



*"Inspiring a Healthy Environment"*

July 29, 2020

City of London – Planning Services  
P.O. Box 5035  
London, Ontario N6A 4L9

**Attention: Sonia Wise** (sent via e-mail)

Dear Ms. Wise:

**Re: File No. Z-9133 - Application to Amend the Zoning By-law  
Response to City on ManEngment Ltd. (P. Flood) and L. Claro Correspondence  
Owner: Fernando Da Silva  
Applicant: Global Waste Disposal London Ltd. c/o Victor Da Silva  
Agents: Luis Carlo and Paul Flood  
2040 River Road, London, Ontario**

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The Upper Thames River Conservation Authority (UTRCA) provided comments on the revised Zoning By-law Amendment application to the City of London on June 26, 2020. It is our understanding City staff will be moving forward with a recommendation for an Open Space (OS5) zone on the subject lands to the Planning and Environment Committee (PEC) and Council. City planning staff are well versed in the interpretation and implementation of their policies and provisions within the City of London Official Plan (1989), the London Plan (2016), and the Zoning By-law Z-1. As such, the recommended OS zone boundary will encompass the area of restoration works to be undertaken by the applicant, and corresponds with the natural hazard and natural heritage features/functions on these lands and adjacent lands.

Since the City's notification of their recommendation, there has been a series of correspondence from the applicant and agents stating objections to the City's recommendation for OS5 zoning on the eastern portion of the lands. In particular, a letter addressed to the City of London from ManEngment Ltd., dated July 3, 2020 and titled "UTRCA Obstruction of Planning Process and Open Space (OS) Zone", offers the agents reasoning for this disagreement. The UTRCA offers the following comments as clarification on the inaccuracies contained in the correspondence provided below. However, first we must be clear that our role is a requirement through our delegated and legislative roles in the planning process.

The UTRCA, and all Conservation Authorities, have provincially delegated responsibilities to represent provincial interests regarding natural hazards under the Provincial Policy Statement. Under the *Conservation Authorities Act* the UTRCA regulates development and activities in or adjacent to river or stream valleys, watercourses, hazardous lands and wetlands.

The following is provided as clarification to the July 3, 2020 letter:

1. “List of Relevant Documents”

A list of dates/events believed to be critical to the understanding of this file is provided. The UTRCA is of the opinion that this list is both incomplete and inaccurate, and the following dates should be added to ensure a comprehensive understanding of the file:

2014 to 2019	Unauthorized site alteration and development apparent on review of aerial imagery from these years. Please refer to the attached compilation of imagery. Construction equipment begins appearing within the mapped features in 2014.
2014 to 2016	*Clarification* The UTRCA provided comments on the City-initiated Official Plan and Zoning By-law Amendment application (OZ-8271) relating to unevaluated vegetation patches. The UTRCA identified that the area contained regulated features (riverine flooding hazard, wetland feature and surrounding area of interference), and had no objections to the proposed amendment to re-designate and re-zone the lands from industrial to open space. Given the historic approvals on select properties within this area, the City advised that the designation and zoning would remain as is, however the features would remain on the subsequent schedules of the Official Plan as an unevaluated vegetation patch.
November 13, 2019	UTRCA receives Zoning By-law Amendment application (Z-9133) from City of London
November 21, 2019	UTRCA emails Victor Da Silva (applicant) and Luis Claro(agent) stating aerial mapping identifying regulated features have been altered/removed; requested availability to conduct a site visit
November 28, 2019	UTRCA staff (Brent Verscheure and Stefanie Pratt) met on site with Victor Da Silva to review extent of work, gain understanding of when/who completed work, and advise of violation under CA Act.
December 5, 2019	Email from Victor Da Silva to Brent Verscheure, Stefanie Pratt and Luis Claro regarding site visit follow-up, explanation for clearing works, and purpose of current application
December 10, 2019	UTRCA Comments to City of London on Z-9133, cc Victor and Luis
January 20, 2020	*Clarification* Meeting to review roles/responsibilities and restoration requirements (with groups listed)
January 22, 2020	MTE provides a copy of January 20 meeting minutes for review and comment
January 27, 2020	*Clarification* UTRCA provides response to meeting minutes providing clarification on matters discussed at meeting that were misrepresented in minutes, and provided a clear representation of requirements to move forward
February 6, 2020	*Clarification* On February 7 <sup>th</sup> , MTE provided a letter stating their interpretation of the historic site conditions and suggested resolution. MTE’s letter states that there was a watercourse and wetland present within the immediate vicinity of the lands, therefore they are subject to <i>Conservation Authorities Act</i> regulation. While the exact extent of these features was never appropriately determined prior to

	unauthorized site alteration, and has resulted in a disagreement of aerial imagery interpretation, the reference to “potential” should be removed.
March 9, 2020	*Clarification* This information was not provided to UTRCA at this time. Dietz OLS is a surveying company. Was a qualified wetland evaluator that successfully completed the Ontario Wetland Evaluation System Course on site to confirm the extent of the wetland? If not, reference to the wetland is not appropriate.
February-June 2020	*Clarification provided below*
February/March 2020	Continued correspondence between MTE (Dave Hayman) and UTRCA regarding restoration requirements.
May, 8, 2020	UTRCA Email clarification to Paul Flood on summary of discussion. Regulatory roles and features regulated; including flooding hazards, wetlands, and the area of interference surrounding wetlands.
May 22, 2020	Site visit with Victor Da Silva, Fernando Da Silva, Luis Claro and UTRCA staff (Brent Verscheure and Stefanie Pratt) to further review restoration requirements in person and develop a path forward that satisfies requirements
May 27, 2020	Sketched drawing from Luis Claro provided to UTRCA via email that did not align with discussions from site visit
June 8, 2020	Additional site visit with Victor Da Silva, Fernando Da Silva, Luis Claro and UTRCA staff (Brent Verscheure and Stefanie Pratt) to further discuss and review restoration requirements and justification
June 9, 2020	Sketched drawings from Luis Claro provided to UTRCA that better aligned with discussions from site visit
June 22, 2020	Luis Claro provides drawings to City and UTRCA formalizing June 9 <sup>th</sup> sketch
June 26, 2020	UTRCA provided revised comments on the Zoning By-law Amendment application (Z-9133) stating no objections to the additional permitted use, recommending implementing of appropriate open space zoning for both on-site and adjacent features, and restoration plan requirements through Site Plan and Section 28 permit process
June 30, 2020	Letter from Luis Claro to City of London (no date, title or signature)
July 3, 2020	Letter from ManEngment Ltd. (Paul Flood) to City of London titled “UTRCA Obstruction of Planning Process and Open Space (OS) Zone”
July 2020	Continued correspondence between applicant, agents, City of London and UTRCA staff regarding interpretation of Official Plan, London Plan and Zoning By-law

Further to the addition of relevant information provided above, we would like to clarify that Regulation Limit mapping is an important tool in identifying natural hazard features on the landscape to ensure long-term protection and appropriate assessment prior to development occurring within or adjacent to any regulated features. Regulated features include; flooding hazards, erosion hazards, wetlands, and areas of interference surrounding wetlands. It is important to note that the text of Ontario Regulation 157/06 describes the areas that are

regulated, so features and hazards do not have to be shown on the mapping to be regulated. Mapping is used as a guide, site specific information/studies are required to confirm the extent of the features and areas prior to development or site alteration. Development and activities that alter these features or their associated functions in any way are regulated and therefore subject to approval from the Conservation Authority prior to being undertaken.

As shown in the review of the aerial imagery noted above, development and site alteration works occurred prior to undertaking appropriate studies to determine the exact extent of features on these lands or receiving a *Conservation Authorities Act* permit.

This list of dates and documents should form a factual representation of UTRCA involvement with the file. As such, personal opinions have been removed.

## 2. “Background”

This section of the report is limited in providing full background on how the consultants came to their interpretations relating to the OS5 recommendation. The following statement is included:

*The London Plan shows no natural features near the subject area...*

It is clear that the author is referring to Schedule A of the Official Plan/Map 1 of the London Plan. While these schedules identify land use designations/place types, respectively, Schedule B1/Map 5/Map 6 also form equal parts of their respective Plans and must be read together with Schedule A/Map 1. The City has provided the applicant and agents with official excerpts of the schedules identifying natural hazards, regulated areas and natural features on the subject lands and adjacent.

## 3. “UTRCA Comments Damaging”

### a) Notice of Violation

As noted above, a site visit occurred with UTRCA staff, Victor Da Silva and Luis Claro which confirmed site alteration prior to undertaking receiving approval under Section 28 of the *Conservation Authorities Act*. It was advised that these works constituted a violation and restoration/renaturalization works would be required. The UTRCA has previously provided clarification in an email on May 8, 2020 to further explain the process to the agent;

*“upon review of the MTE report, dated February 6, 2020 under the heading Regulatory Limits states the following: “the Subject Lands would be regulated for the watercourse adjacent to the east boundary, and for the wetland interference area within 120m of a wetland larger than 2 ha (Regulation 157/06)”. We agree with MTE’s statement. MTE’s submission to you on September 17, 2019 also outlined the Conservation Authority regulatory areas.*

*Any development or site grading activities undertaken prior to obtaining a permit constitutes a violation. As such, the violation is appropriate and the area regulated was also confirmed by your environmental consultant. In our conversation you indicated that your client only looked at the Official Plan and undertook the works designated as Industrial. To clarify, both City Maps Zoning, and Official Plan Schedule B-2 Natural Resources and Natural Hazards schedule (Map 9 for this site) includes Conservation Authority Regulation Limits. Official Plan and City Maps identify Conservation Authority Regulated areas”.*

b) *Open Space – no justification*

City of London staff, on multiple occasions, have provided official interpretation of their Zoning By-law and Official Plan/London Plan in regards to the open space designation. As there are both natural hazard and natural heritage features, and their associated buffers/area of interference on the subject lands and adjacent lands, the City has chosen to implement zoning to respect this.

c) *Natural Heritage Features & Development Potential*

The agent consistently references “the CA’s mandate for fill and floodline protection”. This terminology refers to the Conservation Authority Regulation in place prior to 2006. In May 2006, the Minister of Natural Resources approved the individual "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" Regulations for all Conservation Authorities (Ontario Regulations 157/06 for the UTRCA) consistent with Ontario Regulation 97/04. Through these regulations, Conservation Authorities are authorized to regulate development and activities in or adjacent to river or stream valleys, Great Lakes and inland lakes shorelines, watercourses, hazardous lands, wetlands, and the area of interference surrounding wetlands. This regulation complements municipal implementation of provincial policies under the *Planning Act* for natural hazards. Furthermore, this regulation includes the straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream, watercourse or for changing or interfering in any way with a wetland.

It is stated that “The Owner has generously accommodated the 15m floodway setback ‘regulation’ with the new site plan as agreed in the field with UTRCA on the basis that no OS be considered”. The agreement between the UTRCA and the applicant in regards to the setback did not include confirmation that an OS zone would not be considered. Upon much discussion, UTRCA staff continually stated that the City has jurisdiction to make the final decision on the zoning matters and a recommendation based on regulated features would be provided through our delegated role. Additionally in the field, UTRCA staff stated that a 15 metre setback from the top of the bank of the adjacent channel would be the minimum acceptable requirement, with 6 of those metres to be maintained in a natural state as an access allowance, in the absence of detailed technical reports.

Furthermore, the agent has submitted that the “drain” is not “natural”, nor is the “wetland”. The following confirms that the wetland and “drain” meet the definitions as outlined in these documents:

- Provincial Policy Statement

**“Rivers, stream...:** means all watercourses, rivers, streams, and small inland lakes or waterbodies that have a measurable or predictable response to a single runoff event

**Wetlands:** means lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swmpa, marshes, bogs and fens”

- *Conservation Authorities Act*

““watercourse” means an identifiable depression in the ground in which a flow of water regularly or continuously occurs

“wetland” means land that, (a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface, (b) directly contributes to the hydrological function of a watershed through connection to a surface watercourse, (c) has hydric soils, the formation of which has been cause by the presence of abundant water, and (d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water”

- UTRCA Environmental Planning Policy Manual (2006)

**“Watercourse:** means an identifiable depression in the ground in which a flow of water regularly or continuously occurs. A watercourse includes rivers, stream, creeks, swales, ditches and municipal drains

**Wetland:** means land that

a) as seasonally or permanently covered by shallow water, or has a water table close to or as its surface;

b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse;

c) has hydric soil, the formation of which has been caused by the presence of abundant water; and

d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water. But does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause c) or d)”

The features on and adjacent to these lands meet these definitions, as verified by City of London and UTRCA ecologists, along with the applicant’s own ecological consultant, MTE.

These natural hazard features can be further referred to in the MNR document “Understanding Natural Hazards” and through review of the MNR Technical Guide documents that support the implementation of the PPS.

d) *‘Regulatory’ Mapping*

Regulation limit mapping was developed following the provincial methodology. Wetlands were mapped using historical air photos and digital aerial imagery to identify potential wetland features. Information such as tree cover (with indicator species highly associated with wetlands), soils, surface elevation, and groundwater recharge areas are also very important in identifying potential features.

The UTRCA has and will continue to acknowledge that the exact extent of features are required to be studied in order to confirm accuracy for each site; however in this case the subject lands were altered prior to a formal assessment.

Lastly, the UTRCA’s mapping is similar to feature identification when compared with the City’s Schedule B1/Map 5/Map 6 from the Official Plan/London Plan.

e) *Source Water Protection*

The UTRCA’s December 10, 2019 included Source Protection information. As noted in this letter, Drinking Water Source Protection information is disclosed to local municipalities to assist them in fulfilling their decision making responsibility under the Planning Act. The Clean Water Act (2006) is part of the Ontario government’s commitment to implement the recommendations of the Walkerton Inquiry to protect existing and future sources of drinking water, as well as human health and the environment. The approved Source Protection Plan for the Thames-Sydenham Region can be viewed at the following link:

<https://www.sourcewaterprotection.on.ca/approved-source-protection-plan/>

In this area, the Upper Thames River, Lower Thames Valley and St. Clair Region Conservation Authorities have partnered together to work with the Source Protection Committee to coordinate the development of Source Protection Plans for our watersheds. The Source Water Protection mapping identifies vulnerable areas and is contained on Map 6 of the London Plan to be consistent with Section 2.2.1e) of the PPS.

4. *“Preliminary Site Plan Design”*

The above responses are to provide factual information to the opinions presented and can be applied to this section of the letter as well.

5. “Summary and Conclusions”

Given the information and clarification provided above, the summary and conclusions presented in the July 3rd letter do not align with the policy and regulatory requirements set out by the Provincial Policy Statement, *Conservation Authorities Act* (specifically Ontario Regulation 157/06), City of London planning documents, and the UTRCA Environmental Planning Policy Manual (2006). This letter has been provided to clarify the definitions and framework used to arrive at the UTRCA’s recommendation on this file, through our delegated and legislative roles in the planning process. UTRCA staff will continue to remain hopeful that an agreement can be entered into with all parties to ensure appropriate long-term protection of the natural hazard and natural heritage features in this area.

In addition to the letter authored by Paul Flood, a letter was sent from Luis Claro to City staff as well. The UTRCA will not be providing direct responses to this letter as the majority of the concerns are captured herein.

There was also a series of email correspondence that contained additional information that was not addressed specifically in this letter. However, the points above clarify the majority of the duplicated information raised. The following is the UTRCA’s response to some of the emails:

1. Email from Luis Claro (July 14, 2020)

The agents have accused the UTRCA and City of approving the relocation of a watercourse that has subsequently resulted in the “over” regulation of the subject lands, negatively impacting their clients lands and business. It has been stated that the agents have “evidence” of this approval but none has been provided to date. These references have been made in regard to “The Forks Pottersburg Creek” location shown on Schedule B1, Map 9 of the Official Plan (1989) as a light blue line, versus the omissions of light blue line on Map 5 and 6 of the London Plan. Clarification appears to be required as “The Forks Pottersburg Creek” is simply a subwatershed boundary and not a watercourse, as noted as a dark blue line in the legend of the schedules.

2. Email from Paul Flood (July 15, 2020)

This email provides the definition of natural and claims that the features present on the subject and adjacent lands are not “natural”.

In regards to the definition of “natural”, to clarify, Section 3.1 of the Provincial Policy Statement outlines natural hazards while Section 3.2 outlines human made hazards. It is clear by review of these policies that the features identified meet the criteria of natural hazard as it relates to their natural processes. The MNR document *Understanding Natural Hazard* states “*What are Natural Hazards? Natural, physical, environmental processes that occur near or at the surface of the earth can produce unexpected events of unusual magnitude or severity. Such occurrences are generally regarded as natural hazards. The outcome can be catastrophic, frequently resulting in damage to property, injury to humans or other organisms, and tragically even loss of life.*” (<https://www.scrca.on.ca/wp-content/uploads/2018/09/MNR-Understanding-Natural-Hazards.pdf>). The applicant and agents have agreed that a flood plain and associated setback is appropriate.



In regards to the claim that an unevaluated feature is not a feature, an unevaluated feature is determined to be present on the landscape but needs to be evaluated to determine the level of significance and protection needed prior to development (including site alteration) occurring within or adjacent to the identified area.

We trust the above information is sufficient in providing clarity with regards to this file. If you have any questions, please contact the undersigned.

Yours truly,  
UPPER THAMES RIVER CONSERVATION AUTHORITY



Tracy Annett, MCIP, RPP  
Manager, Environmental Planning and Regulations

Enclosure: Aerial Imagery of 2040 River Road from 2010 to 2018

cc: Victor Da Silva, Global Waste Disposal London Ltd. (Applicant)  
Paul Flood, ManEngment Ltd. (Agent)  
Luis Claro, (Agent)  
Michael Tomazincic, City of London Manager of Current Planning  
James MacKay, City of London Development Services Ecologist  
Brent Verscheure, UTRCA Land Use Regulations Officer  
Stefanie Pratt, UTRCA Land Use Planner