



Planning and Economic Development Department

Planning Division

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May 14, 2026

Ministry of Municipal Affairs and Housing  
Province of Ontario

***SENT VIA ERO POSTING***

**RE: City of Hamilton Comments on ERO 026-0312 - Proposed changes to support standardizing of parkland requirements under the Planning Act - Final Draft**

Attached, please find City of Hamilton staff comments in response to the above noted ERO posting. Hamilton Planning Committee and City Council will be reviewing these comments at their June 16, 2026, and June 24, 2026, meetings.

Hamilton City Council may choose to amend or add to the enclosed comments which would be provided in a subsequent letter.

Should you have questions or comments, please contact myself or Steve Burke, Manager, Sustainable Communities Section, at (905) 546-2424 Ext. 5863 or by email at [Steve.Burke@hamilton.ca](mailto:Steve.Burke@hamilton.ca).

Regards,

Anita Fabac, MCIP, RPP  
Acting Director of Planning and Chief Planner  
Planning Division  
Planning and Economic Development Department  
City of Hamilton

Enclosed.

**ERO 26-0312: Proposed Changes to Support Standardizing of Parkland Requirements Under the *Planning Act***

The following table provides the opportunity to comment on [ERO 26-0312](#).

<b>ERO 26-0312: Proposed Changes to Support Standardizing of Parkland Requirements Under the <i>Planning Act</i></b>	
<b>Description</b>	<b>Comments</b>
<p>The government is seeking public feedback on a Minister’s regulation under the <i>Planning Act</i> to prescribe criteria for developer-identified parkland and related implementation matters for the conveyance of developer-identified lands for municipal parkland dedication, to implement provisions in Bill 23, the <i>More Homes Built Faster Act, 2022</i>, that are not yet in force.</p> <p>Bill 23 added provisions to the <i>Planning Act</i> which, once in force, would provide for:</p> <ul style="list-style-type: none"> <li>• developer-identified lands, including land with encumbrances and POPS arrangements, to count towards municipal parkland dedication requirements,</li> <li>• the landowner to be able to appeal to the Ontario Land Tribunal (OLT) in cases where the municipality rejects developer-identified land, with the OLT required to order the land to be conveyed to the municipality if it meets prescribed criteria.</li> </ul>	<p><b>General Comments</b></p> <ul style="list-style-type: none"> <li>• The proposed changes will require updates to the City of Hamilton <u>Parkland Dedication By-law No. 22-218</u> to identify that encumbered lands and POPS will be counted toward parkland dedication, subject to the prescribed criteria.</li> <li>• Overall, the lands identified as ‘ineligible lands’ would never have been eligible to be dedicated as parkland (for recreational purposes) per the City’s Parkland Dedication By-law (i.e., P1, P2, and P3 Zones in <u>Hamilton Zoning By-law No. 05-200</u>). The Parkland Dedication By-law allows developers to convey natural features as Open Space or Conservation/Hazard Lands (P4 and P5 Zones in <u>Hamilton Zoning By-law No. 05-200</u>) for protection / preservation, but not as parkland.</li> <li>• The changes provide clarity as to how municipalities can evaluate encumbered lands and POPS as appropriate parklands. Procedures will need to be put in place as part of application review to ensure the lands are evaluated prior to draft plan approval so it is known if they will be counted toward parkland requirements to provide appropriate notice</li> </ul>

Description	Comments
	<p>(see “Supporting Implementation Matters” below for comments on notice requirements).</p> <ul style="list-style-type: none"> <li>• Further, allowing encumbered lands and/or POPS lands to be counted toward parkland dedication requirements could result in parkland that is insufficient in terms of size or programming needs. There could be a benefit to allowing such lands to be counted toward parkland in constrained areas, but staff suggest that the use of encumbered lands and POPS as parkland should be evaluated on a case by case basis and limited to intensification / infill areas and not greenfield sites.</li> <li>• The changes also provide for the City’s ability to require agreements / easements for when such lands are proposed for parkland. Additional details are required to provide full comments. Staff note potential concerns regarding liability and insurance requirements with POPS, particularly with condominium corporations. These concerns would need to be dealt with through the required agreements.</li> </ul>
<p>The land suitability criteria that are proposed to be prescribed in regulation would include the following:</p> <p>1. <b>Ineligible Land</b> – land with any of the following conditions cannot be required to be conveyed to</p>	<p>1. <b>Ineligible Land:</b></p> <ul style="list-style-type: none"> <li>• Contaminated lands – The City has never permitted contaminated lands to be dedicated as parkland. It should be noted that contaminated lands could be conveyed to the City for park / recreational purposes if they are remediated</li> </ul>

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<p>municipalities for park and recreational purposes:</p> <ul style="list-style-type: none"> <li>• Contaminated lands – lands that have in or on them any contaminants from industrial or other uses that pose a public health risk</li> <li>• Natural and human-made hazard lands – hazardous lands and hazardous sites as described in section 5.2 of the Provincial Planning Statement, 2024 (PPS 2024) as well as lands affected by human-made hazards as described in section 5.3 of the PPS 2024.</li> <li>• Lands within and adjacent to natural heritage features and areas are eligible on the condition that a park would not interfere with or compromise the natural heritage features and areas.</li> <li>• Lands in the Natural Heritage System of the Greenbelt Plan or in the Natural Core or Natural Linkage Areas of the Oak Ridges Moraine Conservation Plan or unless in accordance with policies of the Niagara Escarpment Plan. <ul style="list-style-type: none"> <li>○ Lands that would not support park use – lands that would not accommodate fill</li> </ul> </li> </ul>	<p>with proof of the work that was completed and accompanied by a Record of Site Condition.</p> <p>The regulation should clarify how contamination will be determined or allow municipalities to specify requirements in the Parkland Dedication By-law (e.g. Record of Site Condition required for any land conveyance).</p> <ul style="list-style-type: none"> <li>• Natural and human-made hazard lands – Conveyance of natural / human-made hazard lands into public ownership (City or Conservation Authority) contributes to protection / preservation of these important features, the inventory of linkages / open space lands, and their role in biodiversity / supporting natural processes. While these lands are not necessarily appropriate as parkland planned for recreational amenities / uses, they are important features that should be maintained as public open space. These lands do not currently contribute to parkland dedication calculations.</li> <li>• Lands within and adjacent to natural heritage features and areas are conditionally eligible – This bullet is confusing as it is part of ‘ineligible lands’ but is noted as being ‘eligible’ on the condition that a park would not interfere with/compromise the natural heritage features. It is unclear who would make this determination and what park uses would be permitted that would not interfere with or compromise the natural heritage features and areas. Municipalities should have the ability to prescribe what types</li> </ul>

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<p>and/or soil depths to accommodate structural footings as per the Ontario Building Code or support tree planting.</p> <ul style="list-style-type: none"> <li>○ Lands with financial encumbrances – lands with liens, charges, etc. registered on title.</li> <li>○ Lands that are privately-owned and not accessible to public at all times.</li> </ul> <p>2. <b>Land Accessibility/Comfort for Use</b> – parkland must be accessible, visible and comfortable to facilitate public use of it and, in particular, must be:</p> <ul style="list-style-type: none"> <li>• Accessible by all users directly from the public realm and readily visible from the public realm.</li> </ul> <p>Land must be of a size and shape that is capable of serving park or public recreational purposes.</p>	<p>of park or recreational uses are required on the lands to be conveyed.</p> <p>The City has a long history of protecting natural heritage features and has developed a City-wide Natural Heritage System. Overall, there is support that lands within and adjacent to natural heritage features and natural and human-made hazards would be ineligible for parkland dedication. This would ensure future protection.</p> <p>It has been highlighted that areas would be eligible on the condition that a park would not interfere with or compromise the natural heritage features. It is unclear how this will be determined. This may undermine the intent of Provincial and municipal strategies (i.e., Ontario Biodiversity Strategy, Hamilton Biodiversity Action Plan, Hamilton Urban Forest Strategy) as well as Provincial requirements (policies associated with Section 4.1 of the Provincial Planning Statement). It is recommended that clear, science-based guidance be provided to ensure that the features and functions of the Natural Heritage System are protected.</p> <p>Conveyance of lands within natural heritage features into public ownership (City or Conservation Authority) contributes to protection / preservation of these important features, the inventory of linkages / open space lands, and their role in biodiversity / supporting natural processes. While these lands are not necessarily appropriate as parkland dedication (i.e., planned for recreational amenities / uses), they are</p>

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	<p>important features that should be maintained as public open space and/or conservation lands. These lands do not currently contribute to parkland dedication calculations, as per the City’s Parkland Dedication By-law.</p> <p>Lands adjacent to natural heritage features are more complex: many uses can coexist adjacent to natural features if appropriate setbacks / buffers are respected. It is unclear who will make this determination.</p> <ul style="list-style-type: none"> <li>• Lands in Natural areas of the Greenbelt Plan, Oak Ridges Moraine Conservation Plan, and/or Niagara Escarpment Plan – No comment.</li> <li>• <b>Suggested Additional Ineligible Land:</b> <ul style="list-style-type: none"> <li>○ Lands with non-financial encumbrances (e.g. restrictive covenants) that would prevent park or public recreational uses;</li> <li>○ Lands containing registered archaeological sites and/or structures / amenities / landscapes of historical relevance that are being retained in situ. The City has a precedent for having owners convey lands containing archaeological sites to the City as part of draft plan of subdivision and zoning by-law amendment applications. These lands are dedicated to the municipality for conservation / protection; however, should not be dedicated for the purposes of recreational parkland. As part of this process, the owner is required to provide</li> </ul> </li> </ul>

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	<p>funding for perpetual care of the site prior to conveyance. Records and mapping should be provided to the municipality should lands be conveyed to the municipality. The lands are generally left in a naturalized state and cannot be developed on or disturbed through the installation of structures, etc. The City would want to ensure that these lands could not be required to be dedicated as parkland without the required funding. The existing “Lands that would not support park use” item does partially cover this, but it is recommended that a separate item be added to certainty and clarity; and,</p> <ul style="list-style-type: none"> <li>○ Any lands deemed unsuitable for the development of residential uses (a sensitive land use) should also be deemed as unsuitable for parkland (sensitive land use).</li> <li>● Expanding the types of land that can be accepted as parkland dedication (e.g. natural heritage, potentially inappropriate size or location) will put further strain on the municipality’s ability to acquire land for parks, as cash-in-lieu collected will be substantially reduced and will be challenging to forecast.</li> </ul> <p><b>2. Land Accessibility / Comfort for Use:</b></p> <ul style="list-style-type: none"> <li>● Regulation should provide a clearer definition of “public realm”, and/or allow municipalities to provide a specific definition in the Parkland Dedication By-law.</li> </ul>

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	<ul style="list-style-type: none"><li>• It is unclear what standards would be considered to determine if lands are a suitable size and shape, and allow for comfort of use, and how it will be determined if they meet recreational needs. Official Plan policies, and Secondary Plans where they exist, should be able to provide additional guidance specific to a municipality's needs for the size, shape and usability of lands.</li><li>• It is unclear if the Regulation will allow municipalities to further specify requirements to ensure lands are of a suitable size or shape. There is concern that this may be interpreted too broadly, resulting in the municipality being required to accept land that is not functional for park or recreational purposes.</li><li>• It should be defined that the size and shape is determined by Secondary Plan Land Use Plans, or in the absence of a Secondary Plan, by Planning staff in consultation with appropriate subject matter experts (who determine parkland or recreation needs) within the municipality in accordance with Parks Master Plans and parkland policies.</li><li>• <b>What Should Form Part of Land Accessibility / Comfort for Use:</b><ul style="list-style-type: none"><li>○ Land intended as parkland should have an appropriate amount of road frontage to ensure sightlines / CPTED measures are possible;</li></ul></li></ul>

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	<ul style="list-style-type: none"><li data-bbox="1024 280 1839 428">○ Land intended as parkland should have appropriate maximum slopes to ensure it meets AODA standards without the requirement for major regrading / alteration by the City;</li><li data-bbox="1024 472 1871 854">○ Land accessibility and comfort of use criteria should also include locational criteria, to focus developer-identified parkland in areas where it is needed most. It is suggested that the new requirements only apply to specific areas, such as within Major Transit Station Areas which are planned for higher densities, or within existing urbanized areas where there are documented deficiencies in parkland as identified by a Parks Master Plan. Developer-identified parkland should not be permitted within greenfield/new growth areas; and,</li><li data-bbox="1024 902 1881 1406">○ In greenfield/new growth areas, the size and location of parks are carefully planned, typically through a Secondary Plan process, to ensure that parks are located within walking distance of residences, have appropriate road frontage for accessibility and safety, and are of a sufficient size to provide needed recreational amenities. This process creates certainty for all developers and for residents moving into a new community. Allowing individual developers to propose an alternative parcel of land that is sub-standard in terms of size, shape or location undermines this comprehensive process and creates uncertainty, both for the ability to deliver planned parks, and for collecting cash-in-lieu from developers</li></ul>

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	<p>whose lands do not contain a planned park, which is needed to fund the purchase of parkland from developers who must over-dedicate land in excess of the parkland dedication requirement.</p>
<p><b>Supporting Implementation Matters</b></p> <p>1. Documents to Support Identification of Land</p> <ul style="list-style-type: none"> <li>• Documentation of specified lands and boundaries, through a Plan of Survey and Topographic Plan.</li> <li>• Attestation from the owner of the land or an authorized representative, to confirm that the land and/or POPS arrangement is not considered to be ineligible land.</li> </ul> <p>2. Notice to Owners</p> <ul style="list-style-type: none"> <li>• The municipality shall provide notice to the owner of the land within 20 days of the municipality making its decision to refuse, by personal service, fax, mail or email.</li> <li>• Notice shall contain the following information: <ul style="list-style-type: none"> <li>○ A statement that the council of the municipality has refused to accept the</li> </ul> </li> </ul>	<p>Providing detailed guidance on how to determine if lands are ineligible will contribute to a more equitable, clear, and transparent process. For example, an Environmental Impact Statement should be completed to ensure that features and functions of the Natural Heritage System (as per 4.1 of the Provincial Planning Statement) are not impacted. In addition, consultation and written correspondence with Conservation Authorities should be a requirement when determining if lands are considered to contain natural and human-made hazards.</p> <p>Process and notice changes will be required to implement these new requirements. A new notice will be required to identify whether the land is or is not accepted as park, and which must be provided within 20 days of decision (Council). Staff from different Divisions (e.g., Planning, Growth Management) will need to coordinate to ensure that this notice is provided at the appropriate time and that all required information is available in a timely manner. As per the related legislative change, if no notice is provided in 90 days of the owner of land identifying land in accordance with subsection (4.30) of the <i>Planning Act</i>, an owner can appeal. These changes could result in an increase in appeals with potential impact on staff time and resources. These changes would also result in lengthier</p>

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<p>conveyance of land identified in accordance with its parkland by-law.</p> <ul style="list-style-type: none"> <li>○ An explanation of the reason(s) for the refusal.</li> <li>○ A statement that the owner of the land may appeal the refusal, within 20 days of the notice being given, to the Ontario Land Tribunal by filing with the clerk of the municipality a notice of appeal.</li> <li>○ The last day on which the refusal may be appealed.</li> <li>○ A description of the lands to which the refusal applies.</li> </ul> <p>3. Record to the Ontario Land Tribunal</p> <ul style="list-style-type: none"> <li>• The landowner can appeal to the OLT a municipality's refusal or, as proposed in the related legislative changes, a non-decision by filing with the clerk of the municipality. The municipal clerk would then have 15 days to forward a record to the OLT that would include the following proposed elements: <ul style="list-style-type: none"> <li>○ a copy of the materials submitted by the landowner (including the identification of land documentation), and</li> </ul> </li> </ul>	<p>processing times for related <i>Planning Act</i> applications, which has the potential to slow construction of new housing.</p>

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<ul style="list-style-type: none"> <li>○ the notice of the municipality’s refusal, if applicable, as well as any staff report that the municipality considered in its decision to refuse the acceptance of the land.</li> </ul>	
<p><b>Impact on the Environment</b></p> <p>The proposed changes to the regulation could increase conveyance for suitable parkland, especially in urban areas, both because of the 70% credit potentially prompting a greater amount of lands being conveyed to satisfy the full parkland dedication requirement and because of the submission of lands not previously accepted by some municipalities instead of cash-in-lieu contributions. Alternatively, unencumbered fee simple lands that may otherwise have been conveyed may not be conveyed under the proposed changes. The Minister’s regulation proposes prescribed criteria related to the suitability of land that are intended to mitigate any negative impacts. Further, the Ministry will monitor implementation of these changes to ensure residents continue to have access to high quality local parks.</p>	<p>The information provided does not clearly support the conclusion that the proposed changes will result in an increase in conveyance of suitable parkland as it highlights lands as being ineligible that were never eligible to begin with. The ERO posting notes this is “because of the submission of lands not previously accepted by some municipalities instead of cash-in-lieu contributions”. Further clarification is required. The wording of the ERO posting requires making several assumptions and interpretations, and it is assumed that the intent is to allow the conveyance of constrained lands (small, remnant parcels, contaminated lands, natural features, etc.) for parkland purposes which is not necessarily in the municipality’s best interest. The potential conveyance of fragmented or constrained parcels of land would hinder the ability to develop suitable parkland in neighbourhoods to meet the long-term needs of future residents, which would not support the achievement of complete communities.</p>