

File Number: 39T-03511/F.Gerrits

<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE MEETING ON MAY 28, 2012</b>
<b>FROM:</b>	<b>GEORGE KOTSIFAS DIRECTOR OF BUILDING CONTROLS AND CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT</b>	<b>SPECIAL PROVISIONS APPLICATION BY: PHYLLIS MATTHEWS WOODHULL SUBDIVISION (39T-03511)</b>

**RECOMMENDATION**

That, on the recommendation of the Senior Planner, Development Services, the following actions be taken with respect to entering into a subdivision agreement between The Corporation of the City of London and Phyllis Matthews for the subdivision of land over Part of Lot C, Gore Concession, (Geographic Township of Delaware), City of London, County of Middlesex, municipally known as 1820 Woodhull Road:

- (a) the attached Subdivision Agreement, (Schedule "B"), between The Corporation of the City of London and Phyllis Matthews for the Woodhull Subdivision (39T-03511) **BE APPROVED**; and
- (b) the Mayor and the City Clerk **BE AUTHORIZED** to execute this Agreement, any amending agreements and all documents required to fulfil its conditions.

**BACKGROUND**

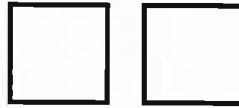
The Woodhull Subdivision is an 13.7 hectare (34 acre) parcel of land located on the east side of Woodhull Road, south of Oxford Street West. The property is designated Rural Settlement in the Official Plan.

The application for a draft plan of subdivision comprising 23 single detached residential lots and an open space block, served by two local roads, was received on September 24, 2003. As a result of an appeal the Ontario Municipal Board granted Draft Approval on December 7<sup>th</sup>, 2006 subject to conditions. A three year extension was subsequently granted by the OMB resulting in the current lapse date of December 7, 2012.

Design studies have been submitted and a peer review has recently been completed for hydrogeological studies prepared by the owner's consultants. Servicing drawings for the subdivision are currently being reviewed.


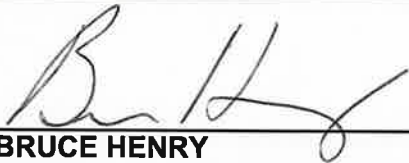
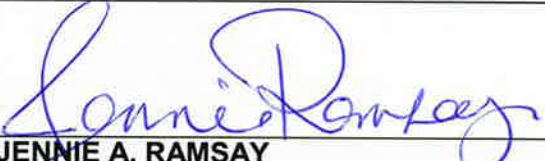

Draft Plan Condition 16 requires the owner to convey the open space and access block to the City, to satisfy the 5% parkland dedication requirement for this subdivision. The open space block, which includes 5.5 hectares of ravine and stream corridor, has been surveyed as Part 2 on Reference Plan 33R-18044. The owner is proposing to dedicate this parcel in advance of final approval for the balance of the subdivision.

Staff are in agreement with acceptance of the open space dedication at this time, provided it is enacted through a formal subdivision agreement with provisions to address the relevant conditions of Draft Approval. The Development Services Division has reviewed these special provisions with the Owner who is in agreement with them. This report has been prepared in consultation with the City's Solicitors Office.

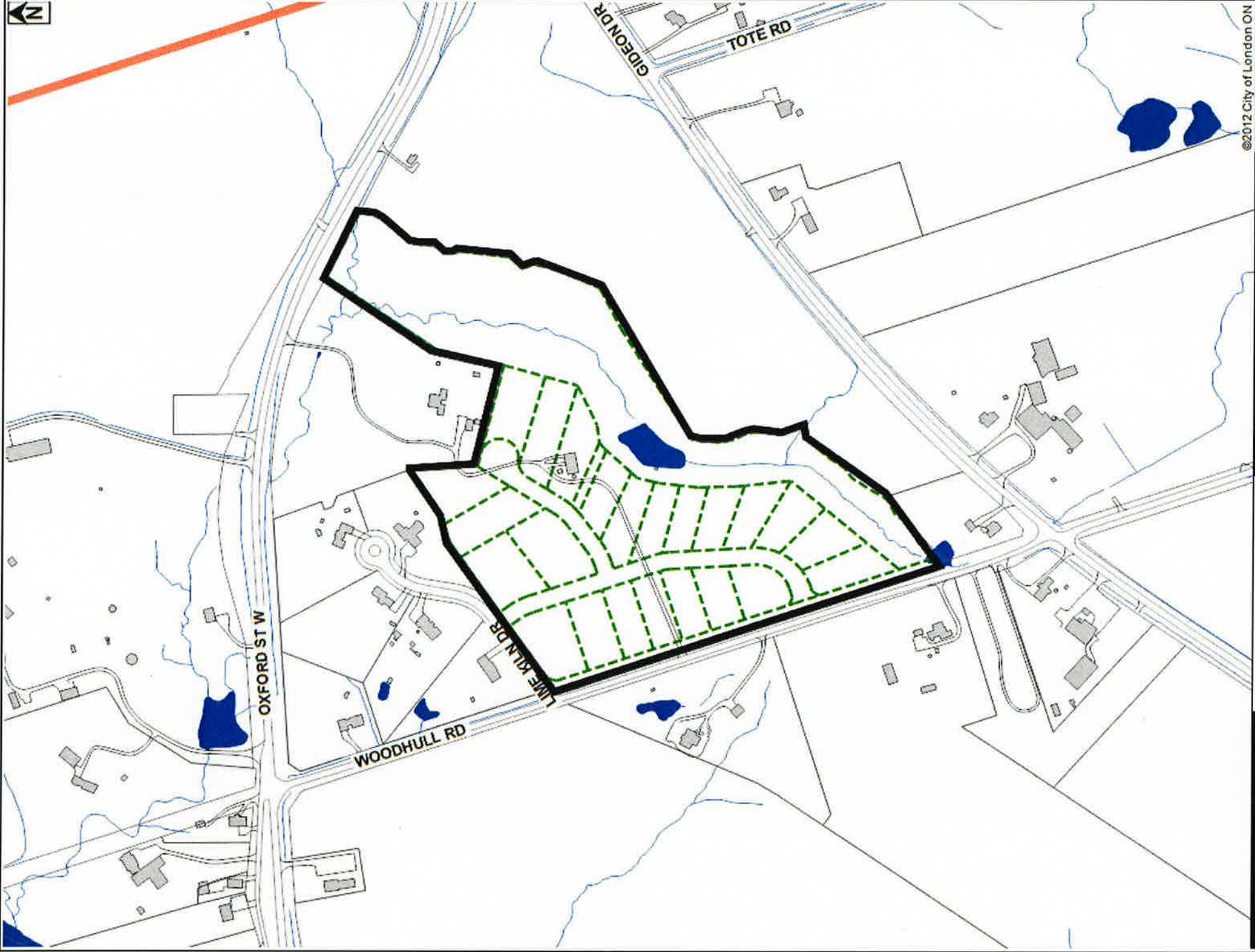


File Number: 39T-03511/F.Gerrits

This subdivision shall be registered in one (1) phase, consisting of 1 parkland block. A location map is attached for the information of the Committee. The reference plan showing the open space block is appended to the agreement.

<b>RECOMMENDED BY:</b>	<b>REVIEWED BY:</b>
	
TERRY GRAWEY SENIOR PLANNER, DEVELOPMENT SERVICES	BRUCE HENRY MANAGER OF DEVELOPMENT PLANNING
<b>CONCURRED BY:</b>	<b>SUBMITTED BY:</b>
	
JENNIE A. RAMSAY MANAGER, DEVELOPMENT SERVICES DEVELOPMENT AND COMPLIANCE DIVISION	GEORGE KOTSIFAS DIRECTOR OF BUILDING CONTROLS AND CHIEF BUILDING OFFICIAL

FG/TG/fg  
Attach.  
May 16, 2012



©2012 City of London ON

### LOCATION MAP

Location: 1820 Woodhull Rd  
 Applicant: Phyllis Matthews

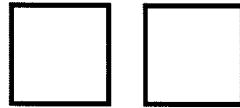
File: 39T-03511  
 Planner: Terry Grawey

Date: 2012-05-16  
 Scale: 1:5000

Corporation of the City of London  
 Prepared By: Planning, Environmental

### LEGEND

-  Subject Site
-  Parks
-  Assessment Parcels
-  Buildings
-  Address Numbers



File Number: 39T-03511/F.Gerrits

THIS AGREEMENT made this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2012.

BETWEEN:

**THE CORPORATION OF THE CITY OF LONDON**  
(hereinafter called the City)

OF THE FIRST PART

AND

**PHYLLIS MATTHEWS**  
(hereinafter called the Owner)

OF THE SECOND PART

WHEREAS the Owner represents that she is seized of those lands situate in the City of London, in the County of Middlesex, more particularly described in **Schedule "A"** hereunto annexed, and desires to obtain the approval of the City of London to the draft plan of subdivision of the said lands now produced and marked **Schedule "B"** to this Agreement, and initialled for the purposes of identification by the signing officers of the parties hereto, and the Approval Authority has requested the City to advise him as to the terms upon which his consent to the registration of the Plan should be given;

AND WHEREAS the said plan of subdivision would be premature, would not be in the public interest, and would not be lands for which municipal services are or would be available unless assurances were given by the Owner that the matters, services, works and things referred to in this Agreement were done in the manner and in the order set out in this Agreement;

AND WHEREAS the Approval Authority has required as a condition precedent to his approval of the said plan of subdivision that the Owner enter into this Agreement with the City;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for other valuable consideration and the sum of Two Dollars (\$2.00) of lawful money of Canada, paid by the City to the Owner at or before the execution of these presents (the receipt whereof is hereby acknowledged) the parties hereto covenant and agree each with the other to comply with, keep, perform and be bound by each and every term, condition and covenant herein set out to the extent that the same are expressed to be respectively binding upon them, and the same shall enure to the benefits of and shall be binding upon their respective heirs, executors, administrators, successors and assigns.

#### 1. DEFINITIONS

The words and phrases defined in this paragraph shall for all purposes of this Agreement and of any subsequent agreement supplemental hereto have the meanings herein specified unless the context expressly or by necessary implication otherwise requires.

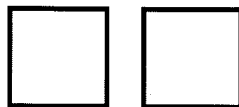
"Approval Authority", shall mean that person, who for the time being, is delegated by Council for the City of London, the Authority to approve Plans of Subdivision.

"City Engineer" or "Engineer" shall mean that person who, for the time being, is employed by the City as its Engineer, its Deputy or Acting Engineer.

"Fully serviced" shall be deemed to include but not limited to those works, services and other requirements as set out in Section 4 of this Agreement.

"Lot" shall include "Block".

"Lot serviced with" shall mean a Lot shown upon the plan to which any specified service in good working condition and, where applicable, completed in conformity with this Agreement



File Number: 39T-03511/F.Gerrits

is immediately contiguous and to which service it is, in the opinion of the Engineer, conveniently and reasonably possible to connect for the purposes of any dwelling or other building which might be erected upon the said Lot.

"Professional Engineer" or "engineer" shall mean a licensed Professional Engineer who, holds a current certificate of authorization issued by the Association of Professional Engineers of Ontario or, is employed by a partnership or corporation authorized by the Association to offer Professional Engineering services to the public.

"This Plan" shall mean the plan of subdivision annexed to this Agreement and marked **Schedule "B"**.

## 2. **INCONTESTABILITY**

The Owner will not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative or other tribunal the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition thereof and this provision may be pleaded by the City in any such action or proceeding as a complete and conclusive estoppel of any denial of such right.

## 3. **LANDS FOR MUNICIPAL PURPOSES**

Upon registration of this Agreement, the Owner shall dedicate Part 2 of Plan 33R-18044 to the City, free and clear of all encumbrances, all at no cost to the City and all to the satisfaction of the City. This land dedication is conveyed to fulfill the required parkland dedication obligations of Draft Approved Plan 39T-03511, the remaining lands of the Owner adjacent to Part 2 of Plan 33R-18044 and any other property located at 1820 Woodhull Road, London, Ontario, and is therefore not subject to or eligible for any cash reimbursement from the City.

It is hereby acknowledged by all parties, that all parkland requirements shall be deemed as being fulfilled through this Agreement and no further parkland dedication will be required for any future development of Draft Approved Plan 39T-03511 under the current zoning. Should a rezoning of the property occur which would increase the allowable density, then the Owner shall be required to make a cash in lieu payment for any units built beyond the permitted density of 35 units per hectare which existed on the date of this agreement.

## 4. **SEVERANCE OF ULTRA VIRES TERMS**

If any term of this Agreement shall be found to be "ultra vires" of the City, or otherwise unlawful, such term shall conclusively be deemed to be severable and the remainder of this Agreement "mutatis mutandis" shall be and remain in full force and effect.

## 5. **PAYMENT OF SOLICITORS' COSTS**

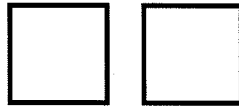
The Owner consents to the registration of this Agreement upon the title of the lands within the Plan, and agrees to pay forthwith, on demand, all solicitors' fees and disbursements incurred by the City in any way arising out of this Agreement, including the preparation thereof and of other deeds, conveyances, registrations and agreements.

## 6. **PAYMENT OF RATES, TAXES AND LEVIES**

The Owner hereby covenants and agrees that any outstanding local improvement charges and/or any other municipal charges on the lands contained in **Schedule "A"** to this Agreement shall be paid, by commutation, and any arrears of taxes on the said lands shall be paid prior to the registration of the plan of subdivision.

## 7. **NOTICE**

Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in writing sent by prepaid registered post, addressed in the case of notice given by the City to: **Phyllis Matthews**, Unit 5, 4690 Colonel Talbot Road, London, Ontario N6P 1S6 and in the case of notice given by the Owner, addressed to: The City Clerk, P.O. 5035, London, Ontario N6A 4L9.



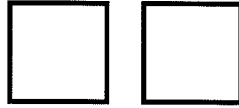
File Number: 39T-03511/F.Gerrits

Notice shall conclusively be deemed to have been given on the day that the same is posted. Wherever in this Agreement the City Engineer is permitted or required to give direction, exercise supervision, or to require work to be done or work to cease in respect of the construction, installation, repair and maintenance of works and services, he shall be deemed to have done so if he communicates such direction, supervision or requirement, orally or in writing, to any person purporting or appearing to be a foreman, superintendent or other servant of the Owner, and if the City Engineer shall have made such communication orally he shall confirm such communication in writing as soon as conveniently possible.

## **8 GENERAL PROVISIONS**

- (a) The parties hereby to authorize, empower and instruct their solicitors to enter into an appropriate escrow arrangement to facilitate the completion of those parts of this Agreement to be completed upon registration of this Agreement and those to be completed thereafter. In default of agreement between the parties' solicitors as to the terms such appropriate escrow arrangement; the Documentation Registration published by the Law Society of Upper Canada on its website shall be employed.
- (b) The division of this Agreement into sections and headings (or paragraphs) herein are for convenience or reference only and are not be used in the interpretation of the provisions related to them.
- (c) The Owner and its successors shall not assign this Agreement in whole or in part without the written consent of the City, which consent shall not be unreasonably withheld.
- (d) Subject to the provisions herein, the Owner shall be subject to all By-laws of the City. In the event of a conflict between the provisions of this Agreement and the provision of any By-law of the City, the provisions of the By-law shall prevail.
- (e) All of the provisions of this Agreement are, and are to be construed as, covenants and agreements as though the words importing such covenants and agreements were used in each separate clause hereof. Should any provision of this Agreement be adjudged unlawful or not enforceable, it shall be considered separate and severable from the agreement and its remaining provisions as though the unlawful or unenforceable provision had never been included.
- (f) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and that the Agreement and the covenants herein contained shall run with and burden the Lands.
- (g) The Owner agrees that Lot and Block grading plans must match adjacent properties including any City owned lands for future open space lands with existing grades along the property line, all to the satisfaction of the City, and at no cost to the City.
- (h) Included with the submission of the engineering services drawings for Draft Approved Plan 39T-03511, the Owner shall include a landscape plan for the planting on the slopes to suit the existing partially vegetated slopes, for approval of the City. The recommendations of the landscape plan shall be designed and constructed with the natural heritage component to permit an ecosystem approach to planning, all to the satisfaction of the City and at no cost to the City.
- (i) The Owner shall submit a detailed erosion and sediment control plan to the Upper Thames River Conservations Authority for their review and acceptance.
- (j) Prior to final approval, the Owner shall be required to obtain all necessary approvals make pursuant to Section 28 of the Conservation Authorities Act to the satisfaction of the UTRCA. Specifically, permits will be required for the storm sewer outlet locations, and for filling and grading activities at the rear of Lots 12 to 17, both inclusive of Draft Approved Plan, 39T-03511.





File Number: 39T-03511/F.Gerrits

**SCHEDULE "A"**

This is Schedule "A" to the Subdivision Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between The Corporation of the City of London and Phyllis Matthews to which it is attached and forms a part.

ALL AND SINGULAR that certain parcel or tract of land and premises, lying, being and situate on Concession Gore, Part Lot C, designated as Part 2 of 33R-18044 in the geographic Township of Delaware, now in the City of London, County of Middlesex.



**LEGEND:**

BEARINGS ARE U.T.M. GRID DERIVED FROM SPECIFIED CONTROL POINTS 028944096 AND 028944097, UTM ZONE 17, MADS3 (ORIGINAL). FOR COMPARISONS, A ROTATION OF 0°10'25" (CLOCKWISE) WAS APPLIED TO BEARINGS FROM P1, P3 and P4 TO ACCOUNT FOR DIFFERENT REFERENCE MERIDIANS. DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.999973281.

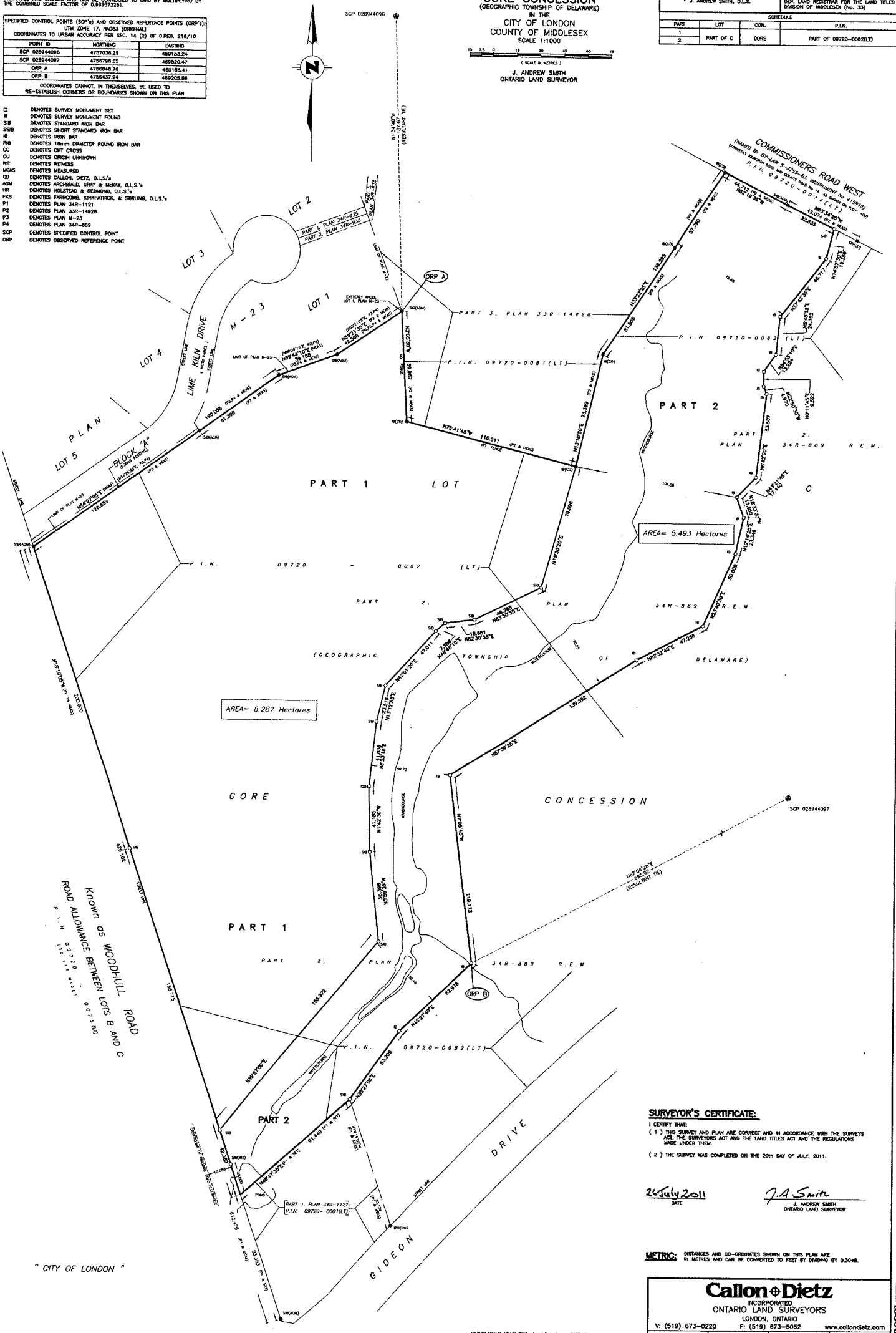
SPECIFIED CONTROL POINTS (SCP'S) AND OBSERVED REFERENCE POINTS (ORP'S):		
COORDINATES TO UTM ZONE 17, MADS3 (ORIGINAL)		
POINT ID	NORTHING	EASTING
SCP 028944096	4797046.26	489153.24
SCP 028944097	4796798.05	489202.47
ORP A	4796848.78	489158.41
ORP B	4796437.24	489205.88

COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN

- DENOTES SURVEY MONUMENT SET
- DENOTES SURVEY MONUMENT FOUND
- ⊕ DENOTES STANDARD IRON BARS
- ⊖ DENOTES SHORT STANDARD IRON BAR
- ⊗ DENOTES IRON BAR
- ⊙ DENOTES 18mm DIAMETER ROUND IRON BAR
- ⊕ DENOTES CUT CROSS
- ⊙ DENOTES ORIGIN UNKNOWN
- ⊕ DENOTES WITNESS
- MEAS DENOTES MEASURED
- CD DENOTES CALLON, DIETZ, O.L.S.'s
- AGM DENOTES ARCHIBALD, GRAY & MACKAY, O.L.S.'s
- HR DENOTES HULSTED & REBANKO, O.L.S.'s
- FVS DENOTES FARMCOMB, KIRKPATRICK, & STURLING, O.L.S.'s
- P1 DENOTES PLAN 348-1121
- P2 DENOTES PLAN 338-14928
- P3 DENOTES PLAN M-23
- P4 DENOTES PLAN 348-889
- SCP DENOTES SPECIFIED CONTROL POINT
- ORP DENOTES OBSERVED REFERENCE POINT

**PLAN OF SURVEY**  
PART OF  
**LOT C**  
**GORE CONCESSION**  
(GEOGRAPHIC TOWNSHIP OF DELAWARE)  
IN THE  
CITY OF LONDON  
COUNTY OF MIDDLESEX  
SCALE 1:1000  
J. ANDREW SMITH  
ONTARIO LAND SURVEYOR

I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT		<b>PLAN 338-10044</b>	
DATE <b>26 July 2011</b>	RECEIVED AND DEPOSITED DATE <b>July 29 2011</b>	H. HENDERSON	
J. A. Smith J. ANDREW SMITH, O.L.S.		DEPT. LAND REGISTRAR FOR THE LAND TITLES DIVISION OF MIDDLESEX (No. 33)	
SCHEDULE			
PART	LOT	COUL.	P.I.N.
1	PART OF C	GORE	PART OF 09720-0082(LT)



**SURVEYOR'S CERTIFICATE:**  
I CERTIFY THAT:  
(1) THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.  
(2) THE SURVEY WAS COMPLETED ON THE 26th DAY OF JULY, 2011.

**26 July 2011**  
DATE  
**J. A. Smith**  
J. ANDREW SMITH  
ONTARIO LAND SURVEYOR

**METRIC:** DISTANCES AND CO-ORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

**Callon & Dietz**  
INCORPORATED  
ONTARIO LAND SURVEYORS  
LONDON, ONTARIO  
V: (519) 873-0220 F: (519) 873-5052 www.callondietz.com  
SURVEY BY: RS DRAWN BY: TB FILE NO: 01-131684 PLAN NO: X-1363

1509000