



**Ontario**  
Home Builders'  
Association

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20 Upjohn Rd., Suite 101 (416) 443-1545  
North York, Ontario Toll Free 1-800-387-0109  
M3B 2V9 Fax: (416) 443-9982  
[www.ohba.ca](http://www.ohba.ca) [info@ohba.ca](mailto:info@ohba.ca)

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Rebecca Zeran  
Ministry of Natural Resources and Forestry  
Natural Resources Conservation Policy Branch  
300 Water Street  
Peterborough, ON K9J 8M5

**Re: Wetland Conservation in Ontario – Discussion Paper**  
**EBR Registry Number: 012-4464**

The Ontario Home Builders' Association (OHBA) is committed to working with the Ministry of Natural Resources and Forestry to assist in the development of a broad wetlands conservation framework. OHBA notes that the review of the wetland conservation framework in Ontario comes at the same time as the Ministry of Natural Resources and Forestry (MNRF) is consulting on the *Conservation Authorities Act* and the Provincial Government is in the midst of the Co-ordinated Review of the Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Niagara Escarpment Plan and Growth Plan for the Greater Golden Horseshoe. The Wetland Conservation in Ontario review is also taking place at the same time as the province is considering amendments to the *Planning Act* through the *Smart Growth for Our Communities Act* (Bill 73). Through this consultation as well as the *Conservation Authorities Act* review and other consultations, it is critical that the Provincial Government connect all the dots to ensure the land-use planning framework and public policy is appropriately implemented and aligned between Ministries.

OHBA previously wrote to the Ministry as part of a joint submission/letter on September 25<sup>th</sup> along with the Ontario Federation of Agriculture, Ontario Waterpower Association, Ontario Stone, Sand & Gravel Association, Canadian Wind Energy Association, Canadian Solar Industries Association and Ducks Unlimited Canada (Ontario) as part of our joint commitment to working together to conserve wetlands in Ontario. Our organizations and members have a significant role in Ontario's economy, in working on Ontario's landscape and ultimately in protecting wetlands across the province and mitigating against their loss.

Our collective submission outlined a number key principles by which we believed our organizations could play a leadership role in achieving the broad objective of improving wetland conservation, as presented in the MNRF Discussion Paper. OHBA reiterates and has elaborated on these key principles from the joint submission below:

#### Key Principles

1. OHBA supports the conservation of wetlands to ensure a healthy natural environment that can provide essential ecosystem services to the people of Ontario now and into the future such as flood control, climate change mitigation and adaptation, water quality improvement and recreation.
2. OHBA supports the use of higher quality information, knowledge and mapping to better inform landowners and other stakeholders about the value and sustainability of wetlands. We recognize that not all wetlands

are equal. Some wetlands are deemed to be *Significant*, based upon the application of the Ontario Wetland Evaluation System (OWES). The generally low thresholds for significance (including consideration of complexing criteria) in that system tend to make most wetlands *Significant* in many landscapes where competing land uses occur. OHBA comments in further detail under the ‘strengthen policy’ section on the following page.

3. OHBA is generally supportive of the mitigation/compensation hierarchy outlined in the discussion paper. This is a critical tool to allow better decision-making around alternate approaches to wetland conservation and management when considering land use proposals where economic and ecological needs intersect. It is important to consider the feasibility, appropriateness and practicality of measures being carried out including reasonable commercial considerations as a project moves from one level of the mitigation hierarchy to the next. OHBA further notes that ensuring adherence to the mitigation hierarchy requires due diligence, transparency, monitoring and flexibility. OHBA recommends consideration of a mitigation sequence that includes off-setting measures premised on a market-based benefits exchange model. The mitigation hierarchy has been successfully implemented in other jurisdictions (i.e. British Columbia, Germany, New Zealand & the United States) and MNRF has considered the benefits exchange model (Species at Risk Benefits Exchange or SARBEX) under other legislation (*Endangered Species Act*).
4. OHBA recommends that MNRF consider harmonizing definitions for greater clarity. There are subtly different wetlands definitions under different legislative, regulatory and provincial plans which can lead to various definitions at the local municipal level.

A successful wetlands conservation strategy requires a strong and transparent implementation plan with buy-in from impacted stakeholders including industry and affected land owners. The current fragmented and burdensome framework is not particularly effective and acts as a disincentive for industry and land owners to engage in partnerships to restore or improve conservation efforts. OHBA notes that the current framework of wetland-related policies and legislation in Ontario are spread across a complex multi-jurisdictional framework that does not align itself well with the land-use planning process. It is important that a future framework and strategy operates in a way that makes it understandable and efficient and that the approvals process aligns itself within the broader planning framework, while providing greater certainty and transparency. Furthermore administrative and accountability or oversight mechanisms must be consistent, fair and cost effective.

OHBA is concerned that recent experience with the implementation of other legislation from the MNRF including the *Endangered Species Act* was less than optimal when the Act was first proclaimed. Since that time the Ministry has worked with impacted industries to protect species at risk while improving the implementation of the Act (i.e. through the establishment of the Bobolink / Eastern Meadowlark Roundtable and the establishment of the Endangered Species Act Stakeholder Group – both of which have resulted in regulatory amendments to improve the implementation of the *Endangered Species Act*). OHBA raises these past implementation concerns and issues as a caution that any future regulatory or legislative framework to protect and mitigate against the loss of wetlands must engage all impacted stakeholders and consider a strong, efficient and effective implementation framework.

Over the years the MNRF has made a series of small changes and “clarifications” that have had the net effect of encouraging the inclusion of very small wetland units scattered across the landscape within wetland complexes that can themselves range far and wide, and that are now complexed across “lateral headwaters” (i.e., headwaters now applies to the flanks of adjacent watersheds, not just the upper reaches). OHBA notes that the effects of high scoring for a now great many more rare species has led to the inevitability of almost any evaluated wetland becoming “significant”. This is arguably undermining the original intent of the system. Instead of identifying the best wetlands for protection, the emphasis has shifted toward protecting all wetlands. The protection of all wetlands may be a laudable goal, but it ignores other aspects of good planning and wise use of resources. Much effort and economic value can be expended in protecting wetlands that have

little functional contribution at the landscape level. Thus the mitigation hierarchy is an important policy tool that must be included in any future wetlands strategy.

OHBA notes that a growing number of corporations and landowners are eager to do more than required by environmental regulations and, where impacts are unavoidable sometimes go beyond regulatory requirements to provide a “net gain” for nature through offsets and donating land to third party conservation organizations. Donors of land or conservation agreements can receive reductions in the amount of their federal and provincial tax payable through tax credits resulting from the value of the gifted lands. OHBA notes however that when the donation of a wetland (or other conservation lands) to a charity or stewardship organization takes place, it triggers two competing outcomes:

- A sale and income equivalent to the difference between cost base and appraised value. i.e. the donation triggers a disposition on the capital gain on the land held even though there is no sale;
- There is a taxable benefit to cancel out / offset the capital gain on the land held by the developer.

However, OHBA notes that such a tax benefit merely cancels out the gain rather than actually incenting donations from private land owners. Due to the tax treatment of such third party donations, there may be many parcels of land (including wetlands) that are held in private portfolios with no clear tenure or management that could potentially be better managed by conservation organizations if there was a better incentive/dedication for the donation of conservation lands.

OHBA has reviewed the Wetland Conservation discussion paper in detail. As part of the establishment of complete communities, OHBA and our members have gained a great deal of diverse experience with wetland conservation across Ontario. We recognize that wetlands contribute to the ecological features and functions of the landscape and in the context of settlement areas they can provide important amenities to the residents benefitting from their conservation. OHBA comments relate principally to the “Strengthen Policy” component of the Discussion Paper. We offer some additional observations and comments in the second and third components, “Encourage Partnership” and “Improve Knowledge”, respectively. Original Discussion paper text is presented in italics, followed by OHBA text.

### **STRENGTHEN POLICY**

*Actions developed under this priority area could involve, but are not limited to:*

*Exploring and/or prioritizing opportunities to strengthen wetland policy identifying where gaps and efficiencies in wetland policy exist, what needs should be addressed and which policy tool should be explored are necessary steps to strengthening policy.*

Developed in the early 1980s, the OWES could not have contemplated the degree of growth and strategies required for the development of complete communities and associated infrastructure required in parts of Ontario. There are a number of components that merit review and reconsideration. Two examples follow:

- Locally and regionally significant plant and wildlife species and associated scoring should be strictly limited. These aspects are, in some jurisdictions the drivers of scores reached to result in a “Significant” determination. This is problematic; many jurisdictions do not maintain such lists and in some cases established lists are outdated and/or are based upon highly varied criteria. In other cases (e.g., Aurora District), lists are informal, unavailable and/or have not been subject to peer review scrutiny.
- The OWES needs to better address minimum size and potential complexing. Different areas of Ontario apply different complexing criteria. Those criteria used in Aurora District, for example, include a number of vague or general criteria that make it too easy to complex wetland areas (regardless of size, origin and/or ecological significance). These criteria exaggerate the importance of very small and often created features, causing unnecessary complexity in community planning.
- The OWES needs to more fully consider sustainability and resilience in settlement areas. Demands placed upon lands for efficiency and density can create situations where some types/forms of wetland

cannot be reasonably conserved in an urbanizing community. The inability to tolerate some changes associated with urbanization should be factored into scoring and/or OWES implementation.

- OHBA would like to be included in any review process that determines how the OWES should be revised to more effectively provide guidance in settlement areas in particular.

Improving guidance to aid in making land use decisions knowing how to address competing land use interests and conservation priorities while also considering the broader ecosystem as a whole is important to support good decision-making.

- The OWES in settlement areas should not be used as a tool to automatically establish and protect significant wetlands. Not because the OHBA considers significant wetlands to be unimportant, but rather to address the unreasonable application of OWES in some jurisdictions. It has become too simple a task to add small, isolated fragments of wetlands into a complex, using vague criteria and less than rigorous or replicable standards.
- One alternative is to use OWES in settlement areas to identify *Potential or Candidate Significant Wetlands*. These would be subject to review given the need for planning and developing strong communities. Where a wetland area will be affected by planning, that removal may occur where those features and functions can be reasonably replicated in a new NHS.
- This “informal work-around”, is already being applied in some jurisdictions, recognizing the limitations of and conflicts created by the OWES outcomes in settlement landscapes.

Reviewing the Ontario Wetland Evaluation System taking advantage of new tools and seeking ways to improve efficiency in determining wetland significance is important to enable informed land use decisions.

There are some situations (e.g., presence of an endangered or threatened species) that will likely trigger the determination of a significant wetland based upon points allocated for special features. Where this is the case, the OWES application and process should be streamlined to avoid unnecessary investments of resources and time (i.e., where outcomes are clear).

## **ENCOURAGE PARTNERSHIP**

*Supporting the identification of wetland conservation priorities working together to identify priority natural heritage systems including wetlands will help to focus resources and conservation efforts.*

OHBA and its members are actively engaged in the design and implementation of Natural Heritage Systems (NHS) in thousands of acres of lands designated for growth as part of existing and future settlement areas. These lands are predominantly in rural/agricultural use, undergoing transformation to urban use. Section 2.1.3 of the PPS requires:

*Natural heritage systems shall be identified in Ecoregions 6E & 7E1, recognizing that natural heritage systems will vary in size and form in settlement areas, rural areas, and prime agricultural areas. (PPS 2014)*

To-date, OHBA observes that this policy is not being adopted. In settlement areas, where some wetlands are of less significance and/or are the result of relatively recent land use practices (e.g., blocked farm culvert), excessive time and resources are being invested to consider and plan around very small and/or created features. This is exacerbated by inconsistent approaches to the use of OWES and in particular the application of informal and formal complexing criteria. OHBA supports more substantial efforts being placed upon larger and more important wetland areas and the incorporation of wetland features and functions within NHS design to the extent practical in settlement areas.

## **IMPROVE KNOWLEDGE**

*Actions developed under this priority area could involve, but are not limited to:*

*Research into climate change mitigation and resilience Using best available science, as well as local and traditional Aboriginal knowledge, we will need to take steps to further our understanding about how threats like climate change will impact wetlands and how these threats can be mitigated.*

In addition to threats to wetlands associated with climate change, the OHBA is interested in ensuring the risks associated with the spread of insect-borne diseases in wetlands (e.g., mosquito borne West Nile) are better understood. Both stormwater facilities and natural wetlands can host West Nile and other diseases being spread by climate change. This knowledge can be helpful in the determination of the best design of and risk management for both natural wetlands as part of an NHS and stormwater facilities.

OHBA supports the direction towards an ability to remove some features and functions, especially where they are creating barriers to the achievement of other provincial priorities (e.g., complete communities). The ability to remove and then replicate these features and functions elsewhere, requires further input and consideration. Again, OHBA would like to be involved and provide further input into those discussions. We would like, for example, to ensure that the mitigation hierarchy, if adopted, reasonably replaces features and functions, and is not used simply as a tool to leverage cash-in-lieu funds from the development industry. This aspect should go beyond an area replacement approach and should encourage and allow for innovation to be able to reduce new feature size in exchange for improved diversity and functional quality.

OHBA looks forward to working with the Ministry to develop a Wetlands Conservation in Ontario framework. The key from our perspectives is ultimately that a successful wetlands strategy comes down to a clear, straightforward and relatively simple implementation framework including a clear mitigation hierarchy as part of any biodiversity offset policy. We also see an opportunity to coordinate with other provincial initiatives to potentially “stack” benefits such as biodiversity, wetlands conservation and carbon sequestration by maximizing ecological functions on the landscape.

It is important that the framework operates in a way to make it easier, faster and more efficient for businesses and individuals to access its services, receive approvals and implement projects to achieve the objective of improving wetland conservation in Ontario. OHBA member companies have experience and expertise in biodiversity offsetting and mitigation against the loss of wetlands as well as in addressing the myriad of overlapping policies and regulation pertaining to wetland which gives us the capacity to contribute to this process in ways we believe the Ministry will find valuable. It is therefore important that this discussion paper and Environmental Registry posting be considered a beginning of the consultation process and that engagement with stakeholders continue as the Ministry further develops public policy options and proposals.

A comprehensive wetland framework is an important tool to assist government, ENGOs and industry develop a path forward to balance the need for wetland conservation with the need for sustainable economic growth and providing greater certainty to the private sector. OHBA supports a balanced approach in implementing the environmental, social and economic goals of the Province, to ensure a high-quality of life and prosperity for Ontario residents. On behalf of our 4,000 member companies organized into a network of 30 local home builders’ association, OHBA appreciates the opportunity to provide comments to the Ministry with the objective to improve the conservation of wetlands across the province.

Sincerely,



Michael Collins-Williams, RPP, MCIP  
Director, Policy  
Ontario Home Builders’ Association

c. Minister of Natural Resources and Forestry – Hon. Bill Mauro

c. Parliamentary Assistant, Ministry of Natural Resources and Forestry – MPP Eleanor McMahon