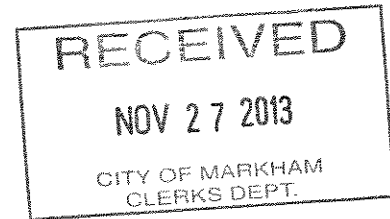




Regional Clerk's Office
Corporate Services Department



November 22, 2013

Ms. Kimberley Kitteringham
City Clerk
City of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3

Dear Ms. Kitteringham:

Re: *Retail Business Holidays Act – The Local Municipality as an Applicant*

Regional Council, at its meeting held on November 21, 2013, adopted the following recommendation of Committee of the Whole regarding '*Retail Business Holidays Act – The Local Municipality as an Applicant*':

1. The Regional Clerk circulate this report to the Clerks of the local municipalities and give notice that the next deadline for the submission of *Retail Business Holidays Act* exemption applications is February 18, 2014.

A copy of Clause No. 3 of Committee of the Whole Report No. 5 is enclosed for your information.

Please contact Anitra Basant Sisavang, Law Clerk at 905-830-4444, Ext. 1444 or Doug Lindeblom, Director, Economic Strategy and Tourism at 905-830-4444, Ext. 1503 if you have any questions with respect to this matter.

Sincerely,

Denis Kelly
Regional Clerk

/C. Martin
Attachments - 13

Clause No. 3 in Report No. 5 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on November 21, 2013.

3

**RETAIL BUSINESS HOLIDAYS ACT –
THE LOCAL MUNICIPALITY AS AN APPLICANT**

Committee of the Whole recommends adoption of the following recommendation contained in the report dated November 7, 2013 from the Regional Solicitor and the Executive Director, Corporate and Strategic Planning:

1. RECOMMENDATION

It is recommended that:

1. The Regional Clerk circulate this report to the Clerks of the local municipalities and give notice that the next deadline for the submission of *Retail Business Holiday Act* exemption applications is February 18, 2014.

2. PURPOSE

This report advises Council of the option available to local municipalities within a regional municipality to file an application for exemption from the *Retail Business Holidays Act* to allow retail businesses in all or part of a local municipality to be open on statutory holidays.

3. BACKGROUND

The *Retail Business Holidays Act* requires businesses to be closed on certain statutory holidays

The *Retail Business Holidays Act* (the “Act”) requires businesses to be closed on public holidays unless they are exempted. The holidays to which the Act applies are:

- New Year's Day
- Family Day
- Good Friday
- Easter Sunday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day

Boxing Day and the Civic Holiday in August are not public holidays under this Act and therefore an exemption is not required for those days.

The Act sets out statutory exemptions for certain types of businesses and also provides that the council of a local municipality within a regional municipality may apply for an exemption from the Act allowing businesses to remain open for the maintenance or development of tourism.

Council may permit businesses within an applicant municipality to be open on holidays if the tourism criteria are met

The Act provides that Council may permit retail business establishments to open on holidays for the maintenance or development of tourism. A bylaw may be passed only if there is compliance with the tourism criteria set out in Ontario Regulation 711/91 Tourism Criteria (the "Regulation") under the Act. A copy of the regulation is appended to this report as *Attachment 1*.

Section 2 (2) of the Regulation provides that area can be exempted if:

- all of the retail businesses in the area are within two kilometres of a tourist attraction;
- the area does not exceed that necessary to encompass all of the retail businesses for which the exemption is sought; and
- at least 25% of the retail businesses in the area are directly associated with the tourist attraction or rely on tourists visiting the attraction for business on a holiday.

For the purposes of Section 2, a tourist attraction is defined as:

- natural attractions or outdoor recreational attractions;
- historical attractions; and
- cultural, multi-cultural or educational attractions.

There is an exception for not meeting the two kilometre distance requirement. The Regulation sets out that the two kilometre restriction does not apply to a retail business located in a local municipality that has a population of less than 50, 000. The applicant is still required to meet the other tourism criteria in the regulation.

At its September meeting Council requested a report on local municipal area exemptions

At the September meeting of Committee of the Whole, four applications for exemption were heard and considered. During this meeting, staff advised Council that local area municipalities can apply to the Region for area exemptions which could simplify the process and minimize the number of individual applications.

Council requested a follow up report to outline the process by which a local municipality could submit an application for exemption from the *Retail Business Holidays Act*.

4. ANALYSIS AND OPTIONS

The council of any of the local municipalities within the Region may apply to exempt a specific area or the entire municipality from closing on public holidays

Under the Act, the council of any of the local municipalities within the Region may apply for an exempting bylaw to allow retail businesses to be open on any of the following public holidays: New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day and Thanksgiving Day.

Local municipalities have the opportunity to apply for a bylaw exempting a defined area or the entire municipality from closing on public holidays.

The local municipality cannot apply on behalf of a business. The application must only be for all or any part of the municipality and in most circumstances the tourism criteria must be met for a defined area to qualify for exemption consideration.

The Towns of Georgina and Whitchurch-Stouffville are currently the only local municipalities within the Region to apply and receive an exemption for all of the businesses within its municipal boundaries for certain public holidays.

Many of the historic downtowns throughout the Region and the Vaughan Mills Mall Campus were the subject of an area application by their respective local municipalities and received an exemption affecting the defined areas set out in their respective applications.

The two kilometre restriction set out in the Regulation does not apply to retail businesses located in a local municipality having a population of less than 50,000

Section 4 of the Regulation states the two kilometre restriction does not apply to a retail business establishment located in a local municipality with a population of less than

50,000. The applicant is still required to demonstrate how the retail business relies on tourists visiting an attraction for business on a holiday and in the case of an area exemption that at least 25% of the businesses within the area are reliant upon tourists and the affected area is not greater than needed to encompass the retail businesses.

Both the Towns of Georgina and Whitchurch-Stouffville are examples of local municipalities that have a municipal wide exemption and a population below 50,000. When these bylaws were enacted in 1995, each municipality's population was below the 50,000 threshold set out in the Regulation and therefore it was not necessary for the businesses covered by the application to meet the two kilometre distance requirement.

The City of Vaughan had exceeded the population threshold when it applied in 2010 for an area exemption for the Vaughan Mills Mall Campus. The application from the City of Vaughan relied on Canada's Wonderland to meet the tourism criteria. *Attachment 2* illustrates how the City of Vaughan defined the area it applied to have exempted, using both a map and text description.

The historical downtown areas that are currently exempted, were also subject to the tourism criteria, however, these areas meet the historical and cultural criteria for an attraction and would not have had to rely on an external tourist attraction.

A large portion of the Region could be considered to be within two kilometres of a tourist attraction as defined by the Regulation

In its decision on the Bramalea City Centre, the OMB stated that a somewhat broader interpretation can and should be applied to the phrase "tourist attraction".

Staff applied the tourism criteria set out in the Regulation using a broader interpretation of what defines a tourist attraction to produce a map of the Region which provides a general overview of potential tourism exemption areas within the Region (see *Attachments 3 - 12*).

On the map of York Region and the maps for each of the local municipalities, staff highlighted all locations or areas that could be considered a tourist attraction and meet the tourism criteria.

These maps do not contain or mark every known tourist attraction, as the Region does not maintain an inventory of these sites, but it does demonstrate where tourism traffic is likely to travel.

This map has been used as a resource by recent applicants that have sought an exemption from closing on statutory holidays, however in preparing the application it is still the responsibility of every applicant to demonstrate not only proximity to a tourist attraction, but the reliance of the applicant upon tourists for business on a statutory holiday.

Businesses located within an exemption area do not have to open on a retail holiday

If Council enacts an exempting bylaw for a local municipality, the retail businesses within that exempted area are not required to be open on any holiday, but do have the choice to be open or closed.

The application of a local municipality is subject to the same process, fees and charges as individual business applicants

The council of a local municipality that wishes to submit an application must first pass a resolution to apply to the Region for an exemption.

This resolution of the local council must be submitted with a complete application form, any required and additional supporting documents and the \$1000.00 application fee. The applicant municipality will be billed the costs of advertising the statutory public meeting after the application has been received and the notice of public meeting is published in the local newspaper.

If a bylaw is enacted by Council, the bylaw will only come into effect on the thirty-first day after enactment. Prior to the thirty-first day, the bylaw is subject to a thirty day appeal period during which any person who opposes the bylaw may file an appeal with the Ontario Municipal Board.

Council accepts and hears applications for exemption two times a year, in September and April. The next deadline for the submission of exemption applications is February 18, 2014. These applications will be heard in early April.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications to the Region as a result of this application.

6. LOCAL MUNICIPAL IMPACT

As an applicant, local municipalities would have an increased role in the exemption application process and much as the individual applicant, the local municipality would be able to determine how an exemption would best serve its community's needs. Approval of an exemption under the Act is intended to contribute to tourism in the local municipality.

7. CONCLUSION

A local municipality may apply to Council for an exemption under the *Retail Business Holidays Act* to permit retail businesses within a part or the whole of the municipality to remain open on New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day and Thanksgiving Day.

The council of a local municipality that wishes to submit an application must first pass a resolution to apply to the Region for an exemption and submit the resolution with the requisite application form and fee to the Region for consideration.

The next deadline for the submission of exemption applications is February 18, 2014. These applications will be heard in early April.

For more information on this report, please contact Anitra Basant Sisavang, Law Clerk at Ext. 1444 or Doug Lindeblom, Director, Economic Strategy and Tourism at Ext. 1503.

The Senior Management Group has reviewed this report.

(The 12 attachments referred to in this clause are attached to this report.)

**Retail Business Holidays Act
Loi sur les jours fériés dans le commerce de détail**

**ONTARIO REGULATION 711/91
TOURISM CRITERIA**

Consolidation Period: From December 1, 1991 to the e-Laws currency date

No amendments.

This Regulation is made in English only.

1. This Regulation sets out the tourism criteria that must be met before a municipality may pass an exempting by-law under subsection 4 (1) of the Act. O. Reg. 711/91, s. 1.

2. (1) A retail business establishment may be exempted if,

- (a) it is located within two kilometres of a tourist attraction; and
- (b) it is directly associated with the tourist attraction or relies on tourists visiting the attraction for business on a holiday. O. Reg. 711/91, s. 2 (1).

(2) An exemption granted on an area basis may only be given if,

- (a) all of the retail business establishments in the area are within two kilometres of the tourist attraction;
- (b) the area does not exceed that necessary to encompass all of the retail business establishments for which an exemption is sought; and
- (c) at least 25 per cent of the retail business establishments in the area are directly associated with the tourist attraction or rely on tourists visiting the attraction for business on a holiday. O. Reg. 711/91, s. 2 (2).

(3) For the purposes of this section, a tourist attraction is limited to,

- (a) natural attractions or outdoor recreational attractions;
- (b) historical attractions; and
- (c) cultural, multi-cultural or educational attractions. O. Reg. 711/91, s. 2 (3).

3. Each retail business establishment that on days other than holidays normally uses a total area of 2,400 square feet or more for serving the public or normally has four or more employees serving the public must, in addition to meeting the tourism criteria set out in subsection 2 (1), provide goods or services on holidays primarily to tourists. O. Reg. 711/91, s. 3.

4. The two kilometre restriction set out in subsections 2 (1) and (2) does not apply to a retail business establishment located in a local municipality, including a local municipality located in a district or regional municipality or the County of Oxford, having a population of less than 50,000. O. Reg. 711/91, s. 4.

5. (1) Despite any other provision of this Regulation, retail business establishments in a municipality may be exempted for up to five holidays a year during which a fair, festival or other special event is being held in that municipality. O. Reg. 711/91, s. 5 (1).

(2) Subsection (1) does not apply to parades. O. Reg. 711/91, s. 5 (2).

6. (1) An application for an exemption under subsection 4 (3) of the Act shall contain the following:

- 1. A description of the area or the retail business establishment for which the exemption is sought.
- 2. The justification, in relation to the seasonal nature, if any, of the tourist attraction, for the time period sought in the exemption.
- 3. Information establishing that the tourism criteria set out in this Regulation are met. O. Reg. 711/91, s. 6 (1).

(2) An application in respect of a retail business establishment described in section 3 shall be made only by that retail business establishment. O. Reg. 711/91, s. 6 (2).

THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 20

BY-LAW NO. 2010-17

A by-law to amend By-law No. LI-8-95-76
to permit retail business establishments
to be open on holidays

The Council of The Regional Municipality of York hereby enacts as follows:

- Schedule "A" to By-law No. LI-8-95-76, being a by-law to permit retail business establishments to be open on holidays, is amended by adding the following:

| Column 1 (Business) | Column 2 (Location) | Column 3 (Holidays) | Column 4 (Hours) |
|------------------------|---|---|---------------------|
| All | <p>VAUGHAN MILLS MALL CAMPUS, including Vaughan Mills Mall and the Outparcels located within the following boundaries:</p> <p>Rutherford Road to the north, Jane Street to the east, Bass Pro Mills Drive to the south and Highway 400 to the west and more particularly shown on the attached Appendix "A"</p> | All, except Christmas Day Good Friday and Easter Sunday | 8 a.m. to 10 p.m. |

**Written Description
of Area to be
Exempted**



- Appendix "A" shall form part of this by-law.

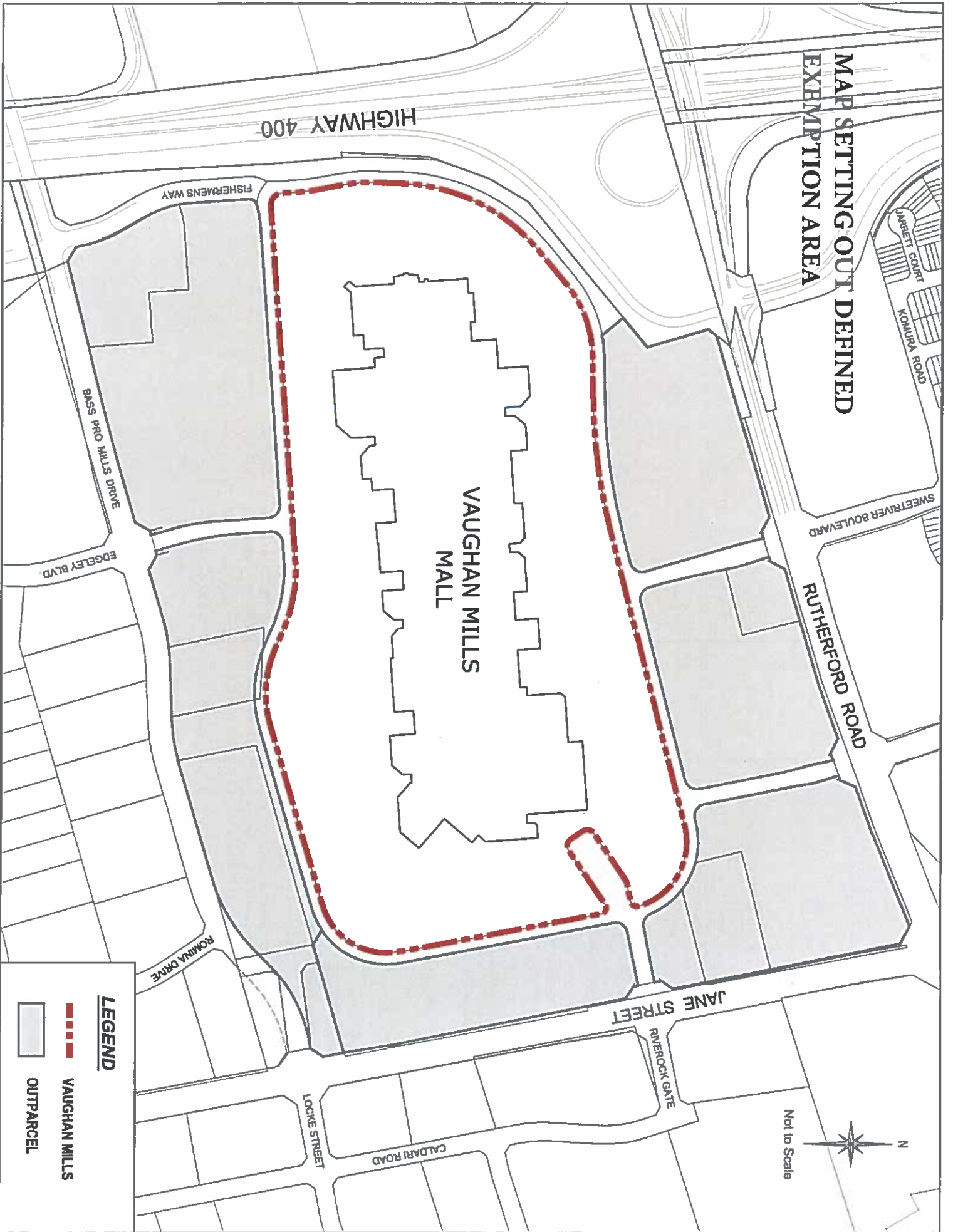
ENACTED AND PASSED this 25th day of March, 2010.

Denis Kelly
Regional Clerk

Bill Fisch
Regional Chair

Authorized by the Report of the Regional Solicitor, adopted by Regional Council at its meeting on March 25, 2010

**MAP SETTING OUT DEFINED
EXEMPTION AREA**



LEGEND

-  VAUGHAN MILLS
-  OUTPARCEL

Retail Business Holiday Act Possible Exemption Areas: Combined Attractions

LEGEND

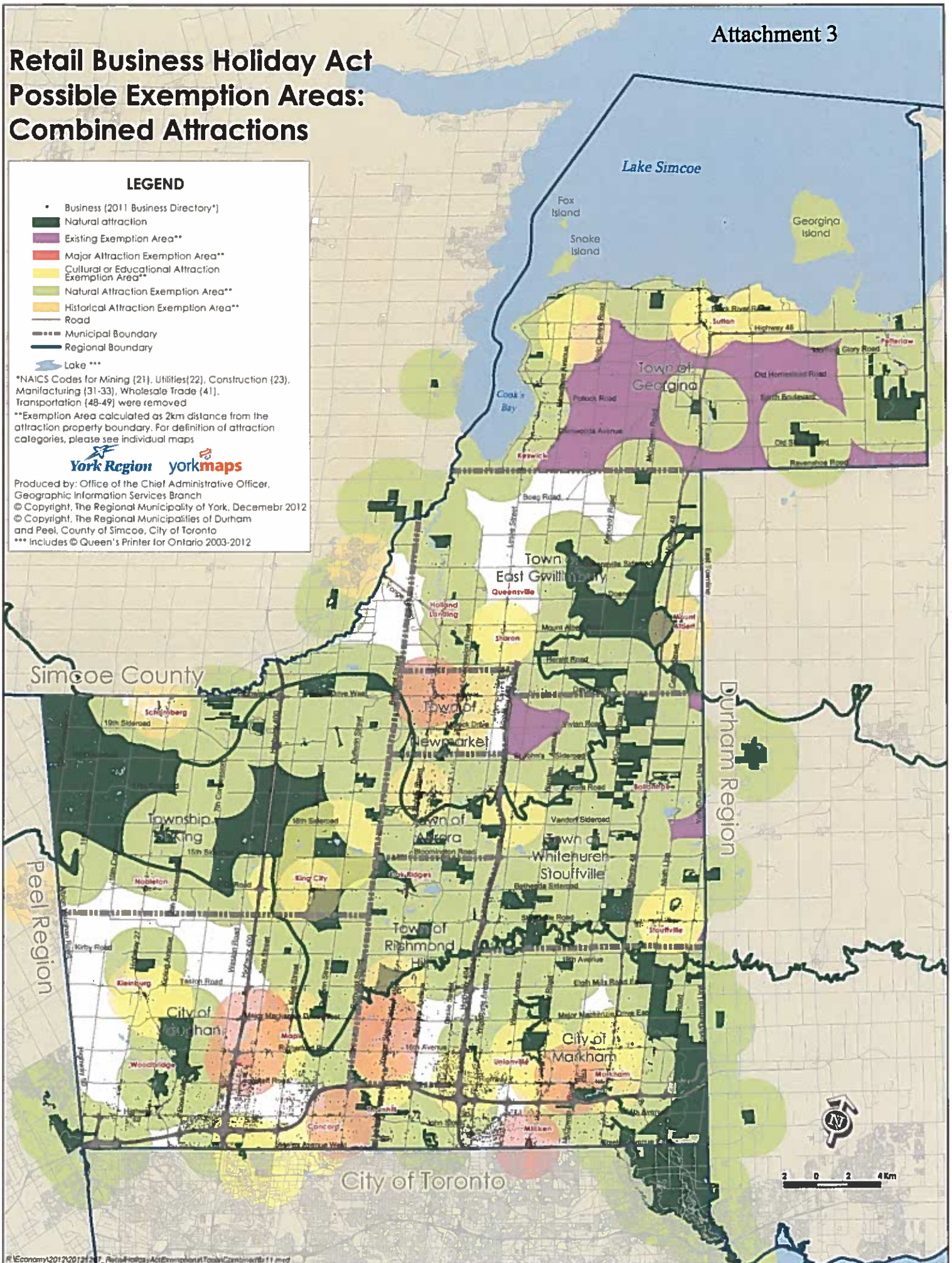
- Business (2011 Business Directory*)
- Natural attraction
- Existing Exemption Area**
- Major Attraction Exemption Area**
- Cultural or Educational Attraction Exemption Area**
- Natural Attraction Exemption Area**
- Historical Attraction Exemption Area**
- Road
- Municipal Boundary
- Regional Boundary
- ☪ Lake ***

*NAICS Codes for Mining (21), Utilities(22), Construction (23), Manufacturing (31-33), Wholesale Trade (41), Transportation (48-49) were removed

**Exemption Area calculated as 2km distance from the attraction property boundary. For definition of attraction categories, please see individual maps



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Retail Business Holiday Act Possible Exemption Areas

Town of Aurora

LEGEND

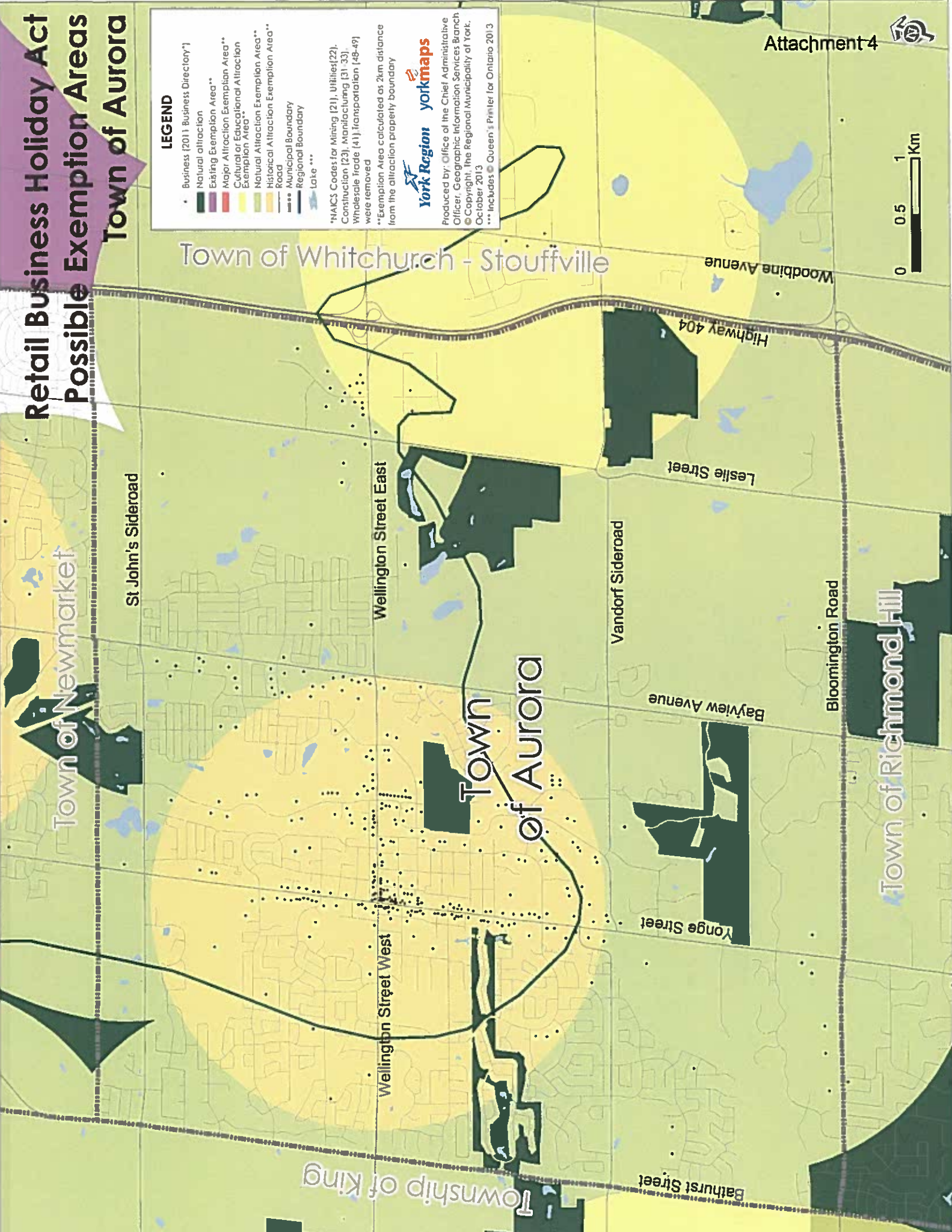
- Business (2011 Business Directory*)
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- Natural Attraction Exemption Area**
- Historical Attraction Exemption Area**
- Road
- Municipal Boundary
- Regional Boundary
- Lake ***

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**Exemption Area calculated as 2km distance from the attraction property boundary

York Region yorkmaps

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Retail Business Holiday Act Possible Exemption Areas Town of Georgina

LEGEND

- Business (2011 Business Directory*)
- Natural attraction
- Existing Exemption Area**
- Major Attraction Exemption Area**
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- Natural Attraction Exemption Area**
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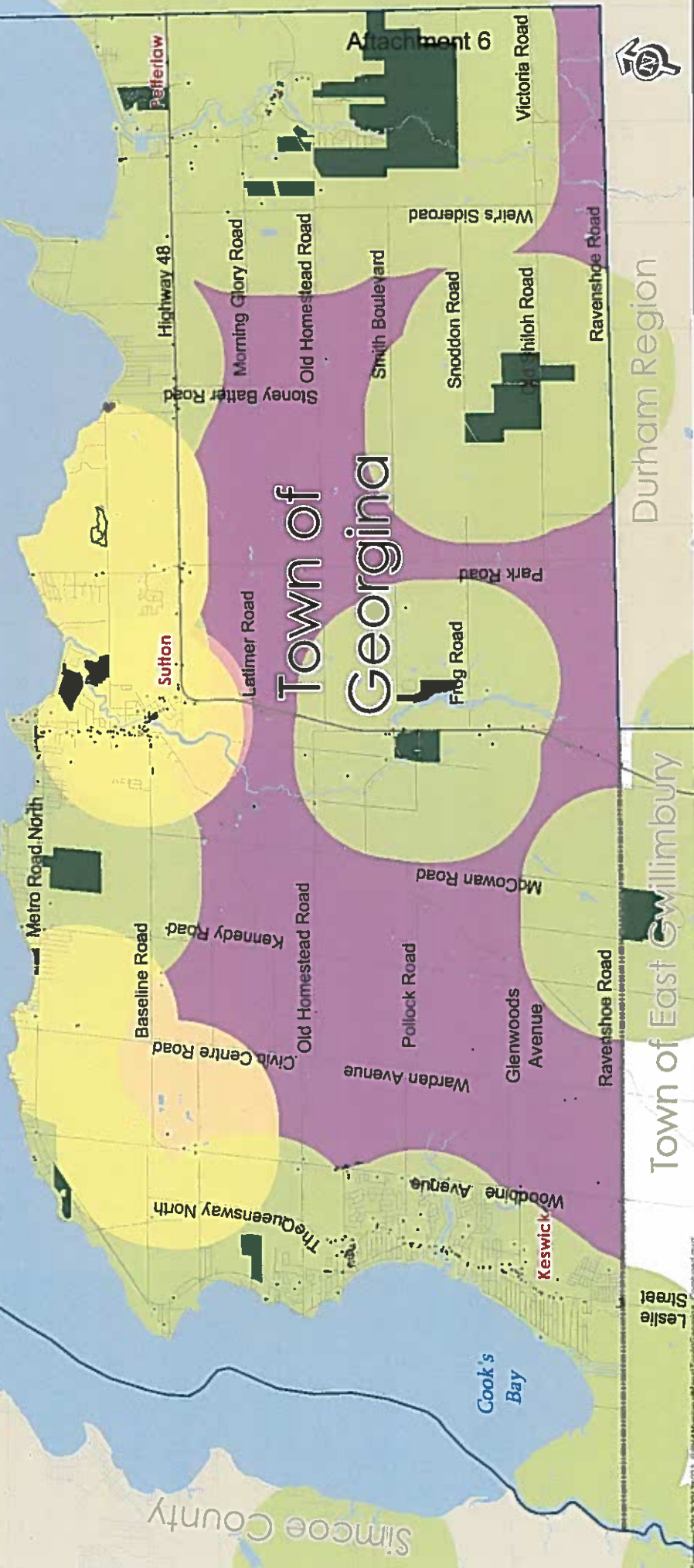
York Region yorkmaps

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Lake Simcoe

Fox Island
Snake Island



Durham Region

Town of East Gwillimbury

Leslie Street

Geographic Information Services Branch, Regional Municipality of York, 2013

Retail Business Holiday Act Possible Exemption Areas Township of King

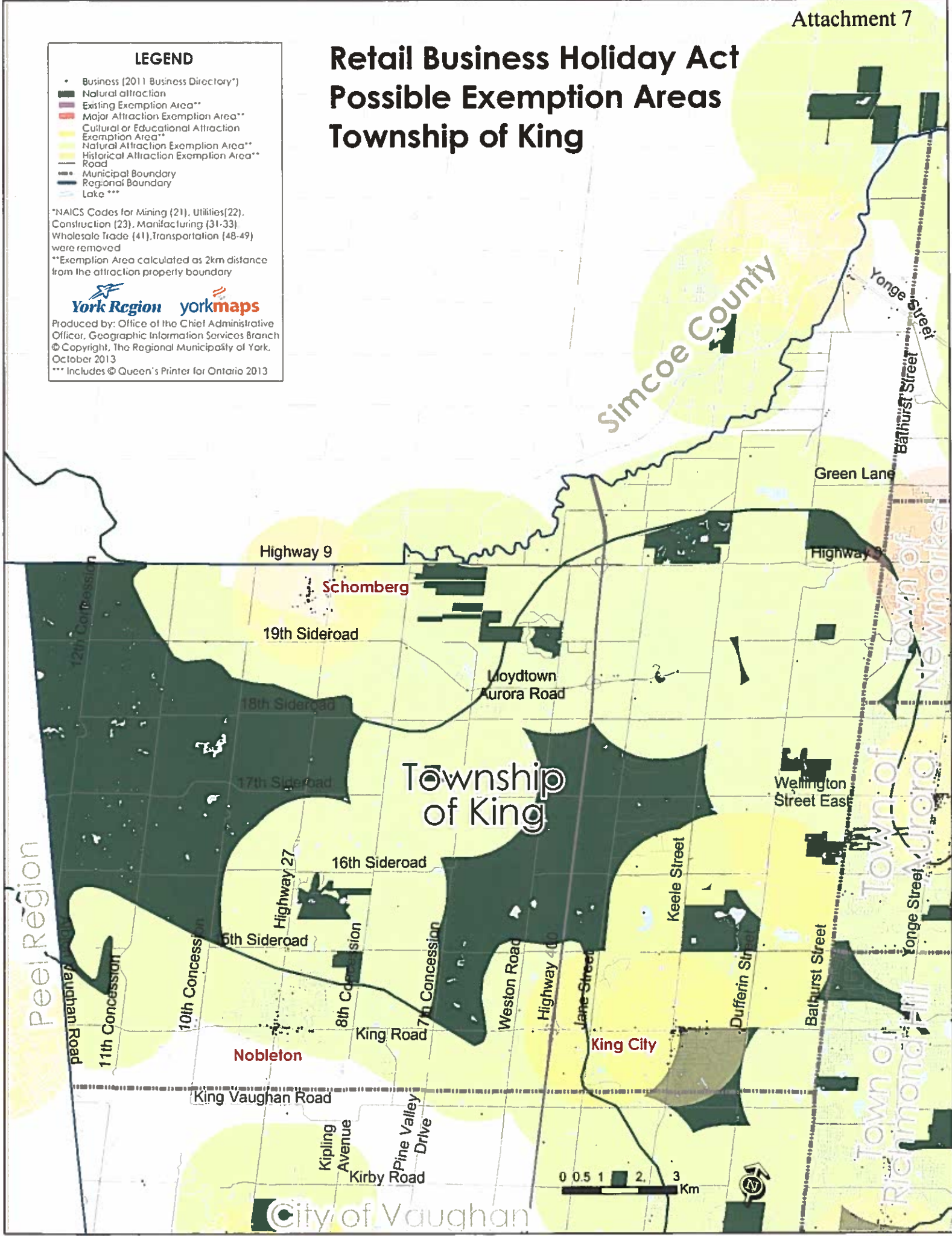
LEGEND

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 **Exemption Area calculated as 2km distance from the attraction property boundary
 *** Includes © Queen's Printer for Ontario 2013

York Region **yorkmaps**

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Retail Business Holiday Act Possible Exemption Areas City of Markham

LEGEND

- Business (2011 Business Directory*)
- Natural attraction
- Existing Exemption Area**
- Major Attraction Exemption Area**
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- Historical Attraction Exemption Area**
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- Lake ***

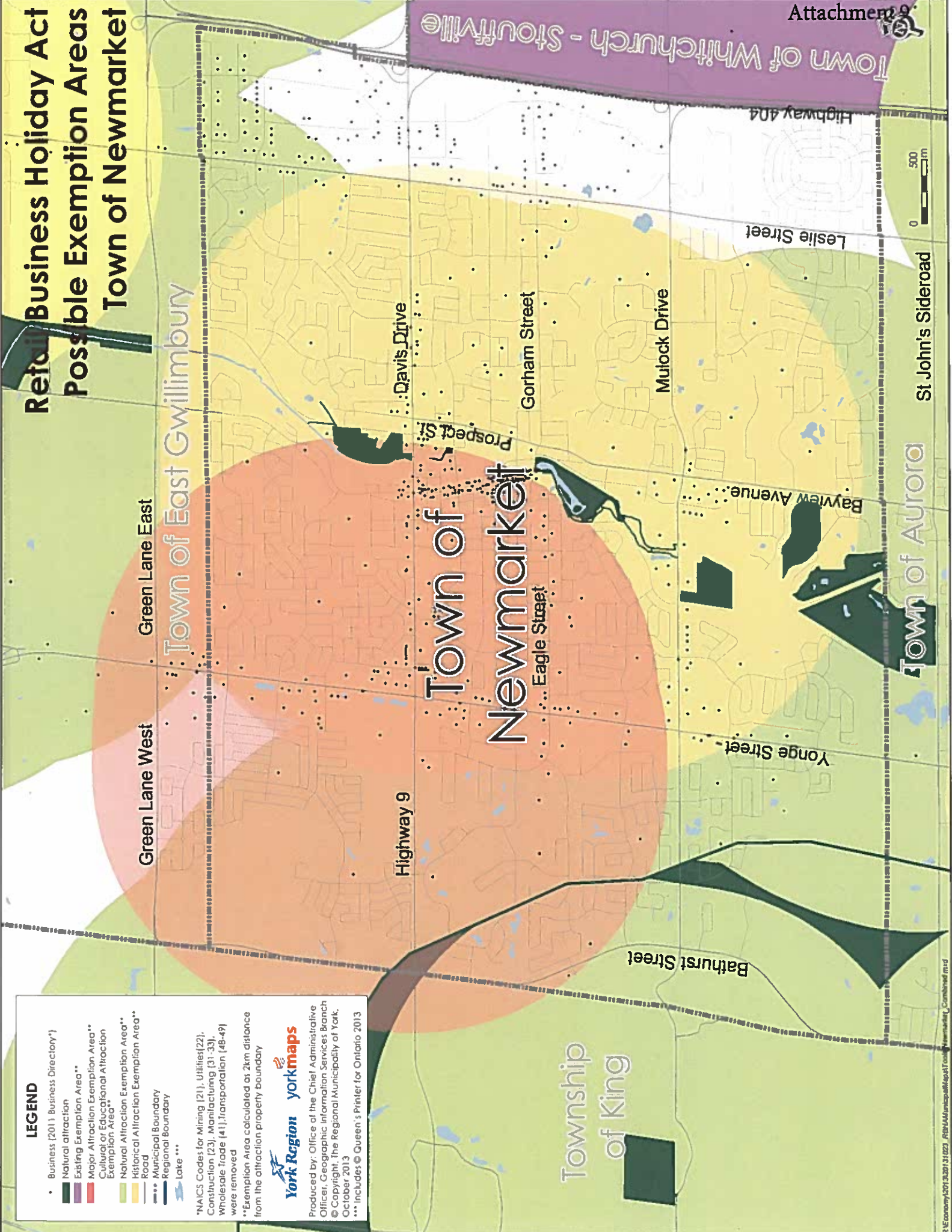
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 **Exemption Area calculated as 2km distance from the attraction property boundary

York Region yorkmaps

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Reform Business Holiday Act Possible Exemption Areas Town of Newmarket



LEGEND

- Business (2011 Business Directory*)
- Natural attraction
- Existing Exemption Area**
- Major Attraction Exemption Area**
- Cultural or Educational Attraction Exemption Area**
- Natural Attraction Exemption Area**
- Historical Attraction Exemption Area**
- Road
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- Lake ***

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**Exemption Area calculated as 2km distance from the attraction property boundary



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Retail Business Holiday Act Possible Exemption Areas Town of Richmond Hill

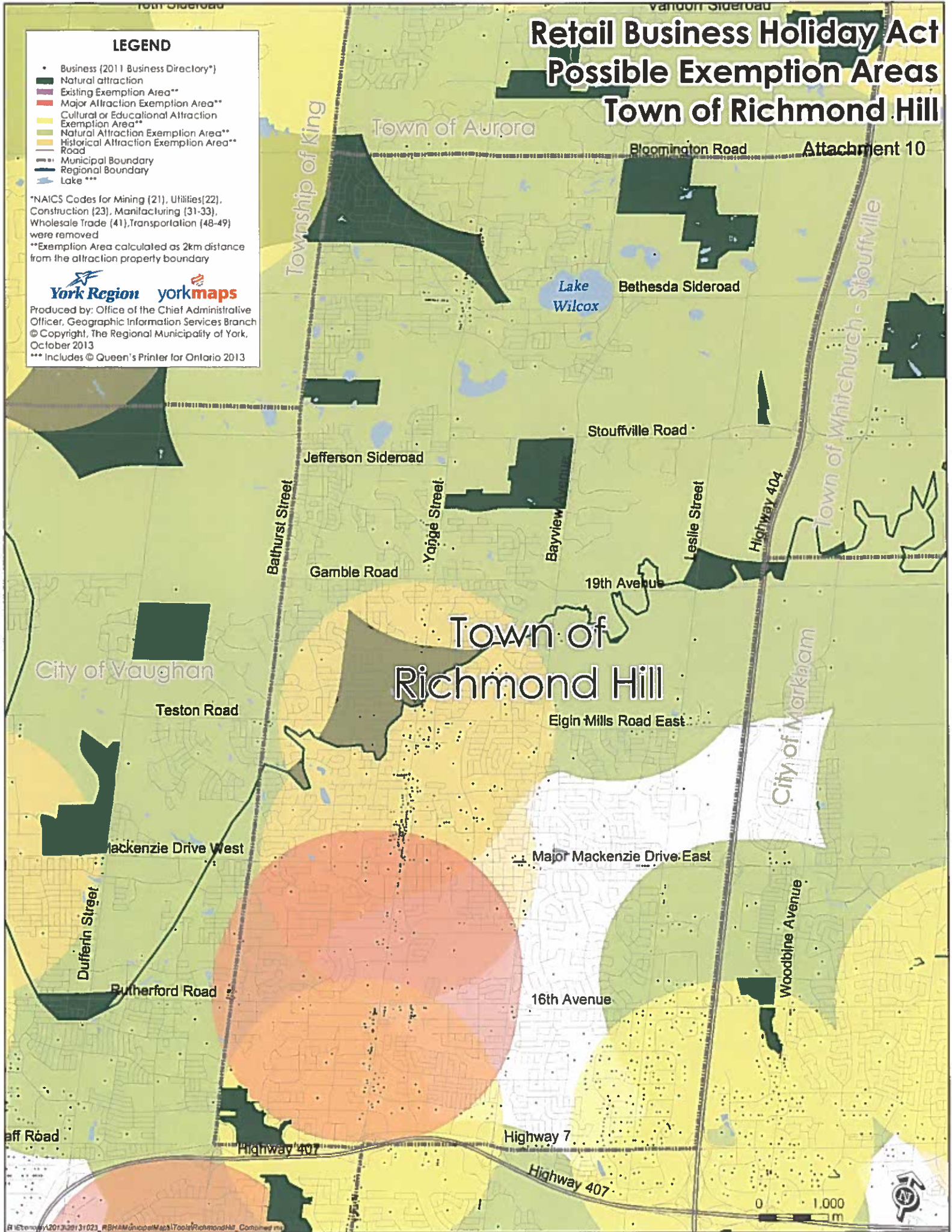
LEGEND

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- Major Attraction Exemption Area**
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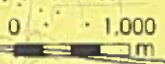


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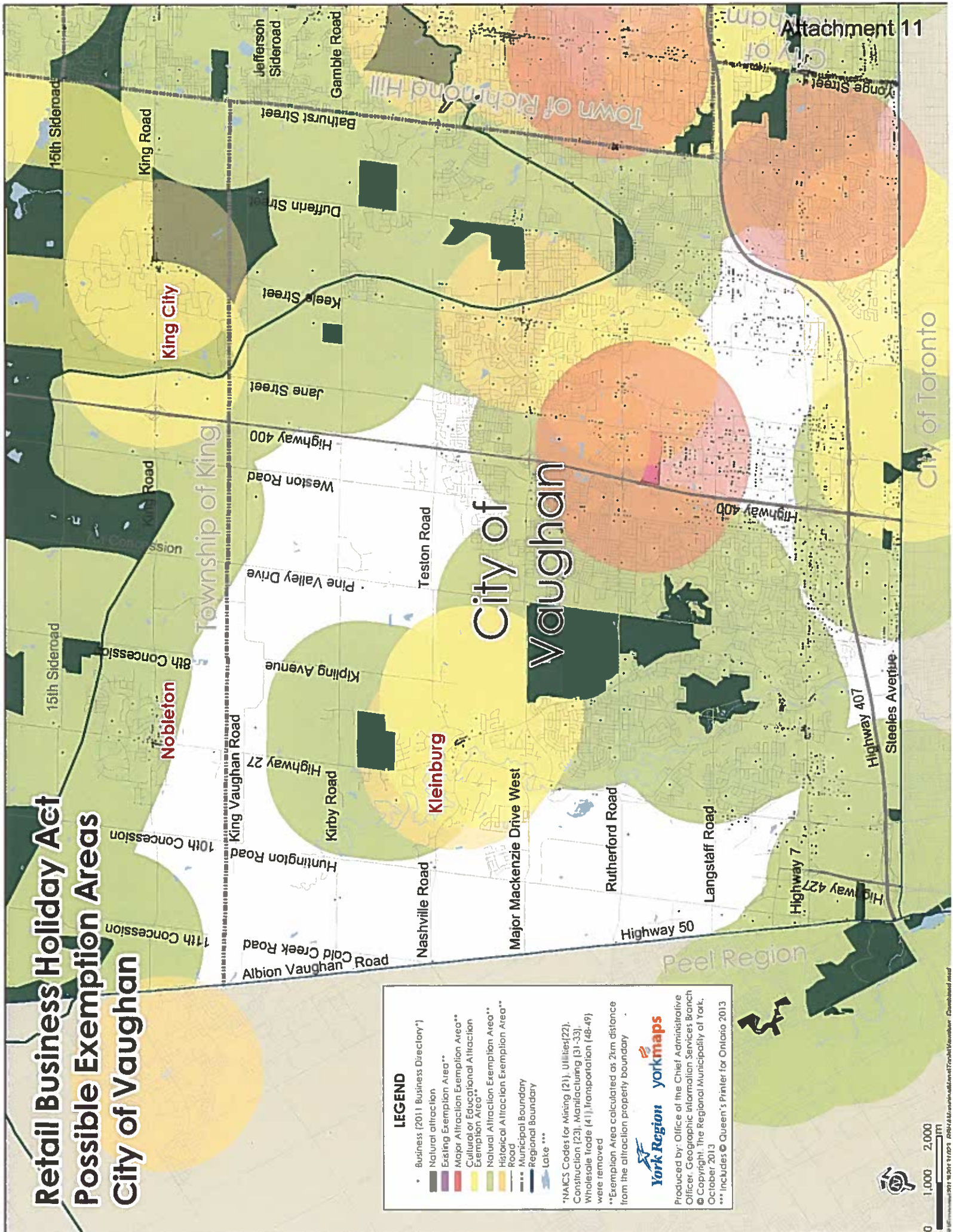


Attachment 10

Town of Richmond Hill



Retail Business Holiday Act Possible Exemption Areas City of Vaughan



LEGEND

- Business (2011 Business Directory*)
- Natural attraction
- Existing Exemption Area**
- Major Attraction Exemption Area**
- Cultural or Educational Attraction Exemption Area**
- Natural Attraction Exemption Area**
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**Exemption Area calculated as 2km distance from the attraction property boundary

York Region **yorkmaps**

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Retail Business Holiday Act

Possible Exemption Areas

Town of Whitchurch-Stouffville

Herald Road

East Town

Davis Drive

Vivian Road

Town of Whitchurch - Stouffville

St John's Sideroad

Aurora Road

Ballantrae

Durham Region

Vandorf Sideroad

Highway 48

Ninth Line

York/Durham Line

Kennedy Road

Bloomington Road

Bethesda Sideroad

Stouffville

Stouffville Road

19th Avenue

City of Markham



LEGEND

- Business (2011 Business Directory*)
- Natural attraction
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Newmarket

Highway 404

Woodbine Avenue

Warden Avenue

Town of Aurora

Town of Richmond Hill