



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

George Vegh

Direct Line: (416) 601-7709
Direct Fax: (416) 868-0673
Email: gvegh@mccarthy.ca

December 18, 2014

VIA RESS, EMAIL AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2014-0298 - Amended Application for an order under section 41(9) of the
Electricity Act, 1998, S.O. 1998, c. 15, Sch. B, as amended (the "Electricity Act")**

On behalf of Niagara Region Wind Corporation and pursuant to section 41(9) of the Electricity Act, please find enclosed two copies of an amended application (the "Application") for an order under section 41(9) of the Electricity Act.

Kindly let us know if you require anything further in order to consider this Application.

Sincerely,

Signed in the Original

George Vegh
Enclosure

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, S.O. 1998, c. 15, Sch. B, as amended;

AND IN THE MATTER OF an application by Niagara Region Wind Corporation for an order under section 41(9) of the *Electricity Act*, 1998, S.O. 1998, c. 15, Sch. B, as amended.

AMENDED APPLICATION FOR ORDER UNDER SECTION 41(9) **OF THE ELECTRICITY ACT**

Introduction and Overview

1. Niagara Region Wind Corporation (the “**Applicant**”) is an Ontario corporation established for the development, construction and operation of the Niagara Region Wind Farm (“**NRWF**”). The NRWF is a proposed 230 MW wind energy generation facility which was awarded a 20-year power purchase agreement under the Ontario Power Authority’s (“**OPA**”) Feed-in Tariff program (the “**FIT Program**”) in February 2011.
2. The NRWF will be located in the Niagara Region in the municipalities of West Lincoln, Lincoln, Wainfleet and in Haldimand County. The NRWF will be connected to the Independent Electricity System Operator (“**IESO**”)-controlled grid by way of a transmission interconnection facility (the “**Transmission Facility**”). The Applicant was granted leave to construct the Transmission Facility by Ontario Energy Board (the “**OEB**” or the “**Board**”) Decision and Order issued July 3, 2014 (EB-2013-0203).
3. In addition to the Transmission Facility, the Applicant will be constructing distribution facilities in order to transport electricity generated by the NRWF to the Transmission Facility. In all, the distribution facilities will consist of 156 km of 34.5 kilovolt (“**kV**”) overhead and underground distribution lines.
4. The Applicant will locate approximately 6 km of the distribution lines for the NRWF along municipal streets and highways owned by the Municipality of Wainfleet (“**Wainfleet**”), (see Appendix “1”).
5. The Applicant initially filed this application on September 17, 2014. When initially filed, the application was in relation to the location of the Applicant’s distribution infrastructure on West Lincoln and Niagara Region road allowances, as well as the

location of distribution infrastructure on Wainfleet's road allowances. Since initially filing this application, the Applicant has entered into road use agreements with West Lincoln and the Niagara Region. The Applicant entered into a road use agreement with West Lincoln on October 9, 2014 and with the Niagara Region on November 14, 2014. As a result, the location of the Applicant's distribution infrastructure within West Lincoln and Niagara Region road allowances has been determined. The Applicant therefore hereby withdraws the Application filed on September 17, 2014, and requests that the Board replace the Application filed on September 17, 2014 with this amended application (the "**Application**").

6. As further described below, the Applicant attempted to work with Wainfleet to enter into a road use agreement, but at present has not been able to reach an agreement with Wainfleet in respect of same, and in particular, has not been able to come to an agreement on the location of distribution facilities along Wainfleet's municipal streets and highways. As a result, the Applicant is seeking the assistance of the OEB by way of an order under section 41(9) of the *Electricity Act, 1998* (the "**Electricity Act**") to determine the location of distribution facilities along the municipal streets and highways required for these facilities in Wainfleet.
7. The reasons for this Application are set out in detail below.

Consultation and Negotiations with Wainfleet

8. Approximately 6 km of distribution lines will be located within Wainfleet road allowances. The Applicant sought to begin work on a road use agreement with Wainfleet in April 2013. Unfortunately, Wainfleet immediately indicated to the Applicant that it would not communicate with the Applicant in respect of a road use agreement until the Applicant had been granted a Renewable Energy Approval ("**REA**") for the NRWF. The Applicant submits that there is no basis whatsoever for Wainfleet to have taken this position; the REA is not a pre-requisite to discussions regarding a municipal road use agreement.
9. Attached as Appendix "1" is the correspondence between the Applicant and Wainfleet confirming the Applicant's proposal for a road use agreement and, in particular, setting out the location where the facilities will be installed (the "**September 16, 2014 Letter to Wainfleet**"). Since this correspondence, the Applicant has been in communications with Wainfleet and Wainfleet is no longer objecting to any communications with the Applicant regarding a road use agreement (the Applicant notes that it received its REA on November 6, 2014). The Applicant has exchanged drafts of a road use agreement but unfortunately, the Applicant and Wainfleet have not reached an agreement at this time. The Applicant notes that Wainfleet has not raised issues with respect to the location of the distribution facilities.
10. Attached as Schedule "A" to the September 16, 2014 Letter to Wainfleet are maps which set out the Wainfleet road allowances which the Applicant will require for the distribution facilities it will be building in relation to the NRWF, and the proposed location of these distribution facilities within the Wainfleet road allowances.

Legislative Context

11. Section 41 of the Electricity Act sets out a comprehensive set of rights of access to public streets and highways pursuant to which a distributor or transmitter's rights of access to and installation on public streets or highways are prescribed by legislation. Specifically, section 41 provides that electricity transmitters and distributors have the right to:
 - Install structures, equipment and other facilities over, under or on any public street or highway (ss. 41(1));
 - Inspect, maintain, repair, alter, remove or replace any structure, equipment or facilities (ss. 41(2)); and
 - Enter onto land to exercise statutory powers (ss. 41(3) and (4)).
12. Under s. 41, all of these rights are exercisable without the consent of the owner or other person having an interest in the street or highway (ss. 41(5)).
13. Pursuant to s. 41(9), when a distributor has not been able to come to an agreement with a municipality in respect of the location of distribution facilities, the location may be determined by the OEB.

The Applicant is a Transmitter and Distributor

14. The Applicant's 156 km of distribution lines which will transport electricity to the Transmission System constitute a distribution system as that term is defined under section 2(1) of the Electricity Act.¹
15. Consequently, the Applicant is a distributor and transmitter² under the Electricity Act, including for the purposes of section 41(9), and may install structures, equipment and other facilities over, under or on any public street or highway.

The Board's Jurisdiction in a Section 41(9) Proceeding

16. Pursuant to section 41(9) of the Electricity Act, when a distributor has not been able to come to an agreement with a municipality in respect of the location of distribution facilities, the location may be determined by the Board.
17. The Board's jurisdiction under section 41(9) is limited. As noted by the Board in EB-2010-0253 in its determination of an application by Plateau Wind, Inc. for an order under section 41(9):

[The legislation, i.e., section 41(1) and section 49(9))] limits the Board's role in this proceeding to a determination of the location of Plateau's proposed Distribution Facilities within the Road Allowances. Given the legislative restriction

¹ A "distribution system" is defined as "a system for distributing electricity, and includes any structures, equipment or other things used for that purpose", see section 2, *Electricity Act*.

² The Applicant will own and operate the Transmission Facility, as described in paragraph 2, above.

on the Board's jurisdiction, it is not the Board's role in this proceeding to approve or deny the Project or the Distribution Facilities, to consider the merits, prudence or any environmental, health or economic impacts associated with it or to consider alternatives to the project such as routes for the Distribution Facilities that are outside of the prescribed Road Allowances. Also, it is not within the Board's jurisdiction in this proceeding to consider any aspect of Plateau's proposed wind generation facilities.

18. Similarly, in a recent application by East Durham Wind, Inc., for an order under section 41(9), the Board made the following comments in respect of letters of comment that included general concerns about the project, or renewable energy policy:

Given the scope of subsection 41(9), it is not the Board's role in this proceeding to decide whether the Project should be approved, consider issues relating to wind turbines or renewable energy policy generally, or consider alternatives to the Project such as routes for the Distribution System that are outside of the Road Allowances. Accordingly, the concerns in the letters of comment described above are not within the scope of this proceeding.

19. In sum, the Applicant submits that the Board's jurisdiction in a section 41(9) proceeding is limited to making a determination of the location of the distribution facilities which the Applicant proposes to locate on streets and highways owned by Wainfleet.

Proposed Distribution System

20. The Applicant has attached at Schedule A of Appendix 1 maps indicating its proposed location of the distribution system.
21. The distribution system will be designed and installed in accordance with the Ontario Electrical Safety Code as per the Electrical Safety Authority and applicable CSA standards. The distribution lines are expected to be installed between one meter to six meters from the property edge of the road right of way depending on width of the right of way and width of existing travelled roads.

Consultation with Stakeholders Generally

22. For the Board's information, the Applicant notes that the NRWF is subject to the environmental screening process prescribed by *Ontario Regulation 359/09, Renewable Energy Approvals under Part V.0.1 of the Act* made pursuant to *Environmental Protection Act*, R.S.O. 1990, c. E.19. Accordingly, the Applicant has conducted extensive consultation with interested stakeholders and submitted its REA application to the Ministry of the Environment on April 22, 2013. The Applicant received its REA on November 6, 2014.
23. In addition to the environmental screening process, the Applicant has received final interconnection reports issued by the Independent Electricity System Operator (the "IESO") and Hydro One Networks Inc. ("HONI").

Order Requested

24. Accordingly, the Applicant hereby applies to the Board for:
- (i) an order under section 41(9) of the Electricity Act to determine the location of distribution facilities along the municipal streets and highways needed for these facilities in the Municipality of Wainfleet.
25. The Applicant requests that the Board determine this Application by way of a written hearing.
26. Pursuant to rule 7.01 of the Board's Rules of Practice and Procedure, the Applicant requests that the Board expedite this proceeding.
27. The following Appendix consists of the Applicant's pre-filed evidence.
- | | |
|------------|---|
| Appendix 1 | September 16, 2014 Letter to Municipality of Wainfleet including Schedule "A" showing Proposed Location of distribution infrastructure in Municipality of Wainfleet |
|------------|---|
28. The individuals below are the authorized representatives of the Applicant for the purpose of serving documents throughout this proceeding:
- | | |
|--|---|
| George Vegh
Héloïse Apestéguy-Reux
McCarthy Tétrault LLP
Toronto Dominion Bank Tower
66 Wellington St. W
Toronto, ON M5K 1E6

Tel: 416.601.7809
Fax: 416.868.0673
Email: hapesteguyreux@mccarthy.ca | Darren Croghan
Niagara Region Wind Corporation

Tel: 905.842.4888
Fax: 905.842.4885 |
|--|---|

Dated December 18, 2014 at Toronto, Ontario.

Niagara Region Wind Corporation
by its counsel McCarthy Tétrault LLP

Per: *Signed in the Original*

George Vegh

Appendix 1

**September 16, 2014 Letter to Municipality of Wainfleet
including Schedule “A” showing Proposed Location of distribution infrastructure in
Municipality of Wainfleet**

September 16, 2014

Municipality of Wainfleet
31940 Highway 3, PO Box 40
Wainfleet, ON L0S 1V0

Niagara Region
Wind Corporation
277 Lakeshore Road East
Suite 211
Oakville, ON L6J 6J3

905 842 4888 Phone
905 842-4885 Fax

Attention: Mike Sullivan, Manager of Planning

Dear Mike,

Re: Niagara Region Wind Corporation – Road use agreement and location of distribution infrastructure along Wainfleet road allowances

As you know, we communicated with the Township of Wainfleet in April of 2013 regarding a road use agreement in respect of the road allowances needed by Niagara Region Wind Corporation ("NRWC") for the Niagara Region Wind Farm (the "Project"), which project was awarded a power purchase agreement pursuant to the Ontario Power Authority's feed-in tariff program.

Unfortunately, it was indicated to us in September of 2013 that the Township of Wainfleet would not communicate with us regarding a road use agreement until the Project had been granted a Renewable Energy Approval ("REA").

We attach as Schedule "A" of this letter maps which set out the Township of Wainfleet road allowances which NRWC will require for the distribution assets it will be building in relation to the Project, and the proposed location of distribution assets within the road allowances.¹ We understand that you have not raised any particular concerns with the proposed location of these distribution assets; instead, you indicated that you would not communicate with us regarding a road use agreement until the Project has been granted a REA. If your position has changed, please advise us of this and we would be happy to work to reach agreement in respect of a road use agreement.

To move things along, NRWC will be filing an application under section 41 of the *Electricity Act, 1998* (the "Electricity Act"). Pursuant to section 41(9) of the Electricity Act, the Ontario Energy Board (the "OEB") may determine the location of the distribution assets which NRWC will build within road allowances.

By way of background, section 41 sets out a comprehensive set of rights of access to public streets and highways pursuant to which a distributor or transmitter's rights of access to and installation on public

¹ We note that the question of road allowances needed for transmission assets for the Project has been settled by the approval, on July 3rd, 2014, of NRWC's leave to construct application.

streets or highways are prescribed by legislation. Specifically, section 41 provides that electricity transmitters and distributors have the right to:

- Install structures, equipment and other facilities over, under or on any public street or highway (ss. 41(1));
- Inspect, maintain, repair, alter, remove or replace any structure, equipment or facilities (ss. 41(2)); and
- Enter onto land to exercise statutory powers (ss. 41(3) and (4)).

Under s. 41, all of these rights are exercisable without the consent of the owner or other person having an interest in the street or highway (ss. 41(5)).

Pursuant to s. 41(9), when a distributor has not been able to come to an agreement with a municipality in respect of the location of distribution infrastructure, the location may be determined by the OEB.

NRWC notes once again that although we will be filing a section 41 application, our preference is to reach an agreement with the Municipality of Wainfleet. We therefore look forward to hearing from you and hope to work with you to reach an agreement in respect of the use of the Municipality of Wainfleet's road allowances.

Please do not hesitate to contact us if you have any questions in respect of the foregoing.

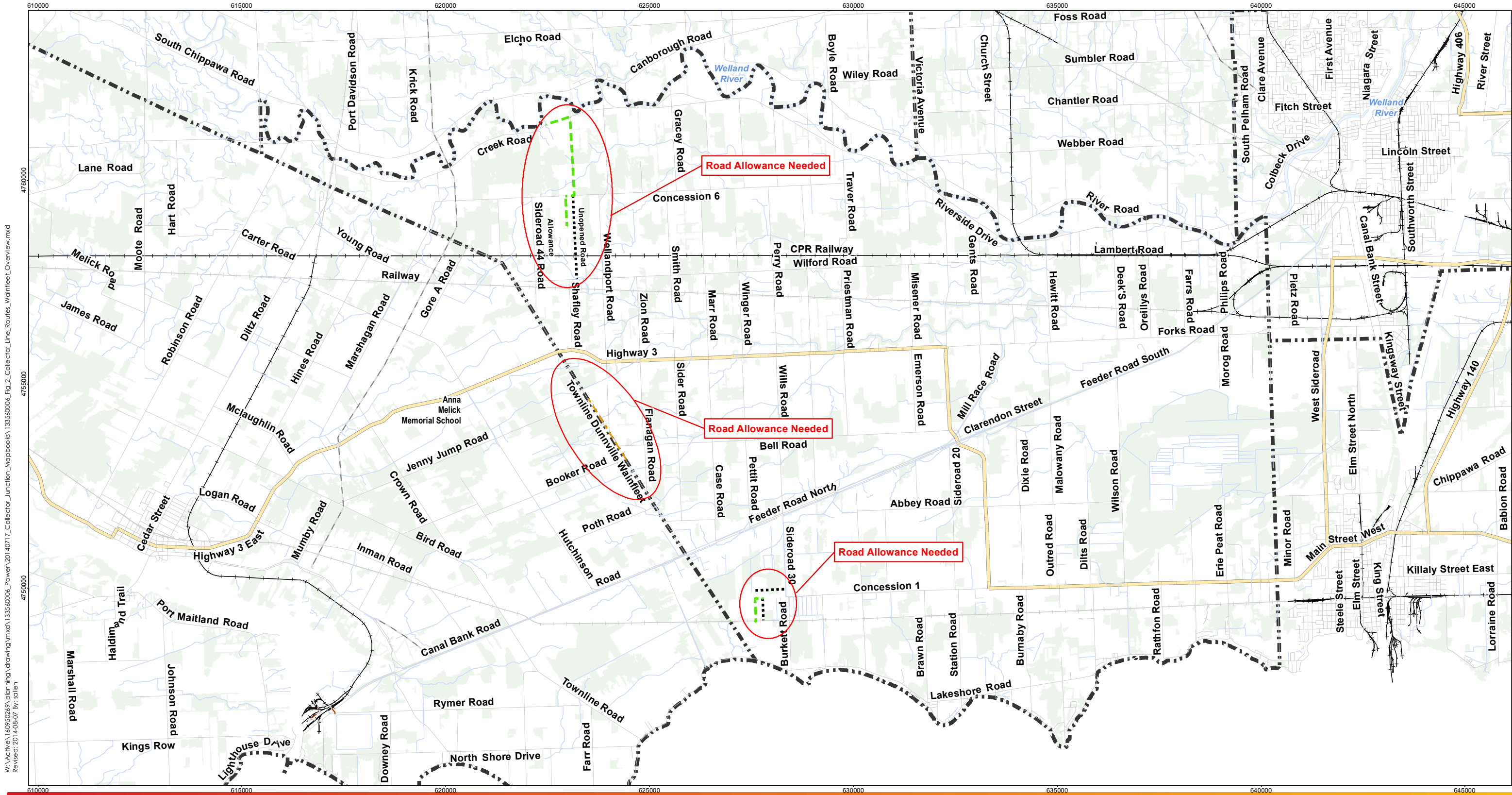
Sincerely,



Darren Croghan,
Vice President, Project Development
Niagara Region Wind Corporation

Schedule "A"

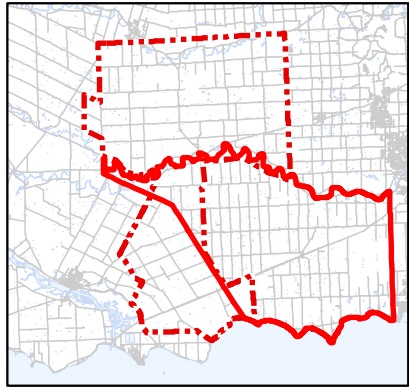
Road allowances required for distribution infrastructure



Notes

1. Coordinate System: NAD 1983 UTM Zone 17N).
2. Base features produced under license with the Ontario Ministry of Natural Resources © Queen's Printer for Ontario, 2011.
3. Orthoimagery source: First Base Solutions, Date Spring 2010.
4. Petroleum Well source: © Ontario Oil, Gas and Salt Resource Library, 2010.
5. MOE Water well locations are approximate and have been positioned based on published UTM coordinates © Queen's Printer for Ontario, 2012.
6. Noise receptors are identified within 1500m of any wind turbine.

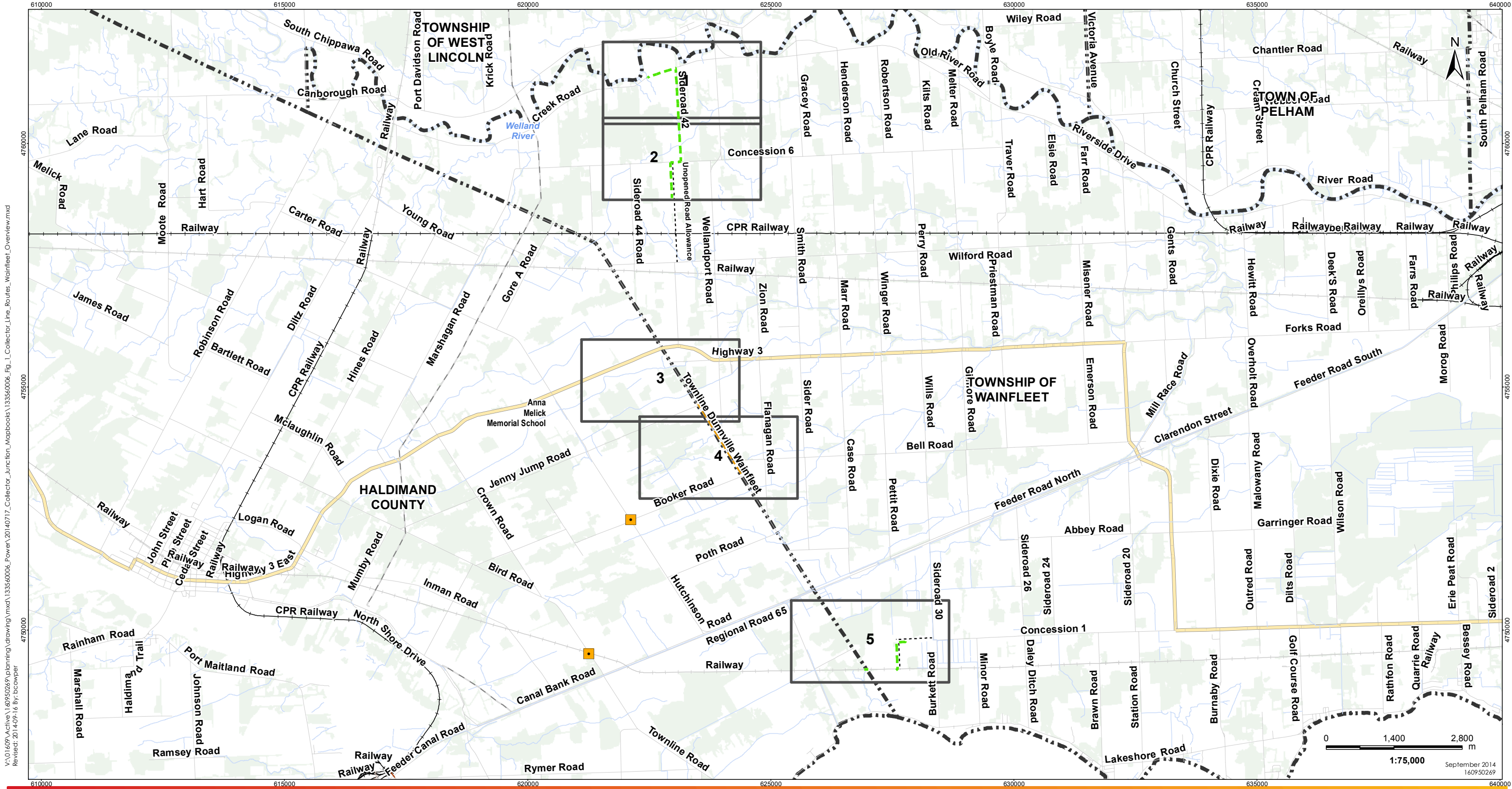
Legend	
	Road
	Expressway / Highway
	Unopened Road Allowance
	Active Railway
	Abandoned Railway
	Existing Transmission Line
	Pipeline
	Watercourse (MNR)
	Municipality Lower Tier
	Wooded Area
Number of Collector Lines	
	1
	3



Client/Project
Niagara Region Wind Corporation

Figure No.
2
Title

Collector Line Routes – Wainfleet Only – Municipal Roads Overview Map

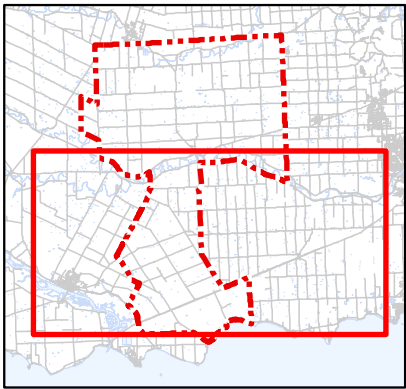


Notes

- 1. Coordinate System: NAD 1983 UTM Zone 17N).
- 2. Base features produced under license with the Ontario Ministry of Natural Resources © Queen's Printer for Ontario, 2011.
- 3. Orthomimagery source: First Base Solutions, Date Spring 2010.
- 4. Petroleum Well source: © Ontario Oil, Gas and Salt Resource Library, 2010.
- 5. MOE Water well locations are approximate and have been positioned based on published UTM coordinates © Queen's Printer for Ontario, 2012.
- 6. Noise receptors are identified within 1500m of any wind turbine.

Legend

- | | |
|---------------------------------|---------------------------|
| — Road | Mapbook Tile Index |
| — Expressway / Highway | Number of Collector Lines |
| - - - - Unopened Road Allowance | 1 |
| + + + Active Railway | 2 |
| + + Abandoned Railway | 3 |
| — Existing Transmission Line | 4 |
| — Pipeline | 5 |
| — Watercourse (MNR) | |
| — Municipality Lower Tier | |
| Wooded Area | |
| Junction Box | |



Client/Project
Niagara Region Wind Corporation

Figure No.
1
Title

Collector Line Routes –
Wainfleet – Municipal Roads
Overview Map



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Revised: 20140916 By: bcowper



Notes

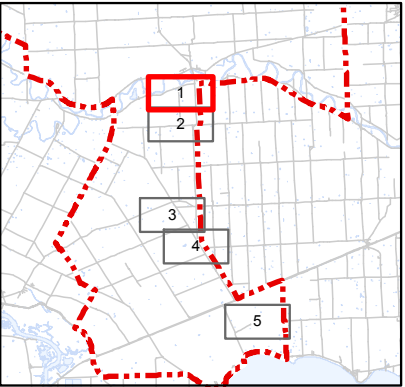
1. Coordinate System: NAD 1983 UTM Zone 17N).
2. Base features produced under license with the Ontario Ministry of Natural Resources © Queen's Printer for Ontario, 2011.
3. Orthimagery source: First Base Solutions, Date Spring 2010.
4. Petroleum Well source: © Ontario Oil, Gas and Salt Resource Library, 2010.
5. MOE Water well locations are approximate and have been positioned based on published UTM coordinates © Queen's Printer for Ontario, 2012.
6. Noise receptors are identified within 1500m of any wind turbine.

Legend

- Watercourse (MNR)
- Property Boundary
- Wooded Area

Number of Collector Lines

- 1
- 2
- 3



Client/Project
Niagara Region Wind Corporation

Figure No.
1.1

Title
**Collector Line Routes –
Wainfleet – Municipal Roads**

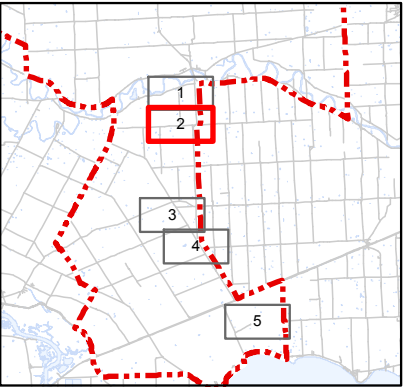
September 2014
160950269



Notes

1. Coordinate System: NAD 1983 UTM Zone 17N).
2. Base features produced under license with the Ontario Ministry of Natural Resources © Queen's Printer for Ontario, 2011.
3. Orthomagery source: First Base Solutions, Date Spring 2010.
4. Petroleum Well source: © Ontario Oil, Gas and Salt Resource Library, 2010.
5. MOE Water well locations are approximate and have been positioned based on published UTM coordinates © Queen's Printer for Ontario, 2012.
6. Noise receptors are identified within 1500m of any wind turbine.

Legend		Number of Collector Lines	
.....	Unopened Road Allowance	1
—	Watercourse (MNR)		
□	Property Boundary		
■	Wooded Area		



Client/Project
Niagara Region Wind Corporation

Figure No.
1.2

Title
**Collector Line Routes –
Wainfleet – Municipal Roads**

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Revised: 20140916 By: bcowper



Notes

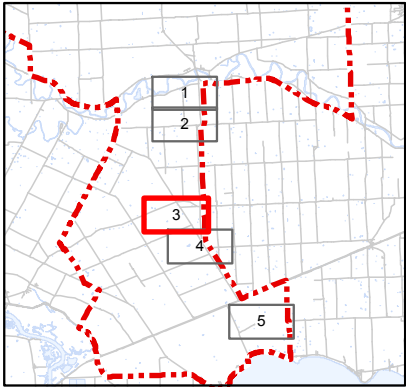
1. Coordinate System: NAD 1983 UTM Zone 17N).
2. Base features produced under license with the Ontario Ministry of Natural Resources © Queen's Printer for Ontario, 2011.
3. Orthoimagery source: First Base Solutions, Date Spring 2010.
4. Petroleum Well source: © Ontario Oil, Gas and Salt Resource Library, 2010.
5. MOE Water well locations are approximate and have been positioned based on published UTM coordinates © Queen's Printer for Ontario, 2012.
6. Noise receptors are identified within 1500m of any wind turbine.

Legend

- Watercourse (MNR)
- Property Boundary
- Wooded Area

Number of Collector Lines

- 1
- 2
- 3



Client/Project

Niagara Region Wind Corporation

Figure No.

1.3

Title

**Collector Line Routes –
Wainfleet – Municipal Roads**

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Notes

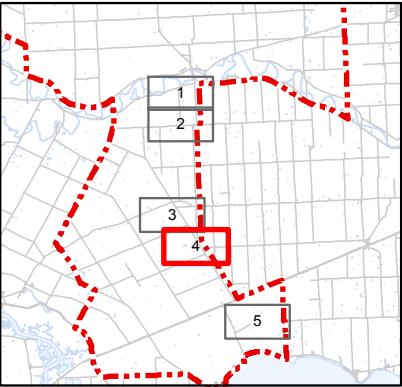
1. Coordinate System: NAD 1983 UTM Zone 17N).
2. Base features produced under license with the Ontario Ministry of Natural Resources © Queen's Printer for Ontario, 2011.
3. Orthoimagery source: First Base Solutions, Date Spring 2010.
4. Petroleum Well source: © Ontario Oil, Gas and Salt Resource Library, 2010.
5. MOE Water well locations are approximate and have been positioned based on published UTM coordinates © Queen's Printer for Ontario, 2012.
6. Noise receptors are identified within 1500m of any wind turbine.

Legend

- Watercourse (MNR)
- Property Boundary
- Wooded Area

Number of Collector Lines

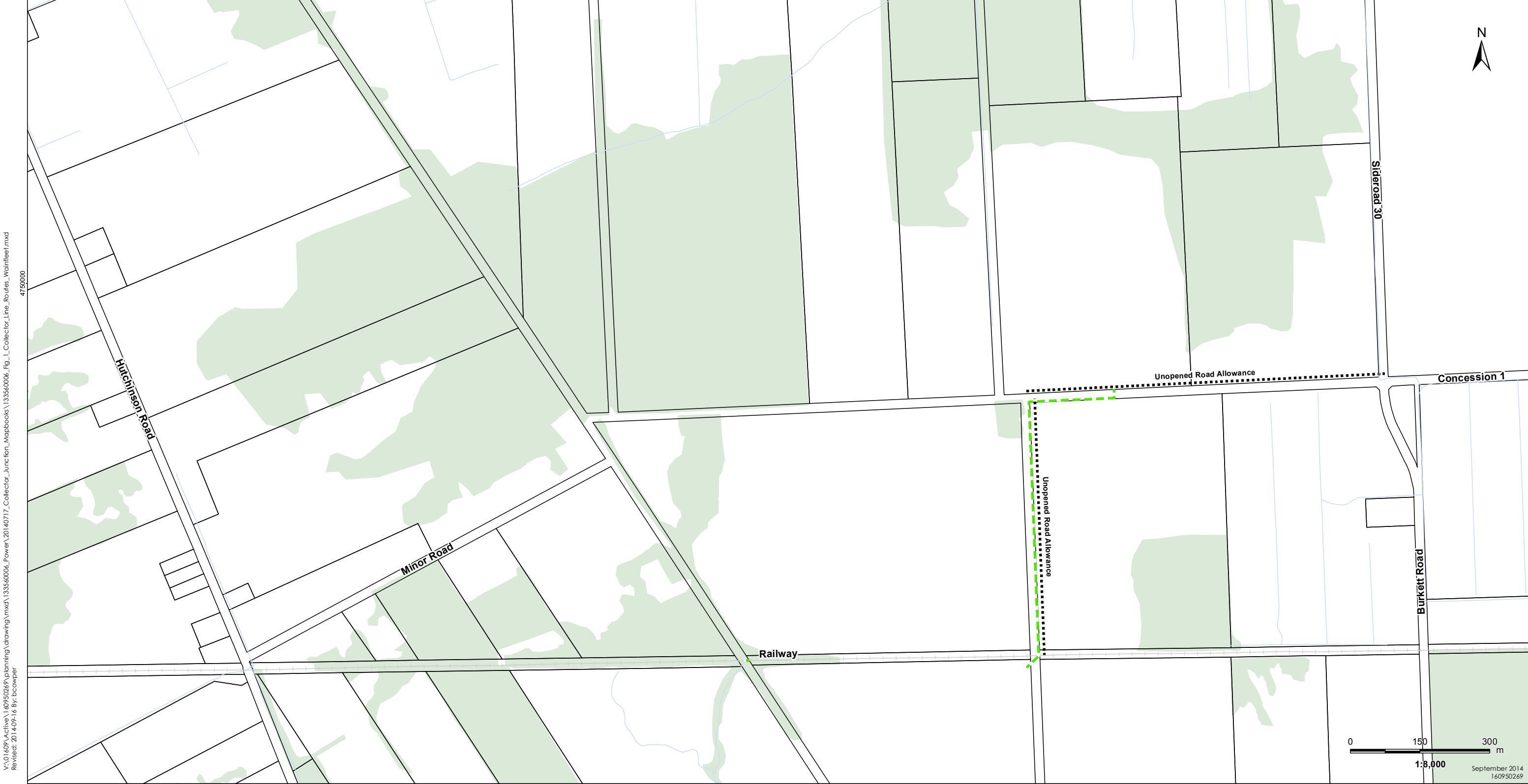
3



Client/Project
Niagara Region Wind Corporation

Figure No.
1.4

Title
**Collector Line Routes –
Wainfleet – Municipal Roads**



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Revised: 20140916 By: bcowper



Notes

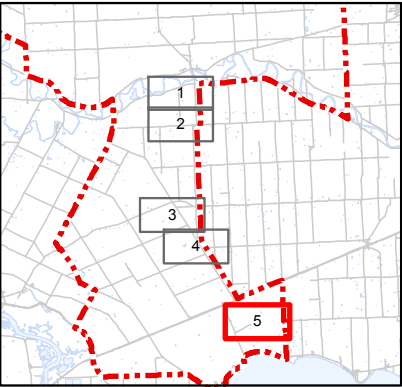
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3. Orthimagery source: First Base Solutions, Date Spring 2010.
4. Petroleum Well source: © Ontario Oil, Gas and Salt Resource Library, 2010.
5. MOE Water well locations are approximate and have been positioned based on published UTM coordinates © Queen's Printer for Ontario, 2012.
6. Noise receptors are identified within 1500m of any wind turbine.

Legend

- Unopened Road Allowance
- Abandoned Railway
- Watercourse (MNR)
- Property Boundary
- Wooded Area

Number of Collector Lines

- 1



Client/Project
Niagara Region Wind Corporation

Figure No.
1.5

Title
**Collector Line Routes –
Wainfleet – Municipal Roads**