



A Healthy Watershed for Everyone

# **Hamilton Conservation Authority Natural Heritage Offsetting Policy Development Discussion Paper**

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# Hamilton Conservation Authority

## Natural Heritage Offsetting Policy Development

### Discussion Paper

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## 1. Background

The Hamilton Conservation Authority (HCA) has initiated a review of its Planning & Regulation Policies and Guidelines (PRPG) document in regard to natural heritage offsetting. This review is being undertaken following a motion by the HCA Board of Directors at their November 5, 2020 meeting in response to a development proposal, where it was approved:

“THAT the Board Directors direct staff to review and develop natural heritage offsetting policy to be included in the Hamilton Conservation Authority’s Planning & Regulation Policies and Guidelines document.”

Additionally, in 2020, the Province continued with its review of the Conservation Authorities Act with significant changes approved. While regulations to implement numerous legislative changes to the Conservation Authorities Act have yet to be passed, mandatory permits for Ministerial Zoning Orders (MZO) were implemented effective December 8, 2020. Mandatory permits through MZO’s provide direction regarding the requirement to enter into agreements relating to ecological compensation and the HCA has no policy or guideline direction in this regard.

HCA staff are guided in our review of municipally circulated land use planning applications and permit applications submitted pursuant to the HCA’s *Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses Regulation 161/06* by Provincial policy and technical guidelines, as well as the HCA Board of Directors approved Planning & Regulation Policies and Guidelines (PRPG) document (2011). The PRPG is a Board approved document, and staff are not able to deviate from the policy direction of this document without direction from the HCA Board of Directors.

HCA staff undertake reviews and updates of the PRPG to ensure policies reflect Provincial direction, current environmental issues and the health of the HCA watershed, and in order to ensure efficient and streamlined review processes for circulated and submitted applications. As noted, HCA currently has no policy or guideline direction related to natural heritage offsetting. Offsetting has emerged as an approach for compensating and/or replacing natural heritage features and functions that have been impacted by development projects or other activities. HCA notes over the past number of years, several Conservation Authorities have reviewed and implemented policies and approaches related to offsetting.

This Discussion Paper has been developed to consider natural heritage offsetting and how it may work within the context of the Hamilton Conservation Authority and our member municipalities. This Discussion Paper is intended to:

1. Define what offsetting means in the context of bio-diversity and natural heritage.
2. Detail the key principles of offsetting as well as recent work on this issue in Ontario.
3. Provide an overview of Provincial policy.
4. Provide an overview of regulations in the Conservation Authorities Act
5. Undertake a review of existing offsetting policy and documentation in Ontario with a specific focus on conservation authority experience.
6. Undertake a review City of Hamilton and Township of Puslinch Official Plan policy framework as it relates to offsetting, development and natural heritage.
7. Provide an overview of the existing policy framework relating to natural heritage conservation within the current HCA Planning & Regulation Policies and Guidelines document.
8. Provide a draft offsetting policy framework for agency and public comment based on the completed reviews noted above.
9. Outline next steps and approach for stakeholder and Public input to solicit engagement and comments to help guide the development of natural heritage offsetting policy for the HCA Board of Directors consideration.

## 2. Defining Offsetting in the Context of Biodiversity and Natural Heritage

The concept of offsetting is not new and has been reviewed and highlighted in various publications and jurisdictions as early as the 1970s. In reviewing the literature, reference is made to a variety of terms, including natural heritage offsetting, biodiversity offsetting and ecosystem offsetting, but in each case ‘offsetting’ is the key term used to describe situations where some form of compensation is provided to address negative impacts or harm to valued ecological features or functions as a result of development activity. “Simply put, it involves a transaction between development proponents and offset providers (e.g., landowners, land trusts, Indigenous communities) to compensate for harm to biodiversity at one site by creating, restoring or enhancing biodiversity elsewhere, generally on a “like for like” basis. At its core, biodiversity offsetting entails a trade-off: accepting harm on the condition that it is counterbalanced by beneficial actions so that in the end nature is no worse off – or ideally even better off”<sup>1</sup>.

In the Ontario Nature document titled “Key Issues in Biodiversity Offset Law and Policy, A Comparison of Six Jurisdictions, June 2015” it is noted that the most commonly cited definition is:

**“Measurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development after appropriate prevention and mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground with respect to species composition, habitat structure, ecosystem function, and people’s use and cultural values associated with biodiversity”<sup>2</sup>**

Credit Valley Conservation (CVC) in their “Ecosystem Offsetting Guidelines, March 2020” states:

**“Natural heritage offsetting is an approach to offset the adverse impacts of land use change on the natural heritage system through the creation or restoration of natural features.”<sup>3</sup>**

Toronto Region Conservation Authority (TRCA) in their “The Living City Policies, November 28, 2014” states:

**“Compensation – in the context of conservation and land use planning, compensation is defined as the replacement of lost/altered ecosystem services and functions”.<sup>4</sup>**

These definitions provide a helpful overview of offsetting for the purposes of this Discussion Paper. They reflect the common themes found in defining the concept, in that offsetting requires compensation for impacts to natural features and functions as a result of development, that offsetting is viewed as a last resort approach, and that where it is used the focus should be on no loss and preferably a net gain to the environment.

### **3. Key Offsetting Principles**

Ontario Nature examined the concept of biodiversity offsetting between 2013-16, including conducting a series of stakeholder, expert and practitioner workshops, and producing the publications titled “Key Issues in Biodiversity Offset Law and Policy, A Comparison of Six Jurisdictions, June 2015” and “Biodiversity Offsetting in Ontario: Issues, accomplishments and future directions Summary of Ontario Nature’s 2014 – 2016 Project, October 2016”. Based on their review of offsetting from various jurisdictions these reports provide an overview of key principles to consider in the development of offsetting policy:

1. Adherence to the mitigation hierarchy
2. Limit to what can be offset
3. Landscape context
4. No net loss
5. Additional conservation outcomes
6. Stakeholder participation
7. Equity
8. Long-term outcomes
9. Transparency
10. Science and traditional knowledge

Building on these overarching principles, Ontario Nature through their completed workshops identified strong support for the following seven principles to be considered for offset policy:

1. Offsetting should be set within a clear mitigation hierarchy. First, negative impacts should be avoided wherever possible. Second, any unavoidable negative impacts should be minimized to the extent possible. Offsetting would then offer a means to deal with residual impacts that cannot be addressed through avoidance or minimizing harm.
2. Offsetting should require achievement of an overall net gain.
3. Some sites, features and habitats should be off-limits to offsetting, based for example on vulnerability and irreplaceability. The “no-go” criteria should be informed by science and Aboriginal traditional knowledge.
4. In establishing equivalence, the offset must take into account not only quantity (size) but also quality with respect to the condition of both sites and their landscape context.
5. The outcomes secured through an offset should last at least as long as the project’s impacts, and ideally in perpetuity.
6. The offset location should be based on desired conservation outcomes.
7. The pricing of offsets should cover the complete costs of the delivery of the offsets (including costs of entering into an agreement, creation and maintenance of the offsets, monitoring and reporting).<sup>5</sup>

These key principles provide an important overview of the issues related to offsetting for consideration in the development of any proposed HCA offsetting policy.

#### **4. Provincial Policy Review**

Planning and regulatory policy developed by the HCA needs to account for and “be consistent with” the Provincial Policy Statement, 2020 (PPS). The introduction to Section 2.0 Wise Use and Management of Resources states “Ontario’s long-term prosperity, environmental health, and social well-being depend on conserving biodiversity, protecting the health of the Great Lakes, and protecting natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources for their economic, environmental and social benefits”.<sup>6</sup>

As it relates specifically to Natural Heritage, Section 2.1.2 of the PPS states “The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features”.<sup>7</sup> Based on this, the overall policy direction as it relates to natural heritage is that of maintaining and restoring natural features, functions, biodiversity, linkages and water features. It does not speak to the removal of these features and it is important to note that the words compensation and offsetting do not appear in the PPS.

The PPS further states that development is not permitted in significant wetlands in Ecoregions 5E, 6E and 7E as well as significant coastal wetlands. The HCA is in Ecoregion 7E. For features such as significant woodlands, significant valleylands, significant wildlife habitat and significant areas of natural and scientific interest, development is not permitted unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions. This policy framework speaks to the protection of the feature with development only permitted when it is demonstrated that the natural features and functions would not be negatively impacted. While not stated in the PPS, and subject to municipal policy direction, it would be in these instances that natural heritage offsetting could be considered.

The Greenbelt Plan and the Niagara Escarpment Plan provide provincial direction as well regarding the natural heritage system of the Greenbelt as well as the natural and physical features of the Niagara Escarpment Plan. The policy direction of the Greenbelt Plan and the Niagara Escarpment Plan are included within municipal official plans and zoning by-laws to ensure conformity with these provincial documents. Any ecological offsetting policy proposed must meet the requirements contained in these documents.

## **5. Conservation Authorities Act and Regulations**

In 2015 the Ontario government initiated a review of the Conservation Authorities Act and its Regulations. This review is on-going, and most recently, on December 8, 2020, the Province approved the Budget Measures Act (Bill 229) which included further changes to the Conservation Authorities Act, specifically Schedule 6 of that Bill details the changes to the CA Act. These changes confirm that natural hazards will remain a mandatory program for conservation authorities. The changes do impact natural heritage as a program area and the legislation dictates that an agreement between the conservation authority and its member municipalities is required to facilitate and cover the costs of such a program. The implementing regulations for these changes to the Conservation Authorities Act have not yet been developed and as such, the actual requirements related to these programs is not known. These requirements may have an impact on what would be included in an offsetting policy and specific requirements.

As part of the changes to the Conservation Authorities Act, the province has included requirements related to mandatory permits and zoning orders. These changes are now in full force and effect. The following excerpts from the Conservation Authorities Act details the requirements relating to zoning orders and the mandatory requirement to issue permits. Section 28.1.2 (1) outlines that this requirement only applies for a zoning order issued for lands outside of the Greenbelt.

**“28.1.2 (1)** This section applies to any application submitted to an authority under section 28.1 for a permit to carry out a development project in the authority’s area of jurisdiction if,

- (a) a zoning order has been made by the Minister of Municipal Affairs and Housing under section 47 of the *Planning Act* authorizing the development project under that Act;
- (b) the lands in the authority’s area of jurisdiction on which the development project is to be carried out are not located in the Greenbelt Area designated under section 2 of the *Greenbelt Act, 2005*; and
- (c) such other requirements as may be prescribed are satisfied. 2020, c. 36, Sched. 6, s. 17.”

Section 28.1.2 (3, 4) details that the permit is to be issued by the conservation authority.

**“28.1.2 (3)** Subject to the regulations, an authority that receives an application for a permit to carry out a development project in the authority’s area of jurisdiction shall issue the permit if all of the requirements in clauses (1) (a), (b) and (c) are satisfied. 2020, c. 36, Sched. 6, s. 17.

Same

- (4) For greater certainty, an authority shall not refuse to issue a permit to carry out a development project under subsection (3) despite,
- (a) the prohibitions in subsection 28 (1) and the fact that the development project may not meet the criteria for issuing a permit under subsection 28.1 (1); and
  - (b) anything in subsection 3 (5) of the *Planning Act*. 2020, c. 36, Sched. 6, s. 17.”

The conservation authority may attach conditions to a permit to mitigate “any effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land as well as any conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property”. It is noted that the proponent can request a Hearing before the Board of Directors or a review by the Minister if there are concerns regarding any conditions specified.

Section 28.1.2 (17, 18 and 19) provides direction regarding the requirement to enter into an agreement relating to ecological compensation for these mandatory permits.

“**28.1.2** (17) An authority that issues a permit to carry out a development project under this section shall enter into an agreement with respect to the development project with the permit holder and the authority and the permit holder may add a municipality or such other person or entity as they consider appropriate as parties to the agreement. 2020, c. 36, Sched. 6, s. 17.

(18) An agreement under subsection (17) shall set out actions or requirements that the permit holder must complete or satisfy in order to compensate for ecological impacts and any other impacts that may result from the development project. 2020, c. 36, Sched. 6, s. 17.

(19) No person shall begin a development project until an agreement required under subsection (17) has been entered into. 2020, c. 36, Sched. 6, s. 17.

This section of the CA Act directs that compensation shall take place and that an agreement must be entered into to set out the requirements of such compensation. This Discussion Paper is intended to highlight the issue of offsetting or compensation and the development of policy direction that would set a policy framework for offsetting in the HCA watershed. The changes to the CA Act by-passes this policy framework approach and speaks directly to implementation. In this regard, a proposed offsetting policy will need to include implementation guidelines to address the overall HCA policy approach as well as the direction of Section 28.1.2 of the Conservation Authorities Act. Implementation guidelines are to be used “only after the decision to offset has been made by the approval authority”<sup>8</sup> and would address as an example natural area function, natural area features, connectivity, planting and species composition, location of offset, replacement ratios and the principle of ecological net gain.

## **6. Review of Existing Offsetting Policy and Implementation Guidelines**

The review of existing offsetting policy within this Discussion Paper focuses on policy that has been developed by conservation authorities. The following provides an overview of the policy approach at the Toronto Region Conservation Authority, Credit Valley Conservation and the Lake Simcoe Region Conservation Authority.

### Toronto Region Conservation Authority

TRCA’s “Living City Policies” document (2014) provides a policy framework that includes opportunities for compensation when it is determined that it is not feasible to protect the full natural heritage system. The policies note that “if a natural feature itself cannot be protected, TRCA may recommend compensation. However, compensation is a management tool that should only be used as a “last resort”, being an option only where federal, provincial and municipal requirements do not protect the feature, and

only after all other options for protecting the feature have been evaluated.”<sup>9</sup> Further, “TRCA will always advocate first for the protection of natural features and the full Natural System. However, when planning or environmental assessments approval processes permit losses to the natural system, compensation can be a mechanism for replicating ecosystem services.”<sup>10</sup>

The TRCA’s policies highlight that an objective is to “advocate first that natural features should be protected in situ and that compensation should:

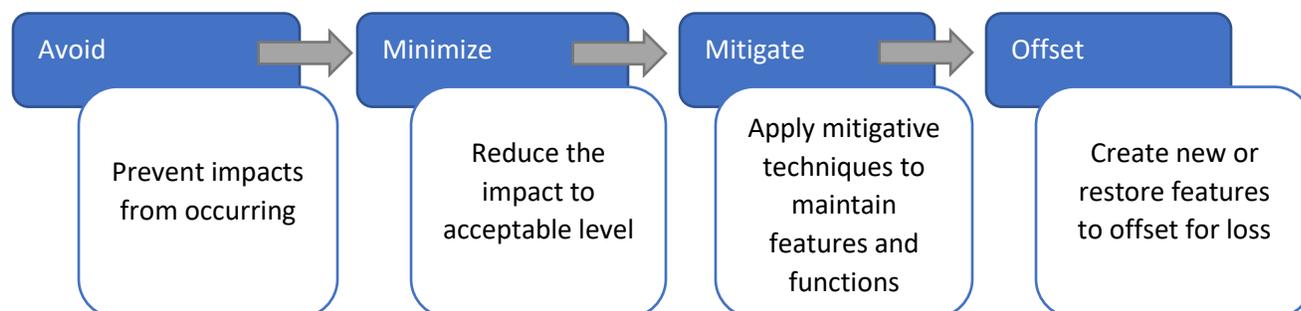
- Only be considered once the protection hierarchy has been applied – avoid/minimize/mitigate first;
- Where feasible, take place in proximity to where the loss occurs;
- Be informed by current knowledge of TRCA’s ecosystem and watershed strategies and any applicable municipal strategies;
- Strive for no loss of ecosystem services;
- Be carried out in a transparent and timely manner;
- Be based on an adaptive management approach incorporating monitoring and evaluation, where appropriate”<sup>11</sup>

In addition to this policy framework, TRCA also has “Guidelines for Determining Ecosystem Compensation, June 2018”. This document guides the technical requirements for compensation after the decision to compensate per the above policies has been made.

### Credit Valley Conservation

CVC’s “Ecosystem Offsetting Guidelines, March 13, 2020” outline that “the application of offsetting shall be consistent with relevant provincial, municipal and other approval authority natural heritage system planning policies, legislation and regulations. Offsetting may not be appropriate or permitted in all cases. Proponents are encouraged to consult the appropriate approval authority to discuss the applicability of ecosystem offsetting. These guidelines are intended to ensure offsetting activities remain a last resort and that all efforts for protection on site have been considered before contemplating removals.”<sup>12</sup>

Offsetting is guided by a mitigation hierarchy as detailed in the CVC’s “Ecosystem Offsetting Guidelines, March 13, 2020”.



The document specifically notes that “the goal of protection and ideally enhancement of the natural system and that the intent of this guideline is not to weaken this goal or diminish the ability to protect ecosystems in situ.”<sup>13</sup> CVC specifically notes that the guidelines are only to be used after the decision to offset has been made by the approval authority. “Where avoidance and mitigation measures are not possible or financially feasible, offsetting may be considered where the approval authority deems it possible and the plan continues to conform with federal, provincial, municipal and conservation authority requirements. In addition, natural heritage features and areas may be impacted through the construction or expansion of infrastructure through the environmental assessment process – including other development-related activities requiring permitting pursuant to Section 28 of the Conservation Authorities Act.”<sup>14</sup>

CVC’s “Ecosystem Offsetting Guidelines, March 13, 2020” provide for their approach to offsetting as well as guiding the technical requirements for compensation after the decision to compensate has been made. This highlights the hierarchy mitigation approach and the need for alignment with municipal planning approaches and to be consistent with federal, provincial and municipal legislation, regulation and policies.

#### Lake Simcoe Region Conservation Authority

LSRCA’s “Ecological Offsetting Policy, May 2019” provides for a similar approach for the mitigation hierarchy as follows:

1. Avoid - Prevent impacts from occurring by changing project location, scope, nature of timing of activities.
2. Minimize - Reduce the duration, intensity and/or extent of impacts that cannot be avoided.
3. Mitigate - Rehabilitate or restore features or functions that have been exposed to impacts that could not be avoided or minimized.
4. Compensate - Create or restore new habitat to compensate for loss that could not be avoided, minimized or mitigated.

The “Ecological Offsetting Policy, May 2019” notes that a goal of the LSRCA’s Strategic Plan “is to support a safer, healthier and more liveable watershed through exceptional integrated watershed management. The development and implementation of an Ecological Offsetting Policy supports this goal by providing a consistent approach to natural heritage protection, enhancement and restoration throughout the watershed.”<sup>15</sup>

LSRCA provides for prerequisites required for ecological offsetting as follows:

“Prior to the approval of any development application proposing compensation for the loss of wetland or woodland feature, the following conditions must first be satisfied

through an approved Environmental Impact Study (EIS), Natural Heritage Evaluation (NHE) or equivalent:

- ✓ Demonstrate conformity with applicable provincial, regional and local plans, including the Oak Ridges Moraine Conservation Plan, Greenbelt Plan, Growth Plan for the Greater Golden Horseshoe, Lake Simcoe Protection Plan, and Official Plans.
- ✓ Satisfy the “no negative impact test” for the loss of natural heritage feature to ensure consistency with the Provincial Policy Statement (PPS)
- ✓ Assess the impacts to natural heritage features such as wetlands, woodlands, and watercourses, as well as their associated vegetation protection zones.
- ✓ Demonstrate that the mitigation hierarchy steps of avoiding, minimizing and mitigating have been followed and that compensation is the only viable option to address impacts to natural heritage features
- ✓ Include a preliminary Ecological Offsetting Strategy (EOS) that describes, in concept, how the loss of natural heritage feature will be compensated for. This would include identifying the feature to be removed, location where it will be replaced and general principles for feature creation.”<sup>16</sup>

Exceptions are provided where offsetting would not be required. These exceptions include agricultural uses, an accessory structure and single detached dwelling on an existing lot of record. These exceptions relate to existing permitted uses, small scale proposals development allowances for a lot of record. Exceptions are also permitted subject to criteria for small wetland and woodland features. Proposals that require approval under LSRCA’s permit regulation (Ontario Regulation 179/06) and no approvals under the Planning Act are not subject to the Ecological Offsetting Policy.

The LSRCA’s outlines that “An Ecological Offsetting Strategy (EOS) will be required where compensation is the only viable option to address impacts to natural heritage features. It will be the responsibility of the developer or proponent to develop and implement this EOS. The EOS must demonstrate how the loss of natural heritage feature will be compensated for and that this offset will result in a “net gain” of natural heritage features. Ecological offsetting compensation projects must be both feasible and completed within a reasonable timeframe, preferably prior to the removal of the original feature. The EOS must also include a monitoring component to ensure the successful installation of compensation projects.”<sup>17</sup>

Like TRCA’s and CVC’s approach, the LSRCA’s “Ecological Offsetting Policy, May 2019” document highlights their approach to offsetting and notes this can be considered when compensation is the only viable option to address impacts to natural heritage features. This highlights the hierarchy mitigation approach and the need to be compliant

with municipal planning approaches and with federal, provincial and municipal legislation, regulation and policies.

### Summary

TRCA's, CVC's and LSRCA's policies as highlighted above provide three current examples of conservation authority policy and best practice related to ecological offsetting. Each policy framework shares similarities in that offsetting should take place only after the approach has been endorsed by the approval authority, the mitigation hierarchy has been followed, offsetting should be considered as part of an overall planning approvals process with a no net loss and ideally a net gain in natural features approach and that, as a starting point, natural features should first be protected in situ.

It is also noted that the Nottawasaga Valley Conservation Authority has also developed a document for discussion titled "Achieving Net Gains through Ecological Offsetting, January 2019". This document provides for a similar approach as highlighted above through the TRCA, CVC and LSRCA.

In the development of this Discussion Paper, HCA staff have had discussions with other conservation authorities that do not have an ecological policy framework in place but have been involved in offsetting. In these examples, the projects generally are not site specific and have involved broader planning processes such as environmental assessments and municipal secondary plans. These broader studies have involved identifying core natural areas within a natural system and ensuring these features are maintained. Offsetting is only considered for natural features identified but outside of the core and linkage areas. Offsetting allows for these isolated features to be incorporated into the broader natural heritage system.

## **7. Review of City of Hamilton and County of Wellington Official Plan Policy**

Local official plans are guided by the requirements of the Provincial Policy Statement specifically, as well as the policies of the Greenbelt Plan and the Niagara Escarpment Plan where they are in effect. As noted previously in this Discussion Paper, the overall policy direction of the PPS as it relates to natural heritage is that of maintaining and restoring natural features, functions, biodiversity, linkages and water features.

The City of Hamilton has an Urban Official Plan and Rural Official Plan in place. The City of Hamilton is the approval authority as it relates to natural heritage and applications considered for approval under the Planning Act. The policy direction of the plans notes that "provincial and local planning objectives for the Natural Heritage System focus on protecting, and restoring these features and natural functions as a permanent resource for the community."<sup>18</sup> The plans include goals "To protect and enhance biodiversity and ecological functions, and to achieve a healthy, functional

ecosystem.”<sup>19</sup> It is important to note that there is no policy direction in these plans that specifically allows for offsetting.

In general terms, the City of Hamilton’s Official Plans seek to protect and enhance core areas, natural heritage features and hydrologic features by not permitting development within these areas and by requiring buffer areas identified as vegetation protection zones. There are allowances in certain instances where development may be permitted provided there are no negative impacts on the feature or the ecological function. This would be demonstrated through the completion of an environmental impact study. The overall policy direction is that of protecting natural features and not permitting development. It would only be in the instances where development is permitted subject to the approved findings of an environmental impact study that offsetting could be considered. When the Official Plan policy of the City of Hamilton is considered, offsetting is not identified as an option.

The Township of Puslinch comprises a relatively small geographic area when considered in the context of the HCA overall watershed. However, the Township’s area within the HCA watershed is incredibly important from a natural heritage, surface water, groundwater and wetland perspective. The headwater features of Spencer Creek and Fletcher Creek are in the Township of Puslinch.

Official Plan direction for the Township is included in the County of Wellington’s Official Plan. The policy direction of this official plan is similar to the approach of the City of Hamilton in that development in certain features is prohibited, however, for some features development may be permitted subject to the completion of an approved environmental assessment. It is noted that the County of Wellington Official Plan does not contain natural heritage offsetting policy. As with the City of Hamilton, it may be in these situations that offsetting could be considered, however, like the comments above, offsetting may run counter to the intent to protect, maintain and restore natural heritage features per the official plan.

This process, if deemed acceptable, would need to be led by the municipality through a land use planning process. As noted, the City nor the County has no offsetting policies in place and the development of HCA natural heritage offsetting policy would best be developed, if that is deemed the desired course, so the City and County has the same approach, or at a minimum an approach that is not conflicting in this regard to natural heritage offsetting.

## **8. Review of existing Hamilton Conservation Authority Policy Framework relating to Natural Heritage**

The “Planning and Regulation Policies and Guidelines, 2011” document is HCA Board of Director approved policy. This document guides staff in providing comments on

circulated planning applications and submitted permit applications. There is no allowance for natural heritage offsetting in this document. The policies and guidelines follow a similar approach to that of an official plan in that protection and maintenance of the natural feature is the goal. From this, development is not permitted in some cases or in other cases it may be permitted subject to the submission, review and approval of an environmental impact study showing that the features and functions of the natural feature will not be negatively impacted because of the development.

It is noted that based on the existing Memorandum of Agreement between the HCA and the City of Hamilton for the review of land use planning applications under the Planning Act, HCA provides technical review and input to the City in an advisory capacity. HCA relies on the PRPG document to inform its review of applications circulated by the City. However, the City is the approval authority on all land use planning applications, including for issues relating to natural heritage.

The PRPG document is also applied to HCA's review of permit applications submitted under HCA's *Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses Regulation (O. Reg. 161/06)*. Development proposals within regulated areas that are associated with watercourses, valleys, wetlands and the Lake Ontario shoreline require review and approval by the HCA. In considering such applications, HCA's policies consider the potential impacts of the proposed development on natural hazards and the environment.

## **9. Draft Offsetting Policy Framework**

HCA could develop a natural heritage offsetting policy framework based on current examples and best practices, as reviewed and summarized in this Discussion Paper. Using other conservation authority examples and approaches as a guide, the following could be considered for the development of HCA's approach to Natural Heritage Offsetting Policy.

### *Introduction*

If through a land use planning exercise or application, environmental assessment or an HCA Regulation permit application, it is determined that a natural feature cannot be protected, the HCA may accept offsetting. However, compensation is a management tool that should only be used as a "last resort", being an option only where federal, provincial and municipal requirements do not protect the feature, and only after all other options for protecting the feature have been evaluated in accordance with the mitigation hierarchy. While offsetting can be a mechanism to replicating natural features and the natural heritage system, the HCA will always advocate first for the protection of natural features and the full natural system.

### *HCA Natural Heritage Offsetting Policy Key Principles*

1. **Adherence to the Mitigation Hierarchy** - Offsetting should follow conventions for mitigation and offsetting by applying a hierarchical approach:
  - 1.1. **Avoid the impact** - Priority is assigned to designing development projects to avoid natural heritage features and negative impacts wherever possible
  - 1.2. **Minimize the impact** - Efforts to minimize and mitigate any unavoidable negative impacts must also be considered.
  - 1.3. **Compensate/offset for the impact** - Offsetting could then offer a means to deal with residual impacts that cannot be addressed through avoidance or minimizing harm.
2. **Achievement of Net Gain** – Offsetting should be designed with watershed conservation objectives in mind, and to achieve an overall net gain to the natural heritage system. This is preferred over seeking a no net loss in the specific features affected by the development; an offset should achieve outcomes above and beyond results that would have occurred if the offset had not taken place.
3. **Offsetting has Limits** - Some sites, features and habitats should be off-limits to offsetting. This will include certain natural heritage features and functions based on rarity, vulnerability and irreplaceability. In recognizing that offsetting has limits and will not be appropriate in some circumstances, offsetting should be informed by policy direction, science and Aboriginal traditional knowledge as available, as well as site and surrounding landscape context.
4. **Equivalency** – The development of offsets and compensation must consider both the quantity (size) and quality of natural heritage features and functions in the context of the subject site(s) and surrounding landscape.
5. **Permanent Outcomes** - The outcomes secured through an offset should support local and regional conservation objectives and should be designed to last at least as long as the project’s impacts, and preferably in perpetuity as part of the natural heritage system.
6. **Alignment with Municipal Policies and Approaches.** Offsetting should preferably align with City of Hamilton and County of Wellington/Township of Puslinch Official Plans and approaches.
7. **Cost Recovery** – When considering natural heritage offsets, the complete costs of the delivery of the offsets should be recovered, including costs of entering into an agreement, project implementation, and longer-term maintenance and monitoring of the offsets.

### *Natural Heritage Offsetting Policy*

To accept in instances where it has been demonstrated that development or infrastructure cannot fully protect a natural feature or any other component of the natural heritage system, offsetting of these natural features and functions be provided, and

That a decision to accept natural heritage offsetting be subject to:

- a) the Natural System not being protected by any other applicable federal, provincial, or municipal requirement(s);
- b) all other efforts to protect the Natural System being exhausted first, in accordance with the mitigation hierarchy;
- c) that it be guided by the municipality in consultation with the landowner;
- d) that it takes place at the appropriate level of the planning and development process for maximizing options for enhancement to the natural system, e.g. secondary plans, environmental assessments.
- e) In circumstances of mandatory requirement to issue a permit under Section 28.1.2 of the CA Act, specific guidelines will be developed and followed for ecological net gain.

Any natural heritage offsetting policy will require implementation guidelines. While such implementation guidelines have not been developed as part of this Discussion Paper, there are examples of such guidelines available. These examples would be used in the development of final HCA Natural Heritage Offsetting Policy and Implementation Guidelines.

## **10. Next Steps and Approach for Stakeholder and Public Input**

Natural heritage offsetting can be viewed as a potential benefit and management tool for the conservation of our natural heritage and it can be viewed as a slippery slope towards the loss of these natural heritage features and contrary to the approach to protect, enhance and restore features in place to ensure a healthy, biodiverse natural heritage system. The HCA knows there will be many viewpoints and approaches to this topic and we encourage you to provide your comments.

This Discussion Paper has been developed to highlight the issues involved and the approaches to natural heritage offsetting. It is intended to facilitate a review of this approach as it relates to natural heritage and to obtain input from our stakeholders and the public.

With the development of such policy, it will be important to ensure that the City of Hamilton and Township of Puslinch are engaged early in the process to ensure that any policy finalized has the support of the City of Hamilton and the Township of Puslinch and ideally, aligns with City and Township policy,

HCA wishes to ensure that anyone with an interest in this policy has the opportunity to provide input. The following questions are provided to help the HCA understand the approach and thoughts of our stakeholders and the public. Please do not feel restricted to answer only the questions, if you have additional thoughts and comments, please do not hesitate to provide your additional thoughts to the HCA.

1. What policies do you think should be put in place by HCA in regard to natural heritage offsetting?
2. Are there gaps or issues missed in the Discussion Paper that would help provide greater insight and direction relating to natural heritage offsetting policy?
3. Given that the Province has implemented mandatory permits through MZO which require offsetting, what should HCA do to conserve the natural heritage when such a permit is required?
4. An option for the policy is that any of our natural heritage offsetting policies or guidelines would be in line with the City of Hamilton and County of Wellington/Township of Puslinch approaches and policies. Therefore, decision related to offsetting would be led by the municipalities. What are your comments about this approach?
5. The Discussion Paper provides a draft policy framework in Section 9 that could be used by the HCA to finalize natural heritage offsetting policy. Does the framework approach provide adequate direction for protection of existing features and for offsetting as a natural heritage management tool?
6. Should the approach in the draft policy framework for offsetting be based on a “no net loss” or a “net gain” philosophy? What are your thoughts on preferred approach that makes it the best option?

Once comments have been received on the Discussion Paper, HCA staff will work towards finalizing the natural heritage offsetting policy for consideration by the Hamilton Conservation Authority Board of Directors. This is expected in the fall of 2021. The HCA thanks you for your interest in this proposal and look forward to receiving your comments.

With the exception of personal information, all comments received will become part of the public record.

## Endnotes

1. Ontario Nature, Ontario Nature's Greenway Guide Series, Biodiversity Offsetting in Ontario: Issues, accomplishments and future directions. Summary of Ontario Nature's 2014-2016 Project, October 2016., 3
2. Ontario Nature, Ontario Nature's Greenway Guide Series, Key Issues in Biodiversity Offset Law and Policy, A Comparison of Six Jurisdictions, June 2015., 7
3. Credit Valley Conservation, Ecological Offsetting Guidelines, March 2013., 1.
4. Toronto and Region Conservation Authority, The Living City Policies for Planning and Development in the Watersheds of the Toronto and Region Conservation Authority, November 2018., 153.
5. Ontario Nature, Ontario Nature's Greenway Guide Series, Key Issues in Biodiversity Offset Law and Policy, A Comparison of Six Jurisdictions, June 2015., 4
6. Government of Ontario, Provincial Policy Statement, 2020, May 2020., 24.
7. Government of Ontario, Provincial Policy Statement, 2020, 24.
8. Credit Valley Conservation, Ecological Offsetting Guidelines, 1
9. Toronto and Region Conservation Authority, The Living City Policies for Planning and Development in the Watersheds of the Toronto and Region Conservation Authority, November 2018., 88.
10. Toronto and Region Conservation Authority, The Living City Policies, 88.
11. Toronto and Region Conservation Authority, The Living City Policies, 88.
12. Credit Valley Conservation, Ecological Offsetting Guidelines, 1
13. Credit Valley Conservation, Ecological Offsetting Guidelines, 7
14. Credit Valley Conservation, Ecological Offsetting Guidelines, 2.
15. Lake Simcoe Region Conservation Authority, Ecological Offsetting Policy, May 2017 (Revised May 2019)., 3.
16. Lake Simcoe Region Conservation Authority, Ecological Offsetting Policy., 5 and 6.

17. Lake Simcoe Region Conservation Authority, Ecological Offsetting Policy., 6
18. City of Hamilton, Rural Hamilton Official Plan, April 2014., C.2, 1 of 15.
19. City of Hamilton, Urban Hamilton Official Plan, September 2013, C.2, 1 of 9

## References

BC Ministry of Environment. 2010. Towards an Environmental Mitigation and Offsetting Policy for British Columbia: A Discussion Paper. BC Ministry of Environment; Victoria, B.C., draft for consultation.

City of Hamilton, Rural Hamilton Official Plan, April 2014

City of Hamilton, Urban Hamilton Official Plan, September 2013

County of Wellington, County of Wellington Official Plan, January 2021

Credit Valley Conservation, Ecological Offsetting Guidelines, March 2013

Government of Ontario, Provincial Policy Statement, 2020, May 2020

Government of Ontario, Wetland Conservation in Ontario: A Discussion Paper, October 2015

Kate, K., Bishop, J., and Bayon, R. (2004). Biodiversity offsets: Views, experience, and the business case. IUCN, Gland, Switzerland and Cambridge, UK and Insight Investment, London, UK.

Lake Simcoe Region Conservation Authority, Ecological Offsetting Policy, May 2017 (Revised May 2019).

Nottawasaga Valley Conservation Authority, Achieving Net Gains through Ecological Offsetting, Guidelines for preparing a site-specific ecological offsetting plan. Draft for Discussion, January 2019

Ontario Nature, Ontario Nature's Greenway Guide Series, Biodiversity Offsetting in Ontario: Issues, accomplishments and future directions. Summary of Ontario Nature's 2014-2016 Project, October 2016

Ontario Nature, Ontario Nature's Greenway Guide Series, Key Issues in Biodiversity Offset Law and Policy, A Comparison of Six Jurisdictions, June 2015

Toronto and Region Conservation Authority, The Living City Policies for Planning and Development in the Watersheds of the Toronto and Region Conservation Authority, November 2018

Toronto and Region Conservation Authority, Guideline for Determining Ecosystem Compensation (After the decision to compensate has been made), June 2018

<https://www.oecd.org/environment/resources/Policy-Highlights-Biodiversity-Offsets-web.pdf>