
Subject: Approval of City of Niagara Falls Official Plan Amendment No. 147
(Employment Policies)

Report to: Planning and Economic Development Committee

Report date: Wednesday, August 9, 2023

Recommendations

1. That the City of Niagara Falls Official Plan Amendment No. 147 (OPA 147) **BE APPROVED** as modified (attached as Appendix 1 to Report PDS 24-2023); and
2. That this report **BE CIRCULATED** to the City of Niagara Falls.

Key Facts

- This report seeks Regional Council's approval of the City of Niagara Falls, Official Plan Amendment (OPA) 147, as modified (Appendix 1). The purpose of OPA 147 is to implement the recommendations of the City of Niagara Falls Employment Lands Strategy and to bring sections of the City's Official Plan that the Amendment affects into conformity with the Niagara Official Plan.
- The Region is the approval authority for OPA 147 pursuant to Section 17 (4) of the *Planning Act*. The primary role of the approval authority is to ensure that the Amendment is consistent with the Provincial Policy Statement, 2020 (PPS), and conforms with the Niagara Official Plan and applicable Provincial plans, including Employment Area mapping and overall policy direction.
- OPA 147 updates existing policies and introduces new policies within the City of Niagara Falls Official Plan regarding Employment Areas and employment lands, including the conversion or re-designation of certain parcels from their existing employment lands uses to new land uses. The Amendment applies to all lands identified for employment uses as well as lands proposed for conversion or re-designation.
- Proposed modifications correct mapping discrepancies, correctly identify Employment Areas in Special Policy Areas, establish tests to support Residential uses in Special Policy Area 87, establish that Employment Area conversions are

only permitted during a Regional Municipal Comprehensive Review, and prohibit Residential uses in Employment Areas.

- OPA 147 was adopted on April 18, 2023, by the City of Niagara Falls Council. Regional staff recommend Council approve OPA 147, as modified, as it is consistent with the PPS and is in conformity with applicable Provincial plans and the Niagara Official Plan.

Financial Considerations

There are no direct financial implications arising from the approval of OPA 147. Under subsection 17 (36) of the *Planning Act*, OPA 147 is, in part, subject to appeal within 20 days after the day that written notice of approval is issued by Niagara Region. An appeal of Regional Council's decision regarding OPA 147 would result in the need for resources to support an Ontario Land Tribunal hearing. Should there be appeals of Regional Council's decision, a further report on financial implications will be provided.

Analysis

Background

The Region of Niagara is projected to grow to 272,000 jobs by 2051, representing an increase of over 85,000 jobs compared to 2021. As part of this growth, the City of Niagara Falls is projected to grow to 58,110 jobs over the same period, comprising approximately 25% of all forecasted employment growth in the Region.

On November 4, 2022, the Minister of Municipal Affairs and Housing approved the Niagara Official Plan, which implements designated Employment Areas, related minimum employment density targets and a policy framework to guide employment growth throughout the Region to 2051.

The City of Niagara Falls initiated its Employment Lands Strategy (ELS), which is the basis for OPA 147, in early 2020. A Phase 2 ELS Report was prepared in April 2021, and a final Phase 3 ELS Report was released in December 2021. The Phase 3 ELS Report assessed the City's employment land needs to 2051, identified lands that are suitable for conversion or re-designation to non-employment land uses, and served as a foundation for OPA 147.

To ensure compliance with the *Planning Act*, public consultation was completed in the form of two public meetings and an open house. Online or hard copies of OPA 147 as proposed were provided to anyone requesting notification through the ELS or the Amendment process under the *Planning Act*.

As part of the consultation process, Regional planning staff provided written and verbal comments on the City of Niagara Falls ELS, and the draft policies and mapping of OPA 147 in November 2021 and in July 2022. The comments were focused on providing guidance to ensure the Amendment is consistent with the PPS, and conforms with the Niagara Official Plan and applicable Provincial plans.

Importance of Protecting Employment Areas

It is important to identify the fundamental differences between Employment Areas and employment lands as these are not interchangeable terms.

Employment Areas are identified in Schedule G of the Niagara Official Plan, and are intended for long-term employment uses, such as manufacturing, warehousing, office and institutional uses, and associated retail and ancillary facilities.

The purpose of the Employment Area designation is to protect lands for employment uses and to ensure that there is a sufficient land supply to accommodate the long-term employment growth forecasts allocated to the Region by the Province. For this reason, conversion of Employment Areas to non-employment uses are only permitted through a Regional Municipal Comprehensive Review, which is a process undertaken by the Region every five years to review and update the Niagara Official Plan for conformity with Provincial policy.

Employment Areas are strategically located along goods movement corridors and are separated from residential uses to address issues of land use compatibility and to ensure that employment uses may be able to operate or expand without encroachment from sensitive land uses.

In accordance with Policy 4.2.1.8 of the Niagara Official Plan, local municipalities must map Employment Areas within their Official Plans; however, they may also identify additional employment lands outside of Employment Areas to accommodate employment uses.

Employment lands outside of Employment Areas are generally regulated by local municipalities and, for the most part, are considered to be outside of Regional interest provided that the criteria in the Niagara Official Plan are addressed. As such, local municipalities are responsible for evaluating the conversion requests of these employment lands, which are permitted to occur at any time.

OPA 147

The City of Niagara Falls Planning Staff Recommendation Report [PBD-2023-15](https://niagarafalls.civicweb.net/document/57858) (<https://niagarafalls.civicweb.net/document/57858>) provides a detailed explanation of OPA 147. OPA 147 applies to all lands within the City of Niagara Falls currently designated for employment and industrial uses as well as those lands proposed to be converted or re-designated as part of the Amendment. OPA 147 identifies Employment Areas and associated minimum employment densities. The Amendment also re-designates locally identified employment lands either from a current employment use to a new land use or from an existing land use to an employment land use, in addition to setting out and implementing the conclusions of the Phase 3 ELS Report noted above.

Specifically, the land use conversions and re-designations include:

- 5796 Valley Way, 5750 Valley Way, 5270 Portage Road and 8236 Beaverdams Road are to be converted from an Industrial to a Minor Commercial designation, which will allow for employment uses of a non-industrial nature on the properties.
- Lands along the north side of Bridge Street at Victoria Avenue, as well as the lands of the former Kimberly Clark building are to be converted from Industrial to a Mixed Use 2 designation to support the intensification targets of the Transit Station Area.
- 9304 Mcleod Road is to be redesignated to a site-specific residential designation subject to the completion of a risk assessment to justify the conversion as a result of the site's proximity to the Cytec Industrial use to the southwest.

Correspondence Received

During the review of OPA 147, the Region received a letter from Thomson Rogers Law, solicitors for Cytec Canada Inc. (Cytec) – part of the Solvay Group, which is included in Appendix 2. The letter requests that the Region of Niagara refuse to approve OPA 147, specifically with respect to allowing residential uses within a two-kilometer radius

surrounding the Cytex lands through the redesignation of 9304 McLeod Road, which has been identified as Special Policy Area 87 in the Amendment.

It is the opinion of Cytex that the Region is legally prohibited from approving Special Policy Area 87 by virtue of the Province's Modification 24 to the Niagara Official Plan (Policy 4.2.4.10 of the NOP). It is the view of Cytex that there is a two-kilometer separation distance or arc surrounding the Cytex facility, and that within that arc residential and other sensitive land uses should be prohibited based on this policy. This is further discussed in the Planning Analysis section of this report under the Niagara Official Plan component.

The Region also received e-mail correspondence from Turkstra Mazza Law, solicitors for the landowners at 9015 Stanley Avenue. The e-mail correspondence requested notice of decision on OPA 147, and informed staff that the solicitor expects that the Region will be approving the Amendment as adopted by the City of Niagara Falls. The clergy principle was noted with reference to Niagara Official Plan Policy 7.12.2.5, and that the development application on their client's lands was deemed complete prior to the approval of the Niagara Official Plan. Staff acknowledge that there is a development application which is still under review by the City. However, as the approval authority for OPA 147, it is the Region's role to ensure that the City's Amendment conforms with the Niagara Official Plan, including the Employment Area boundaries identified in Schedule G.

With respect of the lands at 9015 Stanley Avenue, the Region received further correspondence from the Niagara Industrial Association on behalf of the Stanley Avenue Business Park community. The e-mail objects to residential land uses being permitted on the lands as there is currently limited land zoned for industrial uses in the community and notes that allowing for residential uses would result in an island of manufacturers who will have to route their trucks through residential areas.

Correspondence was also received from Gowling WLG, solicitors for the landowners at 7047 Rexinger Road and 5789 Lyons Creek Road. Both properties are designated Employment Area in the Niagara Region Official Plan. The letter requests that the existing land use designation in the City's Official Plan is retained on the lands to allow for a mixed-use development. Further, the letter requests that the Region defer the approval of OPA 147 until the proposed Provincial Planning Statement is proclaimed as this will change how Employment Areas are managed.

Proposed Modifications

OPA 147 can be supported with modifications. Regional staff have proposed fourteen (14) modifications, as set out in Appendix 1 to PDS 24-2023. The proposed modifications address the following:

- **Mapping Discrepancies:** Staff identified eight (8) mapping discrepancies between the Employment Area mapping on Schedule G of the Niagara Official Plan (NOP) and Schedule A-7 of OPA 147. Modifications have been made in Appendix 1 to ensure that the Employment Area mapping in OPA 147 conforms with the NOP. In Regional staff's view, and supported by legal opinion, this aspect of the amendment is exempt from appeal.
 - As part of the mapping discrepancies, the property known municipally as 9015 Stanley Avenue was not mapped as an Employment Area in OPA 147. This was the decision of local Council as part of adopting the Amendment. However, this property is mapped as an Employment Area on Schedule G of the NOP. Map 1 and Schedule A-7 of the Amendment have been modified to identify these lands as Employment Area to conform with the NOP.
- **Clarification of Employment Lands vs Employment Areas:** Modifications to the Special Policy Areas section of the Amendment have been made to clarify which special policy areas are located within Employment Areas and which special policy areas are located within employment lands outside of Employment Areas. This is important because there are different requirements for land use conversions in Employment Areas compared to employment lands.
- **Special Policy Area 87:** The policy has been modified to establish that the Residential designation will take effect upon certain conditions being cleared to the satisfaction of the City of Niagara Falls in consultation with Niagara Region, as opposed to upon approval of OPA 147 by Niagara Region. The primary purpose of the conditions, and specifically the Risk Assessment, is to evaluate the risk factors associated with the phosphine storage located on the Cytex Canada Inc. lands and determine whether Residential uses are appropriate for Special Policy Area 87 based on the risks identified.
- **Employment Area Conversions:** Policy 4.2.1.10 of the NOP identifies that conversion of lands within Employment Areas shall not be permitted except

during the Region's municipal comprehensive review. Policy 8.32 of OPA 147 allows for the conversion of lands within Employment Areas in advance of the next Regional municipal comprehensive review. This policy has been deleted entirely to ensure conformity with the NOP.

- **Prohibiting Residential Uses in Employment Areas:** Policies within OPA 147 that permit residential uses within Employment Areas have been deleted entirely as the NOP prohibits residential uses within Employment Areas. Policies that were approved through a secondary plan process or equivalent process prior to the approval of the NOP have not been modified in accordance with Policy 4.2.1.16 of the NOP.

Planning Analysis

OPA 147 has been reviewed against the Provincial and Regional planning policy framework in the following analysis.

Provincial Policy Statement (PPS), 2020

The PPS requires that planning authorities promote economic development and competitiveness by providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses, and identifying strategic sites for investment (1.3.1). The PPS directs that planning authorities shall plan for, protect and preserve Employment Areas for current and future uses (1.3.2.1), and shall prohibit residential uses and prohibit or limit sensitive land uses that are not ancillary to the primary employment use to maintain land use compatibility (1.3.2.3). Planning authorities may permit conversion of lands within Employment Areas to non-employment uses through a municipal comprehensive review where it has been demonstrated that the lands are not required for employment purposes over the long term, and that there is a need for the conversion (1.3.2.4).

As modified, OPA 147 is consistent with the PPS.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (Growth Plan), 2020

The Growth Plan directs that upper- and lower-tier municipalities are required to designate Employment Areas in official plans and protect them for appropriate employment uses over the long-term (2.2.5.6). Municipalities are required to plan for all

Employment Areas by prohibiting residential uses and prohibiting or limiting other sensitive land uses that are not ancillary to the primary employment use (2.2.5.7). The conversion of lands within Employment Areas to non-employment uses may only be permitted through a municipal comprehensive review (2.2.5.9). Upper-tier municipalities in consultation with lower-tier municipalities must establish minimum density targets within all Employment Areas and implemented through official plan policies and designations, and zoning by-laws (2.2.5.13).

As modified, OPA 147 conforms with A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020.

Niagara Official Plan (NOP), 2022

The Niagara Official Plan (NOP) was approved by the Province in November 2022. The Region is required to plan for and protect lands to accommodate the Province's forecasted employment growth coming to Niagara, which is achieved through identifying Employment Areas on Schedule G of the NOP. Local area municipalities are required to map Employment Areas in local official plans and plan for Employment Areas to achieve the minimum density targets set out in Table 4-2 of the NOP (4.2.1.8 and 4.2.1.9). Employment Area minimum density targets shall be implemented in local official plans and zoning by-laws (4.2.1.10). Conversion of lands within Employment Areas shall not be permitted except during the Region's municipal comprehensive review and local municipalities are required to use planning tools to achieve land use compatibility between Employment Areas and non-employment lands (4.2.1.11 and 4.2.1.12).

In addition to employment lands located within Employment Areas, the City of Niagara Falls has identified employment lands outside of Employment Areas. Local municipalities are to ensure that the introduction of non-employment uses, if permitted by other policies of the NOP, would be limited and not negatively impact the primary employment function of the area (4.2.4.1). Where avoidance is not possible, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment, and are only permitted subject to demonstrating that the criteria set out are sufficiently addressed (4.2.4.3). Any proposed redevelopment of non-employment uses on employment lands, outside of Employment Areas, shall retain space for a similar number of jobs to remain accommodated on site (4.2.5.1).

NOP Policy 4.2.4.10 identified in the letter from Cytec Canada Inc. noted above was added by the Province as part of its approval. The policy states that development applications within a two-kilometer radius of the Cytec Canada Inc. facility in Niagara Falls shall be subject to Policy 4.2.1.11 of this Plan. Policy 4.2.1.11 states that conversion of lands within Employment Areas shall not be permitted except during the Region's municipal comprehensive review.

A portion of the lands identified as Special Policy Area 87 in OPA 147 fall within a two kilometer radius of the Cytec Canada Inc. facility; however, given that Employment Areas is a defined term within the NOP and that the lands located within Special Policy Area 87 are not mapped as Employment Areas on Schedule G of the NOP, it is the position of Regional staff that Policy 4.2.1.11 does not apply to Special Policy Area 87.

As modified, OPA 147 conforms with the NOP in respect of the applicable policies related to planning for employment in Section 4.2.

Conclusion

Regional staff have provided verbal and written comments to City staff throughout the development of OPA 147 to support conformity of the policies to the Niagara Official Plan. OPA 147 contains policies that focus on planning for and protecting lands to accommodate the forecasted employment growth allocated to the City of Niagara Falls. Employment Areas and employment lands play a critical role in the ability to retain and attract employment investment, which is imperative particularly in the City of Niagara Falls given its strategic location and proximity to the United States.

OPA 147 as modified (Appendix 1) represents good planning and is proposed for Regional Council's approval. As modified, OPA 147 is consistent with the PPS, conforms or does not conflict with applicable Provincial plans, and conforms with the Niagara Official Plan. City staff have been consulted as part of the review of OPA 147 and are generally in agreement with the modifications put forward for recommendation.

Alternatives Reviewed

Council may choose not to approve OPA 147. This approach is not recommended given that City staff incorporated most comments previously submitted by the Region and other agencies into this Amendment, and the modifications proposed ensure conformity with the NOP.

Council may choose to approve OPA 147 without the proposed modifications. This approach is not recommended as the modifications ensure conformity with the NOP as approved by the Province. OPA 147 reflects input from public agencies, interested parties, the public, and Regional staff. The modifications proposed are consistent with the PPS and conform with applicable Provincial plans and the Niagara Official Plan. Should Council not approve the Amendment and an appeal to the Ontario Land Tribunal is launched by the City or a third party, Council will need to retain professional planning services from a consultant to defend its decision.

Relationship to Council Strategic Priorities

Approval of OPA 147 supports the following Regional Council Strategic Priorities:

- Priority 1: Supporting Businesses and Economic Growth
- Priority 2: Healthy and Vibrant Community
- Priority 3: Responsible Growth and Infrastructure Planning

The Amendment will implement policies that protect lands to accommodate the Province's forecasted employment growth for Niagara and will help facilitate responsible growth and development. The Amendment will support the Region in increasing its economic competitiveness and accommodate jobs to support a healthy and vibrant community.

Prepared by:

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Senior Planner, Long Range Planning
Growth Strategy and Economic
Development

Recommended by:

Michelle Sergi, MCIP, RPP
Commissioner
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Development

Submitted by:

Ron Tripp, P.Eng.
Chief Administrative Officer

This report was prepared in consultation with Alexandria Tikky, MCIP, RPP, Senior Project Policy Manager, and reviewed by Britney Fricke, MCIP, RPP, Senior Planner and Angela Stea, MCIP, RPP, Director of Community and Long Range Planning.

Appendices

- Appendix 1 Official Plan Amendment No. 147 to the City of Niagara Falls
 Official Plan as Modified by Niagara Region
- Appendix 2 Correspondence Received During Regional Review

Appendix 1

Modifications to the City of Niagara Falls Official Plan Amendment No. 147

The following modifications are hereby made to the City of Niagara Falls Official Plan Amendment Number 147 adopted by the City of Niagara Falls on April 18, 2023. As thus modified, City of Niagara Falls Official Plan Amendment Number 147 is approved under subsection 17 (34) of the Planning Act, R.S.O. 1990, subject to the following modifications.

Part A: Text Modifications

1. Section 2 (TEXT CHANGES) e) ii) of the amendment is modified by:
 - i. Deleting POLICY 3.16.12 of PART 1, SECTION 3, INTENSIFICATION and its subsections entirely and renumbering subsequent policies accordingly.
2. The following policy is added after Policy 8.2 in Section 2 (TEXT CHANGES) j) of the amendment and subsequent policies are renumbered accordingly:

“The following are prohibited in all Employment Areas:

 - a. **residential uses;**
 - b. **major retail / major commercial uses; and**
 - c. **major office uses, except major office uses permitted in Employment Areas within a strategic growth area.”**
3. Policy 8.3 of Section 2 (TEXT CHANGES) j) of the amendment is modified by:
 - i. In the first paragraph, replacing the word “reflect” with the word “**are**”;
 - ii. In the fourth paragraph, replacing the words “meet the” with the words “**be planned to achieve the**”; and
 - iii. In the fourth paragraph replacing the words “of Part 2, Section 2” with the words “**to 2051 identified in Table 2 of Part 1, Section 2**”.
4. Policy 8.30 of Section 2 (TEXT CHANGES) n) of the amendment is deleted entirely and subsequent policies are renumbered accordingly.
5. Policy 8.31 of Section 2 (TEXT CHANGES) n) of the amendment is modified by:
 - i. Adding the words “**,to the satisfaction of the City of Niagara Falls in consultation with Niagara Region**” after the words “where it has been demonstrated” and before the word “that”;

- ii. In subsection 8.31.4 replacing the words “and the Growth Plan” with the words “**Provincial Plans and policies, and the Niagara Official Plan**”;
- iii. In subsection 8.31.5 removing the word “and” after the semicolon;
- iv. Renumbering subsection “8.30.6” to “**8.31.6**”; and
- v. Adding subsection 8.31.7 as follows:

“8.31.7 conversion criteria and any related requirements set out by the Niagara Region at the time of a Regional Municipal Comprehensive Review are addressed.”

- 6. Policy 8.32 of Section 2 (TEXT CHANGES) n) of the amendment is deleted in its entirety and subsequent policies are renumbered accordingly.
- 7. Policy 8.33 of Section 2 (TEXT CHANGES) n) of the amendment is modified by:
 - i. Adding the words “**outside of Employment Areas**” after the words “non-employment uses”; and
 - ii. Deleting the words “with an associated Regional Official Plan Amendment”.
- 8. Section 2 (TEXT CHANGES) o) ii) of the amendment is modified by:
 - i. Replacing the words “Employment Area” with the words “**Employment Lands**”.
- 9. Section 2 (TEXT CHANGES) o) ix) of the amendment is modified by:
 - i. Replacing the words “Employment Areas” with the words “**Employment Lands**”.
- 10. Section 2 (TEXT CHANGES) o) xviii) of the amendment is deleted in its entirety and replaced with the following:

xviii) by adding the following new policy:

Policy 13.87 SPECIAL POLICY AREA “87”.

Special Policy Area “87” applies to 18.5 hectares of land on the south side of McLeod Road, east of Beechwood Road, known municipally as 9304 McLeod Road. The Residential designation of the lands will come into effect when the following conditions are cleared by the City of Niagara Falls in consultation with Niagara Region:

- a) **That as part of any development application submission on the lands, the applicant shall undertake a Risk Assessment for review and approval to support a Residential designation on the lands.**

- i. **In advance of the Risk Assessment commencing, the applicant shall submit a Risk Assessment Terms of Reference to Niagara Region, in consultation with the City of Niagara Falls for review and approval.**
 - ii. **Niagara Region will undertake a peer review of the Risk Assessment to confirm that the methodology utilized is appropriate and to certify that the Risk Assessment complies with the approved Terms of Reference.**
 - iii. **If the Risk Assessment determines that Residential uses are not appropriate for the lands, due to there being an unacceptable risk to public health or safety or other factors, the Risk Assessment shall identify appropriate non-residential uses to be considered for the lands.**
- b) **That as part of any development application submission on the lands, the applicant shall prepare a Land Use Compatibility Study in accordance with Provincial D-6 Guidelines, which shall be peer reviewed.**
- c) **That as part of any development application submission on the lands, the applicant shall provide written acknowledgement demonstrating the gross floor area of non-residential space being retained for a similar number of jobs to remain accommodated on the site to support the conversion of the lands in accordance with Part 2, Policy 8.33 of this Plan.**

11. Section 2 (TEXT CHANGES) cc) iv) of the amendment is modified by:

- i. Replacing the words “the policies and schedules of the Growth Plan for the Greater Golden Horseshoe” with the words **“Provincial policies and plans and the applicable policies of the Niagara Official Plan”**.

Part B: Mapping Modifications

Mapping modifications are identified through text to Official Plan Amendment No. 147 to the City of Niagara Falls Official Plan below, with corresponding numbers and illustrations of the modifications on the mapping for clarity.

- 12.** “Map 1 to Amendment No. 147 to the Official Plan Schedule “A” – Future Land Use Plan” is modified so that lands municipally known as 9015 Stanley Avenue, in addition to lands located South of the Welland River and East of the Q.E.W. are identified as “Area affected by this amendment”. Lands currently designated Resort Commercial within the “Area affected by this amendment” on Map 1 are re-designated to Employment, as depicted on Map 1 as modified below. The Legend is modified by replacing the word “ECA” with the word “**Employment**”, and by adding text that identifies that the extent of the Environmental Conservation Area and Environmental Protection Area do not necessarily include the extent of the Region’s Natural Environment System and that Regional mapping should be consulted.
- 13.** The Legend to “Map 4 to Amendment No. 147 to the Official Plan Schedule “A” – Future Land Use Plan” is modified by adding the number “**87**” after the words “Special Policy Area” and by modifying the line color for the Special Policy Area from black to red.
- 14.** Map 6 of the amendment entitled “SCHEDULE A-7 EMPLOYMENT LANDS” is modified so that the boundaries of the Employment Areas mapped reflect the addition or removal of the lands identified below:

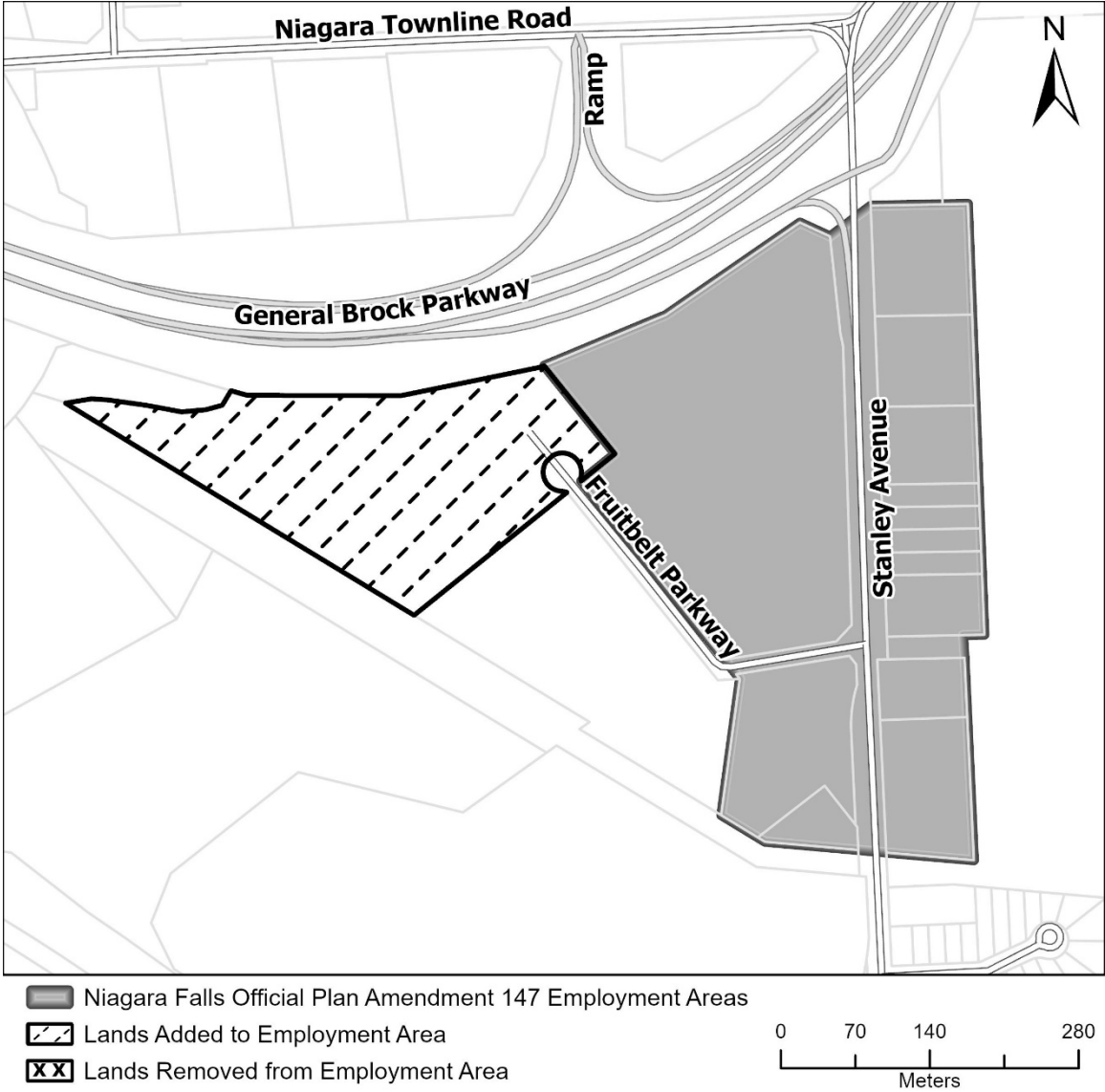
 - a.** Lands municipally known as 2125 Fruitbelt Parkway are added to Employment Area 1 and are designated Employment.
 - b.** Lands bounded by Carroll Avenue to the West, Thorold Stone Road to the North, the Canadian National rail line to the East, and the southern limit of the lands municipally known as 4256 Carroll Avenue to the South, are added to Employment Area 2.
 - c.** Lands that comprise the Hydro Canal are added to Employment Area 2.
 - d.** Lands abutting the rail corridor, South of Whirlpool Road and Southwest of Niagara River Parkway are removed from Employment Area 2.
 - e.** Lands municipally known as 7633, 7641, 7649, 7657, 7665, 7673, 7681, 7689, and 7697 Hackberry Trail, in addition to lands North of Brown Road are removed from Employment Area 5.

- f.** Lands located South of the Welland River and East of the Q.E.W. are added to Employment Area 5.

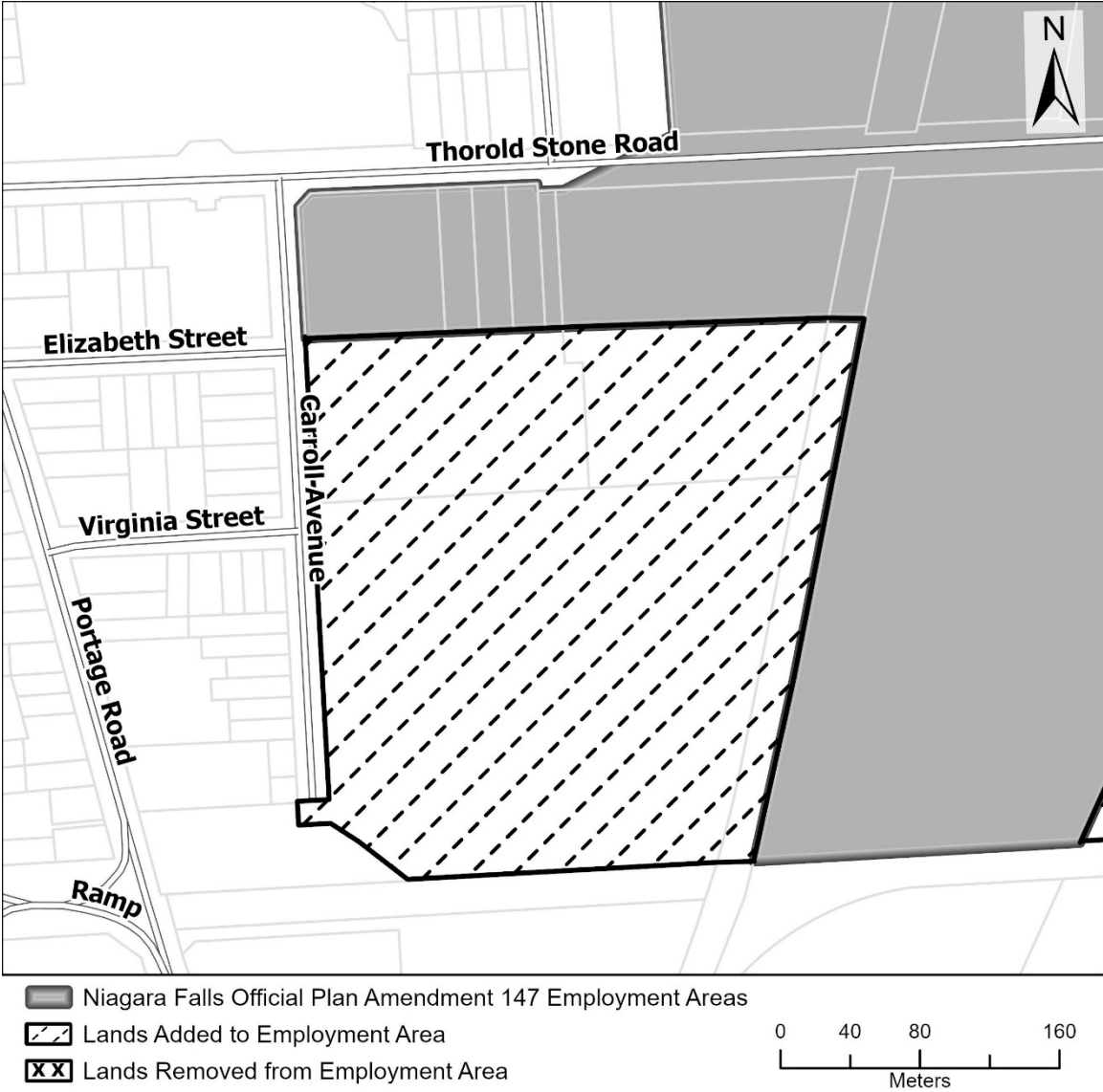
- g.** Lands municipally known as 9015 Stanley Avenue are added to Employment Area 5.

- h.** Lands bounded by Chippawa Parkway to the South, 6025 Chippawa Parkway to the West, Don Murie Street to the North, and Stanley Avenue to the East are added to Employment Area 7.

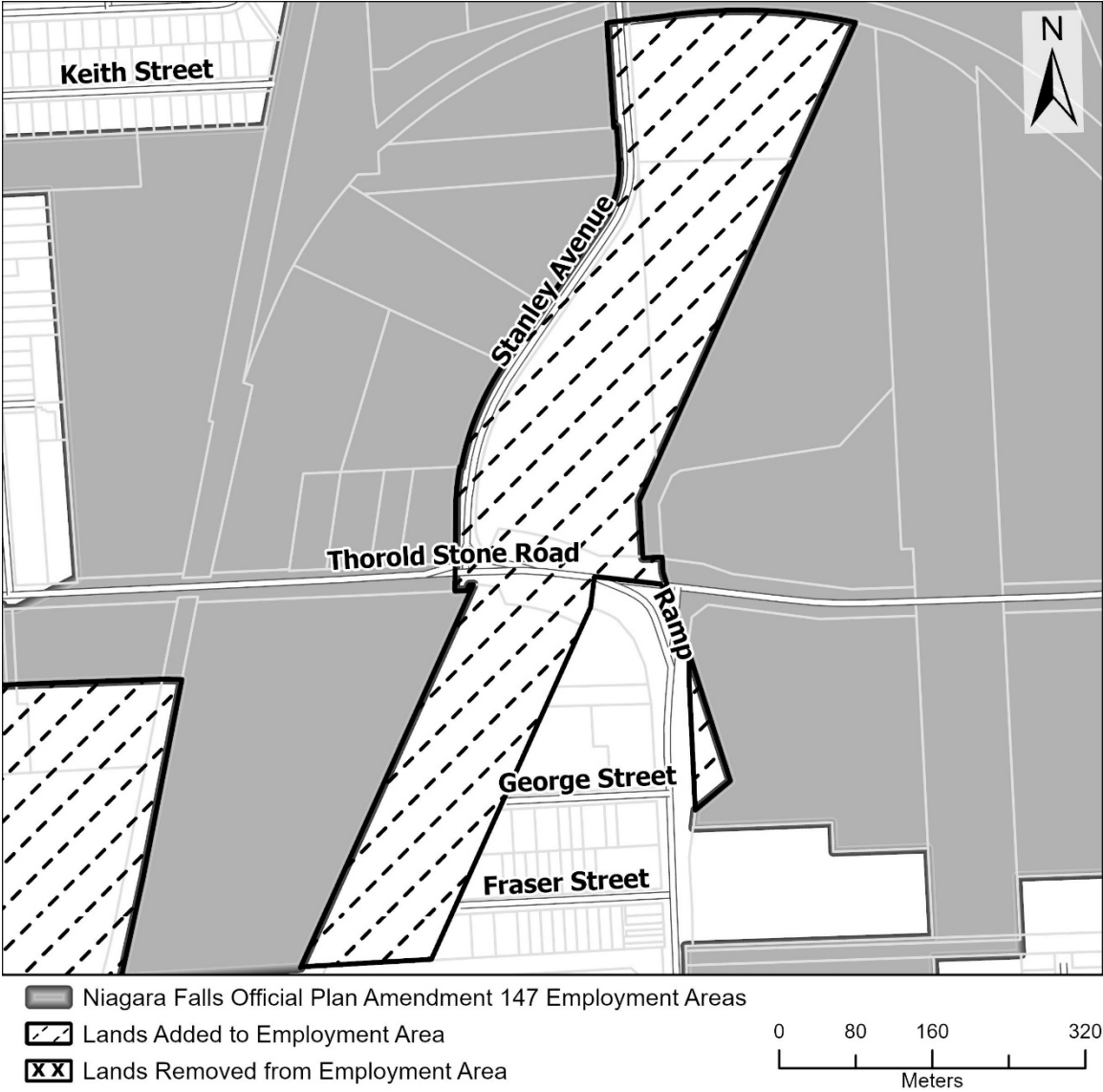
14.A. Lands municipally known as 2125 Fruitbelt Parkway are added to Employment Area 1 and are designated Employment as identified below:



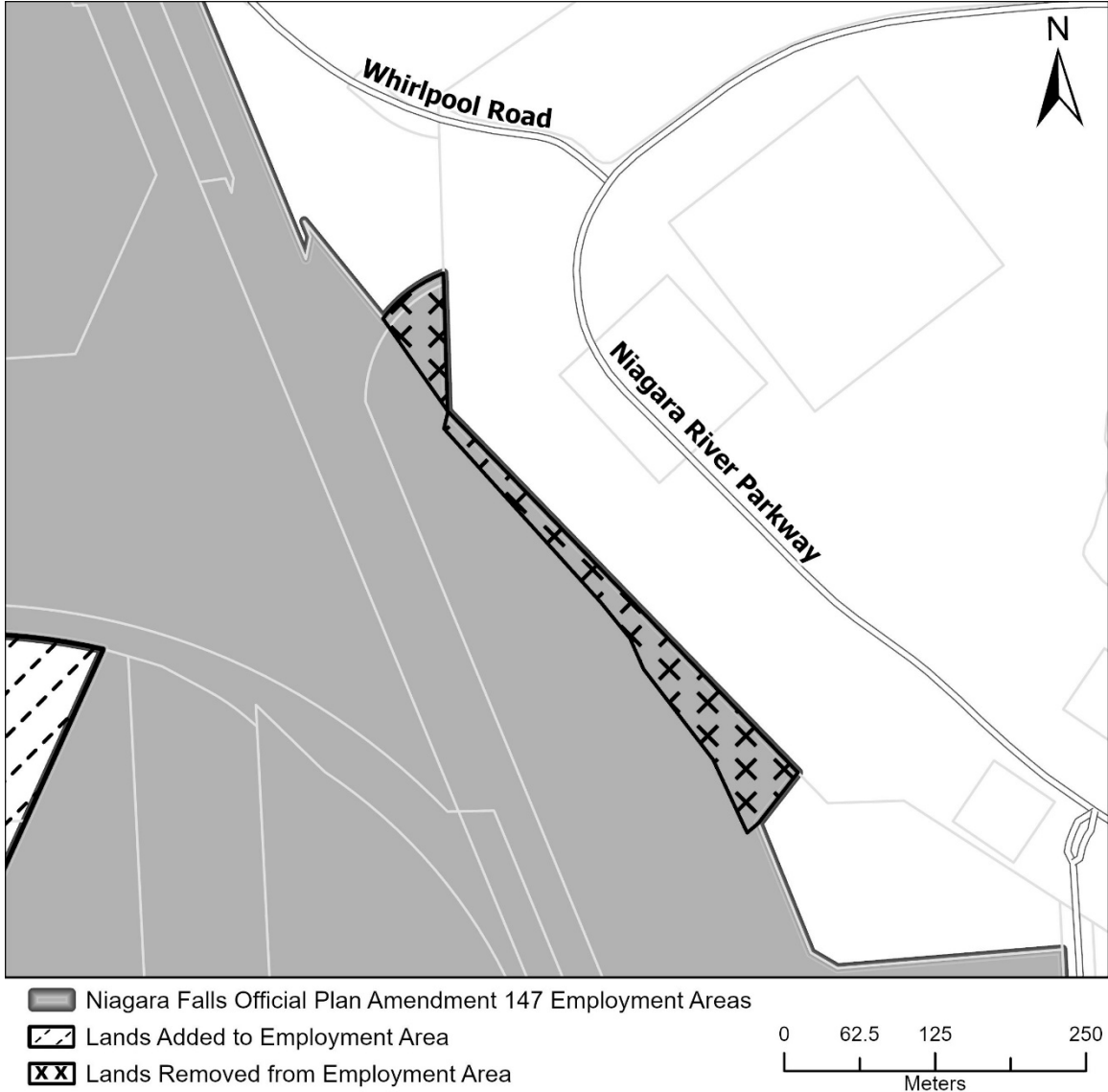
14.B. Lands bounded by Carroll Avenue to the West, Thorold Stone Road to the North, the Canadian National rail line to the East, and the southern limit of the property municipally known as 4256 Carroll Avenue to the south, are added to Employment Area 2 as identified below:



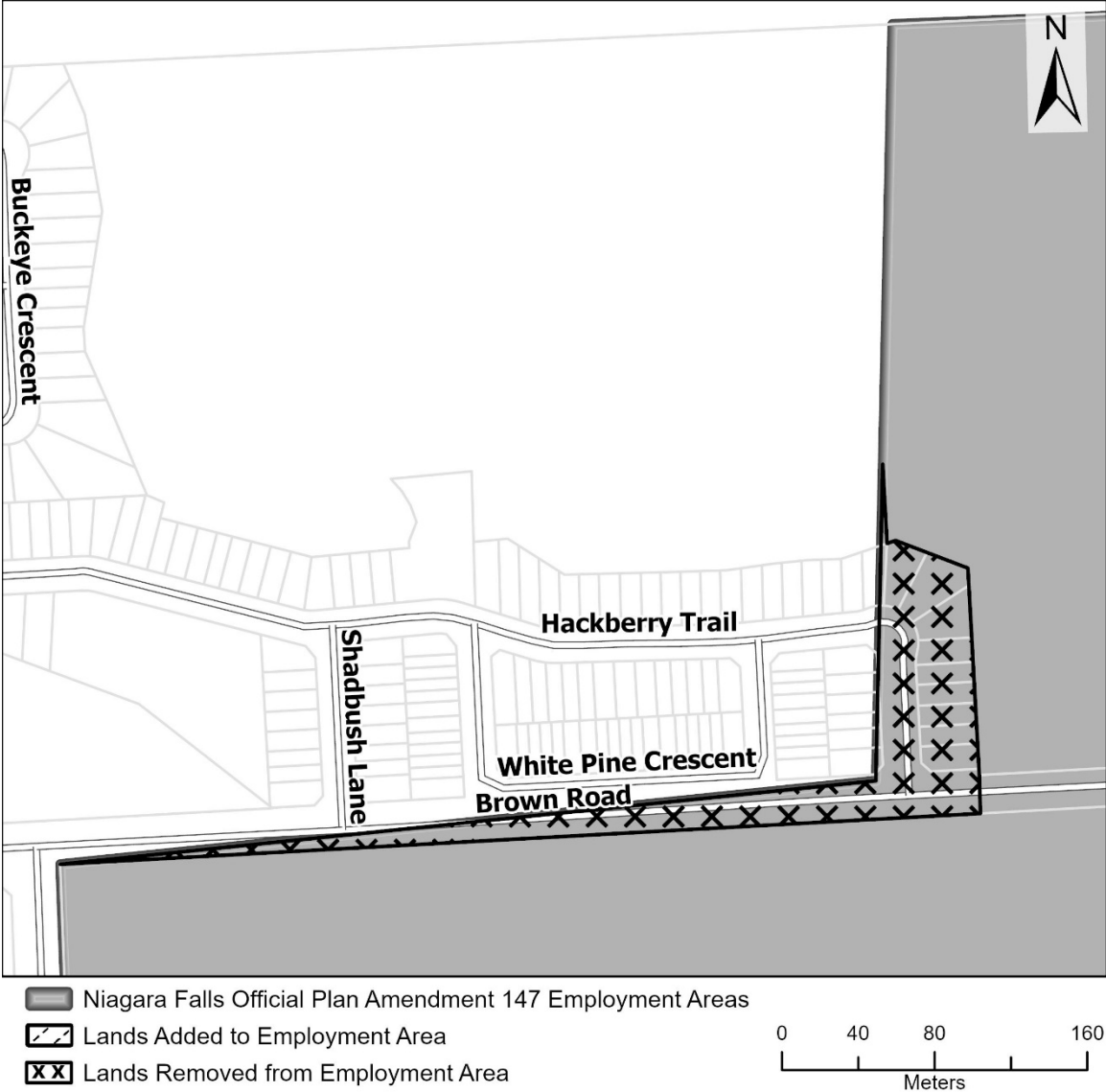
14.C. Lands that comprise the Hydro Canal are added to Employment Area 2, as identified below:



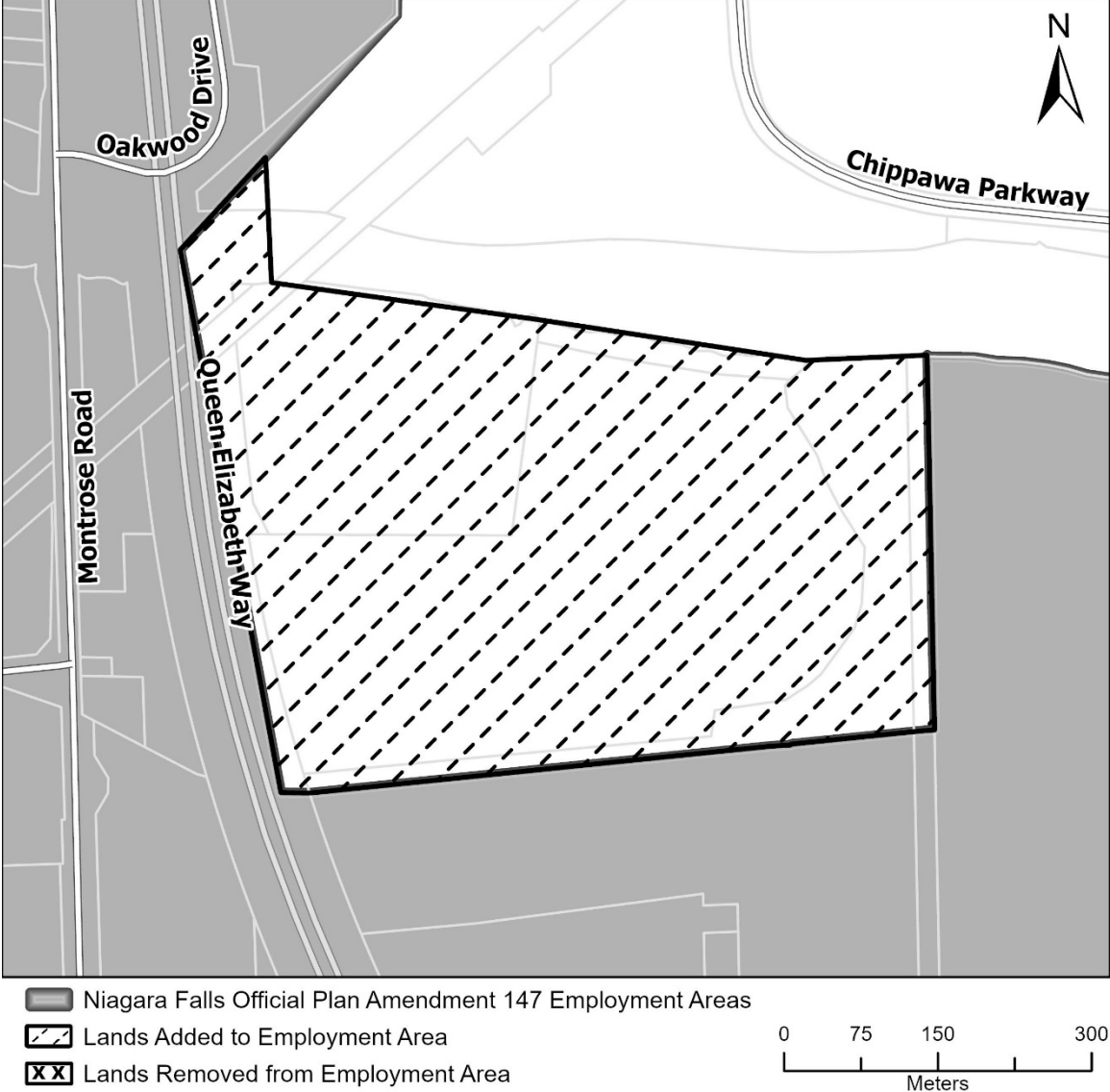
14.D. Lands abutting the rail corridor, South of Whirlpool Road and Southwest of Niagara River Parkway are removed from Employment Area 2 as identified below:



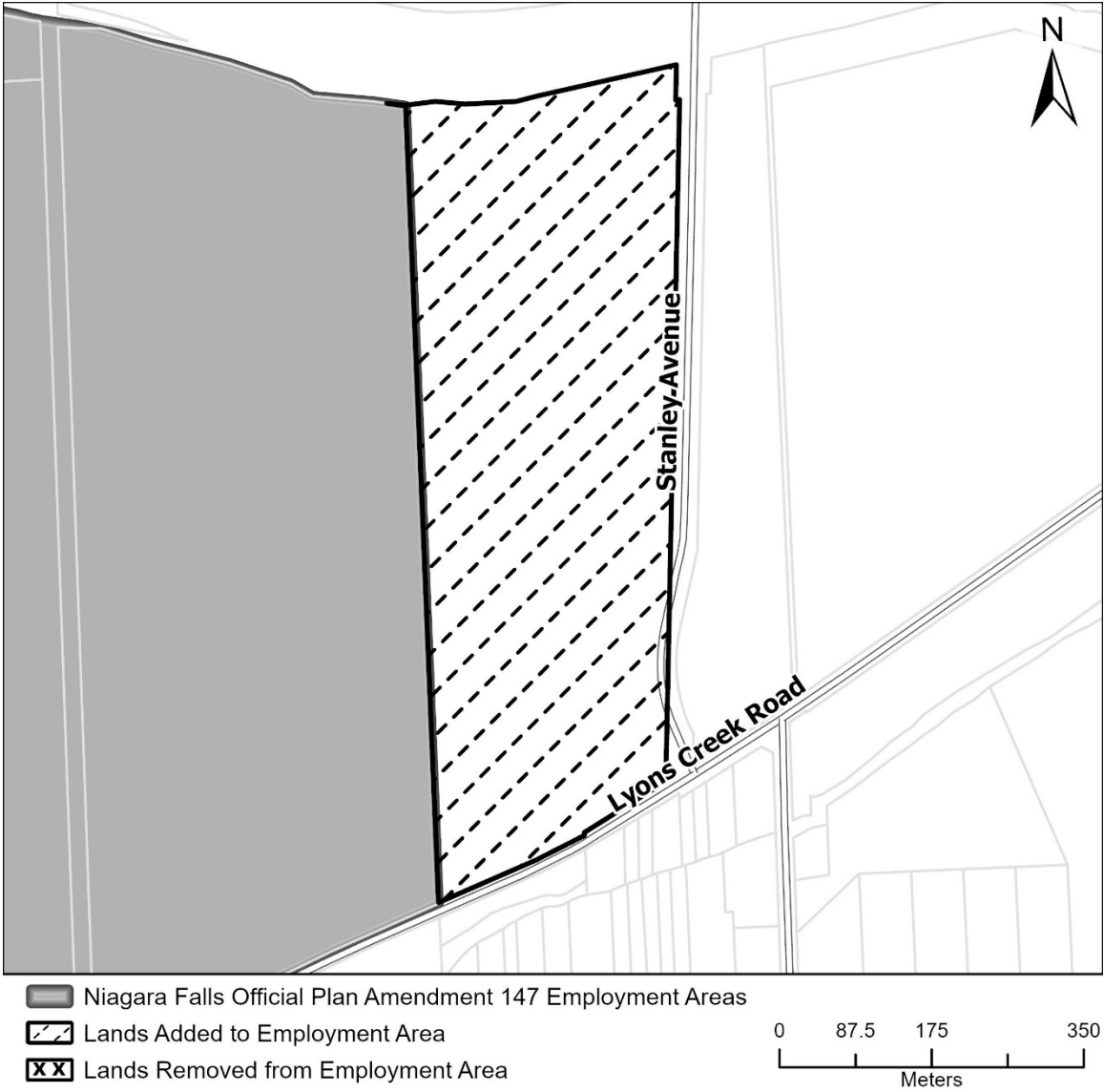
14.E. Lands municipally known as 7633, 7641, 7649, 7657, 7665, 7673, 7681, 7689, and 7697 Hackberry Trail, in addition to lands North of Brown Road are removed from Employment Area 5 as identified below:



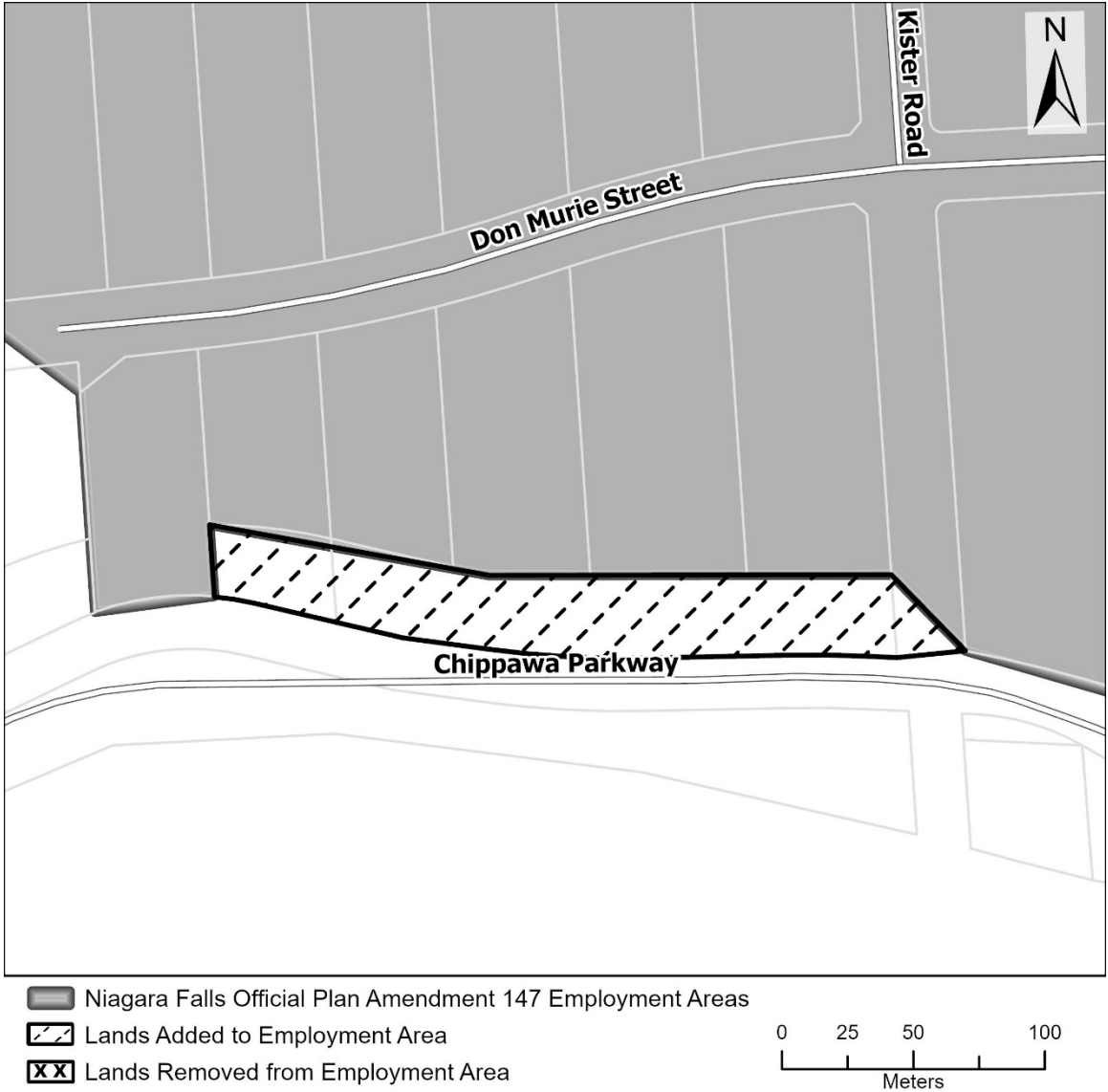
14.F. Lands located South of the Welland River and East of the Q.E.W. are added to Employment Area 5 as identified below:



14.G. Lands municipally known as 9015 Stanley Avenue are added to Employment Area 5 as identified below.



14.H. Lands bounded by Chippawa Parkway to the South, lands municipally known as 6025 Chippawa Parkway to the West, Don Murie Street to the North, and Stanley Avenue to the East are added to Employment Area 7 as identified below:



Appendix 2

Correspondence Received During Regional Review

From: Jeff J. Wilker <jwilker@trlaw.com>
Sent: Tuesday, June 20, 2023 6:13 PM
To: Tikky, Alexandria; Stea, Angela
Cc: brad.campbell@solvay.com; ken.milo@solvay.com; Stan Floras; glenn@wellingsplanning.ca
Subject: FW: City of Niagara Falls OPA 147
Attachments: Letter to Mayor Diodati and Members of Council dated June 20, 2023.pdf

Follow Up Flag: Follow up
Flag Status: Completed

CAUTION EXTERNAL EMAIL: This email originated from outside of the Niagara Region email system. Use caution when clicking links or opening attachments unless you recognize the sender and know the content is safe.

Good evening,

Thank you for copying us on your email to Glenn Wellings.

I am attaching a copy of our letter of today's date to City of Niagara Falls Council dealing with the City planning report and today's statutory public meeting regarding the proposed implementing Zoning By-law Amendment and Draft Plan Subdivision and associated conditions on lands subject to OPA 147.

I ask that Region Planning to review our letter, along with our prior filings, and that Region Planning especially consider the letter's commentary at pages 3 and 4, which states: "Given that the Region's Official Plan is in full force and effect any approval of OPA 147 for employment conversion proposals within the two kilometre Cytec radius requirement is prohibited by law."

While it is Cytec's position that OPA 147 should be refused for not being good planning, we want to make it clear that at law the Region cannot approve OPA 147 dealing with employment conversions within the 2 km radius owing to the Ministry's modification 24 to the Region's Official Plan.

Our team would also be pleased to meet with Region Planning should that assist.

Please ensure that the persons on this email, being Brad Campbell, Site Director for the Niagara Falls facility; Ken Milo, Environmental Rehabilitation Coordinator for Cytec, Glenn Wellings, Cytec's Planning Consultant, Stan Floras and myself of Thomson, Rogers are provided with notice when the Region's report is available.

Thank you.

Jeff

Jeffrey J. Wilker
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Please note Thomson, Rogers has changed its email template to trlaw.com with my primary email now being jwilker@trlaw.com. I would appreciate it if you could amend your records.

From: Tikky, Alexandria <Alexandria.Tikky@niagararegion.ca>

Sent: June 20, 2023 9:34 AM

To: Glenn Wellings <glenn@wellingsplanning.ca>

Cc: Brad Campbell <brad.campbell@solvay.com>; Milo, Ken <ken.milo@solvay.com>; Jeff J. Wilker <jwilker@trlaw.com>; Stan Floras <sfloras@trlaw.com>; Stea, Angela <Angela.Stea@niagararegion.ca>

Subject: RE: City of Niagara Falls OPA 147

Hello Glenn,

Niagara Region staff are still in the process of reviewing the amendment. We anticipate bringing forward a report to the Planning and Economic Development Committee meeting on Wednesday, August 9.

I will be providing an update for agencies and stakeholders closer to the meeting date; however, you can also check for the agenda and other updates on the Committee meeting page here:

<https://www.niagararegion.ca/government/council/committees/pedc/default.aspx>

All the best,

Alexandria Tikky, MCIP, RPP

Senior Policy Project Manager

Growth Strategy and Economic Development

Niagara Region

1815 Sir Isaac Brock Way, P.O. Box 1042

Thorold, ON L2V 4T7

Phone: 905-980-6000 ext. 3593

Toll-free: 1-800-263-7215

www.niagararegion.ca

Building Community. Building Lives.

From: Glenn Wellings <glenn@wellingsplanning.ca>

Sent: June 16, 2023 1:09 PM

To: Stea, Angela <Angela.Stea@niagararegion.ca>; Tikky, Alexandria <Alexandria.Tikky@niagararegion.ca>

Cc: Brad Campbell <brad.campbell@solvay.com>; Milo, Ken <ken.milo@solvay.com>; jwilker@trlaw.com; Stan Floras <sfloras@trlaw.com>

Subject: RE: City of Niagara Falls OPA 147

CAUTION EXTERNAL EMAIL: This email originated from outside of the Niagara Region email system. Use caution when clicking links or opening attachments unless you recognize the sender and know the content is safe.

Good afternoon Angela/Alex. It would be appreciated if you could provide us with an update on the status of City of Niagara Falls OPA No. 147 and any associated timelines. Many thanks.

Glenn



Glenn J. Wellings, MCIP, RPP, AICP

President, Wellings Planning Consultants Inc.

T: 905-681-1769 ext. 201 | C: 416-988-0310
513 Locust Street, Unit B | Burlington, ON L7S 1V3
www.wellingsplanning.ca



From: Jeff J. Wilker <jwilker@trlaw.com>
Sent: Tuesday, May 2, 2023 6:52 PM
To: Stea, Angela <Angela.Stea@niagararegion.ca>
Cc: Kira Dolch <kdolch@niagarafalls.ca>; B Dick <bdick@niagarafalls.ca>; 'Francesca Berardi' <fberardi@niagarafalls.ca>; ken.milo@solvay.com; brad.campbell@solvay.com; Glenn Wellings <glenn@wellingsplanning.ca>; Tikky, Alexandria <Alexandria.Tikky@niagararegion.ca>; Sergi, Michelle <Michelle.Sergi@niagararegion.ca>
Subject: FW: City of Niagara Falls OPA 147

Thank you Angela, for the confirmation below.

The City has sent out a revised notice dated April 26, 2023 received @4:20 on Niagara Falls OPA 147.

I am writing to confirm that Cytec's comments and concerns are not addressed by the revised notice, and we continue to be of the view that Region of Niagara ought to deny approval of OPA 147 with relation to residential conversions (McLeod/Beechwood lands) in the vicinity of the Cytec facility. In other words, the materials filed apply equally to the revised notice.

Please continue to ensure that the Region of Niagara provides my offices together with the offices of Glenn Wellings, Cytec's consulting planner, of any Notice of Decision it makes with respect to Niagara Falls OPA 147.

Thank you.

Jeffrey J. Wilker
Municipal and Planning Law Department Head
Partner, Thomson Rogers Lawyers
3100 - 390 Bay Street, Toronto, ON, M5H 1W2
Direct Line: 416-868-3118
Cell Phone: 416-571-1719

Please note Thomson, Rogers has changed its email template to trlaw.com with my primary email now being jwilker@trlaw.com. While jwilker@thomsonrogers.com remains operational, I would appreciate it if you could amend your records.

From: Stea, Angela <Angela.Stea@niagararegion.ca>
Sent: April 27, 2023 12:02 PM

To: Jeff J. Wilker <jwilker@trlaw.com>

Cc: Kira Dolch <kdolch@niagarafalls.ca>; B Dick <bdick@niagarafalls.ca>; 'Francesca Berardi' <fberardi@niagarafalls.ca>; ken.milo@solvay.com; brad.campbell@solvay.com; Glenn Wellings <glenn@wellingsplanning.ca>; Tikky, Alexandria <Alexandria.Tikky@niagararegion.ca>; Sergi, Michelle <Michelle.Sergi@niagararegion.ca>

Subject: FW: City of Niagara Falls OPA 147

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Good afternoon Mr. Wilker

On behalf of Michelle Sergi, I am confirming receipt of your letter and background materials. We will ensure that both yourself and Glenn Wellings are added to the list of interested parties on the Region's Notice of Decision for this file.

I have copied Alex Tikky who is our Senior Policy Project Manager for local conformity reviews and she will review and reach out should we have any questions about the materials.

Thank you

Angela Stea, MCIP, RPP

Director of Community and Long Range Planning

Growth Strategy and Economic Development

Niagara Region

Phone: 905-980-6000 ext. 3518

Toll-free: 1-800-263-7215

www.niagararegion.ca

From: Sergi, Michelle <Michelle.Sergi@niagararegion.ca>

Sent: Wednesday, April 26, 2023 4:05 PM

To: Stea, Angela <Angela.Stea@niagararegion.ca>

Subject: FW: City of Niagara Falls OPA 147

From: Jeff J. Wilker <jwilker@trlaw.com>

Sent: Wednesday, April 26, 2023 1:13 PM

To: Sergi, Michelle <Michelle.Sergi@niagararegion.ca>

Cc: Kira Dolch <kdolch@niagarafalls.ca>; B Dick <bdick@niagarafalls.ca>; 'Francesca Berardi' <fberardi@niagarafalls.ca>; ken.milo@solvay.com; brad.campbell@solvay.com; Glenn Wellings <glenn@wellingsplanning.ca>

Subject: City of Niagara Falls OPA 147

CAUTION EXTERNAL EMAIL: This email originated from outside of the Niagara Region email system. Use caution when clicking links or opening attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Please see our letter attached requesting that the Region refuse to approve OPA 147 with respect to the conversion of the lands municipally addressed as 9304 McLeod Road to residential for the reasons as set out in the attached letter and requesting notice of the Region's decision on OPA 147.

Please confirm receipt of this request.

Thank you.

Jeffrey J. Wilker
Municipal and Planning Law Department Head
Partner, Thomson Rogers Lawyers
3100 - 390 Bay Street, Toronto, ON, M5H 1W2
Direct Line: 416-868-3118
Cell Phone: 416-571-1719

Please note Thomson, Rogers has changed its email template to trlaw.com with my primary email now being jwilker@trlaw.com. While jwilker@thomsonrogers.com remains operational, I would appreciate it if you could amend your records.

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THOMSON ROGERS

LAWYERS

Jeffrey J. Wilker
416-868-3118
jwilker@thomsonrogers.com

SENT BY EMAIL ONLY

August 3, 2022

Mayor Diodati and Members of Council
City of Niagara Falls
4310 Queen Street
Niagara Falls, Ontario
L2E 6X5

Dear Mayor Diodati and Members of Council:

Cytec Canada Inc. re Cytec Arcs
9304 McLeod Road
Employment Lands Strategy
Official Plan and Zoning By-law Amendment Application
City File -- AM-2021-13
Our File No. 500673

We are the solicitors for Cytec Canada Inc. (“Cytec”) – part of the Solvay Group. We have been requested by Cytec to provide submissions to City Council regarding the proposed Official Plan Amendment and Zoning By-law Amendment under the City’s above referenced file.

The notice provided states that this is the second public meeting. Cytec and its advisors can find no prior notice being provided to it, notwithstanding that it is a major manufacturing facility located within the City.

As part of the proposed amendments, City Planning is suggesting that the lands municipally addressed as 9304 McLeod Road (“McLeod/Beechwood lands”) be converted from being designated and zoned as employment/industrial lands to residential uses. Cytec objects to this proposal. There is insufficient planning and environmental justification in support of the conversion request.

It is our view that this proposal is ill founded, is contrary to section 2 of the *Planning Act*, is inconsistent with the Provincial Policy Statement (“PPS 2020”) and is not in conformity with the Provincial *Growth Plan*, including the employment conversion tests contained



Jeffrey J. Wilker
416-868-3118
jwilker@trlaw.com

SENT BY EMAIL ONLY

March 16, 2023

Mayor Diodati and Members of Council
City of Niagara Falls
4310 Queen Street
Niagara Falls, Ontario
L2E 6X5

Dear Mayor Diodati and Members of Council:

Cytec Canada Inc. re Cytec Arcs
9304 McLeod Road
Employment Lands Strategy
Official Plan and Zoning By-law Amendment Applications City File -- AM-2021-13
Proposed OPA 147
Our File No. 500673

We are the solicitors for Cytec Canada Inc. (“Cytec”) – part of the Solvay Group.

On August 3, 2022, we wrote to City Council regarding the above captioned matter in objection to the proposal. Mr. Wellings, Cytec’s planning consultant, also delegated at the public meeting on Cytec’s behalf.

We understand that the City’s employment land conversion proposal is to be returned to be considered by City Council at its meeting of March 21, 2023. We, therefore, are writing to reiterate our advice in our prior letter, and to provide Council with an update.

To be clear Cytec maintains its objection to the employment conversion resulting in any introduction of sensitive land uses including residential uses within the 2 km arc of the plant facility, together with requiring height restrictions resulting in low rise development in the transition area outside the arc. This is consistent with the City’s long time planning program as demonstrated in the Garner South Secondary Plan, the Heartland Forest approvals, and the Grand Niagara Secondary Plan, and as more particularly detailed in our letter of August 3, 2022.

Added to that position are the limitations applicable to the City proposal as set out in the new Region Official Plan. As the City is aware, the Region of Niagara completed its comprehensive municipal review under the Planning Act last summer, and adopted a new Region Official Plan (“ROP”) to implement same.

Thomson Rogers Lawyers

Suite 3100, 390 Bay St., Toronto, ON M5H 1W2 | TF: 1-888-223-0448 | T: 416-868-3100 | F: 416-868-3134



On November 4, 2022, the Ministry of Municipal Affairs and Housing issued its Notice of Decision which approved the Region Official Plan with modifications. By law, any City planning proposal and resultant instruments must conform to the in force Region Official Plan.

Modification 24 is specific to Cytec. It states:

“New policy 4.2.4.10 is added:

Notwithstanding policy 7.12.2.5, development applications within a two kilometre radius of the Cytec Canada Inc. facility in Niagara Falls shall be subject to policy 4.2.1.11 of this Plan, except for the lands currently designated Neighbourhood Commercial in the local official plan.”

[My Emphasis]

Policy 7.1.2.2.5 as modified by modification 34 is the grandfathering or “Clergy Principle” which allows development applications in the mill before the Plan’s approval to be processed and decided under predecessor Official Plan policies. The Province has specifically excluded same, by the notwithstanding provision in Modification 24 on lands subject to the 2 kilometre Cytec radius.

Policy 4.2.1.11 restricts the timing of the conversion of employment lands. The first sentence of the policy states: “Conversion of lands within *employment areas* shall not be permitted except during the Region’s *municipal comprehensive review*.”

As a result, the Province has specifically recognized and mandated:

- a) the two kilometre Cytec radius requirement;
- b) excluded any grandfathering transition; and,
- c) restricted the consideration of any employment conversion proposals within the two kilometre Cytec radius to the next Region’s municipal comprehensive review.

It is our view that as a result, the City cannot proceed with any employment conversion proposal within the two kilometre radius of the Cytec facility as such proposal would **NOT** be in conformity with the in force Region Official Plan as modified by the Minister, and therefore would be illegal.

We continue to respectfully request notice of any City reports, any continued consideration of this proposal and/or adoption of the Official Plan Amendment and/or passage of the Zoning By-law Amendment.



The addresses follow:

Glenn Wellings
Wellings Planning Consultants Inc.
513 Locust Street, Unit B,
Burlington ON L7S 1V3.
E: glenn@wellingsplanning.ca

Jeffrey J. Wilker
Thomson, Rogers Lawyers
Suite 3100, 390 Bay St. Toronto, ON M5H 1W2
E: jwilker@trlaw.com

By copy of this letter to City Clerks and City Planning, we request that staff ensure that this letter is distributed to City Council prior to the public meeting.

We thank City Council for its consideration of this letter. Cytec looks forward to continuing to work with the City to ensure that Cytec remains a vibrant and important contributor to the City's well being.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Jeff Wilker', written in a cursive style.

Jeffrey J. Wilker

JJW/pf

cc: Bill Matson, City Clerk, City of Niagara Falls
cc: Kira Dolch, Director of Planning, Building and Development, City of Niagara Falls
cc: Brian Dick, Manager of Policy Planning, City of Niagara Falls
cc: Brad Campbell, Site Director, Cytec
cc: Ken Milo, Environmental Rehabilitation Officer, Cytec
cc: Glenn Wellings, Wellings Planning Consultants

with the Provincial planning framework. Moreover, this proposal is contrary to the City's longstanding planning program implemented over the last 25 years including the Cytec 2 km arc, and height and use restrictions beyond the Cytec 2 km arc. Our detailed submissions follow:

Background

Cytec is a major chemical manufacturing company with operations located in Niagara Falls for more than 100 years. Cytec manufactures phosphine in its facility located on its lands fronting Garner Road. Phosphine is a colourless, flammable toxic gas. Cytec is the largest phosphine manufacturer in the world with roughly 65% of the world market. Cytec exports its product worldwide from its Niagara Falls facility. Also located on its lands is a research lab facility. Cytec is a substantial and significant contributor to the City's economic well-being including carrying out a \$165 million plant expansion less than a decade ago.

Garner Road Location

Cytec's major landholdings in the City are located north of the Welland River fronting on Garner Road and consisting of approximately 1,000 acres ("the Cytec lands"). The Cytec lands include Thompson's Creek. The protection of the integrity of Thompson's Creek is of substantial importance to Cytec owing to its use as the outfall for the processing by the facility. Cytec is part of the longstanding industrial precinct in this part of the City.

Fundamental to Cytec's operations was and is the City's existing prior planning program as originally requested by Cytec, refined and implemented by the City's Planning Department, endorsed and supported by City Council, and upheld from time to time by the Ontario Municipal Board/Local Planning Appeal Tribunal (now the Ontario Land Tribunal) over the last twenty-five years or so.

The City's existing planning program was a critical factor that allowed the Niagara Falls site to be successfully expanded. The proposal to redesignate and rezone the McLeod/Beechwood lands to residential now being considered by City Council jeopardizes the viability of Cytec's designated and zoned heavy industrial lands.

The Planning Program

The existing planning program implements the fundamental planning principle that sensitive land uses such as residential land uses, overnight accommodation uses, assembly

hall type uses, day cares, nursing homes etc. are required to be separated from heavy industrial users. This planning program is implemented in part through the Cytec arc -- being a 2 km separation distance/arc ("the Cytec arc"). Within the Cytec arc, land uses are restricted to industrial, commercial and less intense recreational land uses, e.g. nature uses or golf courses, and residential land uses or overnight accommodations or other sensitive land uses are prohibited. Outside the arc, but proximate to the arc, restrictions are implemented on the height of land uses and the type of land uses is refined and/ or prohibited, e.g. daycares or nursing homes are of concern. Additionally on residential development outside but near the arc there is the requirement for a notice clause regarding the Cytec use.

This planning program addresses three fundamental objectives: mitigation of adverse effects; minimization of risk to public health and safety; and maintenance of the long term viability of existing industries. From Cytec's perspective these factors are of critical importance, and this planning program, including the arc, appropriately manage the risk safety profile of a major chemical manufacturing facility.

These principles were incorporated into the original Grand Niagara Resort Official Plan Amendment #37 (approved by the Ontario Municipal Board as it then was) and into the Heartland Forest Official Plan Amendment #40. Subsequent Secondary Plans (Official Plan Amendments) being the Garner South Secondary Plan and the Grand Niagara Secondary Plan continued to implement these principles. All implementing planning approvals respect the Cytec arc in the Zoning By-law(s), plan(s) of subdivision, site plan(s) and consent(s).

Cytec has significant concerns that the City Planning Department is not assessing the risk safety profile of a major chemical manufacturing facility appropriately. The technical environmental documents dealing with compliance at the fence line are not the documents to be relied upon for the 2 km arc. Those documents demonstrate to the Ministry of Environment, Conservation and Parks compliance with the issued Environmental Compliance Approval (ECA) on an ongoing continuing basis. Those documents do not deal with a release of phosphine as a toxic gas which would require an excavation order. The 2 km arc provides the necessary factor to manage that risk safety profile.

9304 McLeod Road (McLeod/Beechwood Lands)

The McLeod/Beechwood lands are designated industrial under the Official Plan and similarly zoned light industrial (leaving aside environmental lands). To the south, including the Cytec's lands, are designated industrial and zoned heavy industrial lands. As

such, there is a transition from heavy industrial to light industrial to the north which is and remains appropriate. It is Cytec's strong preference that the McLeod/Beechwood lands remain industrial.

The conversion of the McLeod/Beechwood lands for residential (or overnight accommodation uses, assembly hall uses, and/or daycares or nursing homes) and other sensitive land uses on the southern part of the McLeod/Beechwood lands – i.e. lands within the Cytec arc -- is unsupportable. Inclusion of a height restriction of 10 m within the 2 km arc for residential uses does not address the requirements previously set out in this letter. City Planning had previously mapped the 2 km arc which approximately bisects the McLeod/Beechwood lands in half.

The northern part of the McLeod/Beechwood lands must be, at a minimum, subject to the City's planning program as implemented on other surrounding residential and similar sensitive land uses, presuming that part of the McLeod/Beechwood lands could ultimately satisfy the other planning tests for conversion. It is noted that there are substantial hurdles in the Provincial planning framework for such conversion which remain unsatisfied.

We also note that given the proximity of the McLeod/Beechwood lands to a tributary of Thompson's Creek that Cytec also has concerns regarding any impact that development may have on the quantity and quality of Thompson's Creek. These are similar concerns to those previously expressed by Cytec on the Forestview subdivision approval to the east of the McLeod/Beechwood lands.

Request of City Council

We respectfully request that City Council deny the proposal in the Official Plan Amendment/Zoning By-law Amendment for employment land conversion of the McLeod/Beechwood lands – municipally addressed as 9304 McLeod Road.

Request for Notice

We respectfully request notice of any City reports, notice of any continued consideration of this proposal and/or adoption of the Official Plan Amendment and/or passage of the Zoning By-law Amendment.

The addresses follow:

THOMSON ROGERS

LAWYERS

-5-

Glenn Wellings
Wellings Planning Consultants Inc.
513 Locust Street, Unit B,
Burlington ON L7S 1V3.
E: glenn@wellingsplanning.ca

Jeffrey J. Wilker
Thomson, Rogers Lawyers
Suite 3100, 390 Bay St.
Toronto, ON M5H 1W2
E: jwilker@thomsonrogers.com

Conclusion

By copy of this letter to City Clerks and City Planning, we request that staff ensure that this letter is distributed to City Council prior to the public meeting.

We thank City Council for its consideration of this letter. Cytec looks forward to continuing to work with the City to ensure that Cytec remains a vibrant and important contributor to the City's well being.

Yours very truly,



Jeffrey J. Wilker
JJW/pf

cc: Bill Matson, City Clerk, City of Niagara Falls
cc: Kira Dolch, Director of Planning, Building and Development, City of Niagara Falls
cc: Brian Dick, Manager of Policy Planning, City of Niagara Falls
cc: Brad Campbell, Site Director, Cytec
cc: Ken Milo, Environmental Rehabilitation Officer, Cytec
cc: Glenn Wellings, Wellings Planning Consultants



Jeffrey J. Wilker
416-868-3118
jwilker@trlaw.com

SENT BY EMAIL ONLY

April 26, 2023

Ms. Michelle Sergi
Commissioner, Planning and Development Services
Niagara Region
1815 Sir Isaac Brock Way,
Thorold, ON
L2V 4T7

Dear Ms. Sergi:

**Cytec Canada Inc. re City of Niagara Falls OPA No. 147
Our File No. 500673**

We are the solicitors for Cytec Canada Inc. (“Cytec”) – part of the Solvay Group.

City of Niagara Falls Planning has issued a Notice of Adoption of OPA No. 147 (New and Updated Employment Land Policies) dated April 5, 2023. We have been advised by City Planning that it is in the process of issuing a revised Notice of Adoption which has not yet been received.

However, out of an abundance of caution, we are writing to Region Planning in its capacity as approval authority to ensure that Cytec is on the record as requesting notice of the Region’s Decision with respect to OPA No. 147.

Please provide a copy of the Notice of Decision to myself and to Cytec’s Planning Consultant, Glenn Wellings. The contact details are as follows

Glenn Wellings
Wellings Planning Consultants Inc.
513 Locust Street, Unit B,
Burlington ON L7S 1V3
E: glenn@wellingsplanning.ca

Jeffrey J. Wilker
Thomson, Rogers Lawyers
Suite 3100, 390 Bay St.
Toronto, ON M5H 1W@
E: jwilker@trlaw.com



Background

Cytec is a major chemical manufacturing company with operations located in Niagara Falls for more than 100 years. Cytec manufactures phosphine in its facility located on its lands fronting Garner Road. Phosphine is a colourless, flammable toxic gas. Cytec is the largest phosphine manufacturer in the world with roughly 65% of the world market. Cytec exports its product worldwide from its Niagara Falls facility. Also located on its lands is a research lab facility. Cytec is a substantial and significant contributor to the City's economic well being, including carrying out a \$165 million plant expansion less than a decade ago.

Garner Road Location

Cytec's major landholdings in the City are located north of the Welland River fronting on Garner Road and consisting of approximately 1,000 acres ("the Cytec lands"). Cytec is part of the longstanding industrial precinct in this part of the City.

Fundamental to Cytec's operations are the Official Plan policies embedded in the City's Official Plan for the lands subject to the Garner South Secondary Plan, the Grand Niagara Secondary Plan and Heartland Forest. These policies implement the fundamental planning principle that sensitive lands uses such as residential land uses, overnight accommodation uses, assembly hall type uses, day cares, nursing homes etc. are required to be separated from heavy industrial users. This planning program is implemented in part through the Cytec arc -- being a 2 km separation distance/arc ("the Cytec arc"). Within the Cytec arc, land uses are restricted to industrial, commercial and less intense recreational land uses, e.g. nature uses or golf courses, and residential land uses or overnight accommodations or other sensitive land uses are prohibited. Outside the arc, but proximate to the arc, restrictions are implemented on the height of land uses and the type of land uses is refined and/ or prohibited, e.g. daycares or nursing homes are of concern. Additionally on residential development outside but near the arc there is the requirement for a notice clause regarding the Cytec use.

This planning program addresses three fundamental objectives: mitigation of adverse effects; minimization of risk to public health and safety; and maintenance of the long term viability of existing industries. From Cytec's perspective these factors are of critical importance, and these policies, including the arc, appropriately manage the risk safety profile of a major chemical manufacturing facility.



This planning program should be implemented on the lands municipally addressed as 9304 McLeod Road.

In the recent approval of the Region Official Plan by the Minister, the Province saw fit and proper to include as Modification 24, new policy 4.2.4.10 which specifically incorporates the 2 km radius into the Region's Official Plan.

Request of Region Planning

We are writing to request that the Region of Niagara refuse to approve OPA 147, specifically with respect to the provisions that implement a residential designation of the lands municipally addressed as 9304 McLeod Road with a corresponding height limitation of 10 m within the 2 km separation distance. Refer to Policy 8.35; also Special Policy Area "87"; and, Map 4, together with any other policies that permit the residential conversion of the 9304 McLeod Road lands ('the impugned policies').

It is our view that the Region is legally prohibited from approving the impugned policies by virtue of the Province's Modification 24. This planning framework including Modification 24 currently remains in full force and effect. Please see attached our letter to the City of Niagara Falls dated March 16, 2023 which provides further details regarding our views.

Moreover, the impugned policies are contrary to section 2 of the Planning Act, inconsistent with Provincial Policy Statement, not in conformity with the Growth Plan and are not in conformity with the City's Official Plan framework with regard to other surrounding subject lands which incorporate the 2 km separation distance, prohibit residential development within that distance, and provide for height restrictions beyond and proximate to the separation distance. Please see attached our letter to the City of Niagara Falls dated August 3, 2022 which provide further details.

The City's impugned policies inappropriately and improperly pre-designate the lands as residential and then subsequently require the carrying out of a post facto justification risk assessment. Such a policy framework is backward and cannot be considered as good and proper planning.

In the text for the Special Policy Area "87" City Planning has referenced the Cytec Canada Inc. Emergency Response Plan. City Planning has misread and misinterpreted the Emergency Response Plan as the document supports the 2 km separation distance and height restrictions beyond that distance. Most importantly, that document is not within the



-4-

public domain but is a controlled and restricted document between Cytec and the City Fire Department. Its reference should not have been included by City Planning in the impugned policies.

For all of these reasons, the fit and appropriate decision by the Region of Niagara for the impugned policies is their refusal.

We, together with our client and its planning consultant, Mr. Wellings, would be pleased to meet with Region Planning to discuss our client's significant and fundamental concerns with the City's OPA 147.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Jeff Wilker', written in a cursive style.

Jeffrey J. Wilker

JJW/jjw

Brad Campbell, Site Director, Cytec

Ken Milo, Environmental Rehabilitation Officer, Cytec

Glenn Wellings, Wellings Planning Consultants

Kira Dolch, Director of Planning, Building and Development, City of Niagara Falls

Brian Dick, Manager of Policy Planning, City of Niagara Falls

Francesca Berardi, Planner 2, City of Niagara Falls



Jeffrey J. Wilker
416-868-3118
jwilker@trlaw.com

SENT BY EMAIL ONLY

June 20, 2023

Mayor Diodati and Members of Council
City of Niagara Falls
P.O. Box 1023
4310 Queen Street
Niagara Falls, Ontario
L2E 6X5

Dear Mayor and Members of Council:

Cytec Canada Inc. re Cytec Arc
9304 McLeod Road, Parts 1 and 2 59R-16846
Zoning By-law Amendment Application – City File: AM 2023-007
Draft Plan of Subdivision Application – City File 26T-11-2023-002
Our File No. 500673

We are the solicitors for Cytec Canada Inc. (“Cytec”) – part of the Solvay Group.

We are writing on behalf of Cytec to identify our client’s objection to the proposed Zoning By-law amendment and Draft Plan of Subdivision application filed by the Applicant 800460 Ontario Limited on the lands municipally known as 9304 McLeod Road, as referenced above, and the subject of staff report PD-2023-34 (“Staff Report”) contained in the June 20 Council Agenda.

This letter should be read in conjunction with our letters that we wrote to City Council on August 3, 2022 and March 16, 2023, objecting to the City’s employment land conversion policies, including conversion of the subject lands, known as OPA 147, which is currently before the approval authority, the Region of Niagara for consideration. A copy of our prior letters setting out the objections are attached for ease of reference. Also attached is a copy of our letter to the Region of Niagara dated April 26, 2023 requesting that the Region refuse OPA 147 with respect to Special Policy Area “87” which includes the subject lands.

Cytec maintains its objection to the employment conversion, zoning by-law amendment and draft plan of subdivision application, and any introduction of sensitive land uses, including residential uses, within the 2 km arc of the Cytec plant facility. Additionally,



outside the arc, but within proximity to the arc, height restrictions and limitations on sensitive land uses are required. These requirements already exist in the approved Garner South Secondary Plan and the approved Grand Niagara Secondary Plan.

City Council should not proceed with development approvals for these lands in advance of the Region's decision on OPA 147. Such an approach is simply inappropriate. In fact, the City Planning Report confirms at Page 8 that owing to the lack of approval of OPA 147, "As such, Regional staff are currently unable to support the applications."

Cytec owns significant employment lands to the north of the Grand Niagara Lands, north of the Welland River fronting on Garner Road and consisting of approximately 1,000 acres ("the Cytec lands"). Cytec is part of the longstanding industrial/employment precinct in this part of the City.

Cytec is a major chemical manufacturing company. It and its previous companies have carried out operations located in Niagara Falls for more than 100 years. Cytec manufactures phosphine in its facility located on its lands fronting Garner Road. Phosphine is a colourless, flammable toxic gas. Cytec is the largest phosphine manufacturer in the world with roughly 65% of the world market. Cytec exports its product worldwide from its Niagara Falls facility. Also located on its lands is a research lab facility. Cytec is a substantial and significant contributor to the City's economy. Cytec has previously carried out a relatively recent \$165 million plant expansion. Cytec is currently investigating further opportunities for its lands.

Fundamental to Cytec's operations are the Official Plan policies as detailed in the City's Official Plan and in place for the lands subject to the Garner South Secondary Plan, the Grand Niagara Secondary Plan and Heartland Forest. These policies implement the fundamental planning principle that sensitive lands uses such as residential land uses, overnight accommodation uses, assembly hall type uses, daycares, nursing homes etc. are required to be separated from heavy industrial users. This planning program is implemented in part through the Cytec arc -- being a 2 km separation distance/arc ("the Cytec arc"). Within the Cytec arc, land uses are restricted to industrial, commercial and less intense recreational land uses, e.g. nature uses or golf courses. Residential land uses or overnight accommodations or other sensitive land uses are prohibited. Outside the arc, but proximate to the arc, restrictions are implemented on the height of land uses and the type of land uses is refined and/ or prohibited, e.g. daycares or nursing homes are of concern. Additionally, on residential development outside but near the Cytec arc is the requirement for a notice clause regarding the Cytec use.



This planning program addresses three fundamental objectives: mitigation of adverse effects; minimization of risk to public health and safety; and maintenance of the long term viability of existing industries. From Cytec’s perspective these factors are of critical importance, and these policies, including the Cytec arc, appropriately manage the risk safety profile of a major chemical manufacturing facility.

This planning program should continue to be implemented on the lands municipally addressed as 9304 McLeod Road that are the subject of the Staff Report. Maintaining the compatible land separation of Cytec 2 km arc between the Cytec facility with the prohibition of residential development within the 2 km radius together with height restrictions proximate to the arc is paramount and in keeping with the policies previously approved in the City’s Official Plan for proximate lands.

The 2 km radius has also been incorporated into the Region’s Official Plan by the Province. The new Region Official Plan concluded the Region’s Municipal Comprehensive Review. Cytec made submissions during that Municipal Comprehensive Review. The Ministry of Municipal Affairs and Housing issued its Notice of Decision which approved the Region Official Plan with modifications on November 4, 2022 which included Modification 24.

Modification 24 is specific to Cytec. It states:

“New policy 4.2.4.10 is added:

Notwithstanding policy 7.12.2.5, development applications within a **two kilometre radius of the Cytec Canada Inc. facility in Niagara Falls** shall be subject to policy 4.2.1.11 of this Plan, except for the lands currently designated Neighbourhood Commercial in the local official plan.”

[My Emphasis]

Policy 7.1.2.2.5 as modified by modification 34 is the grandfathering or “Clergy Principle” which allows development applications in the mill before the Plan’s approval to be processed and decided under predecessor Official Plan policies. The Province has specifically excluded same, by the notwithstanding provision in Modification 24 on lands subject to the 2 kilometre Cytec radius.

Policy 4.2.1.11 restricts the timing of the conversion of employment lands. The first sentence of the policy states: “Conversion of lands within *employment areas* shall not be permitted except during the Region’s *municipal comprehensive review*.”



As a result, the Province has specifically recognized and mandated:

- a) the two kilometre Cytec radius requirement;
- b) excluded any grandfathering transition; and,
- c) restricted the consideration of any employment conversion proposals within the two kilometre Cytec radius to the Region's next municipal comprehensive review.

To be clear, the Region's last municipal comprehensive review was concluded by the Ministry's Decision approving the Regional Official Plan on November 4, 2022. City's OPA 147 was adopted by City Council on April 18, 2023, after the conclusion of the last municipal comprehensive review. No grandfathering is permitted, and no employment conversion proposals within the two kilometre Cytec radius are permitted except during the Region's municipal comprehensive review, *being the next municipal comprehensive review*. Any other interpretation is illogical and pure sophistry. Given that the Region's Official Plan is in full force and effect any approval of OPA 147 for employment conversion proposals within the two kilometre Cytec radius requirement is prohibited by law.

City Planning continues to assert that Cytec has not justified the 2 km radius. With respect to the City's Planning department its position is simply wrong. Cytec has continually justified the 2 km radius and the height restrictions proximate to the arc. City Council and its professional advisors when assessing and approving the Garner South Secondary Plan, Heartland Forest OPA, the Grand Niagara OPA (being the original resort golf course development) and the more recent Grand Niagara Secondary Plan, accepted Cytec justifications. More importantly, the Ontario Municipal Board as it then was – now the Ontario Land Tribunal – issued the Grand Niagara OPA decision approving the 2 km radius. And fundamentally, the Province of Ontario through its modification of the Regional Official Plan has endorsed the importance of the 2 km radius.

Moreover, City Planning misreads and misinterprets a document that it included in the text of OPA 147, being the Cytec Canada Inc. Emergency Response Plan. Cytec has no choice but to respond now in order to protect its position on the land use planning analysis. The Emergency Response Plan states as follows: “Based on the modelling, the level of P₂O₅ could be at ERPG-2 levels (1.72 ppm of P₂O₅) at 2 km / 10 m elevation ...”

This justifies the 2 km radius, with a 10 m elevation (e.g. 2 storey houses) outside the radius – not inside.

It is noted that the Cytec Canada Inc. Emergency Response Plan is not within the public domain but is a controlled and restricted document between Cytec and the City Fire



Department. Its reference should not have been included by City Planning in its draft of the impugned policies, nor should that reference been approved by City Council. Cytec does not waive its production in the public domain whatsoever. Cytec retains all remedies it has in law from this misstep by the City.

We note that page 11 of the City Planning Report references a RWDI Study (2020) for the developer.

RWDI has long been retained by Cytec. This 2020 study was prepared by RWDI personnel without access to Cytec's proprietary information. The 2020 study should not be relied upon and, in fact, should be discarded as it does not represent the current opinion of RWDI senior principals with access to the appropriate information regarding Cytec's operations and processes, whose opinion supports the 2 km radius and the prohibition of sensitive land uses including new residential development within that radius.

The release of proprietary, sensitive, detailed and confidential information from a major chemical facility has to be handled with due diligence. Cytec is prepared to discuss the provision of such documentation subject to the execution of appropriate confidentiality and non-disclosure agreements. However, any such provision also would be specifically subject to Cytec's obligations to comply with pertinent Federal legislation and also would be subject to the restrictions on the release of such information pursuant to freedom of information legislation.

Cytec acknowledges that it must operate and comply with its issued Ministry of the Environment, Conservation and Parks Environmental Compliance Approval (ECA) and certainly has detailed procedures in place to ensure compliance and safety in operation. However, this City Planning commentary distracts from the salient point that the Province has established separation distance guidelines for heavy industry and residential uses, see section 1.2.6 entitled Land Use Compatibility in the Provincial Planning Statement 2020. The Province also expects municipalities to comply with Provincial planning decisions of by the Ministry of Municipal Affairs and Housing, including Modification 24 and its subsequent approval of the Region Official Plan.

We have the further additional comments on the proposed Zoning by-law provisions and on the draft plan of subdivision and associated conditions.

With respect to height restrictions beyond the Cytec arc, residential uses, if any, should be subject to 2 storey height restrictions (10 m) for residential development for the zones. It is noted with respect to the R5B zoning for townhouses, the City's standard is 10 m.



However, City Planning supports a suggested revision of 14.5 metres or 4 storeys (whichever is lesser). Cytec notes that Figure 6 of the Garner South Secondary Plan would suggest the lesser height of 3 storeys, not 4 storeys. Given the foregoing, Cytec has outstanding concerns regarding the 14.5 metres permission. Further, Cytec requests that this R5B zoning exception area be reoriented to McLeod Road frontage (rather than it being on the McLeod Road flankage) with draft plan redlining so as to provide further separation from Cytec's facility. From our review of the City Planning Report, it is understood that additional sensitive land uses other than residential land uses are not proposed. Cytec requests a copy of the draft zoning by-law amendment in advance of it being provided to City Council so it may complete its review. Cytec has noted the inclusion within the draft plan conditions (no. 10) the standard Cytec notice clause, and this is appropriate for residential lands, if any, on the subject property outside the Cytec arc.

On any proposed passage of the Zoning By-law Amendment and/or granting of draft plan approval to authorize residential land uses within the 2 km radius of the Cytec facility, City Council cannot proceed owing to section 24 of the *Planning Act* which requires any by-law to conform with the official plan(s) given the provisions of the Regional Official Plan. We respectfully request that City Council refuse the applications -- especially and particularly with respect for residential land use within the 2 km radius.

Passing the zoning by-law and granting draft plan approval beyond the 2 km radius of the Cytec facility, prior to OPA 147, being dealt with raises legal concerns and issues, especially contrasting City's planning approach with a hold in the proposed zoning by-law versus the granting of draft plan approval.

We continue to respectfully request notice of any City reports, any continued consideration of this proposal and/or adoption of the Report, the draft Zoning By-law Amendment prior to it being returned to Council, the passage of the Zoning By-law Amendment, and any redlining of the draft Plan, and the granting of draft Plan of Subdivision approval together with conditions.

The addresses follow:

Glenn Wellings
Wellings Planning Consultants Inc.
513 Locust Street, Unit B,
Burlington ON L7S 1V3.
E: glenn@wellingsplanning.ca



-7-

Jeffrey J. Wilker
Thomson, Rogers Lawyers
Suite 3100, 390 Bay St. Toronto, ON M5H 1W2
E:jwilker@trlaw.com

By copy of this letter to City Clerks and City Planning, we request that staff ensure that this letter is distributed to City Council prior to the public meeting.

We thank City Council for its consideration of this letter. Cytec looks forward to continuing to work with the City to ensure that Cytec remains a vibrant and important contributor to the City's well being.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Jeff Wilker', written in a cursive style.

Jeffrey J. Wilker

JJW/pf
Enclosure

cc: Bill Matson, City Clerk, City of Niagara Falls
cc: Kira Dolch, Director of Planning, Building and Development, City of Niagara Falls
cc: Andrew Bryce, Director of Planning, City of Niagara Falls
cc: Julie Hannah, Senior Manager of Current Planning, City of Niagara Falls
cc: Alexa Cooper, Planner 2, City of Niagara Falls
cc: Brad Campbell, Site Director, Cytec
cc: Ken Milo, Environmental Rehabilitation Officer, Cytec
cc: Glenn Wellings, Wellings Planning Consultants

Turkstra Mazza

Hamilton London Toronto

Nancy Smith
15 Bold Street
Hamilton Ontario Canada L8P 1T3
Receptionist 905 529 3476 (905 LAW-FIRM)
Facsimile 905 529 3663
nsmith@tmalaw.ca

VIA Email and Mail

May 2, 2023

Attn: Michelle Sergi
Commissioner, Planning & Development Services
Niagara Region
1815 Sir Isaac Brock Way
Thorold ON L2V 4T7

Dear Ms. Sergi

Re: City of Niagara Falls – Official Plan Amendment No. 147

We have received Notice of Passing By-law No. 2023-037 which provides for the adoption of Official Plan Amendment No. 147 from the City of Niagara Falls.

Since the Region of Niagara is the approval authority, and as set out in the Notice, we are writing to formally request notification of the decision of the Region of Niagara.

Yours truly,



Nancy Smith
ns/l

From: Nancy Smith <nsmith@tmalaw.ca>
Sent: Wednesday, July 5, 2023 8:23 AM
To: Tikky, Alexandria
Cc: Sergi, Michelle; efarrugia@gspgroup.ca; Louise Sudac; Stea, Angela; Morreale, Diana; Acs, Erik
Subject: RE: Request for Notice - Niagara Falls OPA No. 147

Follow Up Flag: Follow up
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Respectfully, Alex, this is misguided. The Region's studies say no employment land need for Niagara Falls. The Region included our lands as employment at the insistence of Niagara Falls staff, not Council. Now that Council has spoken in OPA 147, that should end the matter. Given the private application, these lands should never have been considered for employment in the 1st place. Now is the time to correct this, not before the OLT in an expensive appeal.

It would appear that the staff position is entrenched. I was hoping for a meeting before the entrenchment. Please advise if you are open to considering a different path forward.

I am also interested in your timing in bringing this forward for decision-making. **Have you coordinated this timing** with Niagara Falls staff so this it is considered before Niagara Falls considers the private application? Please advise.

Nancy Smith
Turkstra Mazza Associates
15 Bold Street
Hamilton, Ontario, L8P 1T3
T (905) 529-3476 Ext. 2780
F (905) 529-3663
Nancy Smith Professional Corporation

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From: Tikky, Alexandria <Alexandria.Tikky@niagararegion.ca>
Sent: Tuesday, July 4, 2023 3:13 PM
To: Nancy Smith <nsmith@tmalaw.ca>
Cc: Sergi, Michelle <Michelle.Sergi@niagararegion.ca>; efarrugia@gspgroup.ca; Louise Sudac <lsudac@tmalaw.ca>; Stea, Angela <Angela.Stea@niagararegion.ca>; Morreale, Diana <Diana.Morreale@niagararegion.ca>; Acs, Erik <Erik.Acs@niagararegion.ca>
Subject: RE: Request for Notice - Niagara Falls OPA No. 147

Hi Nancy,

Thank you for your patience. This e-mail will be responding to your questions as it relates to OPA 147.

The report is expected to go forward to the Region's Planning and Economic Development Committee meeting on August 9, 2023. Regional staff are in the process of finalizing our report and associated modifications. I will send a link to the meeting page and staff report closer to the meeting date.

Please note that in accordance with the *Planning Act* and the Memorandum of Understanding (MOU) between the Niagara Region and local municipalities, the Region retains approval authority for local Official Plans and Official Plan Amendments.

Collaboration with local municipal staff is important to ensuring alignment with Regional policy. Our evaluation of OPA 147, therefore, is meant to ensure that local planning documents conform and align with the now approved and in-force Niagara Region Official Plan. As such, we intend to modify the mapping for OPA 147 to recognize the subject lands as Employment Area in conformity the Niagara Official Plan.

We understand that there is an active application on the subject lands, that it is still under review, and that no decision has been made on the proposed development.

We would be happy to meet and discuss this matter further. Please let me know when you and/or your client may be available.

All the best,

Alexandria Tikky, MCIP, RPP

Senior Policy Project Manager
Growth Strategy and Economic Development
Niagara Region
1815 Sir Isaac Brock Way, P.O. Box 1042
Thorold, ON L2V 4T7
Phone: 905-980-6000 ext. 3593
Toll-free: 1-800-263-7215
www.niagararegion.ca

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From: Nancy Smith <nsmith@tmalaw.ca>
Sent: June 28, 2023 8:17 AM
To: Tikky, Alexandria <Alexandria.Tikky@niagararegion.ca>
Cc: Sergi, Michelle <Michelle.Sergi@niagararegion.ca>; Elizabeth Farrugia (efarrugia@gspgroup.ca) <efarrugia@gspgroup.ca>; Louise Sudac <lsudac@tmalaw.ca>; Stea, Angela <Angela.Stea@niagararegion.ca>
Subject: RE: Request for Notice - Niagara Falls OPA No. 147

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Alex:

I am surprised that this has not been brought forward for decision-making. Can you give me a sense of timing moving forward?

We do expect that the staff recommendation will be to approve OPA 147 as adopted by the City of Niagara Falls. Throughout this process, we have questioned various Region/City inputs that have not aligned. We have been repeatedly told by staff, in open session before Niagara Falls Council, that the Region defers to the local municipality. We see this exercise as a continuation of this theme.

We also note that the in force Regional Official Plan crystallizes the Clergy Principle in policy 7.12.2.5 – “Development applications deemed complete prior to the date of this Plan’s approval shall be permitted to be processed, and a decision be made, under the Local and Regional Official Plan policies that existed when the application was deemed complete.” My client’s development application is deemed complete. OPA 147 implements this direction.

I look forward to hearing from you. If staff is looking at this matter any differently than I have described in this email, I would appreciate the opportunity to discuss with you.

Nancy Smith
Turkstra Mazza Associates
15 Bold Street
Hamilton, Ontario, L8P 1T3
T (905) 529-3476 Ext. 2780
F (905) 529-3663
Nancy Smith Professional Corporation

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From: Kevin Jacobi <kevin@canadabw.com>
Sent: Friday, July 7, 2023 7:41 PM
To: Tikky, Alexandria
Subject: RE: City of Niagara Falls Official Plan Amendment (OPA) 147 - Employment Policies - Status/Committee Meeting

Follow Up Flag: Follow up
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Good evening,

Thank you for the information. It is unfortunate that the Stanley Avenue business park community wasn't given advanced warning for this item at Niagara Falls council. Neither was the Niagara Industrial Association who have been a strong advocate for a healthy manufacturing sector in both Niagara Falls and the rest of the region.

Changing the zoning of this industrial land will would create an island of manufacturers who will now have their trucks going through residential areas. I hope that we have learned from the mistakes of the past where residential was placed too close to existing manufacturing and correct this before it is too late.


We have limited land zoned for industrial use in the community. Meanwhile we have large areas zoned for both new housing and intensifying existing housing in Niagara Falls. We need to maintain the balance of the existing regional plan where there are quality jobs that make more houses affordable to members of our community.

All the best,

Kevin Jacobi
Executive Director
CanadaBW Logistics Inc.
8699 Stanley Avenue
Niagara Falls, ON L2G 0E1
289-696-1555
www.CanadaBW.com

From: Tikky, Alexandria <Alexandria.Tikky@niagararegion.ca>
Sent: Friday, July 7, 2023 3:21 PM

[Redacted content]



Cc: Stea, Angela <Angela.Stea@niagararegion.ca>; Sergi, Michelle <Michelle.Sergi@niagararegion.ca>
Subject: City of Niagara Falls Official Plan Amendment (OPA) 147 - Employment Policies - Status/Committee Meeting

Good afternoon,

This e-mail is meant to provide a quick update regarding the status of the Region's review of the City of Niagara Falls Official Plan Amendment 147 (Employment Policies). Please be advised that a staff report and presentation on this matter is expected to go forward to the Region's Planning and Economic Development Committee meeting on August 9, 2023. Regional staff are in the process of finalizing our report and associated modifications. I will send a link to the meeting page and staff report closer to the meeting date.

If you have any questions at this time, please let me know.

All the best,

Alexandria Tikky, MCIP, RPP
Senior Policy Project Manager
Growth Strategy and Economic Development
Niagara Region
1815 Sir Isaac Brock Way, P.O. Box 1042
Thorold, ON L2V 4T7
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John Doherty

Direct +1 519 575 7518
 Direct Fax +1 519 571 5018
 john.doherty@gowlingwlg.com
 File no. 02447730

July 17, 2023

Via E-mail (alexandria.tikky@niagararegion.ca)

Alexandria Tikky
 Senior Policy Project Manager
 Growth Strategy and Economic Development
 Niagara Region
 1815 Sir Isaac Brock Way P.O Box 1042
 Thorold, ON L2V 4T7

Dear Ms. Tikky

**Re: Final Region Decision: OPA 147, City of Niagara Falls
 Our Clients: 1000166632 Ontario Inc. and 1000166643 Ontario Inc.**

We are counsel to 1000166632 Ontario Inc., and 1000166643 Ontario Inc. (together, the “**Owners**”) who own respectively, 7047 Reixinger Road and 5789 Lyons Creek Road (together the “**Properties**”). The Properties are located within the designated Greenfield area of Grassy Brook, specifically, within the Region’s *NF-5 Employment Area* (the “**Grassy Brook Employment Area**”) to which the adopted OPA 147 (the “**Adopted Plan**”) relates. The Grassy Brook Employment Area is also the subject of ongoing secondary planning which the Owners remain fully engaged in.

The combined Properties, totalling approximately 80 hectares (198 acres), remain in a vacant state and are identified on **Appendix “A”** to this letter.

Request

Based on the following planning grounds, our Clients request that the Region defer the approval of the Adopted Plan, such that the Properties’ underlying primary land use designation of *Resort Commercial* pursuant to the City of Niagara Falls Official Plan will continue to prevail.

Planning Grounds

1. Background

The Owners’ planning team, *Better Neighbourhoods Inc.* (“**BNI**”) have been collaborating extensively with the City of Niagara Falls’ planning division over the past decade to shape their mixed-use vision for the Properties. In excess of \$1 million dollars has been spent in technical background studies to prove the Properties’ mixed-use development potential, in addition to the multi-million dollar investment made in the purchase of the Properties. BNI has continued to engage with City planning staff during its OPA 147 employment lands strategy which commenced in spring 2020.

Needless to say, our Clients were extremely surprised in mid-2021 when Watson & Associates commenced a detailed examination of the Properties for Employment purposes.

Accordingly, BNI has attended all public engagement sessions respecting OPA 147, speaking throughout in opposition to an Employment designation by contrasting the greater planning merit embodied in its historical mixed-use vision for the Properties. BNI has submitted letters and analysis to planning staff contrasting the benefits of mixed versus single-use employment for the Properties in the spirit of delivering '*complete communities*', and has delegated to Council accordingly.

Provided at **Appendix "B"** to this letter is a summary of our Client's engagement with planning staff in the OPA 147 process.

In opposition to OPA 147, on November 3, 2022, BNI submitted applications for an Official Plan Amendment and Rezoning.

Provided at **Appendix "C"** to this letter are our clients' intended mixed-use development plans currently filed with the City for approval, albeit not accepted as complete.

2. Prematurity

New Provincial Policy Statement ("PPS")

The proposed new PPS represents a fundamental shift on how growth will be managed by the Province, particularly in respect of the municipal planning and management of "*employment areas*" across Ontario through a revised provincial policy direction. The composition of employment areas across Ontario will look far different upon the implementation of the new PPS. We submit that the Grassy Brook Employment Area will, in policy terms, no longer constitute an employment area upon proclamation of the new PPS. As you are aware, the new PPS is intending to treat "Prestige" employment lands no longer as areas of employment, but instead as mixed-use areas and such lands will be provincially mandated to provide for as-of-right mixed-use development, including residential, through normal planning processes.

On this basis, we submit that it is premature to advance a final Decision on OPA 147 until the new PPS is proclaimed; to do otherwise would not be in the public interest.

Region's Land Needs Assessment

Further in the context of prematurity, we note that the Grassy Brook employment area under consideration is also reported to be beyond the 2051 projected employment needs of the City. This appears evident based on the Region's final LNA methodology (June, 2022), which concluded that Niagara Falls has a surplus of employment land to accommodate forecasted growth and that, outside of Welland, Niagara Falls has the greatest employment area potential within existing areas. The Region's LNA work has been corroborated by IBI Group's independent assessment (September, 2022), which was undertaken on behalf of the owner (*i.e.*, 2610832 Ontario Inc.) advancing mixed-use development at 8970 and 9015 Stanley Road, and which formed a key component of their planning rationale upon which their westerly parcel ("*Subject Lands West*") was approved for conversion and ultimately carved out of OPA 147.

3. Land Use: Stanley Road and 5789 Lyons Creek Road

You will be aware of the amended adoption by City Council of OPA 147 which occurred on April 18, 2023. This amendment was prompted by Council's endorsement of the carve-out from OPA 147 of the Subject Lands West lying immediately west of the westerly limit of Stanley Road. Our Clients' land at 5789 Lyons Creek Road lies immediately west of, and shares a common side lot line with the *Subject*

Lands West parcel. The adopted carve-out of the *Subject Lands West* has served to place mixed-use residential immediately adjacent our Client's land which continues to be identified for employment use. A review of the proponent's draft subdivision plan for the *Subject Lands West* (which remains before the City's planning division for approval), identifies a proposed mix of single-family detached lots along our Clients' shared easterly boundary.

Provided at **Appendix "D"** to this letter is the current conceptual development plan for 8970 and 9015 Stanley Road.

In land use terms, the westerly shift from Stanley Road of the easterly limit of the Grassy Brook employment area, has served to enhance the case for higher density mixed use on our Client's Lyons Creek property, which will complement, and be consistent with, the development intentions for the *Subject Lands West* parcel.

In contrast, remaining under a pure Employment designation, and sharing a common lot line with intended residential uses (effectively as-of-right), unquestionably creates an inequitable land use conflict which is contrary to sound planning principles as it will serve to place the entire burden of transitioning land use onto our Clients' parcel. Moreover, it would add further and significant land use constraint to a parcel which is already heavily constrained by environmental features. The combination of these two forces would, in our view, effectively sterilize the Lyons Creek property for future development. This would be unacceptable.

The *Subject Lands West* carve-out was the subject of a comprehensive planning analysis prepared by the owner's planning consultant, GSP Group. Quoting from paragraphs 183 and 184 of the GSP analysis is instructive:

*"The importance of the natural heritage features both on and immediately west of, and adjacent to the Subject Lands West has been confirmed through the Environmental Impact Statement completed by Colville Consulting Inc. which references the lands to the west as a "larger woodland/wetland complex". These natural heritage system designations and overlays and their associated preservation policies would likely eliminate the development potential of more than half the land proposed for employment purposes west of the Subject Lands West. This therefore calls into question the appropriateness of the inclusion of the Subject Lands West, **and the lands further to the west** (emphasis added), for employment purposes when approximately half is not suitable for employment purposes".*

The analysis conducted on behalf of our Clients is aligned with GSP's planning analysis for the *Subject Lands West*. BNI's opinion, based on constraint analysis it has conducted to date, remains firm that the highest and best use of 5789 Lyons Creek Road is Mixed Use and not Employment. Given the range of site-specific constraints, Mixed Use is far more conducive to a tightly knit pattern of higher density built form rather than business park uses found on larger and less constrained lots. We submit that the only practical and economically viable land use arrangement for Lyons Creek is a combination of mixed-use capable of offsetting the extent and cost of overcoming identified environmental constraints.

4. 7047 Reixinger Road

Similar to 5789 Lyons Creek Road, our Client's land at Reixinger Road is equally constrained by environmental features. Significant portions are comprised of natural heritage features, which by regulation must be preserved, and in some cases enhanced, through extended setback allowances. Reixinger is also known to have large areas of archeological features, given its proximity to the River,

which will have to be sensitively mitigated or removed at considerable cost. Therefore, we wish to re-emphasize that the extent of identified environmental constraints necessarily dictates that the highest and best use of the Reixinger parcel is mixed-use, as the economics of mixed-use can absorb the costs of development through clustered higher density in contrast to single-use employment on larger lots.

In the context of the Province's cornerstone policy of *complete communities*, and based on the locational placement of the Reixinger Road parcel, a mixed-use vision is far superior to that of single-use employment in that:

- (a) It will capitalize on the riparian access and public amenity opportunities afforded the parcel by directly connecting it to the Welland River (which the parcel immediately abuts) through an extensive proposed walking trail connecting with the City's recreational trail along its southern shore;
- (b) It is well placed and would be a key contributor to a broader mixed-use community which would better support designated employment lands lying west of the QEW; and,
- (c) The proposed new public infrastructure in the form of the waste-water treatment plant and regional hospital located in proximity to the Reixinger parcel are more conducive to serving a mixed-use community rather than a single-use employment area and on the whole, will provide a higher municipal economic return than would a pure employment use of the property.

5. Legitimacy of Employment as Grassy Brook's Planned Function

Expanding on the above land use background, we seriously question the planning rationale underpinning the choice of Employment rather than Mixed-use as the singular future planned function of the Grassy Brook Employment Area.

Attached at **Appendix "E"** is Map 1 from the adopted OPA 147 which identifies the Grassy Brook Employment Area. Our observations regarding Map 1 are as follows:

- (a) Proceeding from the east, the Stanley Road carve-out has effectively removed two parcels from employment use given that our Clients' Lyons Creek property now effectively acts as a substitute for the former hard boundary of Stanley Road as the land use separator between employment and mixed-use. This added and compounding layer of development constraint legitimately calls into question the planning merit of targeting employment at this location;
- (b) Lying immediately to the west of 5789 Lyons Creek Road is the core portion of the Employment Area which, based on a review of Map 1, is effectively 50% undevelopable due to identified and significant natural feature constraints; quite clearly, this area will not be a significant generator of employment on the whole;
- (c) The lands lying west of the core will be a single use waste-water treatment plant. This is a one-off use, and not a generator of spin-off secondary employment uses. Given that the above are not significant generators of employment on the whole, all that is left potential employment use is our clients' Reixinger Road property. Much of its northerly portion however, is highly constrained due to a combination of floodplain restrictions (River) and related natural features requiring outright conservation or, at a minimum, the imposition of extended setback allowances. Given its location is immediately abutting the River, it is evident that this is a highly questionable parcel for the targeting of employment use.

It is our submission that Grassy Brook, as a designated Employment Area, is incapable of fulfilling its planned function of achieving the employment density targets allocated to it by the Regional Plan. Given the extent of existing natural features and other topographic constraints, including lands associated with the River, this greenfield area would far better serve the public interest under a mixed-use planning framework where higher density residential and commercial uses can more sensitively and effectively be knit into the extensive natural landscape.

Conclusion

Based on the foregoing, we strongly object to a final decision on OPA 147 that would approve the City's intended conversion of our Clients' Properties from primarily *Resort Commercial* to an *Employment Dynamic Area*. That would be an unacceptable outcome. Such a decision would undermine years of our Clients' investment in the pre-planning of the Properties for mixed-use development.

Instead, we would urge Regional Council to have regard to the thrust of the new PPS which will target employment areas across Ontario such as Grassy Brook Employment Area, not for single-use employment but for mixed-use including residential towards fulfilling Ontario's urgent need for more housing more quickly. In the face of the new PPS and its expected proclamation in winter 2024, we submit that it would be premature and, therefore, contrary to sound planning and the greater public interest to issue a final decision respecting OPA 147 in advance of proclamation. Accordingly we would ask that Regional Council defer any final decision pending proclamation of the proposed new PPS.

In closing, we would request that our Clients, with reference to their related Properties, be added to your list of interested parties so that we may receive all future related communications including a copy of any decision respecting OPA 147.

Yours very truly,

Gowling WLG (Canada) LLP

John Doherty

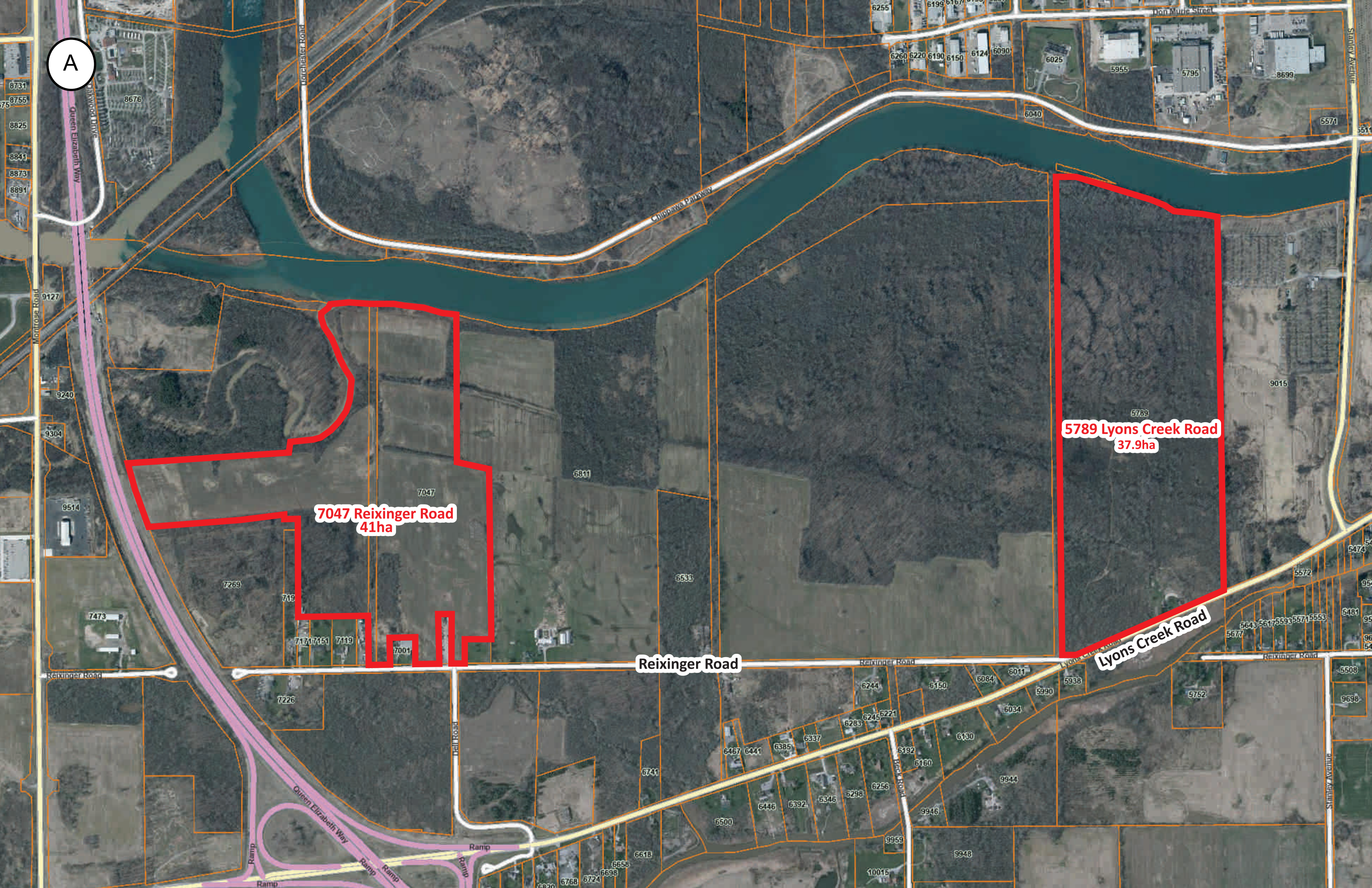


JSD:hp

cc: Client
Daniel Romanko - Better Neighbourhoods Inc.
Regional Chair and Members of Regional Council
Mayor and Members of City Council
Brian Dick – City Senior Manager Policy Planning

APPENDIX “A”

A



7047 Reixinger Road
41ha

5789 Lyons Creek Road
37.9ha

Reixinger Road

Lyons Creek Road

APPENDIX “B”



2023 06 23

7047 Reixinger Road and 5789 Lyons Creek Road Timeline/Correspondence:

Below is a recap of some of the Owners' planning engagement with the Properties, led throughout by BNI:

1. 2011 to 2013: Preparation of Environmental and Archaeological studies, concept development and discussions with City staff regarding land use change to mixed use and servicing;
2. February 18, 2021 Meeting: Participation and co-operation in Waste Water Treatment Plant (WWTP) Site Selection process; discussions with GM BluePlan and the Regional Municipality of Niagara;
3. February 25, 2021: Comments to GM BluePlan and the Region expressing desire and cooperation for the WWTP site selection as one of two preferred properties
4. June 18, 2021: City notifies the Owners of an intent to change land use for the Properties;
5. July 12, 2021: Letter from Daniel & Partners LLP to the City regarding the appropriateness of timing for an OPA and ZBA;
6. September 13, 2021: BNI letter to former planning director Alex Herlovitch regarding employment designation; (Provided at Appendix "B-1")
7. November 4, 2021: Pre-consultation meeting (via Zoom) with the Niagara Peninsula Conservation Authority and City staff;
8. January 10, 2022: BNI provided comments at Open House for 8970 and 9015 Stanley Avenue Owners (OPA Application to Mixed Use);
9. January 14, 2022: BNI comments on Stanley Avenue application addressing concerns regarding appropriateness of timing with respect to holistic planning methodology; (Provided at Appendix "B-2")
10. January 17, 2022: BNI objection letter to City regarding Employment Land Use and argument for compatibility with WWTP; (Provided at Appendix "B-3")
11. August 9, 2022: Public Meeting for OPA & ZBA (the Owners) – BNI gave presentation representing Owners against staff recommendation and requested deferral; (Provided at Appendix "B-4")
12. November 2-3, 2022: Applications submitted for OPA and ZBA on the Properties for mixed use;
13. November 4, 2022: Provincial approval of Regional Official Plan;
14. November 9, 2022: Letter from City to BNI regarding notification of OPA application receipt and deemed incomplete;
15. March 21, 2023: Staff recommendation and Council approval and adoption of OPA 147;
16. April 13, 2023: City Staff and Dillion failed to give notice to BNI and Owners of Dillion's public consultation regarding Grassy Brook secondary plan; and
17. April 18, 2023: Council forwards OPA 147 to the Region for final approval.



2021 09 13

Alex Herlovitch
Director of Planning and Development
City of Niagara Falls
4310 Queen St. P.O. Box 1023
Niagara Falls, ON L2E 6X5

Dear Mr. Herlovitch,

As agents for Global Country of World Peace, owners of 7147 Reixinger Road and 5789 Lyons Creek Road, we respectfully submit the following planning rationale opposing the conversion the lands in the City's urban area defined by the QEW to the west, Welland River to the north, Stanley Avenue to the east and Reixinger and Lyons Creek Roads to the south from the Resort Commercial designation to Employment lands.

History

We have been involved in land use planning and development of these lands on behalf of our client, for over a decade. In this capacity, we have met with politicians and City staff several times regarding the future development of what is arguably the last Greenfield area of this size (~500 ac) remaining within the City's urban area. Our work has included: holding several stakeholder charrettes to establish land uses that would quantify appropriate servicing capacities for the entire planning area; examination of delivery and timing of services; preparation of land use plans to fit with development policies; coordinating various background studies (environmental and archaeological, etc.) This extensive undertaking was necessary to develop conceptual plans for these future neighbourhoods.

In this regard, City staff provided direction based upon the current land use regime (policies) that assisted our effort to develop land use plans consistent with the anticipated direction of development for this area. Furthermore, we understood through those discussions with staff that the properties south of the Welland River would need to be considered together through the Secondary Plan Approval process. Accordingly, the owners have been slowly working to collaborate with neighbouring property owners to facilitate that process.

Early this year, 7047 Reixinger Road, together with the neighbouring property at 6811 Reixinger Road was identified as the preferred location for the Region's new Waste Water Treatment Plant. While the process is ongoing, the identification of the preferred site presented a solution that will address the greatest impediment to development of this planning area: access to municipal services.



To date, Global Country of World Peace has invested over \$2.2 M in land value for both two properties and development consulting work over the past decade. This effort has proceeded in accordance with the current planning regulatory framework. The City's recommendation to redesignate the properties in this area to Employments Lands is counter to that investment

Characteristics and Constraints

Roughly two thirds of the approximate 500 acre site is encumbered by natural features (wetlands, woodlots and their associated setbacks). Additional environmental studies need to be completed (at great expense) to understand the constraints these features impose on future land development. Notwithstanding, it is our opinion that the ecological function of the naturalized areas needs to remain compatible with adjacent land uses.

The northern limits of this Secondary Plan Area are bounded by the Welland River which offers riparian access for recreational pursuits. This valuable resource is best enjoyed by the public at large and discussions with the City concurred by providing direction that a recreational trail be developed along the southern shore of the River. Indeed, this is prime real estate best used as a recreational amenity.

Separately, the Phase 1 & 2 Archaeological Studies conducted on 7047 Reixinger Road property have discovered the presence of significant archaeological resources. The concentration of findings are located along the Welland River embankment and adjacent watercourse. Both a Phase 3 and Phase 4 study will be required to clear the lands of heritage concern for any future development. Budget costs for only Phase 3 of the archeological work have been estimate at more than \$1 M and are expected take over a year. We understand that the archaeological resources in this area are not limited to this property and the extent currently remains unknown.

Land Use Analysis

It is our opinion that the lands in this area remain designated as Resort Commercial, subject to a subsequent Secondary Plan process that will recommend appropriate and compatible land use mix based on site context and constraints.

The planning concepts developed to date have had consideration for the current Resort Commercial designation. Indeed, educational and entertainment type uses, together with other residential and commercial uses are part of the destination uses that have been integrated into the site plan for 7047 Reixinger. The owners plan to include some



employment opportunities in the mixed-use development to provide for a more complete community.

Notwithstanding, having been directed by staff towards a Secondary Plan, the final determination of land uses, and those of the neighbouring properties, need to be considered as part of the larger planning area. This factor has had a limiting effect on furthering the site planning exercise until the Secondary Plan process can begin.

Additionally, in the absence of a Secondary Plan and cost sharing agreement, the provision of services (and further determination of accompanying land uses) has been a significant issue and has stymied further progress. The Region's recent identification of the preferred location for the proposed Waste Water Treatment plant has rejuvenated interest in moving this project forward. Discussions with the Region's waste water treatment plan consultant (BluePlan) have concluded that modern Waste Water Treatment Plants no longer require extreme setbacks given the progress in odour abatement technologies. While the determinants of this key piece of servicing infrastructure have yet to be confirmed, and detailed plans and timing remain uncertain, the owner has been encouraged that the mixed use development for the area remains appropriate. Indeed, the location of the proposed plant from a land use perspective is well served to accommodate a community of several thousand in addition to the South Niagara Hospital and associated uses planned west of the QEW.

Existing land uses adjacent to the proposed Employment Land area include residential and small commercial uses (many with owner operated residential). Accordingly, a mix of land uses would be more compatible with the existing neighbours than those qualified as 'Employment'.

As we look forward on the planning horizon, we recognize there are several trends that should also be considered. One trending change is the relationship of work to home. Indeed, where home based work is not possible, we know that proximity to workplaces, via preferably active transportation modes, creates more sustainable communities. Accordingly, integrating land uses where people can live, work and play are desirable and represent good planning.

Economics

Land use economics play an important role in determining value and sustainability for municipalities. Ne, they are also critical to making development happen. It is therefore important to ensure land allocated for development maximizes value for long term growth in a sustainable manner.



In this case, we believe the south Niagara Falls planning area, with significant environmental features adjacent to the Welland River is not appropriate for Employment (light industrial) uses but rather mixed use complete neighbourhoods. Employment lands encumbered with environmental and archaeological resources will never be realized for their intended purpose if the costs to satisfy regulations governing those features are exorbitant. In other words, if land value cannot support the expense of approval, no development can occur. In this case, we believe only land valued as a mix of commercial and residential uses can support the development costs to clear archaeological and environmental regulations.

In the same manner, the proposed wastewater treatment plant is well-placed to serve a higher density residential & commercial development but would not be leveraged to the same degree next to employment lands.

Conclusion

In summary, the change to Employment Land for this area is not in the best interest of the City nor does it represent the highest and best use of the property. The ecological and archaeological features of the site pose unique circumstances that are best supported through the development of primarily residential and commercial uses.

Submitted by:

Daniel Romanko, MCIP, RPP, CNU-A
Better Neighbourhoods Inc.

cc. Global Country of World Peace
Callum Shedden, Daniel & Partners



2022 01 14

Julie Hannah, Planner 2
Planning and Building Department
City of Niagara Falls
4310 Queen St. P.O. Box 1023
Niagara Falls, ON L2E 6X5

Dear Ms. Hannah,

Further to comments made on January 10th, 2022 at the Public Open house for consideration of an Official Plan Amendment for lands located at 8970 & 9015 Stanley Avenue and lands located south of Lyons Creek Road, east of Stanley Avenue, we would like to express our concerns. The amendment in question will redesignate the lands from Resort Commercial and Environmental Conservation/Protection Area and Open Space to permit Mixed Use. As you may be aware, our client (Global Country of World Peace) owns approximately 200 acres in the area (our property at 5789 Lyons Creek Road abuts the 9015 Stanley Avenue property) and while we do not necessarily object to land use change, we do have concerns that the timing of this application may be premature within current planning context.

It is our understanding that the City of Niagara Falls is currently at a crossroads regarding future development within its boundaries. As such, we believe a comprehensive approach to land development should be practiced to balance interests of the city as a whole. If this application proceeds as presented, the opportunity to fully consider all moving parts may be lost; or a least, not coordinated in the best interest of the City.

Given the accelerated residential growth in the southwest part of the City over the past few years, much of the mixed use development land earmarked for that purpose is now becoming limited and the City must look to the next horizon for planned growth.

The area known as the Grassy Brook Secondary Plan Area would be an ideal candidate considering it consists of over 500 acres, has long been identified as a growth area within the existing urban boundary, is well positioned to provide housing for the Southern Niagara hospital once constructed, and includes the proposed location of the Region's Wastewater Treatment Plan facility which can support anticipated servicing needs. It is also located adjacent to the Welland River and desirable natural amenities that would make for a great living environment.

However, not only are these lands (including 9015 Stanley Avenue which is part of the application) presently being considered for Employment as part of the City's current



review, the City has initiated a Secondary Plan process. The City's Employment Land Needs Analysis will be factored into the Region's more global interests to ensure the Region has sufficient and appropriately located Employment Land in order to satisfy the Province. However, distribution of employment areas and final approval of the employment analysis will be approved by the Region.

At the same time, the Region is contemplating urban area expansions in Niagara Falls, West Lincoln, Pelham and Fort Erie. These expansions present opportunities for the City to appropriately designate land in concert with the immediate pressures to change land uses to fulfill the City's needs.

Considering the complex nature of these broader land use changes, we believe it is incumbent upon the City to approach the various interests in broader City (and Regional) Planning requirements and make decisions in a comprehensive manner. It is for this reason that we believe the application to amend the Official Plan for the aforementioned properties is premature. Accordingly, we respectfully request that any decision by Council be deferred until such time as a holistic planning methodology has examined the complexity of city wide land use options and determined a clear path forward.

Respectfully,

Daniel Romanko, MCIP, RPP, CNU-A



2022 01 17

Brian Dick
Manager of Planning Policy
City of Niagara Falls
4310 Queen St. P.O. Box 1023
Niagara Falls, ON L2E 6X5

Dear Mr. Dick,

Further to comments provided in our letter of September 13, 2021 (addressed to Alex Herlovitch) we wanted to provide further information in opposition of the proposed designation of the Grassy Brook Secondary Plan Area (defined by the QEW to the west, Welland River to the north, Stanley Avenue to the east and Reixinger and Lyons Creek Roads to the south) as Employment Land.

As you are aware, our clients, Global Country of World Peace, own the 7147 Reixinger Road and 5789 Lyons Creek Road properties in the Grassy Brook Secondary Plan Area and have concerns that the highest and best use of the land would not be served if it is converted to Employment (or light industrial) Land.

As previously stated, a large proportion of the approximate 500+ acre Secondary Plan area is encumbered by ecological features (wetlands, woodlots, shoreline) and their associated setbacks. Additional environmental studies need to be completed before any development approval can occur. Similarly, there are some potential sources of environmental contamination stemming from adjacent land uses along with known archaeological resources, all of which require extensive investigation and study to clear the land for development.

However, despite the development constraints the ecological features propose, they make for an ideal backdrop for a mixed use neighbourhood. The northern limits of this Secondary Plan Area are bounded by the Welland River which offers riparian access and public amenity opportunity for recreation. This valuable resource is best enjoyed by the public and the City provided direction to our client earlier that a recreational trail should be developed along the southern shore of the River. Put simply, this is prime real estate that is best used for mixed use as it is arguably more compatible than light industrial uses ever would be.

The anticipated location of the proposed Wastewater Treatment plant expands development opportunities south of the Welland River, including the Grassy Brook Secondary Plan Area and future hospital site (and adjacent lands) on the west side of the QEW. Planning for mixed use of higher density in the Grassy Brook Secondary Plan



area would benefit land uses that can make the most use of the treatment plant, all within close proximity. Yet concerns have been expressed regarding the compatibility of wastewater treatment plants and adjacent residential uses. While that would seem to be a logical conclusion, the reality is that wastewater treatment plants historically exist adjacent to residential uses with minimal concern from the residents that live there. The attached appendix highlights examples of this condition within the Niagara Region – naturally this is true elsewhere in southern Ontario. Furthermore, modern abatement technologies address issues of odour resulting in conditions of adjacent residential land use which support the examples provided. Even the Region’s wastewater treatment plan consultant (BluePlan) has noted that modern Wastewater Treatment Plants no longer require extreme setbacks given the progress in odour abatement technologies.

Indeed, the location of the proposed plant from a land use perspective is well served to accommodate a community of several thousand in addition to the South Niagara Hospital and associated uses planned west of the QEW. Accordingly, the proposed location is well-placed to serve a higher density residential & commercial development but would not be leveraged to the same degree next to employment lands.

Wastewater treatment plants have proven to be compatible with residential neighbourhoods as the attached examples demonstrate. The ecological and archaeological features of the site pose unique circumstances that are best supported through the development of primarily residential and commercial uses. Accordingly, a change to Employment Land for this area is not in the best interest of the City, nor does it represent the highest and best use of the property.

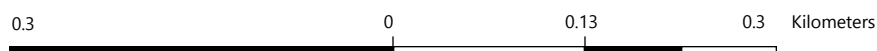
Submitted by:

Daniel Romanko, MCIP, RPP, CNU-A
Better Neighbourhoods Inc.

cc. Global Country of World Peace
Callum Shedden, Daniel & Partners



Legend



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Notes

**1 Anger Avenue
Fort Erie**



Legend



0.3 0 0.13 0.3 Kilometers

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Notes

**160 Lake Street
Grimsby**



Legend



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Notes

**3450 Stanley Avenue
Niagara Falls**



Legend

B-3

0.3 0 0.13 0.3 Kilometers

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Notes

**30 Prosperity Avenue
Port Colborne**



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0.3 0 0.13 0.3 Kilometers

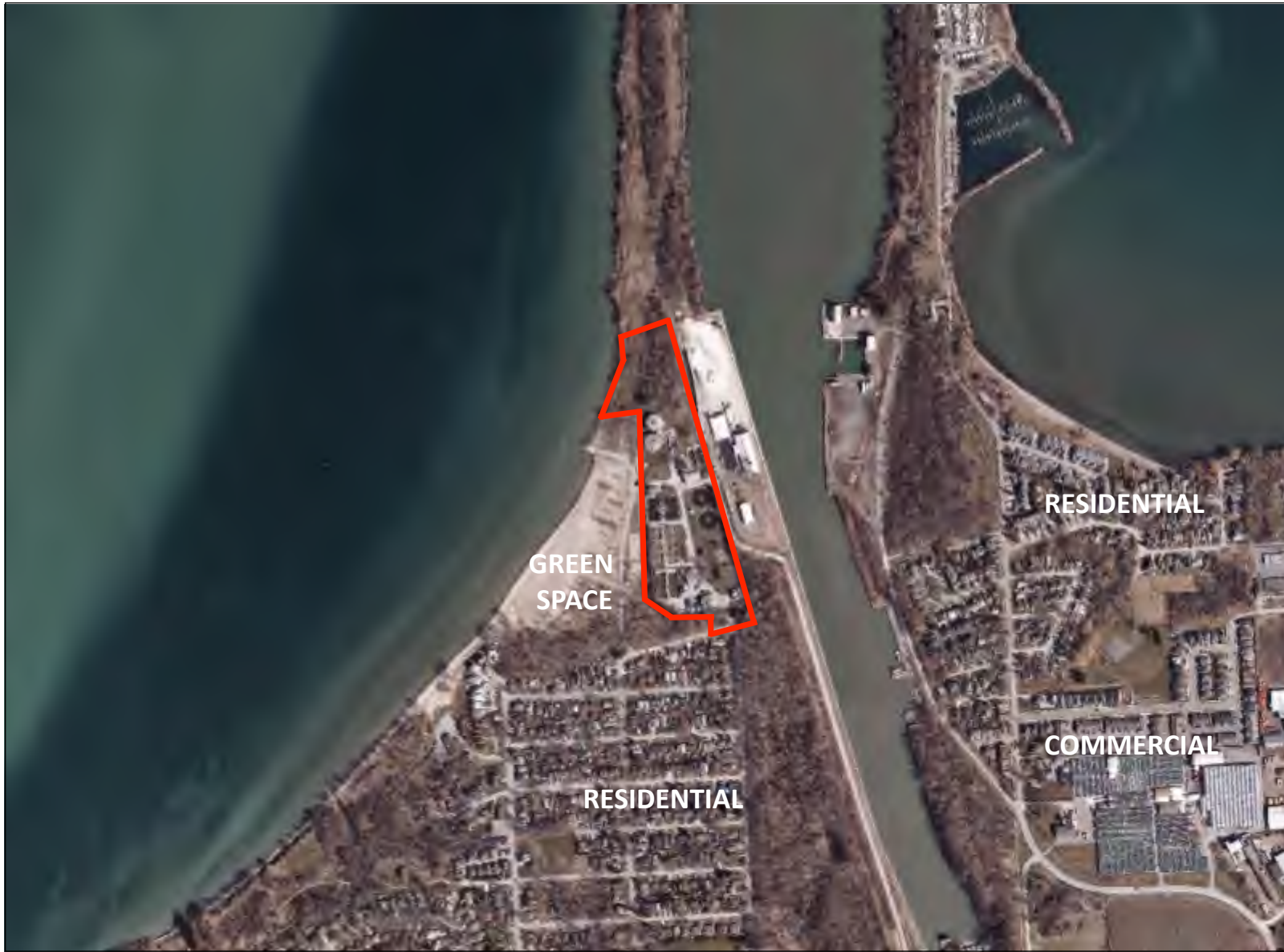
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Notes

**40 Lighthouse Road
St. Catharines**



Legend

B-3

0.5 0 0.25 0.5 Kilometers

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Notes

**27 Lombardy Street
St. Catharines**



Legend

B-3

0.3 0 0.13 0.3 Kilometers

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Notes

**5 River Frontage Road
Niagara-on-the-Lake**

Niagara-on-the-Lake Wastewater Treatment Plant (New)



Legend

B-3

0.3 0 0.13 0.3 Kilometers

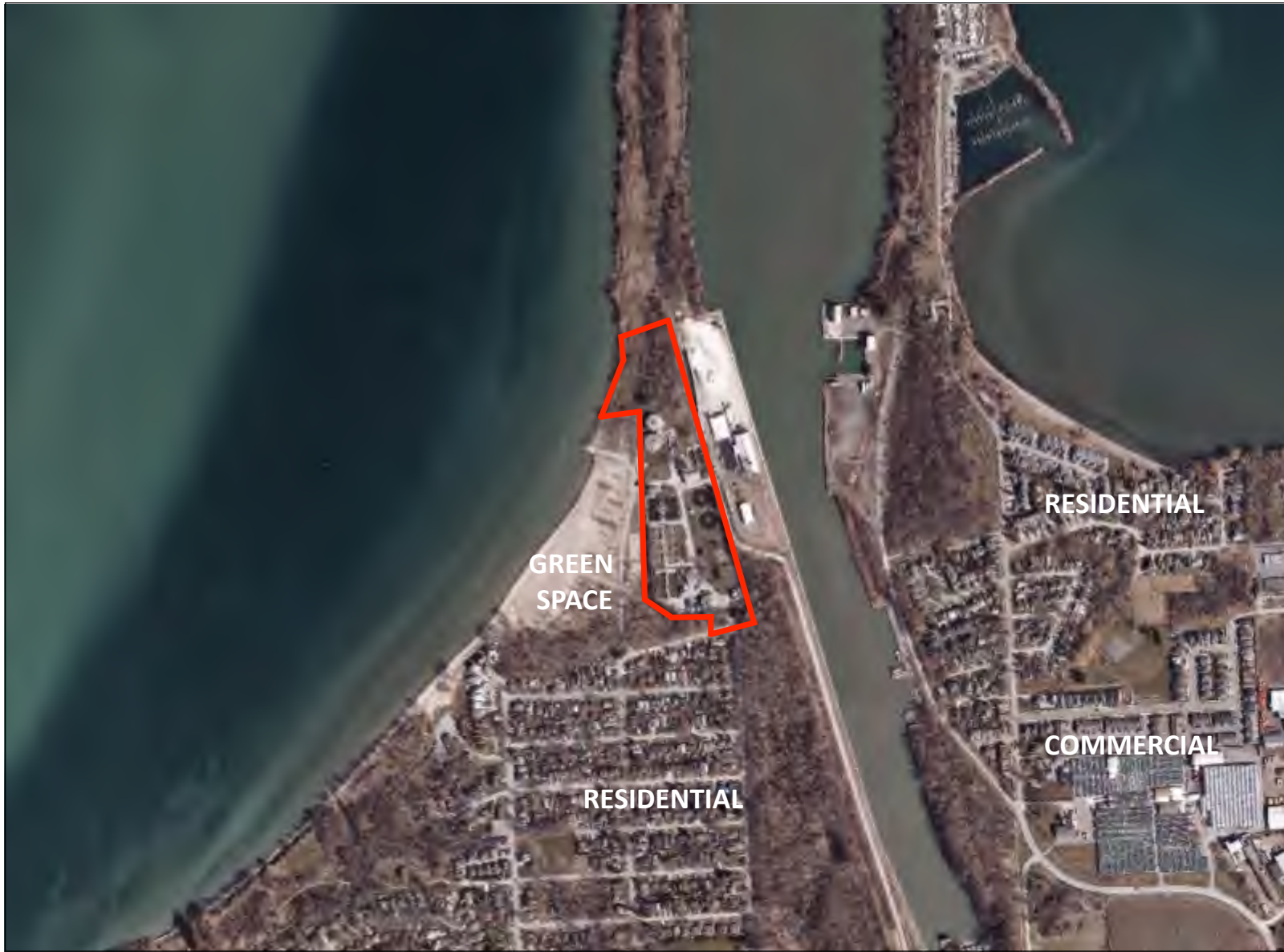
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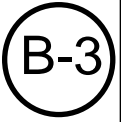


Notes

**1699 Lakeshore Road
Niagara-on-the-Lake**



Legend



0.5 0 0.25 0.5 Kilometers

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Notes

**27 Lombardy Street
St. Catharines**



Legend

B-3

0.3 0 0.13 0.3 Kilometers

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Notes

**505 River Road
Welland**



Legend

B-3

0.1 0 0.06 0.1 Kilometers

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Notes

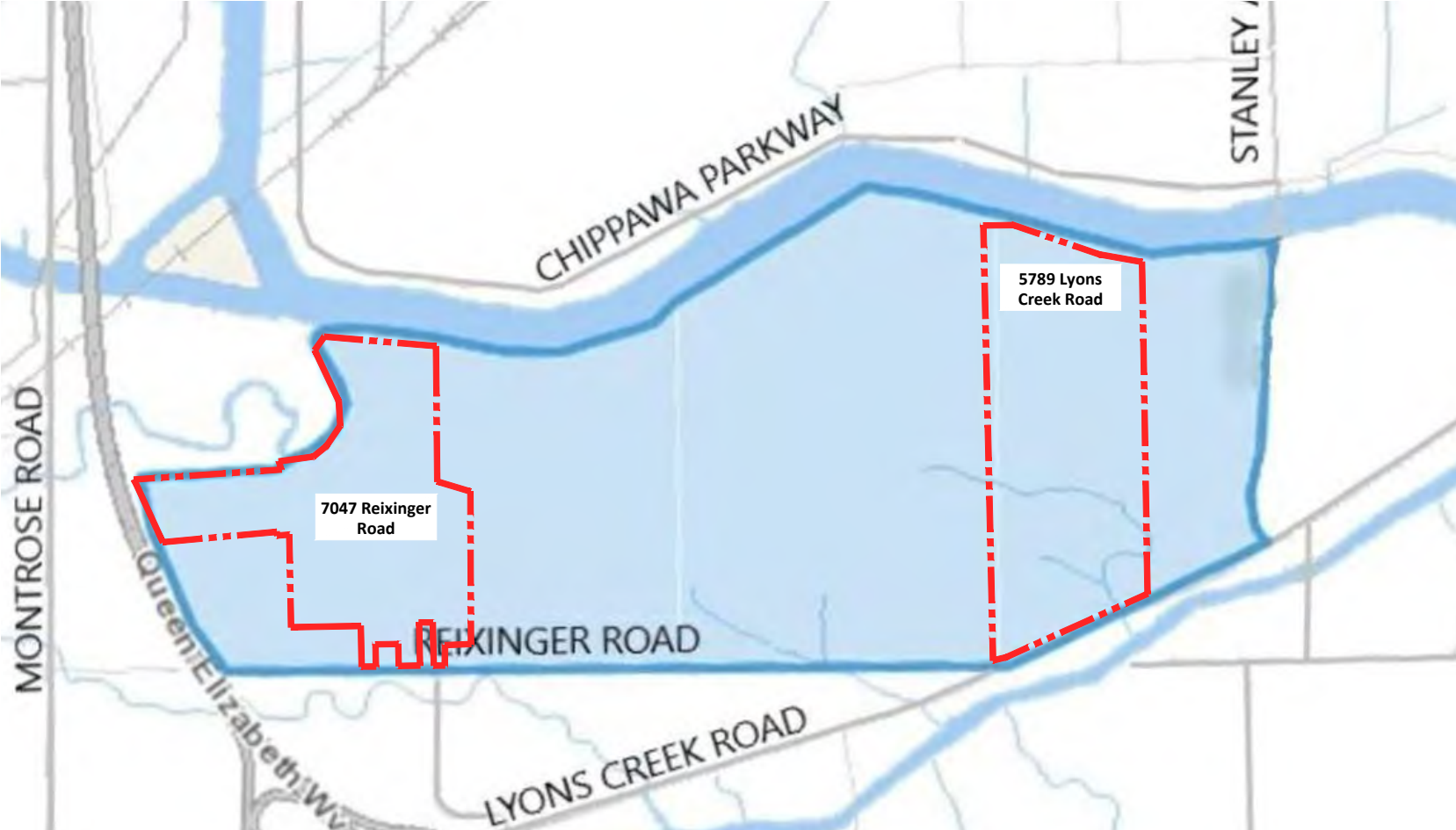
500 Ridgeway Road
Fort Erie

Niagara Falls OPA & ZBA for new Employment Land

7047 REIXINGER ROAD & 5789 LYONS CREEK ROAD

AUGUST 9, 2022

Lands Considered for Employment Conversion



Site Context

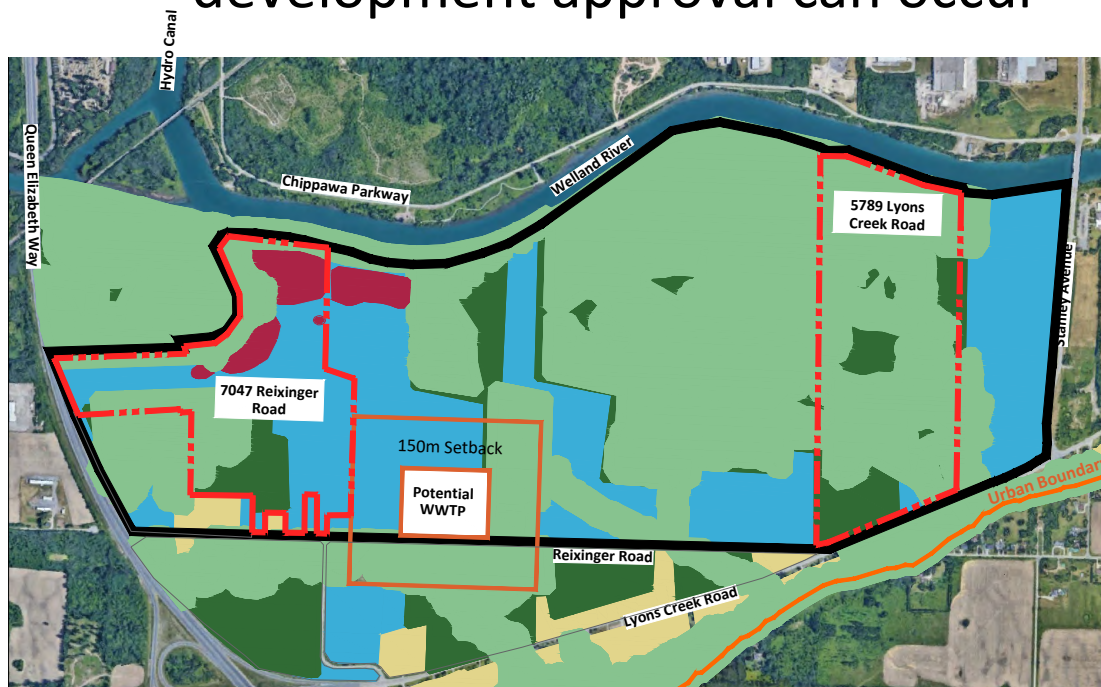


B-4

- The application to amend the Official Plan for new employment use is premature.
- The lands being considered for conversion to Employment Uses are much better suited as a higher density Mixed-Use neighbourhood.
- Recommend deferring decision until consideration of land owner interests and comprehensive land use analysis can be completed.

Employment Land Use Constraints

- 1 Large proportion of area is encumbered by ecological features and their associated setbacks
- 2 Additional environmental studies needed before any development approval can occur



Hectares (130.47 Acres)

LEGEND:

- RECOMMENDED BOUNDARY FOR NEW EMPLOYMENT AREA
- - - PROPERTY LINES
- URBAN BOUNDARY
- POTENTIALLY DEVELOPABLE EMPLOYMENT AREA
- NPCA REGULATED WETLANDS & CONSERVATION AREAS
- WOOD LOTS
- BUFFER 150M - POTENTIAL WWTP
- HIGH ARCHAEOLOGICAL POTENTIAL
- RESIDENTIAL

B-4

Employment Land Use Constraints

- 3 Known archaeological resources



- Phase 3 & 4 study required to clear lands of heritage concern for future development
- Phase 3
 - Approx. \$1 M
 - Expected to take 1+ years

- 4 Employment land is not worth as much as mixed use land (residential/commercial) and therefore cannot afford approval process clearance required to develop.

Mixed use land value can absorb cost through higher density.

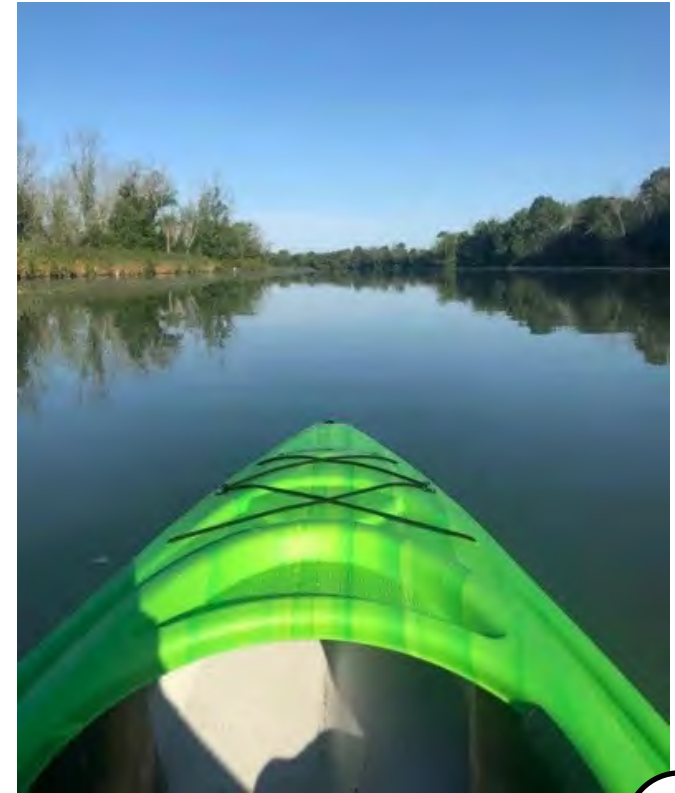
Employment Land Use Constraints



Given the Land Use Constraints, Employment Uses do not deliver the highest and best use of the property.

Mixed Use Opportunities

- 1 Riparian access and public amenity opportunity



Paddling.com, n

B-4

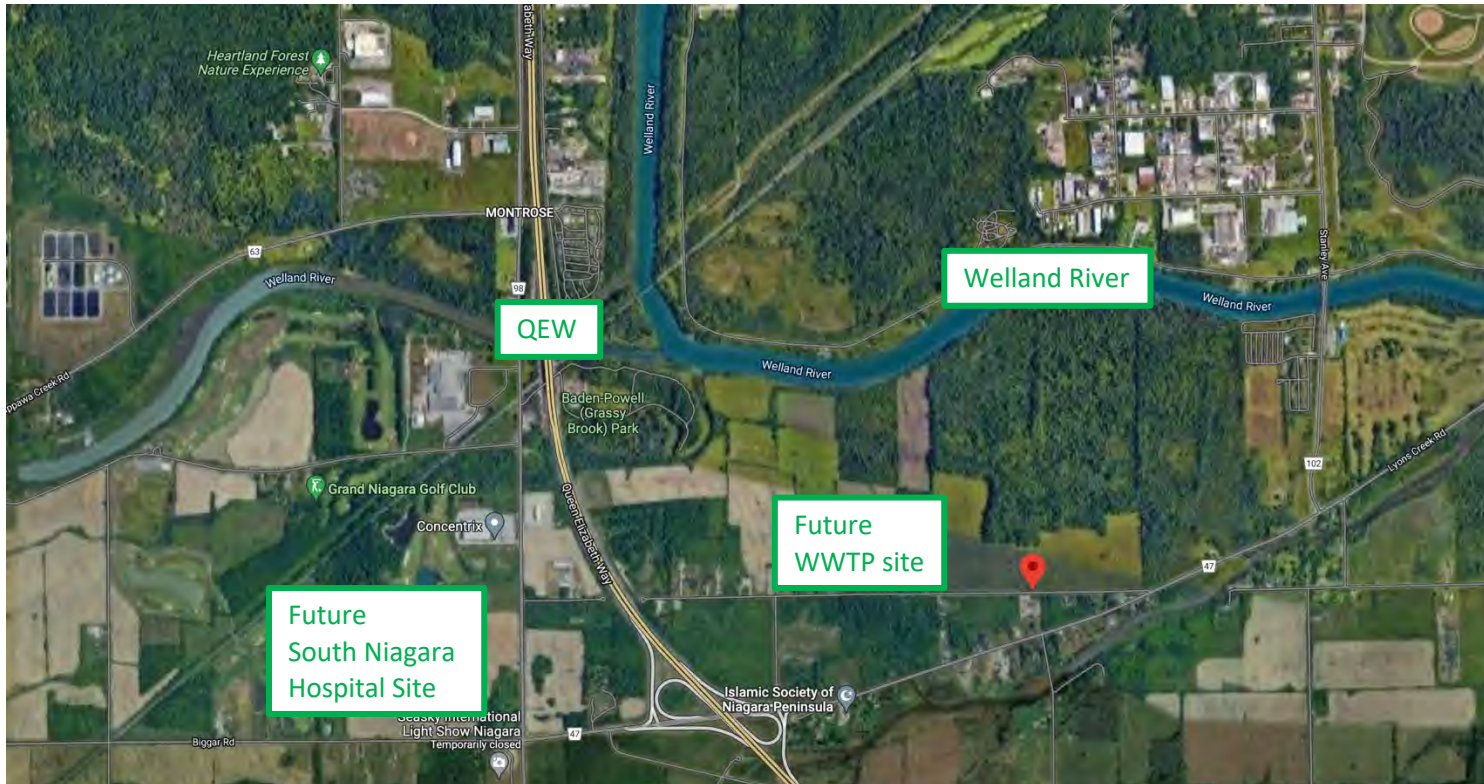
Mixed Use Opportunities

- 2 Direction to develop recreational trail along southern shore of River



Mixed Use Opportunities

- 3 Proposed WWTP well served to accommodate a community of several thousand and South Niagara Hospital
- 4 Ideal location for higher density, mixed use neighbourhood



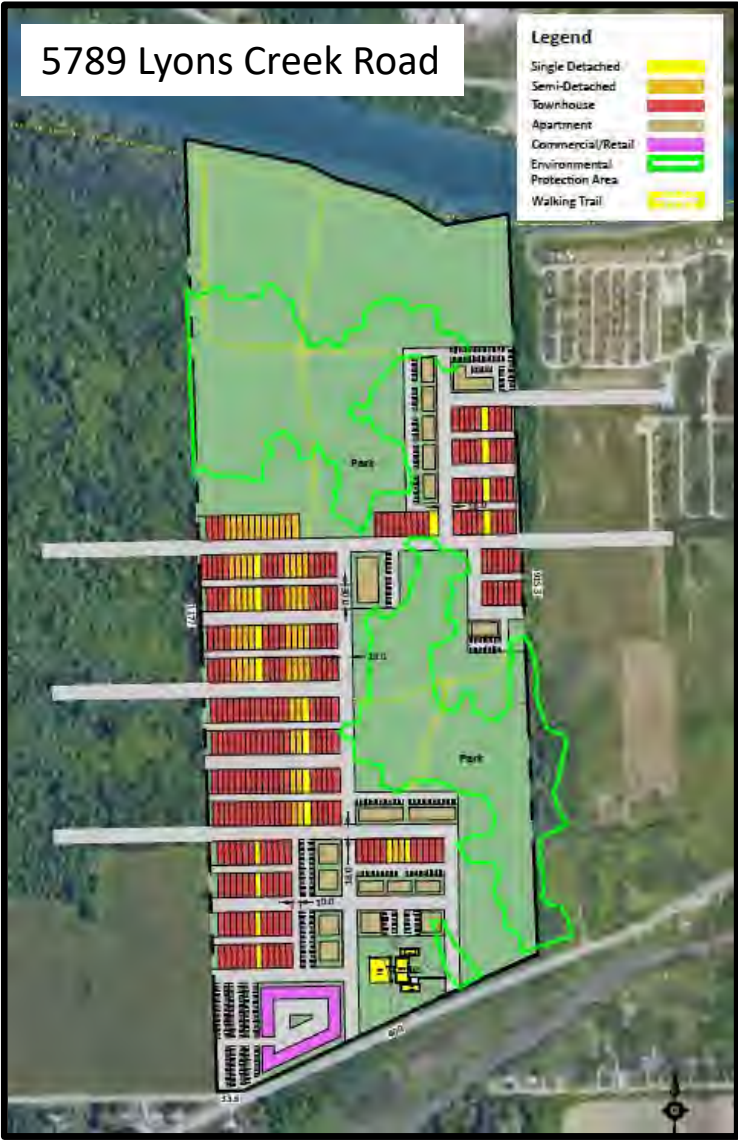
Mixed Use Opportunities – Concept Plan (2017)



Mixed Use Opportunities – Concept Plan (2017)



Mixed Use Opportunities – Concept Plan (2021)



Mixed Use Opportunities



Mixed Use Opportunities – Potential Uses

- Affordable / attainable housing options
- Medical office buildings servicing the new hospital
- Hotel for people visiting patients
- Shopping
- Theatre
- Public boardwalk
- Hiking trails

These opportunities are unavailable with Employment designation

“Ontario must build 1.5 million homes over the next 10 years to address the supply shortage”

- Report of the Ontario Housing Affordability Task Force, 2022

“Underused and vacant commercial and industrial properties are another potential source of land for housing. New housing on undeveloped land should also be higher density than traditional suburbs, especially close to highways.”

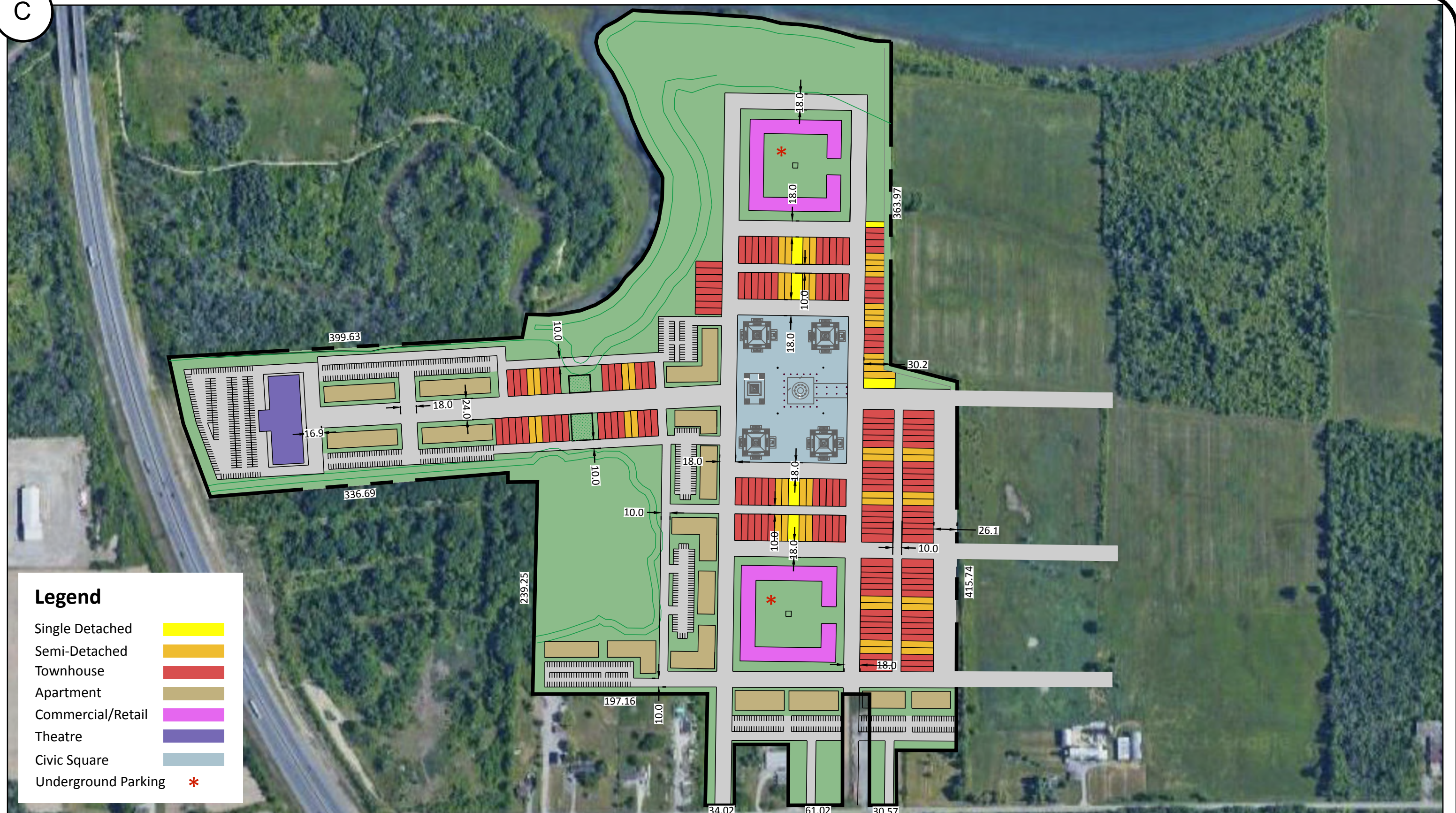
- Report of the Ontario Housing Affordability Task Force, 2022

- The application to amend the Official Plan for new employment use is premature.
- The lands being considered for conversion to Employment Uses are much better suited as a higher density Mixed-Use neighbourhood.
- Recommend deferring decision until consideration of land owner interests and comprehensive land use analysis can be completed.

Questions?

APPENDIX “C”

C



Legend

- Single Detached
- Semi-Detached
- Townhouse
- Apartment
- Commercial/Retail
- Theatre
- Civic Square
- Underground Parking *

Area: 37.9 ha

SCALE = 1:4000



better neighbourhoods

190A Ontario Street, St Catharines, ON L2R 5K9
Studio: 905-684-8585 betterneighbourhoods.ca

PROJECT TITLE:
**7047 Reixinger Road
Niagara Falls, Ontario**

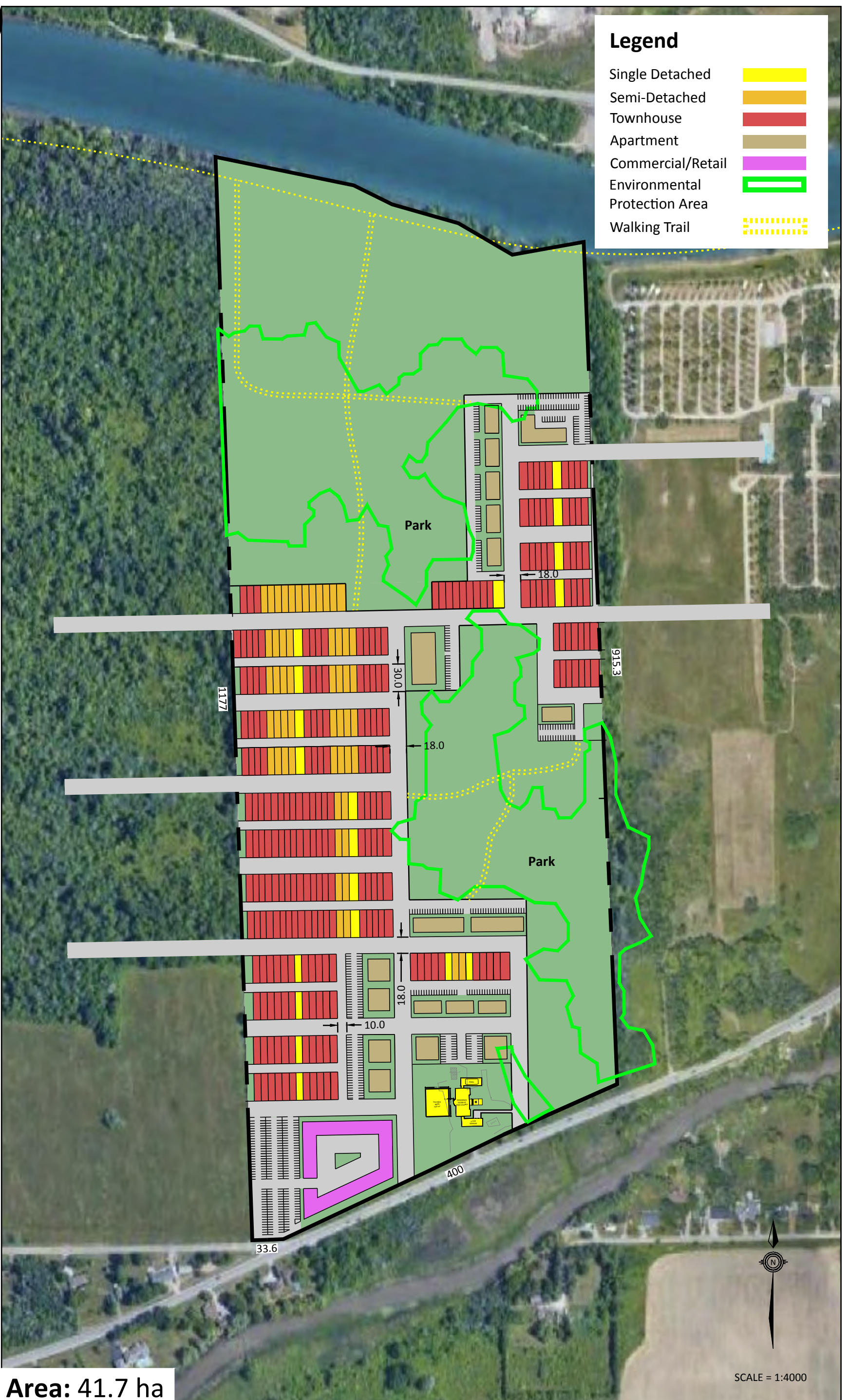
DRAWING TITLE:
**COLOURED
CONCEPT PLAN A**

DATE OF ISSUE: 2021 09 14	
DRAWING No: 0000-CP-A	REV No: 0

C

Legend

- Single Detached
- Semi-Detached
- Townhouse
- Apartment
- Commercial/Retail
- Environmental Protection Area
- Walking Trail



Area: 41.7 ha

SCALE = 1:4000

better neighbourhoods
 190A Ontario Street, St Catharines, ON L2R 5K9
 Studio: 905-684-8585 betterneighbourhoods.ca

PROJECT TITLE:
**5789 Lyons Creek Road
 Niagara Falls, Ontario**

DRAWING TITLE:
**COLOURED
 CONCEPT PLAN A**

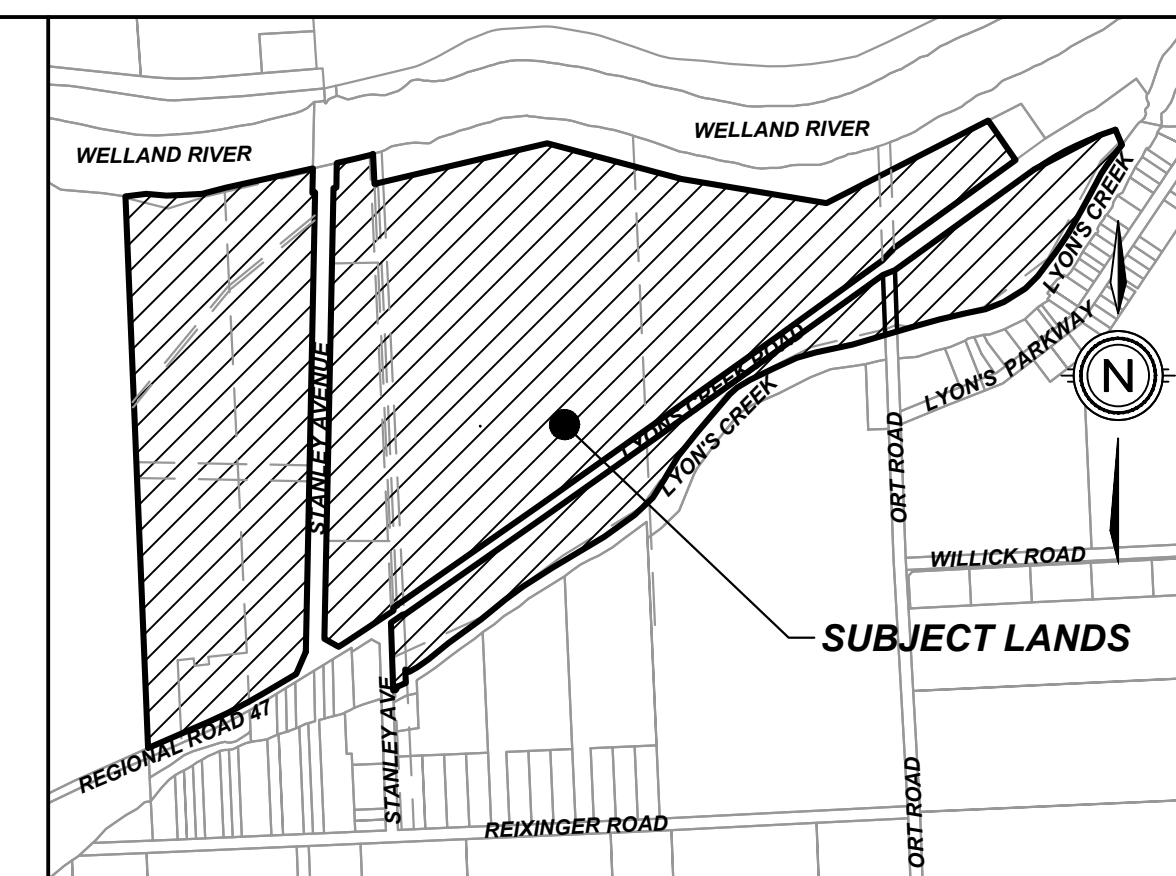
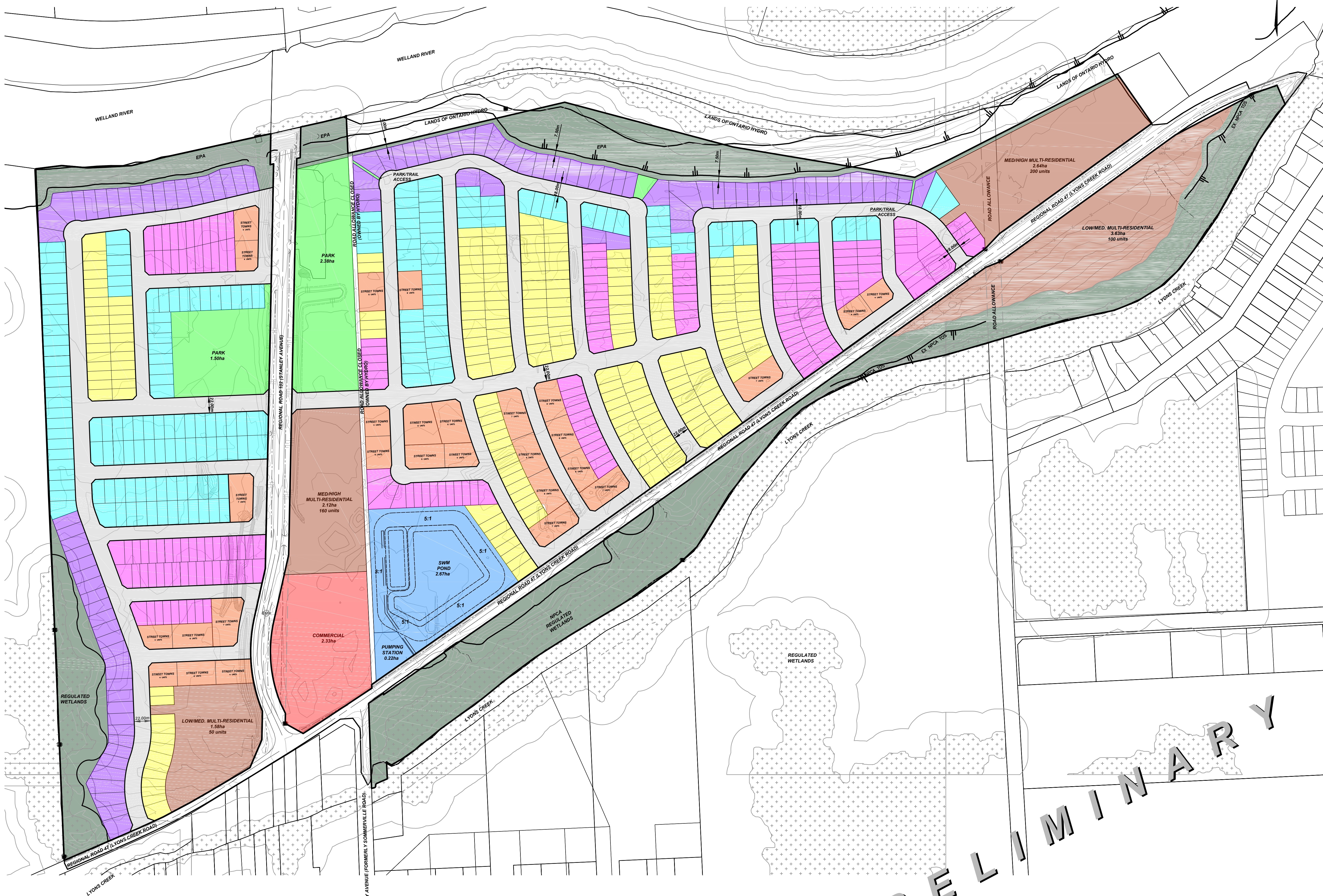
DATE OF ISSUE:
2021 09 13

DRAWING No: 0000-CP-A	REV No: 0
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APPENDIX “D”

CONCEPTUAL DEVELOPMENT PLAN

SOUTH NIAGARA FALLS REDEVELOPMENT



KEY PLAN
N.T.S.

CONCEPT PLAN OF SUBDIVISION

LEGAL DESCRIPTION

PART OF LOTS 1, 2 & 3
BROKEN FRONT CONCESSION WELLAND RIVER
and
PART OF THE ROAD ALLOWANCE BETWEEN
LOTS 2 & 3 (CLOSED BY BY-LAW)
BROKEN FRONT CONCESSION WELLAND RIVER
and
PART OF LOTS 19 & 20 - CONCESSION 3
all being in the former Township of Willoughby,
now the
CITY OF NIAGARA FALLS
REGIONAL MUNICIPALITY OF NIAGARA

- STREET TOWNS
- SINGLE RESIDENTIAL - 10.67m (35')
- SINGLE RESIDENTIAL - 12.20m (40')
- SINGLE RESIDENTIAL - 13.72m (45')
- SINGLE RESIDENTIAL - 15.24m (50')
- MULTI-RESIDENTIAL
- COMMERCIAL
- PARK
- EPA LANDS

LAND USE SCHEDULE

LAND USE	LOT/BLOCK	# OF UNITS	AREA(ha)	AREA(%)
SINGLE RESIDENTIAL 10.67m		180	6.84	8.27
SINGLE RESIDENTIAL 12.20m		217	9.01	10.90
SINGLE RESIDENTIAL 13.72m		182	8.67	10.48
SINGLE RESIDENTIAL 15.24m		100	5.91	7.15
STREET TOWNS		155	4.68	5.66
MULTI-RESIDENTIAL		510	10.02	12.12
STORMWATER MGMT FACILITY			2.89	3.50
PARKS/TRAILS			4.60	5.56
NEIGHBOURHOOD COMMERCIAL			2.33	2.82
ROADWAY			13.92	16.83
ENVIRONMENTAL PROTECTION			13.83	16.72
TOTAL		1344	82.88	100.00

DEVELOPABLE AREA = 69.05ha
DEVELOPABLE DENSITY = 19.46 units/ha

#	ISSUED FOR REVIEW	2021-07-06	TA
0	ISSUED FOR REVIEW	2021-07-06	TA
#	REVISION	DATE	INIT



DRAWING TITLE	DRAFTING	MK/TA
CONCEPTUAL DEVELOPMENT PLAN OF SUBDIVISION	DATE	JULY 6, 2021
	PRINTED	JULY 7, 2021
	SCALE	1:2500
	DWG No.	17105-CDP
	REV	0

PRELIMINARY

APPENDIX “E”





Map 1 to Amendment No. 147 to the Official Plan Schedule "A" - Future Land Use Plan

Proposed Change from Resort Commercial to
Employment

 Area affected by this Amendment

Legend

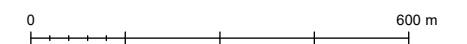
Land Use

-  ECA
-  Environmental Conservation Area
-  Environmental Protection Area
-  Open Space

Note: the schedule forms part of Amendment No. 147 to the Official Plan for Niagara Falls and should be read in conjunction with the written text.



Scale 1:12,000



4/12/2023

