

THE CORPORATION OF THE CITY OF WINDSOR
Office of the City Solicitor
Planning Department

REPORT TO THE CITY OF WINDSOR PLANNING ADVISORY COMMITTEE

DATE OF REPORT: August 19, 2010

SUBJECT: Official Plan Amendment – Provincially Significant Wetlands.

1. RECOMMENDATION

- I. That Chapters 5 and 6 of the Official Plan BE AMENDED to include policies intended to protect and enhance Provincially Significant Wetlands (see Appendix A).
- II. That Schedule D: Land Use of Volume 1 of the Official Plan BE AMENDED to designate the lands that have been identified as Provincially Significant Wetlands as Natural Heritage.
- III. That Schedule B: Greenway System and Schedule C: Development Constraint Areas BE AMENDED to delineate the newly designated Natural Heritage areas.
- IV. That Volume 1 of the Official Plan BE AMENDED to add Schedule C-2: Provincial Significant Natural Features that identifies Provincially Significant Wetlands and Habitat as a development constraint (see Appendix B).
- V. That section 5.3 Background of the Spring Garden Secondary Plan BE AMENDED to make reference to Provincially Significant Wetlands and Volume I of the Official Plan (see Appendix C).
- VI. That the City Planner BE DIRECTED to review the impact of the recently identified Provincial Significant Natural Features on the Spring Garden Secondary Plan.

2. BACKGROUND

The purpose of the proposed Official Plan Amendment is to include policies that protect and enhance the provincially significant wetlands and provincially significant coastal wetlands, as directed by the Province.

In a letter dated April 29, 2009, the Ontario Ministry of Natural Resources (MNR) informed the City that two areas within Windsor had been found to contain provincially significant wetlands: the Ojibway Wetland Complex and the Windsor Airport Swamps.

These areas represent the first provincially significant wetlands (PSW) to be identified within the City of Windsor boundary. In November 2009, the Planning Department communicated to City Council the process needed to amend the Official Plan to identify, protect and enhance these areas.

In addition to the wetlands identified in the April 2009 letter, a part of the Detroit Marsh Wetland Complex lies within Windsor. This complex has been identified as a provincially significant coastal wetland (PSCW) since 1985, and stretches south along the Detroit River shore and into the Town of LaSalle.

2.1 What are Wetlands?

The Provincial Policy Statement (PPS) indicates that wetlands are characterized by seasonally or permanently water covered land and extremely moist soils that can support water-tolerant and hydrophytic plants. The province excludes temporarily flooded or agricultural land from this definition.

Wetland ecosystems, such as swamps, marshes, bogs, and fens, are among the most productive and biodiverse on the planet. They are critical habitats for both terrestrial and aquatic species, including one third of all at risk species (Natural Resources Canada, 2009). The Ojibway Wetland Complex contains 45 provincially significant plant species, and is a traditional migration or feeding ground for various threatened and endangered species as identified by the MNR.

The Province of Ontario uses the Ontario Wetland Evaluation System to evaluate a wetland based on four components: biological, social, hydrological, and special features (e.g. rarity of species). A wetland is considered to be provincially significant if it scores 600 points or more overall, or 200 points in either the biological or special features components. The Ojibway Wetland Complex scored 749 points overall, and 250 points in the special features component.

2.2 Windsor's Provincially Significant Wetlands

Mapping calculations show that Windsor's provincially significant wetlands cover a total of 169.48 hectares of land. Approximately 82% of these wetland areas are currently owned by the City of Windsor or the Province of Ontario. Approximately 64 percent of the total wetland area is within areas currently designated as Natural Heritage in the Official Plan. The remaining wetland area, 32.5 percent of the total (or approximately 60 ha), is currently not provided the level of protection that the Natural Heritage designation does, and that the Province requires.

2.3 Provincial Policy Direction

2.3.1 Provincial Policy Statement 2005 (PPS)

The Provincial Policy Statement (PPS) is issued under the authority of Section 3 of the *Planning Act*. It provides direction on matters of provincial interest related to land use planning and development, and promotes the provincial "policy-led" planning system.

The Provincial Policy Statement, 2005 came into effect on March 1, 2005. The Planning Act requires that all decisions affecting land use planning matters "shall be consistent with" the Provincial Policy Statement.

The Province has developed provincial policy for PSWs and PSCWs that provides them with a heightened level of protection in recognition of their importance to the environment and as habitat to numerous species of flora and fauna. Section 2.1: Natural Heritage of the Provincial Policy Statement provides policy guidance about restrictions on development and site alteration, as well as development or site alteration on properties that are adjacent to provincially significant "Natural Heritage" features.

Specifically, the Natural Heritage policies in the PPS that form the basis for the proposed Official Plan Amendment are summarized below:

- Development and site alteration is prohibited within significant habitats for endangered and threatened species, PSWs in Ecoregion 7E (which Windsor is a part of), and PSCWs (policy 2.1.3, PPS).
- Development and site alteration within significant wetlands, significant woodlands, significant valleylands, significant wildlife habitat, and areas of natural and scientific interest (ANSI) is limited to those that will not negatively affect the natural features or their ecological functions (policy 2.1.4, PPS).
- Development and site alteration within lands adjacent to the Natural Heritage features/areas identified in policies 2.1.3 and 2.1.4 of the PPS is prohibited unless an environmental assessment is submitted and demonstrates that the undertaking would have no negative impact on the ecological functions and natural features.

2.3.2 Natural Heritage Reference Manual

The Natural Heritage Reference Manual (NHRM), published this March by the Province of Ontario, provides guidance on interpreting section 2.1 of the 2005 PPS and gives suggestions on how to protect Natural Heritage features. The Natural Heritage Reference Manual recommends a 120 metre distance around the PSWs as a method of determining adjacency to a PSW.

3. DISCUSSION

3.1 Natural Heritage Land Use Designation

The intent of the "Natural Heritage" land use designation is to provide for the protection and conservation of Windsor's most environmentally significant and sensitive natural areas. As such, it is the recommendation of this report that PSWs and PSCWs be addressed through the Natural Heritage land use designation because this designation can provide the most protection for PSWs/PSCWs. The Natural Heritage designation is the most restrictive designation, allowing a range of very limited environmentally friendly

uses. The only permitted uses are nature reserves and wildland management. These restrictions are suitable for protecting such significant wetlands.

Over half of the total PSW/PSCW area is already designated Natural Heritage. The proposed amendment will expand the Natural Heritage boundaries to include the remaining Provincially Significant Wetlands (+/- 60 ha of additional land) resulting in changes to Schedule D: Land Use of the Official Plan.

3.2 Provincially Significant Natural Features

Policy 2.1.3 in the PPS prohibits development and site alteration within PSWs, PSCWs and significant habitats of endangered species and threatened species. All other Natural Heritage designated lands may be developed with a very limited range of uses if it has been demonstrated that there will be no negative impact on the features or their ecological functions (policy 2.1.4, PPS).

In the proposed OPA, the natural features identified in policy 2.1.3 of the PPS will be referred to as “Provincially Significant Natural Features”. The purpose of this term is to address all of the “Provincially Significant” features collectively, including wetlands and habitat for endangered and threatened species.

3.3 Additional Proposed Schedule Changes

Lands that are designated “Natural Heritage” by Schedule D: Land Use are also depicted on Schedules B and C because they represent part of the Greenway System that is identified by Schedule B and are considered a development constraint for the purposes of Schedule C: Development Constraints. Therefore, these schedules will be amended to reflect the newly designated Natural Heritage areas.

The proposed amendment will also add a new constraint schedule to the Plan— Schedule C-2: Provincially Significant Natural Features (see Appendix B). Only the natural features considered as “Provincially Significant” (i.e. PSWs, PSCWs, and significant habitats of endangered species and threatened species) will be depicted on this schedule. The purpose of C-2 is to inform the reader of where the “no development” policies will apply. Consequently, all references to schedules depicting Natural Heritage will also be updated to include reference to Schedule C-2.

3.4 Proposed Policy Changes

The following section describes each of the Official Plan policy changes and provides the rationale for each change proposed.

3.4.1 Development and site alteration of Natural Heritage including PSWs/PSCWs

The proposed OPA includes two new policies, 6.8.2.2 and 6.8.3.2. The purpose of these policies is to address the restrictions on development and site alteration as stated by policies 2.1.3 and 2.1.4 in the PPS. Currently, the Plan limits the types of uses permitted in Natural Heritage lands but it does not have any policies that explicitly state the restrictions on development or site alteration.

3.4.2 *Adjacent land is 120 metres*

The purpose of introducing policy 6.8.3.3 into the Plan is to clarify where around the PSW/PSCW an Environmental Evaluation Report (EER) is required for development approval.

This report recommends requiring an EER for lands within 120 meters of a Provincially Significant Natural Feature (including PSWs/PSCWs). Development and site alteration will not be permitted on lands within 120 meters unless an EER evaluates the ecological functions of the adjacent land and concludes that the proposed undertaking will have no negative impact on its feature or on its ecological functions. This recommendation is consistent with the PPS and the Natural Heritage Reference Manual.

It should be noted that study beyond 120 meters may be necessary to properly protect the natural features. The impacts of development can reach beyond 120 meters depending on the nature of the development and the characteristics of the natural features (e.g. water source). Policy 6.8.2.3 (formerly 6.8.2.4) will provide the flexibility to request an EER for proposed undertakings beyond 120 meters of a Provincially Significant Natural Feature.

3.4.3 *Native buffer*

Policy 2.1.2 of the PPS expresses the need for the protection, maintenance, and connectivity of Natural Heritage features and areas:

“The diversity and connectivity of natural features in an area, and the long term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.”

Buffers can achieve the goals expressed in 2.1.2 by performing several functions, including protecting water quality, maintaining wildlife habitat and species diversity, and reducing human impact (Castells et al, 1994). For this reason, the proposed policy 6.8.2.6 will allow Council to request that a buffer be maintained around the environmental features of lands designated Natural Heritage, including “Provincially Significant Natural Features”.

The proposed amendment will leave it to an EER to determine whether and where a buffer is appropriate on adjacent parcels because similar to adjacent land extents, buffer widths are very much site specific. There is no one buffer width that is suitable for all Natural Heritage features. The buffer width (if one is required) will depend on the characteristics of the individual feature, the surrounding area, and the ecological function that is to be protected.

3.4.4 Other policies

In addition to the major policy changes stated above, minor wording changes to the policies regarding recreation opportunities, permitted uses, evaluation criteria, and adjacent lands will also be made by the OPA. The purpose of the minor changes is to provide clearer direction on how to interpret the policies.

3.5 Spring Garden Planning Area

The secondary plan Spring Garden Planning Area was based on the findings of the 1997 Malden Planning Area Development Plan. At the time of the Malden Plan, there were no designated provincially significant wetlands in the study area. As a result, the Spring Garden Secondary Plan currently allows for development on some of the lands we now know are provincially significant wetlands.

The proposed OPA to the Spring Garden Secondary Plan will provide protection to the Provincially Significant Wetlands by providing specific reference to the Natural Heritage designation policies in Volume 1 of the Official Plan that are described above.

It is noted that a portion of the wetlands and the Spring Garden Planning Area lie within the Detroit River International Crossing (DRIC) corridor. During consultation, the Ministry of Natural Resources directed the City to proceed with preparing wetland policies and identifying all the wetlands within Windsor. The Ministry stated that the Environmental Assessment conducted for the DRIC would address how development could occur while mitigating the impact on the wetlands.

This report includes a recommendation to revisit the secondary plan at a later date, given the significant changes that are anticipated for the Spring Garden Planning Area.

4. CONSULTATION

The proposed OPA was prepared in consultation with internal departments and external agencies. The external agencies that were consulted are the Essex Region Conservation Authority (ERCA) and the Windsor-Essex County Environmental Committee (WECEC).

On June 3, 2010, the members of WECEC recommended that a 240-meter buffer be required around PSWs and PSCWs based on Environment Canada's "How Much Habitat is Enough?" document.

The Planning Department is recommending a more balanced approach of using the Environmental Evaluation Report to determine the appropriate use of buffers to protect and/or enhance the characteristics and functions of Windsor's most significant environmental features (see Section 3.4.3 above). Additionally, this approach is more consistent with the stated objectives of the Natural Heritage land use designation.

The Ministry of Natural Resources has informed the Planning Department that individual property owners were contacted for permission to access their land but were not provided with any direct notification of the findings.

The Planning Department will provide the necessary notice required by the *Planning Act* for the properties that will be redesignated to Natural Heritage as a result of implementing the Province's policy direction. In addition, the Planning Department will provide mailed notice to all property owners directly affected by this amendment.

5. CONCLUSION

Based on direction from the Province to amend the Official Plan to include policies that protect and enhance provincially significant wetlands and provincially significant coastal wetlands, these policies have been prepared and are the subject the proposed OPA.

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ATTACHMENTS

APPENDIX A– Proposed Amendments to Volume 1 of the Official Plan

APPENDIX B– Schedule C-2: Provincially Significant Natural Features

APPENDIX C– Proposed Amendments to the Spring Garden Secondary Plan

Proposed Amendments to Volume 1 of the Official Plan

(Proposed changes are shown as strikethrough or underlined)

Chapter 5. Environment:

5.2 General Policies

SCHEDULE B: 5.2.1 The following environmental quality designations shall be identified on Schedule B: Greenway System:
GREENWAY SYSTEM

- (a) Natural Heritage;
- (b) Waterfront Recreation;
- (c) Community and Regional Parks;
- (d) Waterway Corridors;
- (e) Recreationways; and
- (f) Linkages.

SCHEDULE C: 5.2.2 The following environmental management designations shall be identified on Schedule C: Development Constraint Areas:
DEVELOPMENT CONSTRAINT AREAS

- (a) Natural Heritage;
- (b) Environmental Policy Area A and B;
- (c) Candidate Natural Heritage Sites;
- (d) Aggregate Resource Sites;
- (e) Mineral Mining Sites;
- (f) Airport Operating Area;
- (g) Floodplain Areas;
- (h) Shoreline and Floodprone Areas;

- (i) Known or Suspected Waste Disposal Sites;
- (j) Pollution Control Plants; and
- (k) Rail Yards. (amended by OMB order 1485 – 11/01/2002)

SCHEDULE
C-2

5.2.3

The following Natural Heritage features and areas shall be identified on Schedule C-2: Provincially Significant Natural Features:

- (a) Provincially significant wetlands;
- (b) Provincially significant coastal wetlands; and
- (c) Significant habitats of endangered species and threatened species.

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5.3.3 Natural Heritage Policies

Lands identified as Natural Heritage provide for the protection and conservation of Windsor’s most environmentally significant and sensitive natural areas, including provincially designated areas of natural and scientific interest (ANSI), provincially significant wetlands, provincially significant coastal wetlands, and significant habitats of endangered or threatened species.

NATURAL
HERITAGE
DESIGNATION
REFER TO
LAND USE
CHAPTER

5.3.3.1

Lands designated as Natural Heritage appear on Schedules B: Greenway System, C: Development Constraints and D: Land Use.

5.3.3.2

The policies which establish the permitted uses, ancillary uses, evaluation criteria, protection and conservation of lands designated as Natural Heritage are further described in the Land Use Chapter of this Plan.

Chapter 6. Land Use:

6.8 Natural Heritage

The lands designated as “Natural Heritage” on Schedule D: Land Use provide for the protection and conservation of Windsor’s most environmentally significant and sensitive natural features and areas, including provincially designated Areas of Natural and Scientific Interest (ANSI), provincially significant wetlands, provincially significant coastal wetlands, and significant habitats of endangered species and threatened species.

The following objectives and policies establish the framework for Natural Heritage.

6.8.1 Objectives

<i>PROTECT & CONSERVE</i>	6.8.1.1	To protect, conserve and improve Windsor’s most environmentally significant and sensitive natural areas.
<i>PROHIBIT DEVELOPMENT</i>	6.8.1.2	To prohibit development and site alteration within Provincially Significant Natural Heritage features and areas.
<i>PASSIVE OPEN SPACE</i>	6.8.1.3	To provide opportunities for passive open space uses within Natural Heritage areas where it would not damage the natural feature.
<i>GREENWAY SYSTEM</i>	6.8.1.4	To link Natural Heritage areas to other components of the Greenway System.

6.8.2 General Policies

<i>PERMITTED USES</i>	6.8.2.1	Uses permitted in the Natural Heritage land use designation shall be limited to nature reserves and wildland management.
<i>DEVELOPMENT AND SITE ALTERATION</i>	6.8.2.2	Development and site alteration on lands designated as Natural Heritage shall not be permitted unless an Environmental Evaluation Report demonstrates to the satisfaction of the Municipality, in consultation with the Province and the Essex Region Conservation Authority that there will be no negative impact on the natural features or their ecological functions.
<i>ADJACENT LANDS</i>	6.8.2.3	Council may require any proponent of development adjacent to lands designated as Natural Heritage to complete an Environmental Evaluation Report or other suitable study in accordance with the Procedures chapter of this Plan. The identification of adjacent lands subject to this requirement will be determined on a site specific basis by the Municipality, in consultation with the province and/or the Essex Region Conservation Authority, and in accordance with policy 10.2.5.4 of this Plan.
<i>ANCILLARY USES</i>	6.8.2.4	<p>In addition to the uses permitted above, Council may permit ancillary facilities in areas designated as Natural Heritage without requiring an amendment to this Plan provided:</p> <ul style="list-style-type: none"> (a) the ancillary use is clearly incidental and secondary to, and complementary with, the main Natural Heritage use; and (b) the ancillary use does not have a negative impact upon the natural features and functions of the site.
<i>EVALUATION CRITERIA</i>	6.8.2.5	<p>The Municipality will evaluate the designation of lands to Natural Heritage based upon the following:</p> <ul style="list-style-type: none"> (a) environmentally significant and/or sensitive based on an evaluation of the area's: <ul style="list-style-type: none"> (i) ecological function; (ii) biological diversity; (iii) natural communities; (iv) vulnerable, threatened or endangered species; (v) physical size;

- (vi) representation;
 - (vii) level of disturbance;
 - (viii) earth science features; and
 - (ix) cultural significance.
- (b) identified as significant by the Province;
 - (c) in keeping with the goals, objectives and policies of any secondary plan or guideline plan affecting the area.

NATIVE VEGETATIVE BUFFER 6.8.2.6 Council may require that a native vegetative buffer be maintained on parcels adjacent to a Natural Heritage area when an Environmental Evaluation Report (EER) finds it appropriate. Consequently, EERs involving parcels adjacent to a Natural Heritage area shall also determine whether and where a native buffer is appropriate.

CONSERVATION MANAGEMENT PLAN 6.8.2.7 The Municipality will prepare a conservation management plan for municipally-owned lands which are designated as Natural Heritage and will encourage other land owners to do the same.

6.8.3 Provincially Significant Natural Features Policies

PROVINCIALY SIGNIFICANT NATURAL FEATURES 6.8.3.1 For the purpose of this Plan, Provincially Significant Natural Features are the following:

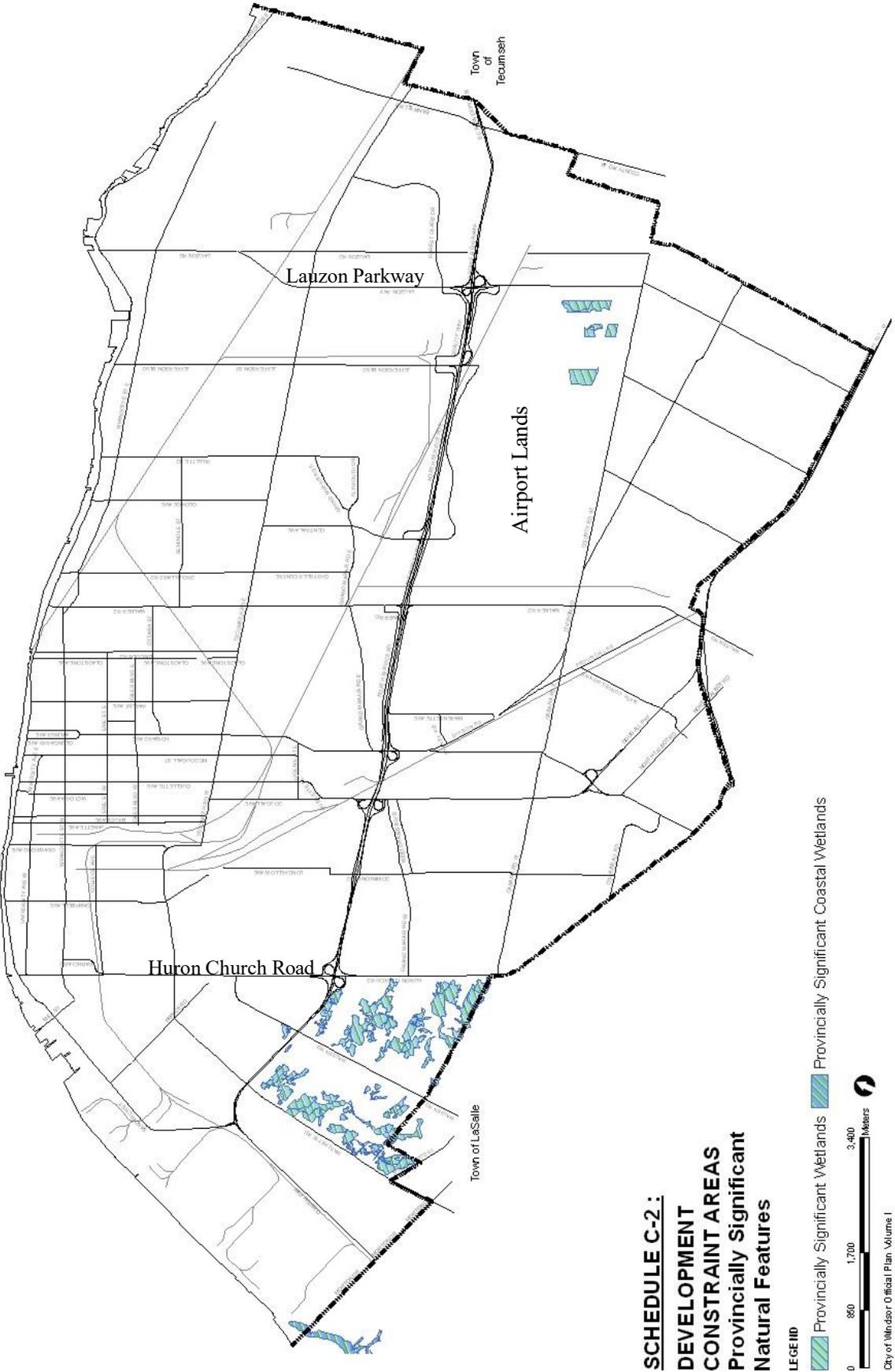
- (a) provincially significant wetlands;
- (b) provincially significant coastal wetlands; and
- (c) significant habitats of endangered species and threatened species.

DEVELOPMENT AND SITE ALTERATION PROHIBITED 6.8.3.2 Development and site alteration of Provincially Significant Natural Features shall not be permitted.

*LANDS
ADJACENT TO
PROVINCIALY
SIGNIFICANT
NATURAL
FEATURES*

6.8.3.3

Council shall protect the lands within 120 meters of Provincially Significant Natural Features from development that can negatively impact the natural features or their ecological functions. Accordingly, development and site alteration on lands adjacent to Provincially Significant Natural Features shall not be permitted unless an Environmental Evaluation Report demonstrates to the satisfaction of the Municipality, in consultation with the Province and the Essex Region Conservation Authority, that there will be no negative impact on the natural features of the adjacent lands and Provincially Significant Natural Features or on their ecological functions.



**SCHEDULE C-2:
DEVELOPMENT
CONSTRAINT AREAS
Provincially Significant
Natural Features**

LEGEND

- Provincially Significant Wetlands
- Provincially Significant Coastal Wetlands

0 860 1,700 3,400 Meters

City of Windsor Official Plan, Volume 1
Office Consolidation :

Proposed Amendments to the Spring Garden Secondary Plan

5.3 Background

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*PROCUREMENT
STRATEGY*

In 1999 Council, at its meeting held October 5th, adopted a new Official Plan for the City of Windsor, which repealed and replaced the former 1972 Official Plan, as amended. The new Official Plan therefore incorporates the former Official Plan amendments numbers 33 and 44 as part of the Primary Plan. The findings of the Malden Planning Area Development Plan were not included as part of the new Official Plan since the procurement strategy for the natural lands had not been finalized by Council.

*PROVINCIALY
SIGNIFICANT
WETLANDS*

In 2009, the Ministry of Natural Resources identified lands within the City of Windsor as provincially significant wetlands. Some of these lands lie within the Spring Garden Planning Area. Volume I of the Official Plan has been amended to include policies intended to identify, protect and enhance provincially significant wetlands. The policies of the Spring Garden Secondary Plan are subject to the provisions of Volume I of the Official Plan.

*REVIEW OF
SECONDARY
PLAN*

The Spring Garden Secondary Plan will be reviewed to address the effect of the provincially significant wetlands and approved infrastructure improvements in and around the Spring Garden Planning Area.