



FEDERATION OF

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General Comments on the Wetland Policy and Implementation Guidelines

Strength of the Policy ---

Both the policy statement and the implementation guidelines are too weak to provide conclusive protection for even the provincially significant wetlands let alone others. While the general intent of the policy is acceptable, the terminology is simply too vague and mushy, providing little or no direction on wetland protection. For example there must be a "no development approach" on significant wetlands yet throughout the implementation guidelines, development is justified. Changes in wording from should to will and may to must would further strengthen the overall program and give it some teeth. Look at the section on essential features (pg. 16 and 17): now that is vague. Ask yourself, do you really have any idea what the government's position is on wetland conservation?

Forested Swamps

Throughout the documents, forested swamps are written off as dispensable, easily replaced or tolerant of disruption (see page 8), when in fact the hydrology of these areas is often very sensitive to dramatic change associated with development. Forested swamps are prime wildlife habitat, critically linked with local and regional hydrology and, some of the wildest, least disturbed natural areas in southern Ontario. Let's call for the government to restate its position on forested swamps and demand better protection.

The Wetlands Evaluation System

A major area of concern stems from the dependence of the policy and its implementation on the wetland evaluation system. Although I will not take the time now to outline the FON's many concerns with the system itself, there are a few points related to policy direction.

i) We believe class 3 wetlands warrant provincial level protection and simply do not accept that they do not receive protection comparable with class 1 and 2 wetlands. Ask why class 3 wetlands are not included under provincial policy protection when MNR's own studies show that those wetlands provide similar diversity and species richness as many class 1 and 2 wetlands.

ii) The evaluation system is specific to southern Ontario and although the province states it will assess development proposals affecting northern wetlands on a case by case basis, this is not effective proactive resource management.

iii) The evaluation results form the basis to justify land use compatibility with wetland conservation (see page 16). This places undue significance on the evaluation results which will promote misuse of the system and further erosion of the systems integrity. We've already seen this happening in Ontario. It is becoming a numbers game.

Northern Wetlands

The proposed policy virtually ignores the conservation of northern wetlands. It has been argued by the province that wetlands are abundant in the north and the threats less severe than in the southern part of the province. Conflicts involving wetlands will be dealt with on a case by case basis. The FON would argue that in many areas, particularly the Lake Superior shoreline and cottage country, the threat of marina and harbour development and other shoreline development is very real and is expanding at an alarming rate. At the FON, the wetland issues we are involved with now are not so much drainage, as in the past, but condominium developments in Muskoka, access roads for cottages, marina expansion and development of back lots. To many people, northern wetlands mean the vast northern peatlands, but we are really talking about a much broader variety of wetland types and locations. Ask the government how they plan to effectively conserve northern wetlands and do not settle for the case by case approach.

Mixed Messages

One final concern is the whole question of mixed messages coming from the government. For example with class 3 wetlands, part of the government recognizes these areas as significant enough to be grouped with class 1 and 2 wetlands as areas eligible for the property tax rebate through the conservation land tax reduction program. Yet another part of the government does not consider class 3 wetlands worthy of provincial protection, leaving the responsibility of their protection to the local planning authority. Consider agricultural land drainage: promoted and subsidized by one government ministry, this activity may facilitate the loss or degradation of wetlands. Yet at the same time another government ministry is spending valuable tax dollars to conserve wetlands. These inconsistent or mixed messages from the government could seriously hamper wetland conservation in Ontario. Since it is generally agreed that many of the remaining threatened wetlands are on private land, it stands to reason that many conservation decisions are really in the hands of private landowners. It would be prudent for the government to get its message straight, presenting a solid consistent commitment to wetland conservation.

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A Few Wetland Facts You May Find Interesting and Useful

- . There are 4 major categories of wetlands: marshes, swamps, bogs and fens.
- . Wetlands are being evaluated using a manual titled "An Evaluation System for Wetlands of Ontario South of the Precambrian Shield". Using scores determined in biological, hydrological, social and special features components, they are grouped into 7 classes with classes 1 and 2 considered provincially significant. (See appendix B of the Implementation Guidelines for some detail)
- . The evaluation system applies to all wetlands south of the Precambrian Shield. Currently there is no evaluation system for northern Ontario wetlands.
- . Approximately 2,000 wetlands have been evaluated to the end of the 1988 field season. Of the 1,665 evaluated to May 1988, 222 were class 1, 190 were class 2, 363 were class 3, 92 were class 4, 223 class 5, 293 class 6 and 282 class 7. Keep in mind the evaluation is not complete for all wetlands and, those considered to be most significant were pre-selected for evaluation.
- . We all agree wetlands are biologically, hydrologically and socially important ecosystems: critical to the health of ourselves and our environment. But economically, wetlands can contribute substantially to local, regional and provincial economies.
 - Habitat is provided for the nesting, breeding, feeding and rearing of over 50% of Ontario's birds, most of the province's endangered species and many types of fish.
 - Direct tourism benefits (fishing, birdwatching, hunting, canoeing, painting etc.) from Ontario wetlands in 1980 totalled \$853.3 million.
 - Harvesting resource products such as meat, vegetables, fur, timber and medicines, contributes over \$200 million annually to the provincial economy.

Some General Points on Official Plans

Official plans are the primary planning document developed by the municipality to guide its land use decisions. It essentially provides the "road map" for the physical aspects of growth in the community (ie. where to put schools, roads, sewers and other land uses). As far as wetlands and other natural areas are concerned, designations within the official plan are often vague such as hazard land, watercourse protection, rural, or environmentally sensitive (admittedly less vague). In looking at an official plan, once you have determined the designation of a site be sure to check the text of the official plan where the designations are described. In some plans, environmentally sensitive is meaningless. General areas are mapped as to the designation and this provides the framework for development.

All municipal by-laws especially zoning by-laws, public works and land use decisions must comply with the official plan. A series of policy statements under the Planning Act, for example, aggregate and wetland policy statements, will also be considered part of the "rules" affecting the plan. One other point, there is supposed to be multi-tiered compliance or coordination. That is, township by-laws should comply with the municipal official plan which should have regard for provincial policy statements under the Planning Act.

Changes to an official plan take the form of a plan amendment. If you have concerns with the plan or a proposed amendment you as an individual or group can appeal to have the changes referred to the Ontario Municipal Board for a hearing.

Not all areas have an approved official plan although many are currently in the works. Within the plan development process there is a requirement for public consultation before approval--your chance to speak out and have those natural areas designated for protection. If there is an approved plan in place, each local council must hold a public meeting at least once every five years to review the plan and consider whether the plan needs to be updated or changed. That's the time to make sure the areas you are concerned with are protected in the plan. Take the time to get a copy of the official plan and inform the clerk that you want to be notified of all changes, applications and reviews.

COMMENTS ON THE PLANNING ACT AND WETLAND PROTECTION:

THERE ARE NO GUARANTEES

In most settled areas of Ontario the chief planning tool influencing the use of land is the Planning Act. Through various policies, official plans and zoning by-laws, local governments determine the use of land in a coordinated manner. Once finalized, provincial policy statements for individual land uses such as aggregate, agriculture and wetlands will ensure local planning incorporates issues of provincial interest and concern.

The following discussion is based on an interesting paper presented at the "Ontario Wetlands: Inertia or Momentum?" conference held in Toronto, October 21/22, 1988. The paper (Wetlands Protection in Canada by Harry Dahme, David Estrin Barristers and Solicitors) includes some valuable insight into the effectiveness of land use planning through the Planning Act.

According to Mr. Dahme, municipalities are creatures of statute and, as such, can only exercise the powers given to them specifically by provincial legislation. In that regard, the powers they exercise which are of particular relevance to wetland protection are those given to them under the Planning Act, the Municipal Act and the Acts for various municipalities.

Under provincial legislation, the various options range from direct purchase and expropriation, to management and control of wetlands through agreements, grants, tax incentives, and potentially, conservation easements. Although there is a wide range of tools available, it must be stressed that none of these guarantee wetland protection.

The Planning Act is probably one of the most powerful protection tools in Ontario. It is of particular interest in that it provides restrictions on private property rights through the implementation of official plans, zoning by-laws, site plan control areas and subdivision agreements. In addition, it provides for the imposition of consideration of provincial policy statements by both municipalities and the Ontario Municipal Board through their powers related to the development of lands. Section 3 of the Planning Act allows for the issuance of these policy statements "that have been approved by the Lieutenant-Governor-in-Council on matters relating to provincial planning that in the opinion of the Minister are of provincial interest." Already, an aggregate policy statement has been implemented and one for wetlands is currently available for public comment.

Unfortunately, while this approach sounds good, the chief concern with this is that adherence to policy statements is not mandatory. Subsection 5 of Section 3 of the Planning Act states that a municipality, government ministry or board "shall have regard to policy statements issued under subsection (1)." It permits those bodies to implement development schemes contrary to principles established in policy statements. Similarly, the Ontario Municipal Board is to give consideration to those policy statements. In both cases, that is not the same as mandatory adherence, and therein lies the difficulty.

Municipal and provincial planning deal with competing land use interests. Although a body may have "regard to" or "consider" a policy statement, failure of mandatory adherence allows for some interests to govern others. In the case of wetlands, that could very well mean an absence of protection.

It is intended that the policy statement's objectives be reflected in local policies and official plans. However, the trade-off is demonstrated by statements such as those contained in a publication of the Ministry of Municipal Affairs regarding policy statements, wherein it is stated that:

"A municipality, for example, is obligated to consider the application of a specific policy statement and, in general to follow its provisions unless it can be demonstrated why the policy is not acceptable to a lesser degree in a certain case."

There is also the question of the effect of one policy statement and how it relates to another policy statement. No single policy statement is to take precedence over another. That in itself may lead to the balancing of interests whereby certain degrees of protection are lost.

The degree of protection can be enhanced through the issuance of policy statements, but remember protection is not guaranteed. Nonetheless, a policy statement does require careful review of the principle of protecting a wetland during consideration of a development proposal. In other words, wetland protection is brought to the forefront during a land use issue and, as such, must be considered a positive step.