



LANDPRO
PLANNING SOLUTIONS

PLANNING JUSTIFICATION BRIEF

ZONING BY-LAW AMENDMENT

Montrose Road

Niagara Falls, Niagara Region

May 2022



LandPro Planning Solutions Inc.

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DISCLAIMER

This report was prepared by the team at LandPro Planning Solutions Inc. It is based on the information provided to us by the applicant. The planning policy research and opinions are based on our own research and independent analysis of the applicable policy.

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This report was written by professionals and supervised by Registered Professional Planners, who are full members of the Ontario Professional Planners Institute as defined by the *Ontario Professional Planners Act, 1994*. The contents of this report represent the author’s independent professional opinions and comply with the OPPI Code of Professional Practice and the opinions presented herein will be defended as required.

LandPro Planning Solutions Inc.



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1. INTRODUCTION

LandPro Planning Solutions Inc. (LandPro) has been retained by Kevin Dilts & Sarah Austin-Dilts (the owners) to assist in the preparation of a zoning by-law amendment application for the properties they own located on Montrose Road, Niagara Falls, Niagara Region with no municipal addresses. The properties are legally described as CON 6 PT LOT 1 RP59R7401 PART 7 & PART 8 with the Roll Numbers of 272514000108436 & 272514000108434.

1.1 PURPOSE

The subject property is currently vacant. The accompanying application proposes to rezone the properties to permit the construction of a new detached dwelling. The property is currently zoned in accordance with the Township of Crowland Zoning By-Law 1538/1958 as O2 Public and Private Open Space. This application proposes a portion of the property to be rezoned to RA Rural Agricultural to facilitate the construction of the new dwelling. This letter serves to provide an overview of the planning merits of the application.

2. SITE CONTEXT

The subject properties are to merge on title to create one (1) property. The subject property is located along Montrose Road with the Parcel IDs of 4881 & 4882. The property is located on the west side of Montrose Road, to the south of Koabel Road and to the north of Schneider Road. See property location shown in **Figure 1** below.

Figure 1: Property Location



2.1 LAND USE CONTEXT

With the subject properties to be merged on title, the property is vacant with the dwelling proposed in the south. The immediate surrounding land uses are described below.

- North = Open Space
- South = Rural Agricultural
- East = Rural
- West = Rural Agricultural

2.2 PROPERTY DIMENSIONS & PHYSICAL ATTRIBUTES

Table 1 - Property Dimensions (merged)

The subject property has frontage onto Montrose Road. The existing property dimensions are presented in **Table 1**.

The property is vacant with no buildings or structures.

Item	Dimension
Lot Frontage	80.8 m +/-
Lot Depth	124.5 m +/-
Lot Area	1.01 ha +/-

3 PROPOSED DEVELOPMENT

The subject property is designated as Good General Agricultural and Core Natural Heritage System with Provincially Significant Wetlands and Significant Woodlands in the Niagara Region Official Plan. Additionally, the Niagara Falls Official Plan designates the property as an Environmental Protection Area and an Environmental Conservation Area; with a Public and Private Open Space zoning under the Zoning By-Law 1538/1958 (former Township of Crowland).

The proposed zoning by-law amendment intends to rezone a portion of the subject property from O2 (Public and Private Open Space) to RA (Rural Agricultural) to permit the construction of a new detached dwelling with associated private servicing. The new dwelling is proposed to be 231.8m² (2495sqft) with three bedrooms and two bathrooms. The property will be privately serviced with a cistern and septic system. There are additional considerations to be given to the environmentally sensitive lands throughout much of the subject property which are detailed below.

The proposal is shown as **Figure 2**.

Figure 3 shows the development overlay with the areas of constraint ranging from area of high constraint to area of low constraint as depicted in the EIS. The proposed concept plan (Figure 2) uses the area of moderate constraint as a boundary for the portion of lands to be rezoned as recommended by the EIS. This boundary of the rezoned lands maintains the reduced 15m buffer setback to the PSW (Tee Creek) to be discussed in greater detail further in this report.

Figure 2: Concept Plan

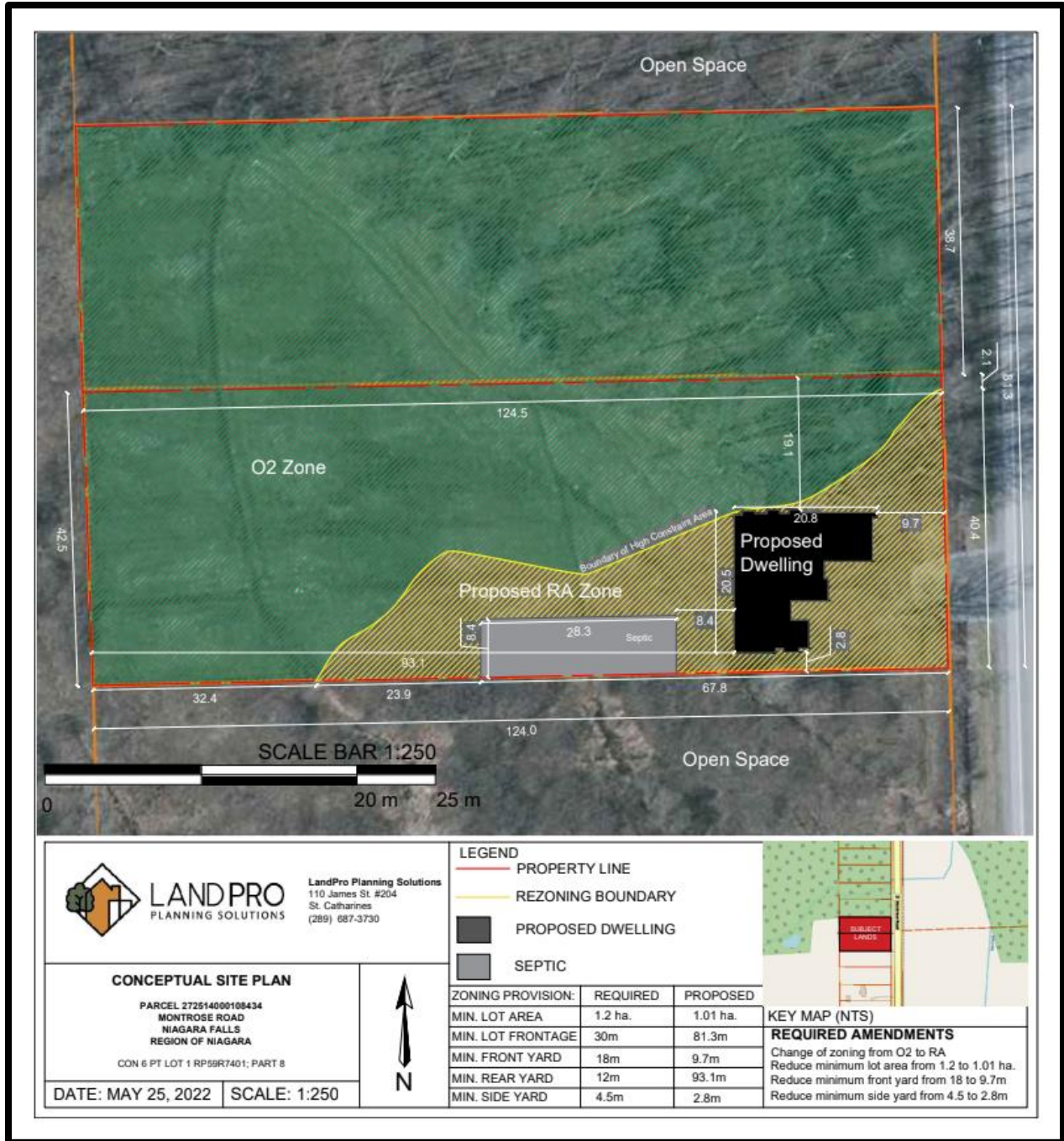


Figure 3: Development Overlay with Areas of Constraint from the Environmental Impact Study (LCA, 2021)



4 LAND USE PLANNING FRAMEWORK

In preparing this application, several policy and regulatory documents were reviewed that need to be addressed to demonstrate good planning. They include the following:

1. Provincial Policy Statement, 2020;
2. A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019;
3. Niagara Peninsula Conservation Authority Policy Document, 2018;
4. Niagara Region Official Plan, 2014;
5. Niagara Falls Official Plan, 2019;
6. Township of Crowland Zoning By-Law No. 1538 (cons. 2016)

The proposed development was assessed against these regulations and associated policies. A detailed review is below.

4.1 PROVINCIAL POLICY STATEMENT, 2020

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest for all land use development throughout Ontario. It provides direction for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.

The PPS permits the rezoning and construction of the proposed dwelling by promoting efficient development and land use patterns **(1.1.1.a)** that conserve biodiversity **(1.1.1.h)** and builds upon the rural character by leveraging rural assets **(1.1.4.1.a)**. This application also considers the biodiversity and the ecological benefits provided by nature **(1.1.4.1.h)** and shall protect natural features for the long term **(2.1.1)**.

The proposed rezoning of the property to permit the detached dwelling will ensure an efficient development and use of land to align with the existing uses of the surrounding area. The rezoning will efficiently use an otherwise unusable parcel of land to construct a detached dwelling. The biodiversity on the subject property will be conserved and will leverage the rural assets to enhance the natural heritage features for the current and future owners of this property.

In addition, the PPS shall also not permit development and site alteration within the significant wetlands **(2.1.4.a)**, in fish habitat **(2.1.6)** or habitat of endangered or threatened species **(2.1.7)**. The adjacent lands of these areas or habitat shall also not be permitted to be developed or altered unless the ecological function has been assessed and there will be no negative impacts **(2.1.8)**.

An Environmental Impact Study (EIS) was completed to ensure that no fish habitat are being disturbed and that no endangered or threatened species were observed on the property. The EIS also evaluated the potential impact and recommended mitigation measures to prevent any possible negative impacts from occurring during or after construction of the dwelling. The rezoning to accommodate the detached dwelling is an appropriate zone and use for the subject property.

This proposed rezoning is consistent with the PPS.

4.2 A PLACE TO GROW: GROWTH PLAN FOR THE GREATER GOLDEN HORSESHOE, 2019

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (Growth Plan) provides a provincial policy framework for managing growth in the Greater Golden Horseshoe, of which applies to Niagara Region and its lower-tier municipalities. The Growth Plan is the Ontario government's initiative to plan for growth and development in a way that supports economic prosperity, protects the environment, and helps communities achieve a high quality of life.

The entirety of the property is mapped as a Provincial Natural Heritage System (NHS) with these features being considered as Key Natural Heritage Features (KNHF), Key Hydrologic Features (KNF) and, subsequently, a Vegetation Protection Zone (VPZ) in the Growth Plan. The Growth Plan identifies that development or site alteration is not permitted in these areas **(4.2.3.1)**. Proposals may be permitted

within these areas where it is demonstrated that the hydrologic functions, including the quality and quantity of water, will be protected (4.2.3.2).

Growth Plan policies typically require the completion of a Natural Heritage Evaluation (NHE) when development and/or site alteration is proposed within 120 metres of a KNHF/KHF (4.2.4.1). Further, a minimum 30 metre Vegetation Protection Zone (VPZ) (4.2.4.3) as measured from the outside boundary of a KNHF/KHF will also not permit any development and/or site alteration. Development and/or site alteration is not permitted within a KNHF or its VPZ unless properly assessed.

We look to rely on the assessment and information presented within the EIS to inform us of the best practices to address the policies within the Growth Plan. As stated in the attached EIS (EIS Section 6.1), LCA Environmental Consultants provides the following evaluation:

“Policy 5.2.8.1 of the Growth Plan states that “where the policies of this Plan require the completion of specific types of master plans, assessments, studies, or other plans, including the equivalent, before a decision can be made, including in respect of matters in process, the policy direction of this Plan may be implemented based on, collectively, existing, enhanced, or new assessments, studies and plans, provided that these achieve or exceed the same objectives.” It is our assessment that based on the scale of the proposed development and existing lots, the policy direction of the Growth Plan may be implemented based on this EIS to achieve the objectives of the Growth Plan by demonstrating no change to the long term ecological or hydrologic function of the PSW.”

We trust that the knowledge and expertise of LCA Environmental Consultants is sufficient in addressing the Growth Plan policies relating to the NHS, KNHF, KNF and VPZ on the subject property.

4.3 NIAGARA PENINSULA CONSERVATION AUTHORITY POLICY DOCUMENT, 2018

The NPCA is responsible for the review of planning applications that are affected by natural environmental hazards; working in partnership with municipalities for the conservation of natural resources. The property is regulated by the NPCA, which is guided by its Watershed Policies and Ontario Regulation 155/06. The approximate NPCA regulation lands are shown in **Figure 4**.

Figure 4: NPCA Regulation Area



As this application intends to rezone the property to permit a detached dwelling, the NPCA is typically a commenting party on the application rather than a required regulatory approval under the Conservation Authorities Act. This includes *the construction, reconstruction, erection or placing of a building or structure of any kind*.

It should be noted that the above mapping (Figure 3) may be **inaccurate** as the southern boundary of the PSW (Tee Creek) watercourse was found to be further north as a result of a replacement culvert at Montrose Road that improved water flow (**EIS, Section 5.1**). The revised watercourse boundary was submitted to and accepted by the Ministry of Northern Development, Mines, Natural Resources and Forestry (NDMNRF).

The City of Niagara Falls relies on the NPCA for management of regulated areas and they have provided comments in Pre-Consultation. The NPCA identifies that new development including new septic systems will not be permitted within 30m of a wetland (**8.2.3.5**) and that development may be permitted between 30 metres and 120 metres of a Provincially Significant Wetland (PSW) where there are no negative impacts on the ecological or hydrological function of the wetland (**8.2.3.6**).

The NPCA pre-consultation comments indicated that they require an EIS to be completed to be able to support this application. Similarly, Regional policies require the completion of an (EIS) when development and/or site alteration is proposed within 120m of the PSW and within 50m of Significant Woodland.

The conclusions and recommendations of the EIS are discussed in detail later in this report. Overall, the EIS recommends the reduction of the 30m buffer zone to a 15m buffer zone in accordance with Policy **8.2.3.5.c**. The location of the proposed building has been chosen to minimize any disturbance to the PSW and the significant woodlands while complying with the Niagara Falls planning policies. The fish and

woodland habitats have been considered both during and after construction of the dwelling. Additionally, there are no alternative locations outside of the 30m buffer zone and the impacts are minimal when considering the entire area of the PSW.

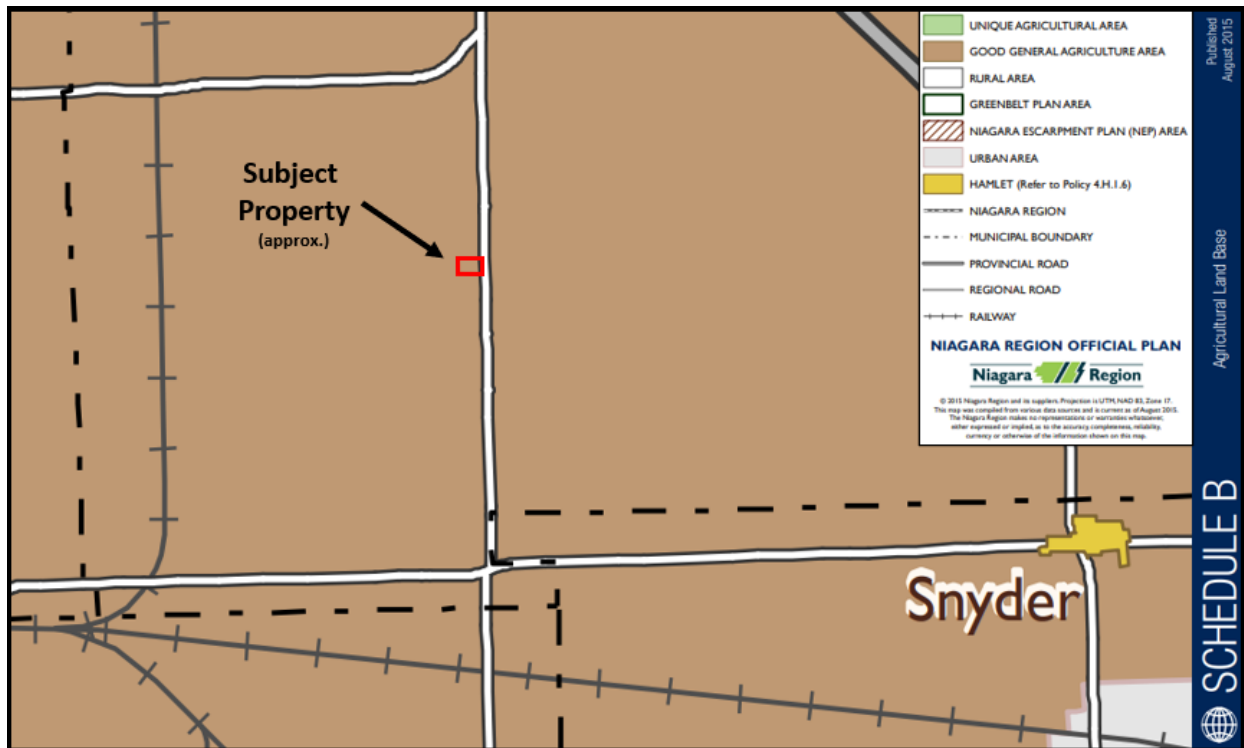
With the supporting EIS, the proposal avoids and mitigates all potential negative environmental impacts. Therefore, the application conforms with the Niagara Peninsula Conservation Authority policy document.

4.4 NIAGARA REGION OFFICIAL PLAN, 2014

The Niagara Region Official Plan (NROP) contains objectives, policies and mapping that describe the Region’s vision for the next 20+ years, including their approach to managing growth, growing the economy, protecting the natural environment, resources, and agricultural land, and providing sustainable infrastructure.

The subject property is designated as Good General Agricultural and Core Natural Heritage System with Provincially Significant Wetlands and Significant Woodlands in the Niagara Region Official Plan. **Figure 5**, below, shows the property designation and surrounding land uses.

Figure 5: Niagara Region Official Plan



The subject property is an agriculturally designated property with a unique opportunity for a low-density development. The proposal aims to conserve and enhance natural resources within and surrounding the property (**Objective 5.A.3**) while providing an efficient development pattern compatible with the surrounding land uses (**Objective 5.A.5**). In addition, the introduction to new non-agricultural

development shall be strictly limited (**Policy 5.B.7**) however may be considered if there are no reasonable alternatives in Rural or Urban Areas (**Policy 5.B.7.d**).

This application is supported by technical studies to ensure the development has appropriate area for private servicing (**Policy 5.B.7.h**) and any potential negative environmental impacts are avoided or mitigated against (**Policy 7.A.2**). The natural environment is to be maintained for future generations (**Objective 7.1**) while encouraging environmental stewardship of the property and surrounding properties (**Objective 7.5**).

The proposed detached dwelling is a common land use in this area and provides an efficient use of the lands. The subject property would otherwise remain vacant without a detached dwelling as it is not a suitable size or topography for any agrarian activity. The natural environment on and surrounding the property are to be maintained and protected for future generations. An EIS has been completed to ensure that the proposed rezoning and subsequent dwelling construction is taking all necessary precautions towards an appropriate and thoughtful development in this environmentally sensitive area.

As the rezoning will permit the efficient use of the property while protecting the natural heritage in the area; the proposed rezoning conforms with the Region's Official Plan.

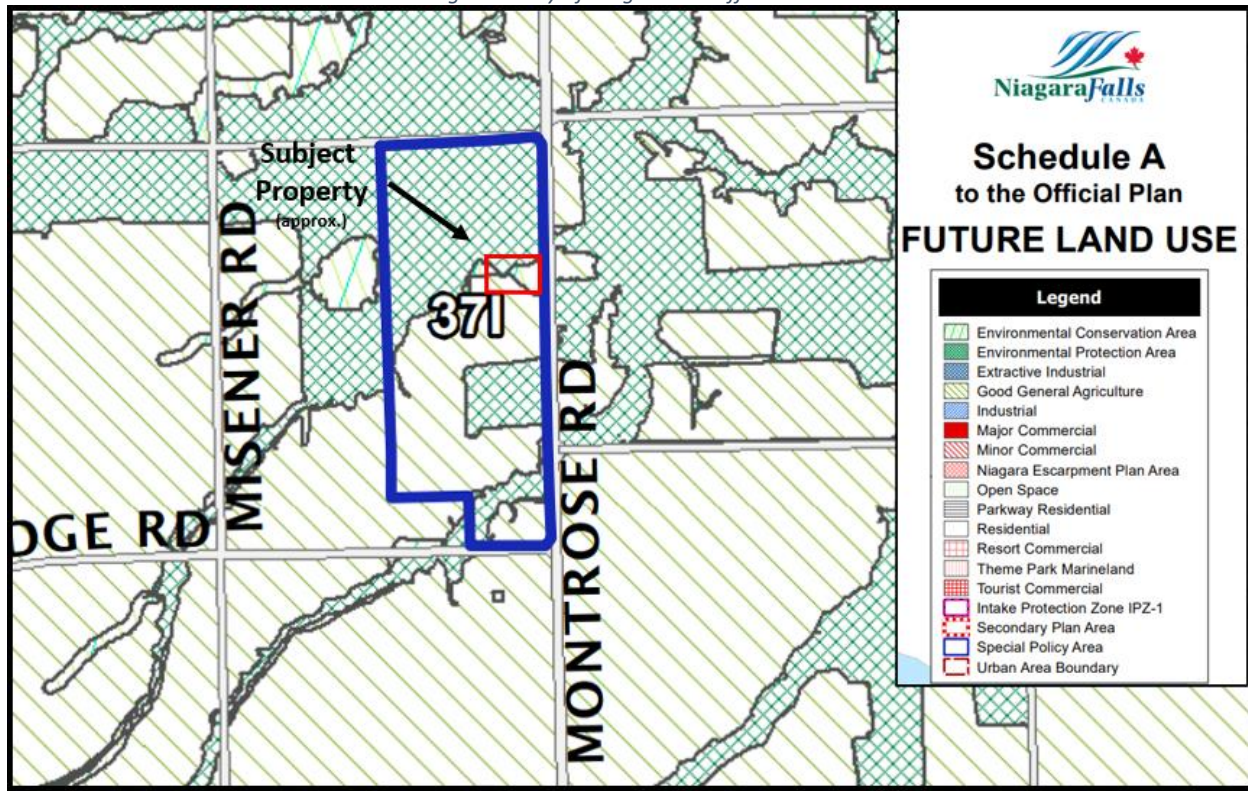
4.5 CITY OF NIAGARA FALLS OFFICIAL PLAN, 2019

The City of Niagara Falls Official Plan (NFOP) designates the property as Environmental Protection Area and Environmental Conservation Area in a Good General Agricultural Area. As shown in **Figure 6**, the property is also part of the Special Policy Area 37.

Special Policy Area 37 (**13.37.1.1**) speaks to how the lands were subdivided through a testamentary devise process that resulted in numerous "rural-residential" type lots. These lots do not address the municipality's land use planning policies as they circumvent the Planning Act, nor do they meet the provisions in the Zoning By-Law as many parcels are undersized. To ensure consistent development of these properties, Council has specified that a minimum lot area of 1.01ha (2.5ac) with a minimum lot frontage of 60m (200ft) is required (**13.37.1.2.1.a & b**).

Additionally, Council encourages the amalgamation of parcels to reduce the impact of unplanned rural development and to provide estate sized parcels (**13.37.1.2.5**). Two (2) undersized testamentary devise parcels are to be merged on title to meet the above policies and the provisions in the Zoning By-Law (**13.37.1.2.3**). The application conforms with the policies of the Special Policy Area 37 in the City of Niagara Falls Official Plan.

Figure 6: City of Niagara Fall Official Plan



The NFOP designates the property as Environmental Protection Area (EPA) and Environmental Conservation Area (ECA) in a Good General Agricultural Area.

In addition to the guidance provided by the Region, City and NPCA staff, an EIS is required by policy under section 11.1.17 of the NFOP. The EIS was completed and provided direction on avoidance and mitigation strategies with respect to the environmentally sensitive areas on the subject properties. The EIS ultimately supports the rezoning and construction of the new dwelling with reduced setbacks to the PSW/EPA (11.2.16). There were no endangered or threatened species observed on the subject property (11.2.17) and the overall impact of the proposed development is minimal when considering the area of the entire area of the PSW or EPA.

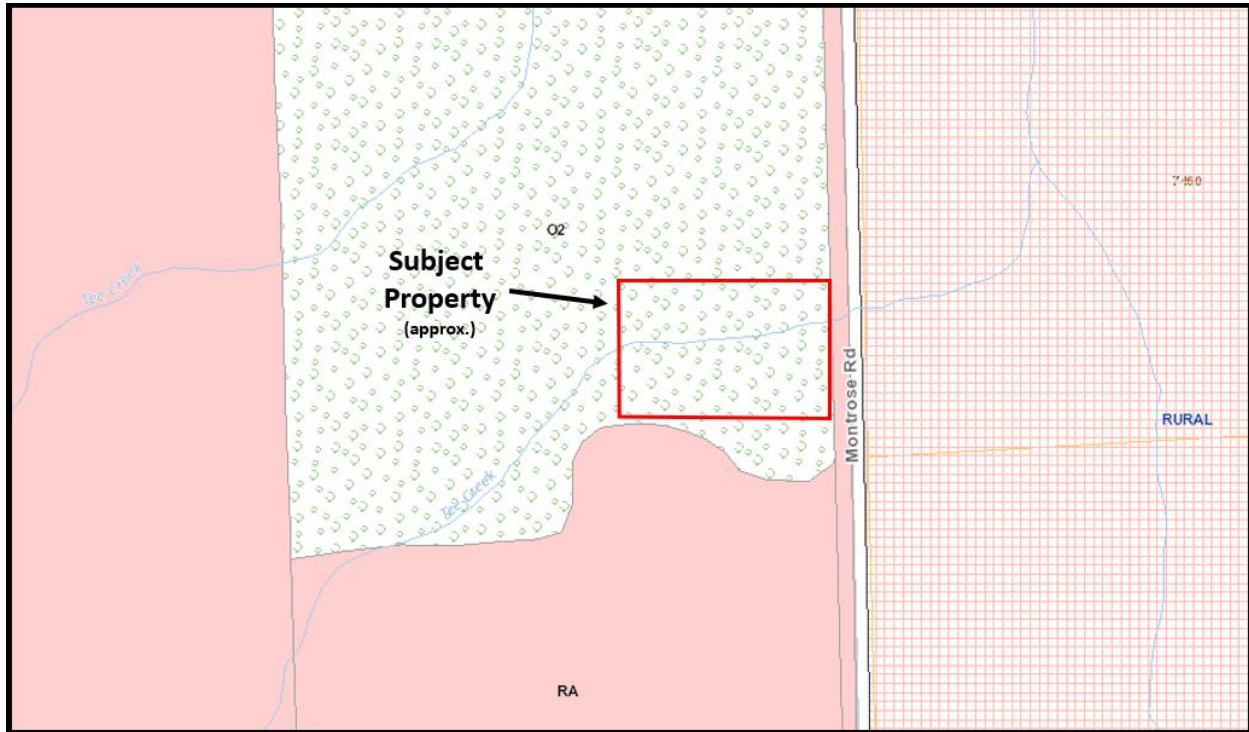
Lastly, the non-agricultural use of these lands is not permitted in the Good General Agricultural Area. Although, Council may consider site-specific uses and provisions in accordance with Section 7.4. With that being said, the Special Policy Area 37 policies, discussed above, shall guide this application closely as they are more restrictive and area-specific to this proposal.

The EIS is in support of the rezoning and dwelling construction while protecting the EPAs and ECAs. The proposed rezoning conforms with the Special Policy Area 37 policies and the City's Official Plan.

4.6 FORMER TOWNSHIP OF CROWLAND ZONING BY-LAW 1589 (1958)

Former Township of Crowland Zoning By-Law 1538 (1958) as amended by By-Law 1589 (1958) regulates the subject property. The current zoning of the property is Private and Public Open Space (O2), as seen in **Figure 7** below.

Figure 7: Former Township of Crowland Zoning By-Law 1589 (1958)



It should be noted that the above mapping (Figure 7) may be **inaccurate** as the southern boundary of the PSW (Tee Creek) watercourse was found to be further north (**EIS, Section 5.1**). The revised watercourse boundary was submitted to and accepted by the NDMNRF.

This application proposes to rezone a portion of the property to Rural Agriculture (RA) from Private and Public Open Space (O2) to accommodate the proposed detached dwelling. The RA zoning permits a single family detached dwelling.

The proposed rezoning is compatible with the permitted uses of the Rural Agricultural (RA) zoning with multiple zoning compliance issue on the property. Please see “RA” zone provisions below in **Table 2**.

Table 2 – Former Township of Crowland Zoning By-law Provisions

“RA” Rural Agricultural Zone			
Zone Provisions	Required	Proposed	Comment
Min. Lot Area	1.2 ha	1.01ha	Does not comply
Min. Lot Frontage	30 m	81.3 m	Complies
Min. Front Yard	18 m	9.7m	Does not comply

Min. Interior Side Yard	4.5 m	2.8m	Does not comply
Min. Rear Yard	12 m	93.1m	Complies
Min. Ground Floor Area	88 m ²	231m ²	Complies
Min. Total Floor Area	110 m ²	231m ²	Complies
Lot Coverage	15%	+/- 2.2%	Complies

As shown in the Tables above, the proposed rezoning and dwelling construction does not meet all provisions set out by the Township Zoning By-law. The reduced minimum lot area, minimum front yard, minimum interior yard is required to be recognized and are included in this zoning by-law amendment application.

To bring this proposal into conformity with the provisions in the zoning by-law, the minimum lot area is proposed to be reduced from the required 1.2ha to 1.01ha. The minimum front yard is proposed to be reduced from the required 18m to 9.7m. The minimum interior side yard is proposed to be reduced from the required 4.5m to 2.8m.

The reduced lot area and setbacks are reasonable as development is restricted elsewhere on the property due to the environmental protection constraints. The reduced setbacks allow for adequate room for the proposed dwelling and the associated private servicing. The property would otherwise remain vacant due to the environmental constraints and the developable land envelope.

5 TECHNICAL STUDIES/REPORTS

5.1 ENVIRONMENTAL IMPACT STUDY

As part of a complete application, the City of Niagara Falls required an Environmental Impact Study (EIS) to be completed as per Regional, City and NPCA policy. LCA Environmental Consultants was contracted to conduct and complete this work. In the report dated January 2022, the following conclusions and recommendations were made:

- The removal of 0.15ha of upland forest in the Regionally Significant Woodlands
- The reduction of a portion of the 30m wetland buffer to a 15m buffer
- Mitigation measures have been recommended which will minimize negative impacts and result in no negative impacts to the adjacent PSW
- Best management practices for construction and development should be employed to mitigate negative impacts
- Pursuant to Policy 5.2.8.1 of the Growth Plan for the Greater Golden Horseshoe, the proposed development supports the Plan’s objectives and does not have any negative impact to the KHFs or the corridor.
- Development can be completed without significant negative impact to wildlife, the surrounding natural areas or their ecological functions.

Overall, the EIS supports the proposed single family dwelling development with a reduction of the wetland buffer area. This report shall also satisfy complete application requirements set out by the City.

5.2 ARCHAEOLOGICAL ASSESSMENT

As part of a complete application, the City of Niagara Falls required an Archaeological Assessment to be completed as per provincial legislation. Irvin Heritage Inc. was contracted; the Stage 1 indicated that the Study Area retained archaeological potential, which required a Stage 2 to be completed. The Stage 2 study identified no archaeological resources in the Study Area. Given those results the archaeologist made the following recommendations.

- It is the professional opinion of the archaeological licensee, Thomas Irvin (P379) that the Study Area has been sufficiently assessed and is **free of further archaeological concern**.
- Notwithstanding the above recommendations, the provided Advice On Compliance With Legislation shall take precedent over any recommendations of this report should deeply buried archaeological resources or human remains be found during any future earthworks within the Study Area.

This report should satisfy that the development can proceed.

6 PLANNING ANALYSIS

The subject property is currently a vacant property with this application proposing to rezone a portion of the property from Public and Private Open Space (O2) to Rural Agricultural (RA) to facilitate the construction of a new dwelling with associated private servicing. The dwelling is proposed to be 231.8m² (2495sqft) with three bedrooms and two bathrooms. The property will be privately serviced with a cistern and septic system.

The Provincial Policy Statement permits the proposed rezoning of the property as it ensures efficient development and use of land aligning with the existing uses of the surrounding area. The rezoning will efficiently use an otherwise unusable parcel of land to construct a detached dwelling. The biodiversity on the subject property will be conserved and will leverage the rural assets to enhance the natural heritage features for the current and future owners of this property.

The NPCA regulates most of the subject property, and the location of the proposed building has been chosen to minimize any disturbance to these lands. The fish and woodland habitats have been considered both during and after construction of the dwelling. Additionally, there are no alternative locations outside of the 30m buffer zone and the impacts are minimal when considering the entire area of the PSW. With the supporting EIS, the proposal avoids and mitigates all potential negative environmental impacts.

The NROP designates the property as Good General Agricultural and Core Natural Heritage System. The proposed detached dwelling is a common land use in this area and provides an efficient use of the lands. The subject property would otherwise remain vacant without a detached dwelling as it is not a suitable size or topography for any agrarian activity.

The NFOP designates the property as Environmental Protection Area and Environmental Conservation Area in a Good General Agricultural Area and is also part of the Special Policy Area 37. To ensure consistent development of these properties, Council encourages the amalgamation of parcels to reduce the impact of unplanned rural development and to provide estate sized parcels which aligns with the objective of this application.

The Former Township of Crowland Zoning By-law 1589 (1958) regulates the subject property. This application proposes to rezone a larger portion of the property from O2 to RA to accommodate the proposed detached dwelling. To bring this proposal into conformity with the provisions in the zoning by-law, the reduced minimum lot area, reduced minimum front yard, and reduced minimum interior yard are required to be recognized through this zoning by-law amendment application.

As part of the complete application requirements, an EIS and Archaeological Assessment were required to be conducted. The EIS makes several recommendations to mitigate any negative environmental impacts to ensure an appropriate and thoughtful development in this environmentally sensitive area. While the Archaeological Assessment found the subject property to be free of all archaeological concern.

Subject to approval of this application, the proposed rezoning and dwelling construction is consistent with the PPS and conforms the Regional and local policies.

7 CLOSING

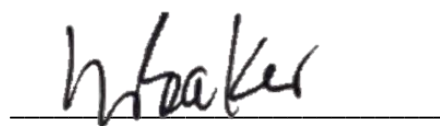
This application is consistent with the Provincial Policy Statement, and conforms to the NPCA policies, NROP, NFOP and the Former Township of Crowland Zoning By-law. The approval of this application will facilitate the construction of the single detached dwelling.

It is our opinion that this application represents good planning and should be approved.

LandPRO Planning Solutions Inc.



Michael Sullivan
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Planner