

City of Hamilton Staff Comments on ERO 025-1081 – Proposed Regulation under the Ontario Heritage Act – Archaeology Exemption Criteria.

Note that Hamilton Planning Committee and City Council will be reviewing these comments at their January 13, 2026, and January 21, 2026 meetings. Hamilton City Council may choose to amend or add to the enclosed comments which would be provided in a subsequent letter.

ERO 025-1081 – Proposed Regulation under the Ontario Heritage Act – Archaeology Exemption Criteria

Comments

Staff are supportive of the provisions included in the draft regulation that limit exemptions for archaeological and burial sites, especially those with significance to Indigenous communities, and of the requirements for the Minister to notify Indigenous communities before granting an exemption.

The Province has also proposed that an operational policy be developed to provide further details to support Indigenous consultation and screening for potential archaeological sites. Consultation is ongoing with Indigenous communities as part of the Province’s Heritage Framework Transformation initiative, which will examine the current provincial Standard and Guidelines for Consultant Archaeologists, related process timelines and reporting requirements and compliance rates.

The draft regulation includes a requirement for the Minister to consider the archaeological potential of the property before granting an exemption, as per Section 2.1.i of the draft regulation. Staff are supportive of this provision as it would allow for the City’s Archaeological Management Plan and identified areas of archaeological potential to be considered as part of a request for exemption. However, without reviewing a draft of the operational policy proposed to be developed, it is unclear how the Minister’s consideration process would work and what involvement or comment the City of Hamilton may have as the approval authority for archaeological interests within the municipality’s jurisdiction.

Section 3 of the draft regulation also identifies other activities that the Lieutenant Governor in Council may consider for exempting archaeological requirements, specifically those activities taking place on a property that “are or will be economically significant or strategically important to the Ontario economy”. These appear to fall under “such other priorities as may be prescribed,” as per Section 66.1.5 of the *Ontario Heritage Act, 1990* and are in addition to the other provincial priorities identified in that Section, including transit, housing, health and long-term care, and other infrastructure. The extent and how these priorities should be interpreted are unclear and, in the absence of a draft operational policy to review and comment on, it is presumed that this provision in the draft regulation could have significant impacts on yet-to-be-identified archaeological resources across the province that would be impacted by site disturbance and development.

It should be noted that the language included in Section 3 of this draft regulation mirrors the language included in the draft regulation on the proposed Special Economic Zones Criteria under the *Special Economic Zones Act, 2025*, also currently under review as part of the Environmental Registry of Ontario posting ERO 025-1077.

The draft Special Economic Zone Criteria regulation includes criteria that must be considered for an area to be designated as a special economic zone, including activities taking place or proposed in an area that “are or will be economically significant or strategically important to the Ontario Economy”. Further, Section 3 of that draft regulation includes language for what should be considered as part of the Minister’s determination of the criteria, as follows:

- Consideration of projects that have significant long-term economic benefits for Ontario may include:
 - i. The extent to which the project will have positive impacts on the security of the Province, job creation, the development of a skilled workforce, the size and diversification of the economy, tax revenue, critical supply chains or the development and adoption of technology and innovation.
 - ii. The extent to which the project will use goods made in Ontario or services provided by Ontario residents or businesses.
 - iii. Such other factors as the Minister considers appropriate.

- Consideration of projects that will benefit communities in Ontario may include:
 - i. The extent to which the project will provide benefits to communities within the special economic zone and outside the zone.
 - ii. The extent to which the project will increase the revenues of, or otherwise strengthen, businesses in those communities.
 - iii. Whether the project will provide benefits to Indigenous communities and, if it will, the extent to which it will.
 - iv. Such other factors as the Ministry considers appropriate.

The extent of projects that meet the criteria for a special economic zones, or that meet the proposed criteria for exemption archaeological requirements, may be substantial and have the potential to have significant impact on areas of archaeological potential that have not yet been assessed and archaeological resources that may be disturbed. If a project is exempted from archaeological assessment, the Province could consider alternative ways to enable Indigenous communities to participate in the project at subsequent phases (e.g. monitoring ground disturbance construction activities).