

## Assessment of Legislative Framework for Protecting Farmland Town of Milton, ON June 2018

### SUMMARY

Overall, the strength of the local legislative framework to protect farmland for the Town of Milton, Ontario (ON), is somewhat weak. The Town Official Plan is significantly out-dated (last consolidated in 2008) and is in need of revisions to properly reflect present issues, resources, legislation and challenges. Milton’s most notable effort in ensuring farmland protection is through the implementation of the Permanent Urban Separator, which works to accommodate urban boundary expansion while ensuring existing farmland is protected. Nonetheless, agricultural land appears vulnerable to development. Recent aspirational policy documents, such as Destiny 2 and Destiny 3 Milton, do not refer to the Permanent Urban Separator, thus raising questions about whether the Urban Separator is regarded as current policy. The Greenbelt Plan (GBP), which is a critical piece of provincial legislature that governs a substantial amount of farmland protection in Ontario, is not mentioned. Finally, the historical loss of farmland suggests that existing measures are not adequately protecting agriculture in Milton. Refer to Table 1 (at the end of this report) for a summary of the legislative framework for protecting farmland.

### Strength of Legislative Framework: Summary Assessment

	Overall Strength	Maximize stability	Integrate across jurisdictions	Minimize uncertainty	Accommodate flexibility
<b>Town of Milton (overall)</b>	<b>Somewhat Weak</b>	****	**	**	***
<b>Town of Milton (Greenbelt)</b>	<b>Weak</b>	***	*	*	***
<b>Town of Milton (non-Greenbelt)</b>	<b>Moderate</b>	****	***	***	***

\* = Very weak, \*\*\*\*\* = Very strong

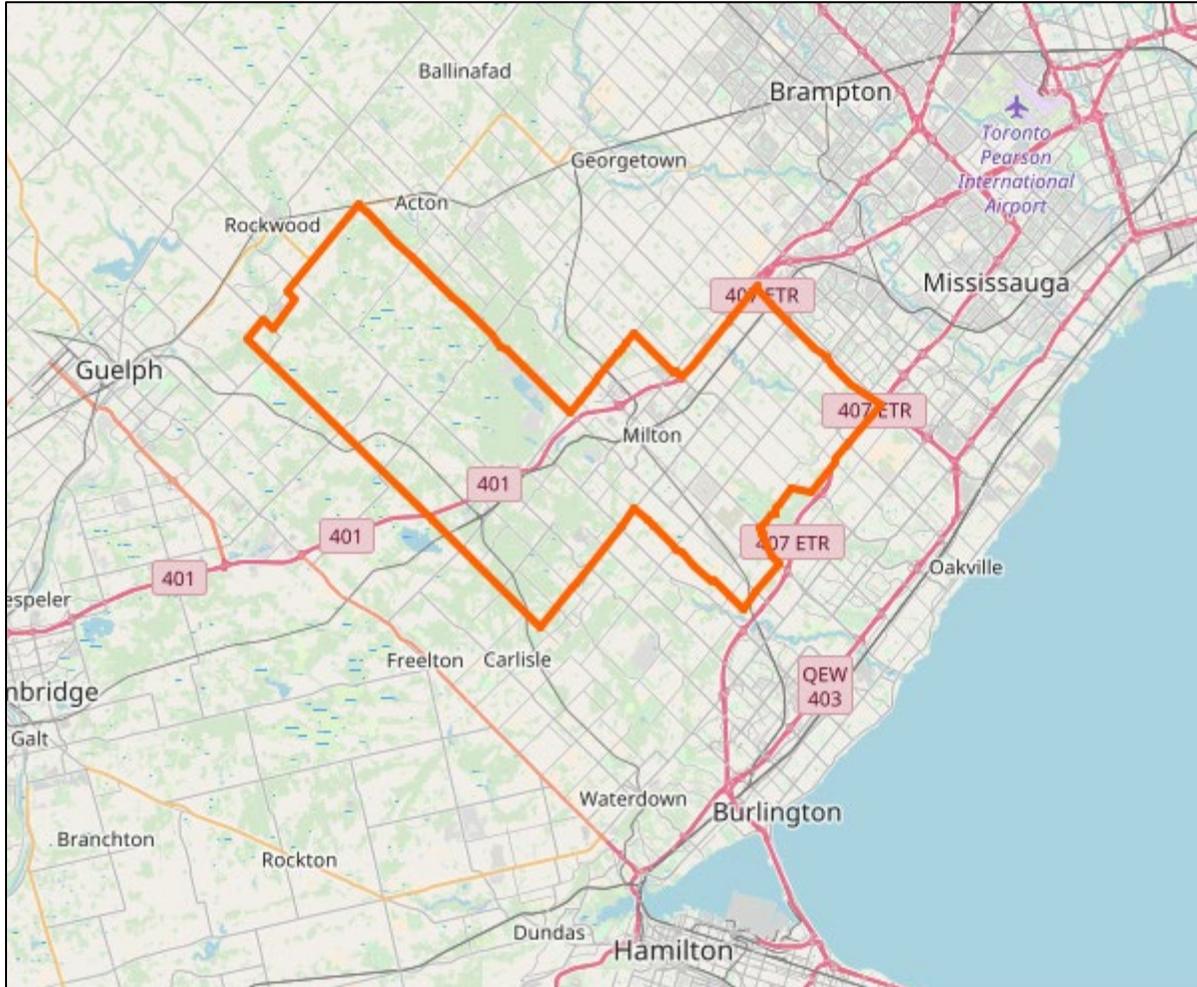
### ABOUT THE SITE

The Town of Milton is located in the Halton Region of Southern Ontario (Figure 1).. Considered as part of the Greater Toronto Area (GTA), Milton comprises approximately 363 square kilometres, situated along the edge of the Niagara Escarpment, a UNESCO Biosphere that extends 750km from Queenston on the Niagara River to Tobermory at the tip of the Bruce Peninsula. The Town of Milton is also considered a part of the Greater Golden Horseshoe (GGH) area of Southern Ontario, which extends along the shore of Lake Ontario from Niagara Falls to Clarington.

The demand for urban development is very high in Milton. The Town has seen tremendous growth over the past twenty years. The Town was noted as the fastest growing municipality in Canada, with a 71.4% increase in population between 2001-2006 and another 56.5% increase between 2006-2011 (Stats Can, 2011). According to the 2016 Canadian Census, Milton’s population

is 110,128, with projections indicating a 107% increase in growth by 2031, bringing the total population to 228,000.<sup>1</sup>

Figure 1. Map of the Town of Milton



Source: openstreetmap.org

Like much of Halton Region, Milton has a good supply of agricultural land with high capability. North of the Niagara Escarpment, though the agricultural land base is contiguous and has significant overlap with Greenbelt/Natural Heritage Sites, this area is less suitable for agricultural productivity (Figure 2). Agricultural land south of the Niagara Escarpment is somewhat contiguous, surrounds urban centres, and includes some of the most fertile prime agricultural land in the region. Almost half of the region's prime agricultural land exists south of the Niagara Escarpment Plan area, and a substantial area of prime agricultural land is included within the urban expansion boundaries (Figures 3 and 4).

Regarding the total of farmland acreage, the trend in the Town of Milton is consistent with the regional and broader provincial trends, seeing a 7% decline (2,415 acres) between 2001-2006 and then followed with a 10% decline (3,220 acres) between 2006-2011. As the Town of Milton and

<sup>1</sup> <https://www.insidehalton.com/news-story/7110264-census-milton-remains-in-top-10-fastest-growing-canadian-communities/>

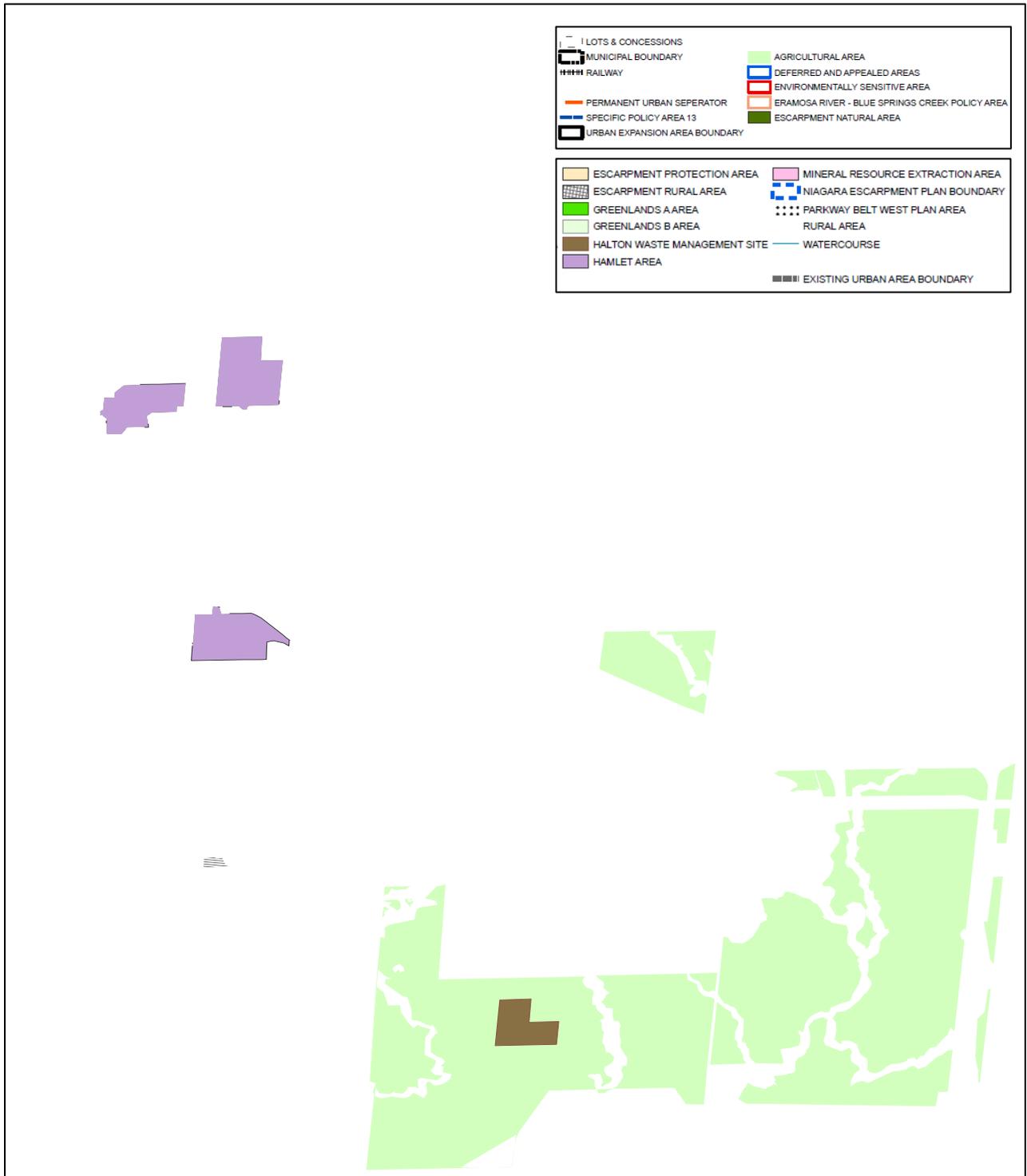
neighbouring Town of Halton Hills represent 83% of all farmland in Halton Region, this steep decrease indicates a dramatic loss to the region's agricultural industry (HRASBR, 2016). According to the Halton Region Agricultural Strategy Background Report (HRASBR), Milton has experienced an overall decrease in number of farms in the region, which represents the greatest decline in farm numbers out of all region's municipalities, showing a drop of 20% from 2006-2011.

For Halton Region, the strength of the legislative framework to protect farmland is somewhat strong. The importance of the municipality's agricultural base is clearly and continuously referenced through extensive goals and policies indicated in the Halton Region Official Plan. This clear statement of importance is coupled with the integration of numerous provincial plans that guide and constrain land-use planning across the Region. Protection for agricultural land that is covered by the Greenbelt Plan is strong, and the rest of the region that is not covered by the Greenbelt Plan is considered somewhat strong.

The legislative framework for protecting farmland in Ontario also differs depending on which legislation covers the agricultural land base. The *Planning Act* provides the foundation for protecting farmland, including a Provincial Policy Statement (PPS) that protects prime agricultural lands and specialty crop areas for long-term use for agriculture. In most parts of the province, which are covered by only the PPS, the framework is moderate. Where a package of additional legislation applies, including the *Greenbelt Act*, *Niagara Escarpment Planning and Development Act*, and *Places to Grow Act*, which covers the Greater Golden Horseshoe area that surrounds Toronto and Niagara Escarpment, the legislative framework for protecting farmland is somewhat strong.

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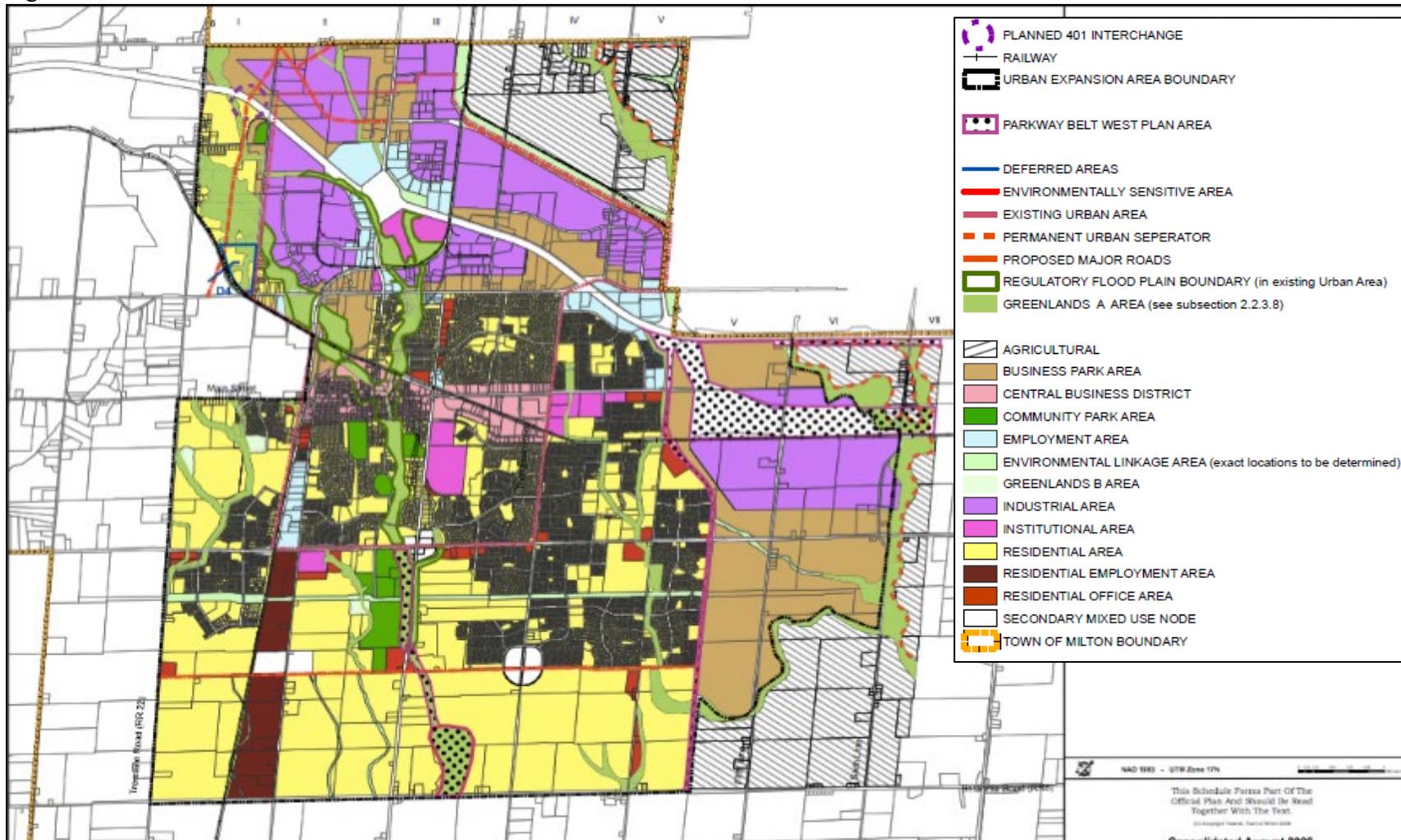
Figure 2. Town of Milton Land Use Plan



Source: Town of Milton Official Plan

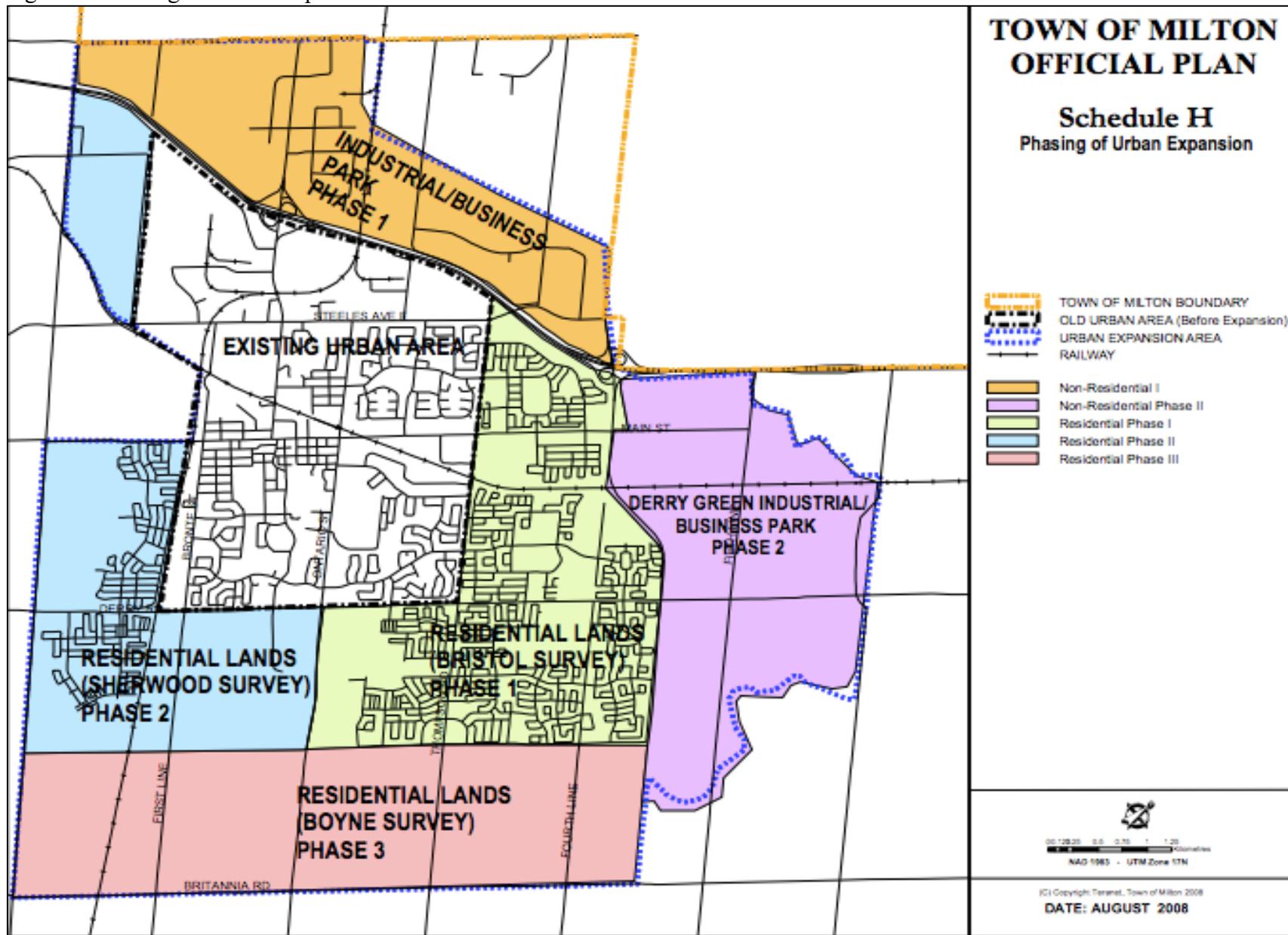
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Figure 3. Town of Milton Urban Area Land Use Plan



Source: Town of Milton Official Plan

Figure 4. Phasing of Urban Expansion



Source: Town of Milton Official Plan

## RESULTS

### Maximise stability

A stable legislative framework for protecting farmland is one that is not easily changed at the whim of shifting political interests; it is well-entrenched in acts of legislation, policy, and governance structures that are based on clear, concise language, and can hold up to court challenge. A key element of stability is a clear statement of purpose regarding farmland protection among the primary goals and objectives within each enforceable document. Thus, stability is a critical measure of the strength of an agricultural land-use planning framework.

The legislative framework for protecting agricultural land for the Town of Milton is strong in stability. A significant weakness of the Town's legislative framework is the age of its Official Plan (OP), which was approved by Town Council in 1996, and amended over the years. The Preface to the OP, which is not part of the OP, appears to be from the original plan. Although the Preface includes references to preserving agricultural lands and a permanent green space to restrict urban growth, it is not clear to what extent these non-official positions remain relevant.

Notwithstanding the above weakness, the OP includes strong statements for protecting farmland. A stated plan goal (s. 2.1.2.12) represents the Town's strongest statement for protecting farmland: "To protect prime agricultural areas for long-term agricultural use." This goal statement supports a broader goal (2.1.2.3) to maintain and enhance the agricultural economy. Further, in recognition of the key role of agriculture, the OP (2.4.3.5a) states, the Town will "implement land use policies that protect the most productive lands from non-agricultural uses." Under plan objectives, the only explicit reference to agricultural land is, "To maintain, strengthen and protect prime agricultural areas and significant aggregate resource areas" (2.1.3.21).

Although the above goals apply to all agricultural land, not all agricultural land is treated equally within the Town of Milton. The area to the south and east of the Urban Area is designated as Agricultural Area. The goal to protect prime agricultural areas is supported by Agricultural Area policies, which are addressed under the Rural System and Greenlands System Land Use Policies (Section 4). The general purpose of the Agricultural Area designation (4.4.1.1) is:

- a) To recognize agriculture as the primary activity and land use;
- b) To preserve prime agricultural soil;
- c) To maintain as much as possible lands for existing and future farm use;

This purpose is supported by a comprehensive set of land use policies.

Although the Halton Region OP designates significant areas of the area north and west of the Niagara Escarpment as prime agricultural land, these agricultural lands are not designated specifically as agricultural in the Town of Milton OP. Nevertheless, a general purpose of the Rural Area designation is to "recognize and protect agriculture as a primary activity and land use." These agricultural lands are not supported by a set of land use policies. Instead, an agricultural impact assessment is the primary mechanism to manage non-farm development.

Greenlands System land uses are interspersed throughout the Rural Area. The supporting policies (2.2.2.12), which focus on the natural environment, only recognise existing agricultural operations as permitted uses in Greenlands Area A and Greenland Area B. The Rural and Grasslands Systems section of the OP also includes policy (4.1.1.16) to establish a "permanent urban separator" that allows for "permanent farmlands between the ultimate Urban Areas of Milton, Mississauga and Oakville."

It is important to note that the Rural Area overlaps with the Protected Countryside land designation under the Greenbelt Plan. This provincial designation offers higher levels of protection for agricultural land within the Town of Milton, but is not recognised in the OP.

Finally, it should be noted that the expanded urban boundaries result in the direct loss of a substantial area of prime agricultural lands.

#### Integrate public priorities across jurisdictions

Integrating policies and priorities across jurisdictions is a foundation for building cohesion across provincial, regional, and local governments. One can also think of integration as a formal “linkage” that provides consistency among them. In order to successfully integrate policies across jurisdictions there must be sufficient details about the legislative context that guides and constrains local government plans and strategies.

The Town of Milton’s ability to integrate across jurisdictions legislative framework is weak. Important provincial legislation, including the *Planning Act* and the need to be consistent with the Provincial Policy Statement, are identified as binding agents to enact the legal effect of the Town of Milton’s OP. Correspondingly, the OP recognises the need to conform with the Niagara Escarpment Plan, Parkway Belt West Plan, and Regional Plan. Other important legislation, such as the *Greenbelt Act*, the *Places to Grow Act*, the *Farm and Food Protection Act* are absent from the legislative framework. The Niagara Escarpment Plan is the most consistently referenced example of additional legislation that has relevant impact on land use planning, but this legislation does not affect significant areas of agricultural land. The OP does refer to provincial Minimum Distance Separation Formulae.

The roles and responsibilities of Halton Region in planning and development matters are noted to signify its authority in guiding municipal planning and as the deferral authority for council on agricultural matters.

#### Minimise uncertainty

The presence of uncertainty, typically introduced via ambiguous language, exceptions, or gaps, is a critical measure of the weakness of an agricultural land use-planning framework. Thus, in addition to maximising the stability of a legislative framework through enforceable policies, people want to know they can rely on these rules and regulations to be applied consistently under different circumstances.

The Town of Milton’s legislative framework is rated as weak for minimising uncertainty. The strongest example of how the Town supports population growth while protecting existing farmland is demonstrated as the Permanent Urban Separator (4.1.1.16):

The main objective of the permanent urban separator shown on Schedules "A" and "B" is to prevent the extension of the Urban Expansion Area to the southeast, allowing for permanent farmlands between the ultimate Urban Areas of Milton, Mississauga and Oakville. To this end, applications to include these lands within the Urban Area shall not be considered regardless of the policies of subsection 5.3.3.9 of this Plan

This policy outlines the plans and impacts of urban boundary expansion. However, the more recent policy documents, *Destiny Milton 2* and *Destiny Milton 3*, do not mention the Urban Separator. This internal inconsistency suggests that this urban containment policy may no longer be as high a priority as presented in the OP, thus increasing uncertainty regarding these agricultural lands. A lack of consistency with the agricultural land designations of the Halton Region OP is an important factor that contributes to uncertainty.

Notwithstanding the above concerns, the OP contains agricultural land policies that help to minimise uncertainty. Importantly, the general purpose of the Agricultural Area policies (4.4.1) include the following:

- d) To protect farms from incompatible activities and land uses which would limit agricultural productivity or efficiency;
- e) To reduce the fragmentation of lands suitable for agriculture and provide for their consolidation;

Other relevant Agricultural Area policies include the following:

4.4.3.1(a) directs non-farm uses to Urban Areas and Hamlets.

4.4.3.3(a) Promote the location of major secondary agricultural processing, manufacturing, wholesaling and retailing operations within the Milton Urban Area; and, b) Promote the location of farm support operations within the Milton Urban Area.

The OP also contains urban growth goals, objectives, and policies that serve to reduce uncertainty for agricultural lands. A stated goal of the OP (2.1.2.10) is to promote compact forms of development, as follows:

To promote compact forms of development in all areas of the municipality to ensure the efficient land use pattern essential for the achievement of sustainable development. In particular, a compact urban area, which maximizes the use of serviced land through sensitive intensification and appropriate phasing of new development, will form the basis of the policies for the Milton Urban Area.

The strength of the above policies is countered by other policies. The policy for expanding urban boundaries (5.3.3.9) permits expansion onto prime agricultural land “only if no reasonable alternative exists.” A more comprehensive statement is needed to help minimise uncertainty. Similarly, although the expansion to Hamlet Areas shall be permitted only under specific conditions, consideration for impacts on agricultural land is not recognised among these conditions.

Finally, some areas of prime agricultural land in the Agricultural Area are identified as Future Employment Areas. Although this land use is not a formal designation, it is identified as a constraint for future development. More specifically, the Future Employment Areas are to be free of constraints for future development. Agricultural land uses are considered acceptable uses, i.e., not a constraint to the development of future employment lands. As such, the possibility of using these lands for future employment development increases the uncertainty about the future of these lands for agricultural uses.

#### Accommodate flexibility

Creating an effective legislative framework is an act of balance, without being too stable so that it cannot be changed when needed or too strict so that it cannot be applied in a range of circumstances. Thus, flexibility is necessary in order to moderate the restrictive effects of maximizing stability and minimizing uncertainty. The means to accommodate flexibility is typically done through itemized considerations when evaluating exceptions and governance mechanisms that reflect local agricultural interests and priorities in the decision-making process.

The Town of Milton’s legislative framework for accommodating flexibility is moderate. There are two significant aspects. The first concerns consent. Under Land Division (5.7.3.9.e) the OP states that protection of agricultural operations is a must be considered, as follows:

In order to preserve and protect agricultural operations, wherever they are located in the Town outside the Existing Urban Area boundary, as designated on Schedule "B", a severed lot for other

than agricultural purposes shall be located where it will have the minimum impact on surrounding agricultural operations and the location will comply with the Minimum Distance Separation (MDS) Formula I.

A second significant policy is the use of an agricultural impact assessment (AIA) when considering non-farm uses. In the Agricultural Area and Rural Area, an AIA is required for all permitted non-farm uses, as follows:

Require the proponent of any non-farm use that is permitted by specific policies of this Plan but has a potential impact on adjacent agricultural operations to carry out an Agricultural Impact Assessment (AIA), based on guidelines adopted by Region of Halton Council.

An AIA is also required for other situations, including major tourist facilities and non-intensive recreational use of Niagara Escarpment lands. The integration with Halton Region is important because the region has a comprehensive AIA guideline.

Attempts to accommodate flexibility are also reflected in rural lot creation and accessory farm dwelling policies. For rural lot creation (4.1.1.11), a farmer can qualify only under specified conditions. Similarly, an accessory farm dwelling (4.1.1.14) is permitted under specific conditions that ensure it is a bona fide request related to farm uses.

Although Milton does not have an agricultural advisory committee, the OP acknowledges the regional body. Policy 4.4.3.4 states, “the Town of Milton shall recognize, encourage, protect and support Halton's farmers and agricultural operations and to this end: b) Encourage the Region's maintenance of a broad-based Agricultural Advisory Committee to advise Regional Council on agriculture-related matters.”

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Table 1. Legislative Framework for Milton, ON

	POLICY	LEGISLATION	GOVERNANCE
<b>PROVINCIAL</b>	<p><b>Provincial Policy Statement (2014)</b></p> <p><b>Niagara Escarpment Plan</b></p> <p><b>Protected Countryside (Greenbelt Plan)</b></p> <p><b>Oak Ridges Moraine Conservation Plan</b></p> <p>Parkway Belt West Plan</p>	<p><i>Planning Act</i>, R.S.O. 1990, c. P.13</p> <p><i>Niagara Escarpment Planning and Development Act</i>, R.S.O. 1990, c. N.2</p> <p><i>Places to Grow Act</i>, S.O. 2005, c. 13</p> <p><i>Greenbelt Act</i>, 2005, S.O. 2005, c. 1</p> <p><i>The Farming and Food Protection Act</i>. 1998.</p> <p><i>Local Food Act</i>, 2013</p>	Ontario Municipal Board
<b>REQUIRED INTEGRATION</b>	<p>[PPS] Provincial Policy Statement</p> <p>Ontario Planning Act</p> <p><i>Planning Act</i> s. 1.1(c) to integrate matters of provincial interest in provincial and municipal planning decisions</p> <p><i>Planning Act</i> s. 5 Decisions shall be consistent with provincial policy statements and shall conform, or shall not conflict, with provincial plans, as the case may be.</p> <p><i>Planning Act</i> s. 6 (2) Ministries shall have regard for municipal planning policies.</p> <p><i>Planning Act</i> s. 2 planning authorities shall have regard for provincial interest (e.g. protection of agricultural resources).</p> <p><i>Planning Act</i> s. 27(1) amendments to lower-tier OPs shall conform to upper-tier OPs.</p> <p><i>Greenbelt Act</i> s. 6(2)(e) the Greenbelt Plan may set out policies with respect areas designated as Protected Countryside, including policies prohibiting official plans and zoning by-laws containing provisions that relate to specific matters and are more restrictive than those provisions relating to such matters in the Greenbelt Plan.</p> <p><i>Greenbelt Act</i> s. 7(1) decisions made under the <i>Planning Act</i> shall conform to with the Greenbelt Plan.</p>		
<b>REGIONAL</b>	<p>Halton Region Rural Agricultural Strategy - Background Report (2016)</p> <p>Greater Golden Horseshoe Agriculture &amp; Agri-Food Strategy (2012)</p>	<i>Halton Region Official Plan</i>	<p>Planning Advisory Committee</p> <p>Halton Agricultural Advisory Committee</p>
<b>LOCAL</b>	<p><b>Destiny Milton 3</b></p> <p>Employment Lands Needs Assessment (draft)</p>	<p><i>Town of Milton Official Plan</i></p> <p><i>Zoning Bylaw</i></p>	

*Acts (provincial laws), bylaws (local government laws, e.g., official municipal plan) [italicised]*

**Enforceable policy, regulations pursuant to acts [bold]**

Aspirational policy at all levels [plain text]