

ONTARIO LAND TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act, R.S.O. 1990, c. P. 13, as amended.*

Appellant:	Caivan (Perth GC) Limited
Subject:	Proposed Plan of Subdivision – Failure of Approval Authority to make a decision
Description:	To permit 940 single detached dwellings and townhomes, a nine-hole golf course, park and open space areas
Reference Number:	OPA-01-2023
Property Address:	141 Peter Street, Part of Lots 26 & 27, Concession 1, Part Lots 25, 26 & 27, Concession 2, Geographic Township of Bathurst, and Part Lot 1 in Southeast Half Lot 1, Concession 1, Part Lot 1 in Southwest Half Lot 1, Concession 2, Geographic Township of Drummond, now in the Town of Perth, County of Lanark
Municipality/UT:	Town of Perth / County of Lanark
OLT Case No:	OLT-23-000939, OLT-23-000940, OLT-23-000534
OLT Lead Case No:	OLT-23-000534
OLT Case Name:	Caivan (Perth GC) v Lanark County

WITNESS STATEMENT OF ROB WEST

WITNESS STATEMENT

ROB WEST

1. I will attend the hearing in this matter and provide expert evidence in the areas of ecology and biology. I am a Senior Ecologist with Oakridge Environmental Limited, which is an environmental and hydrogeological consulting firm based in Peterborough, Ontario. Our firm was retained by the Town of Perth to provide various ecological and environmental consulting services related to 141 Peter Street, Part of Lots 26 & 27, Concession 1, Part Lots 25, 26 & 27, Concession 2, Geographic Township of Bathurst, and Part Lot 1 in Southeast Half Lot 1, Concession1, Part Lot 1 in Southwest Half Lot 1, Concession 2, Geographic Township of Drummond, now in the Town of Perth, County of Lanark (“subject property”), for a proposed 940 single detached dwelling and townhome development, with a nine-hole golf course, park and open space areas which are the subject of this appeal.
2. My knowledge of the subject property, and its ecological/environmental setting, is based upon reviewing the Environmental Impact Study (EIS) and supporting materials, in addition to two (2) site visits to the property and adjacent lands (Tay River and wetland complexes). During these visits, I have had time to become familiar with the site conditions associated with the proposed development lands and adjacent lands surrounding the subject property. My work has included investigations in the early morning and mid to late afternoon diurnal period to review the ecological conditions on the property. From these data, I have completed an evaluation/review of the potential for impacts on the ecosystems on-site. My conclusions, etc., are drawn from reviewing the EIS and supporting documents, two (2) site visits (May 17th, 2024 and May 29th, 2024) and based on my 25 years experience as a Biologist/Ecologist with Oakridge Environmental Limited and my familiarity with the Perth area.
3. I have attached as **Exhibit “A”** to this witness statement, a copy of my curriculum vitae, which sets out my qualifications and expertise as a Biologist/Ecologist. I have attached as **Exhibit “B”** to this Witness Statement, a copy of my “Acknowledgement of Expert’s Duty”, which I have read, understand and have signed.

DOCUMENT REVIEW AND COMPLIANCE WITH OFFICIAL PLAN REQUIREMENTS

4. Our goal has been to gather data to better understand the ecological conditions of the site and adjacent lands in order to provide objective knowledge and informed opinions regarding the proposed development in the context of the Natural Heritage Features (NHF) that have been identified on the subject property and adjacent lands. The focus

was on identifying NHFs within the Perth Golf Course property. To accomplish this, we attended the site twice to collect data and familiarize ourselves with the site conditions on the subject property and surrounding area.

5. The documents relied upon, as reported upon with respect to the Proposed 940 single detached dwellings and townhomes, a nine-hole golf course, park and open space areas, in the Town of Perth/Lanark County, include the following:
- **KILGOUR & ASSOCIATES LTD; Environmental Impact Study for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario. February 23, 2023 (Version 3).**
 - **Prepared by Macintosh Perry Consulting Engineers for Lanark County; SUSTAINABLE COMMUNITIES OFFICIAL PLAN Part II, Section 5 – Natural Heritage.** Adopted June 27, 2012.
 - **Town of Perth; OFFICIAL PLAN Consolidated with Modifications.** Various sections and policies that refer to Natural Heritage within the OP. April 16, 2019 (as amended).

The reports and response to technical review comments outline our findings and opinions presented in this witness statement and I rely on these documents to provide context for my evidence before the Tribunal in relation to this appeal. The conclusions derived from recommendations made in this witness statement are provided in interest of protecting the Natural Heritage Features identified both on and adjacent to the property.

I also provide the names of several protocols and provincial documents that myself and other expert ecologists utilize to determine whether the survey techniques described in the EIS are sufficient or provide additional information/descriptions for a species habitat.

The following Exhibits include both the proponent’s report, the Official Plans of the Town and County and my technical peer review responses concerning whether the EIS document meets the technical requirements:

- (i) February 2023 (Version 3) - **“KILGOUR & ASSOCIATES LTD.; Environmental Impact Study for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario. February 23, 2023 (Version 3).”**

- This report describes the ecological conditions within the proposed subdivision development on the site and adjacent lands in support of an application to obtain approvals from the Town of Perth and County of Lanark for the above-mentioned proposed residential development within the Perth Golf Course property in Perth, Ontario.
- According to the EIS report, the site and surrounding area was attended by Kilgour and Associates staff a total of approximately thirty-five (35) times in 2021 and 2022 throughout the seasons to detect all species present.
- According to the EIS, the development is meant to be directed within the “back-nine” of the golf course whereby it would displace not only the open areas associated with the 10th to 18th holes, but also displace the wooded areas between the holes, the golf course ponds and corresponding headwater features associated with those ponds.
- The headwater features are often connective waterways to either the Tay River and/or the Grant’s Creek Provincially Significant Wetland (PSW). Site Alterations within the headwater areas would likely have negative impacts on both the Tay River and PSW. The proposed development plan does not appear to preserve any of the headwater features’ channels that occur directly within the proposed development areas. For instance, Drainage Feature A, which occurs off the end of the PSW extension and drains to both the unevaluated wetland/significant woodland area to the north along the Tay River, will not survive, as per: *“Headwater features occurring within the development area will be fully removed/realigned”*. It is my opinion the headwater drainage features should remain/be realigned and should not be completely removed, especially Drainage Feature A, as it is directly connected to the PSW and unevaluated wetland that Kilgour and Associates has identified within the EIS. It is my opinion this drainage feature should be afforded the same protection as the unevaluated wetland and a minimum 15 m setback should be appended to this feature. The watercourse has been identified to contain fish, amphibians, turtles, etc., suggesting it is a naturalized feature, regardless of how it has been altered in the past by the previous farming efforts and golf course. The better approach would be to improve/enhance those drainage features as per the Shoreline Management policies in the Town of Perth OP. The policies

recommend improving the feature, as opposed to altering/removing the waterway completely to allow for dwellings to occur. In addition to the setback concern, Drainage Feature A connects the Tay River to the PSW, therefore, could very well be a flood regulated feature. This drainage course is perennially wet according to discussions with Kilgour and Associates staff during the site inspections in May 2024. Therefore, the potential for this feature to be a regulated feature under the Conservation Authorities Act should be reviewed by the Rideau Valley Conservation Authority.

- The EIS recommends setbacks from NHFs, however, there are some significant encroachments within these setbacks, especially with reference to those that are meant to protect the Tay River, its associated unevaluated wetlands/Significant Woodland areas and the Grant's Creek PSW. There is a significant encroachment within the 15 m setback on the unevaluated wetland on the north side of the development that sees both the road and the Stormwater Management Pond (SWMP) No. 3 occur within the 30 m and 15 m setback areas. The SWM Ponds should not be permitted within the setbacks until such time as the Environmental Assessment (EA) process has been completed and it has been determined it can be proceed without adversely impacting the NHFs. According to my discussions with the expert team, the ponds will be constructed to incorporate infiltration into their design which is agreeable. However, as mentioned above, the ponds should be located outside the 30 m Tay River setback and the 15 m Unevaluated Wetland Setback until the EA is complete. Therefore, the draft plan should provide an alternative location in the event the EA does not favour the proposed location. Due to the rising and falling water levels in the ponds, it is often difficult to naturalize SWMPs, so this is not really an option.

There are two other areas where the development encroaches within the 30 m setback, along the southern edge of the property proximal to the existing clubhouse and outbuildings (an approximately 260 m intrusion). It is my opinion the roadway and development should be shifted northward to adhere to the 30 m PSW setback. The proposed berm feature between the PSW and roadway narrows from the east end of where it encroaches and is only a meter or two wide at the west end.

The proposed berm plantings are insufficient to mitigate for the buffer loss within the 30 m setback.

Applicable Policies and Provincial Requirements

The policies in the County of Lanark and Town of Perth's Natural Heritage documents recommend protecting the PSW.

The Town of Perth's OP states:

"Development and site alteration shall not be permitted in the Perth Long Swamp, the Blue Berry Creek Wetland, and the Grant's Creek Wetland. Development and site alteration shall not be permitted on adjacent lands to these significant wetlands unless it has been demonstrated, through the preparation of an Environmental Impact Study (EIS) as required in Section 8.5.4 e. EIS of this Plan, that there will be no negative impacts on the natural features or on the ecological functions for which a specific wetland area is identified. This shall include impacts on the wildlife habitat which exists in these wetlands."

Although the development will not occur directly within the PSW, it will impose on the 30 m setback in some locations, which is not typically afforded by the agencies, unless there is no alternative. In my opinion, the encroachment is a negative impact and that impact is avoidable because it is possible to move the development outside the setback. In both instances, the road can be adjusted to allow the development to remain outside the 30 m.

Significant Woodland

- **"8.6.4 Natural Heritage Features Policies Section 6.** *Where a potentially Significant Woodland, as identified on Appendix 11 to this Plan extends over an area of 1 ha or less, then a 15 m buffer shall be provided between the woodland and development and site alteration on adjacent land unless an EIS is completed and demonstrates either that the identified feature is not a significant woodland or a lesser buffer will protect the natural features or the ecological functions of the woodland."*

According to the EIS, there are Significant Woodland areas along the shore of the Tay River, in which some are associated with the unevaluated wetland areas within the riparian zone of the Tay River. Kilgour and Associates Ltd. also identified an area of Significant Woodland along the entire southern and western limit of the golf course. I agree with the mapping of the significant woodland as it would meet the woodland density criteria outlined in the Natural Heritage Reference Manual (NHRM) and the definition of “Significant” within the manual, provided below:

“Significant: means ... c) in regard to woodlands, an area which is ecologically important in terms of features such as species composition, age of trees and stand history; functionally important due to its contribution to the broader landscape because of its location, size or due to the amount of forest cover in the planning area; or economically important due to site quality, species composition, or past management history;¹”

The identified woodlands also meet the majority of the Woodland Size Criteria, Ecological Function, Uncommon Characteristics, Economic and Social Functional Values, Criteria in the NHRM.

Applicable Policies and Provincial Requirements

The OP section above states that a 15 m setback should be appended to any confirmed Significant Woodland areas identified within Appendix 11 of the OP, in addition to any other Significant Woodland identified on-site. Consequently, a 15 m setback has been appended to the Significant Woodland areas identified on-site which is illustrated in ORE’s constraints plan (Figure 1), include with this witness statement.

The EIS also suggests that there will be Significant Woodland losses on-site due to the proposed development:

“However, incursions into the edge of Significant Woodland associated with the Grants Creek PSW will total 2.6 ha. This would be offset with

¹ Ministry of Natural Resources, Natural Heritage Reference Manual, docs.ontario.ca/documents/3270/natural-heritage-reference-manual-for-natural.pdf

the conversion of 3.6 ha of the low-quality thicket to be replanted with deciduous tree cover.”

The above mentioned estimates do not take into account the 15 m Significant Woodland setback as it was not applied to the Significant Woodland boundary in the EIS figures. The OP states that the 15 m setback off of a Significant Woodland can be reduced, however, there is no policy that states Significant Woodland loss is acceptable. The quotation above states that 2.6 ha of Significant Woodland will be removed for the purpose of the development and that 3.6 ha of new woodland would be planted within the low quality thicket areas. Although these areas constitute Significant Woodland, they are also Significant Wildlife Habitat (SWH) and subject to other protection measures.

The 2020 Provincial Policy Statement states that:

Development and site alteration shall not be permitted in:

b) significant woodlands in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)¹; unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.

It is my opinion that the removal of the above-mentioned Significant Woodland area (2.6 ha) does not comply with the PPS, as removing the woodland would be a negative impact on the feature. Although Kilgour and Associates Ltd. is recommending a compensatory area be planted within the cultural thicket, it would not function like the current woodland does, likely for more than 100 years.

Eastern Gray Ratsnake (Threatened)

➤ Section 2.1.7 of the 2020 PPS states:

“Development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.”

The EIS states that Eastern Gray Ratsnake was identified on a small island proximal to the northwest corner of the subject property. Eastern Gray Ratsnake is a threatened species which is protected by the Endangered Species Act (ESA). The EIS states the best quality habitat (what could be considered Category 1 habitat) is the FOD5 ELC community on the subject property.

According to the Government of Ontario Fact Sheet, the habitat consists of:

“The Frontenac Axis population requires a variety of habitat types including deciduous forests, wetlands, lakes, rocky outcrops and agricultural fields.”²

The subject property contains habitats mentioned in the quote above, in this instance the golf course appears to be behaving similar to agricultural fields for this species. The sections of “rough” in the golf course alongside the woodland/riparian areas associated with the Tay River and the unevaluated/PS wetlands are suitable basking habitats with respect to thermo-regulation. The rocky outcrops along the Tay River edge and blocky materials used to fill the Peter Street bridge would provide avenues for this species to hibernate within, along with other species of snake such as the Watersnakes observed along the edge of the Tay River. It is my opinion that the majority of the FOD5 (deciduous woodlands ecotype) that occur around the edge and within the interior of the golf course is suitable habitat as they contain an abundance of nesting areas for bird species and represent a constant food source for this climbing species of snake. A constraints plan (Figure 2) illustrating the Categorized habitats of the Eastern Gray Ratsnake is provided at the end of this Witness Statement. Therefore, encroachments into the FOD5, areas along the Tay River Shoreline where exposed bedrock and/or manmade structures that provide access to potential hibernacula at or near the shallow water table, are identified on this Gray Ratsnake constraints map.

² Province of Ontario, “Gray ratsnake” Fact Sheet, <https://www.ontario.ca/page/gray-ratsnake>

Some descriptions and keywords were taken from the province's "**Gray Ratsnake (Frontenac Axis Population) Habitat Protection Summary**"³ but did not include the following:

"Activities in regulated habitat can continue as long as the function of these areas for the species is maintained and individuals of the species are not killed, harmed, or harassed. For example, hay fields are used primarily for movement and are relatively tolerant to alteration; most activities can continue in these areas as long as they do not create a permanent barrier to the movement of snakes through these areas.

Generally compatible:

- *Yard work such as lawn care and gardening.*
- *Continuation of existing agricultural practices such as annual harvest.*
- *Renovations or the building of small structures such as a shed or a deck.*

Generally not compatible:

- **Significant reduction or clearing of natural and semi-natural features, such as forests, woodlands, wetlands, shorelines, rock outcrops, hedgerows, and meadows.**
- **Large-scale construction, such as a housing development or roads.**
- *Removal or alteration of documented nesting sites that may be found in rotting logs or compost piles. If these features are man-made (other than hibernacula), they are protected during the season that they are being used by the snake."*

Table 3 - Treed ELC Units and Anticipated Area of Required Tree Clearing in the EIS (Page. I-7 under Appendix I - Tree Preservation Plan) states that 4.81 ha of the FOD5-1 habitat that contains the rocky outcrops and deciduous woodland habitat that Eastern Ratsnake prefers to hibernate within will be cleared for development purposes.

³ Ministry of Natural Resources Habitat Protection Summary for Gray Ratsnake (Frontenac Axis Population), files.ontario.ca/environment-and-energy/species-at-risk/Gray_Ratsnake_HR_Summary_Eng.pdf

Based on the above-mentioned, the development will displace potential Category 1 habitat associated with the rock outcrop areas, deciduous dominated woodland cover and nearby wetlands/waterways, that function as habitat for the Eastern Gray Ratsnake.

The EIS stated on Page 62 of the document that:

“The openness of most of the golf course combined with frequent human disturbance (e.g., mowing, presence of golfers, etc.) would likely deter snakes from conducting most life processes here.”

The treed areas and edge/rough maintained areas are exactly what this species requires as part of their habitat. The old buildings within the golf course can also be used as artificial basking cover areas for this species during the spring and summer period. This species will climb into attics and even use vending machines (observed at Charleston Lake and Murphy’s Point Provincial Park) to bask within. Therefore, manmade structures can be suitable habitat and should also be searched in the evening hours. Mowing of the course and maintenance of the rough/fairways and woodland edges likely maintain potential basking areas where this species would thermo-regulate. Moreover, this species would not need to be concerned about successional change in these maintained areas. Therefore, the residual use and maintenance of the golf course could very well be what is attracting the Eastern Gray Ratsnake to the area. This species occurs within Murphy’s Point Provincial Park and from my own observations, some appear to be quite comfortable with areas that are continually maintained.

Consequently, the removal of this habitat for residential development purposes does not comply with the Section 2.1.7 of the PPS in addition to Section g) Habitat of Threatened and Endangered Species, Point #3 of the Town of Perth Official Plan – *“New development and site alteration shall not be approved within the confirmed Significant Habitat of ETS without the express consent and concurrence of the MNR as specified in accordance with a Permit under the Endangered Species Act. More specifically, development and site alteration shall*

not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.”

Therefore, the proponent and their consultant would have to obtain a permit from the Ministry of Environment, Conservation and Parks (MECP) to determine whether development could displace the habitat of Eastern Gray Ratsnake on-site. Considering MECP has not been approached to determine whether the development could displace the habitat of this threatened snake species, this potentially removes a substantial portion of the proposed development in the southwest corner of the property. As I understand from discussions with the proponent’s ecologist, the FOD5 community that contains the elevated bedrock areas will have to be removed by way of blasting to obtain the desired grades for the residential development to proceed. The rock outcropping in the FOD5 community is some of the only exposed bedrock on-site. If that is altered in any way, the alterations could potentially (negatively) impact the Eastern Gray Ratsnake and/or its habitat. This habitat could not be replaced anywhere else on the subject property as part of a compensation or tree preservation plan effort.

- The search effort provided in the EIS did not reference the specific protocols for detecting Eastern Gray Ratsnake, therefore, detections were likely hindered. The Survey Protocol for Ontario’s Species at Risk Snakes states under the Species-specific Survey Notes:

“Gray Ratsnake: this species is commonly encountered in trees (Blouin-Demers and Weatherhead 2001a), and it is important to regularly scan the sub-canopy (approx. 1 to 4 m height) when surveying for this species in forested habitats.”⁴

Although the level of effort to detect snakes is provided in Table 10 Page 59 of the EIS, it does not separate out the level of effort applied to searching the woodland areas in the sub-canopy as described in the

⁴ Province of Ontario, Survey protocol for Ontario’s species at risk snakes, <https://www.ontario.ca/page/survey-protocol-ontarios-species-risk-snakes>

protocol. It just describes the overall level of effort. Therefore, I am unsure as to whether the level of effort to detect this species was sufficient.

It also would have been beneficial to include emergence surveys in the early spring, per the guidance in the Survey Protocol:

“Hibernation habitat varies with species and region, and a thorough review of the species biology and habitat use is required to inform spring emergence surveys...while Gray Ratsnakes in eastern Ontario often make use of south-facing rocky slopes.”

The FOD5 deciduous bedrock bearing areas on the subject property appear to be south-facing as there is a number of bedrock showings in the tee-off area in the southwest corner of the site where the FOD5 ELC type occurs, further suggesting that this community has all the key attributes of Eastern Gray Ratsnake hibernaculum habitat.

Additionally, the **February, 2018 - Best Management Practices for Identifying, Managing and Creating Habitat for Ontario’s Species at Risk Snakes**⁵ states the following in regards to additional search effort for Species at Risk snakes based on the hibernaculum:

“If, after completing 10 surveys, a feature or area is confirmed as a hibernaculum for any snake species (including non-SAR) other than the target SAR snake species, additional surveys are recommended to determine with reasonable confidence that the target species is not using the hibernaculum. This may be achieved by conducting five additional visual encounter surveys of the target area/feature during spring emergence or installing fencing and traps (see section 6.4.3).”

The 10 or more snake survey dates did not discuss how much time was spent in the FOD5 Ecosite community, suggesting that hibernaculum surveys may not have been completed. Nor does there appear to have been any additional surveys completed during the emergence period to determine whether Eastern Gray Ratsnake is utilizing the bedrock areas on-site for hibernaculum.

⁵ Ministry of Natural Resources, Best Management Practices for Identifying, Managing and Creating Habitat for Ontario’s Species at Risk Snakes
https://canadianherpetology.ca/conservation/doc/MNRF%20Snake%20Habitat%20BMP_final-1.pdf

Applicable Policies and Provincial Requirements

- Consequently, the removal of this habitat for residential development purposes does not comply with the Section 2.1.7 of the PPS in addition to Section g) Habitat of Threatened and Endangered Species, Point #3 of the Town of Perth Official Plan – *“New development and site alteration shall not be approved within the confirmed Significant Habitat of ETS without the express consent and concurrence of the MNR as specified in accordance with a Permit under the Endangered Species Act. More specifically, development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.”*

Therefore, the proponent and their consultant may have to obtain a permit from the Ministry of Environment, Conservation and Parks to determine whether development could displace the habitat of Eastern Gray Ratsnake on-site. Considering MECP has not been approached to determine whether the development could displace the habitat of this threatened snake species, approval of the development proposal would be premature, until such time as this can be confirmed with MECP.

Black Ash

Both I and the Kilgour and Associates Inc. staff observed many Black Ash on the subject property during the site inspections. Some were present within the treed areas within the golf course. The EIS states:

“5.10.5 Black Ash

Numerous Black Ash individuals were observed in the SWD3-2 and SWD2-1 ELC units on the Site and Peripheral Lands. It was particularly widespread within the SWD2-1 ELC unit, where it formed the dominant canopy species. Black Ash was listed as Endangered under the ESA on January 26, 2022; subsequently, however, the Minister of MECP ordered Ontario Regulation 23/22 that ESA protections for Black Ash be temporarily suspended for a two-year period (i.e., until January 26, 2024) following its listing (Government of Ontario, 2022a) to allow for the development of a recovery strategy and associated policy will be developed during this time by the province.”

The province has since released the Recovery Strategy for Black Ash and the main recommendation to protect the individual appears to be the application of a 28 m setback.

“The recommended area for consideration in developing a habitat regulation for Black Ash is the entire wetland ELC ecosite type in which one or more Black Ash tree is present and all of the area within a radial distance of at least 28 m from an individual Black Ash tree, including less suitable dry or upland areas habitats.”

The subject site contains both swampy conditions that contain an abundance of Black Ash and also individuals that have not been identified in the EIS. Therefore, until such time any individual Black Ash have been identified within the proposed development area or within any of the potential crossings along the Tay River, there is the potential to negatively impact this Endangered species.

Typically, the recommendations in the Recovery Strategy are adhered to in the protection measures for the Endangered species. Consequently, all of the Black Ash, including the habitat related areas and individuals, should be identified and this constraint realized with respect to the proposed development.

Blanding’s Turtle

Although Blanding’s Turtle was not specifically identified during either the Kilgour and Associates Ltd. inspections or my inspections, the nesting area near the Peter Street bridge is suitable habitat for this species.

Nesting habitat is considered to be Category 1 habitat according to the provincial Habitat categorization for Blanding’s Turtle (*Emydoidea blandingii*).⁶ It is described below, in addition to the other two categories of habitat:

⁶ Ministry of Environment, Conservation and Parks, General Habitat Description for the Blanding’s Turtle, <https://files.ontario.ca/mecp-blandings-turtle-general-habitat-description-en-2021-04-20.pdf>

“Category 1: Nest and the area within 30 m or Overwintering sites and the area within 30 m;

Category 2: The wetland complex (i.e., all suitable wetlands or waterbodies within 500 m of each other) that extends up to 2 km from an occurrence, and the area within 30 m around those suitable wetlands or waterbodies;

Category 3: Area between 30 m and 250 m around suitable wetlands/waterbodies identified in Category 2, within 2 km of an occurrence.”

A map of the Blanding’s Habitat should have been provided with the EIS, to identify where these key habitats are situated in relation to the development. According to this document, lawn space areas that contain sandy soils (sand traps, etc.) would be considered nesting habitat. The golf course would, therefore, contain Category 1 habitat, depending on where the nesting sites are within the subject property.

Applicable Policies and Provincial Requirements

Both Section 2.1.7 of the PPS and Section g) Habitat of Threatened and Endangered Species, Point #3 of the Town of Perth Official Plan would apply to the Blanding’s Turtle.

The proponent would have to potentially obtain a permit from MECP to allow for any alterations to occur within the Category 1 habitat of Blanding’s Turtle. Therefore, further confirmatory surveys should be completed to identify the Category 1 Blanding’s Turtle habitat on-site.

Butternut

- According to the EIS, a total of five (5) Butternuts were detected by Kilgour and Associates Limited staff. Four (4) of the five (5) Butternuts were observed in the area of the Peter Street Bridge. However, only the Butternuts on the west side of the bank were discussed in the EIS. There were another four (4), or more on the east bank of the river that I detected which are much younger, healthier trees. Presumably,

widening of the existing crossing in the Peter Street location would remove these young/healthy Butternut trees.

Although this area would be subject to an Environmental Assessment, the EIS should have included Health Assessments to determine which trees are retainable/non-retainable.

- No Butternut Health Assessments have been completed on any of the trees as stated within the EIS on Page 69 of the report. That being said, the report indicates that the trees on the west bank (on the subject property) all appear to be of poor health. Until such time as the Butternut Health Assessments are completed on the west bank Butternuts, the assumption should be the trees are healthy. I observed the majority of the Butternuts appear to be healthy on the east bank, considering they are much younger and between 3 and 15 cm dbh with 100% of their canopy intact and very little canker/health deterioration evidence.

Therefore, any proposed updated crossing would not only have to go through the EA process, but the health of these other Butternuts would have to be assessed, which could influence the widening of the Peter Street crossing.

The Root Harm Prevention Zone setback distance for healthy Butternuts is between 6 m and 9 m.

I did not observe any other areas along the east shore where replacement/compensatory Butternuts could be planted, as they appear to have an affinity for the roadbed on the east bank. Therefore, the trees would likely have to be planted on the west side of the bank/subject property. However, most of the areas where any compensatory Butternut trees could survive (such as the FOD5 community inside the golf course area) will be removed. It is doubtful any trees could be planted in the FOD5 community that occurs outside of the golf course as this area contains a mature woodland and any planted Butternut would be shaded and not do well in this setting. The remaining areas typically exhibit moist to wet soil conditions, where no other Butternuts were detected. The only other location where Butternut plantings might be successful is within the existing nine (9) hole golf course where some additional Butternuts were observed along

the Tay River north of the four (4) Butternuts identified in the EIS that are proximal to the Peter Street bridge. These areas are also densely covered with understorey species (Buckthorns, etc.) that would shade the forest floor and woodland edge, preventing any planted Butternuts from receiving the sunlight they require.

Applicable Policies

Since both the Butternut tree and its habitat (Root Harm Prevention Zone) are protected by the Endangered Species Act (ESA), a permit would be required for those trees that meet the retainable health criteria, should they need to be removed.

Until such time as MECP is contacted/consulted, the trees should remain unharmed. A SAR permit maybe required by MECP and the protection measures may influence whether this location can be altered or not.

The Town of Perth OP policies regarding Endangered and Threatened species has already been provided above: Section - *“New development and site alteration shall not be approved within the confirmed Significant Habitat of ETS without the express consent and concurrence of the MNR as specified in accordance with a Permit under the Endangered Species Act. More specifically, development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.”*

Section 2.1.7 of the 2020 PPS states: *“Development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.”*

It is ultimately the Town of Perth’s decision as to whether they want to allow development to occur within the confirmed habitat of a Threatened or Endangered species.

Endangered Bats – Little Brown Myotis and Tri-colored Bat

According to the bat acoustic data provided in Table 6 on Page 53 of the report, the placement of the detectors in 2021 were mostly within open areas likely used for foraging purposes. The detectors were not directed within any of the woodland areas where good quality snags are located.

Therefore, the acoustic recorders may have detected bats that may be roosting on-site and transient bat species foraging within those open areas. Consequently, the data does not appear to be conclusive with respect to identifying whether the site contains roosting SAR bats.

Similarly, the 2022 bat detector locations appear to have been along the edge of woodland habitats, with the exception of AM-8 which was located inside the tree line, although it is not indicated whether it was located in an area where there are better quality bat snags.

In addition to the data not specifically identifying whether the SAR bats are roosting on-site, the report states on Page 68 that:

“Little Brown Myotis and Tri-colored Bat were detected at all six acoustic monitoring stations and therefore likely forage and/or roost in proximity to the Site. The numbers of detections over most survey stations, however, were very low, suggesting only a limited transient presence over most of the Site.”

I disagree with this conclusion. All six (6) acoustic stations detected SAR bats, which is a significant finding, suggesting the wooded areas on-site (including those directly within the golf course) potentially represent habitat for endangered bat species. The additional comment stating that numbers were low is to be expected, considering these endangered bats are typically fewer in number compared to more common bat species. In regards to the limited transient presence, it is my opinion that due to the location of the detectors being in the open areas, this may not be the correct interpretation. Instead, if good quality snags are present in the wooded areas, there is the possibility that concentrated SAR bats could occur on the subject property.

In addition, the EIS states that one detector likely detected two (2) SAR bats in suitable habitat, located on the east bank of the Tay River in the area of the Peter Street bridge crossing. Therefore, if the bridge is to be upgraded as part of the development, the bridge should be investigated further as both potential roosting habitat and possibly as hibernaculum. The large boulders and bedrock fractures associated with the crossing could represent habitat SWH for both and that is why bats (SAR bats included) were detected by the single bat detector facing this bridge crossing. Similarly the bedrock fractures in the FOD5 community

could represent hibernaculum for these SAR bats. This has also not been investigated and has not been confirmed.

Applicable Policies

Both the Town of Perth and the PPS have policies that protect the habitat of Endangered and Threatened species. These have been provided in an earlier section.

Significant Wildlife Habitat (Confirmed)

The EIS identifies six (6) types of confirmed Significant Wildlife Habitat (SWH) on the property (Figure 3). These are:

1. Bat Maternity Colonies (Appendix A)
2. Turtle Nesting Areas (Appendix B)
3. Woodland Amphibian Breeding (Appendix C)
4. Wetland Amphibian Breeding (Appendix D)
5. Woodland Area-sensitive Bird Breeding (Appendix E)
6. Special Concern and Rare Wildlife Species (Appendix F)

Based on my review, the EIS does not map any of the confirmed SWH on-site. Typically, a SWH is associated with one or more ELC types and it is this area that forms the SWH. I have included SWH mapping for the above-mentioned confirmed SWH with this Witness Statement as **Exhibit "C"**. It is based on habitat types discussed in the EIS report and those ELC community types that are included in the January 2015 - Significant Wildlife Habitat Criteria Schedules For Ecoregion 6E⁷. A good majority of the confirmed SWH occurs directly within the golf course area, the implications of which were not discussed in the EIS.

Applicable Policies

Section 5.5.5 of the Town of Perth OP states that:

"Significant Wildlife Habitat outlines that no site alteration or development is to occur within Significant Wildlife Habitat unless it can be demonstrated through an EIS that there will be no negative impact."

⁷ Ministry of Natural Resources and Forestry, Significant Wildlife Habitat Criteria Schedules For Ecoregion 6E, docs.ontario.ca/documents/4775/schedule-6e-jan-2015-access-ver-final-s.pdf

It is my opinion that the SWH portion of the EIS has not been properly assessed. The EIS does not present a map outlining which ELC communities are associated with the six (6) confirmed SWH.

Based on the OP excerpt above, and the lack of follow-through on the SWH analysis and constraints mapping exercise, the outcome of the confirmed SWH is unknown.

According to the proposed plan, any woodland areas within the confines of the “back-nine” of the golf course would be removed for development purposes. The displacement/loss of the SWH within the golf course would result in a negative impact and the EIS has not clearly identified or evaluated this. In addition, the drainage courses and ponds possess habitat for Special Concern turtles which is also SWH, regardless of those ponds and headwater areas having been constructed or altered for the Golf Course’s water hazards and drainage. They have become (or have remained) SWH for Special Concern species.

Midland Painted Turtle, Snapping Turtle and Eastern Musk Turtle

- There were multiple occurrences of these Special Concern species throughout the waterways, including the internal headwater drainage areas and existing hazard ponds within the golf course. Considering these are Special Concern species, the habitat would be confirmed SWH for Special Concern and Rare Wildlife Species as identified in the Significant Wildlife Habitat Criteria for Ecoregion 6e. Therefore, these species are included within the Special Concern and Rare Wildlife Species SWH identified in the ORE mapping constraints plan.
- These species were observed either directly within the golf course ponds and headwater drainage areas, or alongside the Tay River system. It is anticipated that they were present to not only forage but to nest within the golf course, which is integral with respect to this species survival.

This SWH is subject to the mitigation measures outlined in the Significant Wildlife Habitat Mitigation Support Tool (SWHMiST). Nowhere does the support tool indicate that all of the habitat of Special Concern species can be displaced by residential developments. The primary objective within the SWHMiST is to avoid the habitat and when that is not possible, the development should be directed to the edge of the SWH to avoid the core areas. The proposed development does not abide by the primary or secondary goals outlined in the SWHMiST. The SWH of this species will undoubtedly be negatively impacted by the proposed development, due to habitat loss/removal.

Golden-winged Warbler

- I identified this Species at Risk bird proximal to the additional PSW area that Kilgour and Associates Ltd. mapped in the northeastern portion of the property. It was overheard calling within the Cultural Thicket community east of the PSW and north of a bedrock outcrop that is visible on the air photo. This Special Concern species prefers willow dominated thickets and will nest within these communities. Considering it is a Special Concern species, the habitat would be confirmed SWH. Therefore, these species would be included within the Special Concern and Rare Wildlife Species SWH identified in the ORE mapping constraints plan.
- This species was observed within an area that is meant to be retained and enhanced by tree plantings as a means of offsetting tree removal within the interior of the golf course. Unfortunately, if the vegetation in the cultural thicket is to be removed for the purpose of compensatory tree plantings, it will remove the SWH habitat of this Special Concern species.
- The SWH of the Golden-winged Warbler would be subject to the mitigation measures outlined in the Significant Wildlife Habitat Mitigation Support Tool (SWHMiST). The primary objective within the SWHMiST is to avoid the habitat. Consequently, the compensatory mitigation measures to create a new woodland tract would apparently be at the expense of this Special Concern

species SWH that was not detected during the EIS surveys completed on-site.

Eastern Wood-Pewee and Wood Thrush

- Both the Eastern Wood-Pewee and Wood Thrush were detected by myself and Kilgour and Associates Ltd. staff during the site inspections. These two (2) species were overheard utilizing the wooded areas between the golf course holes where the residential development is proposed and within the periphery woodland areas on-site.
- The removal of these wooded areas would displace the nesting habitat of both species in those woodland areas where the draft plan proposed residential units.
- The SWH for these Special Concern species would be subject to the mitigation measures outlined in the Significant Wildlife Habitat Mitigation Support Tool (SWHMiST). The primary objective within the SWHMiST is to avoid the habitat of these Special Concern species. Consequently, the compensatory mitigation measures to create a new woodland tract elsewhere would apparently be at the expense of these Special Concern species SWH. Both species prefer secondary succession deciduous to mixed type woodland communities, this type of woodland would not be achieved without many years of monitoring and removal of non-native species.

(ii) June 27, 2012, **Prepared by Macintosh Perry Consulting Engineers for Lanark County;** ***SUSTAINABLE COMMUNITIES OFFICIAL PLAN Part II, Section 5 – Natural Heritage.***

- There are a number of ways the proposed development does not comply with the Sustainable Communities Official Plan. These are included below.
- Section 5.3 Objectives:

“It is Lanark County’s overall goal that the County’s natural heritage features be

both conserved and protected from negative impacts of development. Principles that form the basis of policies that achieve this goal are as follows:

The County's significant natural heritage features shall be protected from negative impacts of development.

The County's natural heritage features, including non-significant features, should be conserved and rehabilitated for the benefit of future generations according to best management practices undertaken today and as they evolve."

- There have been a number of NHFs identified on the subject property. Some are identified in Schedule A of the County OP, however, some are not. This is typical as the EIS is supposed to identify any/all additional NHFs. That being said, not all of those that have been identified in Schedule A are being protected and those additional NHFs identified through the EIS are also not being protected.
- The final paragraph of Section 5.3, the County identifies that non-significant features should be both protected and rehabilitated. This applies to the headwater/drainage features and the unevaluated wetlands along the Tay River. Under the Draft Plan, the headwater drainage features will not be protected/enhanced for future generations. Furthermore, a 15 m setback is proposed off the unevaluated wetlands, however, there are proposed encroachments within this 15 m setback that would not further the objective of protecting and rehabilitating the features.
- Section 5.4 General Land Use Policies:

"The County of Lanark and its constituent municipalities have an obligation to consider the impact of development and land use on waterbodies throughout the County in order to ensure the long term viability of this important natural and economic resources. Local Official Plan requirements which provide for a minimum 30 metre setback where development is proposed adjacent to a waterbody shall apply. Any proposed reduction to the minimum setback requirements shall be in accordance with the provisions of local Official Plans."
- A 30 m setback has been applied to the Provincially Significant Wetland and the Tay River (from highwater mark in EIS). However, the Draft Plan proposes some encroachments into the 30 m pertaining to the PSW and a very large component of the development will occur within the 30 m setback off the Tay

River. These encroachments do not comply with the County's 30 m setback requirement.

➤ Section 5.5.1 Provincially Significant Wetlands Part 5:

“Activities that create or maintain infrastructure within the requirements of the Environmental Assessment process or works subject to the Drainage Act are not subject to the policies of this section, however wherever possible such uses shall be located outside of designated wetlands.”

- Part 5 (above) is applicable to the proposed crossing of the PSW in the northwest portion of the site. According to the proponent's plan, they would like to bridge the PSW to allow for development to occur on the other side. An EA would be necessary to allow for the crossing, similar to some of the potential crossings associated with the Tay River. The crossing of the new PSW identified in the EIS may not be necessary and it may possible to access any development lands outside this feature. Until the EA confirms otherwise, development within the PSW should be avoided.

➤ Section 5.5.2 Endangered or Threatened Species Habitat:

“Development and/or site alteration is prohibited in significant habitat of endangered or threatened species as may be identified from time to time.

Approval authorities shall, subject to federal or provincial legislation, refuse development applications where the development review process, which can include an Ecological Site Assessment, confirms the existence of significant habitat of endangered or threatened species as approved by the Ministry of Natural Resources.

Notwithstanding sub-sections 1 and 2 above, development and site alteration may be permitted on lands within 120 metres of the habitat of endangered or threatened species provided it has been demonstrated through an Environmental Impact Statement (EIS) that there will be no negative impacts on the natural features or the ecological functions for which the area is identified.”

- As mentioned above, there appears to be the habitat of Eastern Gray Ratsnake on-site, which is a Threatened species. The EIS states that the on-site FOD5 habitat is the most likely ecotype that this species would occur within on-site. However, snakes are generalists and could occur anywhere on the subject

property at anytime. The fractured bedrock on the golf course and in the periphery appear to also contain potential hibernaculum habitat for this species. Therefore, these habitats would be subject to the first clause above, whereby development should be prohibited within this habitat. The Ministry has not been contacted in this regard and there are no data to support that additional hibernaculum surveys have been completed to confirm the absence of Eastern Gray Ratsnake from utilizing the fractured bedrock areas in FOD5 and other areas on the subject property.

➤ Section 5.5.4 Significant Woodlands

“Development may be permitted in Significant Woodlands, or within 120 metres on adjacent lands only if it has been demonstrated through an Environmental Impact Statement (EIS) that there will be no negative impacts on the natural features or on the ecological functions for which the area is identified.”

➤ The site contains Significant Woodland and as stated earlier in this Witness Statement, areas of Significant Woodland would be removed for the purpose of the proposed development. Although the quotation above states this may be possible via an EIS, it is my opinion that the value of the existing woodland in these areas has not been taken into account. The wooded areas protect the Tay River and PSW. If development removes parts of these woodlands, the buffering capacity to those waterway features could be significantly reduced. The Town of Perth’s OP states that a 15 m setback should be applied to Significant Woodland. It is my opinion that the 15 m setback should be applied and the woodland should not be removed for the purpose of development, as it protects significant features recognized by the Official Plans.

Part 3 in the same section of the County OP states that *“The identification of Significant Woodlands other than Community Forests shall be in accordance with the specific circumstances of each individual municipality.”*

➤ Section 5.5.7 Fish Habitat:

“According to the PPS, fish habitat is defined as: “the spawning grounds and nursery, rearing, food supply, and migration areas on which fish depend directly or indirectly in order to carry out their life processes.” Fish resources have many values to the County, including:

1. *Contributing to a diversity of species;*
 2. *Providing a natural indicator of water quality and environmental health;*
 3. *Forming a vital part of the aquatic food chain;*
 4. *Providing commercial fishing such as baitfish (minnow) harvest (OMNR, 1983); and*
 5. *Providing recreational sport fishing opportunities and related economic spin-offs (OMNR, 1990)."*
- The PSW and Tay River (including the unevaluated wetlands in the periphery of the river) provide habitats for a diversity of species. The headwater drainage features provide spawning areas during the flood period for smaller fish (minnow species) which are part of the aquatic food chain for larger fish that inhabit the Tay River. Consequently, those drainage features that were identified to possess fish support the aquatic food chain and are invaluable to the fishing industry associated with the Tay River and water bodies it drains to. A 30 m setback is illustrated off the Tay River to protect these fisheries habitats. Unfortunately, large tracts of development are still proposed within the 30 m setback from the Tay River according to the Draft Plan.

The Town of Perth recognizes the Tay River in the area of the subject site as containing significant fisheries habitat:

"3. Fish habitat areas including the Tay River/Canal, Blueberry Creek and Grant's Creek main channel and tributaries."

It is my opinion the encroachment into the 30 m setback is not ecologically supportable and the development should respect this setback to protect the riparian zone. In my opinion, the encroachment is not justified by the existence of the golf course holes within the majority of the 30 m setback as these areas can eventually naturalize and serve as riparian areas again if allowed.

The maintenance of the 30 m Setback is also supported by the Town of Perth's Shoreline Management Policies (8.6.4g)

"Shoreline Management

The Tay River and its tributaries, the blueberry creek and grants creek , are natural heritage resources that serve and important ecological function within the watershed ... Urban land uses and urban activities have compromised the ecological function of the riparian zone of the Tay and to a lesser extent its tributaries. The intent of the plan is to provide for the restoration and rehabilitation of the shoreline of the Tay River and protection of shoreline areas through an integrated management approach which consists of the following measures:

...

Iv) the Town will cooperate with other levels of government, and the private sector to upgrade drainage and stormwater management systems to reduce contaminant and other discharges into the Tay River and its tributaries with priority given to discharge locations where water quality impacts are identified or the best water quality improvement outcomes can be achieved.

...

V) reduce or replace hard surfaces adjacent to the shoreline which lead to uncontrolled runoff into the river;

...

Vi) require increased setbacks from the shoreline for new buildings;”

- The proposed development does not appear to comply with the above mentioned shoreline management policies, nor does it appear to conform to the above mentioned County fish habitat policy to retain riparian habitats for fish and improve the overall health of the Tay River (see section 5.5.7 Fish Habitat referenced above).
- In addition to the above, Stormwater Management (SWM) Pond No. 3 is proposed to occur within the 30 m setback. Although SWM Ponds being can potentially be somewhat naturalized, they are artificial development and should not be allowed within any of the setbacks, especially the 30 m riparian zone setback. It is my experience, ponds often do not achieve a naturalized state as the water continually rises and falls within these features, they can be wet for days and then dry for months, which is challenging for most native species to germinate within and survive, and to maintain a natural composition. As a result, invasive species often invade the SWM Pond as they can withstand these extreme conditions. SWM Ponds do not typically contribute to the habitat of fish and can often introduce warm standing water to waterways like the Tay River during their slow release. Although the SWM pond would release runoff to the

appropriate subwatershed from an engineering perspective, they do not replace the value of the headwater features identified in the EIS.

(iii) **Town of Perth;** **OFFICIAL PLAN Consolidated with Modifications.** Various sections and policies that refer to Natural Heritage within the OP. April 16, 2019 (as amended).

➤ Section 7.3.1 General Environmental Protection Policies

Part a) refers to those Environmental Protection Areas identified in Schedule A of the OP, which includes:

1. Lands within the 1:100 regulatory flood level (flood plain and flood plain constraint);
2. Lands Characterized by a Natural Heritage Feature such as a PSW and significant wildlife habitat;
3. Any update to the Plan will add to this designation areas of unstable soils, slopes or areas of forest types for wildland fires where they are identified.

➤ The site contains lands that occur within the 1:100 regulatory floodplain. It is my understanding that the proponent has submitted a proposed amendment to the floodplain to the Rideau Valley Conservation Authority but the Authority has not reviewed or confirmed the accuracy of the new proposed development limit. The Authority should be consulted further in this regard, as the plan in the EIS suggests that there would be incursions into the flood plain. It is my understanding that the Town of Perth and Lanark County Planning departments would not permit development within a flood hazard area as it does not comply with their policies.

➤ The subject property contains both PSW and significant wildlife habitat, among other Natural Heritage Features. It is my opinion the current Draft Plan does not conform to the setbacks applied to those features. These are discussed in great detail above within the EIS section of this witness statement.

- There does not appear to be any unstable soils/slopes or any woodlands that would be considered a fire hazard.
- The majority of the policies in the Town of Perth OP under Section 8.6.4 Natural Heritage Features Policies have been applied to the natural heritage features identified on-site both through the EIS and by myself, in some instances. Considering the policies are listed beneath each NHF, they will not be discussed to avoid redundancy.
- Section h) Environmental Impact Study of 8.6.4 has not been discussed in the context of whether the EIS has provided all of the content that should be included in an EIS.
- *“ #1 Council will require an Environmental Impact Study (EIS) for development and site alteration proposed in designated Natural Heritage Features and adjacent lands, except where development and site alterations are not permitted by policy. An EIS will be prepared to support planning applications such as Official Plan amendments, Zoning Bylaw amendments, plans of subdivision, consent etc. prior to the approval of the proposed development or site alteration. Where the impact of the development and/or site alteration cannot be mitigated, it will not be permitted.”*

It is my opinion the proposed development will impose directly on certain areas that are considered significant NHF (SWH and habitat of Endangered/Threatened species, headwater fish habitat) in addition to imposing on setbacks that are meant to protect those NHF.

- *“#2. EIS is intended to provide for an assessment of the potential impact of a proposed development or site alteration on a particular natural heritage feature and shall be used to determine whether the proposed development, redevelopment or site alteration should or should not be permitted. The EIS will be undertaken by the proponent of development and/or site alteration. The Town will require proponents to pre-consult with the municipality with respect to the requirements and scope of an EIS.”*

I understand from the discussions with staff that the Town of Perth does not have any record of the proponent or their consultant contacting them to scope the EIS as part of the pre-consultation process.

- *“#2. EIS is intended to provide for an assessment of the potential impact of a proposed development or site alteration on a particular natural heritage feature and shall be used to determine whether the proposed development, redevelopment or site alteration should or should not be permitted. The EIS will be undertaken by the proponent of development and/or site alteration. The Town will require proponents to pre-consult with the municipality with respect to the requirements and scope of an EIS.”*

- *“The components of the EIS shall be tailored to the scale of development and may range from a simplified assessment (scoped assessment) to a full site assessment. For example, a single detached dwelling may only require a scoped assessment while a subdivision, multiple unit residential complex, major commercial or industrial development, golf course etc. will require a full site assessment Council may consult with the Conservation Authority in determining information requirements and the type and content of an EIS. The following is intended to provide a guideline on the potential scope of an EIS:*
 - 1. Providing background information for the proposed development that describes the planning aspects (i.e., description/purpose of proposal, draft site and grading/drainage plan, features of full build-out), and the existing environmental conditions (i.e., surface and subsurface soils, local landform types, catchment boundaries of surface water features, infiltration capabilities of the site).*

 - 2. Identifying and describing the natural heritage feature(s) and area(s) affected by the development proposal (i.e., mapping of the feature, describing the significance, habitat requirements, relationship between features, linkages to off-site features, methodology used for field studies).*

 - 3. Analyzing the ecological functions of the feature(s) affected by the development proposal on the site and adjacent property(ies) including: examination of the features and functions present and their ecological sensitivity; explanation of the methods used to determine the effects of the proposed development; information to demonstrate that proposed mitigation measures intended to protect key features or functions are measurable and outcomes are predictable or manageable; assessment of habitat changes; identification of indicator, keystone or flagship species that could be considered in assessing habitat conditions; identification of features or functions, including existing or new movement linkages*

or habitat corridors that contribute significantly to the integrity or function of the natural heritage system).

4. *Identifying the diversity and connectivity that supports the natural heritage system by recording existing habitats and lists of existing species, and evaluating aquatic, riparian and terrestrial linkages where they exist or can be enhanced, particularly through enabling natural succession processes.*
 5. *Outlining potential impacts of the development proposal on natural heritage features and their ecological functions and potential mitigation measures. Assessing the potential negative impacts both direct and indirect in quantitative and qualitative terms.*
 6. *Identifying mitigation measures and residual impacts with a preference at avoiding impacts. Residual impacts must be assessed as to whether they are negative impacts, their significance, severity and longevity.*
 7. *Identifying monitoring needs, a monitoring program and a contingency plan in the event that the results indicate that there are negative impacts.*
 8. *Recommendations resulting from the assessment that will assist the Town in making a decision on whether the application should be approved modified, refused and what measures may or should be required for mitigation and monitoring.”*
- Among those in the list above, # 1 appears to have been completed satisfactorily.
 - #2 lacked the mapping portion whereby the NHFs should be clearly defined on a map. I have included a series of maps that identify the NHFs identified in the EIS report as Exhibit “C”. The mapping is extremely important and should be used to define the development limits. Although measures may be applied to allow for minor encroachments into certain areas, the intent should be to clearly identify those areas and work back from the worst-case scenario.
 - #3 has not been completed adequately without first identifying where all the NHFs occur on the property. How can an expert discern what the

potential negative impacts will be on the overall form and function of a NHF, when they have not mapped the areas and reviewed them in the context of the proposed development? The EIS should identify the NHF on a map and estimate what the loss to that NHF would be.

- #4 has not been met. One example of linkage that will be lost is the connection between the PSW and Tay River via Drainage Feature A, as indicated in the EIS report. This feature will be removed and the flows directed to a SWM Pond, likely SWM Pond No. 3. Although this watercourse drains through a relatively short distance through the golf course, it provides a linkage corridor between the PSW and the unevaluated wetland along the Tay River. These types of connective waterways have value and should be protected.
- #5 has not been met. It discusses what the negative impacts could be on the NHFs (although not all that have been identified) but without the mapping of the NHFs, it is not possible to fully assess the potential negative impacts both direct and indirect in quantitative and qualitative terms.
- #6 The EIS includes a variety of measures to mitigate impacts to NHFs. However, without a scaled map to identify how and where these areas are, it is not feasible to determine whether it will be a net benefit or whether the imposition by the development will result in excessive negative impacts to the feature.
- #7 As mentioned above in #6, there are a number of compensation measures outlined in the EIS, such as replacing wooded areas that constitute habitat for confirmed SWH species in thicket areas. However, the only monitoring recommended within the EIS is to monitor for Blanding's Turtle. There is no recommendation to monitor the new wooded areas to ensure the plantings, (and buckthorn removals) are effective in the long term, nor has there been any recommendation to conduct additional monitoring for Eastern Gray Ratsnake on-site.
- *Recommendations resulting from the assessment that will assist the Town in making a decision on whether the application should be approved modified, refused and what measures may or should be required for mitigation and monitoring.*

At this time, I do not believe there is sufficient data in the EIS for the Town to approve development. Although there are a variety of mitigation techniques being applied to the NHFs to allow development to occur on the property, the assessment falls short of defining the boundaries/locations of these features and identifying whether there would be a negative impact on the features. Based on the constraints plans I have provided with this Witness Statement, the proposed development does not appear to have any regard for these areas nor the setbacks that are meant to protect the naturalness of the site and adjacent waterways. As already stated above, the EIS recommends numerous ways to mitigate the losses, but includes monitoring for only Blanding's Turtle which has suitable nesting habitat near the Peter Street crossing, but no monitoring for the large areas where buckthorn and tree planting mitigation is proposed. It is my opinion the Town of Perth and County of Lanark should refuse this application based on the data-gaps within the EIS.

6. RESPONSE TO ISSUES:

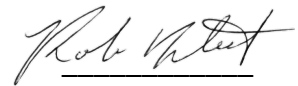
With respect to Issue 3 of the Issues List (Consistency with the Provincial Policy Statement 2020), in my opinion the proposal is not consistent with the above-referenced natural heritage and environmental protection policies of the PPS 2020, for the reasons discussed above.

With respect to Issue 4 of the Issues List (Conformity to the County of Lanark Sustainable Communities Official Plan) and Issue 5 (Conformity to the Town of Perth Official Plan), in my professional opinion the proposal does not conform to the above-referenced natural heritage and environmental policies of the Plans, for the reasons discussed above.

It is my opinion the EIS completed by Kilgour and Associates Ltd. has not been completed to the satisfaction of the Official Plan criteria of either the Town Of Perth or Lanark County.

7. CONCLUSIONS

- i) In my opinion, the EIS is incomplete with respect to identifying potential impacts to NHFs that have been identified within and adjacent to the NHFs. I further disagree with the EIS's support for the development and silt alterations to occur within the features or within the setbacks from these features.
- ii) During two (2) site visits, it was determined that the boundary of the PSW appeared to be accurately mapped, based on the more recent site visits by Kilgour and Associates Ltd., staff members. However, it is my opinion that the headwater watercourse referred to as *Drainage Feature A* in the EIS should be a protected feature. This feature was identified to contain coarse fish species in the EIS, which supports the food chain in the Tay River. It also provides a connective waterway between the Tay River and Grant's Creek PSW for other wildlife such as Special Concern turtles. I have included a 15 m setback off this feature as it is effectively an extension of the Significant Woodland and unevaluated wetland features that it drains towards, whereby both possess a 15 m setback.
- iii) It is my expert opinion the proposed subdivision development Draft Plan does not provide sufficient protections/monitoring of the Natural Heritage Features identified on and adjacent to the subject property (most notable are Species at Risk and the wetlands/watercourses). It does not respect the identified NHFs and should not be allowed to proceed as planned. It is also my opinion that the EIS ought to have included constraints mapping, to identify how much of and where the proposed development will interfere with and possibly negatively impact the identified NHFs.



Rob West

Works Referenced:

1. Ministry of Natural Resources, Natural Heritage Reference Manual, docs.ontario.ca/documents/3270/natural-heritage-reference-manual-for-natural.pdf
2. Province of Ontario, “Gray ratsnake” Fact Sheet, <https://www.ontario.ca/page/gray-ratsnake>
3. Ministry of Natural Resources Habitat Protection Summary for Gray Ratsnake (Frontenac Axis Population), files.ontario.ca/environment-and-energy/species-at-risk/Gray_Ratsnake_HR_Summary_Eng.pdf
4. Province of Ontario, Survey protocol for Ontario’s species at risk snakes, <https://www.ontario.ca/page/survey-protocol-ontarios-species-risk-snakes>
5. Ministry of Natural Resources, Best Management Practices for Identifying, Managing and Creating Habitat for Ontario’s Species at Risk Snakes https://canadianherpetology.ca/conservation/doc/MNRF%20Snake%20Habitat%20BMP_final-1.pdf
6. Ministry of Environment, Conservation and Parks, General Habitat Description for the Blanding’s Turtle, <https://files.ontario.ca/mecp-blandings-turtle-general-habitat-description-en-2021-04-20.pdf>
7. Ministry of Natural Resources and Forestry, Significant Wildlife Habitat Criteria Schedules For Ecoregion 6E, docs.ontario.ca/documents/4775/schedule-6e-jan-2015-access-ver-final-s.pdf

Figures and Appendices (Exhibit C):

1. Figure 1 – Constraints
2. Figure 2 – Gray Ratsnake Habitat
3. Figure 3 – Constraints – Significant Wildlife Habitat
4. Appendix A – SWH Bat Maternity Colony
5. Appendix B – SWH Turtle Nesting Areas
6. Appendix C – SWH Woodland Amphibian Breeding
7. Appendix D – SWH Wetland Amphibian Breeding
8. Appendix E – SWH Woodland Area Sensitive Bird Breeding
9. Appendix F – SWH Special Concern and Rare Wildlife

****End of Witness Statement****

Exhibit "A" to Witness Statement

Mr. Rob West is a Senior Environmental Scientist and has over 20 years experience completing Environmental Studies. His knowledge of Ontario flora and fauna is extensive and relied upon by various agencies and clients throughout Ontario. Mr. West's work requires him to be up-to-date on all legislation, protocols, guidelines, permitting process requirements, etc., both provincially and federally with respect to Species at Risk (SAR).

Mr. West has completed numerous Species at Risk studies and fisheries surveys throughout Ontario in support of municipal engineering infrastructure projects such as water distribution systems, sewage collection systems, surface water intakes, treatment plants and hydro dams in both aboriginal and non-aboriginal communities.

Mr. West's project experience includes SAR regional mapping projects, species protection protocols, SAR recovery projects, fish and mussel surveys, biophysical inventories, invasive species removal programs, bird banding, benthic surveys, SAR monitoring programs, consultation, and many others.

EDUCATION

HBSc, Laurentian University, Sudbury, Ontario

PROFESSIONAL DEVELOPMENT

Identification of Ontario Mosses, Trent University (2018)

Standard Ecological Land Classification Training, Ministry of Natural Resources & Forestry (2015)

Endangered Species Act Update, Ministry of Natural Resources (2013)

Venomous Snake Training, Ministry of Natural Resources Canada (2013)

MTO/DFO/OMNR Protocol for Protecting Fish & Fish Habitat (2012)

Fish Identification, Royal Ontario Museum (2011)

Electrofishing Techniques, Central Lake Ontario Conservation (2008, 2018)

Mussel Identification, Environment Canada (2008)

Data Sensitivity Training (NHIC), Ministry of Natural Resources (2007)

ASSOCIATIONS

ESA Ecological Society of America

CSEB Canadian Society of Environmental Biologists

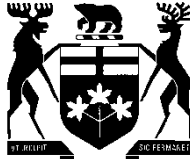
OBBA Ontario Breeding Bird Atlasser

PFN Member, Peterborough Field Naturalists

PROFESSIONAL CAREER

1999 to present	Oakridge Environmental Ltd. Peterborough, Ontario Senior Environmental Scientist/ Project Manager
1997 to 1999	Lakefield Research Lakefield, Ontario Manager of Electron Microscopy
1995 to 1997	Laurentian University Sudbury, Ontario Procedural and Geochemical Research

Exhibit “B” to Witness Statement



Ontario
Ontario Land Tribunal

ACKNOWLEDGMENT OF EXPERT'S DUTY

Case Number	Municipality
OLT-23-000534	Town of Perth

1. My name is Rob West. I live in the City of Peterborough in the Province of Ontario
2. I have been engaged by or on behalf of the Town of Perth to provide evidence in relation to the above-noted OLT proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - c. to provide such additional assistance as the OLT may reasonably require, to determine a matter in issue.
 - d. not to seek or receive assistance or communication, except technical support, while under cross examination, through any means including any electronic means, from any third party, including but not limited to legal counsel or client.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

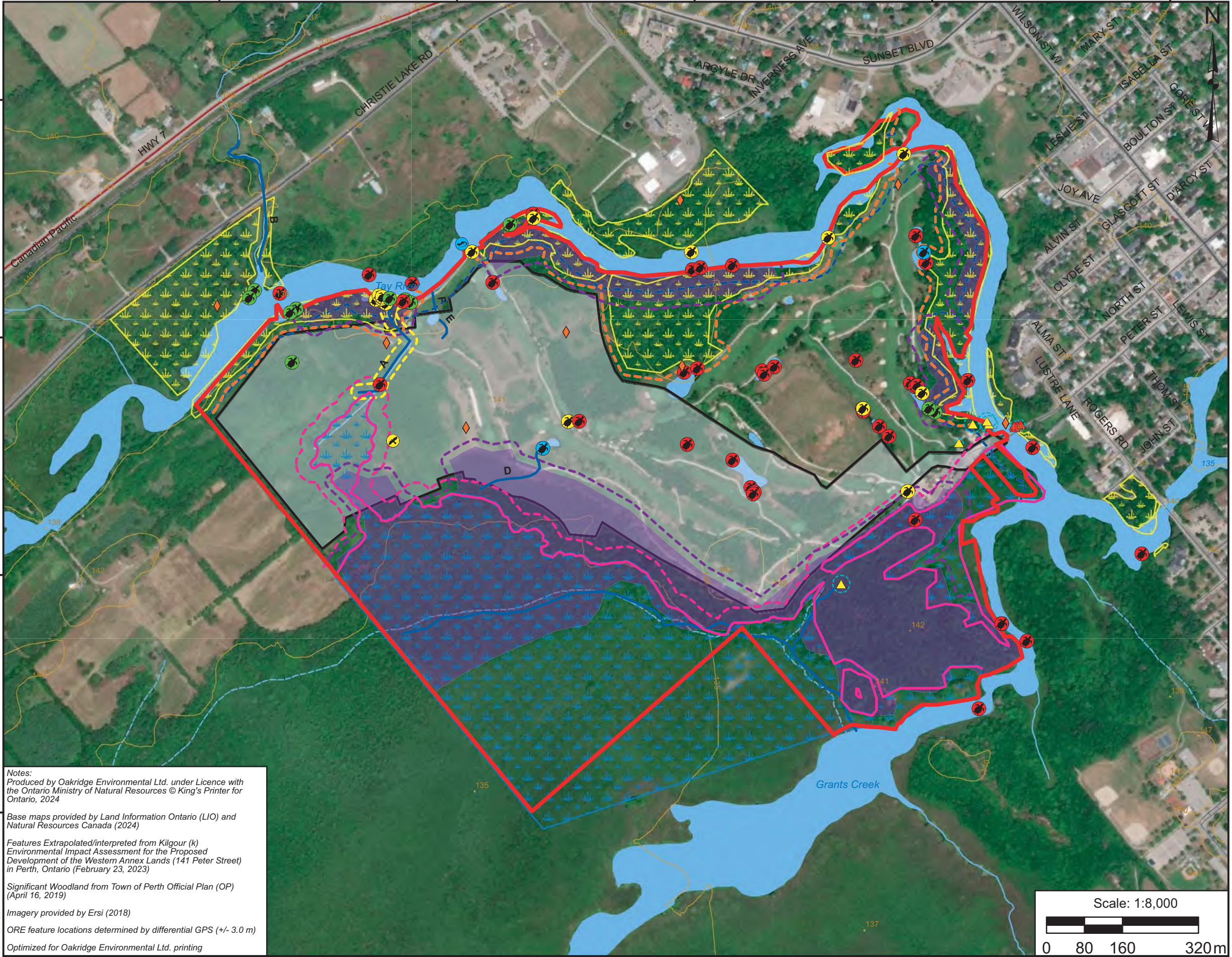
Date...April 16, 2024.....

.....
Signature

Exhibit “C” to Witness Statement

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Subdivision Technical and OLT Review
141 Peter Street, Perth ON

- Approximate Property Boundary
- Proposed Development Area
- PSW - Revised Boundary (k)
- Unevaluated Wetland (k)
- Unevaluated Wetland Setback (15 m)
- Provincially Significant Wetland (k)
- PSW Setback (30 m)
- Significant Woodland (OP)
- Significant Woodland Setback (15 m)
- Waterbody (LIO)
- Tay River Setback (30 m)
- Tributaries (k)
- Waterway Linkage Corridor Setback (15 m)
- Watercourse (LIO)
- Intermittent Watercourse (LIO)
- Contour (5 m Intervals)
- Spot Height (m asl)
- ◆ Bat Observation Points (k)
- ▲ Butternut (ORE)
- ▲ Butternut (k)
- Butternut Setback (Varies per DBH)
- Gray Ratsnake (k)
- Eastern Musk Turtle (k)
- Snapping Turtle (k)
- Midland Painted Turtle (k)
- Snapping Turtle (ORE)
- Golden-winged Warbler (ORE)

Notes:
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Base maps provided by Land Information Ontario (LIO) and Natural Resources Canada (2024)

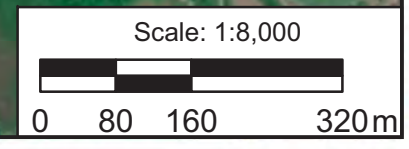
Features Extrapolated/interpreted from Kilgour (k) Environmental Impact Assessment for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario (February 23, 2023)

Significant Woodland from Town of Perth Official Plan (OP) (April 16, 2019)

Imagery provided by Ersi (2018)

ORE feature locations determined by differential GPS (+/- 3.0 m)

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NAD 1983 UTM Zone 18N

TITLE
Constraints



PROJECT #
24-3409

DATE
June 2024

FIGURE NO.
1

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Subdivision Technical and OLT Review
141 Peter Street, Perth ON

- Approximate Property Boundary
- Gray Ratsnake Habitat
- Unevaluated Wetland (k)
- Provincially Significant Wetland (k)
- Waterbody (LIO)
- Watercourse
- Intermittent Watercourse
- Contour (5 m Intervals)
- Spot Height (m asl)
- Gray Ratsnake (k)
- Gray Ratsnake (iNaturalist)

Notes:
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Base maps provided by Land Information Ontario (LIO) and Natural Resources Canada (2024)

Features Extrapolated from Kilgour (k) Environmental Impact Assessment for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario (February 23, 2023)

Gray Ratsnake (road mortality) observation exported from iNaturalist (August 2022)

Wetlands (LIO) not shown off-site.

Imagery provided by Esri (2018)

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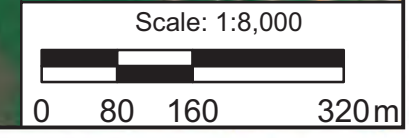
TITLE
Gray Ratsnake Habitat



PROJECT #
24-3409

FIGURE NO.
2

DATE
June 2024



NAD 1983 UTM Zone 18N

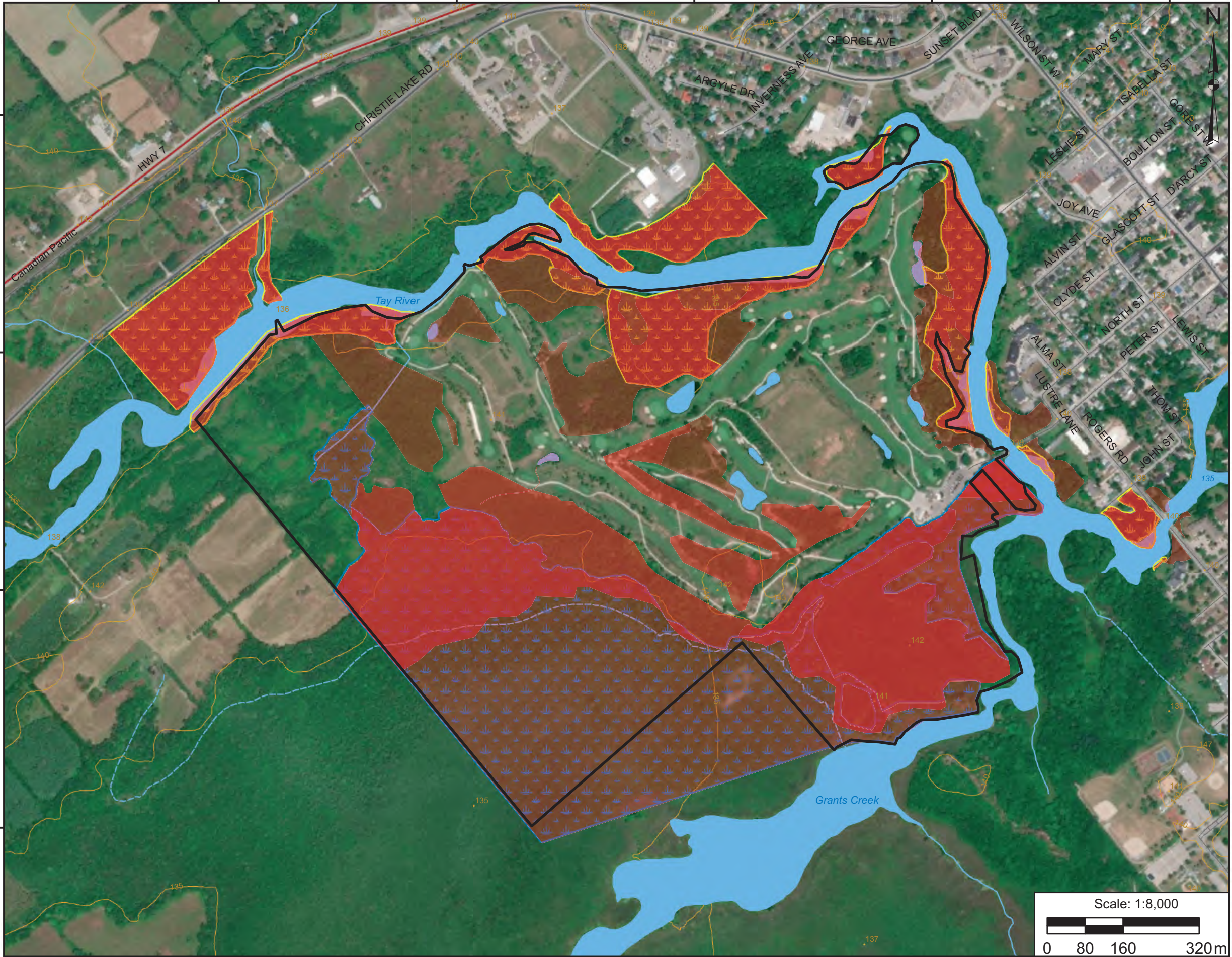
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Subdivision Technical and OLT Review
141 Peter Street, Perth ON

-  Approximate Property Boundary
-  Significant Wildlife Habitat - SWH
-  Unevaluated Wetland
-  Provincially Significant Wetland
-  Waterbody (LIO)
-  Watercourse
-  Intermittent Watercourse
-  Contour (5 m Intervals)
-  Spot Height (m asl)

Notes:
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Base maps provided by Land Information Ontario (LIO) and Natural Resources Canada (2024)

Significant Wildlife Habitat (SWH) Extrapolated/interpreted from Kilgour Environmental Impact Assessment for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario (February 23, 2023)

SWH opacity increased due to overlap of multiple SWH.

Breakdown of individual SWH in Appendix X

Wetlands as identified by Kilgour. LIO Wetlands not shown off-site.

Imagery provided by Esri (2018)

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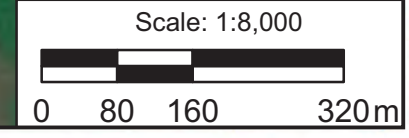
TITLE
Constraints
- Significant Wildlife Habitat



PROJECT #
24-3409

FIGURE NO.
3

DATE
June 2024












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Subdivision Technical and OLT Review
141 Peter Street, Perth ON

-  Approximate Property Boundary
-  Bat Maternity Colonies - SWH
-  Unevaluated Wetland
-  Provincially Significant Wetland
-  Waterbody (LIO)
-  Watercourse
-  Intermittent Watercourse
-  Contour (5 m Intervals)
-  Spot Height (m asl)

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Base maps provided by Land Information Ontario (LIO) and Natural Resources Canada (2024)

Significant Wildlife Habitat (SWH) Extrapolated/interpreted from Kilgour Environmental Impact Assessment for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario (February 23, 2023)

Wetlands as identified by Kilgour. LIO Wetlands not shown off-site.

Imagery provided by Esri (2018)

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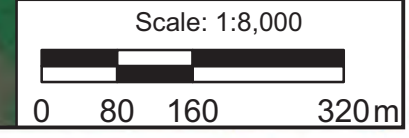
TITLE
**Significant Wildlife Habitat
Bat Maternity Colonies**



PROJECT #
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DATE
June 2024

Appendix
A












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Subdivision Technical and OLT Review
141 Peter Street, Perth ON

-  Approximate Property Boundary
-  Turtle Nesting Areas - SWH
-  Unevaluated Wetland
-  Provincially Significant Wetland
-  Waterbody (LIO)
-  Watercourse
-  Intermittent Watercourse
-  Contour (5 m Intervals)
-  Spot Height (m asl)

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Base maps provided by Land Information Ontario (LIO) and Natural Resources Canada (2024)

Significant Wildlife Habitat (SWH) Extrapolated/interpreted from Kilgour Environmental Impact Assessment for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario (February 23, 2023)

Wetlands as identified by Kilgour. LIO Wetlands not shown off-site.

Imagery provided by Esri (2018)

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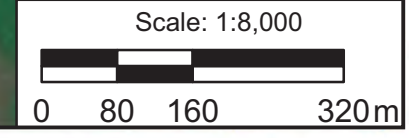
TITLE
**Significant Wildlife Habitat
Turtle Nesting Areas**



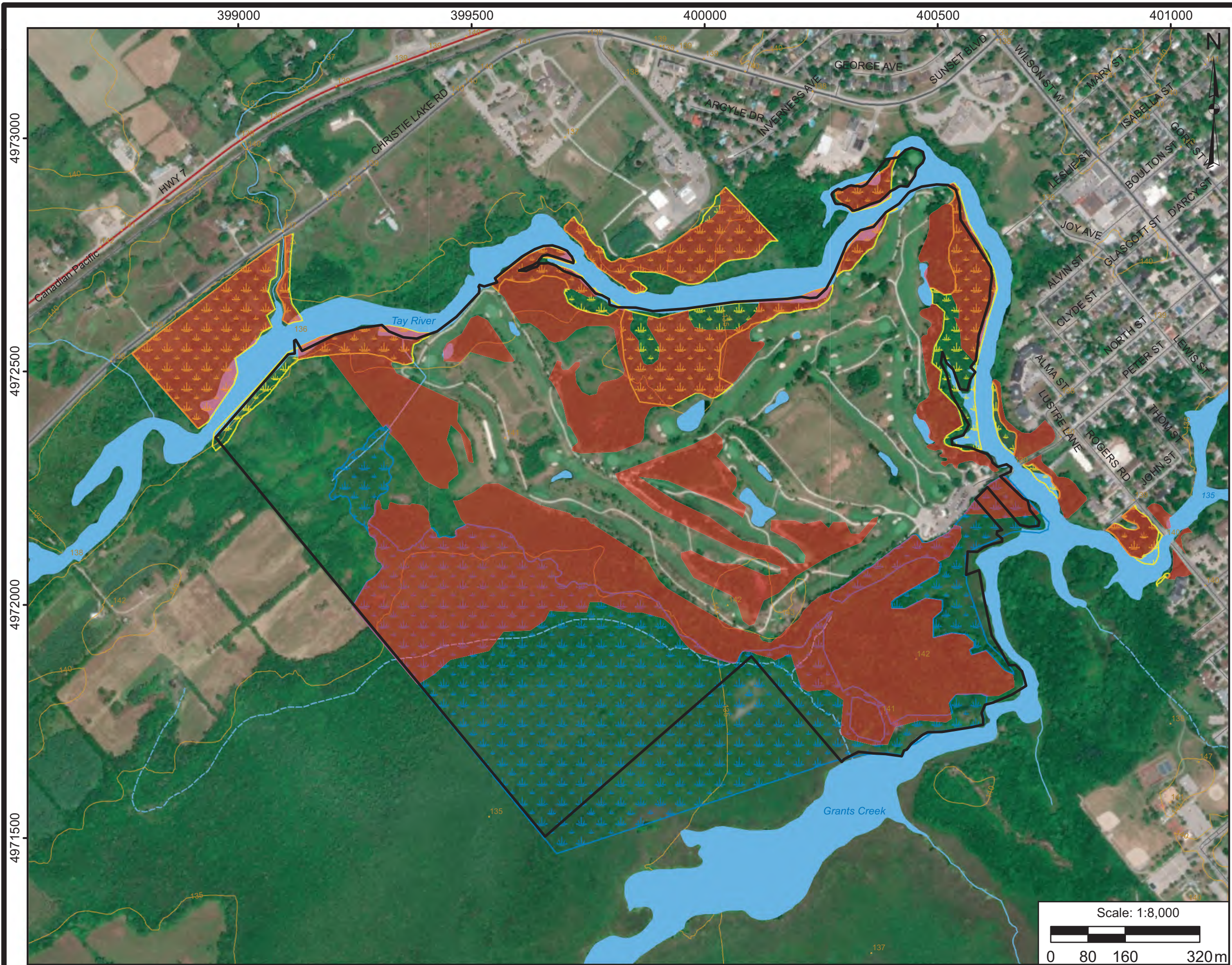
PROJECT #
24-3409

Appendix
B










DATE
June 2024



NAD 1983 UTM Zone 18N



Subdivision Technical and OLT Review
141 Peter Street, Perth ON

-  Approximate Property Boundary
-  Woodland Amphibian Breeding - SWH
-  Unevaluated Wetland
-  Provincially Significant Wetland
-  Waterbody (LIO)
-  Watercourse
-  Intermittent Watercourse
-  Contour (5 m Intervals)
-  Spot Height (m asl)

Notes:
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Base maps provided by Land Information Ontario (LIO) and Natural Resources Canada (2024)

Significant Wildlife Habitat (SWH) Extrapolated/interpreted from Kilgour Environmental Impact Assessment for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario (February 23, 2023)

Wetlands as identified by Kilgour. LIO Wetlands not shown off-site.

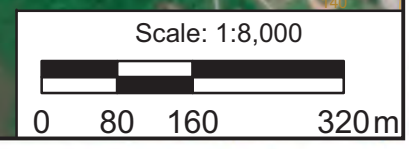
Imagery provided by Esri (2018)

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TITLE
**Significant Wildlife Habitat
Woodland Amphibian Breeding**



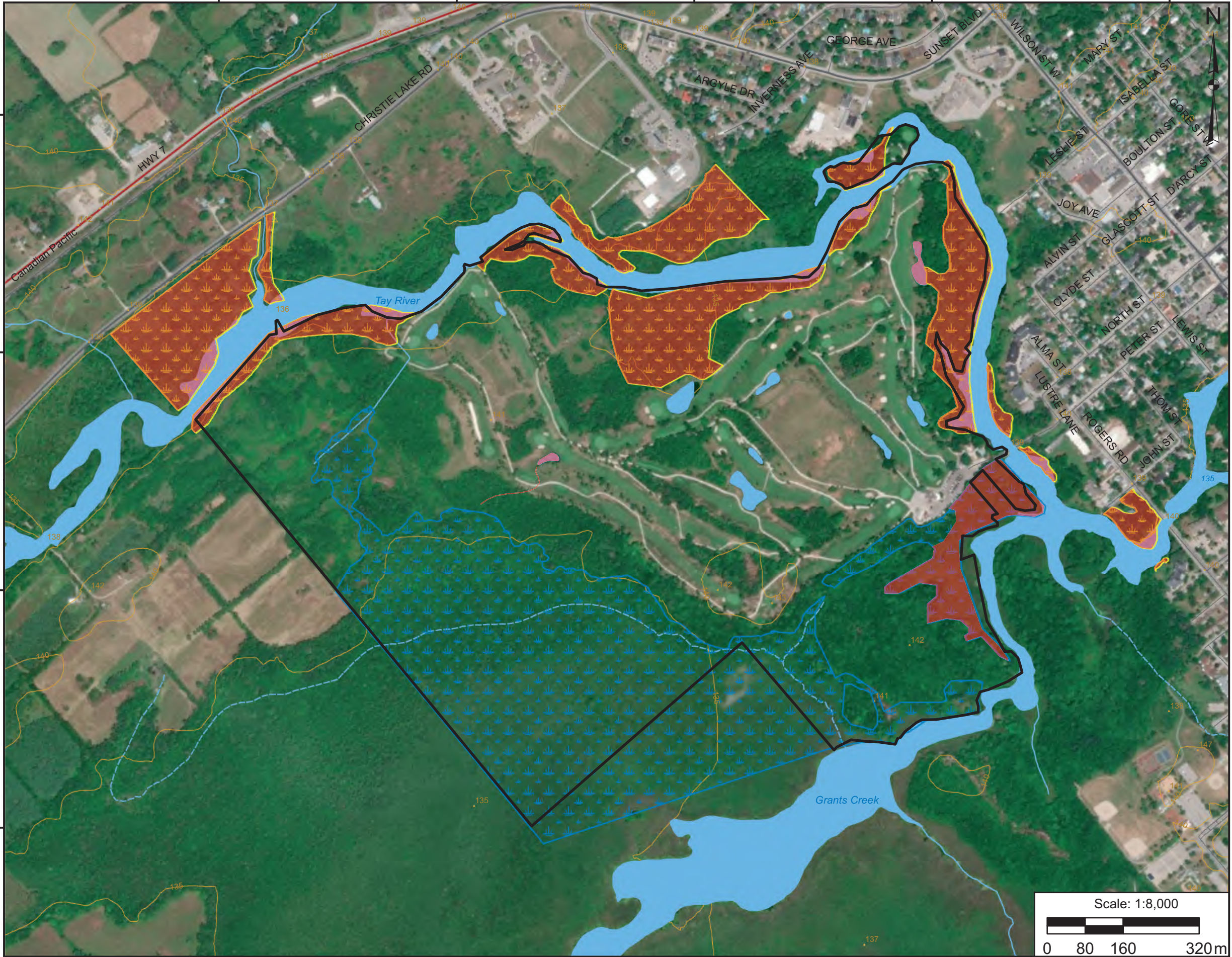
PROJECT # 24-3409	Appendix C
DATE June 2024	












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Subdivision Technical and OLT Review
141 Peter Street, Perth ON

-  Approximate Property Boundary
-  Wetland Amphibian Breeding - SWH
-  Unevaluated Wetland
-  Provincially Significant Wetland
-  Waterbody (LIO)
-  Watercourse
-  Intermittent Watercourse
-  Contour (5 m Intervals)
-  Spot Height (m asl)

Notes:
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Significant Wildlife Habitat (SWH) Extrapolated/interpreted from Kilgour Environmental Impact Assessment for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario (February 23, 2023)

Wetlands as identified by Kilgour. LIO Wetlands not shown off-site.

Imagery provided by Esri (2018)

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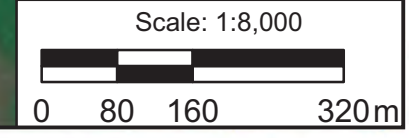
TITLE
**Significant Wildlife Habitat
Wetland Amphibian Breeding**



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24-3409

DATE
June 2024

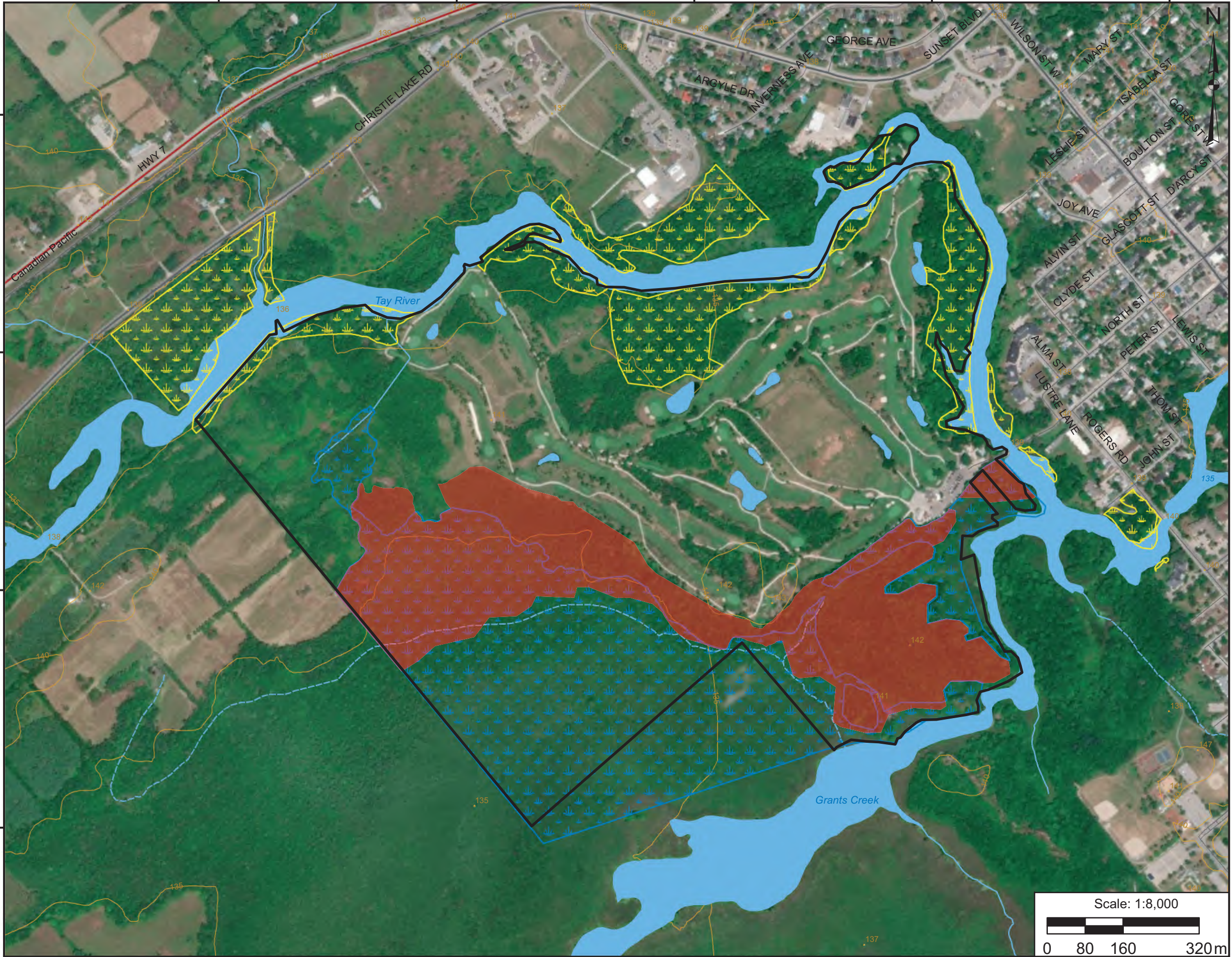
Appendix
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Subdivision Technical and OLT Review
141 Peter Street, Perth ON

- Approximate Property Boundary
- Woodland Area-sensitive Bird - SWH
- Unevaluated Wetland
- Provincially Significant Wetland
- Waterbody (LIO)
- Watercourse
- Intermittent Watercourse
- Contour (5 m Intervals)
- Spot Height (m asl)

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Base maps provided by Land Information Ontario (LIO) and Natural Resources Canada (2024)

Significant Wildlife Habitat (SWH) Extrapolated/interpreted from Kilgour Environmental Impact Assessment for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario (February 23, 2023)

Wetlands as identified by Kilgour. LIO Wetlands not shown off-site.

Imagery provided by Esri (2018)

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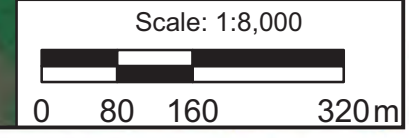
TITLE
**Significant Wildlife Habitat
Woodland Area-sensitive Bird**



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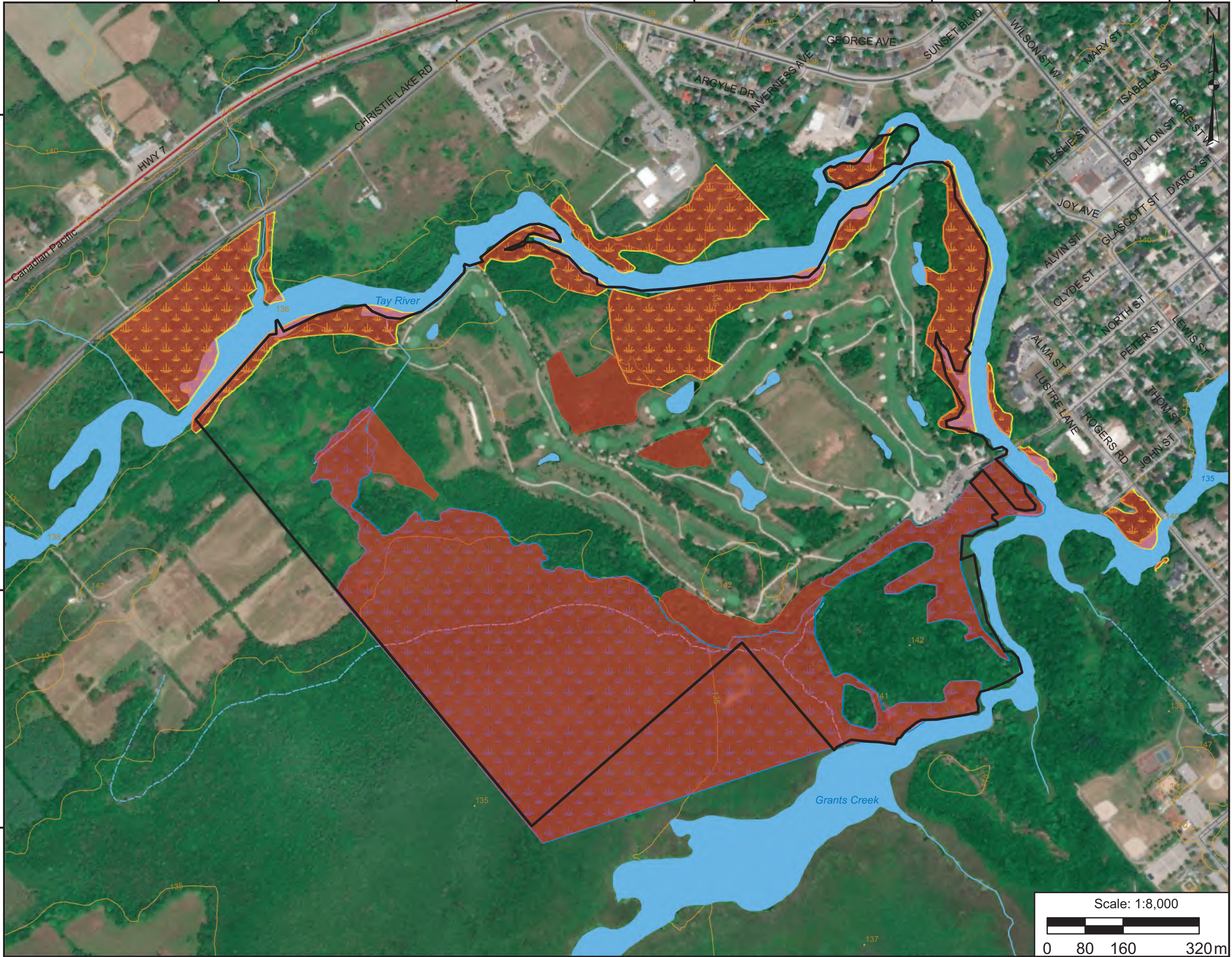
Appendix
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Subdivision Technical and OLT Review
141 Peter Street, Perth ON

-  Approximate Property Boundary
-  Special Concern and Rare Wildlife - SWH
-  Unevaluated Wetland
-  Provincially Significant Wetland
-  Waterbody (LIO)
-  Watercourse
-  Intermittent Watercourse
-  Contour (5 m Intervals)
-  Spot Height (m asl)

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Base maps provided by Land Information Ontario (LIO) and Natural Resources Canada (2024)

Significant Wildlife Habitat (SWH) Extrapolated/interpreted from Kilgour Environmental Impact Assessment for the Proposed Development of the Western Annex Lands (141 Peter Street) in Perth, Ontario (February 23, 2023)

Wetlands as identified by Kilgour. LIO Wetlands not shown off-site.

Imagery provided by Esri (2018)

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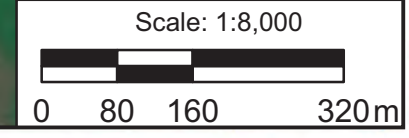
TITLE
**Significant Wildlife Habitat
Special Concern and Rare Wildlife**



PROJECT #
24-3409

Appendix
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June 2024



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