



**CITY OF PORT COLBORNE
SPECIAL COUNCIL MEETING AGENDA
TUESDAY, FEBRUARY 12, 2013 – 6:30 P.M.
Council Chambers, 3rd Floor, 66 Charlotte Street**

CALL MEETING TO ORDER Mayor Vance Badawey

1. CONFIRMATION OF THE AGENDA
2. DISCLOSURES OF INTEREST
3. DELEGATIONS
 - (a) MMM Group Limited, Planning & Environmental Design, Representing their Client Nyon Oil Inc. Re: Nyon Oil Inc. Official Plan Amendment and Zoning By-Law Amendment Applications and Update on the Latest Concept Plan (Page No. 3)
4. ITEM(S) FOR DISCUSSION:

NOTES			ITEM	DESCRIPTION	PAGE NO.	RECOMMENDATION
VB	BB	RB	1.	Department of Chief Administrative Officer, Special Projects and Strategic Initiatives, Report No. 2013-01, Subject: Council consideration of a report from Urban & Environmental Management Inc. titled, "Update & Recommendation Report on Nyon Energy Park"	9	That Special Projects and Strategic Initiatives Report No. 2013-01 report be received for information; and That Council considers the Planning "Recommendation Report" from Urban & Environmental Management Inc. in its entirety; and That Council provides direction to its Planning Consultant and Legal Counsel with respect to the Nyon Oil Inc. OMB appeal.
AD	FD	YD				
DE	BK	WS				

5. CONFIRMATORY BY-LAW

By-law No. 5916/23/13 Being a By-Law to Adopt, Ratify and Confirm the Proceedings of the Council of The Corporation of the City of Port Colborne at its Special Meeting of February 12, 2013
6. ADJOURN

MMM Group Limited
Planning & Environmental Design
100 Commerce Valley Drive West,
Thornhill, Ontario, L3T 0A1
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www.mmm.ca

January 29, 2013
File number: 14.09240.001.P01

Mayor and Members of Council
City of Port Colborne
66 Charlotte Street
Port Colborne, ON L3K 3C8

Dear Mayor Badawey and Members of Council

**Subject: Nyon Oil Inc. OPA and ZBLA Applications
City of Port Colborne Special Council Meeting – February 12, 2013**

We are forwarding this formal request for the opportunity to address Council on behalf of our client Nyon Oil Inc. at the upcoming Special Council Meeting being held on February 12, 2013. As a courtesy, we would like to update Council on the latest Concept Plan and explain differences between the current and previous submissions of the Official Plan Amendment (OPA) and Zoning By-law Amendment (ZBLA) applications. Nyon is requesting Council's support for the revised OPA and ZBLA Applications. We would also like to take this opportunity to answer any questions Council and the general public may have regarding the applications or the updated Concept Plan.

The presentation to Council will specifically include:

- An explanation of the currently submitted OPA;
- An explanation of the currently submitted ZBLA; and,
- An update on the latest Concept Plan.

Pertinent display boards including the Concept Plan, OPA Schedule "A" and ZBLA Schedule "A" will be produced and displayed during the Open House. The display boards have been attached as appendices to this letter.

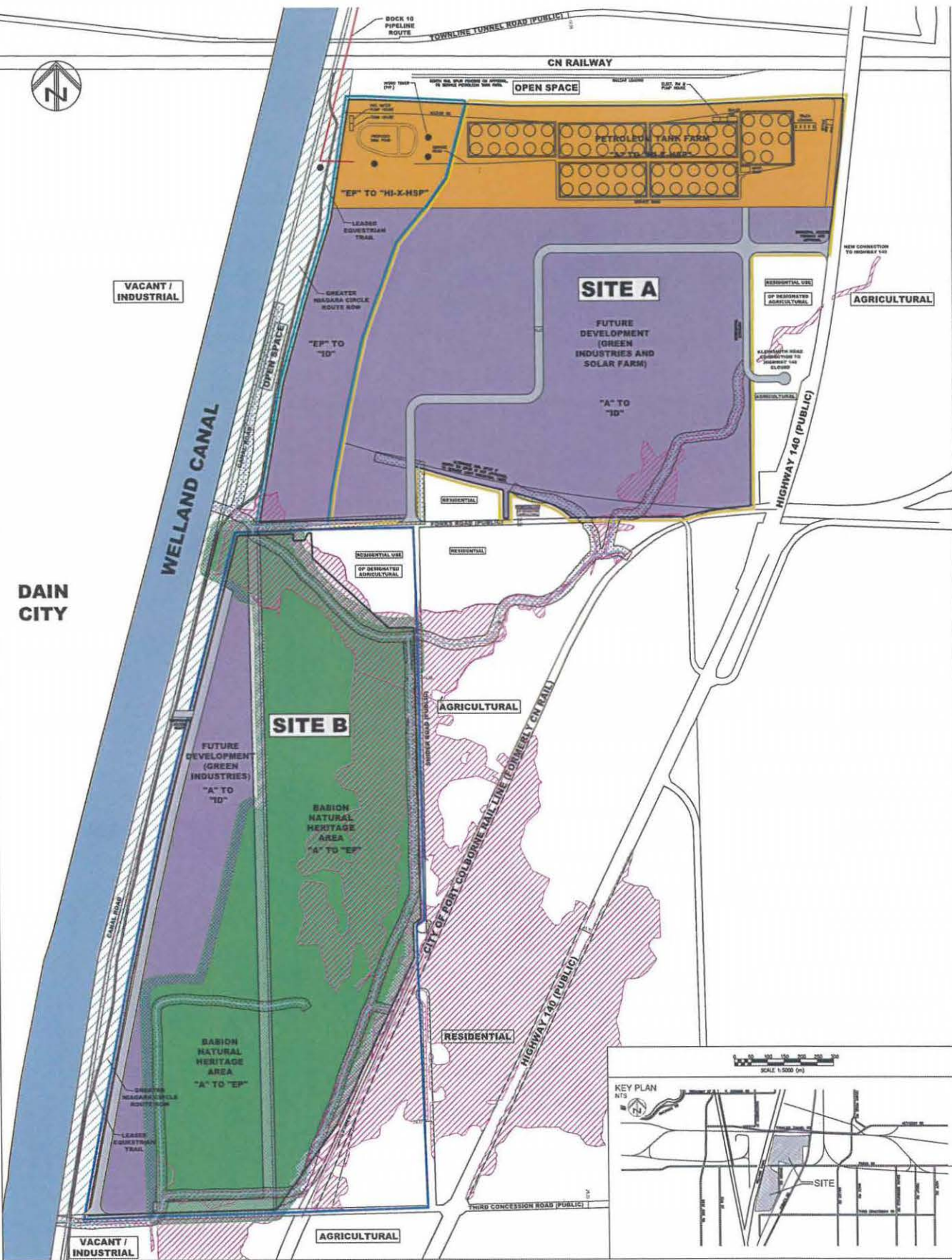
We would like to thank you for taking the time to review this request. Please contact us should you have any questions or comments regarding the proposed energy park development.

Yours truly,

MMM GROUP LIMITED

cc. Thomas A. Richardson - Sullivan Mahoney – Solicitor for City of Port Colborne
cc. Richard Brady – Planning Consultant for City of Port Colborne
cc. Cecil Vincent – Special Projects Manager, City of Port Colborne
cc. Gord Baker, Q.C. – Nyon Oil Inc.
cc. James Ayres – Nyon Legal Counsel

Encl. Appendix A – Concept Plan
 Appendix B – OPA Schedule “A”
 Appendix C – ZBLA Schedule “A”



PROJECT DATA

PROPERTY ADDRESS: PART OF LOTS 23, 24, & 25, CONCESSION 4, PART OF LOTS 16 TO 20, CONCESSION 5, CITY OF PORT COLBORNE

SITE AREA:
 SITE A 1,760,162.8 m² / 176.0 h
 SITE B 1,392,773.7 m² / 139.3 h

ZONING: ENVIRONMENTAL PROTECTION "EP", AGRICULTURAL "A", HEAVY INDUSTRIAL WITH EXCEPTION "HI-X-HSP", LIGHT INDUSTRIAL WITH EXCEPTION "LI-X-HSP"

SETBACKS:

ENVIRONMENTAL PROTECTION	FRONT YARD	15.0 m
	REAR YARD	7.0 m
	SIDE YARD	7.0 m
HEAVY INDUSTRIAL	FRONT YARD	15.0 m
	REAR YARD	8.0 m
	SIDE YARD	3.0 m
REGIONAL RD. / HIGHWAY	FRONT YARD	13.0 m
RAILWAY	FRONT YARD	1.5 m
HYDRO CORRIDOR	FRONT YARD	1.5 m

SITE LEGEND:

[Solid line]	PROPERTY BOUNDARY	[Hatched pattern]	GREATER NIAGARA CIRCLE ROUTE
[Dashed line]	HYDRO CORRIDOR	[Dotted pattern]	LEASED EQUESTRIAN TRAIL
[Thin solid line]	INTERNAL ROAD NETWORK	[Red hatched pattern]	DOCK 10 PIPELINE ROUTE
[Blue hatched pattern]	LIGHT INDUSTRIAL	[Blue wavy pattern]	WATERCOURSE
[Orange hatched pattern]	HEAVY INDUSTRIAL	[Green hatched pattern]	15 METRE VEGETATIVE BUFFER
[Green hatched pattern]	NATURAL HERITAGE AREA	[Red hatched pattern]	FLOODPLAIN
[Dark green hatched pattern]	NATURAL HERITAGE AREA 30 METRE BUFFER	[Blue hatched pattern]	DEFERRED INDUSTRIAL
[Pink hatched pattern]	FLOODPLAIN	[Yellow hatched pattern]	AGRICULTURAL
[Blue hatched pattern]	DEFERRED INDUSTRIAL	[Light blue hatched pattern]	OPEN SPACE

OWNER'S AUTHORIZATION
 I AUTHORIZE MMM GROUP LIMITED TO PREPARE AND SUBMIT THIS CONCEPT PLAN TO THE CITY OF PORT COLBORNE FOR APPROVAL.
 WYOM OIL INC. _____ DATE _____

SURVEYOR'S CERTIFICATE
 I HEREBY CERTIFY THAT THE BOUNDARIES OF THE LAND TO BE SURVEYED AS SHOWN ON THIS PLAN AND THEIR RELATIONSHIP TO THE ADJACENT LANDS ARE ACCURATELY AND CORRECTLY SHOWN.
 _____ DATE _____

PLANNER'S CERTIFICATE
 PLAN PREPARED BY
 MMM GROUP LIMITED
 _____ DATE _____

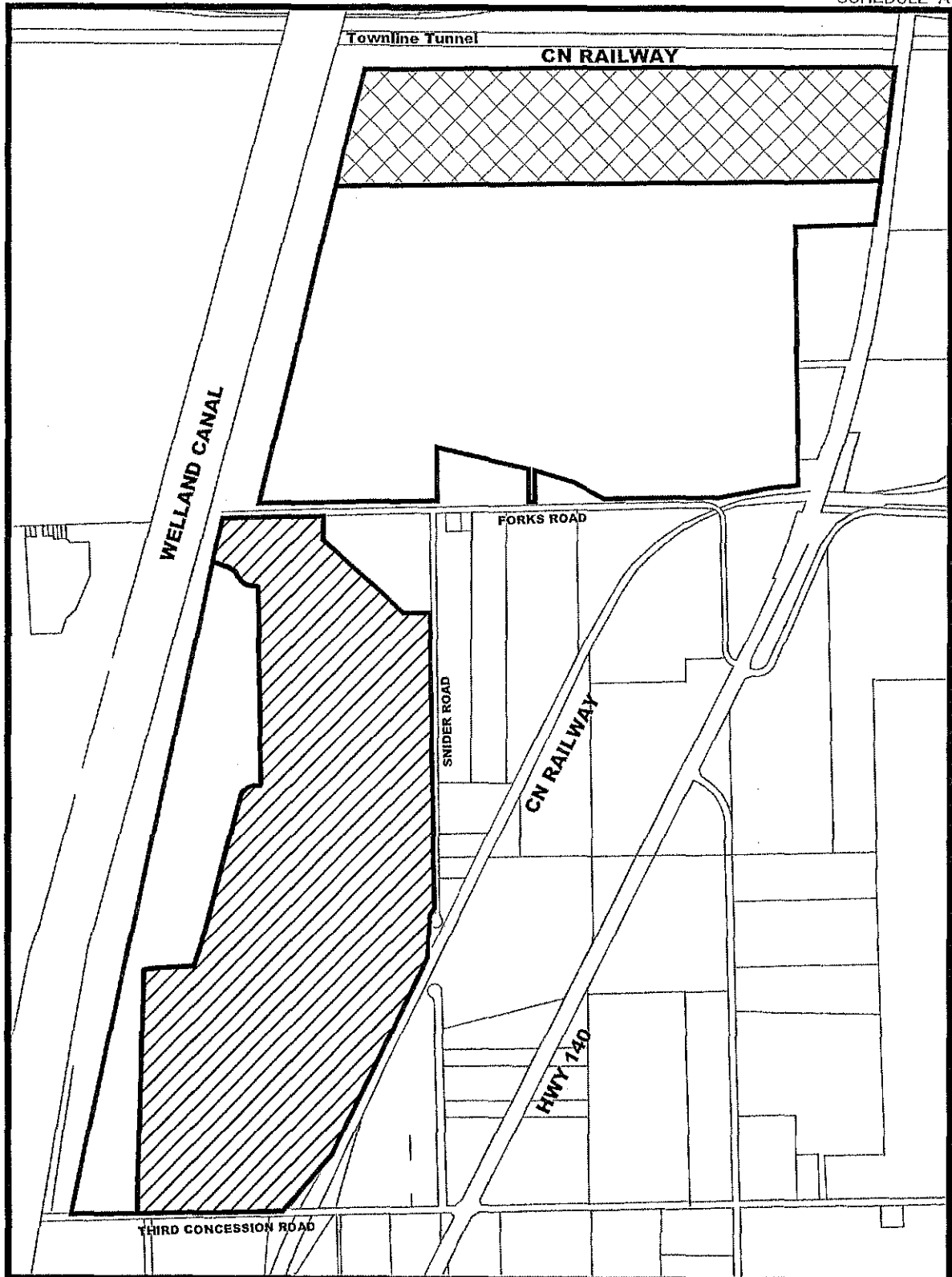
TITLE: CONCEPT PLAN

MMM GROUP

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 Thornburg, ON L3T 9A1
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 F: 905.882.7270
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Scale 1:5000
 14-09240-001-P01

NO.	REV.	DATE	DESCRIPTION
1	01	2014-09-24	ISSUED FOR APPROVAL





THIS IS SCHEDULE "A" TO OPA NO. _____

PASSED THE _____, 2013

MAYOR

CLERK

 LANDS TO BE RE-DESIGNATED FROM "RURAL EMPLOYMENT" TO "INDUSTRIAL HEAVY"

 LANDS TO BE RE-DESIGNATED FROM "ENVIRONMENTAL CONSERVATION AREA" AND "ENVIRONMENTAL PROTECTION AREA" TO "ENVIRONMENTAL PROTECTION AREA"

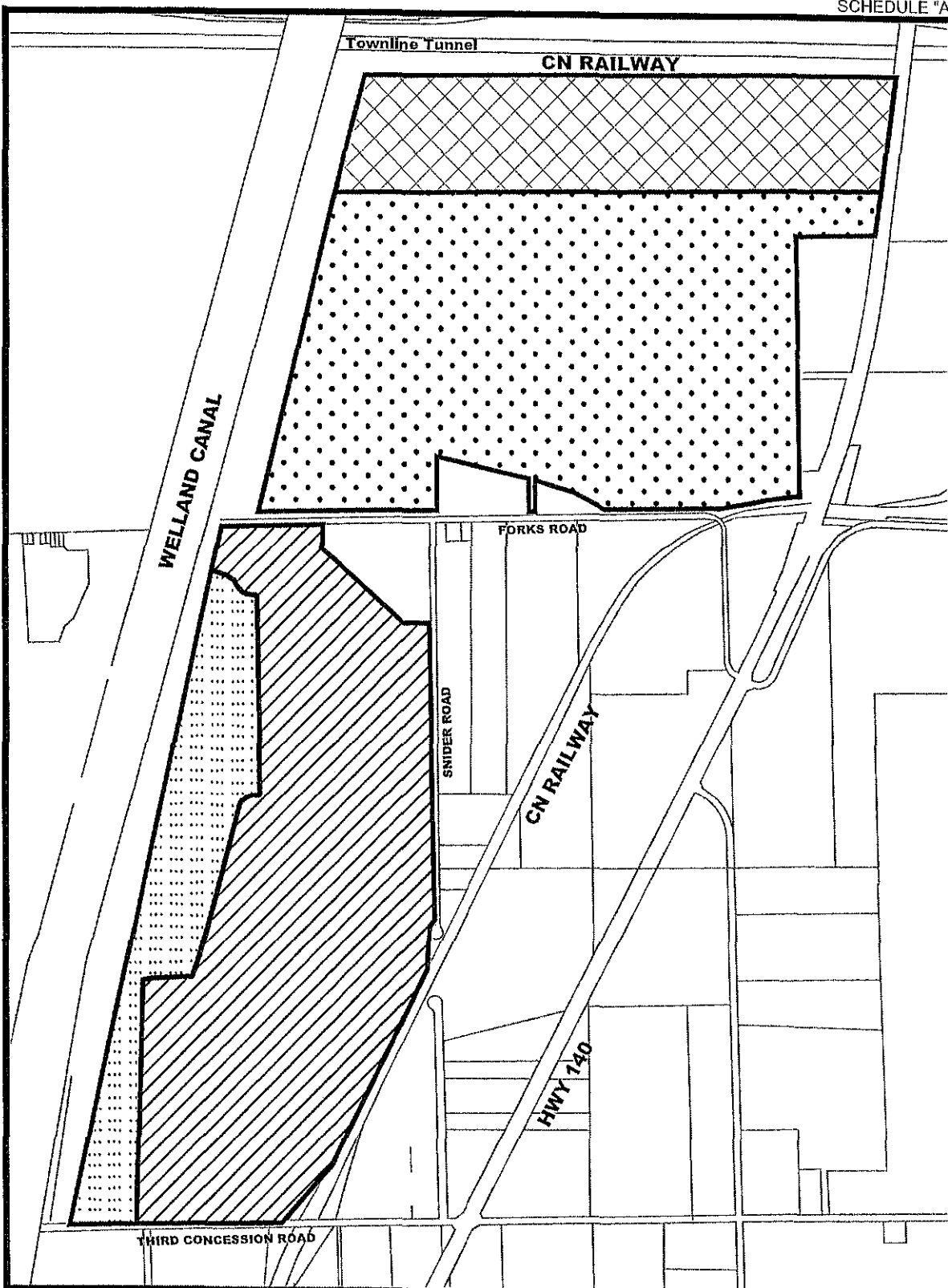


DATE: _____

FILE NO. _____

SCALE: NTS

DRAWN BY: TB







THIS IS SCHEDULE "A" TO BY-LAW NO. _____

PASSED THE _____, 2013

MAYOR _____

CLERK _____

-  LANDS TO BE REZONED FROM "A" & "EP" to "HI-X-HSP"
-  LANDS TO BE REZONED FROM "A" & "EP" to "ID"
-  LANDS TO BE REZONED FROM "A" to "EP"
-  LANDS TO BE REZONED FROM "A" to "ID"



DATE:

FILE NO.

SCALE: NTS

DRAWN BY: TB



Report Number: 2013-01

Date: February 12, 2013

SUBJECT: Council consideration of a report from Urban & Environmental Management Inc. titled, "Update & Recommendation Report on Nyon Energy Park".

1) PURPOSE:

This report provides a general outline of activities that have been a part of the final preparation and submission to Council of an "Update & Recommendation report on NYON Energy Park" prepared by our independent planning consultant, Mr. Rick Brady, M.A., MCIP, RPP of Urban and Environmental Management Inc. (UEM).

Mr. Brady's report recommends that City Council provide specific direction to our representatives at the upcoming Ontario Municipal Board (OMB) hearings. The hearing is scheduled to take place starting on April 15, 2013 and possibly lasting several days, depending upon any objections received by the OMB to the requested Official Plan Amendment (OPA) and Zoning By-law Amendment (ZBA) being proposed for the Energy Park Lands.

2) HISTORY, BACKGROUND, COUNCIL POLICY, PRACTICES

The "Update & Recommendation Report on Nyon Energy Park" is being submitted after more than 3 years of meetings. These discussions have been between the City's Strategic Planning Office, Mr. Rick Brady of UEM and our legal advisor Mr. Thomas A. Richardson, B.A. LL.B, C.S. of Sullivan Mahoney, and Nyon Oil Inc. and their planning consultant MMM. Ltd., its legal representative Mr. Jim Ayres LL.B., and Mr. Gordon Baker, Q.C., President of Nyon Oil Inc.

In addition to the staff and consultant meetings noted above, there were many other meetings that included several public presentations at City Hall. Members of the Council and the Public were invited to meet with Nyon Oil Inc. officials and their various consultants to obtain any information they felt was needed from the proponents, Nyon Oil Inc.

Meetings have also been ongoing over this period between the City of Port Colborne and Nyon Oil Inc. and the Region of Niagara Planning Staff, the Niagara Regional Conservation Authority, the Ontario Ministry of Transport, and the Ministry of Municipal Affairs and Housing.

All has been part of the process deemed necessary for the City of Port Colborne to properly prepare for the OMB hearing which was scheduled after Nyon Oil Inc. was successful in an Ontario Divisional Court decision in 2009. That decision provided to Nyon Oil Inc. the status to appeal to the OMB the City of Port Colborne's decision on June 15, 2009 to deny the application for a City Official Plan amendment and a Zoning

Bylaw amendment and to notify the Region of Niagara that it had done so. This decision was based upon the recommendations contained in our UEM planning report dated May 29, 2009, (attached as schedule1) and with the following recommendation:

"It is my recommendation that the City of Port Colborne deny the proposed amendments to the City's Official Plan and Zoning Bylaw.

Further it is my recommendation that the Council of the City of Port Colborne inform the Regional Niagara that it has denied the applications for Official Plan Amendment and Zoning Bylaw Amendment and that it does not support the current application to Regional Niagara for a policy plan amendment.

Finally I recommend that NYON Energy Corp be provided with a copy of this recommendation report."

The 2009 UEM report notes in its conclusion:

"That based upon the information that has been provided by NYON Energy Corp. and despite the number of requests for information by myself that have not been responded to, it is my conclusion that the current applications for an Official Plan Amendment and Zoning Bylaw Amendment are incomplete. It is time to make a decision on this project. Given the length of time (over 4 years) that this project had been considered by the City of Port Colborne and lack of responses from NYON Energy Corp. it is my professional opinion that the applications for an Official Plan Amendment and Zoning Bylaw Amendment should be denied by Port Colborne Council. Based on the merits of the information that has been provided there has been insufficient information to move the application forward and it is my recommendation that the application be denied."

City Council accepted the recommendations from our planning consultant and voted to approve the recommendations as presented and to deny the ZBA and OPA requested.

3) STAFF COMMENTS AND DISCUSSIONS

The process to prepare for the upcoming OMB hearing has been a very detailed and complicated process but also a very open process. Direction was received from City Council that every effort was to be made to keep members of City Council and members of the public aware of the evolution of the development proposals which evolved as more detailed studies were completed on the Energy Park Lands. The UEM report dated February 12, 2013 is the culmination of that direction.

As a part of the final process to prepare this UEM "Update & Recommendation report on NYON Energy Park" for City Council the draft OPA and ZBA have been vetted by the Province of Ontario Municipal Affairs Planning officials, Region of Niagara Planning, City of Welland Planning, and NYON Oil Inc.'s planning consultants MMM Ltd.

City Strategic Planning staff has discussed the OPA and ZBA details with our consultants as well and believes the approach being proposed is very appropriate. Because of the change in City Council direction from the 2009 vote staff has requested that Mr. Brady provide Council a full and detailed commentary on the planning justifications that have resulted in the new proposed City Council support for a new ZBA and OPA.

The "Update & Recommendation Report on NYON Energy Park", from UEM Inc. on page # 6, provides the following recommendations to Council for their consideration:

1. "That Port Colborne City Council instructs Urban & Environmental Management Inc. to present the recommendations contained in this report on the NYON lands at the upcoming OMB hearing.
2. That Port Colborne Council support the notwithstanding provision for the Port Colborne Official Plan on the northerly portion of the NYON lands that are proposed for a tank farm.
3. That Port Colborne Council supports the revised designation of lands Environmental Protection on NYON lands.
4. That Port Colborne Council support the approach outlined in this report for zoning of the NYON lands.
5. That the proposed Official Plan Amendment and Zoning By-Law Amendment that are attached to this report be supported by Port Colborne Council at the upcoming Ontario Municipal Board in April 2013."

While no objections have been raised to date to the drafts, it is important to note that even if supported by Council as requested, the final decision to either approve / amend or reject is that of the OMB's as this matter is before a formal OMB hearing commencing on April 15, 2013.

Council is asked to direct questions as appropriate to either Mr. Brady or Mr. Richardson on any aspects for the "Recommendation Report" or attached documentation, as they deem necessary. The Office of Special Projects and Strategic Initiatives will also provide whatever assistance Council requires to inform Council of its involvement, should such an area of questioning be deemed informative to Council in their deliberations.

4) OPTIONS AND FINANCIAL CONSIDERATIONS:

a) Do nothing.

City Council can choose to not change its current position, which has been appealed by Nyon Oil Inc. to the OMB. This is not the option that is being proposed by our independent planning consultant and Council should evaluate the direction it wants to support based upon that advice.

b) Other Options

It is recommended that subject to Council's own determination of the direction it wants to support, Council decides whether it has sufficient information to approve the recommendations contained in the UEM "Update & Recommendation Report on NYON Energy Park" report from dated February 12, 2013.

5) COMPLIANCE WITH STRATEGIC PLAN INITIATIVES

This project is not specifically identified in the current City of Port Colborne Strategic Plan but is consistent with the ongoing efforts of the Port Colborne Economic Development, Tourism and Marketing Department to promote economic expansion and retention in the City.

6) ATTACHMENTS

Planning "Recommendation Report" from Urban & Environmental Management Inc. dated February 12, 2013 addressed to Mayor Vance Badaway and Councillors, to the attention of Mr. Cecil E. Vincent, Manager of Special Projects and Strategic Initiatives.

7) RECOMMENDATION


That Special Projects and Strategic Initiatives Report No.: 2013-01 report be received for information; and

That Council considers the Planning "Recommendation Report" from Urban & Environmental Management Inc. in its entirety; and

That Council provides direction to its Planning Consultant and Legal Counsel with respect to the Nyon Oil Inc. OMB appeal.

8) SIGNATURES

Prepared on January 23, 2013 by:


Cecil E. Vincent
Manager of Special Projects and Strategic Initiatives

Reviewed and Respectfully Submitted:


Robert J. Heil
Chief Administrative Officer

URBAN &
ENVIRONMENTAL
MANAGEMENT INC.

PROFESSIONAL CONSULTING SERVICES



February 12th, 2013

Program Management

Asset Management

Environmental &
Quality Management
Systems

Occupational
Health & Safety

Municipal Engineering

Development
Planning & Approvals

Environmental
Assessment

Strategic &
Policy Planning

Transportation
Planning & Engineering

Waste Management

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uemconsulting.com

Mayor Vance Badaway & Councillors

City of Port Colborne

66 Charlotte Street

Port Colborne, Ontario

L3K 3C8

**Attn: Cecil E. Vincent, Manager of Special
Projects & Corporate Strategic Initiatives**

Re: Update & Recommendation Report on NYON Energy Park

I am pleased to provide this update and recommendation report to Port Colborne Council. It outlines the activity that has taken place since my report dated May 29th, 2009 on the NYON Energy Park. This report outlines the significant activity that has taken place in the last three and a half years on this project. Furthermore, it provides recommendations for the upcoming Ontario Municipal Board hearings scheduled for April 8th to April 27th, 2013.

ACTIVITY SINCE MAY 29th, 2009

The following chronology outlines some of the significant activity that has occurred since May 29th, 2009.

- NYON appealed the decision of Port Colborne Council
- NYON agreed to provide technical studies supporting their proposed application
- Regional Niagara adopted Regional Plan Amendment RPPA 1-2012 providing for NYON lands to be included in the Gateway Economic Centre Lands
- Port Colborne Official Plan approved by Regional Council (November 28th, 2012)
- Province of Ontario and City of Welland comment on Rural Employment designation on NYON lands
- Peer Review comments from Associated Engineering on technical studies
- No appeals filed on "Rural Employment" designation in Official Plan

A brief outline of the significance of each of the activities follows.

NYON APPEALED THE DECISION OF PORT COLBORNE COUNCIL

Port Colborne Council denied the application for an Official Plan Amendment and Zoning By-law amendment based on a lack of technical information about the proposed project. NYON filed an action with the Courts to be considered the applicant on the submitted amendments and was granted status as an applicant. Subsequently, NYON filed an appeal of the OPA and ZBA to the OMB. There have been several pre-hearings of the OMB on procedural matters. The hearing is now set for April 8th to April 27th, 2013.

NYON AGREED TO PROVIDE TECHNICAL STUDIES

The firm of MMM Limited was retained by NYON to undertake additional technical studies to provide the necessary information in support of its proposal. These recent technical studies are in addition to the earlier studies prepared by AMEC that were reviewed by Regional Niagara and the NPCA, at the time and found to be insufficient. There were several meetings held to determine the types of additional studies that should be provided. Regional Niagara and NPCA staffs were canvassed on what additional technical studies should be provided. The following additional technical studies were received:

- Concept Plan dated May 13th, 2012
- Planning Justification Report dated May 2012
- Noise Impact Study dated May 2012
- Air Emission Compliance Assessment dated May 2012
- Traffic Impact Study dated May 2012
- Hydrogeological Report dated May 2012
- Functional Servicing Report dated May 2012
- Groundwater impact and Environmental Management Plan dated May 2012
- Implementation Plan dated May 2012
- Natural Gas Wells Assessment dated November 2012
- On December 23rd 2012 a preliminary Environmental Impact Study (natural heritage) was received from NYON. This type of study required field work over several seasons and therefore required more time to complete

REGIONAL NIAGARA RPPA-1-2012

The Regional Municipality of Niagara completed a study of "Gateway" lands in Niagara and identified the proposed NYON lands as an appropriate area for rural industrial development. The NYON lands were designated "Rural Employment" when Regional Plan Amendment 1-2012 was approved by Regional Council. With this Regional designation there was no further need for a Regional Plan Amendment to permit dry industrial development of the NYON lands.

Subsequently on September 24th, 2012 the application for the Regional amendment was withdrawn by Port Colborne Council and by NYON. Therefore, there is no need for the scheduled April 2013 Ontario Municipal Board hearing to consider the issue of a Regional Plan Amendment. The OMB has been notified of the withdrawal.

PORT COLBORNE OFFICIAL PLAN APPROVAL (DECEMBER 6th, 2012)

The City of Port Colborne's overall Official Plan was approved by Regional Council on December 6th, 2012. In this document there were references to the rural employment lands. Comments were received from both the Province and the City of Welland concerning the designation of the NYON lands as industrial lands. The Region disagreed with the approach of the City of Welland to require an Official Plan Amendment for any development of the Rural Employment Lands. They clearly stated that the NYON property is "an area where development should be encouraged". In the end, the policy was approved with one additional policy that provides for revisions to be submitted by NYON to be considered by the OMB and if there are no proposed changes the approved policies apply.

The approach used by Port Colborne Council of including "Rural Employment" designation has provided the designation for the developable portion of the NYON lands. Furthermore, the environmental features have also been designated. These provisions are not under appeal.

The Region when it approved the Port Colborne Official Plan (December 6th, 2012) added a modification to the "Rural Employment" designation. This modification provides that the lands of NYON "are presently before the Ontario Municipal Board under appeal and the OMB shall determine what uses are permitted and any other requirement that may be necessary. In the event, the OMB denies the appeal then the policies of this section shall apply".

PEER REVIEW COMMENTS FROM ASSOCIATED ENGINEERING (DECEMBER 2012)

The City of Port Colborne contracted to Associated Engineering the responsibility to undertake a peer review of all technical reports received by May 2012. This peer review is now complete and has advised the following:

The peer review team divided the developable portion of the site into three geographic areas. The first being the tank farm, the second being lands north of Forkes Road and the third being the lands south of Forkes Road within the land holdings of NYON. The work was reviewed from both a conceptual level and a detailed design perspective. A copy of the summary table is attached to this report.

From a conceptual level the technical information that was supplied has “satisfied” the peer review team for the Tank Farm. From a detailed design perspective “additional information is required based on the comments of the peer review team”.

For Site A the lands north of Forkes Road within the NYON development site the peer review team identified that some of the technical information satisfied their review at a conceptual level but significant work remains from both a conceptual level and detailed design perspectives.

For Site B the land south of Forkes Road within the NYON development site the peer review team identified that from their perspective “No information” has been supplied at either a conceptual or detailed design perspective.

In summary, the peer review supports the tank farm at a conceptual level but required some additional technical work to support the tank farm from a detailed design level. Overall, the rest of the proposed NYON development requires additional technical information at both a conceptual and detailed design level.

PROPOSED OFFICIAL PLAN AMENDMENT

NYON had proposed that an Official Plan Amendment be approved by the OMB to permit a tank farm on the northerly portion of their property. The remainder of the property was proposed to be designated for a variety of green energy related uses. Also, based on the preliminary Environmental Impact Study (EIS) a significant amount of the property is proposed to be designated Environmental Protection Area.

Based on the planning justification work and technical studies that have been provided by NYON and also the Regional Plan Amendment for these lands it is supportable to designate the northern portion of the NYON lands for the 56 tank petrochemical storage facility by adding a notwithstanding provision to the existing Official Plan designation.

Based on the preliminary EIS and the mapping of natural environmental features in the recently approved Port Colborne Official Plan it is supportable to designate the lands as identified by NYON for natural heritage protection as Environmental Protection Area.

Based up on the peer review and the designation approved in the Port Colborne Official Pan there is insufficient planning or technical justification to change the designation of the remainder of the NYON lands from Rural Employment. This designation provides for a range of employment uses.

PROPOSED ZONING BY-LAW AMENDMENT

NYON has provided a proposed amendment to the comprehensive zoning by-law for the lands that they have an interest in developing. The current zoning on the lands as "Agricultural" does not reflect the changes that have occurred in both the Regional Plan and the Port Colborne Official Plan. It is in need of updating.

The lands will be the subject of a notwithstanding provision in the proposed Official Plan amendment and are being proposed to be rezoned heavy industrial holding (HI-X-HSP). This type of zoning would permit a 56 tank petrochemical storage facility subject to a series of identified technical studies being provided or updated based on the comments of the peer review. The zoning would clearly provide that the technical studies must be complete to the satisfaction of Port Colborne Council prior to the holding provisions being removed and permitting the development to move forward. Given the comments of the peer review this approach is supportable.

Zoning the lands designated Environmental Protection Area to a similar zone is a relatively straight forward zoning conformity exercise. It is also supportable.

The original proposal for the remainder of the NYON lands as Light Industrial Holding (LI-X-HSP) is not supportable based on the technical comments of the peer review and based on comments made by the Province when they were reviewing the Port Colborne Official Plan. An alternative way to zone the balance of the lands was needed.

The approach that is proposed in this report is to rezone the remainder of the NYON lands as "Dry Industrial Development (ID)" zone. Given the uncertainty of what employment based uses will be proposed for these lands and the lack of technical information; this approach is a prudent way to move forward. The proposed zoning would clearly identify that the lands are to be developed for dry industrial uses in the future but provide maximum control to Port Colborne Council in reviewing proposed uses. Any proposed use would require a site specific zoning by-law amendment and would require the submission of the appropriate technical studies at the time of the zoning by-law amendment application. Dependent upon the proposed use the number and scope of technical studies could be identified at that time.

This proposed zoning is in conformity with the new "Rural Employment" designation for these lands in the recently approved Official Plan and the approved Regional Policy Plan amendment.

CONCLUSIONS

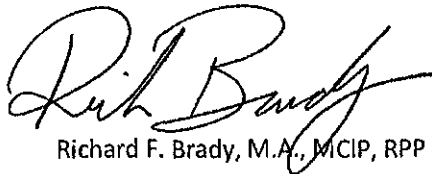
This planning report has taken into consideration the significant changes in Regional and City Official Plan policies that affect the proposed NYON development lands as well as the significant planning and technical studies supplied by NYON's consultants. There has been a great deal of change since my report to Port Colborne Council on this matter dated May 29th, 2009.

Based on all of the policy changes as well as the submissions from NYON's consultants I advise Port Colborne Council to review its position on the NYON development matters. There is a sufficient policy framework and technical justification to approve the NYON development in part. Furthermore, the proposed approach will ultimately allow the dry industrial development of the appropriate portions of the NYON lands.

RECOMMENDATIONS

1. That Port Colborne Council instructs Urban & Environmental Management Inc. to present the recommendations contained in this report on the NYON lands at the upcoming OMB hearing.
2. That Port Colborne Council support the notwithstanding provision for the Port Colborne Official Plan on the northerly portion of the NYON lands that are proposed for a tank farm.
3. That Port Colborne Council supports the revised designation of lands Environmental Protection on the NYON lands.
4. That Port Colborne Council support the approach outlined in this report for zoning of the NYON lands
5. That the proposed Official Pan Amendment and Zoning By-law Amendment that are attached to this report be supported by Port Colborne Council at the upcoming Ontario Municipal Board in April 2013.

Yours truly,
Urban & Environmental Management Inc.



Richard F. Brady, M.A., MCIP, RPP

Attachments:

- Peer Review Chart
- Draft Official Plan Amendment
- Draft Zoning By-law Amendment

Nyon Energy Park
Peer Review

	Site Access & Traffic	Site Servicing - Water Supply	Site Servicing - Sanitary Sewage	Site Drainage & Grading	Storm Water Management	Utility Connections	Emergency Services	Geotechnical	Archaeological	Noise	Air Quality	Natural Environment*
Tank Farm												
Conceptual	Satisfied	Satisfied	Satisfied	Satisfied	Satisfied	Satisfied	Satisfied	Satisfied	Satisfied	Satisfied	Satisfied	No Info
Detailed Design	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	No Info
Remainder Site A												
Conceptual	Additional Info Required	Satisfied	Satisfied	Additional Info Required	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info
Detailed Design	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	Additional Info Required	No Info
Site B												
Conceptual	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info
Detailed Design	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info	No Info

* Natural Environment Technical report submission to City Staff was pending at the time of production of this report

THE CORPORATION OF THE CITY OF PORT COLBORNE

BY-LAW NO.XXX/XX/12

**BEING A BY-LAW TO ADOPT AMENDMENT NO.XX TO THE OFFICIAL PLAN (2012)
OF THE PORT COLBORNE PLANNING AREA**

WHEREAS it is deemed expedient to further amend the Official Plan, heretofore adopted by Council for the City of Port Colborne Planning Area;

NOW THEREFORE the Council of the Corporation of the City of Port Colborne pursuant to Section 17(22) of The Planning Act, R.S.O. 1990, enacts as follows:

1. The Official Plan Amendment No. XX to the Official Plan for the City of Port Colborne Planning Area consisting of the attached explanatory text and mapping.
2. That the Clerk is hereby authorized and directed to make application to the Regional Municipality of Niagara for approval of the aforesaid Amendment No. XX to the Official Plan for the Port Colborne Planning Area.
2. This By-law shall come into force and take effect on the date upon which It is finally passed.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS XXTH DAY OF [Month] 2013.

Vance Badawey, MAYOR

Ashley Grigg, CLERK

AMENDMENT NO.XX
TO THE OFFICIAL PLAN FOR THE
PORT COLBORNE PLANNING AREA

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The Statement of Components

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- I. Minutes of Public Information Meeting held on June 13, 2012 and Minutes of Port Colborne Council Meeting held on February 11, 2013;
- II. Urban and Environmental Management Report dated February 11, 2013;
- III. Supporting Technical Studies, including:
 - MMM Planning Rationale Report
 - Floodplain Analysis Report;
 - Noise Impact Study;
 - Air Emissions Compliance Assessment;
 - Traffic Impact Study;
 - Hydrogeological Consultation Report;
 - Functional Servicing Report;
 - Groundwater Impact and Environmental (Contaminant) Management Plan;
 - Geotechnical Study;
 - Project Implementation Plan;
 - Archaeological Study;
 - Abandoned Natural Gas Well Study;
 - Environmental Impact Statement;
 - Tree Preservation Plan; and,
 - Risk Assessment Plan.

**AMENDMENT NO.XX
TO THE OFFICIAL PLAN FOR THE
PORT COLBORNE PLANNING AREA**

THE STATEMENT OF COMPONENTS

PART A - The Preamble does not constitute part of this Amendment.

PART B - The Amendment consisting of the following text and Schedule "A" constitutes Amendment No. XX to the Official Plan for the Port Colborne Planning Area.

Also attached is **PART C – The Appendices**, which do not constitute part of this Amendment. These appendices contain the background data, planning considerations and public involvement associated with this Amendment.

PART A – THE PREAMBLE

Purpose

The purpose of this amendment is to re-designate certain lands within the Port Colborne Planning Area, to permit the development of a 56 tank petroleum tank farm and distribution facility..

Location

The lands are generally bounded by the CN railway tracks to the north, Highway 140 to the east, the Welland Canal by-pass to the west and Third Concession Road to the south. A detailed map of the subject lands is attached as Schedule "A" to this Official Plan Amendment No. XX

Basis

An application has been submitted to establish an energy park in the City of Port Colborne. The energy park will include a number of light industries in addition to a ground-mounted solar energy facility and a 56 tank petroleum tank farm and distribution facility. A concept plan illustrating the intended location of these uses is provided in Schedule 1 of the Planning Rationale Report (Appendix III to OPA No. XX).

These lands are currently designated "Rural Employment", "Environmental Conservation Area", and "Environmental Protection Area".

The "Rural Employment" designation applies to two portions of the lands. First, it applies to those lands located on the west side of Snider Road and the CN Railway, north of Third Concession Road, south of Forks Road and immediately east of the Welland Canal. Second, it applies to all lands located on the north side of Forks Road, west of Highway 140, south of the CN Railway and east of the Welland Canal. The Official Plan designates these lands for employment uses based on a recent Regional Plan Amendment that designates these lands for "Rural Employment" development.

The "Environmental Conservation Area" and "Environmental Protection Area" designations occur in conjunction with one another on those lands located on the west side of Snider Road and the CN Railway, north of Third Concession Road, south of Forks Road and immediately west of the lands designated "Rural Employment".

It is proposed that these lands be re-designated to an area subject to a notwithstanding provision and "Environmental Protection Area" to permit petroleum tank farm and distribution facility and to protect a significant natural environmental area associated with the Babion Woodlot.

The use of the lands for Rural Employment purposes is warranted based on a defined need for additional industrial lands to accommodate large parcel industrial users, as outlined in the City of Port Colborne's Industrial Land Needs Study. Furthermore, these lands are within the areas identified by the Province, Region and City as an "Economic Gateway Centre" which has been identified as having a unique economic importance to the Region and the Province due to its proximity to the international border crossing and has recently been designated as "Rural Employment" with the adoption of RPPA 1-2012, the Region's Economic Gateway Amendment and the City's Official Plan.

A number of studies have been completed, which demonstrate the feasibility and appropriateness of the proposed rural employment development in this location. These studies include:

- Planning Rationale Report;
- Floodplain Analysis Report;
- Noise Impact Study;
- Air Emissions Compliance Assessment;
- Traffic Impact Study;
- Hydrogeological Consultation Report;
- Functional Servicing Report;
- Groundwater Impact and Environmental (Contaminant) Management Plan;
- Geotechnical Study;
- Project Implementation Plan;
- Archaeological Study; and
- Abandoned Natural Gas Well Study.

Further to the above studies, the following studies will be completed prior to development proceeding:

- Environmental Impact Statement;
- Tree Preservation Plan; and
- Risk Assessment Plan.

In addition to the policies outlined in Official Plan Amendment No. XX, there will be further controls governing the development on the subject property. These will include:

- Zoning By-law for Dry Industrial Development (ID) zone;
- Zoning regulations, including a holding "H" symbol so all required conditions must be cleared before development can commence;
- Site plan approval to delineate the specific nature and location of development; and
- Various required environmental approvals.

The specific nature of future industrial uses will be guided by the recommendations outlined in each of the supporting studies and adhere to standard protocol for industrial uses, including the

MOE D-6 Separation Guidelines, which will guide development and be applied during the review of the Site Plan.

It is intended that the boundaries of the proposed land use designations, as shown on Schedule "A", shall be considered as approximate, except where they coincide with roads, railways or other definite physical features. Where the general intent of the Official Plan for the Port Colborne Planning Area is maintained, minor adjustments may be made in these boundaries without necessitating an amendment to the Plan. Other than such minor adjustments, no areas of designation shall be created that do not conform to the Official Plan with respect to land use.

PART B - THE AMENDMENT

All of this part of the document entitled Part B – The Amendment, consisting of the following text and Schedule "A" constitutes Amendment No. XX to the Official Plan for the Port Colborne Planning Area.

DETAILS OF THE AMENDMENT

The Official Plan for the Port Colborne Planning Area is hereby amended as follows:

The following text is inserted into Section 3.12 of the Official Plan for the Port Colborne Planning Area:

- (s) Solar energy generating facilities and dry industrial development will be permitted uses on lands generally located south of the CN railway track, west of Highway 140, east of the Welland Canal By-pass, and north of Third Concession Road as shown on Schedule A (attached) and;

The following changes are made to Schedule A – City-Wide Land Use of the Official Plan for the Port Colborne Planning Area:

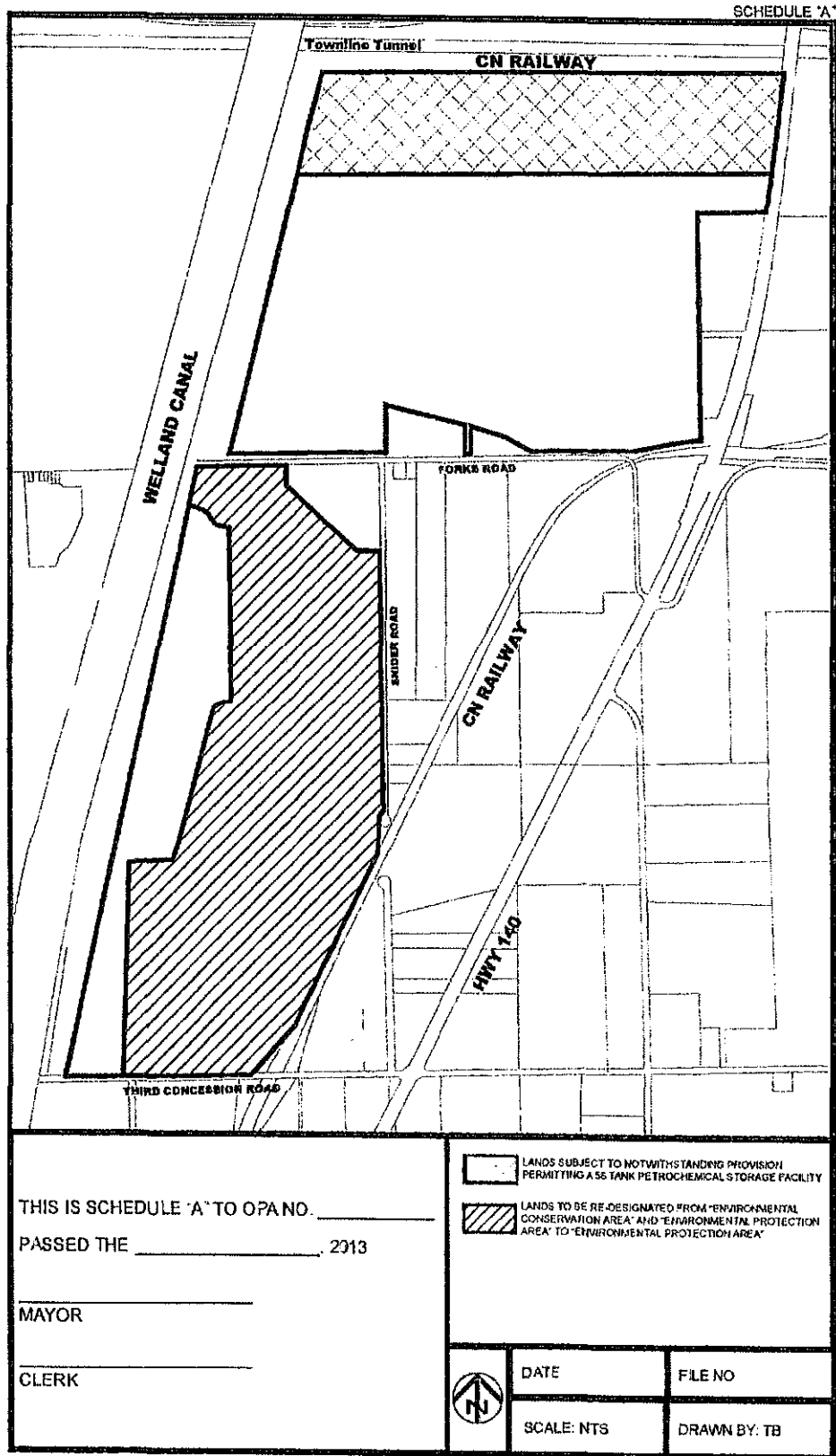
1. That the area shown as "Rural Employment" on Schedule A, attached hereto be the subject of a notwithstanding provision that permits the additional use of a 56 tank petrochemical storage facility, entitled "Schedule A to Official Plan Amendment No. XX", shall be re-designated from "Rural Employment" to "Rural Employment subject to notwithstanding provisions" and shall be so identified on Schedule A City-Wide Land Use Map of the Official Plan for the Port Colborne Planning Area.
2. That the area shown as "Environmentally Sensitive Area" on Schedule A, attached hereto, entitled "Schedule A to Official Plan Amendment No. XX", shall be re-designated from "Environmental Conservation Area" and "Environmental Protection Area" to "Environmental Protection Area" and shall be so identified on Schedule A City-Wide Land Use Map of the Official Plan for the Port Colborne Planning Area.

The implementation and interpretation of this amendment shall be in accordance with all other relevant policies of the Official Plan for the Port Colborne Planning Area.

PART C – THE APPENDICES

The following appendices do not constitute part of Amendment No. XX but are included as information to support the Amendment.

- APPENDIX I Minutes of the Public Information Meeting dated June 13, 2012 and
Minutes of Port Colborne Council Meeting held on February 12, 2013
- APPENDIX II Urban and Environmental Management Report dated February 12,
2013
- APPENDIX II Planning Rationale Report, May 2012
- APPENDIX III Supporting Technical Studies, including:
- Floodplain Analysis Report;
 - Noise Impact Study;
 - Air Emissions Compliance Assessment;
 - Traffic Impact Study;
 - Hydrogeological Consultation Report;
 - Functional Servicing Report;
 - Groundwater Impact and Environmental (Contaminant)
Management Plan;
 - Geotechnical Study;
 - Project Implementation Plan;
 - Archaeological Study;
 - Abandoned Natural Gas Well Study;
 - Environmental Impact Statement;
 - Tree Preservation Plan; and,
 - Risk Assessment Plan.



DRAFT ZONING BY-LAW AMENDMENT

THE CORPORATION OF THE CITY OF PORT COLBORNE

BY-LAW NO. _____

BEING A BY-LAW TO AMEND ZONING BY-LAW 1150/97/81, AS AMENDED, RESPECTING LANDS KNOWN AS PART OF LOTS 23, 24 AND 25, CONCESSION 4 AND PART OF LOTS 16 TO 20, CONCESSION 5, CITY OF PORT COLBORNE, LOCATED ON THE EAST SIDE OF THE WELLAND CANAL, SOUTH OF THE RAILWAY LANDS, WEST OF HIGHWAY 140 AND SNIDER ROAD AND NORTH OF THIRD CONCESSION ROAD

WHEREAS, By-law 1150/97/81, as amended, is a by-law of the Corporation of the City of Port Colborne restricting the use of land and the location and use of buildings and structures;

AND WHEREAS, the Council of the Corporation of the City of Port Colborne desires to amend the said by-law;

NOW, THEREFORE, and pursuant to the provisions of Section 34 of The Planning Act, R.S.O. 1990, the CORPORATION OF THE CITY OF PORT COLBORNE ENACTS AS FOLLOWS:

1. This amendment shall apply to those lands described on Schedule "A" attached to and forming part of this by-law.
2. That the "Zoning Map" referenced as Schedule "A" forming part of By-law 1150/97/81, as amended, is hereby amended by changing those lands described on Schedule "A" attached from "A (Agricultural)" and "EP (Environmental Protection)" to the site-specific "HI-X-HSP (Heavy Industrial - Holding)", "ID-X-HSP (Dry Industrial Development Zone - Holding)", "ID" (Dry Industrial Development Zone" and "EP (Environmental Protection)".
3. That Section 30(b) entitled SPECIAL EXCEPTIONS AND PROVISIONS OF Zoning By-law 1150/97/81, as amended, is hereby further amended by adding the following:

HI-X-HSP -- (Heavy Industrial -- Holding)

The provisions in Section 23 (HI -- Heavy Industrial) of the City of Port Colborne Zoning By-law 1150/97/81 will continue to apply to the lands zoned "HI-X-HSP (Heavy Industrial - Holding)". The permitted uses will be restricted to a 58 tank petrochemical storage and distribution facility.

Notwithstanding the above, the uses permitted in Section 23 of this By-law shall not occur until the Holding Symbol (HSP) on the "HI-X-HSP (Heavy Industrial -- Holding)" zone is removed through an amending By-Law enacted by the City of Port Colborne. The Holding (HSP) provision will be administered to provide Council with the authority to ensure a Phase 2 Archaeological Study, a Geotechnical Study, a Noise Study, an Air Quality Study, Site Access and Traffic Study, a Vibration Study, a Tree Preservation Plan, an Environmental Impact Statement, and a Risk Assessment Report have been undertaken to the satisfaction of the City and appropriate approval authorities. Removal of the Holding Symbol (HSP) may only occur when:

- i) The Owner enters into and registers on title a Site Plan Agreement with the City of Port Colborne which will include recommendations made in the supporting technical studies conducted in association with the development application;
- ii) The above mentioned technical studies and their recommendations are satisfactory to the City of Port Colborne,
- iii) Prior to the City entering to the Site Plan Agreement, approval shall be obtained from the applicable approval authority which identifies an appropriate location and design for a private sewage disposal system and private water supply system to adequately and appropriately service the proposed use; and,
- iv) Meets Species at Risk requirements to the satisfaction of Ministry of Natural Resources.

ID -- (Dry Industrial Development Zone)

It is intended that the boundaries of the proposed zones, as shown on Schedule "A", shall be considered as approximate, except where they coincide with roads, railways or other definite physical features. Where the general intent of the City of Port Colborne Zoning By-Law 1150/97/81 is maintained, minor adjustments may be made in these boundaries without necessitating an amendment. Other than such minor adjustments, no areas of implementing zones shall be created that do not conform to Zoning By-Law 1150/97/81.

Prior to any dry industrial development of lands zoned "ID", a Zoning By-Law Amendment is required and appropriate technical studies including a Phase 2 Archaeological Study, a Geotechnical Study, a Noise Study, an Air Quality Study, a land use compatibility study, Site Access and Traffic Study, a Vibration Study, a Tree Preservation Plan, an Environmental Impact Statement, and a Risk Assessment Report may be required dependent upon the use proposed. A pre-consultation meeting will be held to identify which studies are required and to scope the extent of the studies.

The above mentioned technical studies and their recommendations are to be satisfactory as determined by the City of Port Colborne.

Prior to the City entering into the Site Plan Agreement, approval shall be obtained from the applicable approval authority which identifies an appropriate location and design for a private sewage disposal system and private water supply system to adequately and appropriately service the proposed use.

4. That this By-law shall come into force and take effect on the day that it is passed by Council, subject to the provisions of The Planning Act.

6. The City Clerk is hereby authorized and directed to proceed with the giving notice of the passing of this by-law, in accordance with The Planning Act.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS
XX DAY OF XXXXXXX, 2013.**

Vance Badawey, MAYOR

Ashley Grigg, CLERK

