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VIA ONLINE SUBMISSION

October 7, 2022

Attn: Alejandra Perdomo

Municipal Services Office - Central Ontario
Ministry of Municipal Affairs and Housing
16th floor
777 Bay Street
Toronto, ON M7A 2J3

Dear Ms. Perdomo,

**Re: Niagara Official Plan
ERO No. 019-5717
2610832 Ontario Inc.
8970 and 9015 Stanley Avenue, Niagara Falls
MINISTER'S ACTION REQUIRED**

We represent 2610832 Ontario Inc. ("**261**"), owner of lands municipally known as 8970 and 9015 Stanley Avenue, Niagara Falls ("**Subject Lands**"). We write to provide comments with respect to the Regional Municipality of Niagara Official Plan ("**ROP**") that is now before the Minister of Municipal Affairs and Housing ("**MMAH**") for a decision under the *Planning Act*.

SUBJECT LANDS

The Subject Lands are within the yellow boundary in **Figure 1** below. The portion of the Subject Lands west of Stanley Avenue were formerly used as a trailer park while the portion east of Stanley Avenue were formerly used as a golf course.



Figure 1. Subject Lands

DEVELOPMENT APPLICATION

261 submitted an Official Plan Amendment Application to the City of Niagara Falls (“City”) in July 2021 and a Zoning By-law Amendment Application in February 2022 (together, “Development Application”). Both applications have been deemed complete by the City.

The Development Application intent is to change the land use designation on the Subject Lands from Resort Commercial and Open Space to Residential and Minor Commercial. On-site and adjacent natural heritage features have also been evaluated through a Regionally scoped Environmental Impact Study (“EIS”) and are to be designated for long term protection through this amendment.

OUR ASK TO THE REGION

Schedule G of the ROP shows the Subject Lands partially designated as an Employment Area (specifically Dynamic Employment Area) on the west side of Stanley Avenue, as per **Figures 2 and 3** below (“Stanley West Lands”). In March 2022, before the Region’s approval of the ROP, we wrote to the Region (enclosed) to request that the proposed change in land use designation for these lands be deferred until such time as the City had considered the Development Application. The Region declined to do so.

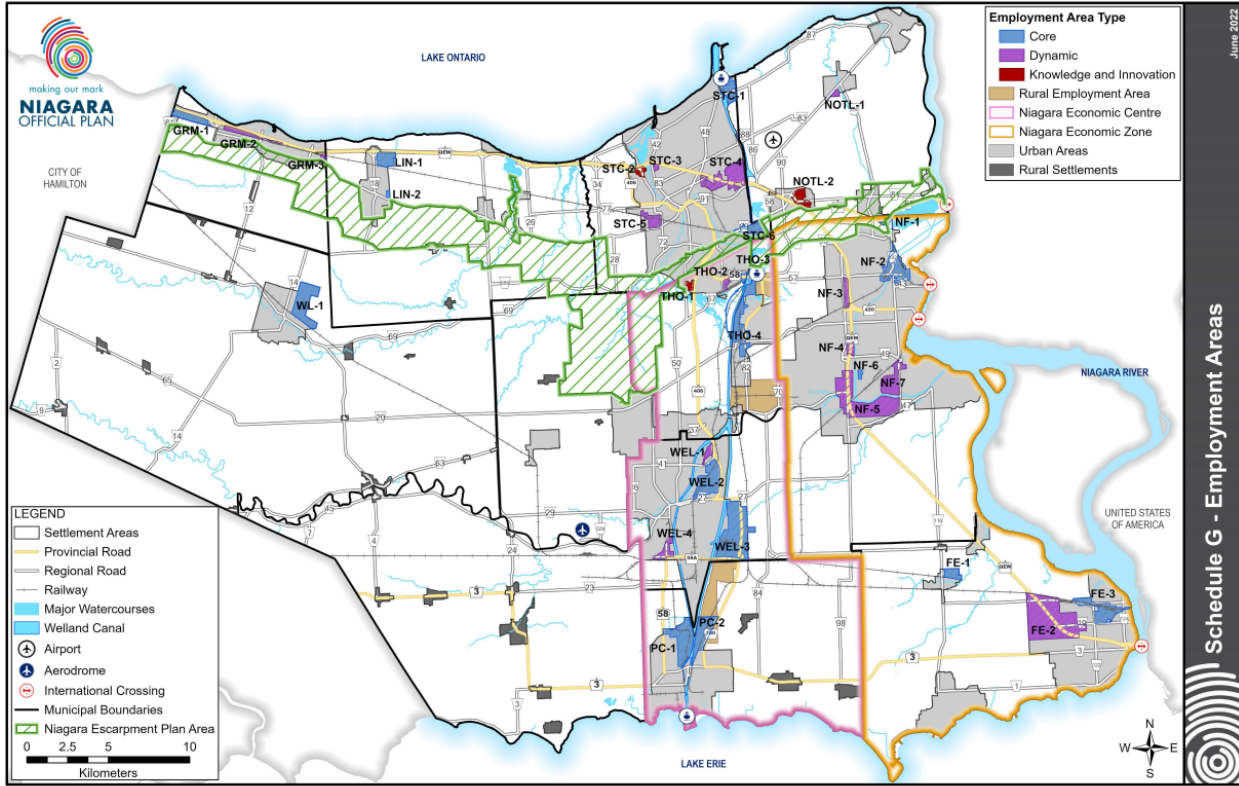


Figure 2. Schedule G of the ROP

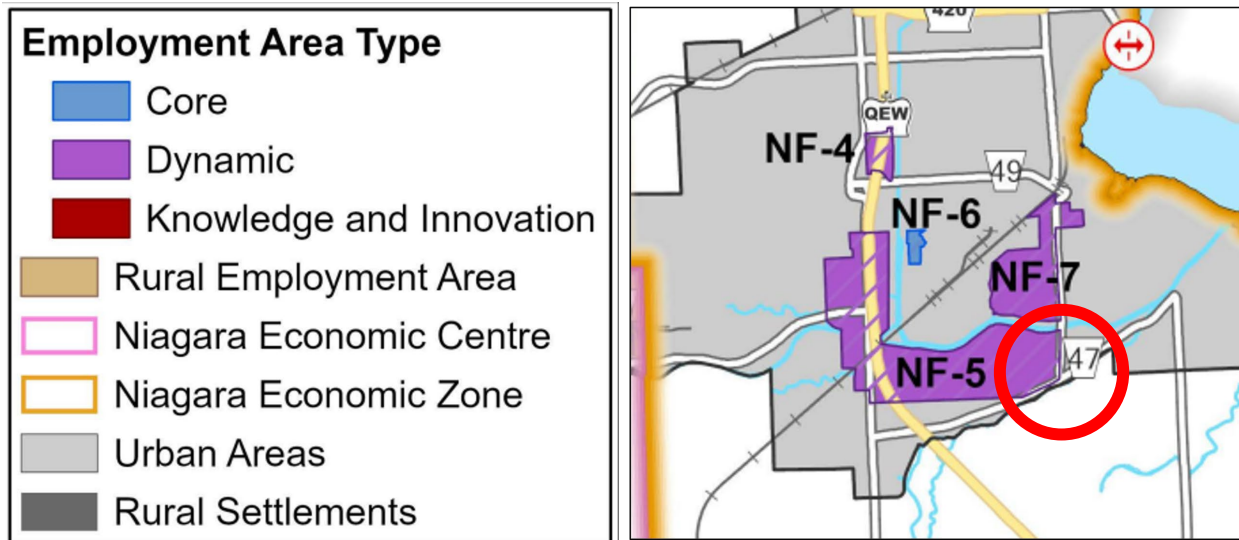


Figure 3. Excerpt from Schedule G of the ROP – Subject Lands within Red Circle

Simply put:

1. The Region never studied or provided any technical justification to apply an Employment Area designation to the Stanley West Lands; and
2. A proper application of the Clergy Principle bars an Employment Area designation on the Stanley West Lands.

Each will be addressed below.

NO JUSTIFICATION

The Region completed a Land Needs Assessment (“LNA”) in June 2022. The LNA assessed employment land needs for local municipalities within the Region. The results of the LNA indicate that the Town of Fort Erie and Township of West Lincoln do not have sufficient supply of employment lands to accommodate forecasted employment growth to 2051. There was also a small need identified in the City of Welland. No need was identified for the City of Niagara Falls, suggesting that the City has enough employment lands to accommodate the forecasted employment growth within the planning horizon. The Region retained Hemson Consulting Ltd. (“Hemson”) to conduct a peer review of the LNA and Hemson confirmed that the LNA adhered to the provincial Land Needs Assessment Methodology. Hemson also confirmed the employment land needs identified in the LNA for the local municipalities.

Despite the fact that no employment land need was identified for the City, the ROP partially designates the Subject Lands as a new Employment Area, specifically a Dynamic Employment Area. We have seen no rationale for why or how the Subject Lands have been selected as a new Employment Area.

APPLY THE CLERGY PRINCIPLE

Given the timing of 261’s Development Application, any vision for an employment designation on any part of the Subject Lands should only be considered after the City makes a determination on the Development Application. To proceed otherwise is contrary to established legal principles and policy. In 2021, the Divisional Court unequivocally confirmed what is known as the “Clergy Principle”. This principle is designed to ensure fairness in the *Planning Act* decision-making process. It states that applications should be assessed according to the policies that are in place at the time the *Planning Act* application is submitted. This makes sense. Good planning cannot occur in the public interest if the applicable policy regime is permitted to change mid-application.

MINSTER’S ACTION REQUIRED

We request that the Minister amend Schedule G of the ROP to remove the Employment Area (specifically Dynamic Employment Area designation) from the Stanley West Lands and designate these lands as Urban Area.

We thank you for your attention to this matter. Please do not hesitate to contact the undersigned should you have any questions. We reiterate our request for notice of the Minister’s decision on the ROP.

Yours truly,

A handwritten signature in black ink, appearing to read 'Nancy Smith', written in a cursive style.

Nancy Smith
ns/l

Encl.

Nancy Smith

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Hamilton Ontario Canada L8P 1T3

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VIA EMAIL

March 4, 2022

Niagara Official Plan Team
makingourmark@niagararegion.ca
1815 Sir Isaac Brock Way
Thorold, ON L2V 4T7

Dear Sirs and Madam:

**Re: Draft Regional Official Plan
8970 and 9015 Stanley Avenue and Lands on the South Side of Lyons Creek Road**

We represent 2610832 Ontario Inc., owners of lands municipally known as 8970 and 9015 Stanley Avenue, Niagara Falls (“**Subject Lands**”). The Subject Lands are shown within the yellow boundary in Figure 1 below. The portion of the Subject Lands west of Stanley Avenue were formerly used as a trailer park while the portion east of Stanley Avenue were formerly used as a golf course. Our retainer is focused on assisting 261 in realizing the development potential of the Subject Lands in accordance with the applicable policy regime.

Our client has reviewed the Region of Niagara’s proposed Regional Official Plan and offer the following comments, which are provided in the context of a site-specific development application for the Subject Lands.



Figure 1 - Subject Lands

EMPLOYMENT DESIGNATION

Schedule G of the Draft Regional Official Plan shows our client's lands partially designated as Dynamic Employment Area on the west side of Stanley Avenue, as per **Figure 2** below. Currently, the lands are designated as Urban Area and Built-up Area in the Regional Official Plan with no employment land or employment area designations.

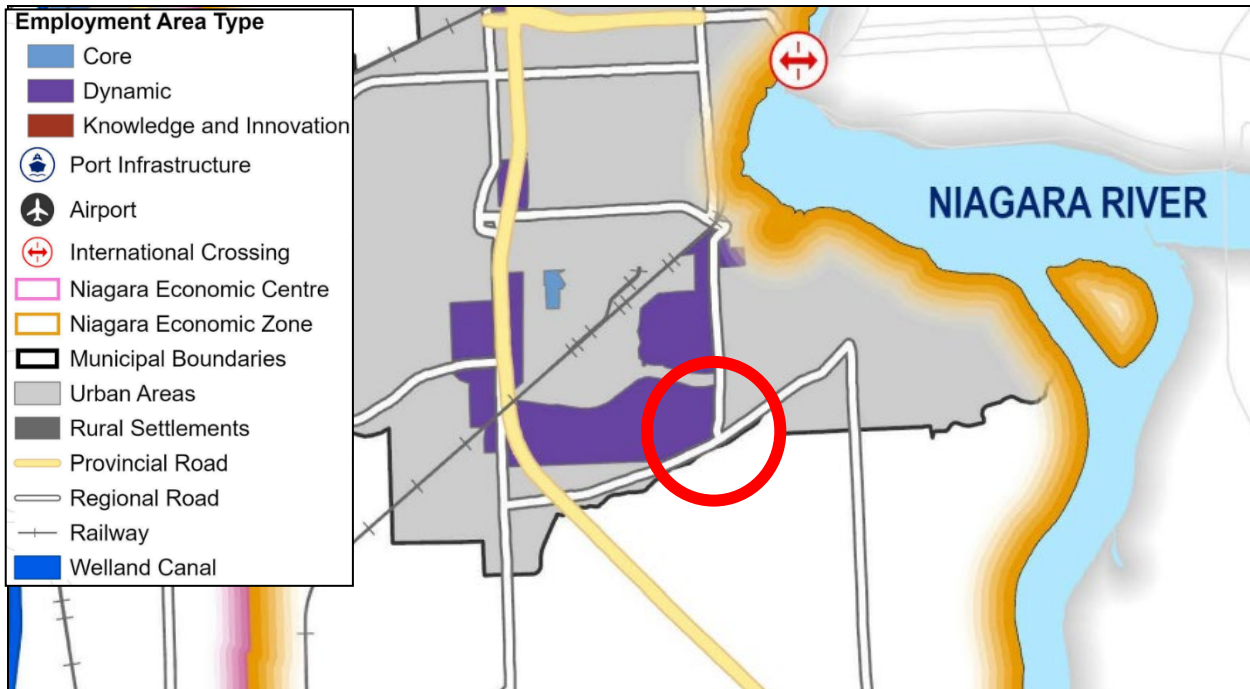


Figure 2 - Draft Schedule G of the Regional Official Plan - Affected Lands within Red Circle

Schedule G of the Draft Regional Official Plan illustrates a sizable swath of land south of the Chippewa Creek, along the north side of Lyon’s Creek Road/Reixinger Road extending westerly from Stanley Avenue to the QEW/Montrose Road as a *Dynamic Employment Area* as noted in the Excerpt below.

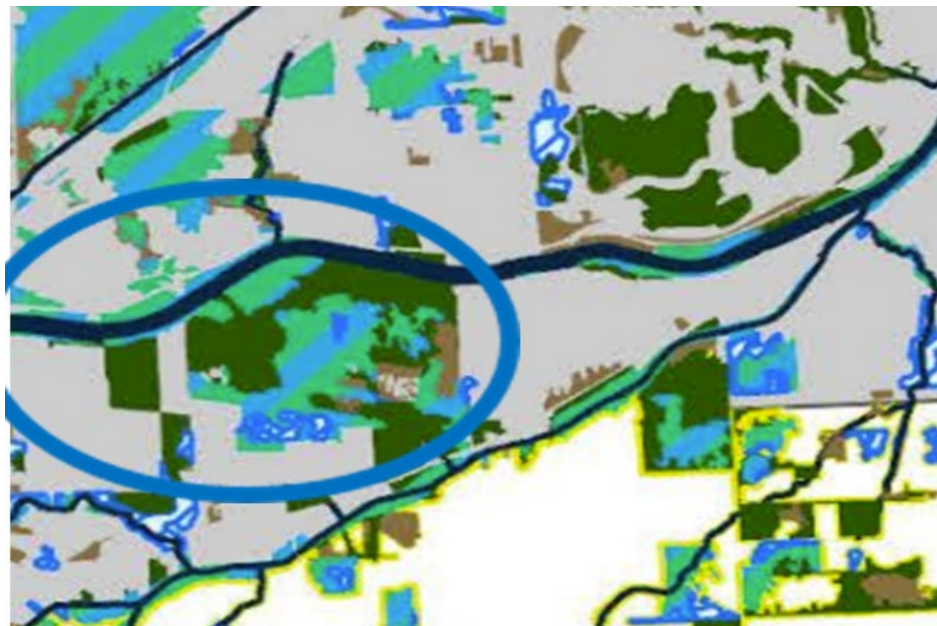
Excerpt from Schedule G – Employment Area



However, the eastern half of this land area is likely not developable due to the predominance of a *Natural Environment System Overlay*, including Significant woodlands, other woodlands, and provincially significant wetlands (refer to Excerpt from Schedule C1 and C2 below). The inclusion of the eastern half of this large area with nominal development potential as Employment land is not realistic and will result in a land area that is not readily available for development purposes. In turn, this will unreasonably inflate the total supply of Employment land within Niagara Falls.



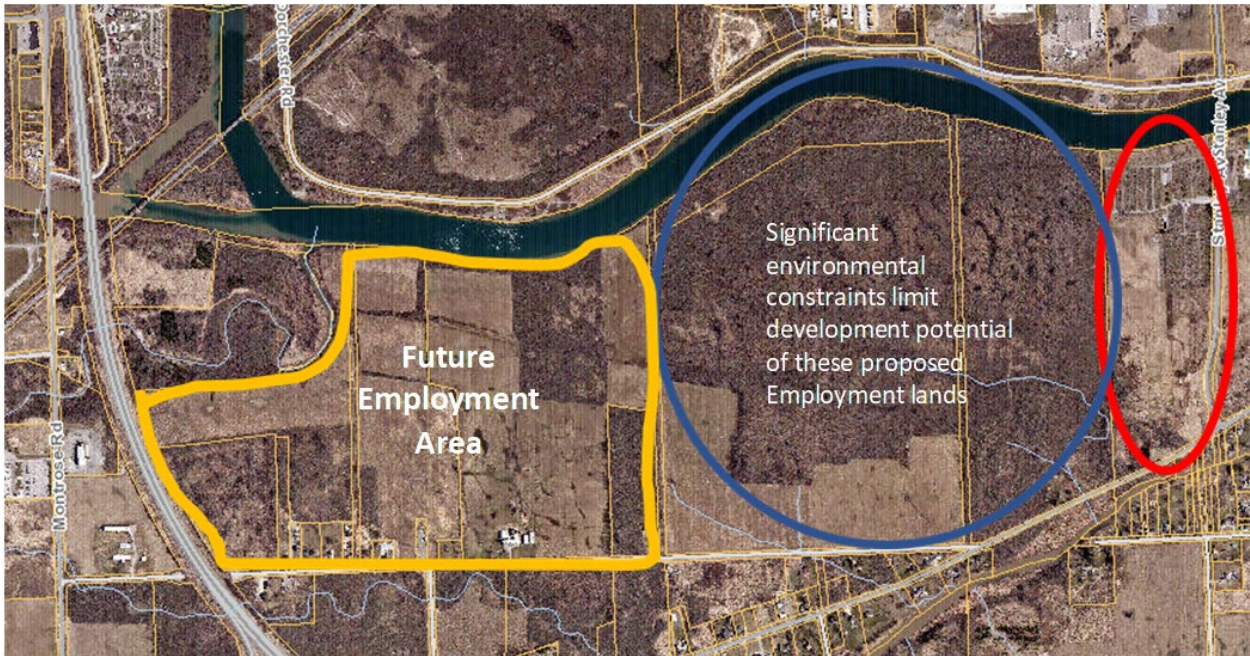
*Excerpt from Schedule C1 –
Natural Environment System
Overlay and Provincial
Natural Heritage Systems*



*Excerpt from Schedule
C2 – Natural
Environment System
Overlay: Individual
Components and
Features*

The 2018 air photo excerpt below, taken from the City of Niagara Falls Viewer mapping system illustrates how the lands fronting Stanley Avenue are clearly separate from the environmentally

sensitive lands to the west where significant woodland cover is evident. This environmental feature/woodland provides a reasonable buffer from potential employment lands further west that have development potential.



Accordingly, consideration should be given to remove the eastern half of the proposed Employment area from Schedule G – Employment Area.

Our clients currently have an active local Official Plan and Zoning By-law Amendment application before the City of Niagara Falls (City File AM-2021-016). The intent of this application is to change the land use designation on the properties from Resort Commercial and Open Space to Residential and Minor Commercial. On-site and adjacent natural heritage features have also been evaluated through a Regionally scoped Environmental Impact Study (“EIS”) and are to be designated for long term protection through this amendment. The submitted Zoning By-law Amendment application implements the Official Plan Application.

The City has deemed the Official Plan Amendment Application complete. The City has yet to deem the Application for Zoning By-law Amendment Application but has until March 10, 2022 to do so.

We respectfully request that the proposed change in land use designation to Dynamic Employment Area for these lands be deferred until such time the City has considered the Official Plan Amendment application.

NATURAL HERITAGE DESIGNATION

The Region has provided a preliminary natural heritage mapping tool that shows proposed features on lands throughout the Region. This property is no exception, and does have a variety of natural heritage features shown on the property, as shown in **Figure 3** below.

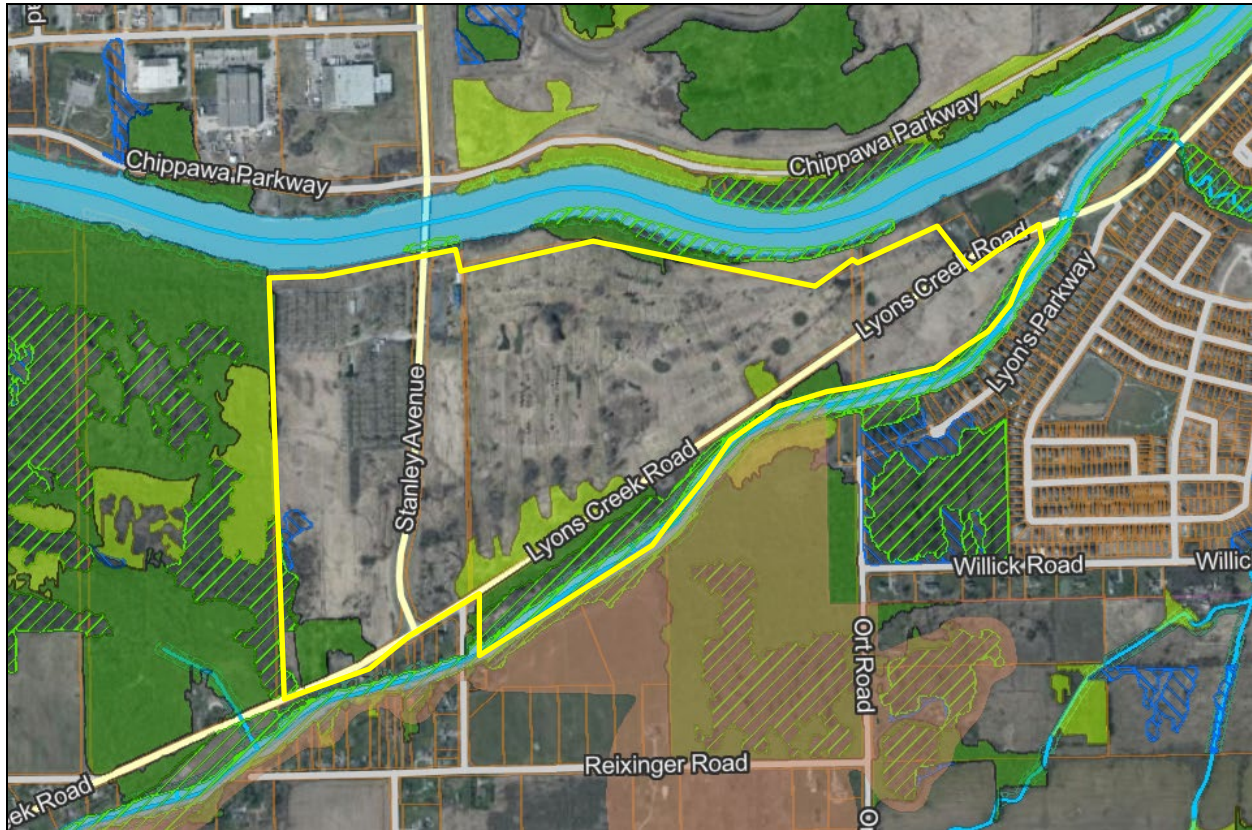


Figure 3 - Proposed Niagara Region Natural Heritage Mapping

As noted, our client has submitted an EIS for the Subject Lands which has been scoped by Regional staff. It is our understanding that this report has been circulated to Niagara Region with the Official Plan Amendment for review and comment.

Given this circumstance, it is requested that the application of new natural heritage mapping to this property be deferred until such time that the EIS and amendment to implement the corresponding land use designations be approved.

Thank you in advance for your consideration of these submissions. We would be happy to meet with you to discuss our clients concerns in greater detail.

Yours truly,

A handwritten signature in black ink that reads "Jennifer Meader". The signature is written in a cursive, flowing style.

Jennifer Meader

JM/my

For: Nancy Smith

Encl. (0)

NANCY SMITH PROFESSIONAL CORPORATION
TURKSTRA MAZZA ASSOCIATES, LAWYERS