



CITY OF HAMILTON

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division**

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: February 5, 2013	
SUBJECT/REPORT NO: Memorandum of Agreement with Conservation Authorities (PED13018) (City Wide)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Ray Lee (905) 546-2424 Ext. 4196
SIGNATURE:	

RECOMMENDATION

That the General Manager of the Planning and Economic Development Department be authorized and directed to execute, on behalf of the City of Hamilton, the updated Memorandum of Agreement between the Hamilton Region Conservation Authority, Conservation Halton, the Grand River Conservation Authority and the Niagara Region Conservation Authority, attached as Appendix "A" to Report PED13018, which is in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

Since 1996, the Conservation Authorities (CAs) have provided comments on site-specific planning applications submitted under the Planning Act in place of the Provincial Ministry of Natural Resources and Environment on behalf of the former Region of Hamilton-Wentworth and now the City of Hamilton under a Memorandum of Agreement (MOA). The now 16 year old agreement is outdated and has been reviewed to reflect the current roles and responsibilities between the City and the CAs.

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A working group of the City/CA Liaison Committee comprised of representatives from the City's Planning and Growth Management Divisions and the CAs' was formulated to primarily update and refine the old Agreement. The main objective of this group was to develop a MOA that clarifies respective roles and responsibilities and reduce duplication of service. This concern was raised by the Hamilton Halton Home Builders Association (HHHBA) and the development community during the City's Open for Business Sub-Committee meetings. In particular, the industry and proponents have perceived a duplication of responsibilities between the City of Hamilton and the CAs. In response to this and the need to update and refine the old Agreement, the Growth Management and Planning Divisions of the Planning and Economic Development Department initiated this review to clarify the respective roles and responsibilities between the CAs and the City.

After several months of negotiations, the parties have now collaboratively developed an updated Agreement which clearly delineates the role of the CAs when acting in place of the City in reviewing and commenting on Planning Act applications and not to be confused with their regulatory responsibilities under the Conservation Authority Act. Under the updated MOA, an effective, efficient and cooperative approach in the protection of our natural environmental from policy development through to development approvals will be provided. Representatives from all four (4) CAs have tentatively accepted the terms of the updated Memorandum of Agreement attached as Appendix "A" to Report PED13018 to this report and will be presenting it to their Boards concurrently for endorsement.

Alternatives for Consideration – See Page 5

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND (Chronology of events)

In 1996, the Province of Ontario withdrew their plan review function for site specific planning applications for Provincial interest. As a result of this, the Province transferred/downloaded their responsibility under a Memorandum of Understanding (MOU) to review planning applications for Provincial interests from the Ministry of Municipal Affairs and Housing, Ministry of Natural Resources, Ministry of the Environment, Ministry of Agriculture, Food and Rural Affairs to the municipalities.

As the delegated planning approval authority in 1996, the Region of Hamilton-Wentworth was responsible for ensuring that all planning decisions were made in

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accordance with the requirements of the *Planning Act*. At the time, the Region did not have the necessary in-house expertise to deal with all of the technical issues in the MOU, and like other municipal jurisdictions in Ontario, retained the CAs as consultants to provide plan review comments and technical clearances for the municipality as delegates of the Ministry of Natural Resources and Environment. In April 1996, the former Region of Hamilton-Wentworth entered into Memorandum of Agreements (MOAs) with the four (4) local Conservation Authorities (Hamilton Region, Halton Region, Niagara Region and the Grand River) to provide this service.

The original MOA has been in place now for over 16 years and should be reviewed to ensure that the provisions in the Agreement reflect the current roles and responsibilities between the City and the CAs.

POLICY IMPLICATIONS

Urban Hamilton Official Plan:

The new Urban Hamilton Official Plan was adopted by City Council on July 9, 2009. While the Plan is not yet in force and effect, it is noted that Policy 2.3.2 identifies the Conservation Authorities having jurisdiction within the City of Hamilton. The CAs are the Hamilton Conservation Authority, Niagara Peninsula Conservation Authority, Halton Region Conservation Authority, and the Grand River Conservation Authority. Representatives from all four (4) CAs have tentatively accepted the terms of the updated Memorandum of Agreement attached as Appendix "A" to Report PED13018 to this report and will be presenting it to their Boards concurrently for endorsement.

Rural Hamilton Official Plan:

An Ontario Municipal Board ruling on March 7, 2012, brought most portions of the new Rural Hamilton Official Plan into full force and effect, save for certain sections which are still under appeal. While the Rural Hamilton Official Plan does not specifically identify the four (4) CAs having jurisdiction within the City of Hamilton, it provides for numerous policies requiring the City to consult with the relevant CAs prior to any development approvals. In this regard, the Memorandum of Agreement attached as Appendix "A" to Report PED13018 sets out the framework within which the CAs will provide specific planning application and technical review services to the City in addition to their legislative responsibilities under the *Conservation Authorities Act*.

RELEVANT CONSULTATION

A draft copy of the updated MOA has been reviewed by the Legal Services Division and is in a form acceptable to them.

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As part of staff's consultative process with the development industry, the Hamilton Halton Home Builders Association was advised of the City's on-going discussions with the Conservation Authorities and supports any changes that would streamline and clarify the roles and responsibilities between the City and the CAs.

Staff has concluded its discussions with the CAs and have agreed on the terms of an updated Agreement. The updated Agreement attached as Appendix "A" to Report PED13018 is being presented concurrently to the CAs' Boards.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Staff is recommending Alternative "C" as outlined under the **ALTERNATIVES FOR CONSIDERATION** section of Report PED13018.

The current agreement is more than 16 years old. The CAs and the City of Hamilton have mutually agreed to re-visit the 1996 agreement to evaluate the current roles and responsibilities related to the review, assessment and implementation of planning proposals. From the City of Hamilton's perspective, the Province's decision to withdraw from the plan review function left the former Region without the technical ability to fulfil its transfer of review responsibilities. The intent is to clarify the current jurisdictional roles and responsibilities related to the review, assessment and implementation of planning proposals. This concern was raised by the development community during the City's Open for Business Sub-Committee meetings. In particular, the industry and proponents have perceived a duplication of responsibilities between the City of Hamilton and the CAs. The new updated Agreement clearly delineates the role of the CAs when acting in place of the City when reviewing and commenting on Planning Act applications and not to be confused with their regulatory responsibilities under the Conservation Authority Act.

The most significant change between the old and updated MOA involves the City's transfer of review responsibilities from the Ministry of Natural Resources for stormwater management issues. Since 1996, the City has expanded its role in the review and technical clearance of site specific stormwater planning and stormwater management facilities. This knowledge was not available to the former Region and the newly amalgamated City of Hamilton so the City continued to rely on the 1996 MOA. On the natural heritage side, the City has become less dependent on the CAs for their expertise on matters related to the evaluation of Areas of Natural and Scientific Interests (ANSI), woodlands and flood hazards on a site specific applications basis.

As part of this review, the Hamilton Conservation Authority (HCA) and the City of Hamilton have agreed on a protocol for screening planning applications. In the interest of reducing overlap and unnecessary review of applications, the HCA has offered to waive the circulation of applications for plans of subdivision, condominium, consents,

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minor variances and site plans for development sites less than 2 hectares within a defined area of Hamilton's lower city as shown on Appendix 4 – Schedule 4 to the MOA attached to Report PED13018. While the HCA recognizes that this area is essentially built out, the HCA will limit their review to only large scale development proposals within this defined area.

As provided for in the MOA, the CAs will continue to provide planning application and technical review comments including the review of City-initiated studies and projects at no additional fee to the City.

All of the above changes are now reflected in the updated MOA attached as Appendix "A" to Report PED13018.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Alternative "A" – Do nothing.

The current MOA is outdated and does not reflect the current roles and responsibilities of the plan review function between the City and the CAs as they relate to the review of natural environment and stormwater management issues. Therefore, this alternative is not recommended.

Alternative "B" – Terminate the Memorandum of Agreement.

The City and our CAs have a long standing history of working in a cooperative and consultative manner. With their input and advice, planning decisions in Hamilton takes into consideration the economic, environmental and social interests of our residents. The CAs continue to carry out their responsibilities under our MOA in an efficient and effective manner. As the CAs continue to house valuable expertise in areas such as subwatershed and master drainage planning, their input and advice is critical to the protection of our natural environment. If this Agreement is terminated, the City would be required to retain outside consultant advice whereas under the current terms of our MOA, this service is provided to the City without fee by the CAs. Therefore, this alternative is not recommended.

Alternative "C" – Update the Memorandum of Agreement.

The MOA has served its purpose over the past 16 years but is now outdated and needs to be reviewed. Since amalgamation, the City has acquired additional in-house expertise in the areas of natural heritage and stormwater management. This reflects the City's desire to become more efficient and streamlined in the delivery of growth planning services. During staff's negotiations, an agreement was reached with the CAs to

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continue providing their technical review services in areas where the CAs continue to house expertise such as subwatershed, master drainage planning and wetland evaluation to the City without fee. The CAs will continue to provide comments under their regulatory authority in addition to their responsibilities under the updated MOA. For these reasons, this alternative is recommended.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative & Respectful Organization

- ◆ A culture of excellence
- ◆ More innovation, greater teamwork, better client focus
- ◆ An enabling work environment - respectful culture, well-being and safety, effective communication
- ◆ Council and SMT are recognized for their leadership and integrity

Financial Sustainability

- ◆ Financially Sustainable City by 2020
- ◆ Effective and sustainable Growth Management
- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Intergovernmental Relationships

- ◆ Maintain effective relationships with other public agencies

Growing Our Economy

- ◆ An improved customer service

Environmental Stewardship

- ◆ Natural resources are protected and enhanced
- ◆ Aspiring to the highest environmental standards

Healthy Community

- ◆ Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix "A" – Memorandum of Agreement

RL:mh

MEMORANDUM OF AGREEMENT

BETWEEN

The City of Hamilton
(herein referred to as the "City")

and

The Hamilton Region Conservation Authority
(herein referred to as the "HCA")

and

The Niagara Peninsula Conservation Authority
(herein referred to as the "NPCA")

and

Conservation Halton
(herein referred to as the "CH")

and

The Grand River Conservation Authority
(herein referred to as the "GRCA")

WHEREAS the parties desire to set out in writing the framework within which the Conservation Authorities will provide specified planning application and technical review services to the City as set out in Appendix A - Schedules 1 to 4, inclusive;

AND WHEREAS it is the intent that this framework apply to all four Conservation Authorities in respect of planning and development applications activities in the geographic area of the City as set out in Appendix A - Schedule 4;

AND WHEREAS the four Conservation Authorities have legislated responsibilities under the Conservation Authorities Act to review applications for development pursuant to their individual regulation which process is not subject to this MOU;

NOW THEREFORE in consideration of the conditions and obligations described herein, the parties agree as follows:

1. The HCA, NPCA, CH and GRCA (collectively referred to herein as the "Conservation Authorities") shall provide planning application and technical review services to the City in respect of those matters identified in this

Memorandum of Agreement and/or the appendix attached to this Memorandum of Agreement. Nevertheless, the parties acknowledge and agree that the City shall remain the approval authority for those development planning applications for which the City is so designated by statute.

2. The Conservation Authorities, through the Memorandum of Understanding between Conservation Ontario, the Ministry of Municipal Affairs and Housing and the Ministry of Natural Resources, provide the Provincial interest comments on planning applications related to natural hazards. Specifically, the Conservation Authorities review planning applications to ensure they are consistent with the Provincial Policy Statement policies related to flooding hazards, erosion hazards, dynamic beach hazards, unstable soils and unstable bedrock. The Conservation Authorities will clearly identify which comments are specific to the Memorandum of Understanding with the Province.
3. The City agrees to:
 - (a) circulate to the Conservation Authorities those planning applications listed in Appendix A, Schedule 1. Included in the circulation will be the appropriate fee as collected by the City from the proponent. Specifically, the City shall circulate all planning applications that are located or adjacent to a regulated area pursuant to Section 28 of the Conservation Authorities Act, and/or as listed in Appendix A, Schedule 2. This screening protocol is attached as Appendix A, Schedule 4;
 - (b) transfer copies of appropriate policy statements, guidelines, manuals, maps, information, data and criteria from the City to the Conservation Authorities, and transfer said material to them as it is received from the Province of Ontario, or make arrangements to have said material transferred directly from the Province to the Conservation Authorities; and,
 - (c) retain consultants other than the Conservation Authorities to provide the planning application and technical review services identified in this Memorandum of Agreement, when in the opinion of the City or the Conservation Authority, utilizing the Conservation Authority as specified in this Memorandum of Agreement could result in a pecuniary/ownership conflict for the Conservation Authority.
4. Those City-initiated studies and projects not listed in Appendix A, Schedule 1 such as, but not limited to, official plans, policy official plan amendments, secondary plans, comprehensive zoning by-laws; and policy zoning by-law amendments, subwatershed plans; Master Drainage Plans and Environmental Assessments, will continue to be circulated to the Conservation Authorities however, the Conservation Authorities will review these as a commenting agency without fee to the City.

5. The Conservation Authorities agree to:
 - (a) provide the City with those services listed in Appendix A, Schedules 2, 3 and 4 on a fee for service basis. The fee schedule is made pursuant to the Conservation Authorities Act and, as such, is approved by the Conservation Authorities Board of Directors. The Conservation Authorities will consult with the City prior to making any revisions to the fee schedule;
 - (b) transfer copies of appropriate policy statements, guidelines, manuals, maps, information, data and criteria from the Conservation Authorities to the City, and transfer said material to the City as it is received from the Province of Ontario, or make arrangements to have said material transferred directly from the Province to the City;
 - (c) apply all relevant Provincial and City operational procedures and guidelines in the planning application and technical review services it provides the City;
 - (d) not release their planning application and technical review comments for major applications as determined by the HCA's Schedule of Fees to the applicants until they are reviewed by the City;
 - (e) not disseminate any data, maps, information or other documents either received directly from the Province or identified as "Provincial data" by the City;
 - (f) disseminate City data, maps, information or other documents when requested, only in accordance with City policies and procedures; and
 - (g) make provision for their staff to attend Ontario Municipal Board Hearings, upon the request of City Legal staff, with respect to planning application and technical review services provided pursuant to this Memorandum of Agreement. The City will provide the legal representation for Conservation Authorities at the OMB hearing at the cost of the City. Should the Conservation Authority attend the hearing for matters outside of this Memorandum of Agreement, the Conservation Authority will be responsible for retaining and paying for their own legal representation.
6. This Memorandum of Agreement will take effect on March 1, 2013.
7. The parties agree that they will, upon the reasonable request of each other, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices and assurances whatsoever to effect all of the terms, provisions and conditions of this Memorandum of Agreement.

8. The term of this Memorandum of Agreement will be for a period of five (5) years, after which it may renewed for a further period of five (5) years on written consent of all parties if this Memorandum and appendix are consistent with then current Provincial and City policies.
9. This Memorandum of Agreement may be amended from time to time in writing only, with the mutual consent of the parties.
10. Any party may terminate this Memorandum of Agreement at any time, in writing to all other parties to the agreement, with a minimum of 60 calendar days notice.

The parties have duly executed this Memorandum of Agreement:

CITY OF HAMILTON

Tim McCabe, MCIP, RPP
General Manager, Planning and Economic Development Department

Dated this _____ day of _____, 2013

HAMILTON REGION CONSERVATION AUTHORITY

Steven C. Miazga, MCIP, RPP
Chief Administrative Officer

Dated this _____ day of _____, 2013

NIAGARA PENINSULA CONSERVATION AUTHORITY

Tony D'Amario, P.Eng
Chief Administrative Officer / Treasurer

Dated this _____ day of _____, 2013

CONSERVATION HALTON

Ken Phillips, Chief Administrative Officer

Dated this _____ day of _____, 2013

GRAND RIVER CONSERVATION AUTHORITY

Joe Farwell, Chief Administrative Officer

Dated this _____ day of _____, 2013

Definitions

“Planning Application Review” means:

- i. reviewing planning applications (including formal consultation) under the *Planning Act*,
- ii. identifying the need for and review of technical reports; and,
- iii. recommend conditions of approval.

“Technical Review” means:

- i. assessing technical reports submitted by a proponent of development to determine if the reports satisfy requirements specified.

APPENDIX A – SCHEDULE 1

CIRCULATION STATUS BY APPLICATION TYPE AND DEFINITIONS

1. The City advises the Conservation Authorities that under this agreement it will circulate the following types of development/planning applications to them for comment as per the items in Appendix A, Schedules 2 and 3:

Official Plan Amendments;
Zoning By-Law Amendments;
Subdivisions;
Condominiums;
Site Plans;
Consents;
Minor Variances; and,
Community Improvement Plans.

**APPENDIX A – SCHEDULE 2
CA Responsibilities in Planning Application and Technical Review Services**

Feature/Function	Delegated Authority (1)	Planning Application Review	Regulatory Review
Subwatershed/Master Drainage Planning		X	
Significant Habitat of Endangered and Threatened Species		X (2)	
Wetlands		X	X
Significant Valleylands			X
Significant Wildlife Habitat (4)		X	
Areas of Natural & Scientific Interest (4)		X	
Fish and Fish Habitat		X	
Sensitive Surface Water Features		X	
Sensitive Groundwater Features (3)(4)		X	
Flooding Hazards	X		X
Erosion Hazards	X		X
Dynamic Beach Hazards	X		X
Unstable Soil	X		X
Unstable Bedrock	X		X

Note 1:

Delegated Authority CA's provide comments pursuant to MoU between Conservation Ontario, Ministry of Municipal Affairs and Housing and Ministry of Natural Resources.

Note 2:

The Endangered Species Act is the responsibility of the Ministry of Natural Resources. The City and the Conservation Authorities may provide technical comments on significant habitat of endangered and threatened species pursuant to the PPS. The Ministry of Natural Resources is responsible for permitting (if required) pursuant to the Endangered Species Act.

Note 3:

Solely related to interaction between sensitive ground water features and natural heritage features/functions.

Note 4:

The GRCA will not provide Planning Application and Technical Review comments for these features/functions.

APPENDIX A – SCHEDULE 3

Guidelines for Detailed Engineering Reviews – Responsibilities of Each Organization

Issue/Concern		Conservation Authority	City of Hamilton	Ministry of Environment
Watercourse & Valleys	Floodline Delineation	X(Lead) (1)	X	
	Low Flow Channel Design & Fluvial Geomorphological Considerations	X (Lead)	X	
	Geotechnical Considerations (Slope stability, Natural Hazards)	X (Lead)	X	
Road & Utility Crossings	Hydraulics (Riparian issues and Channel Design)	X (Lead)	X	
Shoreline Design		X (Lead)	X	
Stormwater Management	Type of facility (or facilities)	X	X (Lead)	
	Location of facility with respect to vision of area		X (Lead)	
	Location of facility with respect to Natural Hazards	X (Lead)	X	
	Location of facility with respect to structural setbacks	X	X (Lead)	
	Location of facility with respect to functionality	X	X (Lead)	
	Confirmation of drainage areas	X	X (Lead)	X
	Sizing of facility with respect to quality, erosion and quantity controls, including release rates & settling calculations.	X	X (Lead)	X (3)
	Other potential impacts on receiving watercourse	X (Lead)	X	
	Outlet structure and spillway design	X	X (Lead)	
	Outlet to watercourse (if necessary)	X (Lead)	X	
	Safety – Side slopes, grating, grading, emergency access		X (Lead)	
	Landscaping/Revegetation	X	X (Lead)	
	Long Term Maintenance		X (Lead)	
	Major and minor flow conveyance (internal to subdivision)	X	X (Lead)	
Hydraulic grade line analysis of storm sewer system and outlet		X (Lead)		
Erosion and Sediment Control Plans		X	X (Lead)	
Grading of Lots Abutting Regulated Areas		X	X (Lead)	
	Trail Design	X	X (Lead)	

Note 1: Approvals Lead = Decision Maker
X = Commenting Role

Note 2: Individual situations may require further discussion

Note 3: Environmental Branch of the MOE reviews all systems that fall under s53 of OWRA including residential systems. The Local District Office in Burlington only reviews industrial related systems.

APPENDIX A – SCHEDULE 4

Planning Application Screening Protocol

City-Wide	Official Plan Amendments	Zoning By-Law Amendments	Subdivision/Condominiums	Site Plans	Consents	Minor Variances
Regulated Areas and adjacent areas	Yes	Yes	Yes	Yes	Yes	Yes
Natural Heritage Features (As per Section 2.1 of the Provincial Policy Statement)	Yes	Yes	Yes	Yes	Yes	Yes
Downtown Hamilton “Core Area”(1)						
Within “Core Area” less than 2 hectares in area	No	No	No	No	No	No
Within “Core Area” but greater than 2 hectares in area or large development projects	Yes	Yes	Yes	Yes	Yes	Yes

Note 1: Core as is as shown on Figure 1.

