ecological or environmental features or functions at risk of being harmed or impaired.

“Silvicultural Prescription” means an operational plan prepared by a Registered Professional Forester or Qualified Person that describes the existing conditions and the sustainable management objectives for Trees on a Site, and that prescribes the practice of controlling Tree establishment and the composition, growth and quality of Trees to achieve the objectives of management, the methods for managing the Trees and a series of silvicultural treatments and Good Arboricultural Practices that will be carried out to perpetuate Tree cover and establish a free-growing state for Trees that accommodates other resource, environmental and social values as may be identified.

“Site” means the general area where work that may be permitted under this By-law is planned or executed, and in the case of a tract of land that extends over multiple landholdings, each separate landholding is a separate “Site”.

“Species at Risk” shall mean any species listed in *Ontario Regulation 242/08* under the *Endangered Species Act, 2007*, S. O. 2007, c.6 and species listed in Schedules of the *Species at Risk Act*, S.C. 2002, c.29.

“Tree” means a woody perennial plant, whether alive or dead, healthy or unhealthy, including saplings or seedlings and including the root system, where the plant has reached or has the potential to reach or, if dead, had the potential while alive to achieve a height of at least 4.5 metres (15 feet) at physiological maturity, typically growing with a single stem and typically developing with branching at regular intervals, provided that where multiple stems grow from the same root system, the number of Trees shall be the number of stems that can be measured individually at a point 1.4 metres above the Natural Ground Level. The term “Trees” shall have the same meaning, plural.

“Tree Protection Area” means any geographic area of the City that appears as a Tree Protection Area on Schedule D of this By-law, as may be amended from time to time.

“Woodland” shall have the same meaning as “Woodlands” as defined by the *Forestry Act*, R.S.O. 1990, c. F.26.

3 SCOPE

3.1 This By-law applies to a Tree anywhere within the City of London.

4 ADMINISTRATION

4.1 The administration of this By-law shall be performed by the City Planner.

5 EXEMPTIONS

5.1 This By-law does not apply to:

- (a) activities or matters undertaken by a municipality or a local board of a municipality;
- (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
- (c) the Injuring or Destruction of Trees by a Person licensed under the *Surveyors Act*, to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- (d) the Injuring or Destruction of Trees imposed after December 31, 2002, as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act*, or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (e) the Injuring or Destruction of Trees imposed after December 31, 2002, as a condition to a development permit or community planning permit authorized by regulation made under the *Planning Act* or as a requirement of an agreement entered into under the regulation;
- (f) the Injuring or Destruction of Trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of

constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;

(g) the Injuring or Destruction or removal of Trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;

(h) the Injuring or Destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,

(1) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and

(2) on which a pit or quarry is a permitted land use under a By-law passed under section 34 of the *Planning Act*;

(i) where a Tree is a Noxious Weed as defined in the *Weed Control Act* that is being controlled by an appropriate method under the oversight or direction of a Qualified Person and no Trees other than a Noxious Weed are being Injured or Destroyed; or

(j) activities and matters undertaken by or under order of a Conservation Authority and any works under the *Conservation Authorities Act* and any Regulations and amendments thereto.

5.2 Despite Sections 6 and 7 of this By-law, a Permit as defined by this By-law is not required where:

(a) Pruning is necessary to maintain the health and condition of the Tree and is carried out in accordance with Good Arboricultural Practices;

(b) the Tree is not a Distinctive Tree and is located outside of the Tree Protection Area identified in Schedule D of this By-law;

(c) the Tree is located within a building, a solarium, a rooftop garden or an interior courtyard;

(d) the Tree to be Destroyed is located within an actively managed, cultivated orchard, Tree farm or plant nursery and is Destroyed for the purposes for which the Tree was planted;

(e) the Tree is an immediate threat to public health and safety; or

(f) the Injury or Destruction is a Normal Farm Practice as defined in the *Farming and Food Production Protection Act, 1998, S.O. 1998, c.1.*

6. PROHIBITION – TREES WITHIN THE TREE PROTECTION AREA

6.1 The provisions of this section shall apply to Trees within the Tree Protection Area shown on the maps within Schedule D of this By-law.

6.2 No Person shall Injure or Destroy a Tree or cause the Injury or Destruction of a Tree within the Tree Protection Area unless a Tree Protection Area Permit has been issued by the City Planner to permit the Injury or Destruction.

6.3 No Person or Permit Holder shall Injure or Destroy a Tree or cause the Injury or Destruction of a Tree within the Tree Protection Area unless the Injury and Destruction is carried out in accordance with all of the conditions of the Tree Protection Area Permit.

6.4 No Person or Permit Holder shall fail to protect a Tree within the Tree Protection Area in accordance with all of the conditions of a Tree Protection Area Permit.

6.5 Any Person who intends to Injure or Destroy a Tree within the Tree Protection Area shall submit to the City Planner an application for a Tree Protection Area Permit.

6.6 The application for a Tree Protection Area Permit shall include the required Permit fee as described in Schedule A of this By-law, and the following basic information:

(a) the name, address and telephone number of the Landowner;

(b) if the Applicant is different from the Landowner, the name, address, telephone number and professional credentials of the Applicant and the Landowner's written consent to the application;

(c) If the Tree is a Boundary Tree, written consent to the application by the adjacent Landowner;

(d) the name, address, telephone number and professional credentials of the Qualified Person hired by the Landowner or Applicant to complete the Tree Protection Area Permit application;

(e) the name, address and telephone number of the contractor implementing the work identified in the Tree Protection Area Permit;

(f) the municipal address and legal description of the land, upon which the Tree or Trees are to be protected, Injured or Destroyed;

(g) confirmation by the Qualified Person of the location, species, size and health of the Tree or Trees on the property;

(h) the purpose for which the Tree Protection Area Permit is required;

(i) a description of the proposed Tree Injury or Destruction, clearly illustrated in a measured drawing of the Site at a scale acceptable to the City Planner. This description shall include Trees on adjacent properties, where the Critical Root Zone of such Trees will be affected by the proposed activity on the Site;

(j) a schedule of the anticipated starting and completion dates of each Injuring or Destroying of a Tree or Trees;

(k) a description and measured drawing of the Site at a scale acceptable to the City Planner of any proposed construction, works, excavation or site alteration that may lead to the Tree Injury or Destruction which is the subject of the application; a schedule of this proposed activity, including a start and end dates shall also be provided;

(l) a description of any proposed Tree planting or Tree protection that is to be undertaken in association with the proposed Tree Injury or Destruction, all clearly illustrated in a measured drawing of the Site;

(m) a description of any off-site Tree planting that may be proposed to mitigate Tree canopy loss as a result of the proposed Tree Injury or Destruction and/or any funds that may be provided to the City for such off-site Tree planting in accordance with Schedule B of this By-law;

(n) a report prepared by a Qualified Person suitable to evaluate the nature and extent of the proposed Tree Injury and/or Destruction that evaluates the health of the Tree or Trees and the implications of the proposed Injury and/or Destruction as it relates to the following, as applicable:

- Site topography (e.g. ravines, slopes, contours, etc.);
- hydrological functions (e.g. streams, ponds, wetlands, recharge areas, etc.);
- sensitive environmental features or areas (e.g. riparian zones, seepage areas, amphibian breeding ponds, wetlands, steep or unstable slopes, significant wildlife habitat, stick nests, migrating or breeding birds, patches of conifer, rare species or species of conservation concern, etc.);
- the flood plain and Conservation Authority fill regulation lines; and,
- sustainability of the Trees that are proposed to remain.

The report will evaluate the basis for the proposed Tree Injury or Destruction and identify recommendations for any conditions to be included in a Tree Protection Area Permit that the Qualified Person believes are necessary and will present how the proposal is in accordance with Good Arboricultural Practices; and,

(o) confirmation of any other applications (Planning applications or otherwise) affecting the land upon which the Tree or Trees are to be protected, Injured or Destroyed, including measured drawings of any proposed development of the Site or adjacent Sites.

At their discretion, the City Planner may waive any of the above requirements where it is deemed reasonable to do so.

6.7 Where the City Planner deems that additional information is necessary to evaluate a Tree Protection Area Permit, beyond the basic information identified in Section 6.6 of this By-law, they may require one or more of the following:

(a) where the above basic information requires submission of information, study or a report by a Qualified Person, the City Planner may require this information to be submitted by an Arborist or a Registered Professional Forester as defined in this By-law;

(b) an inventory of all Trees that have a trunk diameter of 10cm or more, measured 1.4m above the Natural Ground Level, identifying the location, size, species and health of each such Tree and identifying those Trees that are identified for Injury or Destruction; this inventory is to be submitted in electronic form, such that the data can be linked using the City's geographic information system;

(c) Tree marking of all Trees to be Injured or Destroyed, prepared by an accredited Tree marker;

(d) the location of existing or proposed logging roads and skid trails;

(e) the landing or loading area for sawlogs as they are being harvested;

(f) any or all of stand height, structural or age class range, density, species composition, logging tally, basal area and volume;

(g) a Silvicultural Prescription as defined by this By-law, prepared by a Qualified Person;

(h) a Forest Management Plan as defined by this By-law, prepared by a Qualified Person;

(i) a description of how the Trees are to be removed from the Site, the potential impact on natural heritage features and areas, and an explanation of how these impacts are to be mitigated; and,

(j) such other information deemed necessary by the City Planner.

6.8 Where an application for a Tree Protection Area Permit is made for the operation of an existing cemetery or golf course, the requirements of Section 6.6 and 6.7 of this By-law will not apply and the following will be required for a Tree Protection Area Permit application:

(a) the name, address and telephone number of the Landowner of the golf course or cemetery;

(b) the name, address and telephone number of the Qualified Person hired by the Landowner or Applicant to complete the Tree Protection Area Permit application;

(c) a five-year Silvicultural Prescription and/or Forest Management Plan, prepared by a Qualified Person, describing how the Trees on the Site are to be managed in a sustainable fashion to achieve Good Arboricultural Practices and Good Forestry Practices;

(d) The report cited in clause (c), above, will evaluate the basis for the proposed Tree Injury or Destruction and identify recommendations for any conditions to be included in a Tree Protection Area Permit that the Qualified Person believes are necessary to be in accordance with Good Arboricultural Practices;

- (e) a general description of the circumstances that would represent a substantive change from the five-year Silvicultural Prescription and/or Forest Management Plan that would require a Tree Protection Area Permit; and,
 - (f) such other information deemed necessary by the City Planner.
- 6.9 Where a Tree within a Tree Protection Area is a Boundary Tree, in addition to the requirements of subsection 6.6, the Applicant must provide the written consent of the other Landowner or Landowners to the application.
- 6.10 Where a Tree within a Tree Protection Area is a Boundary Tree between City Property and private property, the issuance of a Tree Protection Area Permit by the City to the Applicant constitutes the City's consent to the Injury or Destruction of the subject Tree or Trees.
- 6.11 The City Planner shall review the complete application for a Tree Protection Area Permit and may:
- (a) issue a Tree Protection Area Permit;
 - (b) issue a Tree Protection Area Permit with conditions; or
 - (c) refuse to issue a Tree Protection Area Permit.
- 6.12 The City Planner may issue a Tree Protection Area Permit for one or more of the following reasons, and where the application demonstrates that there is no reasonable alternative to the proposed Injury or Destruction, all to the satisfaction of the City Planner:
- (a) it is necessary to remove one or more dangerous, dead, diseased or severely Injured Trees or parts of a Tree for safety reasons;
 - (b) the Tree or Trees are causing or in the opinion of a Qualified Person are likely to cause structural damage to load-bearing structures or roof structures;
 - (c) the Injury or Destruction of the Tree or Trees is required in order to remediate contaminated soil;
 - (d) the Injury or Destruction is necessary to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the construction or use of a building or structure for which a building permit has been issued and there is no reasonable alternative to locating these utilities and infrastructure;
 - (e) the Applicant has undertaken to implement a satisfactory Silvicultural Prescription, Forest Management Plan, landscaping, replanting or Tree preservation;
 - (f) the proposed Tree Injury or Destruction represents Good Arboricultural and/or Good Forestry Practices; or
 - (h) other compelling reasons that the City Planner believes suitably justify the Tree Injury or Destruction.
- 6.13 The City Planner may impose conditions to a Tree Protection Area Permit, including but not limited to, the following:
- (a) any condition in accordance with Good Arboricultural and/or Good Forestry Practices;
 - (b) the preparation of a Silvicultural Prescription or Forest Management Plan and any necessary Security to ensure that it is implemented;
 - (c) the manner and timing of the Injury or Destruction of the Tree or Trees;
 - (d) a specified period for which the Permit is valid, after which the Permit will lapse;
 - (d) the manner and timing of any required replacement Tree planting and any necessary Security to ensure that it is implemented;

- (e) any condition recommended by a Qualified Person;
 - (f) measures to be implemented to protect the retained Trees during construction, where applicable;
 - (g) that the Injury or Destruction is to be carried out by or under the supervision of a Qualified Person; and,
 - (h) a requirement to plant replacement Trees or, alternatively, the provision cash in lieu of such Tree planting, consistent with Schedule B of this By-law, and any Security to ensure that such Tree planting is implemented
- 6.14 Where a Tree Protection Area Permit requires, as a condition, the planting of replacement Trees, the City Planner may impose the following conditions with respect to the replacement Tree:
- (a) the species, size and location of replacement Trees;
 - (b) the timing for the planting of the replacement Trees;
 - (c) the provision of any Security necessary to ensure that such Tree planting is implemented; and
 - (d) where there is no reasonable alternative for the required Tree planting on the subject lands, consistent with Schedule B of this By-law, a fee may be required in lieu of the required Tree planting that cannot be accommodated on Site, that will be used by the City to achieve Tree planting within the City.
- 6.15 No Permit Holder shall fail to post the Tree Protection Area Permit on the Site in accordance with the following requirements:
- (a) in a prominent location so as to be clearly visible to the public;
 - (b) for a period of not less than seven (7) days prior to any action being undertaken in accordance with the Tree Protection Area Permit for the Site;
 - (c) for the period that any action is being taken on the Site; and,
 - (d) for a period of not less than seven (7) days following any action taken in accordance with the Tree Protection Area Permit.
- 6.16 The City Planner may revoke a Tree Protection Area Permit where:
- (a) the Permit was issued on mistaken, misleading, false or incorrect information;
 - (b) the Permit was issued in error;
 - (c) the Landowner or Permit Holder requests, in writing, that it be revoked; or
 - (d) the Landowner or Permit Holder fails to comply with any condition of the Tree Protection Area Permit or this By-law.
- 6.17 No Person shall knowingly furnish false or incorrect information for the purposes of obtaining a Tree Protection Area Permit.
- 7. PROHIBITION – DISTINCTIVE TREES**
- 7.1 The provisions of this section apply to Distinctive Trees, as defined in this By-law.
- 7.2 No Person shall Injure or Destroy or cause the Injury or Destruction of a Distinctive Tree, unless a Distinctive Tree Permit has been issued by the City Planner to permit the Injury or Destruction.
- 7.3 No Person or Permit Holder shall Injure or Destroy or cause the Injury or Destruction of a Distinctive Tree unless the Injury or Destruction is carried out in accordance with all of the conditions of a Distinctive Tree Permit.

- 7.4 No Person or Permit Holder shall fail to protect a Distinctive Tree that has been identified for protection in accordance with the conditions of a Distinctive Tree Permit.
- 7.5 Any Person who intends to Injure or Destroy a Distinctive Tree shall submit to the City Planner an application for a Distinctive Tree Permit.
- 7.6 The application for a Distinctive Tree Permit shall include the required Permit fee as described in Schedule A of this By-law and the following basic information:
- (a) the name, address and telephone number of the property Landowner;
 - (b) if the Applicant is different from the Landowner, the name, address, telephone number and professional credentials of the Applicant and the Landowner's written consent to the application;
 - (c) If the Tree is a Boundary Tree, written consent to the application by the adjacent Landowner;
 - (d) the name, address and telephone number and professional qualifications of the Qualified Person hired by the Landowner or Applicant to complete the Distinctive Tree Permit application;
 - (e) the name, address and telephone number of the contractor implementing the work identified in the Distinctive Tree Permit;
 - (f) the municipal address and legal description of the land upon which the Distinctive Tree or Trees are to be protected, Injured or Destroyed;
 - (g) confirmation by the Qualified Person of the location, species, size and health of the Distinctive Tree or Trees on the property;
 - (h) the purpose for which the Distinctive Tree Permit is required;
 - (i) a description of the proposed Tree Injury or Destruction, clearly illustrated in a measured drawing of the Site at a scale acceptable to the City Planner. This description shall include Trees on adjacent properties, where the Critical Root Zone of such Trees will be affected by the proposed activity on the Site;
 - (j) a schedule of the anticipated starting and completion dates of each Injuring or Destroying of a Tree or Trees;
 - (k) a description and measured drawing of the Site at a scale acceptable to the City Planner of any proposed construction, works, excavation or site alteration that may lead to the Tree Injury or Destruction which is the subject of the application; a schedule of this proposed activity, including a start and end dates shall also be provided;
 - (l) a description of any proposed Tree planting or Tree protection that is to be undertaken in association with the proposed Distinctive Tree Injury or Destruction, all clearly illustrated in a measured drawing of the Site;
 - (m) a description of any off-site Tree planting that may be proposed to mitigate Tree canopy loss as a result of the proposed Tree Injury or Destruction and/or any funds that may be provided to the City for such off-site Tree planting in accordance with Section B of this By-law;
 - (n) a report prepared by a Qualified Person suitable to evaluate the nature and extent of the proposed Tree Injury and/or Destruction that evaluates the health of the Tree or Trees and the implications of the proposed Injury and/or Destruction as it relates to the following, as applicable:
 - Site topography (e.g. ravines, slopes, contours, etc.);
 - hydrological functions (e.g. streams, ponds, wetlands, recharge areas, etc.);
 - sensitive environmental features or areas (e.g. riparian zones, seepage areas, amphibian breeding ponds, wetlands, steep or unstable slopes,

significant wildlife habitat, stick nests, migrating or breeding birds, patches of conifer, rare species or species of conservation concern, etc.);

- the flood plain and Conservation Authority fill regulation lines; and,
- sustainability of the Trees that are proposed to remain; and,

(o) confirmation of any other applications (Planning applications or otherwise) affecting the land upon which the Trees are to be protected, Injured or Destroyed, including measured drawings of any proposed development of the Site or adjacent Sites.

At their discretion, the City Planner may waive any of the above requirements where it is deemed reasonable to do so.

7.7 Where the City Planner deems that additional information is necessary to evaluate a Distinctive Tree Permit, beyond the basic information identified in Section 7.6 of this By-law, they may require one or more of the following:

(a) where the above basic information requires submission of information, study or a report by a Qualified Person, the City Planner may require this information to be submitted by an Arborist or a Registered Professional Forester as defined in this By-law;

(b) a description of how the Trees are to be removed from the Site, the potential impact on natural heritage features and areas, and an explanation of how these impacts are to be mitigated;

(c) Tree marking of all Trees to be Injured or Destroyed, prepared by an accredited Tree marker;

(d) a Silvicultural Prescription as defined by the By-law, prepared by a Qualified Person; and,

(e) such other information deemed necessary by the City Planner.

7.8 Where an application for a Distinctive Tree Permit is made for the operation of an existing cemetery or golf course, the requirements of Section 7.6 and 7.7 of this By-law will not apply and the following will be required for a Distinctive Tree Permit application:

(a) the name, address and telephone number of the Landowner of the golf course or cemetery;

(b) the name, address and telephone number of the Qualified Person hired by the Landowner or Applicant to complete the Distinctive Tree Permit application;

(c) a five-year Silvicultural Prescription and/or Forest Management Plan, prepared by a Qualified Person, describing how the Trees on the Site are to be managed in a sustainable fashion to achieve Good Arboricultural Practices and Good Forestry Practices;

(d) The report cited in clause (c), above, will evaluate the basis for the proposed Tree Injury or Destruction and identify recommendations for any conditions to be included in a Distinctive Tree Permit that the Qualified Person believes are necessary to be in accordance with Good Arboricultural Practices;

(e) a general description of the circumstances that would represent a substantive change from the five-year Silvicultural Prescription and/or Forest Management Plan that would require a Distinctive Tree Permit; and,

(f) such other information deemed necessary by the City Planner.

7.9 Where a Distinctive Tree is a Boundary Tree, in addition to the requirements of subsection 7.6, the Applicant must provide the written consent of the other Landowner or Landowners to the application.

7.10 Where a Distinctive Tree is a Boundary Tree between City Property and private property, the issuance of a Distinctive Tree Permit by the City to the Applicant

constitutes the City's consent to the Injury or Destruction of the subject Tree or Trees.

7.11 The City Planner shall review the complete application for a Distinctive Tree Permit and may:

- (a) issue a Distinctive Tree Permit;
- (b) issue a Distinctive Tree Permit with conditions; or
- (c) refuse to issue a Distinctive Tree Permit.

7.12 The City Planner may approve the issuance of a Distinctive Tree Permit for any one or more of the following reasons, and where the application demonstrates that there is no reasonable alternative to the proposed Injury or Destruction, all to the satisfaction of the City Planner:

- (a) it is necessary to remove one or more dangerous, dead, diseased or severely Injured Trees parts of the Trees for safety reasons;
- (b) the Tree or Trees are causing or are in the opinion of a Qualified Person likely to cause structural damage to load-bearing structures or roof structures;
- (c) the Injury or Destruction of the Tree or Trees is required in order to remediate contaminated soil;
- (d) the Injury or Destruction is necessary to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the construction or use of a building or structure for which a building permit has been issued and there is no reasonable alternative to locating these utilities and infrastructure;
- (e) the Applicant has undertaken to implement a satisfactory Silvicultural Prescription, Forest Management Plan, landscaping, replanting or Tree preservation;
- (f) the proposed Tree Injury or Destruction represents Good Arboricultural and/or Good Forestry Practices; or,
- (g) other compelling reasons that the City Planner believes suitably justify the Tree Injury or Destruction.

7.13 The City Planner may impose conditions to a Distinctive Tree Permit, including but not limited to, the following:

- (a) any condition in accordance with Good Arboricultural and/or Good Forestry Practices;
- (b) the preparation of a Silvicultural Prescription or Forest Management Plan and any necessary Security to ensure that it is implemented;
- (c) the manner and timing of the Injury or Destruction of the Tree or Trees;
- (d) a specified period for which the Permit is valid, after which the Permit will lapse;
- (e) the manner and timing of any required Tree planting and any necessary Security to ensure that it is implemented;
- (f) any condition recommended by a Qualified Person;
- (g) measures to be implemented to protect the retained Trees during construction, where applicable;
- (h) that the Injury or Destruction is to be carried out by or under the supervision of a Qualified Person; and,
- (i) a requirement to plant replacement Trees or, alternatively, the provision of cash, in lieu of such Tree planting, consistent with Schedule B of this By-law, and any Security to ensure that such Tree planting is implemented.

- 7.14 Where a Distinctive Tree Permit requires, as a condition, the planting of replacement Trees, the City Planner may impose the following conditions with respect to the replacement Tree:
- (a) the species, size and location of replacement Trees;
 - (b) the timing for the planting of the replacement Trees;
 - (c) the provision of any Security necessary to ensure that such Tree planting is implemented; and
 - (d) where there is no reasonable alternative for the required Tree planting on the subject lands, consistent with Schedule B of this By-law, a fee may be required in lieu of the required Tree planting that cannot be accommodated on Site, that will be used by the City to achieve Tree planting within the City.
- 7.15 No Permit Holder shall fail to post the Distinctive Tree Permit on the subject property in accordance with the following requirements:
- a) in a prominent location so as to be clearly visible to the public;
 - (b) for a period of not less than seven (7) days prior to any action being undertaken in accordance with the Distinctive Tree Permit on the Site;
 - (c) for the period that any action is being taken on the Site; and
 - (d) for a period of not less than seven (7) days following any action taken in accordance with the Distinctive Tree Permit.
- 7.16 The City Planner may revoke a Distinctive Tree Permit where,
- (a) the Permit was issued on mistaken, misleading, false or incorrect information;
 - (b) the Permit was issued in error;
 - (c) the Landowner or Permit Holder requests, in writing, that it be revoked; or
 - (d) the Landowner or Permit Holder fails to comply with any condition of the Distinctive Tree Permit or this By-law.
- 7.17 No Person shall knowingly furnish false or incorrect information for the purposes of obtaining a Distinctive Tree Permit.

8 REQUIREMENT TO OBTAIN ALL OTHER APPROVALS REQUIRED BY ANY LEVEL OF GOVERNMENT

- 8.1 A Permit issued pursuant to this By-law does not preclude the responsibility of the Applicant or Landowner to obtain all other approvals which may be required by any level of government and agencies thereof, including, but not limited to, Species at Risk legislation.

9 APPEALS - REFUSAL TO ISSUE A PERMIT

- 9.1 The power and authority to conduct hearings for appeals under this By-law are hereby delegated to the Hearings Officer of the City of London.

- 9.2 The provisions of the City's Hearings Officer By-law A-6653-121, as amended, apply to all hearings conducted by a Hearings Officer.

- 9.3 An Applicant for a Permit pursuant to this By-law may appeal to the Hearings Officer:

- (a) if the City Planner refuses to issue a Permit; such an appeal must be made within 30 days after the refusal;
- (b) if the municipality fails to make a decision on an application within 60 days after a complete application is received by the City Planner; or

(c) if the Applicant objects to a condition in the Permit; such an appeal must be made within 30 days after the issuance of the Permit.

9.4 A request by an Applicant for a hearing shall be made in writing and filed with the City Clerk. The request shall consist of a notice of appeal and must comply with the requirements set out in Schedule 1 of the City's Hearings Officer By-law A-6653-121

9.5 A Hearings Officer may:

(1) Uphold the decision of the City Planner;

(2) Require the municipality to vary any condition on a Permit; or

(3) Require the municipality to issue a Permit with conditions as the Hearings Officer considers appropriate.

9.6 The decision of the Hearings Officer is final.

10 **TRANSFER, SUSPENSION OR VARIATION OF A PERMIT OR ORDER**

10.1 Any Permit, or any Order made under this By-law and any condition(s) that is not lapsed shall be deemed transferred in the event a Site, subject to that existing Permit or Order, is given away, sold, or otherwise disposed, with the new Landowner obliged to the existing Permit or Order and all conditions therein, and including the Security, if applicable.

10.2 The Permit Holder shall notify the City Planner within two business days if the Site that is subject to an existing Permit or Order is given away, sold, or otherwise disposed, and shall provide the City Planner with the name and all other relevant information relating to the new Landowner, consistent with the requirements of a permit application within Sections 6.6 and 7.6 of this By-law.

10.3 If the Permit Holder cannot be found or where the public interest requires it, a notice of the revocation, suspension or variance of a Permit may be placed on the City website and in a local newspaper.

10.4 A copy of the notice of revocation, suspension or variance of a Permit shall be recorded by the City Planner in the publicly-available register and recorded on title as a land charge, to be revealed by the Registry Office in the event of a search of title for the subject property.

11 **ENFORCEMENT**

11.1 This By-law shall be enforced by a By-law Enforcement Officer.

11.2 A By-law Enforcement Officer may, at any reasonable time, enter and inspect any land to determine if this By-law, an Order issued under this By-law or a condition of issuance of a Tree Protection Area Permit or a Distinctive Tree Permit has been complied with provided that the power of entry does not allow the By-law Enforcement Officer to enter into any building on the land.

11.3 A By-law Enforcement Officer may, in carrying out an inspection pursuant to subsection 11.2, be accompanied by the City Planner and any other Person possessing expert or special knowledge necessary to assist the By-law Enforcement Officer with their enforcement activities.

11.4 A By-law Enforcement Officer may require the production for inspection of the Silvicultural Prescription or Forest Management Plan, as applicable, and inspect and remove such report for the purpose of making copies.

11.5 A receipt shall be provided for any report removed under subsection 11.4 and the report shall be promptly returned after the copies are made.

11.6 A By-law Enforcement Officer may take photographs, measurements, surveys and other necessary recordings to identify the extent of Tree Injury or Destruction necessary for the purpose of the inspection.

- 11.7 No Person or Permit Holder shall hinder or obstruct or attempt to hinder or obstruct the By-law Enforcement Officer in the discharge of duties under this By-law.
- 11.8 For enforcement purposes, if a Tree has been Injured or Destroyed and its trunk diameter can no longer be measured at 1.4m above Natural Ground Level, but the remains of the trunk can be found, one or more of the following measures may be taken to interpret whether the diameter of the Tree at 1.4m would have been equal to, or greater than, 50cm:
- i. The remaining trunk/stump is 75cm diameter or greater anywhere above 30cm from the Natural Ground Level; or
 - ii. The remaining trunk/stump is 100cm diameter or greater anywhere above the Natural Ground Level; or
 - iii. The By-law Enforcement Officer may estimate what the diameter of the Tree would have been at 1.4m above Natural Ground Level, before it was cut, based on well-accepted arboricultural practices or scientific literature and considering such things as the Tree species, typical root flare/buttress, the remaining trunk/stump diameter, historical aerial or other photographs or video, or other reliable means that can be substantiated.

12 ORDER TO DISCONTINUE ACTIVITY

- 12.1 Where the City Planner is satisfied that a contravention of this By-law has occurred, the City Planner may issue an Order to Discontinue Activity requiring the Person who contravened the By-law or that caused or permitted a contravention of the By-law to stop any Injury or Destruction.
- 12.2 The Order to Discontinue Activity shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the contravention and the date by which there must be compliance with the Order to Discontinue Activity.
- 12.3 No Person or Permit Holder shall fail to comply with an Order to Discontinue Activity issued by the City Planner pursuant to this By-law.
- 12.4 An Order to Discontinue Activity may be served personally by the Bylaw Enforcement Officer, may be sent by registered mail to the Person contravening the By-law, or may be posted in a conspicuous place on the property where the contravention occurred.
- 12.5 Where an Order to Discontinue Activity under this By-law is served personally by the By-law Enforcement Officer, it shall be deemed to have been served on the date of delivery to the Person or Persons named.
- 12.6 The posting of the Order to Discontinue Activity on the affected lands shall be deemed to be sufficient service of the Order to Discontinue Activity on the Person or corporation to whom the Order to Discontinue Activity is directed on the date it is posted.
- 12.7 Where an Order to Discontinue Activity issued under the By-law is sent by registered mail, it shall be sent to the last known address of:
- (a) the Applicant;
 - (b) the Landowner; or
 - (c) the Person or company retained to undertake the Injury or Destruction,
- and shall be deemed to have been served on the fifth day after the Order to Discontinue Activity or Order is mailed.

13 POWER TO MAKE A WORK ORDER

- 13.1 Where a Tree or Trees in a Tree Protection Area or a Distinctive Tree is/are Injured or Destroyed without a Permit or contrary to the provisions and conditions of an existing Permit or Order made under this By-law, in addition to or instead of all other actions available under the By-law and any Act, Regulation or By-law, the City Planner may serve an Order known as a Work Order requiring that the Site be managed, monitored and maintained in a manner and to a condition satisfactory to the City Planner, within a specified and reasonable timeframe, and this may include requiring the planting of a Tree or Trees.
- 13.2 The City Planner may serve a Work Order where a Tree in a Tree Protection Area or a Distinctive Tree has been Injured or Destroyed by or on instruction of Emergency Services or during a Declared Emergency, or where a Tree has been Injured or Destroyed by natural disturbance, including but not limited to infection, decay, flood, land slip, erosion, wind storm, ice storm, snow or other severe weather, so long as the Work Order is issued within six months of the Tree Injury or Destruction occurring.
- 13.3 A Landowner for any Site that was subject to a Permit may be served with a Work Order from the City Planner if a replacement Tree that was required as a condition of the Permit dies or is removed without a Permit or if the required natural regeneration fails to be established by the specified timeframe stated in a Permit or condition of a Permit.
- 13.4 The Work Order shall set out the following:
- (a) the minimum goal that, upon its achievement by a specific date, will satisfy the City Planner;
 - (b) that a plan shall be prepared by a Qualified Person, who shall be a Registered Professional Forester in circumstances where the Site contains Woodland, at the expense of the Landowner, and the plan submitted to the City Planner by a specified date. No works shall commence until the plan is approved by the City Planner;
 - (c) that the plan is required to include all the steps to be taken and all oversight required by the Qualified Person to achieve the goal of the Work Order to the satisfaction of the City Planner;
 - (d) that the plan approved by the City Planner be commenced and implemented in a manner and to a condition satisfactory to the Qualified Person and City Planner and completed to the satisfaction of the City Planner within a period of time specified in the plan;
 - (e) that a penalty may arise if the Work Order and approved plan is not complied with or completed by the specified date; and,
 - (f) the right to, and proper submission of, an appeal against the Work Order.
- 13.5 Failure to comply with the requirements of a Work Order and any plan approved under a Work Order shall constitute an offence.
- 13.6 In addition to all other powers under the By-law, if a Work Order is not complied with, whether partially or in full, by the specified date the City Planner may enter onto land after the Work Order is expired and carry out all work that was not done, to the satisfaction of the City Planner, and recoup all costs by applying those costs to the property tax roll.

14 PROTECTION OF FOREST HEALTH

- 14.1 For the purpose of early detection of a Pest, and monitoring, measuring or controlling threats to forest health, the City Planner may, at any reasonable time, enter and inspect or survey a property in which the City Planner believes on reasonable grounds there may be a Pest or threats to forest health. The City Planner may;

- (a) examine anything and take samples of it;
 - (b) conduct any tests or analyses or take any measurements;
 - (c) require any Person to produce any record or other document that the City Planner believes on reasonable grounds contains any information relevant to forest health and the administration of this By-law; and,
 - (d) remove any things, Tree(s) or parts thereof relating to the protection of forest health, at the City's expense and without compensation.
- 14.2 An Order known as a Forest Health Order may be served by the City Planner where a threat to forest health may occur or is occurring. The Forest Health Order may prohibit the disturbance or removal of anything within or from subject Sites or may require that work be done to reduce or eliminate a specific threat. Failure to comply with a Forest Health Order shall constitute an offence.
- 14.3 The Forest Health Order shall contain:
- (a) the address(es) of the subject property(ies) or, if across a geographic region, the extent of that region may be described by a plan or map;
 - (b) the details of the prohibited activity, or the action or work required to be done, written in plain language, and using appropriate visually-informative symbols and images where possible;
 - (c) the date and time at which the Forest Health Order commences;
 - (d) the date and time when the Forest Health Order expires, no later than six months after the commencement date; and,
 - (e) when and under what terms the Forest Health Order may be lifted, if any.
- 14.4 The Forest Health Order shall be mailed to the last known address of the Landowner(s) and occupier(s) if different, and deemed served two business days after being sent when mailed by regular post.
- 14.5 If the public interest requires it, in advance of or after the commencement of the Forest Health Order a notice may be posted by the City Planner in the local newspaper and on the City's website to explain the forest health threat and the activity that has been or will be prohibited.
- 14.6 A Forest Health Order shall be posted, until the date of its expiry, in a public location or on the City's website. Where a geographic area is affected by the Forest Health Order, a copy of the Forest Health Order shall be posted until the date of its expiry in all municipal libraries within the affected area.
- 14.7 A Forest Health Order may be renewed by the City Planner at its expiry if the forest health conditions warrant a continuation.
- 14.8 A Forest Health Order cannot be appealed.

15 POWERS OF ENTRY

- 15.1 The City Planner, By-law Enforcement Officer or an officer appointed under By-law may enter a property at any reasonable time for the purpose of carrying out an inspection:
- (a) to assess Tree(s) and the Site(s) that are subject of an application;
 - (b) to determine compliance with any Permit or condition issued under this By-law;
 - (c) to inspect for compliance with an Order to Discontinue Activity, a Work Order, or a Forest Health Order;
 - (d) to determine compliance with an order under section 431 of the *Municipal Act, 2001*, S.O. 2001, c.25 or any Court order issued under the By-law; and
 - (e) may make examinations of any relevant thing including but not limited to measuring, probing, drilling, excavating, sounding or tapping a Tree(s), removing foliage or woody material using appropriate methods, taking an example of a Pest, and recording observations by methods including but not limited to video, photograph or written record.

16 OFFENCES AND PENALTIES

- 16.1 Every Person who contravenes any provision of this bylaw is guilty of an offence as provided for in subsection 429.(1) of the *Municipal Act, 2001*, S.O. 2001, c.25
- 16.2 Every Person who contravenes an Order to Discontinue Activity that is issued pursuant to this By-law is guilty of an offence and the offence is hereby designated a continuing offence as provided for in subsection 429.(2)(a) of the *Municipal Act, 2001*, S.O. 2001, c.25.
- 16.3 A Person who is convicted of an offence under this By-law is liable to a minimum fine of \$500 and a maximum fine of \$100,000 as provided for in subsection 429(3) 1 of the *Municipal Act, 2001*, S.O. 2001, c.25.
- 16.4 A Person who is convicted of an offence under this By-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000 and the total of all daily fines for the offence is not limited to \$100,000, as provided for in subsection 429(3) 2 of the *Municipal Act, 2001*, S.O. 2001, c.25.
- 16.5 When a Person has been convicted of an offence under this By-law, the Superior Court of Justice or any court of competent jurisdiction thereafter, may, in addition to any penalty imposed on the Person convicted, issue an order:
- (a) prohibiting the continuation or repetition of the offence by the Person convicted; and
 - (b) requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 16.6 Every Person who contravenes any provision of this By-law, including an order made under this By-law, is guilty of an offence and is liable to a fine, including the fines set out in this Part, and such other penalties as provided for in the *Provincial Offences Act*, R.S.O. 1990, c.P.33, and *Municipal Act, 2001*, S.O. 2001, c.25.

17 TRANSITION

- 17.1 Any Permit issued under the provisions of By-law CP-1466-249 that has not expired or been revoked as of the date of the coming into force of this By-law shall be deemed to be subject to this By-law.

18 REPEAL – IN FORCE

- 18.1 By-law C.P.-1466-249, as passed on October 22, 2007 and all of its amendments, are hereby repealed.
- 18.2 This By-law shall come into force and effect on the day it is passed.

Passed in Open Council on August 30, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – August 30, 2016
Second Reading – August 30, 2016
Third Reading – August 30, 2016

Schedule A Permit Fees

The following fees shall apply for the submission of a Tree Protection Area Permit or Distinctive Tree Permit application.

The City Planner may waive any fee, at their sole discretion, where they are satisfied that the imposition of a fee would be unreasonable or would cause undue hardship.

NATURE OF APPLICATION FOR A PERMIT	FEE FOR PERMIT
Injure or Destroy any Tree that the City Planner accepts is hazardous	No fee
Injure or Destroy any Tree where that Injury, or Destruction is required under any Court Order or an Order issued under in accordance with an Act or Regulation or other By-law	No fee
Remove any Tree that is fallen, falling, or dead or dying, from natural causes	No fee
Injure or Destroy one Distinctive Tree	\$100/Tree
Injure or Destroy one to three living Trees within a Tree Protection Area	Less than 50cm diameter: \$75/Tree More than 50 cm diameter: \$100/Tree
Injure or Destroy four or more living Trees within a Tree Protection Area	Less than 50cm diameter: \$75/Tree More than 50cm: \$100/Tree Up to a maximum of \$1,000

Schedule B Schedule of Cash Contribution in Lieu of Off-site Tree Planting

Where a permit, or a condition of a permit, requires that a replacement Tree is required but there is insufficient space or opportunity on a Site to provide for a replacement Tree over the long term, the City Planner may require a cash contribution in lieu of such planting, to be paid by the Applicant to the City, to support Tree planting elsewhere in the municipality.

The amount of the cash contribution shall be \$350 per replacement Tree, subject to a maximum of \$35,000.

Schedule C Critical Root Zone

The trunk diameter shall be measured at a point of 1.4m above Natural Ground Level. It shall be rounded up or down to the nearest centimetre, with measurements having a decimal nominal of 0.5 or greater rounded up.

The Critical Root Zone is measured horizontally and radially in all directions from the outside bark at the base of the trunk or its root flare, if present, where the Tree emerges above Natural Ground Level.

The drip line is where intercepted rain may fall off the outermost branches and leaves of a Tree canopy (Tree crown). For the purpose of this By-law, where an asymmetric Tree canopy occurs, the drip line shall be the greatest of the drip line distances measured horizontally from the base of the trunk at the points corresponding to North, South, East and West.

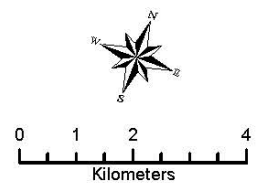
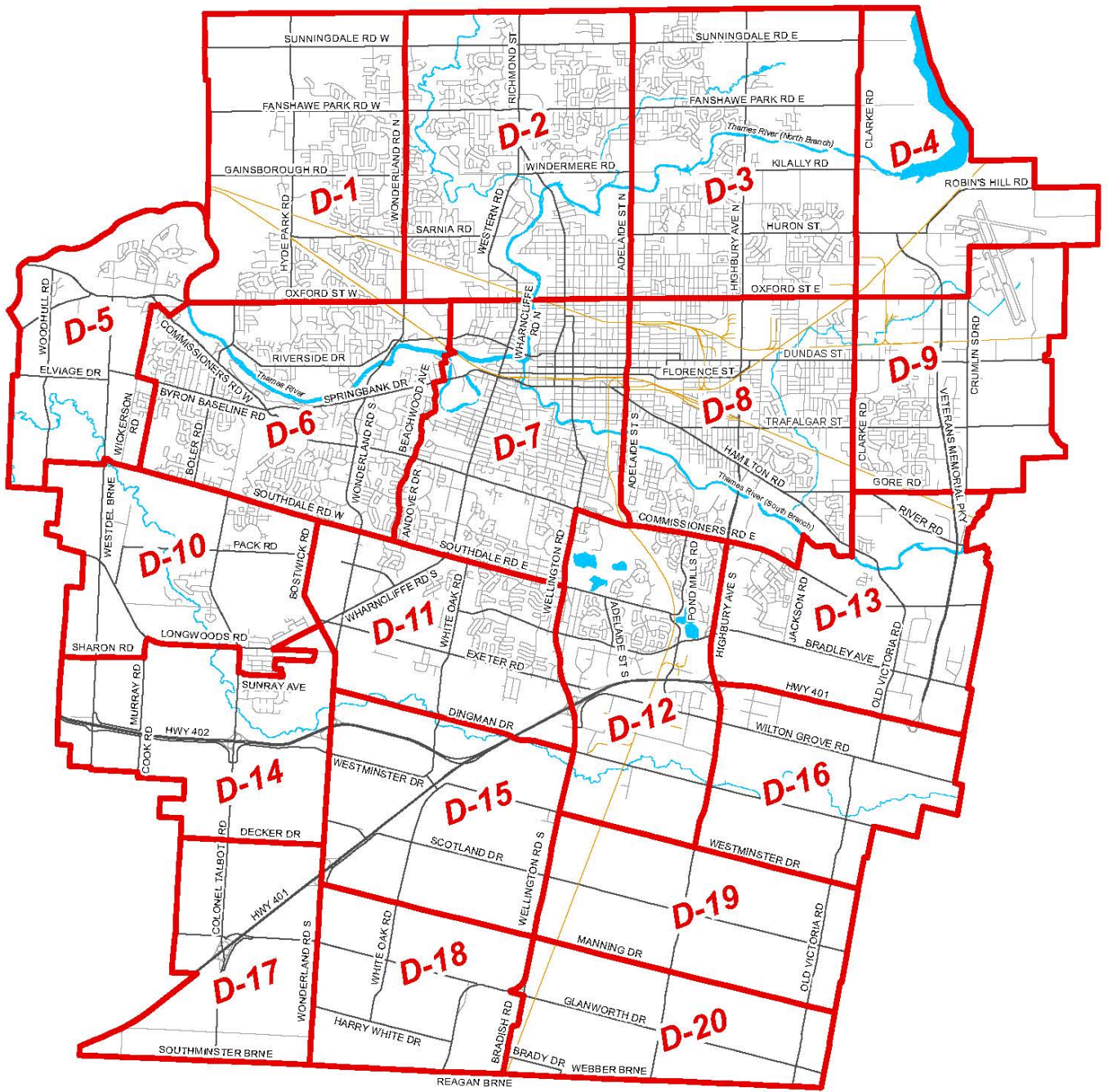
If any drip line cannot be measured, the alternate dimension shown in the Table below shall be used.

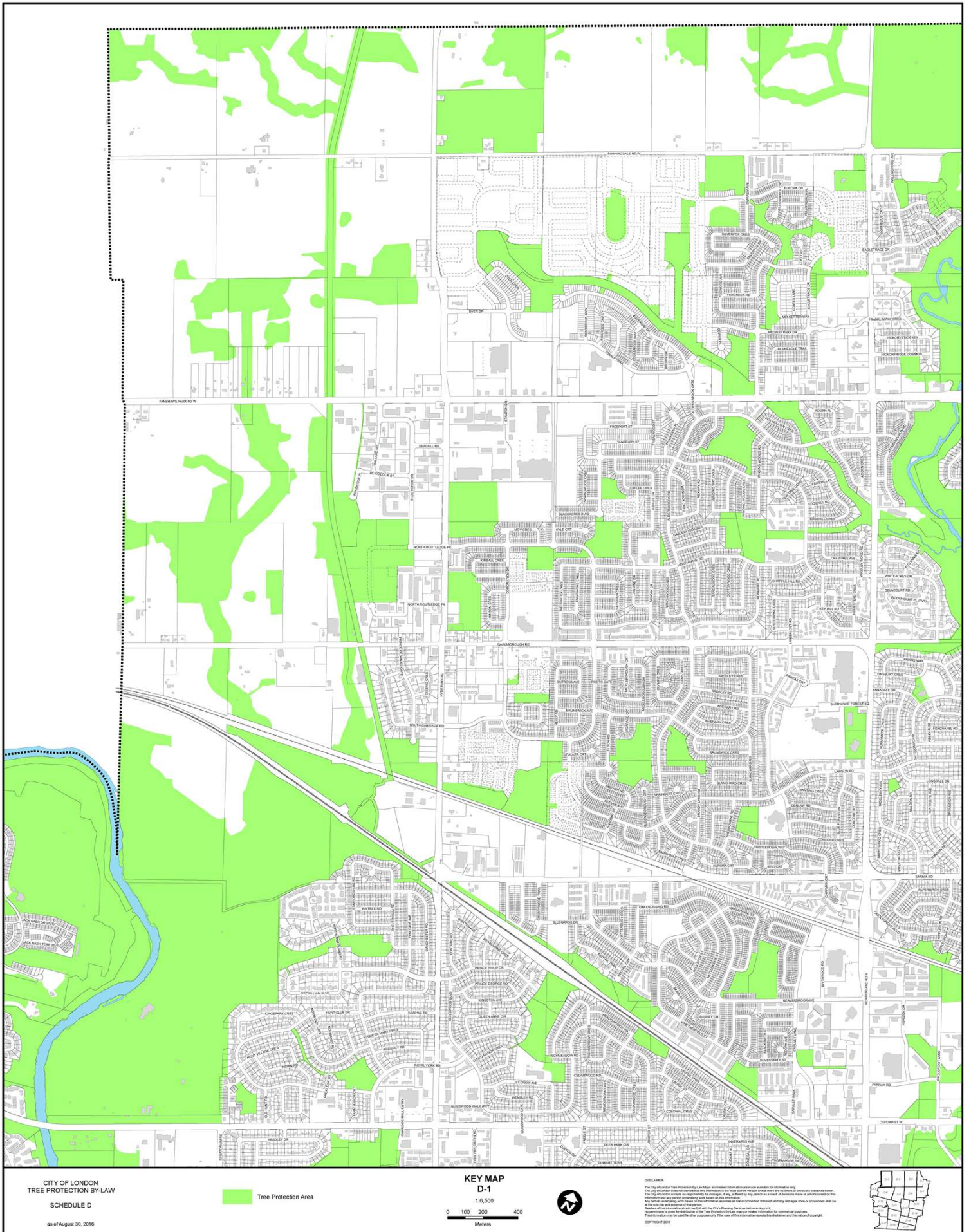
The City Planner, solely at their discretion, may make an alternative interpretation of the Critical Root Zone that they deem to be reasonable and warranted.

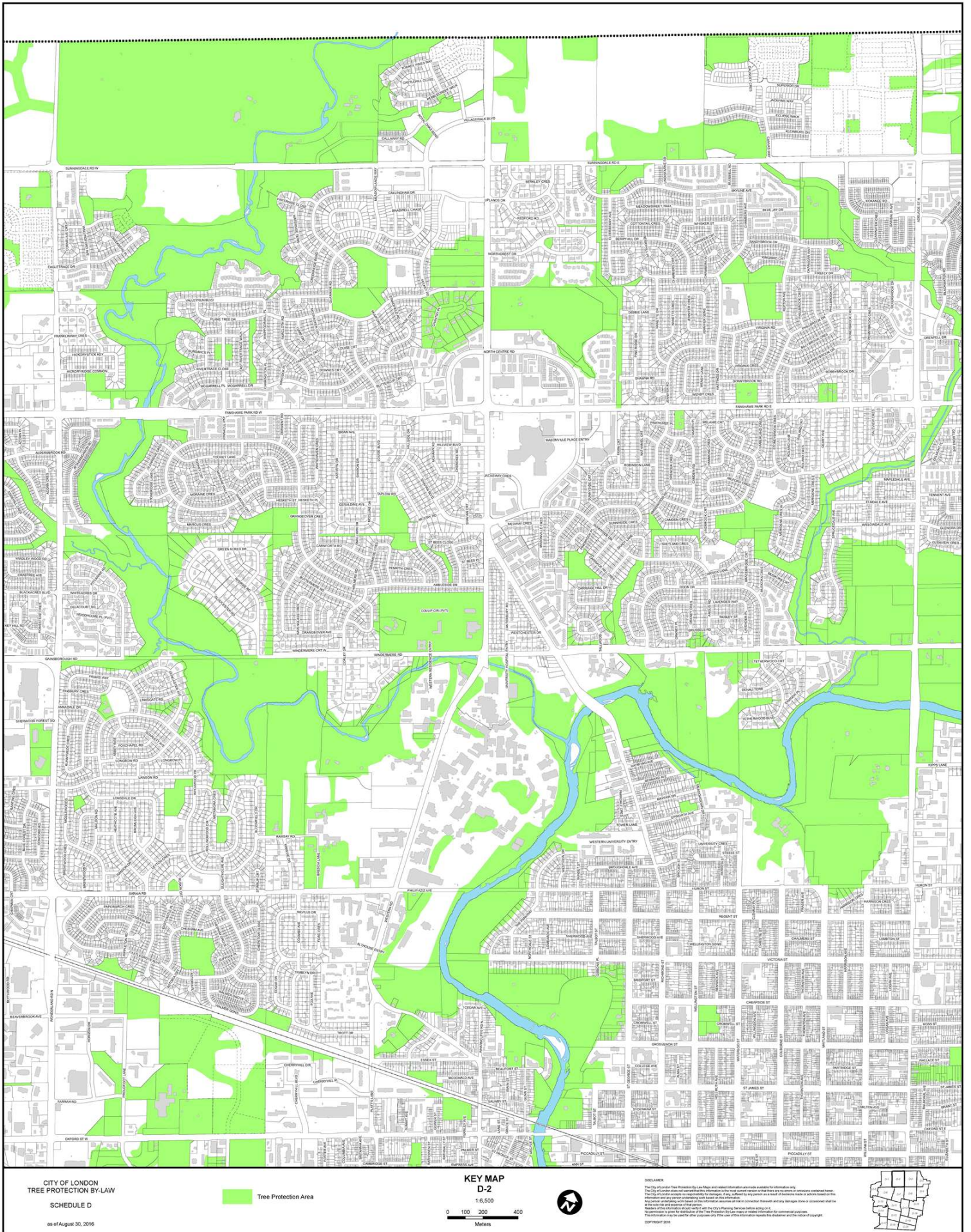
Trunk diameter measured at 1.4m above Natural Ground Level	Critical Root Zone shall be:
Less than 10cm	1.2 m
10 -29 cm	3.6 m
30 - 40 cm	4.8 m
41 - 50 cm	6.0 m
51 - 60 cm	7.2 m
61 - 70 cm	8.4 m
71-80 cm	9.6 m
81-90 cm	10.8 m
91-100 cm	12.0 m
>100 cm	12 cm for each 1cm of diameter

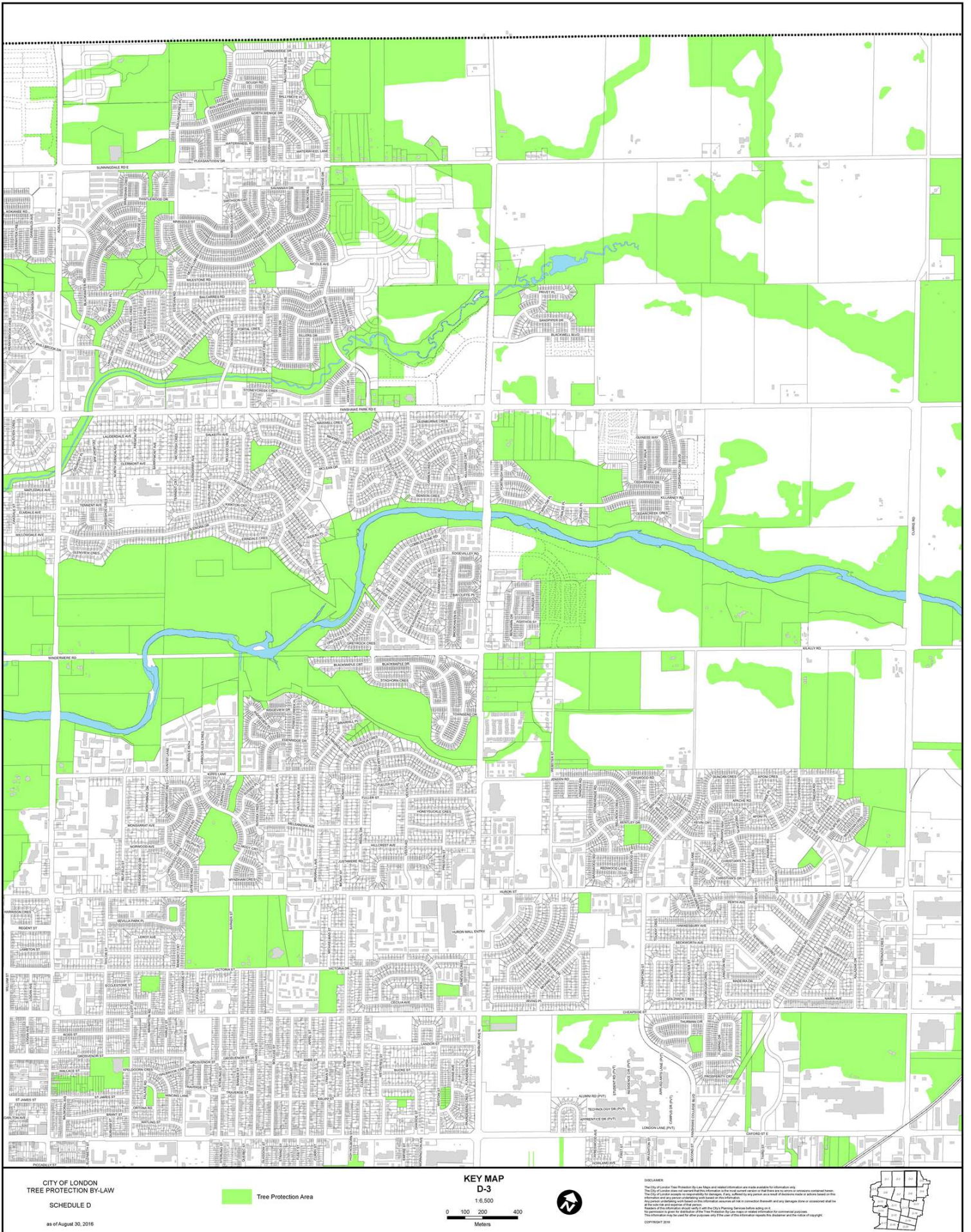
Schedule D Tree Protection Area Maps

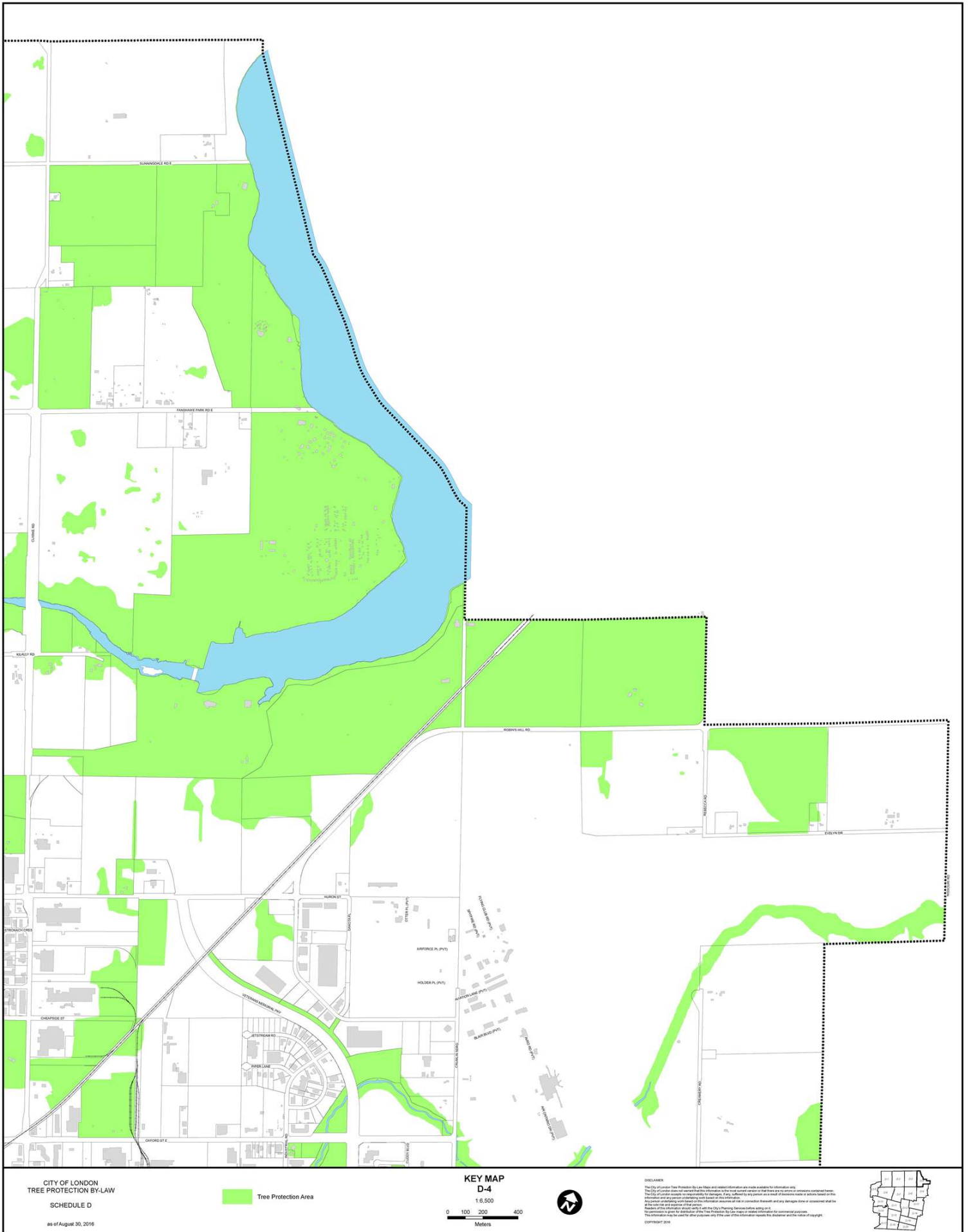
Note: The maps provided in this Schedule are for reference only. An online version of these reference maps is also available on the City's website to provide users greater detail. The Tree Protection Area Maps for this By-law are kept by the City Clerk and can be reviewed in the City Clerk's offices.

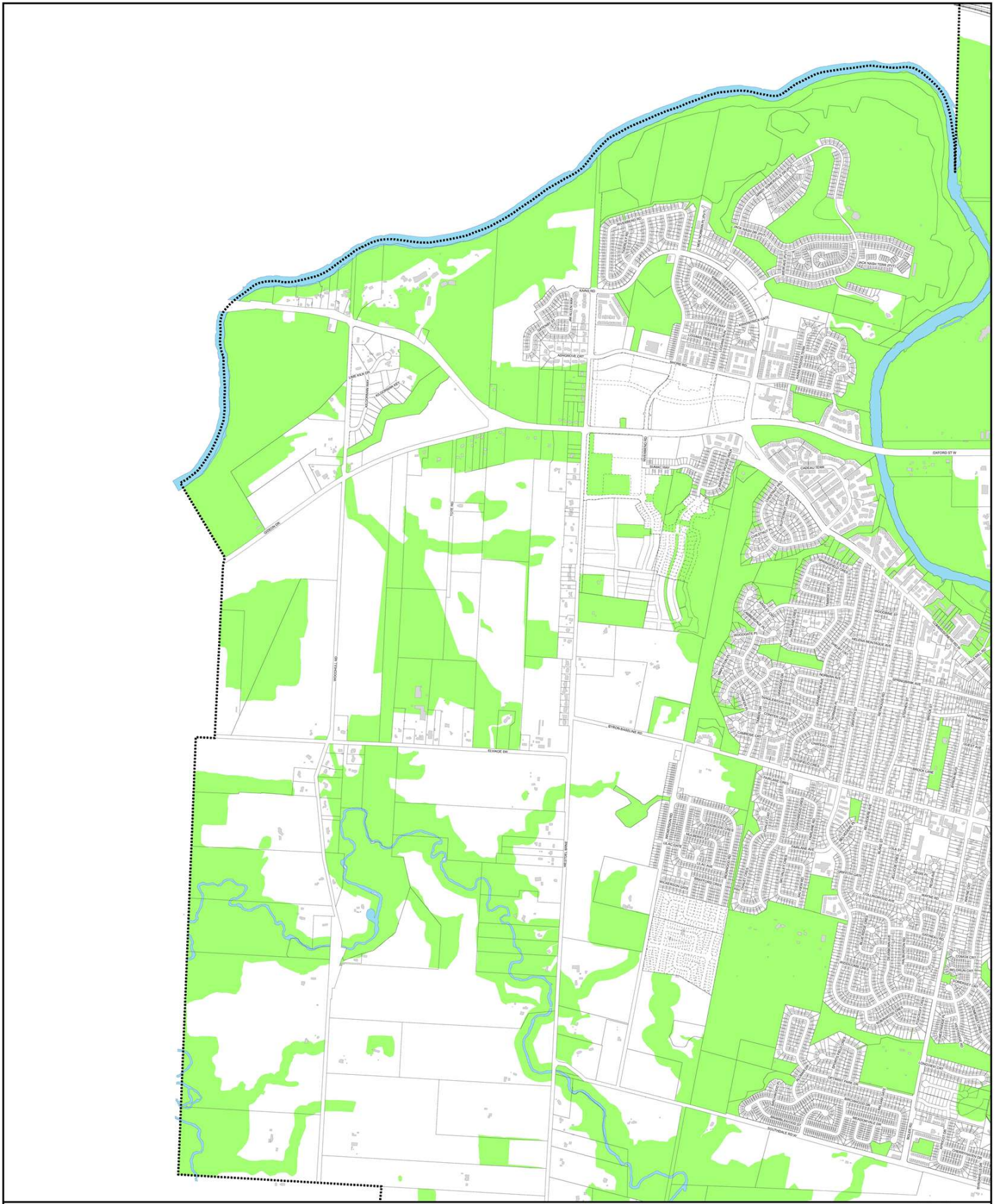














CITY OF LONDON
TREE PROTECTION BY-LAW
SCHEDULE D
as of August 30, 2016

KEY MAP
D-5


1:6,500

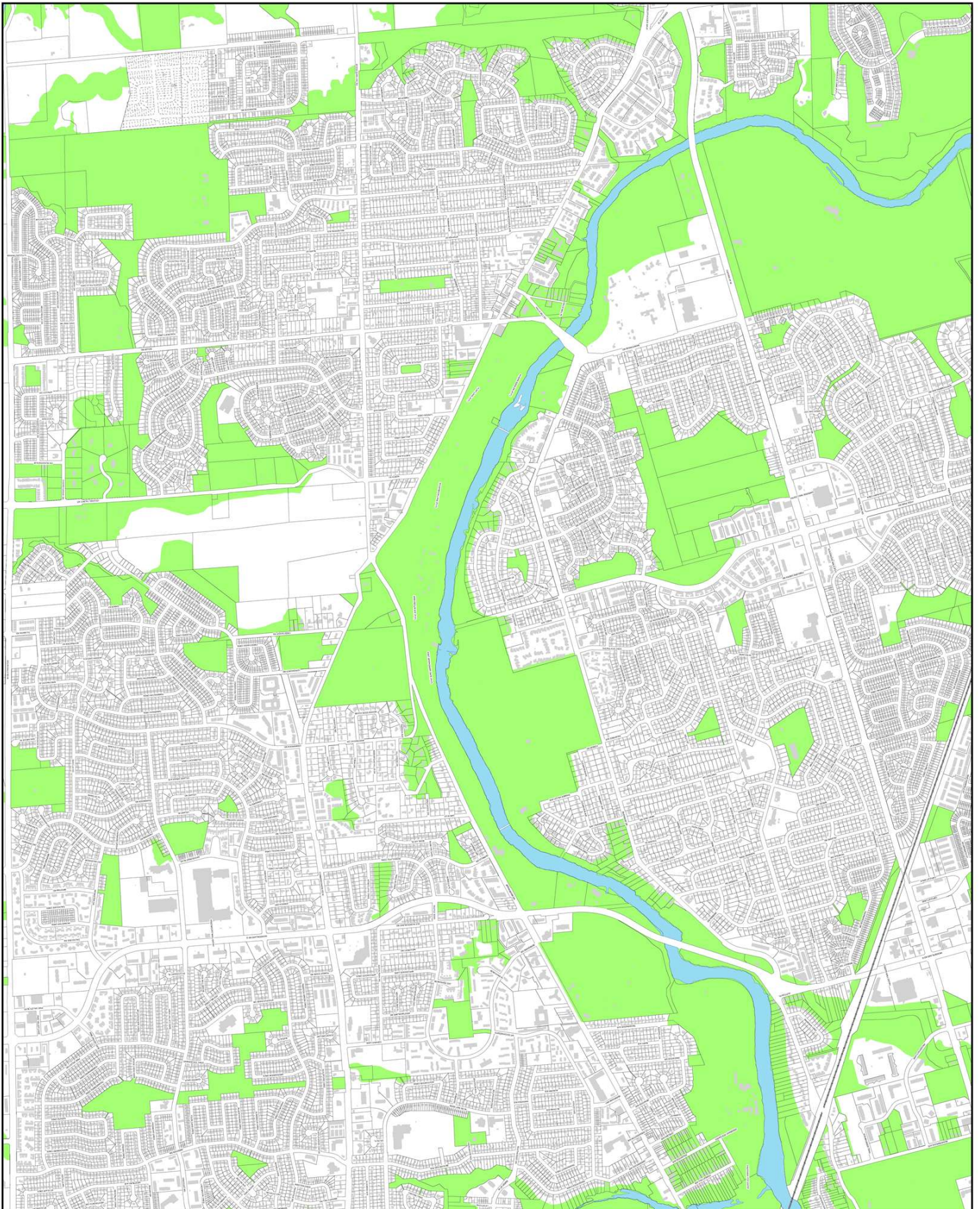




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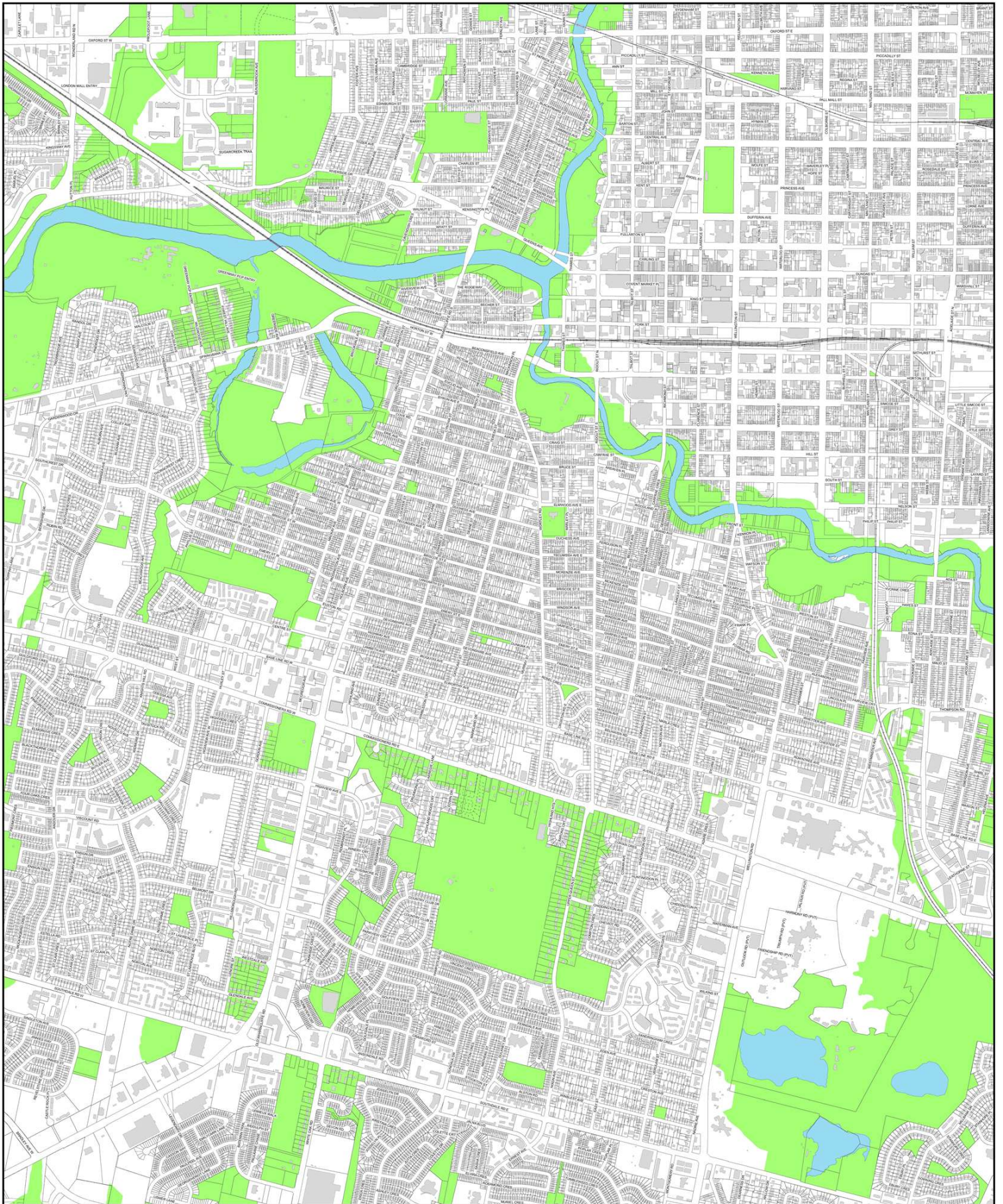
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KEY MAP
D-8

Tree Protection Area

CITY OF LONDON
TREE
PROTECTION BY-LAW
SCHEDULE D
 as of August 30, 2018

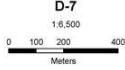


CITY OF LONDON
 TREE PROTECTION BY-LAW
 SCHEDULE D

as of August 30, 2016

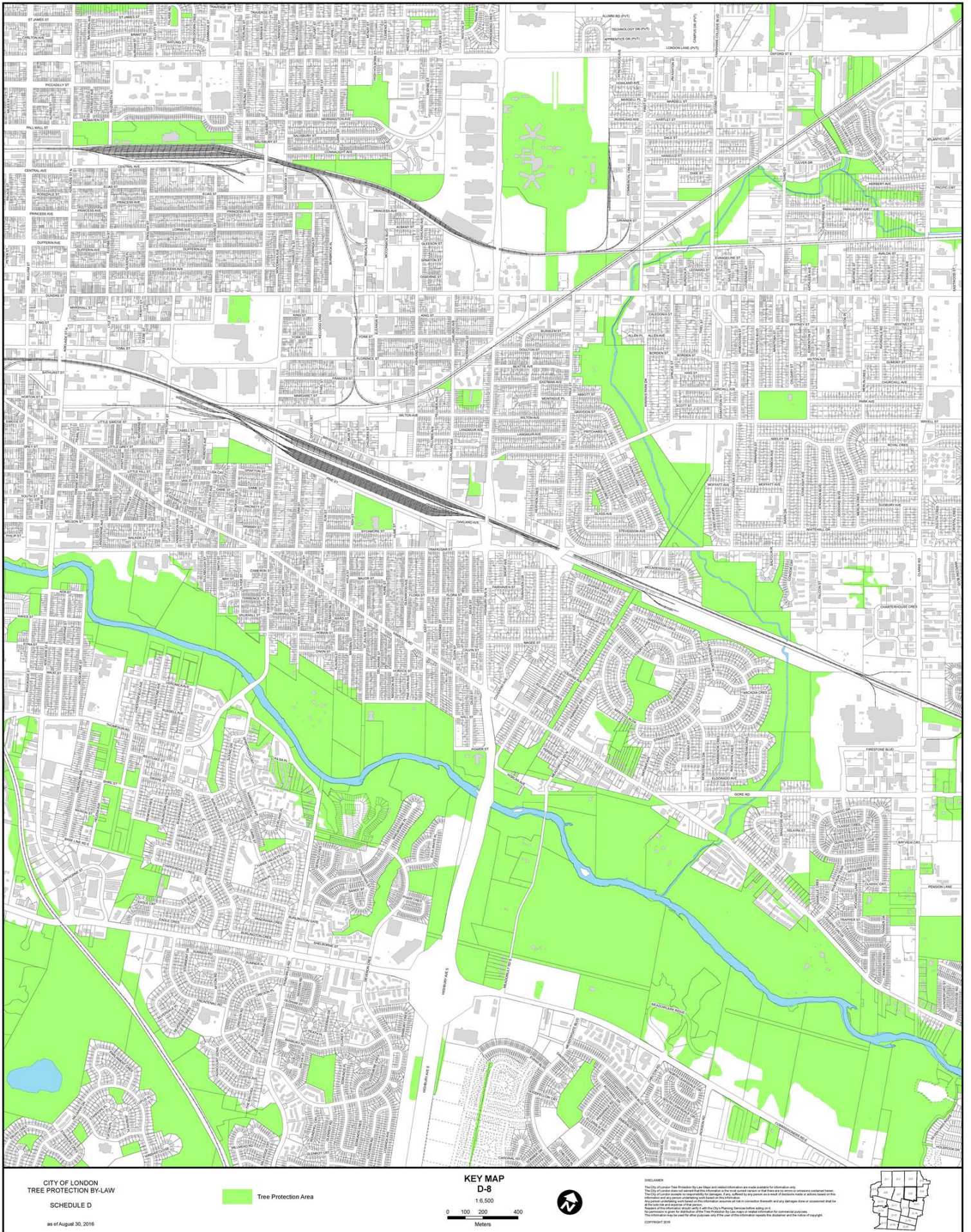
 Tree Protection Area

KEY MAP
 D-7



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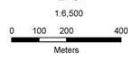


CITY OF LONDON
 TREE PROTECTION BY-LAW
 SCHEDULE D

as of August 30, 2016

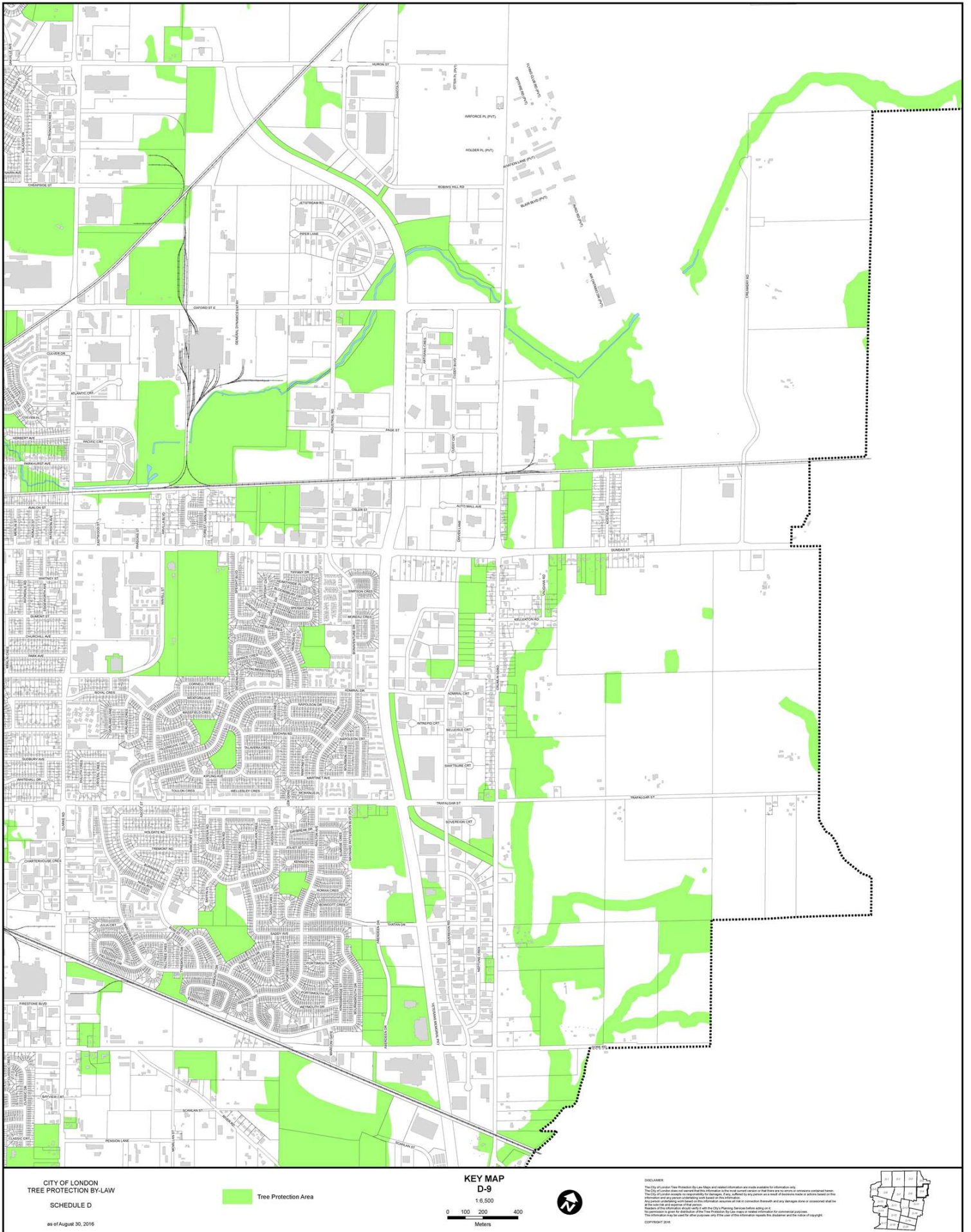
 Tree Protection Area

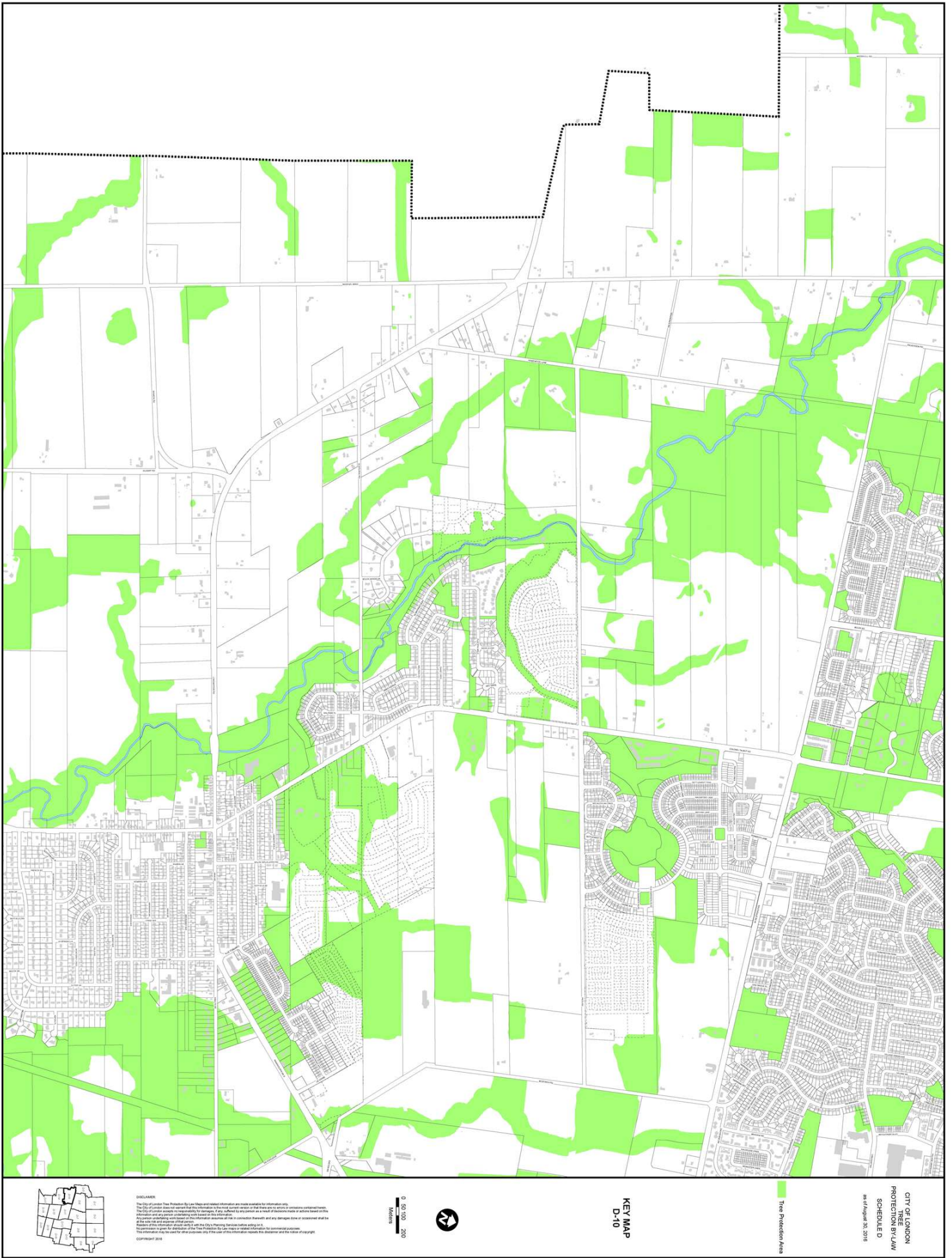
KEY MAP
 D-8



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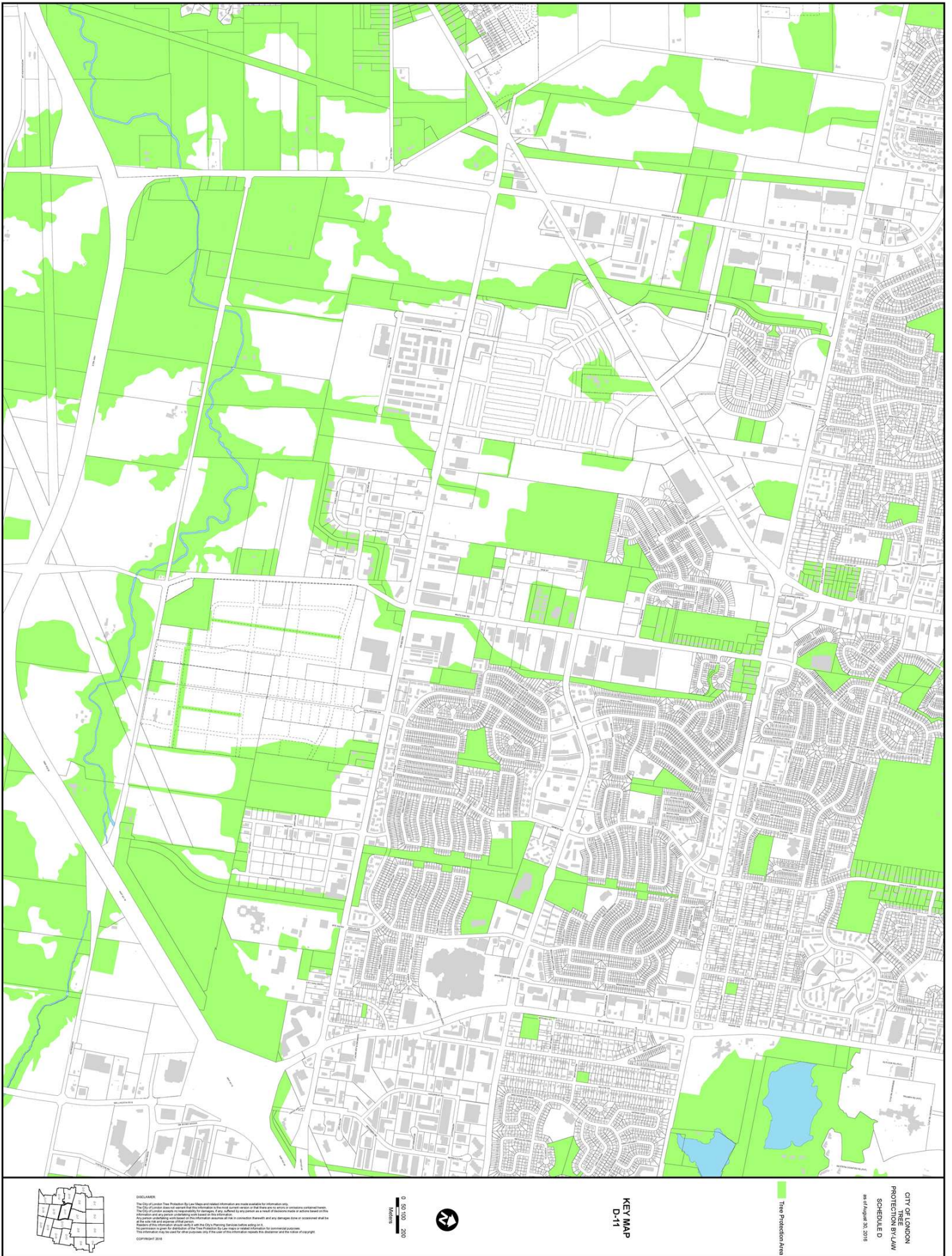
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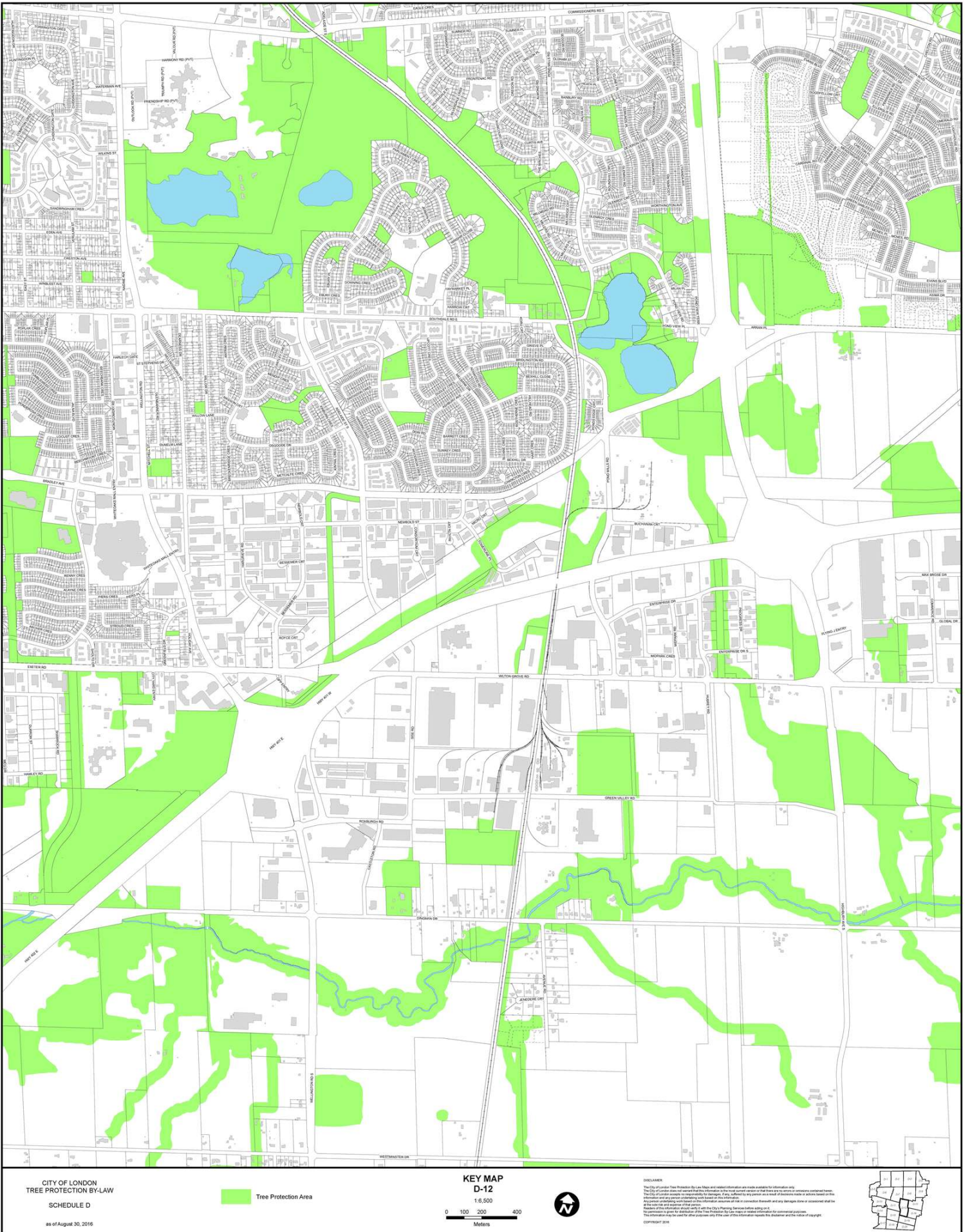


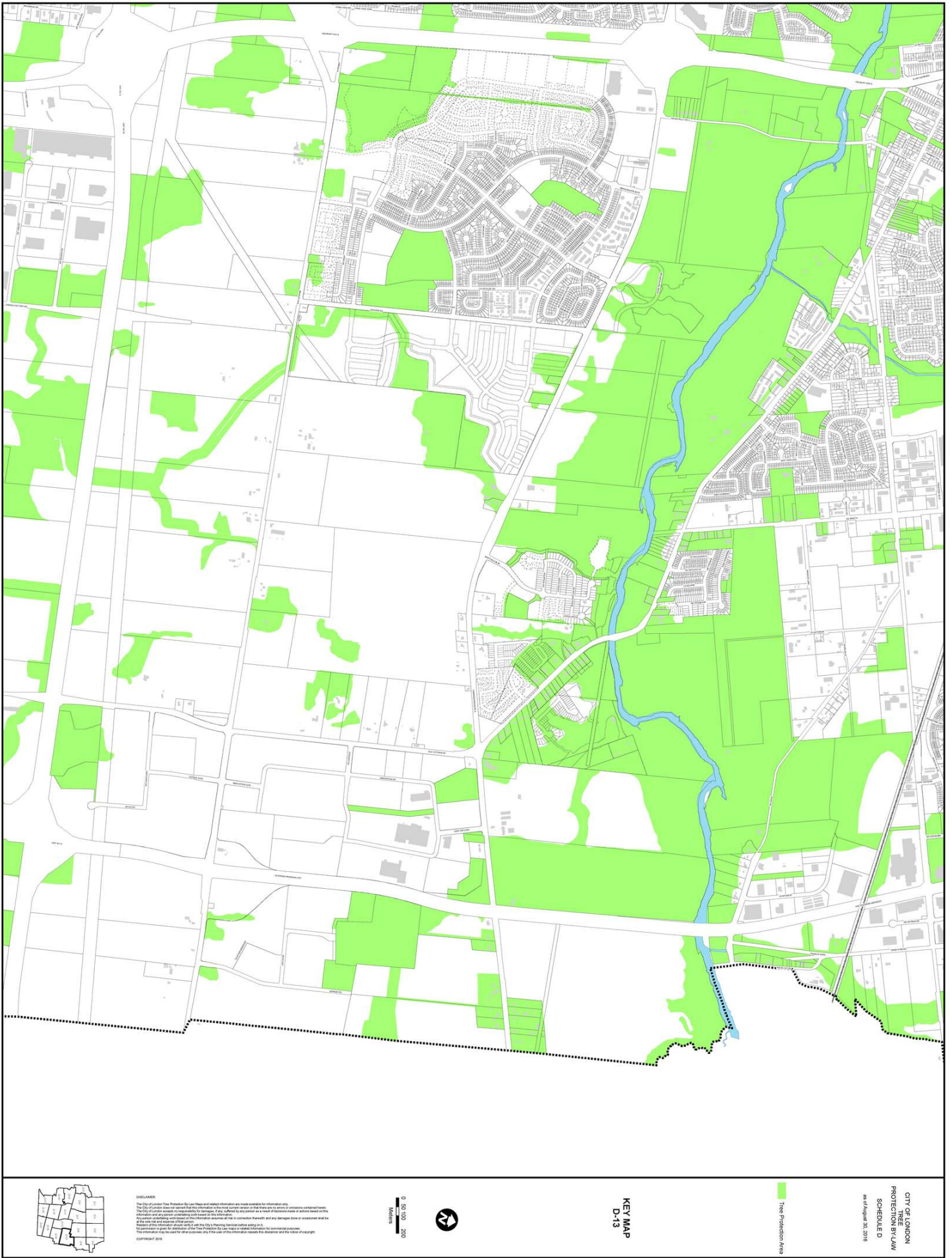
**KEY MAP
 D-10**

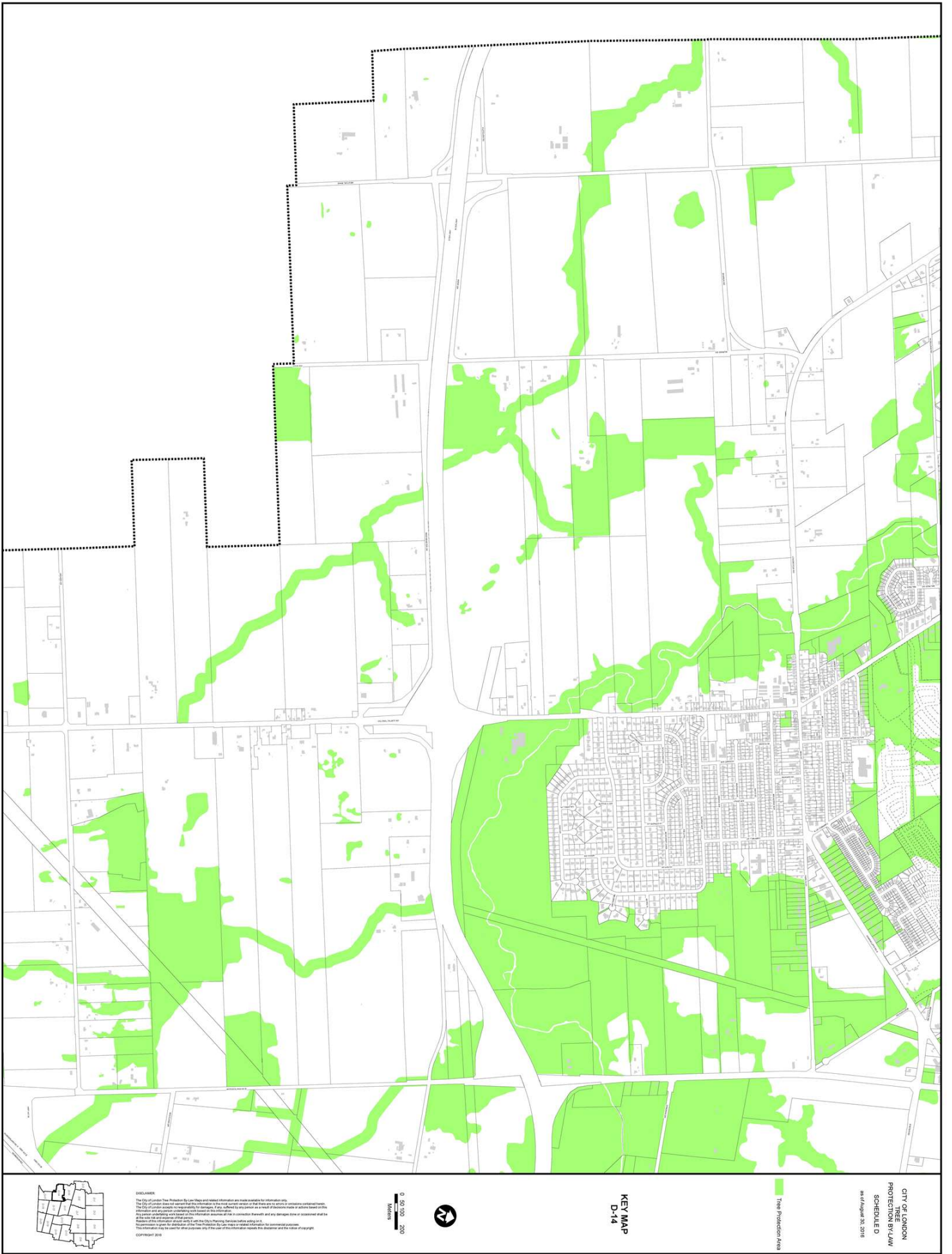
Tree Protection Area

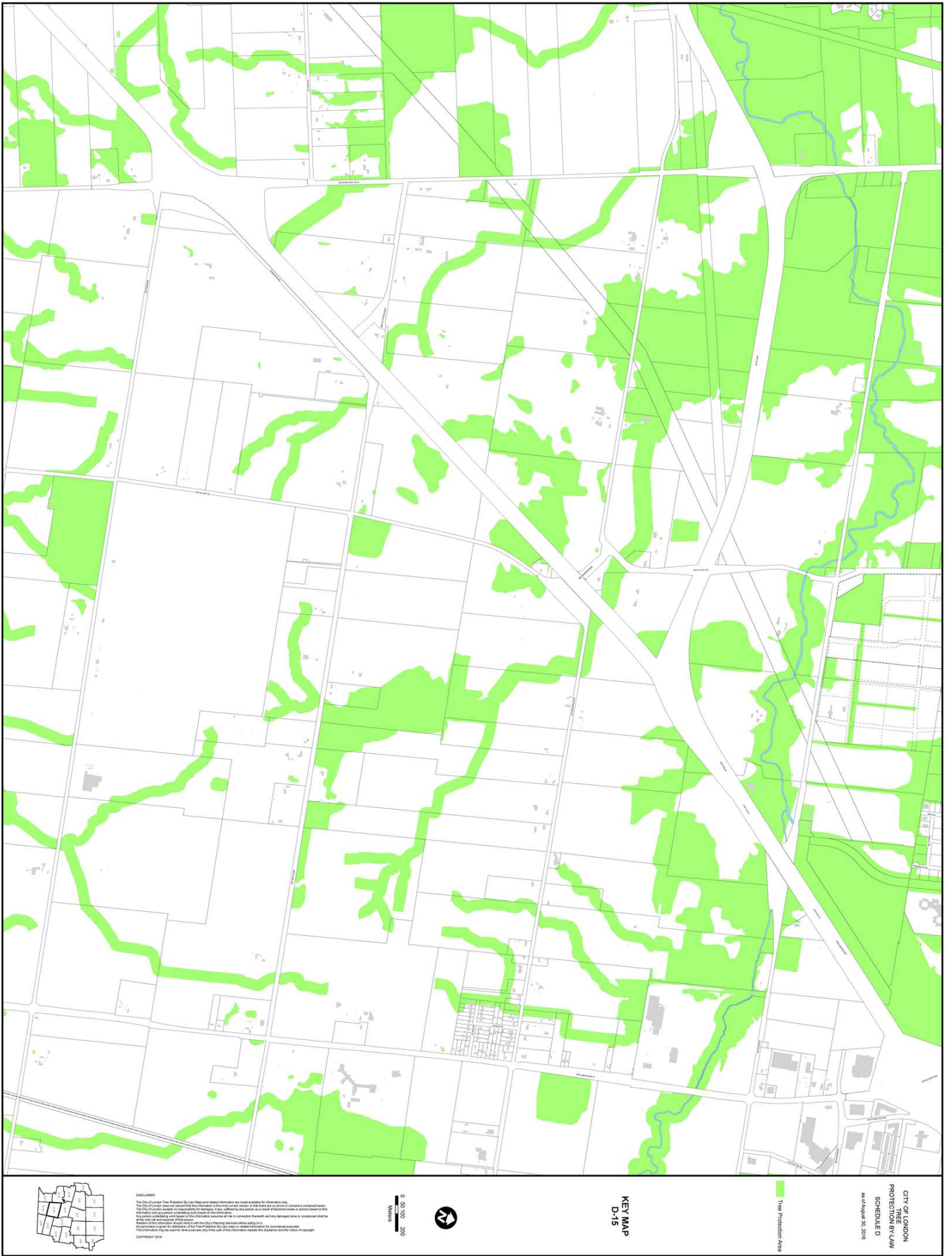
**CITY OF LONDON
 TREE
 PROTECTION BY-LAW
 SCHEDULE D**
 as of August 30, 2016











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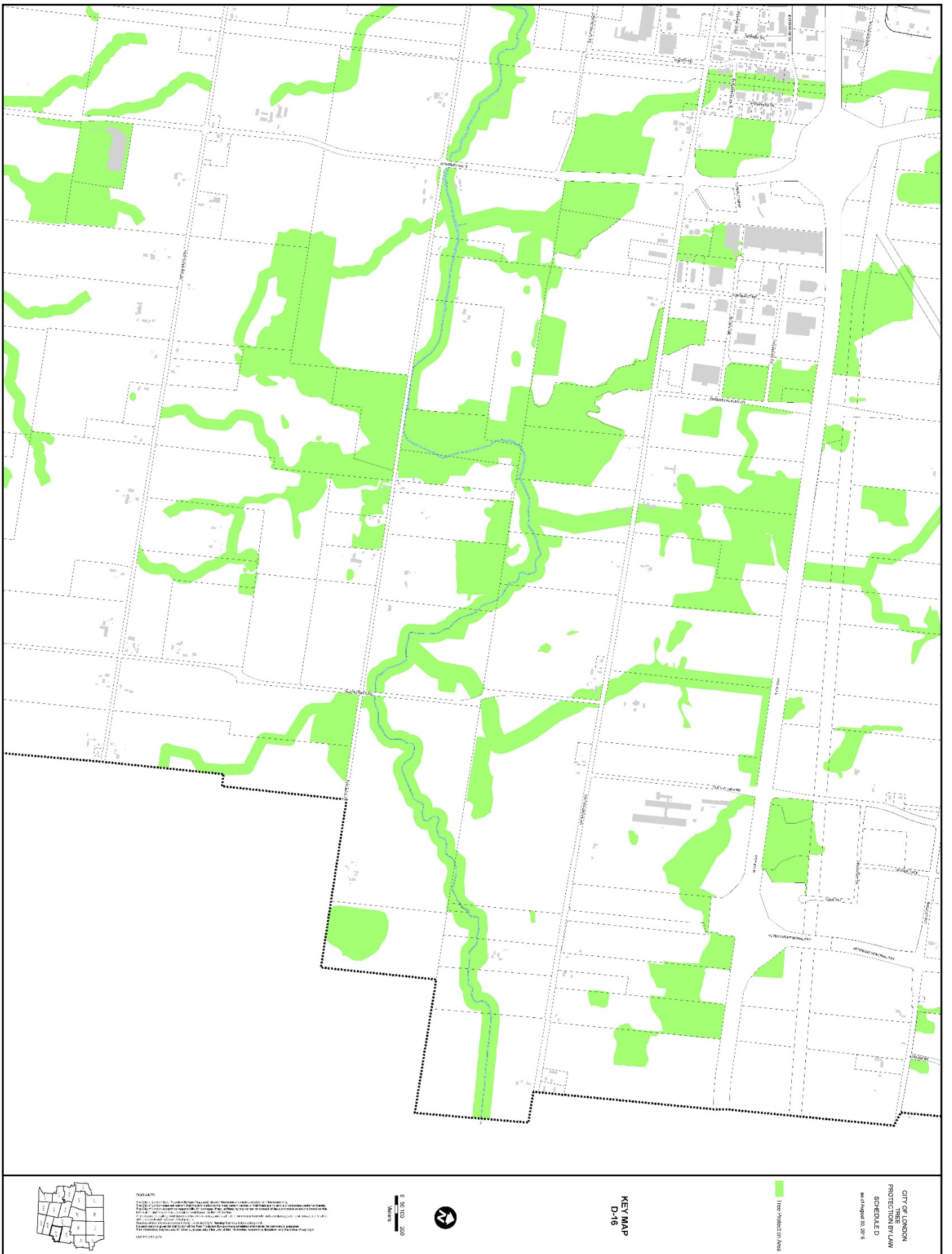
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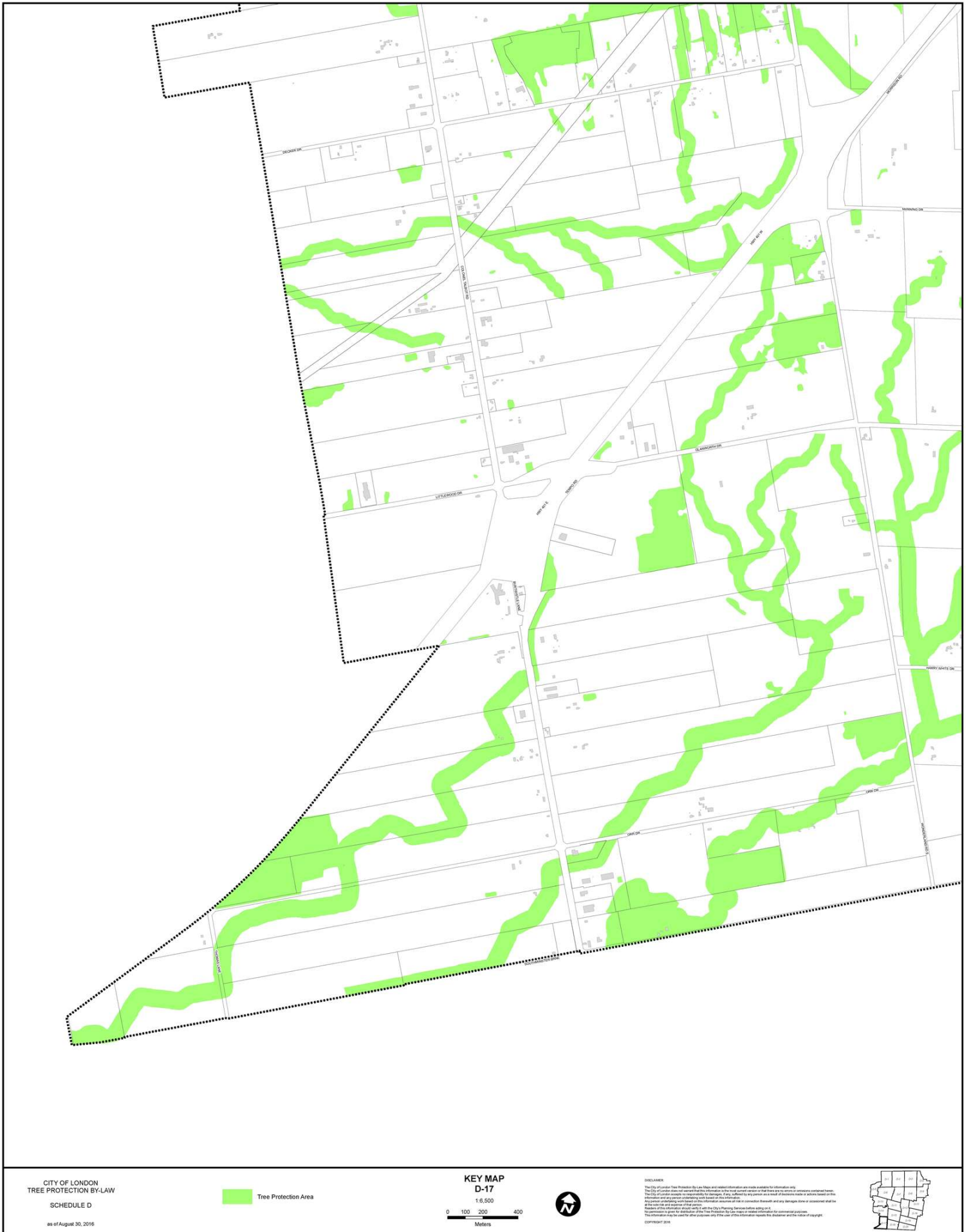


**KEY MAP
D-15**

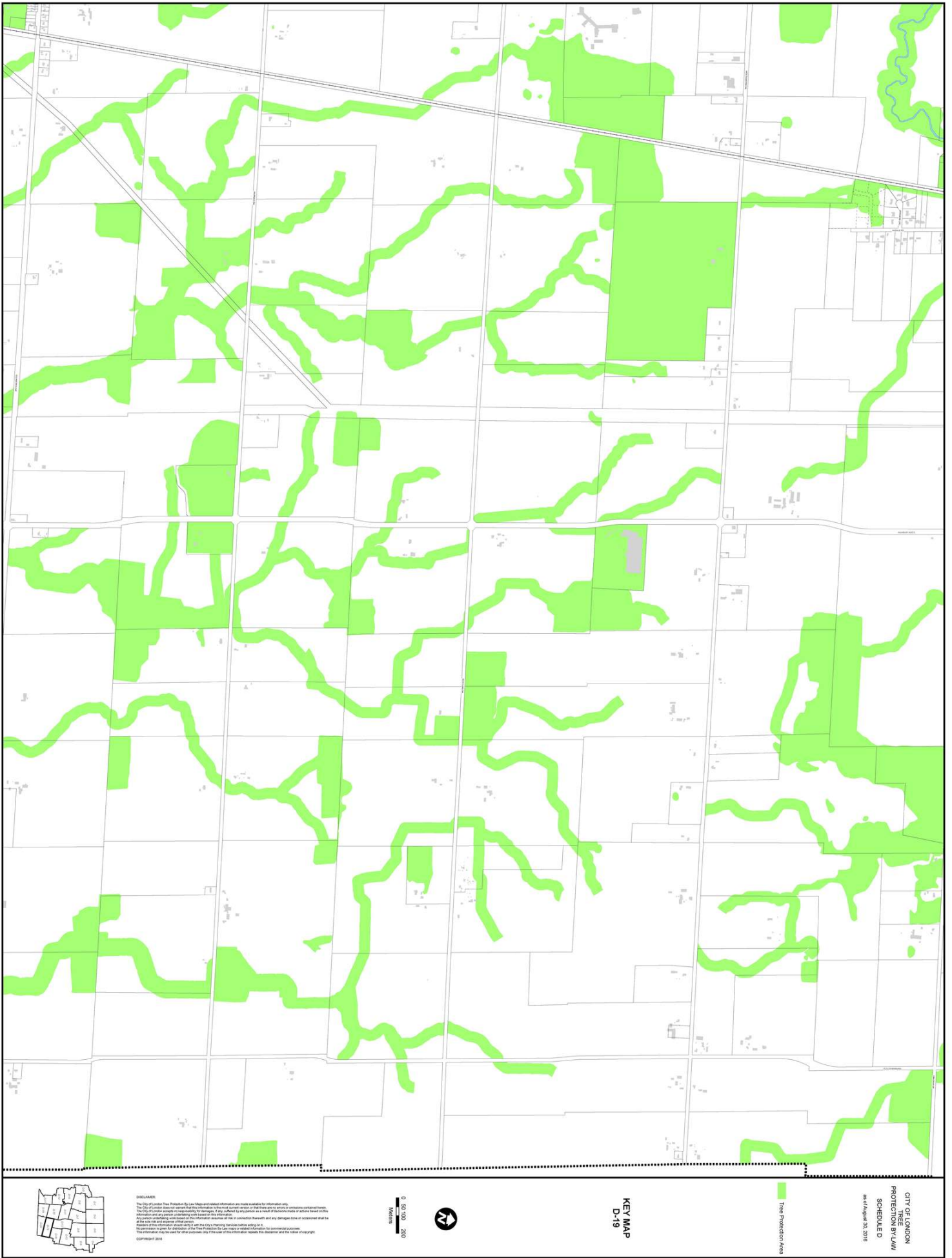
Tree Preservation Area

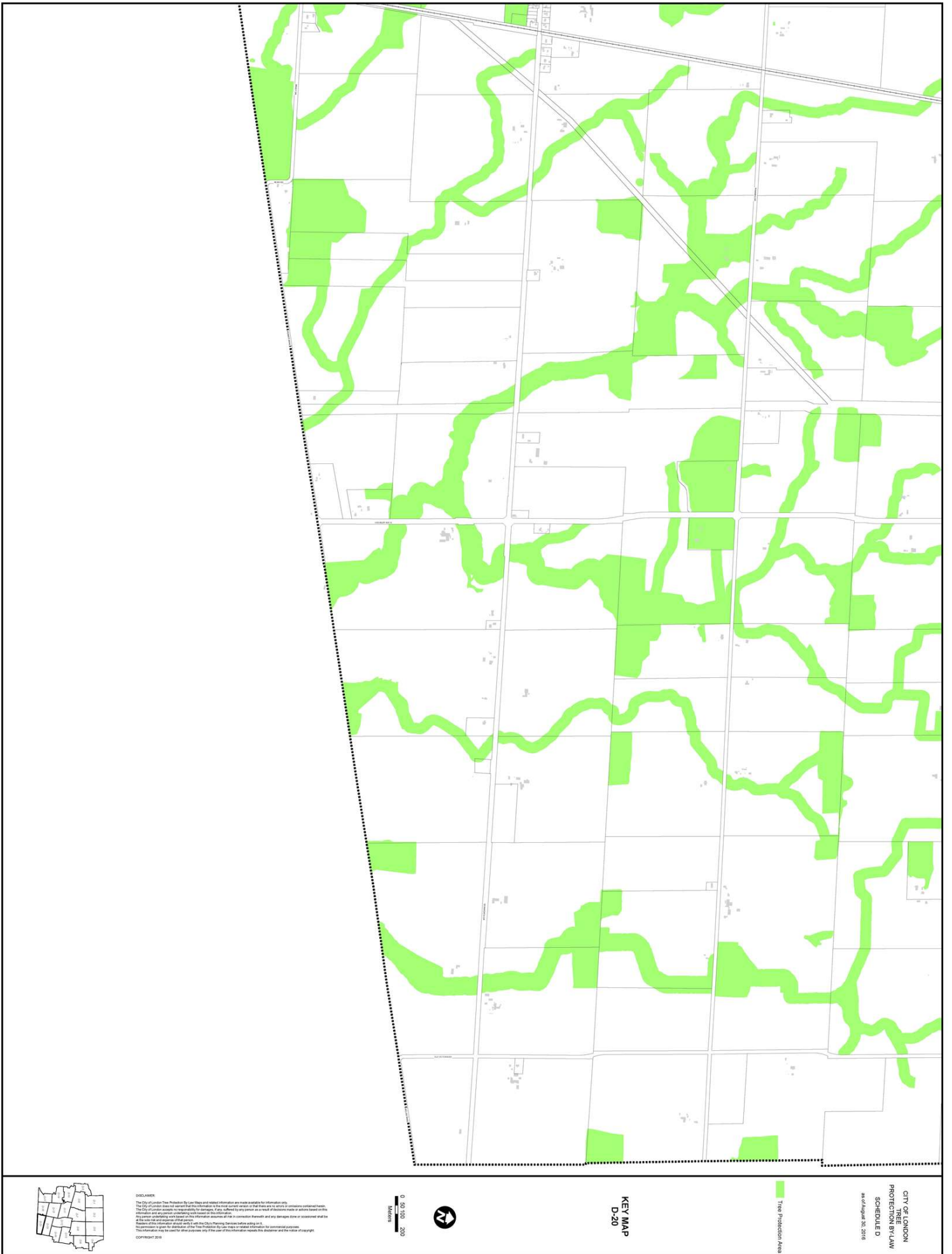
**CITY OF LONDON
TREE
PROTECTION BY-LAW
SCHEDULE D**
as of August 30, 2016











CITY OF LONDON
 TREE PROTECTION BY-LAW
 SCHEDULE D
 as of August 30, 2016

Tree Protection Area

KEY MAP
 D-20



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 METERS

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Congregation Beth Tefilah

Orthodox Synagogue of London

1210 Adelaide Street North, London, Ontario, Canada N5Y 4T6
Telephone: 519-433-7081

Rabbi: Eliezer Gurkow

President: Sandy Levin
Past President: Jack Bottner

November 11, 2020

Chair and Members
Planning and Environment Committee
City of London

Via e-mail

Re: Tree Protection by law change to Map B3

Thank you for considering our previous submission on this matter. We appreciate and support the change to our property at Adelaide North and Kipps Lane.

Sincerely,

E. Gurkow

Committed to the values and pursuit of Torah observance

Please circulate wide and far and to the ends of the earth.

Dear Neighbour,

The City of London is introducing a new tree by-law this Monday at the Planning and Environment Committee. There is a public participation meeting (no earlier than 4pm at City Hall) and/or you can send your written comments to the city clerk's office at lmorris@london.ca.

The staff report: <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=75925>

The new by-law: <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=75926>

There are no significant changes being introduced with this new by-law. The new by-law is the same as the old by-law. NO JOKE.

It is both surreal and unsettling.

The rationale against a stronger tree protection by-law is that there are not enough by-law officers to enforce it even though Council recently approved the hiring of up to 18 additional by-law enforcement officers.

It retains the limit of 50 cm. diameter at 1.4 metres high in which a tree can be cut without a permit. Even though city staff acknowledge public and industry support to reduce the diameter size to 20 cm to protect younger trees and capture greater species diversity such as cedars and aspens which typically never reach trunk size of 50 cm. even at maturity, city staff will not advocate for a stronger tree protection by-law.

You need to do that. Council has NEVER spoken in defense of tree preservation even though this city has a supposed climate action plan, their words are hollow hence a new tree by-law that is eerily similar to the old tree by-law.

The Forest City has been a past tense for a long long time and speaks volumes of the city's priority where hundreds of thousands of citizens' hard earned dollars is spent on expropriating private homes to widen roads unnecessarily but cannot afford extra officers to secure a tree canopy.

Speak Up. Please don't be a cynic and fight back. If City Council is complacent it is because we are too.

Be Good and Be Safe

AnnaMaria Valastro

133 John Street, Unit 1

London, Ontario N6A 1N7

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee
From: George Kotsifas P. Eng.,
Managing Director, Development & Compliance Services and
Chief Building Official
Subject: 7th Report of the London Advisory Committee on Heritage
183 and 197 Ann Street
Meeting on: November 16, 2020

Recommendation

That on the recommendation of the Director, Development Services, the following actions be taken with respect to the properties located at 183 Ann Street and 197 Ann Street:

a) pursuant to section 35.2 of the Council Procedure By-law, the resolution of the Municipal Council meeting held on October 27, 2020 regarding part a) of clause 4.1 of the 16th Report of the Planning and Environment Committee related to the 7th Report of the London Advisory Committee on Heritage regarding the properties known as 183 Ann Street and 197 Ann Street **BE RECONSIDERED** to change the date on which the Civic Administration is to report back on this matter from November 30, 2020 to a future meeting of the Planning and Environment Committee as the applicant is proposing to alter the building design resulting in the need for consideration by the Civic Administration in order to bring forward recommendations with respect to proposed amendments to the Official Plan and Zoning By-law. Part a) of clause 4.1 reads as follows:

“a) clause 4.1 c) and d) of the 7th Report of the LACH BE REFERRED to the Civic Administration to report to the November 30, 2020 Planning and Environment Committee meeting relating to the properties located at 197 Ann Street and 183 Ann Street; it being noted that clause 4.1 c) and d) read as follows:

"c) the resource known as 197 Ann Street BE DESIGNATED, pursuant to Part IV of the Ontario Heritage Act, based on the ~~attached~~ evaluation of the property including the Statement of Cultural Heritage Value or Interest; it being noted that the properties located at 175, 179, 183, and 197 Ann Street and 84 and 86 St. George Street have merged;

d) the resource known as 183 Ann Street BE DESIGNATED, pursuant to Part IV of the Ontario Heritage Act, based on the ~~attached~~ evaluation of the property including the Statement of Cultural Heritage Value or Interest; it being noted that the properties at 175, 179, 183, and 197 Ann Street and 84 and 86 St. George Street have merged;”

b) subject to the approval of a) above, the Civic Administration **BE DIRECTED** to report back on clause 4.1 c) and d) of the 7th Report of the London Advisory Committee on Heritage related to the properties located at 183 Ann Street and 197 Ann Street to a future meeting of the Planning and Environment Committee after the Civic Administration has had adequate time to review the submission of an altered building design by the applicant; it being noted that clause 4.1 c) and d) read as follows:

"c) the resource known as 197 Ann Street BE DESIGNATED, pursuant to Part IV of the Ontario Heritage Act, based on the ~~attached~~ evaluation of the property including the Statement of Cultural Heritage Value or Interest; it being noted that the properties located at 175, 179, 183, and 197 Ann Street and 84 and 86 St. George Street have merged;

d) the resource known as 183 Ann Street BE DESIGNATED, pursuant to Part IV of the Ontario Heritage Act, based on the attached evaluation of the property including the Statement of Cultural Heritage Value or Interest; it being noted that the properties at 175, 179, 183, and 197 Ann Street and 84 and 88 St. George Street have merged;”

Executive Summary

Purpose and the Effect of Recommended Action

The recommended action would change the date for consideration of the LACH request for designation of 183 and 197 Ann Street under the *Ontario Heritage Act* from November 30, 2020 to a future meeting of the Planning and Environment Committee, scheduled to coincide with the date of the Public Participation Meeting for the related Official Plan and Zoning By-law amendment applications. The purpose of the change would provide the Civic Administration time to receive and prepare recommendations and reports based on a revised building design and supporting documentation.

Background

The 7th Report of the London Advisory Committee on Heritage (LACH), included on the October 19, 2020 Planning & Environment (PEC) agenda, recommended the designation of 183 Ann Street and 197 Ann Street under the Ontario Heritage Act (OHA). These properties, along with 84 – 86 St. George Street and 175 – 179 Ann Street, are also the subject of an application to amend the Official Plan and Zoning By-law (OZ-9127) to permit a 22 storey apartment building.

At the October 19th PEC meeting, the Applicant for the requested development appeared as a delegation and requested that consideration of the LACH's request for designation be deferred to the November 30, 2020 Planning and Environment Committee meeting. The intent was that the matter be considered on the same date as the anticipated public participation meeting held in accordance with the *Planning Act* for the requested Official Plan and Zoning By-law amendments. The deferral would also give the Heritage Planner time to prepare a report/recommendation regarding the LACH recommendation for designation.

The October 27, 2020 Municipal Council resolution regarding the LACH report referred the relevant portions of the LACH report back to the Civic Administration to report back on this matter at the November 30, 2020 PEC meeting.

The Applicant has since met with the Civic Administration and is proposing to change the requested building design to incorporate heritage elements. As a result, the Applicant will be submitting revised Official Plan and Zoning By-law applications, along with an updated Heritage Impact Assessment, Design Package and other supporting documents to the City. The Civic Administration will be circulating these revisions to commenting agencies, departments and the public and considering the comments received as part of preparing an analysis, report and recommendations to a future meeting of the PEC on the Official Plan and Zoning By-law amendment applications. As a result of the proposed changes to the requested development, a Public Participation Meeting will be held in conjunction with consideration of the revised Official Plan and Zoning By-law amendment applications.

The revised Heritage Impact Assessment will also be reviewed by the City's Heritage Planner and considered as part of a report and recommendation to the PEC regarding possible designation of the properties under the *Ontario Heritage Act*.

While heritage significance and the conservation of heritage features and possible designation under the *Ontario Heritage Act* should be considered on its own merits, the appropriate treatment of heritage features in this case is inextricably linked to the development proposal because a Bonus Zone is being requested. A Bonus Zone, if approved, would tie the developer through zoning to a very specific building design. It would be beneficial to maintain the previously understood intent of Municipal Council to

consider the staff report on possible heritage designation, and the staff report on the requested Official Plan and Zoning By-law amendment at the same PEC meeting.

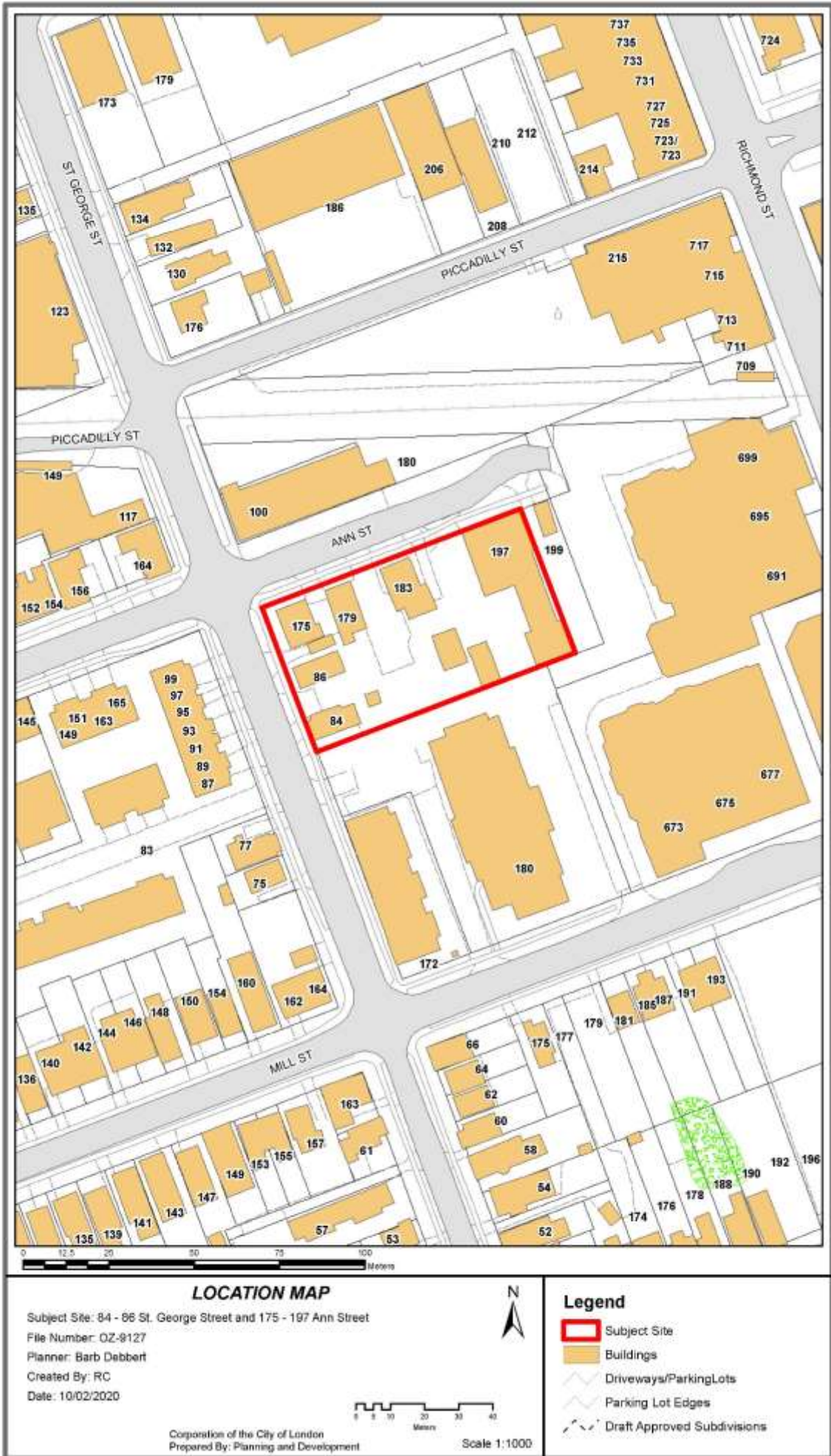
The Civic Administration will need some time following receipt of revised application materials for the Official Plan and Zoning By-law amendment to review the submission and prepare both the heritage and planning reports and recommendations to PEC. The Civic Administration's ability to complete this work depends upon the date of resubmission and details contained in the revised materials. As a result, the Civic Administration is recommending the date on which the Civic Administration is to report back on this matter be changed from November 30, 2020 to a future meeting of the Planning and Environment Committee when a Public Participation Meeting will be held regarding the Official Plan and Zoning By-law amendment applications to receive further comments from the community.

Prepared by:	Laura E. Dent, M.Arch, PhD, MCIP, RPP Heritage Planner, Development Services
Prepared by:	Barb Debbert Senior Planner, Development Services
Recommended by:	Paul Yeoman, RPP, PLE Director, Development Services
Submitted by:	George Kotsifas, P.ENG Managing Director, Development and Compliance Services and Chief building Official
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

November 5, 2020

cc: Michael Tomazincic, MCIP, RPP, Manager, Current Planning

Y:\Shared\DEVELOPMENT SERVICES\11 - Current Planning\DEVELOPMENT APPS\2019 Applications 9002 to\9127OZ - St. George Street, 84 - 86 and 175 - 197 Ann Street (BD)\PEC\OZ-9127 LACH deferral.docx



Re: delay in planning application review for 197 Ann Street

Urgent Matter - Please share with your family and friends.

A Heritage Update – please read.

In a weird twist of fate, the decision by Old Oak Properties to demolish 93 and 95 Dufferin Ave has sealed the fate of the Kent Brewery heritage designation.

Heritage designation of the Kent Brewery Building at 197 Ann St. and the family homes of the Hamilton Family, the brewery owners, at 183 and 179 Ann St is being heard on Monday Nov.16 at the Planning and Environment Committee (PEC) meeting. It is NOT open to the public. The staff report:

<https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=75931>

York Development currently owns these properties and is proposing to build a dense luxury student housing complex.

Here is my understanding of what is being proposed and how these two issues are linked.

Old Oak Properties will win approval to demolish 93 and 95 Dufferin Ave on appeal because when Council approved the demolition of Camden Terrance, their short-sightedness also gave license to demolish 93 and 95 Dufferin.

Camden Terrance was by far more culturally rich in heritage than its neighbour at 93 and 95 Dufferin. Unfortunately, Camden Terrance was a weathered building, and the '*snobbish voices*' advocated that the building wasn't 'pretty' enough to preserve despite its rich history. The same sentiment is also being expressed by York Development and some councillors about the Kent Brewery. 93 and 95 Dufferin were more 'tasteful' and therefore spared. Upon appeal Old Oak will argue that if Council demolished the most historical building, then the lesser of the two cannot be defended against demolition.

This has struck fear into the bones of the Civic administration because they cannot stop the demolition of 93 and 95 Dufferin because of their own past decision.

In a backwards twisted effort to avoid another Camden Terrace debacle, city planning staff want to 'cut a deal' with York Development to 'lock-in' the site plan at the current Kent Brewery so York Development cannot return with a demolition request at a later time. In exchange, Council will remove heritage designation off of the Kent Brewery and family homes of the Hamilton Family. York Development will only be obligated to retain heritage 'elements' – not the buildings but only 'elements' of those buildings in exchange for a bonus zone.

This is not clean and it gets worse.

Heritage designation does not impede creative design. It promotes it.

The preservation of built heritage, green space, parkland, yard setbacks etc. are all BASIC planning principles described either in the London Plan (heritage page

141) or in law such as by-laws. These principles are applied to ensure that developers build good living spaces.

These basic principles cannot be used as bargaining chips to get what you want. They are not for sale. The erosion of these basic planning principles is how we get horrible, oversized developments with no green open space, trees and so on.

Bonus zones are awarded when developers offer something extraordinary BEYOND the basic requirements that advance or improve the community. They are not intended to be given away at leisure or used to **pit one issue 'heritage preservation' against another such 'parkland dedication'**. Instead bonus zones are used to advance good design and community inclusion. Examples are:

- Using clean energy
- Incorporating public art
- Reducing parking space to reduce traffic and air pollution.

Heritage designation is intended to be reviewed on its own merits and not in a poker match. York Development wants heritage preservation linked to its request for a bonus zone therefore degrading the very planning principles Londoners worked so hard to establish through their participation and voices in forming of the London Plan.

Mayor Ed Holder is key.

The Mayor advocated on behalf of York Development at the Oct.19 PEC meeting like a nervous stage mom. The Mayor pushed hard to ensure that York was given an opportunity to rework the planning application to skirt heritage designation. And that is exactly what is being proposed.

This approach needs to stop because people are becoming jaded. If we are going to have corporate control of urban land then the least this city can do is set strong guidance and not try to 'out-smart' or 'go through the back door' to secure what is already stated in law as basic principles. That's the public expectation.

I am clearly very angry. I am tired of neighbourhoods being railroaded by members of council that make decisions on issues they know little about and make no effort to understand.

Who are these people and why do they run for office other than to become gainfully employed? Lord Help Us.

This problem is systematic and not unique to this neighbourhood.

This September City Council accepted a significant donation by York Development to raise a pavilion in a public park in the White Oaks neighbourhood. It was apparently a gift by York Development to the neighbourhood. But there was NO apparent public outreach to local residents to ask what they would like to see happen in the park. No one talked to the area residents. It was all about a wealthy corporation deciding what is good for the neighbourhood without engaging the residents. The donation can be perceived as a conflict of interest and at worst a 'bribe'. And Council accepted it.

Below is an email exchange with Councillor Stephen Turner who sits on the PEC. He voted to delay heritage designation until York Development brought back a new proposal. He insisted that heritage designation would be reviewed independently of the application. **Wrong**

His rationale was that he was not satisfied with a recommendation to designate the Kent Brewery by London's Advisory Committee on Heritage, by the City's Heritage Planner or the many individuals that wrote letters and waited more than three hours to voice their support for designation. He wanted to hear from members of the public. Some of us were already standing right there – for three hours we waited to speak - during a pandemic.

There is NO public participation meeting at this junction.

I felt we were treated with contempt and disrespected especially by Mayor Ed Holder. The whole thing is just so gross.

For all those individuals that signed the petition letter in support of heritage designation of the Kent Brewery and family homes, that petition is being submitted for the Nov. 16 PEC meeting. There are just shy of 100 signatories collected in just three short days, door to door and face to face. Support for designation is overwhelming.

Please read the staff report. These are just my interpretations of what is being proposed.

Be Good and Be Save

AnnaMaria Valastro

133 John Street, Unit 1

London, Ontario N6A 1N7

From [Turner, Stephen](#) on 2020-10-19 23:46

[Details Plain text](#)

The opposite of that, actually. I took pains to state that the heritage designation decision needs to be separate from the application.

Stephen Turner

Councillor - Ward 11

City of London, Canada

On Oct 19, 2020, at 11:34 PM, wrote:

Hello Councillor Turner,

Can you please offer an explanation as to why you decided to support delaying a decision of designation for the properties at 197 and 183 Ann St?

I walked away believing your decision was based on the proposed development application itself rather than waiting for a consultant's report or staff report providing evidence as to whether designation does or does not meet heritage requirements.

Thank You for clarifying.

AnnaMaria

November 12, 2020

Dear Members of Council,

These letters were scheduled to be collected and returned by the Nov 30th Planning and Environment Committee (PEC) meeting as per Resolution from the Council Meeting of one week ago.

These signatures were collected door to door and face to face in the North Talbot area.

The petition was written to be informative and its goal clear and questions were answered through person to person conversation.

Ward 13 Councillor, Councillor Kayabaga has not apparently reached out to the community as a whole either directly or through the Councillor's monthly newsletter or through social media.

Therefore, these signatories should be considered as individuals with an independent voice in support of heritage designation of the Kent Brewery Building and the homes of the Hamilton Family.

We the undersigned endorse the following statement:

A new development proposal on the corner of St. George Street and Ann Street in the North Talbot Neighbourhood would require the demolition of several heritage buildings, **specifically the historical Kent Brewery and the home of brewer Joseph Hamilton.**

The brewing history in London Ontario is significant on a national scale with some of the largest breweries in Canadian history, Labatt and Carling, having their roots here. Kent Brewery, a smaller brewery became famous for its "London Porter" a brand that played on a centuries-old tradition of well-regarded porters brewed in London, England.

Heritage Planning Staff and London's Advisory Committee on Heritage have recommended heritage designation and protection of the Kent Brewery Building (197 Ann Street) and the home of brewer Joseph Hamilton (183 Ann Street).

There is an additional property associated with the Kent Brewery, 179 Ann Street, which was owned by brewer John Hamilton, and lived in by his son, Joseph Hamilton. This property, through its association with the Hamilton family, also merits consideration for designation.

Taken together, these three structures (197 Ann Street, 183 Ann Street, and 179 Ann Street) are visually and functionally linked: they present a rare surviving Canadian example, along with Alexander Keith's Brewery in Halifax, of a 19th Century brewery district, where the brewers' houses are preserved along with the brewery building.

The London Plan (the city's official planning document that thousands of Londoners shaped through their participation and their voices), clearly states:

554_ - 3. Ensure that new development and public works are undertaken to enhance and be sensitive to our cultural heritage resources.

562_ Strategies will be developed to promote the adaptive re-use or repurposing of existing built heritage assets to support green building design to reduce demand on natural resources.

563_ In conformity with the Urban Regeneration policies in the Our City part of this Plan, initiatives will be taken to support the adaptive re-use of cultural heritage resources to facilitate economic revitalization of neighbourhoods and business areas.

565_ New development, redevelopment, and all civic works and projects on and adjacent to heritage designated properties and properties listed on the Register will be designed to protect the heritage attributes and character of those resources, to minimize visual and physical impact on these resources. "..... and explore alternative development approaches and mitigation measures to address any impact to the cultural heritage resource and its heritage attributes." (source **The London Plan pgs. 137 and 138**).

While this petition is focused on the preservation of the Kent Brewery, heritage protection and neglect of city policy as it relates to heritage preservation is a problem across the city, therefore I am asking that council:

1. Support the LACH recommendation to designate the Kent Brewery building at 197 Ann St and the house built by brewer Joseph Hamilton at 183 Ann Street.
2. Request that staff review 179 Ann Street for potential designation, a house owned by John Hamilton and lived in by his son, brewer Joseph Hamilton.
3. Uphold the principles of the London Plan as it relates to heritage preservation by integrating cultural heritage resources into new developments.

London Advisory Committee on Heritage

Report

The 8th Meeting of the London Advisory Committee on Heritage
November 11, 2020
Advisory Committee Virtual Meeting - during the COVID-19 Emergency
City Hall is open to the public, with reduced capacity and physical distancing requirements.

Attendance PRESENT: D. Dudek (Chair), S. Bergman, M. Bloxam, J. Dent, L. Fischer, S. Gibson, T. Jenkins, S. Jory, J. Manness, E. Rath, M. Rice, K. Waud and M. Whalley and J. Bunn (Committee Clerk)

ALSO PRESENT: L. Dent, K. Gonyou, M. Greguol and M. Schulthess

The meeting was called to order at 5:30 PM; it being noted that the following Members were in remote attendance: S. Bergman, M. Bloxam, J. Dent, L. Fischer, S. Gibson, T. Jenkins, S. Jory, J. Manness, E. Rath, K. Waud and M. Whalley

1. Call to Order

1.1 Disclosures of Pecuniary Interest

J. Dent discloses a pecuniary interest in Item 4.1 of the 8th Report of the London Advisory Committee on Heritage, having to do with the Stewardship Sub-Committee Report, by indicating that his employer is involved with a matter on the Report.

2. Scheduled Items

None.

3. Consent

3.1 7th Report of the London Advisory Committee on Heritage

That it BE NOTED that the 7th Report of the London Advisory Committee on Heritage, from its meeting held on October 14, 2020, was received.

3.2 Municipal Council Resolution - 7th Report of the London Advisory Committee on Heritage

That it BE NOTED that the Municipal Council resolution, from its meeting held on October 27, 2020, with respect to the 7th Report of the London Advisory Committee on Heritage, was received.

4. Sub-Committees and Working Groups

4.1 Stewardship Sub-Committee Report

That the following actions be taken with respect to the Stewardship Sub-Committee Report, from its meeting held on October 28, 2020:

a) the following properties BE ADDED to the Register of Cultural Heritage Resources based on the cultural heritage information presented in the Cultural Heritage Assessment Report prepared by ASI:

- 171 Adelaide Street North
- 173 Adelaide Street North

- 86 Anderson Avenue
- 143 Arundell Street
- 145 Arundell Street
- 140 Dreaney Avenue
- 144 Dreaney Avenue
- 150 Dreaney Avenue
- 154 Dreaney Avenue
- 209 Egerton Street
- 10 Elm Street
- 1 Hamilton Road
- 92-98 Hamilton Road, 511-513/ Horton Street East
- 101 Hamilton Road
- 104 Hamilton Road
- 112 Hamilton Road
- 120 Hamilton Road
- 124 Hamilton Road
- 126 Hamilton Road
- 125-127-127/ Hamilton Road
- 250 Hamilton Road
- 260 Hamilton Road
- 274 Hamilton Road
- 276 Hamilton Road
- 280 Hamilton Road
- 328 Hamilton Road
- 342 Hamilton Road
- 345 Hamilton Road
- 349 Hamilton Road
- 349/ Hamilton Road
- 355 Hamilton Road
- 357 Hamilton Road
- 363 Hamilton Road
- 364-364A-364B Hamilton Road
- 366 Hamilton Road
- 367 Hamilton Road
- 371-373 Hamilton Road
- 407 Hamilton Road
- 414 Hamilton Road (96 Rectory Street)
- 416 Hamilton Road
- 423 Hamilton Road
- 465 Hamilton Road
- 519 Hamilton Road
- 523 Hamilton Road
- 541 Hamilton Road
- 547 Hamilton Road
- 556 Hamilton Road
- 560 Hamilton Road
- 592 Hamilton Road
- 583-585 Hamilton Road
- 601 Hamilton Road
- 612 Hamilton Road
- 645 Hamilton Road
- 658 Hamilton Road
- 664 Hamilton Road
- 689 Hamilton Road
- 709 Hamilton Road
- 721-725 Hamilton Road
- 735 Hamilton Road
- 737 Hamilton Road
- 741-743 Hamilton Road
- 749 Hamilton Road
- 751 Hamilton Road
- 783-783/ Hamilton Road

- 772 Hamilton Road
- 796 Hamilton Road
- 818 Hamilton Road (formerly 15 Glenwood Avenue)
- 870 Hamilton Road
- 867 Hamilton Road
- 873 Hamilton Road
- 875-881 Hamilton Road
- 885 Hamilton Road
- 887 Hamilton Road
- 504 Horton Street East
- 506 Horton Street East
- 508 Horton Street East
- 122 Inkerman Street
- 124 Inkerman Street
- 128 Inkerman Street
- 751 Little Hill Street
- 755 Little Hill Street
- 783 Little Hill Street
- 156 Madison Avenue
- 128 Mamelon Street
- 136 Mamelon Street
- 143 Mamelon Street
- 147 Mamelon Street
- 17 Marmora Street
- 19 Marmora Street
- 971 Ormsby Street
- 134 Price Street
- 138 Price Street
- 141 Price Street
- 145 Price Street
- 28 Redan Street
- 898 Trafalgar Street
- 180 William Street
- 184 William Street
- 192 William Street

it being noted that the Stewardship Sub-Committee does not recommended that the property located at 18 Elm Street be added to the Register of Cultural Heritage Resources as it was further evaluated through the completion of a Cultural Heritage Evaluation Report, and found not to have cultural heritage value or interest; and,

b) the remainder of the above-noted Stewardship Sub-Committee Report BE RECEIVED.

5. Items for Discussion

5.1 Request for Designation of 75 Langarth Street East under Part IV of the Ontario Heritage Act

That, on the recommendation of the Director, Planning and City Planner, with the advice of the Heritage Planner, the following actions be taken with respect to the staff report dated, November 11, 2020, related to the request for designation of the heritage listed property located at 75 Langarth Street East:

a) notice BE GIVEN under the provisions of Section 29(3) of the Ontario Heritage Act, R.S.O. 1990, c. O. 18, of Municipal Council's intention to designate the property to be of cultural heritage value or interest for the reasons outlined in the attached Statement of Cultural Heritage Value or Interest; and,

b) should no appeals be received to Municipal Council's notice of intention to designate, a by-law to designate the property located at 75 Langarth Street East to be of cultural heritage value or interest, for the reasons outlined in the above-noted Statement of Cultural Heritage Value or Interest, BE INTRODUCED at a future meeting of Municipal Council immediately following the end of the appeal period;

it being noted that should an appeal to Municipal Council's notice of intention to designate be received, the City Clerk will refer the appeal to the Conservation Review Board.

6. Adjournment

The meeting adjourned at 5:50 PM.

Appendix D – Statement of Cultural Heritage Value or Interest

Legal Description

Part Lot 13, Block G, Plan 392(4th), Part Lot 14, Block G, Plan 392 (4th) as in 410248, London

Description of Property

The Greg Curnoe Childhood Home and First Art Studio at 75 Langarth Street East is a one-and-a half storey gable-roofed residential house, located on the south side of Langarth Street East, between Edward Street and Cathcart Street in the neighbourhood of Old South London. It was built in 1936 by local builder William Porter, Greg Curnoe's grandfather.

Statement of Cultural Heritage Value or Interest

The property at 75 Langarth Street East demonstrates Historical and Associative Value because it has direct associations with events and persons that are significant to a community. The property was the childhood home and first studio of renowned London-born artist Greg Curnoe (1936-1992). It was in this South London home that Curnoe developed a love of art as a child, where his artistic talent emerged as a young adult, and where his early thinking on regionalism as an artistic sensibility began to take shape. This was also the site of "Curnoe's Inferno", his first art studio, in which he would produce works of art that reflected his love of home and family and the influences of the everyday world around him. Objects from the Langarth Street studio are now held in the collections of Museum London and the Art Gallery of Ontario.

The property also yields information that contributes to an understanding of the community of artists in Curnoe's circle, including Jack Chambers, John Boyle and others, who represented a unique art movement known as London Regionalism—described as a group of artists who recognized home as the centre and subject of creative activity; who acknowledged yet refused to situate themselves in the art world of the metropolitan centre; who even refused to participate in 'movements'. Curnoe was a leading figure in this circle. The basement studio of 75 Langarth Street East, known as "Curnoe's Inferno," played a catalytic role in the emergence of Curnoe's artistic talent and his regionalist sensibility.

The property also demonstrates and reflects the work of the builder, Greg Curnoe's grandfather William Porter, who is significant to the community. A carpenter and cabinet maker by trade, Porter emigrated from England in 1907 and established his construction company, William Porter and Son, in London in the 1920s. William Porter designed and built at least 33 houses in London between 1917 and 1953, as well as a number of shopfronts in London and surrounding towns. Porter's houses display a notable and distinct vernacular style in the London context, which may have influenced later builders in the South London neighbourhood where his properties are concentrated.

The property is comparable in form, scale and massing to the modest homes built by Porter and Son in South London in the 1920s and 30s. In style, it includes many Tudor Revival references popular in South London at the time, and which Porter featured in a number of his houses. Two of these, 251 St James Street (1932) and 99 Baseline Road East (c. 1934) are listed as Tudor Revival dwellings on the City of London Register of Cultural Heritage Resources; the property at 251 St James Street is designated under Part V in the Bishop Hellmuth Heritage Conservation District.

The property demonstrates Physical/Design Values in its representation of the Tudor Revival architectural style popular in South London residential houses in the 1920s and 30s. Designed by Curnoe's mother Nellie Porter and built by his grandfather William Porter in 1936, the property is distinguished by its projecting red brick buttressed porch with steeply pitched roof, half-timbering set in stucco in the front gable, pointed bargeboard and prominent gable ends, and fenestration that includes multiple leaded glass panes at the front and flanking the fireplace on the west elevation, a decorative quarry under the front gable, and an oriel window typical of Period Revival styling.

The property also displays a high degree of craftsmanship of the builder. Porter's fine carpentry skills and craftsmanship are evident not only in the exterior Tudor Revival styling, but also in the interior handcrafted Canadian chestnut baseboards, fireplace mantel and built-in bookcases, hand-polished oak floors, bevelled glass and mirrored interior doors, and high wooden kitchen cupboards, all of which remain today.

The property also has Contextual Value in defining and maintaining the historic and architectural character both of the streetscape and the neighbourhood. Langarth Street East, along with parallel streets Briscoe and Emery (formerly Wreay), holds a long history. These streets were first given their names and laid out on an 1880 survey of the "Woodside" estate of Crown Attorney Charles Hutchinson, inspired by the titles of his holdings in Cumberland County, England. The original street layouts remain today.

The property is physically, visually and historically linked to its surroundings. The streetscapes on both north and south sides of this section of Langarth Street remain largely unaltered since the houses were built between the late-19th and mid-20th century. These include the cluster of six brick bungalows built between 1925-27 on the north side of Langarth Street East, directly facing the Curnoe family home, and the c. 1886 Ontario Cottage directly west at 73 Langarth Street East, one of five Langarth Street properties built between 1883 and 1914 that are listed on the City of London *Register of Cultural Heritage Resources*.

Heritage Attributes

Heritage attributes which support and contribute to the cultural heritage value or interest of this property include the form, scale and massing of the one-and-a-half storey dwelling with Tudor Revival styling, featuring:

- Half-timbering set in textured stucco;
- Gable roof with wood soffits;
- Projecting brick-buttressed porch with steep gable;
- Red brickwork with alternating darker bricks set randomly, with a soldier course and basket weave bond over the front doorway;
- Plain wood moulded bargeboard trim with prominent gable ends;
- Multi-paned diamond leaded front windows and decorative quarry;
- Pair of leaded side windows flanking the fireplace and brick chimney on the west elevation;
- Oriel window projecting from west-facing dining room;
- Four-over-one sash window at rear, originally the Curnoe boys' bedroom window, portrayed in Greg Curnoe's 1972 painting, *Backyard, Langarth St. E.*; and,
- Interior Canadian chestnut baseboards handcrafted by William Porter, along with fireplace mantel and built-in bookcases, and bevelled glass and mirrored wood doors to the vestibule and master bedroom.