

June 9, 2022

By E-Mail Only to *clerk@niagararegion.ca*

Planning and Economic Development Committee
Niagara Region
1815 Sir Isaac Brock Way
P.O. Box 1042
Thorold, ON L2V 4T7

Committee Chair Huson and Members of Committee:

**Re: Request for Re-Inclusion in Settlement Area
SABR ID: 1151 – Lands located on Garrison Road between Rosehill Road
and Municipal Centre Drive, Town of Fort Erie
Agenda Item 5.2 - June 15, 2022 Committee Meeting
PDS 17-2022 Niagara Official Plan: Recommendation Report for Adoption**

We are counsel to Mega Canada Ltd., the owner of approximately 19.7 hectares of land located on Garrison Road between Rosehill Road and Municipal Centre Drive in the Town of Fort Erie (the “**Subject Lands**”). The Subject Lands have been identified as SABR ID: 1151 in the Region’s Settlement Area Boundary Review (“**SABR**”) process.

The Subject Lands were one of the sites recommended for Settlement Area expansion first by the Town of Fort Erie (“**Town**”) Council on February 22, 2021 and then by Regional Staff in their December 8, 2021 SABR report PDS 41-2021 (the “**December SABR**”). It was intended that the Subject Lands would form part of the Spears High Pointe Crescent Park settlement expansion area which includes lands directly across the road from the Subject Lands on the north side of Garrison Road.

However, in Regional Staff’s March 9, 2022 updated report PDS 6-2022 (the “**March SABR**”), the Subject Lands were removed from the recommended Settlement Area expansion and remain excluded in the Official Plan which is now before this Committee for endorsement. The reasons given for the removal were based on the presence of environmental features on the Subject Lands and servicing constraints.

Our client strongly disagrees with the decision to remove the Subject Lands from the recommended Settlement Area expansion and, through its representatives and consultants, has met with Regional Staff on two occasions, March 7, 2022 and June 7, 2022, to discuss the concerns.

Based on these discussions and the study undertaken by our client's expert land use planning, environmental and engineering consultants, our client now revises its request to include only a 10 hectare portion within the Settlement Area, representing the developable area of the Subject Lands.

Detailed rationale for our client's request and our response to the Regional Staff concerns outlined in the March SABR has been shared with Regional Staff verbally and through written correspondence, a copy of which is attached. We encourage the Committee to review the attached correspondence which sets out in detail the history of the Subject Lands' inclusion in the Settlement Area recommendations at both the Town and Regional level and provides detailed responses to the environmental, servicing and growth management issues raised.

In summary, we highlight the following:

- The Subject Lands were recommended by the Town as a priority within the Spears High Pointe Crescent Park Area, one of the two areas which were recommended for inclusion in the Settlement Area, along with two individual sites. These recommendations were endorsed by Town Council on February 22, 2021 and forwarded to the Region for input into the Municipal Comprehensive Review and SABR process.
- The Subject Lands were originally included within the expansion area identified as Recommendation No. 2 in the Region's December SABR, along with lands to the north of Garrison Road. The site-specific assessment indicated that servicing was feasible, and although approximately half the Subject Lands contain environmental features, the site would provide the highest contribution to a complete community and its inclusion was highly favourable to address the Town's land need.

Environmental

- Our client's environmental consultant, Colville Consulting Inc. has conducted preliminary, on-site environmental investigations and constraint mapping, which identifies that approximately 9.8 hectares of the site are developable after protecting for environmental features and their minimum vegetation protection zones.
- The Colville mapping is generally consistent with that prepared by the Region's consultant North South Environmental which informed the Natural Environment System mapping in the proposed Official Plan, with only minor discrepancies on the size of the woodland. While the Colville mapping is based on more thorough field investigation and therefore provides a more refined delineation of the environmental features on the site, both maps indicate that slightly less than 10 hectares of the Subject Lands are unconstrained and available for development.

- Many, if not all, of the expansion areas identified in the Town contain environmental features to some extent. The remaining developable area on the Subject Lands is consistent with, and in some cases larger than, the size of the developable areas on other proposed expansion sites.

Servicing

- The servicing concerns raised in respect of the Subject Lands relate only to sanitary infrastructure such as the pumping station and collection system. Capacity in the wastewater treatment plant and municipal water services are available to accommodate future development of the Subject Lands.
- Options exist to provide sanitary servicing to the Subject Lands through upgraded or new pumping station infrastructure, which would be expected to be assessed through the Region's update to its Water and Wastewater Master Servicing Plan. There are no servicing constraints which are unresolvable or serious enough to preclude any growth on the Subject Lands over the 30 year time horizon of the Official Plan.

Growth Management

- The Subject Lands represent a prime location for expansion and a logical extension of the current Settlement Area. The lands are already well-served due to their location adjacent to the Town's largest urban area with existing community facilities, services and transportation corridors available in the immediate vicinity. They will form part of the larger expansion area with the lands to the north, allowing for comprehensive community planning to occur. Exclusion of the Subject Lands from the Settlement Area would detract from a complete community planning approach for the Garrison Road corridor.
- At approximately 10 hectares in size, the developable area of the Subject Lands provides a sufficiently large parcel of land, consistent with the size of other proposed expansion areas in the Town, which will assist in accommodating the Town's future growth and can be developed with a range of housing types well within the planning horizon of the Official Plan.
- Minor adjustments to the Land Needs Assessment are permitted, as was done with the recent inclusion of the 0 Nigh Road parcel which is now being recommended for the expansion area in Region Staff Report PDS 17-2022. Re-inclusion of a portion of the Subject Lands would also represent a minor adjustment which would not require any removal of other lands from the proposed Settlement Area.

Conclusion

The Subject Lands have been the subject of thorough study and assessment throughout the Town's and Region's studies, both of which resulted in positive recommendations to support their inclusion with the Urban Settlement Area.

The reasons for removal identified by Regional Staff in the March SABR can be resolved by including only the 10 hectare developable area of the Subject Lands to ensure strong protection of the environmental features on the site and more accurately reflect the Subject Lands' contribution to the needed land supply. Inclusion of the Subject Lands will allow for comprehensive planning with the other expansion lands to the north to create a complete community that will meet the Town and Region's future growth needs.

In consideration of the above and the attached comment letter, our client respectfully requests that the proposed Official Plan mapping be revised prior to final adoption to identify the 10 hectare developable portion of the Subject Lands within the Urban Area as Designated Greenfield Area on proposed Schedule B.

We request notice of any decision made by the Committee or Regional Council in respect of this matter.

Yours truly,
DAVIES HOWE LLP



Meaghan McDermid

MM:MM

copy: Client
Mr. Maurizio Rogato, Blackthorn Development Corp.

June 8, 2022

By E-Mail Only to *diana.morreale@niagararegion.ca*

Ms. Diana Morreale
Acting Director, Community and Long Range Planning
Niagara Region
1815 Sir Isaac Brock Way
P.O. Box 1042
Thorold, ON L2V 4T7

Dear Ms. Morreale,

**Re: Request for Settlement Area Re-Inclusion
SABR ID: 1151 – Lands located on Garrison Road between Rosehill Road
and Municipal Centre Drive, Town of Fort Erie**

We are counsel to Mega Canada Ltd., the owner of approximately 19.7 hectares of land located on Garrison Road between Rosehill Road and Municipal Centre Drive in the Town of Fort Erie (the “**Subject Lands**”). The Subject Lands have been identified as SABR ID: 1151 in the Region’s Settlement Area Boundary Review (“**SABR**”) process.

We are writing further to our review of Region Staff Report PDS 17-2022, your meetings with our client representative Mr. Huo on March 7, 2022 and more recently with our client’s planning consultant Mr. Rogato on June 7, 2022. As discussed in your recent meeting, and for the reasons set out herein, our client is requesting that Regional Staff recommend that a portion of the Subject Lands be re-included in the Region’s Settlement Area prior to adoption of the new Official Plan by Council.

As you know, the Subject Lands were recommended for inclusion in the Settlement Area by the Town of Fort Erie (“**Town**”) and originally, by Regional Staff in your December 8, 2021 report PDS 41-2021, before being removed from the recommended Settlement Area expansion lands in your March 9, 2022 report PDS 6-2022.

We note that, with the exception of one other site (the Horse and Pony Rescue Operation in Crystal Beach) which was recently removed at the request of the property owner, the Subject Lands are the only site out of more than 1,000 hectares of expansion land across four local municipalities which was removed following the original December, 2021 SABR recommendations.

We understand that the reasons given for removal of the Subject Lands relate to the presence of environmental features and servicing issues. Our client and its expert land use planning, environmental and engineering consultants have reviewed these concerns, studied the site and refined the request for inclusion to apply to only an approximately 10 hectare portion of the Subject Lands, which is expected to be unconstrained and available for development, and which is worthy of inclusion in the Settlement Area, consistent with the original Staff recommendations.

Background

While we know that you are intimately familiar with the details of the Region's Municipal Comprehensive Review ("**MCR**") process and SABR analysis, the history as it relates to the Subject Lands bears repeating for context.

Town UAB Study

In early 2021, the Town undertook an Urban Boundary Expansion Study to provide the Region with its recommended expansion locations to meet the Town's community land need of 105 hectares, as identified through the Region's MCR and Land Needs Assessment ("**LNA**").

On February 22, 2021, Town Council endorsed the recommendations in Town Staff Report PDS-14-2021 and the Urban Area Boundary Expansion Study Addendum #1 prepared by WSP (the "**Town UAB Study**") and directed that it be forwarded to the Region to inform the MCR.

The Town UAB Study recommended that two areas, the Ridgeway-Crystal Beach Area and Spears High Pointe-Crescent Park Area ("**Spears High Pointe Area**"), and two individual sites (171 Gorham Road and 0 Nigh Road) be prioritized for residential uses. The Subject Lands are located within the Spears High Pointe Area (identified as Area 2) and were recommended as the second priority parcel within this Area and 7th highest priority parcel overall in the Town.

The Town's UAB Study concluded the following about the Subject Lands: "Area 2 should be prioritized, as it is serviced, accessible and does not require environmental study".

Of note, lands on the north side of Garrison Road, west of Sunset Drive (identified as the "Sunset Road" parcel in the Town's UAB Study), which have been included in the Region's recommended Settlement Area expansion, were not identified as a priority for inclusion by the Town due to lack of sanitary servicing and notable environmental constraints, among other reasons.

A subsequent Town Staff Report PDS-41-2021 and Urban Area Boundary Expansion Study – Addendum #2 prepared by WSP ("**Addendum 2**") was considered and endorsed by Town Council on May 31, 2021. The purpose of this report was to identify candidate

lands that may be considered for UAB expansion outside of the MCR process. The four parcels identified in Addendum 2 (totalling only 52.6 ha) did not include the Subject Lands.

Addendum 2 noted that the Spears High Pointe Area was not identified as a priority in the near-term due to significant servicing constraints, but if the lands gain access to servicing, they could be developed as a priority as they are contiguous to existing development, representing a logical extension to the settlement area boundary.

Addendum 2 did not change Town Council's position that the Subject Lands should be included in the UAB through the Region's MCR as identified in the February 22, 2021 recommendations. The purpose of Addendum 2 was to identify lands for expansion outside of the MCR and within a shorter time frame, whereas the Region's MCR is intended to plan for growth over a 30 year period to the year 2051.

Region SABR

The Region's August, 11, 2021 Made-in-Niagara Forecast and Revised LNA identified that 105 hectares of community land is required in the Town to meet the Region's population growth forecasts for the Town to the year 2051.

The December 8, 2021 Region Staff Report PDS 41-2021 *Settlement Area Boundary Review Urban Recommendations* (the "**December SABR**") recommended three expansion areas in the Town to meet the identified community land need. Recommendation No. 2 identified 93 hectares of land which included the Town's priority Spears High Pointe Areas 1 and 2 (the latter being the Subject Lands), the Sunset Road parcel and additional lands to the north of that parcel which were not assessed in the Town's UAB Study and for which we could not locate a SABR Assessment Sheet.

The December SABR identified that a comprehensive strategic planning exercise including sub-watershed, servicing and transportation would be expected to be undertaken to coordinate future development of the Recommendation No. 2 area.

In respect of the Subject Lands, the individual SABR assessment identified the following:

- Some growth capacity to service the site available at Anger Ave WWTP;
- Sanitary and water servicing is feasible;
- Access to major transportation corridors, expansion of transit and active transportation facilities are feasible;
- Approximately half of the site is shown as Natural Heritage System ("**NHS**"), but it is outside of the Provincial NHS;
- The inclusion of the site would provide the highest contribution to a complete community due to its size and location immediately adjacent to facilities and transit, even though environmental features on the lands could limit some development potential; and

- The inclusion of the site was highly favourable to address land need for the community.

The December SABR recommendations were received by the Planning and Economic Development Committee (“**PEDC**”) on December 8, 2021 and by Regional Council on December 16, 2021.

Then, shortly after your meeting with our client, Region Staff Report PDS 6-2022 dated March 9, 2022 (the “**March SABR**”) recommended revisions to the Settlement Area recommendations to remove only the Subject Lands from the Recommendation No. 2 Area and in its place, add an additional 11 hectare site at 171 Gorham Road and an additional 19 hectares of land on the north side of Garrison Road between Rosehill Road and Laur Road, the majority of which is already developed with rural homes and businesses.

The March SABR indicated that the Subject Lands were recommended to be removed from the Settlement Area due to the identification of environmental features on approximately half of the property and servicing constraints. The SABR assessment sheet was updated with the following:

- Sanitary servicing is identified as low feasibility. Inclusion of the lands within a new servicing strategy for lands north of Garrison Road is no longer feasible and the lands would be directed to Dominion Road pumping station which currently has challenges;
- More than half of the site is shown as NHS;
- The site will provide a lower contribution to a complete community because the extent of environmental features present challenges to development and there are servicing constraints;
- The inclusion of the site is of lower favourability to address land need because there is a reduced area of developable land given the natural features present.

We understand from Region Staff Report PDS 17-2022 dated June 15, 2022 (the “**June Report**”) that is to be considered by PEDC on June 15, 2022 that an additional site located at 0 Nigh Road consisting of 10.5 hectares is now being recommended for inclusion in the Town’s Settlement Area as a result of a minor adjustment in the LNA. The Final LNA was not available for review at the time of writing.

The Subject Lands

Environmental

Our client has retained Colville Consulting Inc., who have conducted preliminary, on-site environmental investigations and constraint mapping. A copy of Colville’s preliminary constraint mapping is attached as Attachment 1. Of course, the exact limits of

development would be determined in the future in accordance with the Region's and Town's Official Plan policies and following more detailed analysis to be conducted and reviewed through future development applications.

Colville's preliminary investigations indicate that, after protecting for environmental features and their minimum vegetation protection zones, approximately 9.8 hectares of the Subject Lands are developable (the "**Developable Area**").

You previously shared with our client a copy of the North South Environmental mapping for the Subject Lands which we understand served as the basis for the Official Plan's Natural Environment System mapping on proposed Schedules C1 and C2. A copy of the North South Environmental mapping for the Subject Lands is attached as Attachment 2.

Notably, the Colville mapping is generally consistent with the North South Environmental mapping, with only minor discrepancies in the size of the woodland. In our view, the Colville mapping provides a more refined delineation of the environmental features on the site, as it is based on more thorough field investigation.

We had understood that the North South Environmental mapping was developed through a desktop review, as is typical for an Official Plan level assessment. In your meeting with Mr. Rogato, he was advised that North South Environmental may have conducted an on-site review of the Subject Lands. We trust that this "on-site" visit was conducted from the public realm, as we were advised by our client that no authorization has been sought or granted for North South Environmental to attend on the Subject Lands. Given that the area of discrepancy between the North South Environmental and Colville mapping is primarily in the interior of the site, the Colville mapping, completed with full access to the Subject Lands, should therefore be considered more accurate.

Regardless, whether the Colville or North South Environmental mapping is relied on, it is clear that both agree that slightly less than 10 hectares of the Subject Lands are unconstrained and available for development.

Therefore, to address Regional Staff's concerns and ensure the future protection of environmental features, our client seeks to have only the Developable Area of the Subject Lands (approximately 10ha) re-included within the Region's Settlement Area.

The presence of environmental features on a portion of the Subject Lands should not constitute a sufficient reason to exclude the entire parcel from the Settlement Area, particularly given the size of the remaining Developable Area, which is consistent with or larger than other recommended expansion areas in the Town, and our client's revised request to exclude the environmental features from the expansion area.

Many, if not all, of the expansion areas in the Town have been identified to contain environmental features to some extent. For example, the recently added 0 Nigh Road (a 10.5 hectare parcel) was originally assessed in the December SABR to be entirely within

the Provincial Natural Heritage System, and while we understand that environmental study has been undertaken to refine the extent of the environmental features on the site, it remains constrained to an extent and will therefore have less land available for development than the Subject Lands. The expansion lands on the north side of Garrison Road also contain environmental features, including a Provincially Significant Wetland.

The Developable Area represents a significantly sized parcel of land which can be developed within the planning horizon of the Official Plan with a variety of housing types to meet the Town and Region's future growth needs, while ensuring that the important environmental features on the Subject Lands and their functions will be protected.

Servicing

It is our understanding that concerns regarding servicing of the Subject Lands relate only to sanitary servicing, as municipal water servicing is confirmed to be feasible. Further, with respect to sanitary servicing, we understand that the Anger Avenue Wastewater Treatment Plant ("WWTP") has existing capacity to accommodate future growth, including from the Subject Lands. Therefore, the only new or upgraded infrastructure which might be required to service the Subject Lands would be pumping station and collection system infrastructure.

As noted in the Town's Addendum 2 and the December SABR, a sanitary servicing strategy will be required for the Spears High Pointe Area, which would include the 175 ha of employment lands and 92 hectares of community land on the north side of Garrison Road which are proposed to be included in the Settlement Area. It is not clear why the Subject Lands, which are located directly across Garrison Road from the remainder of the expansion lands, are not feasible for inclusion in this new servicing strategy, and it is likely premature to make such a determination at this stage, prior to the update to the Region's Water and Wastewater Master Servicing Plan ("MSP").

Further, in the event that it is truly not feasible to include the Subject Lands within the servicing strategy for the lands to the north, other servicing options exist. The Subject Lands are located adjacent to the catchment areas for both the Dominion Road SPS and the Alliston Avenue SPS, the latter of which is indicated in the December SABR as providing feasible sanitary servicing for the lands to the north. Potential future upgrades, if necessary, to either of these SPS could be investigated to accommodate growth from the Subject Lands. Alternatively, a new SPS could be constructed to service the development of the Subject Lands.

The March SABR indicates that servicing for the Subject Lands is not feasible because the Dominion Road SPS is presently experiencing challenges. Planning for growth cannot rely on present servicing infrastructure and its limitations, rather planning for growth and infrastructure must go hand in hand. The need for new and upgraded

infrastructure to accommodate growth over a 30 year period, as this Settlement Area expansion is intended to do, is inevitable.

The Region is currently undertaking an update the to 2016 MSP which we would expect to assess the present challenges and determine how they can be resolved to support the planned growth in the Town to 2051. We note that the 0 Nigh Road lands which are now proposed for inclusion are also within the Dominion Road SPS area, and therefore, the resolution of any issues with the Dominion Road SPS will be required to support the Region's proposed Settlement Area expansion regardless of whether the Subject Lands are included or not.

In our client's view, the present and potential servicing challenges do not provide sufficient justification to exclude the Subject Lands from the expansion area, as these challenges can be addressed through future infrastructure planning processes, development approvals and detailed design. This is particularly so, as the challenges here relate to more minor infrastructure like pumping stations, as opposed to major infrastructure like a WWTP or capacity issues caused by limitations in a receiving watercourse. As noted, capacity does exist currently in the Anger Avenue WWTP to accommodate future development of the Subject Lands.

Planning

The Subject Lands represent a prime location for expansion and a logical extension of the current Settlement Area. The lands are already well-served due to their location adjacent to the Town's largest urban area with existing community facilities, services and transportation corridors available in the immediate vicinity. They will also form part of the larger expansion area with the lands to the north, allowing for comprehensive community planning to occur. Exclusion of the Subject Lands from the Settlement Area would detract from a complete community planning approach for the Garrison Road corridor.

The Subject Lands' high value for expansion is undeniable, as evidenced through both the Town's UAB Study and the December SABR which ranked the Subject Lands as highest contribution to a complete community and highly favourable in addressing the Region's land needs. As discussed above, the reasons identified in the March SABR for lowering these rankings are resolved by limiting the expansion area to only the Developable Area.

At approximately 10 hectares in size, the Developable Area provides a sufficiently large parcel of land, consistent with the size of other proposed expansion areas in the Town, which will assist in accommodating the Town's future growth and can be developed with a range of housing types well within the planning horizon of the Official Plan.

The Region's LNA identified that 105 hectares of community land is required to meet growth needs in the Town to 2051. With the removal of the Subject Lands, the ability to meet this need in a comprehensive manner would be jeopardized.

Through the reporting, it is not clear how the amount of land to be added to meet the Town's 105 hectare need was calculated and what exclusions, if any, were netted out of the gross land areas.

However, we note that all of the lands included in the original December SABR Recommendation No. 2 Area include environmental constraints and, for the lands to the north, potential limitations due to Minimum Distance Separation requirements which will limit the overall developable area.

Further, the 19 hectares of land on the north side of Garrison Road, which were included through the March SABR following the removal of the Subject Lands, do not constitute vacant, greenfield land, but are already developed with rural homes and businesses. While there may be potential for infill or redevelopment of lands within this area, the growth potential is limited and it should not be assumed to contribute in any meaningful way to the required land supply.

Finally, as is noted in the June Report, the Provincial Land Needs Assessment Methodology allows for minor adjustments to the LNA, which would allow additional parcels to be included, or for the Subject Lands re-included, as was done with the recent inclusion of the 0 Nigh Road parcel. Re-inclusion of a portion of the Subject Lands would also represent a minor adjustment which would not require any removal of other lands from the proposed Settlement Area.

Accordingly, the Developable Area of the Subject Lands should be re-included in the recommended Settlement Area to ensure that the Region will provide for sufficient vacant, developable land to meet the Town's forecasted growth needs and to ensure a complete community planning approach for the area.

Conclusion

The Subject Lands have been the subject of thorough study and assessment throughout the Town's and Region's studies, both of which resulted in positive recommendations to support their inclusion with the Urban Settlement Area.

The reasons for removal identified in the March SABR are resolved by limiting the expansion area to only the Developable Area, which will ensure strong protection of the environmental features on the site and more accurately reflect the Subject Lands' contribution to the needed land supply.

In consideration of the above, our client respectfully requests staff support a revision to the proposed Official Plan mapping prior to final adoption to identify the Developable Area

of the Subject Lands within the Urban Area as Designated Greenfield Area on proposed Schedule B.

Yours truly,
DAVIES HOWE LLP



Meaghan McDermid

MM:MM

copy: Mr. Greg Bowie, Senior Planner, Long Range Planning, Niagara Region
Mr. David Heyworth, Official Plan Policy Consultant, Niagara Region
Mr. Phill Lambert, Director, Infrastructure Planning and Development
Engineering, Niagara Region
Client
Maurizio Rogato, Blackthorn Development Corp.



Legend

- Subject Property
- Surface Watercourse
- 15m Buffer from Surface Watercourse
- Significant Woodland
- 15m Buffer from Significant Woodland
- Developable area

Extent of Mapped Woodlands on the Subject Lands

Garrison Road and
Rosehill Road Property

Prepared for: Mr. Victor Huo

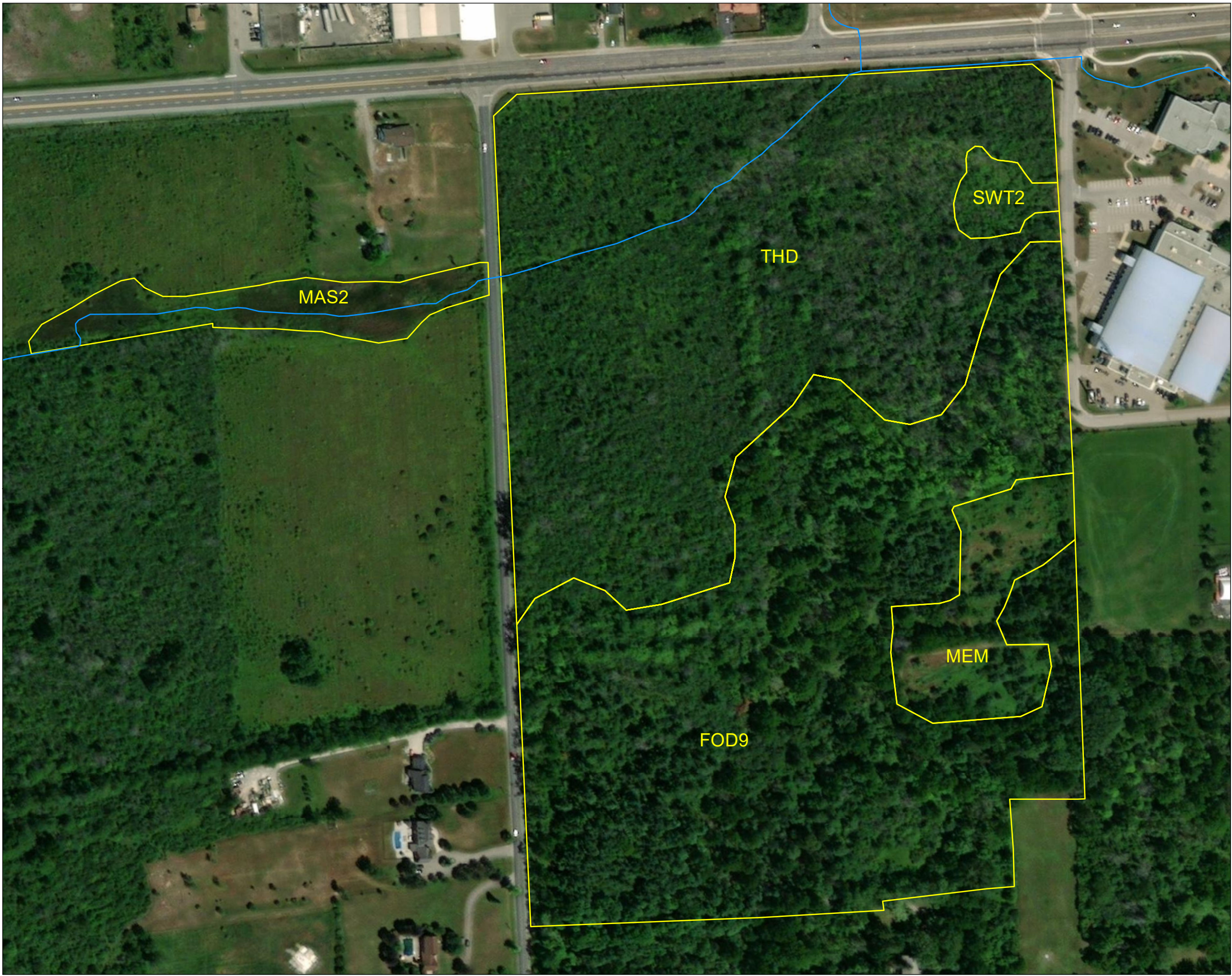
Prepared by:

COLVILLE
CONSULTING INC. 

Notes: Entire property designated as Significant Natural Area

September 2020

FILE: C2006



1 Municipal Center Dr
Ecological Land Classification

Legend

- Watercourse
- Ecological Land Classification
- FOD9 - Fresh-Moist Oak-Maple-Hickory Deciduous Forest Ecosite
- MAS2 - Graminoid Mineral Shallow Marsh Ecosite
- MEM - Mixed Meadow
- SWT2 - Willow Mineral Deciduous Thicket Swamp Ecosite
- THD - Deciduous Thicket



Project Number 18-1043	Date: 2022-02-18	N
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