

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 24, 2014

CASE NO(S): PL111325

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

Appellant: Cytec Canada Inc.
Appellant: Grand Niagara Resort Inc. (2285045 Ontario Inc.)
Subject: Proposed Official Plan Amendment No. 96
Municipality: City of Niagara Falls
OMB Case No.: PL111325
OMB File No.: PL111325

Heard: August 5 and 6, 2014 in Niagara Falls, Ontario

APPEARANCES:

Parties

Counsel

City of Niagara Falls

Ken Beaman

Grand Niagara Resort Inc. (2285045 Ontario Inc.)

Gordon E. Petch

Cytec Canada Inc.

Jeffery Wilker

Regional Municipality of Niagara

Stephen Chisolm

Walker Aggregates Inc.

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON AND
ORDER OF THE BOARD**

BACKGROUND

[1] Official Plan Amendment No. 96 ("OPA 96"), which amends the City of Niagara Falls Official Plan ("OP") to put new environmental policies into effect, was adopted by the City of Niagara Falls ("City") on November 8, 2010.

[2] OPA 96 was approved by the Regional Municipality of Niagara, which is the approving authority, on November 9, 2011.

MATTER BEFORE THE BOARD

[3] 2285045 Ontario Inc., which does business in Niagara Falls as Grand Niagara Resort Inc. ("Grand Niagara"), Cytec Canada Inc. ("Cytec") and Walker Aggregates Inc. ("Walker") appealed the decision approving OPA 96.

CYTEK'S POSITION

[4] Cytec contended that the maps illustrating the proposed new environmental policies show that a portion of Cytec's existing (and future) infrastructure overlaps with areas designated in OPA 96 for environmental protection. It contended that that portion of the maps in OPA 96 has errors. Moreover, as Cytec plans an expansion of its existing plant and the existing infrastructure, those errors put the viability of the proposed expansion into doubt.

GRAND NIAGARA'S POSITION

[5] Grand Niagara contended that a draft plan of subdivision with all the required studies had been approved by the City in 2009. Beyond updating some of the existing studies, it maintained that there is no need to do new studies as would be required by OPA 96.

WALKER AGGREGATES' POSITION

[6] Walker's appeal expressed similar concerns to those of Cytec.

SETTLEMENT PROPOSED

[7] At the commencement of the hearing, counsel jointly informed the Ontario Municipal Board (“Board”) that after lengthy negotiation, settlements between the City and the three appellants (Grand Niagara, Cytec and Walker) had been reached. The Minutes of Settlement between the City and Grand Niagara were entered into the evidence as Exhibit 2. An amendment to OPA 96, which modifies the policies respecting the Cytek lands, was entered into the evidence as Exhibit 3. The Minutes of Settlement between the City and Walker were entered into the evidence as Exhibit 6.

EVIDENCE AND FINDINGS

[8] The Board qualified Glenn Wellings, who was retained by Cytec, to provide opinion evidence on land use planning. Mr. Wellings explained that a site inspection conducted by Colville Consulting Inc. demonstrated that the interpretation of the aerial photos used to identify natural heritage features incorrectly identified the boundaries of the designated natural heritage areas on the Cytec lands. He testified that Exhibits 5a and 5b correct those errors in the mapping and that the designated natural heritage areas are now correctly identified and that the corrected maps (and policies) are consistent with Provincial policy and represent good planning.

[9] The Board accepts Mr. Wellings unopposed evidence and finds that the corrected maps are consistent with Provincial policy; conform to both the local OP and to the official plan of the Regional Municipality of Niagara and represent good planning.

[10] Alex Herlovitch, who is Director of Planning and Development for the City, was qualified by the Board to provide opinion evidence on land use planning.

[11] Mr. Herlovitch testified that the Minutes of Settlement signed by Grand Niagara and the City ask the Board to modify OPA 96 to take into account previous agreements

between the City and Grand Niagara including site specific zoning By-law 2007-162 and the Environmental Impact Study.

[12] On the unopposed evidence of Mr. Herlovitch, the Board finds that the requested modifications are consistent with Provincial policy, conform to the official plans of both the City and the Region and represent good planning.

[13] Mr. Herlovitch also requested that the Board accept the Minutes of Settlement signed in May 2012 by the City and Walker Aggregates Inc. These Minutes were entered into the evidence as Exhibit 6. The Board accepts his unopposed testimony and finds that the policies contained therein represent good planning.

ORDER

[14] The Board orders that the appeals of Cytec and Grand Niagara are allowed in part.

1. With respect to the appeal of 2285045 Ontario Inc. (Grand Niagara):
 - a) The appeal is granted in part such that an article 12.2.1 (a) as set out in Attachment 'A' to the Minutes of Settlement attached to this Order as Appendix 2 shall be added to the City of Niagara Falls Official Plan.
 - b) The appeal is granted in part such that the maps which make up Attachment 'B' to the Minutes of Settlement which form Appendix 2 to this Order shall be Schedules A and A-1 and Appendices III-A through III-E of the City of Niagara Falls Official Plan.

2. With respect to the appeal of Cytec:
 - a) The appeal is granted in part such that a special policy area 68 shall be designated as set out in Appendix 3 to this Order.
 - b) The appeal is granted in part such that the maps which make up Attachment 'B' to the Minutes of Settlement attached to this Order as Appendix 2 shall be Schedules A and A-1 and Appendices III-A through III-E of the City of Niagara Falls Official Plan.
3. With respect to the appeal of Walker Aggregates Inc., the appeal is granted in part such that a sub-section 12.1.49 as set out in Attachment 'A' to the Minutes of Settlement attached to this document as the "Order" shall be added to the City of Niagara Falls Official Plan.
4. The Board orders that City of Niagara Falls Official Plan Amendment No. 96 and, in turn, the City of Niagara Falls Official Plan shall be amended in accordance with subparagraphs 1 to 3 of paragraph 14 as noted above.

"C. Hefferon"

C. HEFFERON
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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ATTACHMENT

PL111325

ONTARIO MUNICIPAL BOARD

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

Appellant: Cytex Canada Inc.
Appellant: Grand Niagara Resort Inc. (2285045 Ontario Inc.)
Appellant: Walker Aggregates Inc.
Subject: Proposed Official Plan Amendment No. 96
Municipality: City of Niagara Falls
OMB Case No.: PL111325
OMB File No.: PL111325

ORDER

The final sitting of the proceedings concerning this matter took place on this 5th day of August, 2014.

Having heard the land-use planning evidence of Professional Land-Use Planners, Alex Herlovitch and Glenn Wellings, the submissions of counsel for the parties, and having reviewed the Exhibits tendered before this Board, this Board orders as follows:

1. With respect to the appeal of Walker Aggregates Inc., the appeal is granted in part such that a sub-section 12.1.49 as set out in Attachment 'A' to the Minutes of Settlement attached to this Order as Appendix 1 shall be added to the City of Niagara Falls Official Plan.
2. With respect to the appeal of 2285045 Ontario Inc. (Grand Niagara):

a) The appeal is granted in part such that an article 12.2.1 (a) as set out in Attachment 'A' to the minutes of settlement attached to this order as Appendix 2 shall be added to the City of Niagara Falls Official Plan.

b) The appeal is granted in part such that the maps which make up Attachment 'B' to the Minutes of Settlement which form Appendix 2 to this order shall be Schedules A and A-1 and Appendices III-A through III-E of the City of Niagara Falls Official Plan.

3. With respect to the appeal of Cytec:

a) The appeal is granted in part such that a special policy area 68 shall be designated as set out in Appendix 3 to this Order.

b) The appeal is granted in part such that the maps which make up Attachment 'B' to the Minutes of Settlement attached to this Order as Appendix 2 shall be Schedules A and A-1 and Appendices III-A through III-E of the City of Niagara Falls Official Plan.

4. The Board orders that City of Niagara Falls Official Plan Amendment No. 96 and, in turn, the City of Niagara Falls Official Plan shall be amended in accordance with paragraphs 1 to 3 of this Order.

APPENDIX I: Minutes of Settlement

OMB Case No. PL111325

MINUTES OF SETTLEMENT dated this ^{May - KB} 14 of ~~April~~ 2012

BETWEEN:

WALKER AGGREGATES INC.
(hereinafter referred to as "WALKER")

- and -

THE CORPORATION OF THE CITY OF NIAGARA FALLS
(hereinafter referred to as the "CITY")

- and -

THE REGIONAL MUNICIPALITY OF NIAGARA
(hereinafter referred to as the "REGION")

WHEREAS Walker Aggregates Inc. has appealed to the Ontario Municipal Board under Section 17(36) of the Planning Act from a decision of the Regional Municipality of Niagara to approve Amendment No. 96 to the City of Niagara Falls Official Plan;

WHEREAS the City and the Region have an interest to resolve the concerns of Walker without compromising the purpose and intent of Amendment No. 96;

WHEREAS the parties have collaborated on developing a supplementary policy that aims to resolve the concerns of Walker without compromising the purpose and intent of Amendment No. 96;

WHEREAS the undersigned signatories for each of the parties have been duly authorized to execute these Minutes of Settlement;

NOW THEREFORE these Minutes of Settlement confirm the positions and agreement of the undersigned parties, as follows:

1. The undersigned parties agree that the above recitals are true.
2. The undersigned parties agree to request the Ontario Municipal Board to modify Official Plan Amendment No. 96 in accordance with Attachment 'A' to these Minutes of Settlement.

3. The undersigned parties agree that Official Plan Amendment No. 96, as proposed to be modified in accordance with Attachment 'A' to these Minutes of Settlement, conforms with the Provincial Policy Statement 2005, the Growth Plan for the Greater Golden Horseshoe, the Greenbelt Plan and the Regional Policy Plan, as amended, and represents good planning.
4. The undersigned parties agree to assist the Ontario Municipal Board with such evidence and submissions as necessary, consistent with these positions.
5. None of the undersigned parties will seek or support any order of costs by the OMB against any of the other undersigned parties in these proceedings.

Dated at the City of Thorold, Niagara Region, this 11 day of ^{May - KB} April, 2012

Walker Aggregates Inc.
Per:




Corporation of the City of Niagara Falls

Per: K.L. Beaman

K.L. Beaman
City Solicitor

Regional Municipality of Niagara

Per:



Patrick Robson
Commissioner,
Integrated Community Planning

Attachment 'A' to the Minutes of Settlement

Proposed New Policy Official Plan Amendment No. 96

12.1.49 A new mineral aggregate operation or an expansion to an existing operation that is located within any area identified as a Bedrock Resource Area on Appendix 4 to this Plan may be permitted through applications to amend this Plan and/or the Zoning By-law within NPCA regulated wetlands greater than 2 ha in size, floodways and erosion hazard areas and environmentally sensitive areas designated EPA, subject to the following:

- a) Completion of an Environmental Impact Study (EIS) as set out in policies 12.1.17 to 12.1.21 inclusive, to the satisfaction of Niagara Region in consultation with the City of Niagara Falls and the Niagara Peninsula Conservation Authority;*
- b) Completion of a hydrogeological study in accordance with policy 12.1.27;*
- c) The EIS is to include the considerations set out in policy 12.2.30 a) and b);*
- d) The requirements of the Niagara Peninsula Conservation Authority; and*
- e) Other applicable policies of this Plan including the requirements of Part 2 Section 10.*

APPENDIX 2: Minutes of Settlement

OMB Case No. PL111325

MINUTES OF SETTLEMENT dated this 5th of August, 2014

BETWEEN

2285045 ONTARIO INC.

(hereinafter referred to as "Grand Niagara")

-and-

THE CORPORATION OF THE CITY OF NIAGARA FALLS

(hereinafter referred to as the "City")

-and-

THE REGIONAL MUNICIPALITY OF NIAGARA

(hereinafter referred to as the "Region")

WHEREAS Grand Niagara has appealed to the Ontario Municipal Board under Section 17(36) of the Planning Act from a decision of the Regional Municipality of Niagara to approve Amendment No. 96 to the City of Niagara Falls Official Plan;

WHEREAS the City and the Region have an interest to resolve the concerns of Grand Niagara without compromising the purpose and intent of Amendment No. 96;

WHEREAS the parties have collaborated on developing a supplementary policy and revised schedules and appendices that aims to resolve the concerns of Grand Niagara without compromising the purpose and intent of Amendment No. 96;

WHEREAS the lands of Grand Niagara are subject to Zoning By-law 2007-162 and to Section 13.34 of the City's Official Plan which set out the boundaries of the EPA lands and the OS lands for resort commercial, vacation villas, residential, Golf Course and Driving Range uses and related uses;

WHEREAS the boundaries and setbacks of the EPA lands to be protected and those OS lands to be developed and the appropriate regulations established were supported by an Environmental Impact Study;



WHEREAS the Environmental Impact Study was accepted and approved by the Niagara Peninsula Conservation Authority;

WHEREAS the lands are appropriately zoned to implement section 13.34 and that such zoning provides for the requirement of necessary studies to lift the holding provisions as part of any subdivision, condominium or site plan application;

WHEREAS the undersigned signatories for each of the parties have been duly authorized to execute these Minutes of Settlement;

NOW THEREFORE these Minutes of Settlement confirm the positions and agreement of the undersigned parties, as follows:

1. The undersigned parties agree that the recitals are true.
2. The land use designation and site specific policies contained in section 13.34 implemented by Zoning By-law 2007-162 constitute a planned approach through an accepted Environmental Impact Study for the future development of the lands as proposed in section 13.34 and through the incorporation of the approved section 13.34 and the associated modified mapping as part of Official Plan Amendment No. 96, the intent of the Official Plan is being met and because the implementing zoning by-law provides that certain tests and studies be satisfactorily completed as part of a future application, under the *Planning Act* prior to development, the public interests will be served.
3. The undersigned parties agree to request the Ontario Municipal Board to modify Official Plan Amendment No. 96 in accordance with Attachments 'A' and 'B' to these Minutes of Settlement.
4. The undersigned parties agree that Official Plan Amendment No. 96, as proposed to be modified in accordance with Attachments 'A' and 'B' to these Minutes of Settlement, conforms with the Provincial Policy Statement 2014, the Growth Plan for the Greater Golden Horseshoe, the Regional Official Plan, as amended, and represents good planning.
5. The undersigned parties agree to assist the Ontario Municipal Board with such evidence and submissions as necessary, consistent with these positions.
6. None of the undersigned parties will seek or support any order of costs by the Ontario Municipal Board against any of the other undersigned parties in these proceedings.



Dated at the City of Niagara Falls, Niagara Region, this 5th day of August, 2014.

2285045 Ontario Inc.

Per:



Frank Bascasara Member Co-Owner Grand Niagara
The Corporation of the City of Niagara Falls

Per:



Regional Municipality of Niagara

Per:



(A) Director of Planning Services



Attachment 'A' to the Minutes of Settlement

Proposed New Policy

Official Plan Amendment No. 96

12.2.1 (a) The policies of sections 12.1 and 12.2 shall not apply to the development of those lands subject to the provisions of Section 13.34 of this Plan.



Attachment 'B' to the Minutes of Settlement

Revised Maps 1 through 7 (inclusive)

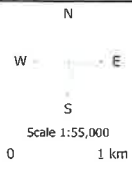
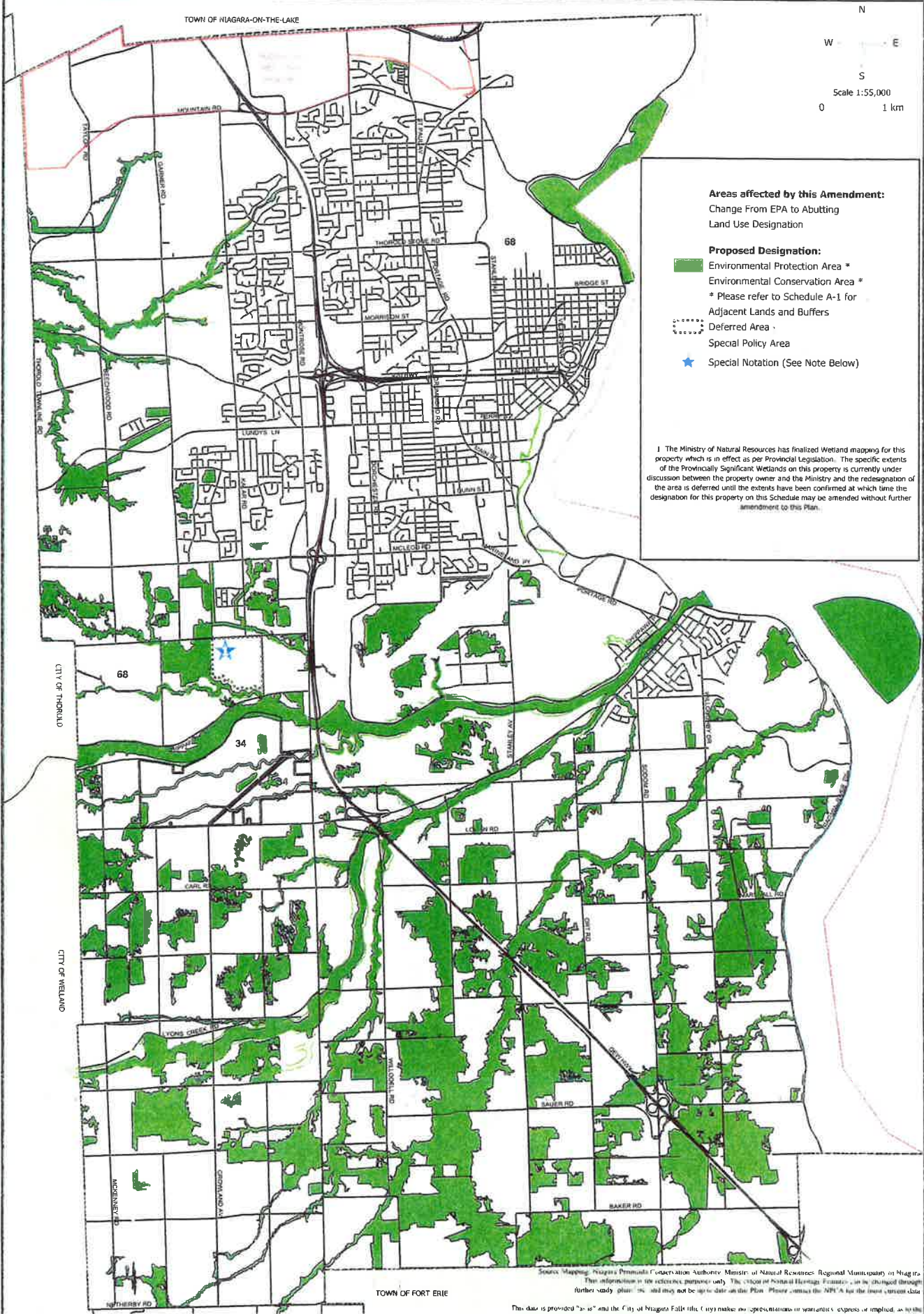
Official Plan Amendment No. 96

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be a first name followed by a last name, though the specific characters are not clearly legible.

MAP 1 TO AMENDMENT NO. 96

SCHEDULE A TO THE OFFICIAL PLAN

Environmental Protection Area and Environmental Conservation Area



Areas affected by this Amendment:
Change From EPA to Abutting Land Use Designation

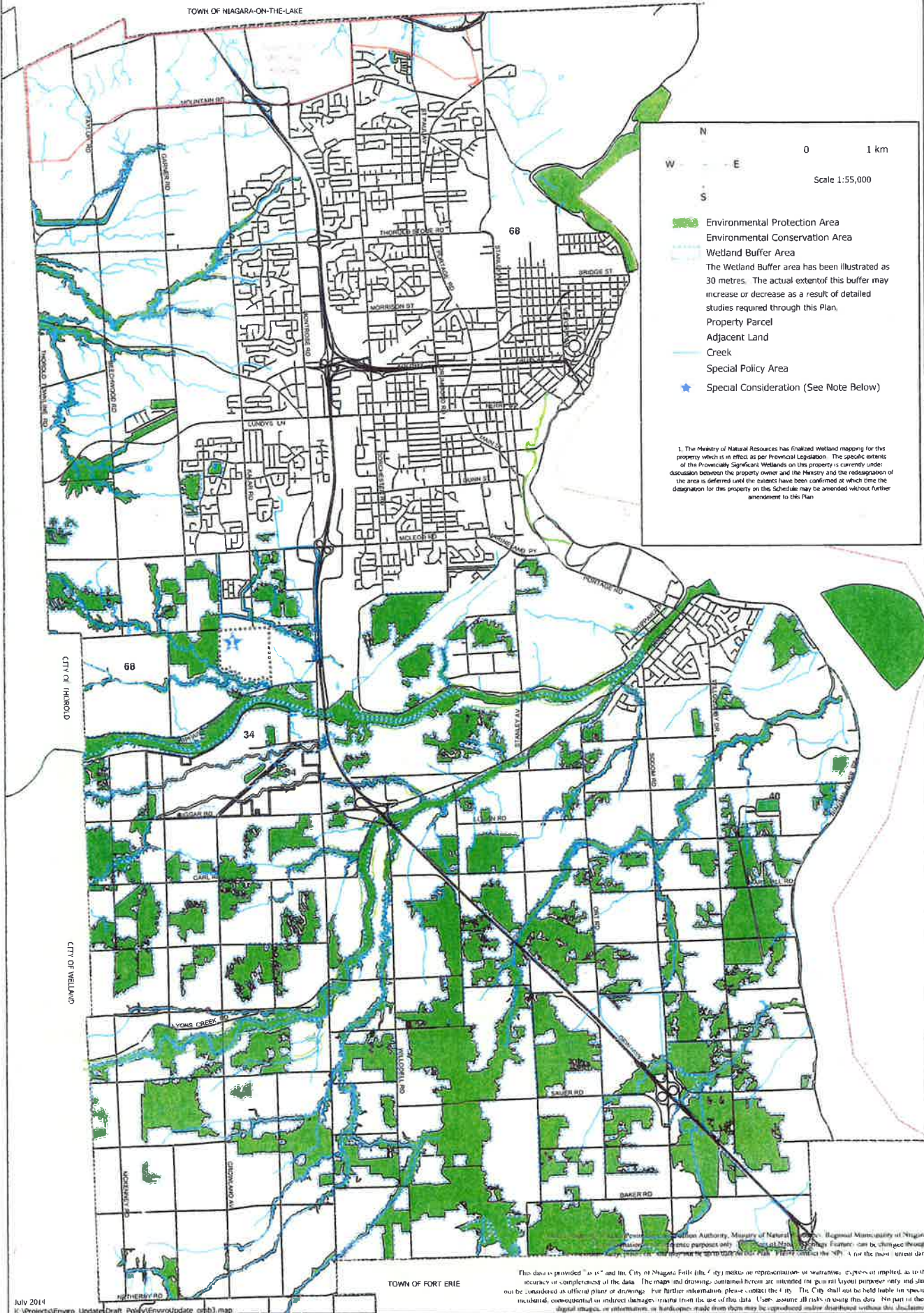
- Proposed Designation:**
- Environmental Protection Area *
 - Environmental Conservation Area *
 - * Please refer to Schedule A-1 for Adjacent Lands and Buffers
 - Deferred Area
 - Special Policy Area
 - Special Notation (See Note Below)

1 The Ministry of Natural Resources has finalized Wetland mapping for this property which is in effect as per Provincial Legislation. The specific extents of the Provincially Significant Wetlands on this property is currently under discussion between the property owner and the Ministry and the redesignation of the area is deferred until the extents have been confirmed at which time the designation for this property on this Schedule may be amended without further amendment to this Plan.

MAP 2 TO AMENDMENT NO. 96

SCHEDULE A-1 TO THE OFFICIAL PLAN

Natural Heritage Features and Adjacent Lands

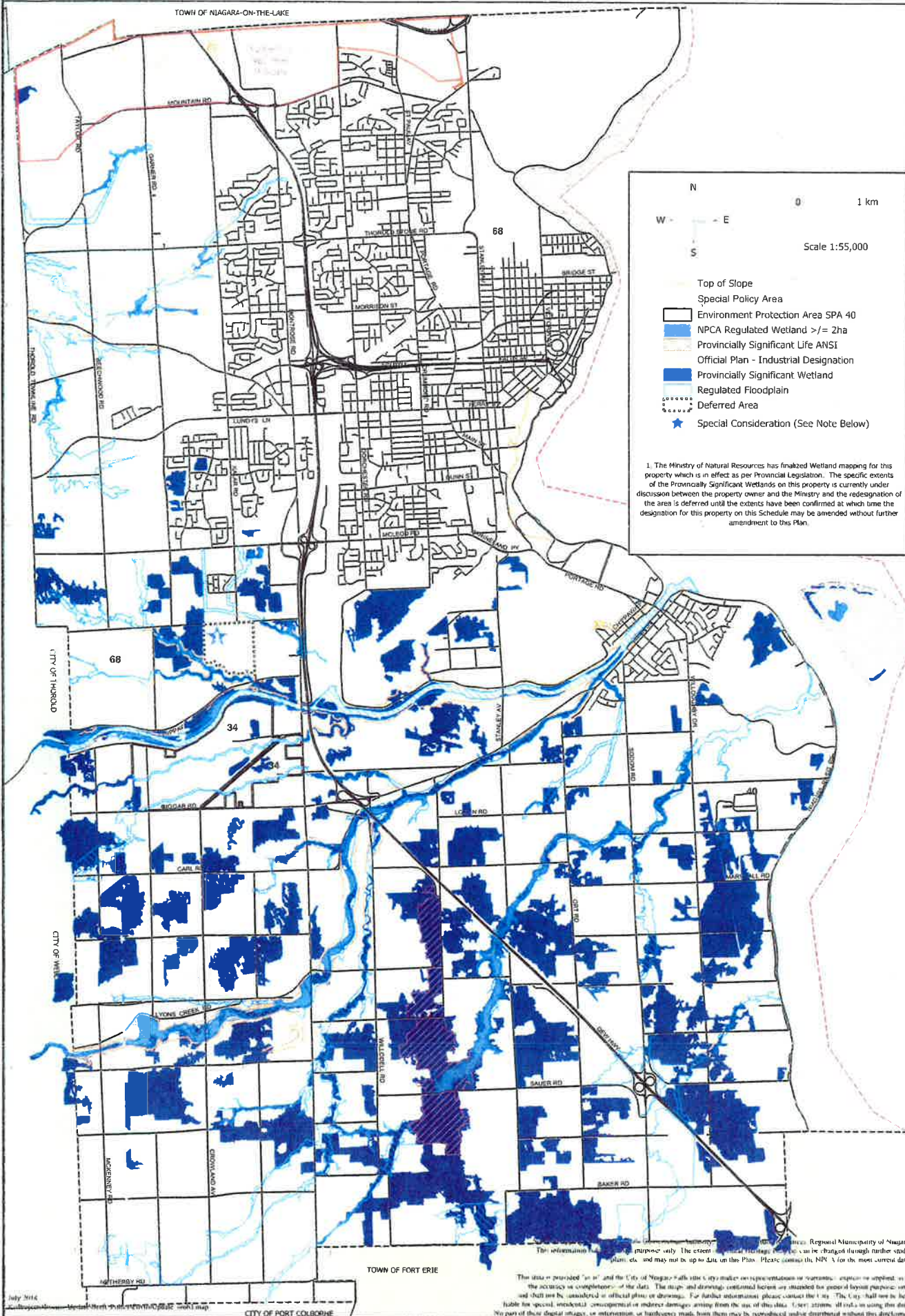




Map 3 to Amendment No. 96

Appendix III-A

Inventory of Natural Heritage Features - Map 1



N
W — E
S

0 1 km

Scale 1:55,000

- Top of Slope
- Special Policy Area
- Environment Protection Area SPA 40
- NPCA Regulated Wetland \geq 2ha
- Provincially Significant Life ANSI
- Official Plan - Industrial Designation
- Provincially Significant Wetland
- Regulated Floodplain
- Deferred Area
- ★ Special Consideration (See Note Below)

1. The Ministry of Natural Resources has finalized Wetland mapping for this property which is in effect as per Provincial Legislation. The specific extents of the Provincially Significant Wetlands on this property is currently under discussion between the property owner and the Ministry and the redesignation of the area is deferred until the extents have been confirmed at which time the designation for this property on this Schedule may be amended without further amendment to this Plan.

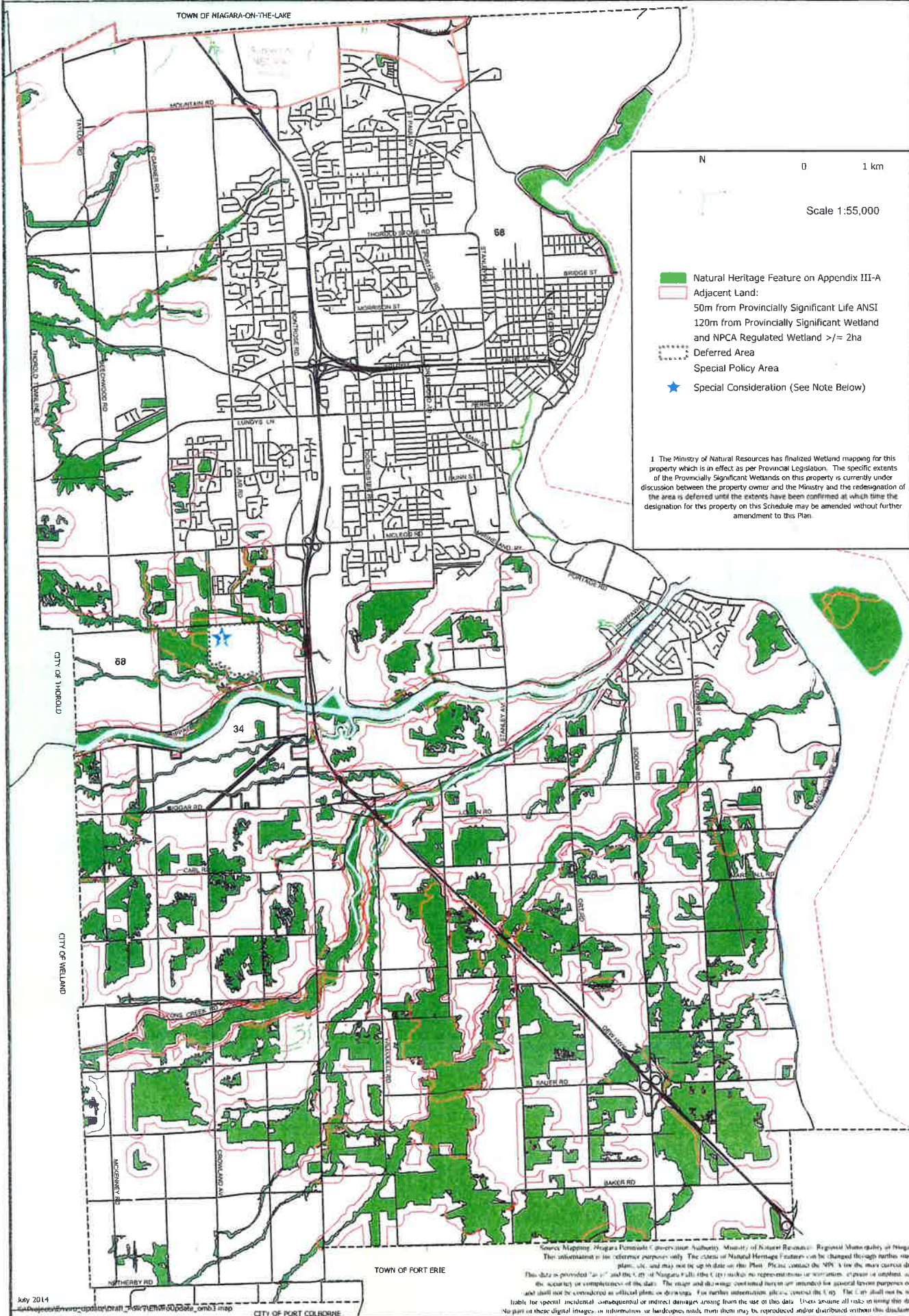
The information on this map is for informational purposes only. The extent of natural heritage features can be changed through further study, planning, and may not be up to date on the Plan. Please consult the NRC for the most current data.

This data is provided "as is" and the City of Niagara Falls and its staff makes no representation or warranty, express or implied, as to the accuracy or completeness of the data. The maps and drawings contained herein are intended for general layout purposes only and shall not be considered as official plans or drawings. For further information please contact the City. The City shall not be held liable for special, incidental, consequential or indirect damages arising from the use of this data. Users assume all risks in using this data. No part of these digital images, or information, or hardcopy made from them may be reproduced or distributed without the disclaimer.

Map 4 to Amendment No. 96

Appendix III-B

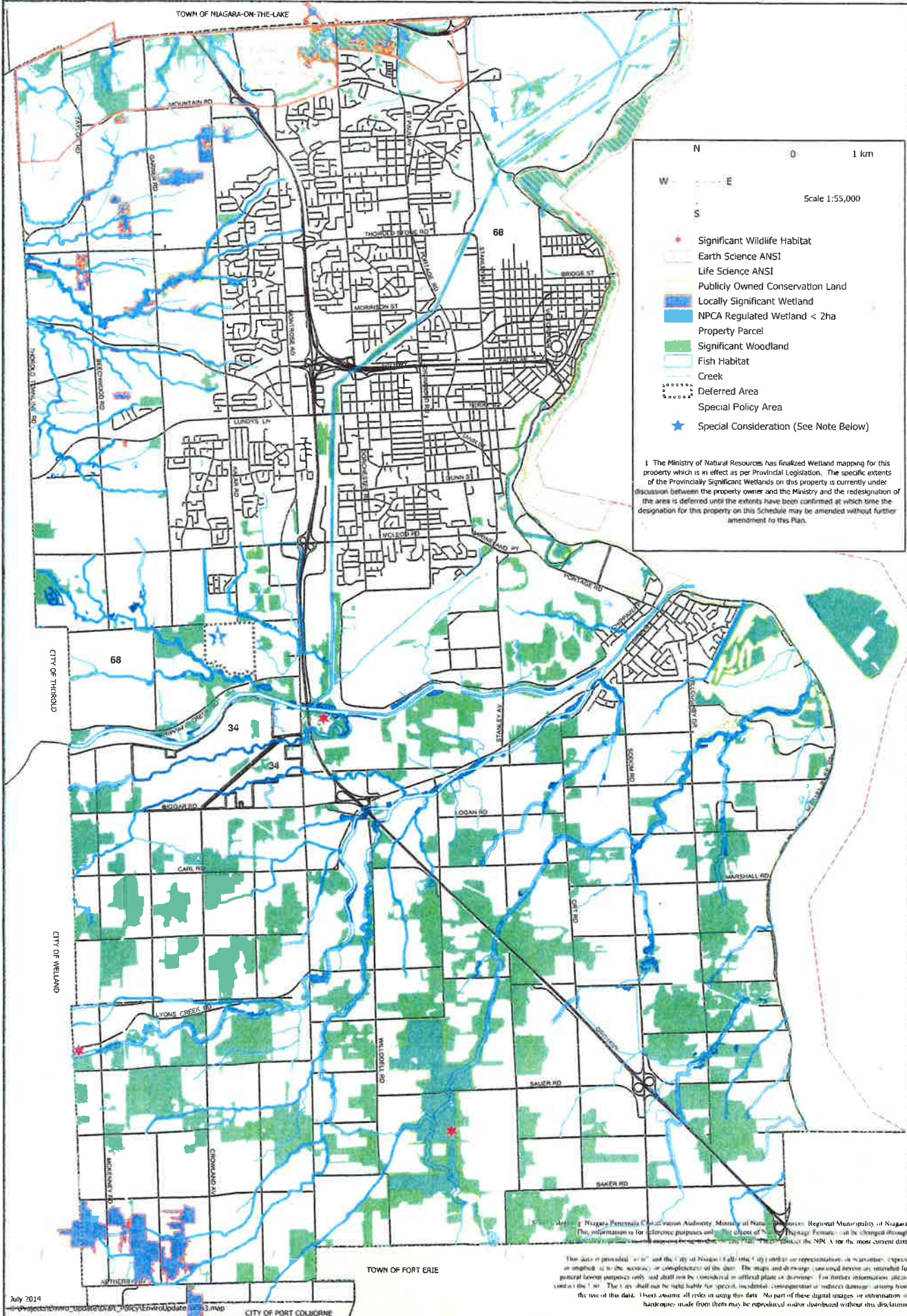
Adjacent Lands to the Inventory of Natural Heritage Features on Appendix III-A



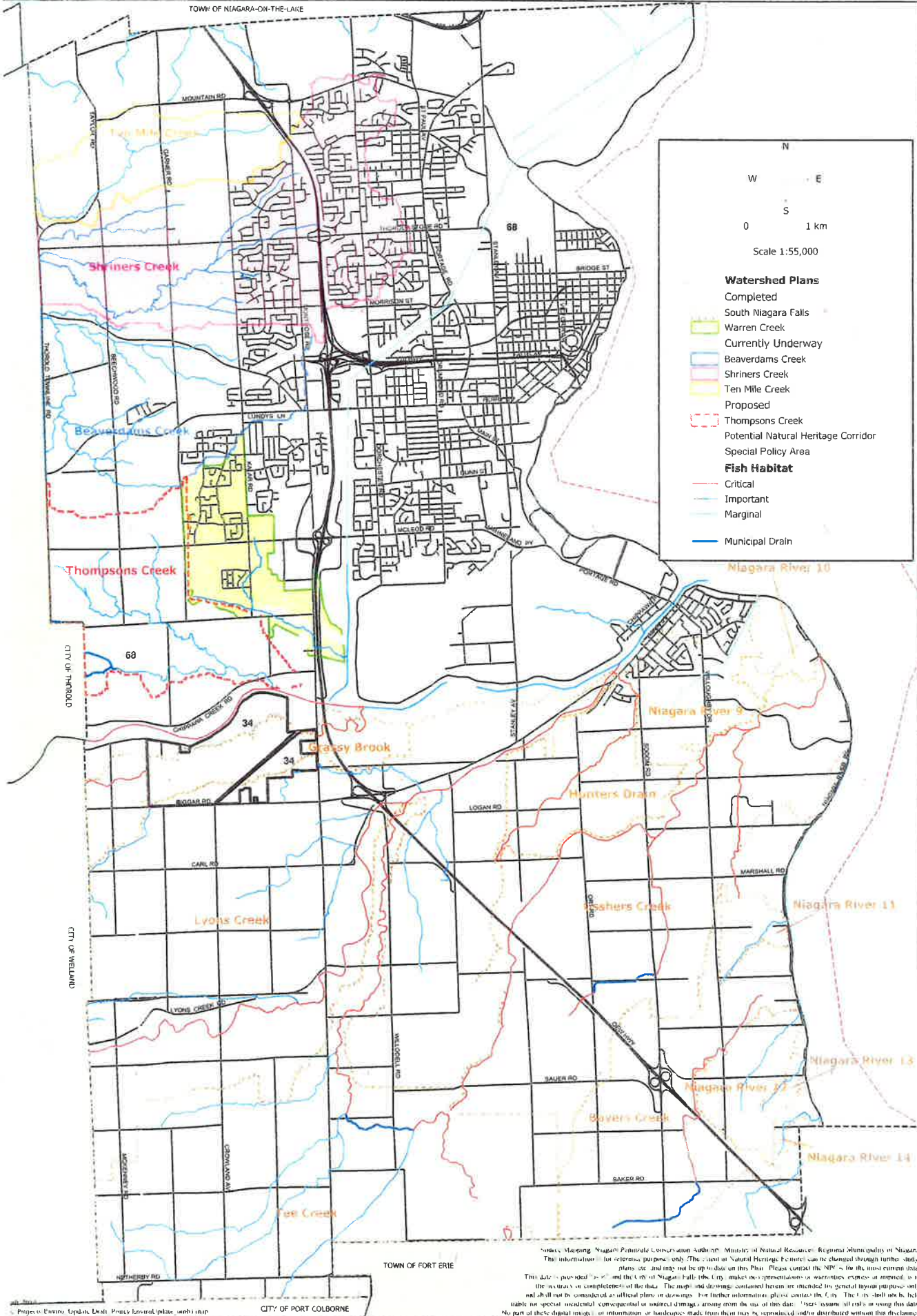


Map 5 to Amendment No. 96 Appendix III-C

Inventory of Natural Heritage Features - Map 2



Watershed Plans and Potential Corridors



Source: Mapping: Niagara Peninsula Conservation Authority; Ministry of Natural Resources; Regional Municipality of Niagara. This information is for reference purposes only. The content of Natural Heritage Features can be changed through further study, plans, etc. and may not be up to date on this Plan. Please contact the NPA or the NRC in the most current data. This data is provided "as is" and the City of Niagara Falls (the City) makes no representations or warranties, express or implied, as to the accuracy or completeness of the data. The maps and drawings contained herein are intended for general informational purposes only and shall not be considered as official plans or drawings. For further information, please contact the City. The City shall not be held liable for special, incidental, consequential or indirect damages arising from the use of this data. Users assume all risks in using this data. No part of these digital images or information or hardcopies made from them may be reproduced and/or distributed without this disclaimer.

APPENDIX 3

SPECIAL POLICY AREA "68"

Special Policy Area "68" the policies of Part 2, Section 12 shall not be interpreted or applied in any manner that would interfere with the legal rights associated with the existing buildings and improvements on and to the Cytex lands (as identified on Schedule A and Schedule A-1) as of the date these policies come into effect. Further, the policies of Part 2, Section 12 shall not be interpreted or applied in any manner as imposing the requirement for the carrying out of an Environmental Impact Statement for any repair, maintenance, renovation and/or replacement in kind of those existing buildings and improvements.