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File No: O-7585  
Planner: G. BARRETT

<b>TO:</b>	<b>CHAIR AND MEMBERS BUILT AND NATURAL ENVIRONMENT COMMITTEE</b>
<b>FROM:</b>	<b>JOHN M. FLEMING DIRECTOR OF LAND USE PLANNING AND CITY PLANNER</b>
<b>SUBJECT:</b>	<b>INFORMATION REPORT ONTARIO MUNICIPAL BOARD DECISION OFFICIAL PLAN AMENDMENT NO. 438 AUGUST 15, 2011</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Director of Land Use Planning and City Planner, the following report **BE RECEIVED** for information.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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- Report to Planning Committee Meeting of January 11, 2010: "Official Plan Review-Information Report".
- Report to Planning Committee Meeting of November 8, 2010: "Information Report-Ontario Municipal Board Appeals, Official Plan Amendment 438".

<b>BACKGROUND</b>
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Official Plan Amendment 438 (OPA 438), implementing the amendments to the City's Official Plan arising from the Official Plan Five Year Review, was adopted by Municipal Council on March 3, 2008. On December 17, 2009, the Amendment, with modifications, was approved by the Minister of Municipal Affairs and Housing. The appeal period ended on January 6, 2010, and appeals were made by 11 property owners.

Through much of 2010, Staff worked with the Solicitor for the Appellants to narrow the scope of issues to be heard by the Board. The Board issued a decision on October 25, 2010 identifying the matters under appeal. With the exception of those identified matters, all of the text and map modifications arising from OPA 438 have been in full force and effect since January 7, 2010.

The Hearings on these matters was scheduled for 6 weeks, commencing on January 24, 2011. In advance of the Hearings, some of the appealed matters were resolved, and so the focus of the first two days of the Hearing was on the City's Growth Management policies of Section 2. As a result of the Hearing, minor wording changes have been made to policies 2.6.2.1. (ii) and 2.6.4.1. (iii). These are the only text changes to be made to the appealed portions of OPA 438.

The Hearing was resumed for two days in February to resolve site specific mapping issues. Evidence was heard on only three of the nineteen site specific mapping appeals. The only amendment arising from these appeals is a modification to Schedule B-1, Natural Heritage Features to better show the extent of the ESA boundary at 1300 Fanshawe Park Road East.



When the Hearing was adjourned in February, it was to be resumed in June, 2011 to address the appeals to policies of Section 15 of the Official Plan. On June 21, 2011, the London Development Institute (the Appellant), informed the Board of its decision to withdraw its remaining appeals, and on July 13, 2011, the Board issued its Decision, which is attached for information.

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<b>CONCLUSION</b>
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The attached decision of the Ontario Municipal Board is the resolution of the City's Official Plan Five Year Review project that was initiated with the adoption of the Terms of Reference by Municipal Council on April 10, 2006. While the process to complete this extensive policy review was completed by the adoption of Official Plan Amendment 438 by Municipal Council on March 3, 2008, the process is just now complete with the final decision regarding the appealed matters.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
	
<b>GREGG BARRETT, AICP MANAGER, CITY PLANNING AND RESEARCH</b>	<b>JOHN M. FLEMING, MCIP, RPP DIRECTOR OF LAND USE PLANNING AND CITY PLANNER</b>

August 2, 2011  
 GB/

cc. J. Page, City Solicitors Office

"Attachment"

ISSUE DATE:

Jul. 13, 2011

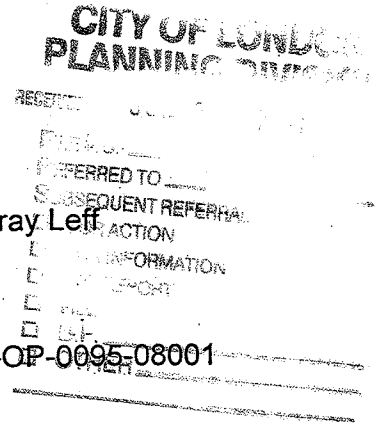


PL100102

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

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

Appellant:	London Land Developers Association ("London Development Institute")
Appellant:	Aniela Dziadura
Appellant:	Sifton Properties Limited
Appellant:	Liahn Farms Limited & Hugh Allen
Appellant:	Highland Ridge Land Corp. & John Schalk
Appellant:	Norwest Land Corp.
Appellant:	Cobblestone Gate Land Corp.
Appellant:	Norquay Developments Limited
Appellant:	G.M.S. Mortgage Investment Corp. & Murray Leff
Appellant:	Arroyas Enterprises Limited
Appellant:	700531 Ontario Limited
Appellant:	Auburn Developments Inc.
Subject:	Proposed Official Plan Amendment No. 39-OP-0095-08001
Municipality:	City of London
OMB Case No.:	PL100102
OMB File No.:	PL100102



**APPEARANCES:**

Parties

City of London

Ministry of Municipal Affairs & Housing

761030 Ontario Limited

London Land Developers Association  
Aniela Dziadura  
Sifton Properties Limited  
Liahn Farms Limited & Hugh Allen  
Highland Ridge Land Corp. & John Schalk  
Norwest Land Corp.  
Cobblestone Gate Land Corp.  
Norquay Developments Limited  
G. M. S. Mortgage Investment Corp. & Murray Leff  
700531 Ontario Limited  
Auburn Developments Inc.

Counsel

J. Page

J. R. Boxma and C. Young

R. Sanichara

B. Card

City Clerk

No. 2669

Subject PL100102 - various appellants - proposed official plan amendment #39-OP-0095-08001

JUL 26 2011

Ref. L. Dakin

C.C. SPB J Fleming M. Francis  
Scawto Saunders  
GREG BARRETT

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

London Development Institute ("LDI") filed an appeal to the City of London's ("the City") comprehensive official plan amendment ("OPA 438"). The organization of the hearing began sometime in 2010 at which time the hearing was scheduled to commence late January 2011. By this time, a number of issues had been resolved and in many cases, appeals withdrawn. Such was the case for 761030 Ontario Limited which had been taken over by G.M.S. Mortgage Investment Corp. ("GMS"). At the outset of the hearing, GMS was granted party status as it was stepping into the shoes of 761030 Ontario Limited. A few days later, Counsel for GMS reported that it would no longer be participating in the hearing after all. The Ministry of Municipal Affairs and Housing ("MMAH") was also a party to the proceedings but as the hearing unfolded, it too did not present a case. As such, the hearing was portioned into phases to address specific policy issues and site specific matters. This decision is divided into segments reflecting those portions of the hearing.

**Growth Management Policy 2.6.4.1**

Chris Pidgeon, qualified and accepted as an expert in land use planning, provided opinion evidence on behalf of the Appellant concerning the growth management policies under section 2.5.2 of OPA 438. Firstly, Mr. Pidgeon was critical that the City was using mediocre growth projections which he believed would negatively impact the land use planning policy. He was clear that that tight fiscal restraint reflected in OPA 438 should not be the sole factor in managing land use and growth. He stated definitively in his witness statement that:

The driving theme throughout these new policies is that spending on municipal infrastructure, until it is absolutely necessary, will lead to the demise of the community. To ensure that London does not overextend itself on the cost of services which have been constructed prematurely, the policies of OPA direct that existing services are "fully utilized" before new services are put in the ground. Unfortunately, it is not the City Council and staff who are able to make decisions about consumer preferences in housing locations, forms and designs, nor that developers should be making decisions solely on infrastructure investment. In a perfect world, infrastructure supply would match demand and there be no idle capacity, but such is not the case. [see Ex. 1 tab 1, pg. 3, para. 12]

Mr. Pidgeon suggested that there needed to be a balance between fiscal prudence by the municipality and the drive for growth to accommodate housing and employment. Achieving that balance is part of safeguarding the public interest and in this regard, he opined that OPA 438 had failed to meet the test of ensuring the public interest. Further he was critical that the restrictive language used in OPA 438 was not consistent with the policy direction found in the 2005 Provincial Policy Statement ("2005 PPS"). Mr. Pidgeon reviewed each proposed amendment and provided his analysis for alternative language. Specifically he disputed the role of the City to "control" the expansion of its municipal services to provide adequate capacity and suggested that the City's role would be better described as to "plan and co-ordinate." [see s. 2.6.4.1 (ii) OPA 438]. He disagreed with the term "optimization" in the same subsection of the plan suggesting that the term has an unnecessary obstructive connotation. A better term in his opinion would be "efficiencies." He asserted that this same analysis applied to the term "control" found in the same subsection.

With respect to the hierarchy set out under subsection (a) to (d) of ss. 2.6.4.1 (iv), Mr. Pidgeon testified that the allocation of growth should be given more flexibility than the language suggests and in this regard, amending "take precedence" to "be given priority" incorporates such flexibility.

Rob Panzer, in-house Planner for the City, was also qualified and accepted as an expert in land use planning. He methodically reviewed the process which lead to the appeals and provided background context explaining that Clayton Research had been retained by the City to conduct population projections. He was candid to say that the City hoped to exceed the Clayton projections but did not want to look "through rose-coloured glasses." In other words, while being optimistic the City's approach was grounded in a pragmatic and practical approach. Mr. Panzer focussed his testimony on the specific area of disagreement and provided a cogent rationale for why he believed specific language should remain. He also provided alternative language to address the concerns raised by LDI while maintaining the spirit of the policy as envisioned by the City. As such, his opinion was that the term "control" found in ss. 2.6.4.1 (ii) was appropriate and no sinister connotation should be attributed to it. He agreed that the language could be amended to "control, plan and co-ordinate" which would perhaps address the concerns of LDI. This concession was agreeable to LDI as noted by its Counsel.

Concerning the term "optimization" found in ss. 2.6.4.1 (ii), Mr. Panzer testified that no change should be made to that term. He explained that the term was reflective of the language of the 2005 PPS. He was steadfast on his opinion explaining that by implementing the same language would ensure consistency with the provincial policy. On this point, the Board prefers the analysis of Mr. Panzer. The Board does not agree with Mr. Pidgeon that the term incorporates an unduly restrictive measure but rather obligates the use of existing infrastructure to its most effective function. That principle is reflective of the 2005 PPS and in making decisions, this Board is required to be consistent with that policy. Given this circumstance, the Board accepts Mr. Panzer's concession and will amend the policy to reflect this revised language.

Therefore, policy under ss. 2.6.4.1 (ii) should read as follows:

**The City will monitor the servicing requirements of proposed and approved development and will control, plan and co-ordinate the expansion of its municipal services to provide adequate capacity and performance in a timely, cost efficient manner. In controlling, planning and co-ordinating for required servicing, the City will have regard for the optimization of existing infrastructure and the merits of managing and/or limiting growth according to the availability of uncommitted sewer and water servicing capacity and the capacity of existing roads to accommodate the additional traffic. The City will also have regard for the optimization of existing infrastructure and the merits of managing and/or limiting growth according to the availability of uncommitted servicing capacity.**

Further Mr. Panzer compromised on the language of ss. (iii) where there had been criticism that "deferred" did not provide the certainty of a refusal. Mr. Panzer took no issue with the language referencing a refusal as he stated this was the language of the previous official plan (known as OPA 88) and such language was adequate. Further the term "refuse" would coincide with reference under ss. 2.6.4.1(iv)(d) and would reflect the fact that the City has delegated approval authority on this matter. During his cross-examination, Mr. Panzer also explained that he took no objection to "will only be given" to be amended in policy (iii) to "Development approvals may be refused if there is insufficient existing or planned servicing capacity to accommodate the proposed use within a reasonable time frame." He indicated that the amended language co-ordinated with the terminology used in ss. 2.6.4.1 (iv)(d). Given this conciliatory position of the City, the Board accepts the analysis provided and will amend the policy accordingly. Further in light of the connection made between policies ss. 2.6.4.1(iii) and 2.6.4.1(iv)(d)

by Mr. Panzer, no change will be made to ss. 2.6.4.1(iv)(d) so that the terminology between the two remain consistent in their reference to the term "refused."

**Therefore policy under ss. 2.6.4.1(iii) should read as follows:**

**Development approvals may be refused if there is insufficient existing or planned servicing capacity to accommodate the proposed use within a reasonable time frame.**

**And no change is made to ss. 2.6.4.1(iv)(d).**

Mr. Panzer disputed the need for the proposed ss. (iii) citing that the policy is already covered under s. 19.6.1 of the plan and as such, inclusion under this section would be repetitive and unnecessary. However, under cross-examination, he stated that he found the proposed (iii) policy to be an obvious statement and if one determined that its inclusion added clarity, he took no issue with it. However, in re-direct, he did state that the principle should be found under s. 2.6.2 of the plan. On this proposed amendment, the Board finds no rational basis for inclusion of a repetitive policy. In fact, by duplicating the policy under this subsection may result in an unintended interpretation on a policy which is not in dispute.

**Therefore, the Board will not include the suggested policy as reflected as proposed s. 2.6.4.1 (iii).**

With respect to the policy under ss. 2.6.4.1(iv) (a) and (b), Mr. Pidgeon suggested amending "take precedence" to "be given priority." Mr. Panzer was not challenged on his opinion on this point and he found the proposed changes provided no real value. The Board agrees. If one looks to the sentence which introduces subsections (a) through (d), the reference to priorities is already contained. The line states, "The following order of priorities [emphasis added] for the allocation of servicing capacity in the Greenway service area until such time as the Southside Pollution Control Plan is built, are based on the Official Plan objectives related to effective use of infrastructure, intensification and infill, compact urban form and economic development." It is clear from a plain reading of this policy that the City has already turned its mind to the order of priorities and as such, specific types of growth are given precedence reflecting their appropriate place in the hierarchy. Given this reference in the

introductory paragraph of the policy, the Board will not amend policies (a) and (b) as suggested by Mr. Pidgeon.

**Therefore policies under ss. 2.6.4.1(iv)(a) and (b) will remain unchanged.**

9 and 11 Commissioners Road East and 70 Highview Avenue East -- Schedule "A":

Craig Linton testified on behalf of the Appellant, Norquay Developments Ltd. Mr. Linton is a planning technician and was not proffered as an expert witness in land use planning. Mr. Greg Barrett, on the other hand, was qualified as such and testified on behalf of the City. On this appeal dealing with 9 and 11 Commissioners Road East and 70 Highview Avenue East ("the subject lands"), a discrepancy concerning the designations as shown on the City's mapping was alleged. Mr. Linton stated that there was a disconnect between the designations shown on Schedule "A" and the zoning for the properties. Mr. Linton directed the Board to the resolution of London City Council which amended Schedule "A" Land Use to the Official Plan for the City wherein the designation for the property at 70 Highview Avenue East was changed from "Restricted Service Commercial" to "Multi-Family High Density Residential." Mr. Barrett explained that changes to designations had been made to properties adjacent to the subject lands but not to the subject lands. They were to be seen as Multi-Family High Density Residential. Mr. Barrett indicated that because the mapping for Schedule "A" was at a 1:30,000 scale, specific designation boundaries would not be discernable. He did not recommend changing the scale or enlarging the mapping to a degree where specific boundaries could be interpreted. Mr. Barrett testified that the scale used for Schedule "A" was appropriate and he was steadfast that no error had been made. The Board is satisfied that no error has been made with respect to the designations delineated on Schedule "A." The mapping is intended to reflect the subject lands as Multi-Family High Density Residential. That evidence was unequivocal and clear from the City's Planner. The enlarged mapping produced by the Appellant and filed as Ex. 8(b) was not accepted by the City and while it might be helpful and instructive to show the specific boundaries of the subject lands and their designations, the Board does not accept it as a substitute or supplement to Schedule "A." Schedule "A" at the 1:30,000 scale is to be used; the testimony from the City's Planner makes it clear that the designations for the subject lands are to be Multi-Family High Density Residential. On the basis of this



expert planning evidence, which was the only expert planning evidence provided, the Board will not make any changes to Schedule "A."

**Therefore on these site specific matters, the Board orders that the appeals are dismissed and no amendments will be made to Schedule "A" Land Use for the City of London Official Plan.**

450 Pond Mills Road – Schedule "A":

Much like the preceding matter, the site specific appeal associated with this property revolves around the interpretation of the mapping on Schedule "A" as well and the designation. Messrs. Linton and Barrett testified on this appeal. Mr. Linton prepared an enlargement of the Schedule "A" mapping to show that the designation for entire property at 450 Pond Mills Road ("the subject property") should be Multi-Family Medium Density Residential. The enlarged mapping (filed as Exhibit 10) suggests that a small portion of the subject property was omitted from this designation. Mr. Barrett explained that the scale of 1:30,000 does not afford this level of scrutiny nor is it intended to do so. As with the previous disposition, the Board makes a similar finding based on the analysis provided by the City. The City confirmed that the subject property is designated Multi-Family Medium Density Residential and the mapping at Schedule "A" at the 1:30,000 shows this information. Mr. Barrett also explained that the zoning on the subject property, namely R54 (a medium density residential zone) conforms to the designation. Mr. Barrett's testimony was the only expert planning evidence provided on this site specific appeal and it is on this basis that the Board makes its determination.

**Therefore on this site specific matter, the Board orders that the appeal is dismissed and no amendment will be made to Schedule "A" Land Use for the City of London Official Plan.**

1300 Fanshawe Park Road East – Schedule "B1":

This site specific appeal relates to Schedule "B1." Quite specifically, the mapping on this matter did require correction and at the hearing proper, the parties requested some time to focus on the issues. Following some dialogue, the parties were able to resolve the matter. Mr. Terry Grawey testified on behalf of the City. He was

qualified and accepted as an expert in land use planning. He explained that there had been no intent to make any significant changes through the OPA 438 process to the property located at 1300 Fanshawe Park Road East ("the subject property"). He was clear in his evidence that prior to OPA 438, Patch 2018 and 2019 were not connected. OPA 438 was not to attach these Patches but should reflect a 25 to 30 m gap. Because of the scale of Schedule "B1," that gap was not readily apparent. Mr. Grawey recommended the removal of two small dots and the inclusion of yellow shading to show that a gap did exist between Patch 2018 and Patch 2019. Mr. Grawey explained that doing so would ensure that Schedule "B1" would align with the information contained on Schedule "A." Bonnie Bergsma, the City's Environmental Expert, was in attendance and had provided technical input to this recommendation. Given the resolution achieved and based on the unchallenged testimony of Mr. Grawey, the Board provided an oral decision amending Schedule "B1" to ensure it reflects the gap between Patches 2018 and 2019. The Board had requested this revised mapping be provided so that it could be appended to this decision. That has been done and the attachment forms part of the Board's Decision and Order.

**Therefore the Board orders that the appeal is allowed in part and Schedule "B1" of OPA 438 for the City of London is amended as reflected in Attachment 1 to this Decision and forms part of the Board's Order.**

Environmental Policies ss. 15.3.3(i), (ii), (iii), ss. 15.3.7, ss. 15.3.7(i), (ii), ss. 15.4.5, ss. 15.4.6(i) to (v):

Shortly prior to the resumption of the hearing, the Board was advised that the appeal associated with the City's Environmental Policies under chapter 15 had been withdrawn. As such, no decision or Order will be given on these policies.

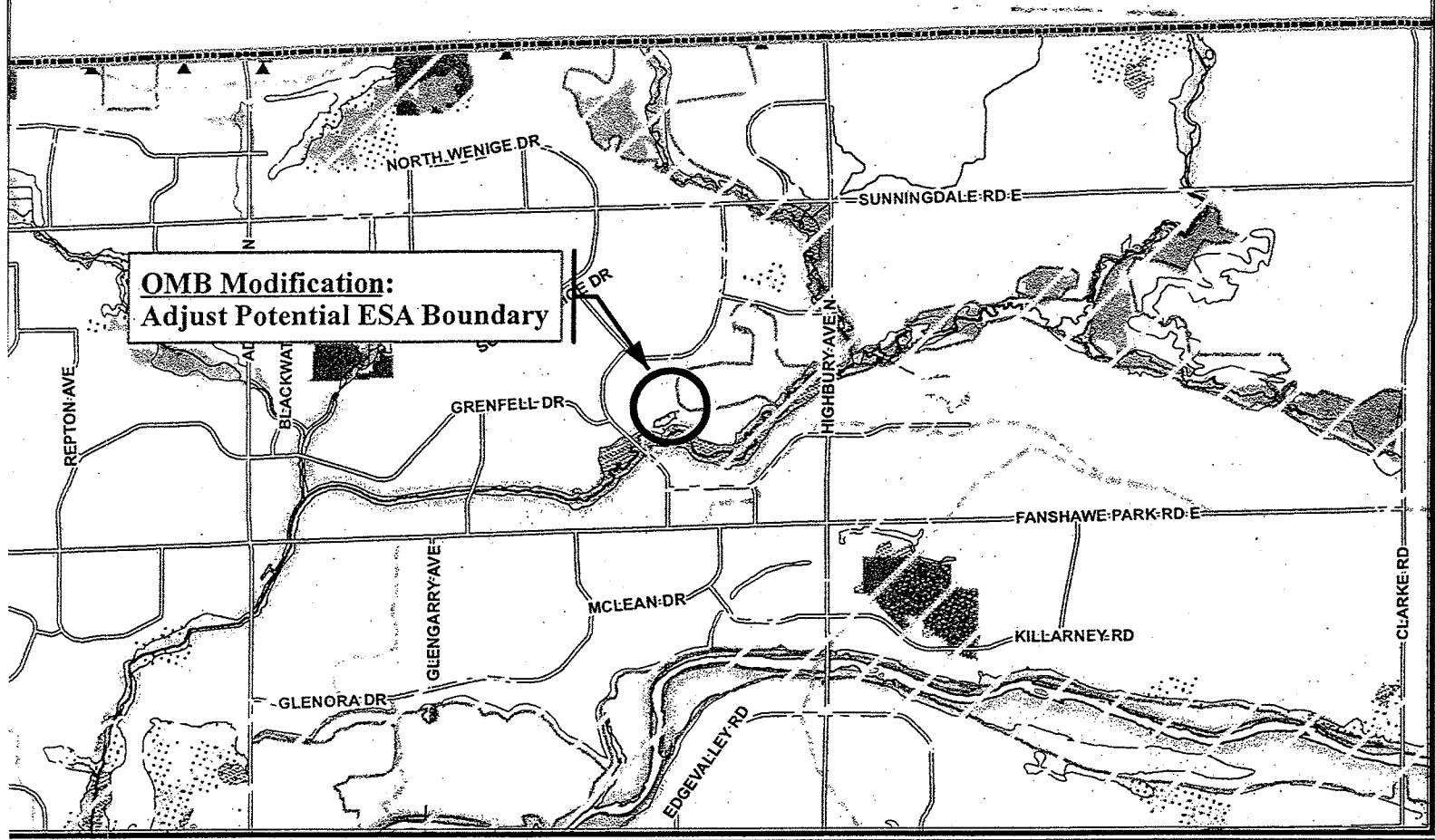
The Board's Orders are given with respect to the matters set out in this Decision.

Those are the Orders of the Board.

"J.V. Zuidema"

J.V. ZUIDEMA  
VICE CHAIR

# ATTACHMENT 1



### NATURAL HERITAGE SYSTEM

- ESAs
- Potential ESAs
- Significant Woodlands
- Woodlands
- Unevaluated Vegetation Patches
- Significant River, Stream, and Ravine Corridors
- Unevaluated Stream and Ravine Corridors
- Provincially Significant Wetlands
- Locally Significant Wetlands
- Unevaluated Wetlands
- Potential Naturalization Areas
- Potential Upland Corridors
- Ground Water Recharge Areas

### NATURAL HAZARDS

- Maximum Hazard Line
- NOTE 1: Hazard Lines shown on this map are approximate. The precise delineation of hazard line mapping available from the Conservation Authority having jurisdiction.
- NOTE 2: Flood Fringe mapping for certain areas of the city is available from the Upper Thames River Conservation Authority.

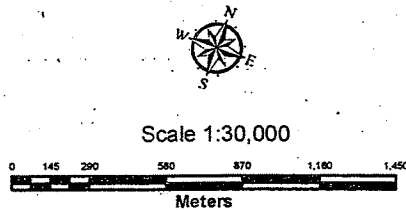
### Base Map Features

- Railways
- Water Courses/Ponds
- Streets (refer to Schedule "C")
- Conservation Authority Boundary
- Subwatershed Boundary
- Big Picture Meta-Cores and Meta-Corridors

*This is an excerpt from the Planning Division's working consolidation of Schedule B1 to the City of London Official Plan, with added notations.*

## SCHEDULE B-1 OFFICIAL PLAN CITY OF LONDON

PREPARED BY: Graphics and Information Services



OMB File No. PL100102  
 OMB Order NO. \_\_\_\_\_  
 PLANNER: GB  
 TECHNICIAN: MB  
 DATE: 2011/02/18