

Public Input Coordinator
MNRF - PD - Resources Planning and Development Policy Branch
300 Water Street, 2nd Floor, South tower
Peterborough, ON
K9J 3C7

Re: ERO number 019-6160, Proposed Updates to the Ontario Wetland Evaluation System

The City of Ottawa is pleased to provide comments and ten recommendations on the proposed changes to the Ontario Wetland Evaluation System (OWES). The City has reviewed the changes in the context of the changes proposed in Bill 23 and in the concurrent review of A Place to Grow and Provincial Policy Statement (ERO number 019-6177).

Summary

The City of Ottawa believes that the proposed changes to the OWES would lead to a dramatic loss of wetlands and harm to their benefits in Southern Ontario. This would be on top of the historical loss of wetlands, which reaches more than 90% in some counties. The changes contradict well understood wetland science. They would undermine decades of planning decisions, with adverse effects on natural heritage and municipal plans. They are intended to solve a problem that does not exist. Finally, they are unnecessary, because the Community Infrastructure and Housing Accelerator already provides a valid mechanism to address site-specific instances of conflict between Provincial planning priorities of growth and wetland protection.

Recommendation 1: the proposed changes to the Ontario Wetland Evaluation System should be withdrawn and a multi-stakeholder working group, including municipalities and Conservation Authorities, struck to consider and recommend any necessary updates to the system.

Recommendation 2: the proposal to eliminate wetland complexing should be withdrawn.

Recommendation 3: the proposal to reduce the score for threatened and endangered species should be reconsidered in conjunction with a review of the effectiveness of ESA protections for wetland species.

Recommendation 4: the language regarding the use of other sources of information where site visits are not possible should be retained.

Recommendation 5: the oversight and administration of the OWES and wetland evaluations should be retained by the Province and supported by continuing strong Provincial policies and regulations.

Recommendation 6: if responsibility for implementing wetland policies and the OWES is downloaded to municipalities, then a wetland evaluation should only be deemed “complete” when it has been reviewed and approved by the responsible planning authority.

Recommendation 7: municipalities and Conservation Authorities should be included pro-actively in any on-going or future consultations on environmental policies and tools related to municipal planning.

Recommendation 8: the need for the proposed changes to the OWES and related wetland policies should be reconsidered given the availability of a more appropriate planning tool, the Community Infrastructure and Housing Accelerator.

Recommendation 9: provincially significant wetlands should not be included within an offsetting policy framework, but should remain excluded from development and site alteration under Provincial policy.

Recommendation 10: among the changes that should be considered by a multi-stakeholder working group, the City of Ottawa recommends (a) adjusting the PPS policies for significant wetlands to allow minor development and alterations that do not affect the boundaries and functions of a wetland, (b) providing more clear guidance on the complexing of wetlands, especially as related to functional connectivity, and (c) adjusting the scoring for threatened and endangered species to make it more difficult for small wetlands to qualify as significant solely on that basis.

We provide more detailed comments on the proposed changes to the OWES in the attached Appendix. We also reiterate our main recommendation that the proposed changes be withdrawn to provide time for a multi-stakeholder working group to consider and recommend any necessary updates to the system. The City would be very willing and interested to participate in such a working group.

Sincerely,

David Wise, RPP

Director, Economic Development and Long Range Planning, Directeur développement économique et Planification à long terme

110 Laurier Ave. W. | 110, avenue Laurier ouest Ottawa, ON K1P 1J1

(613) 580 2424 Ext. | Poste 13877

Appendix 1

Detailed Review and Comments on the Proposed Changes to the Ontario Wetland Evaluation System.

The City's comments fall into eleven areas, discussed in detail below. The City makes ten recommendations regarding the proposed changes to the OWES and related Provincial wetland policy.

The Importance of wetlands and their ecological functions and services

The role, importance and critical functions of wetlands are well understood. They support high biodiversity including many species at risk, support fisheries, support hunting, play an important role in carbon and nutrient cycling, provide flood control and mitigation, and maintain groundwater levels. The maturity of wetland ecosystems plays a large role in the quantity and quality of these services. Broadly speaking, older wetlands provide more benefits than younger wetlands, making them more important to conserve and more difficult to replace. Decades of research also shows that the proximity and density of wetlands on a landscape also affects these functions.

Wetlands work together and support each other, increasing overall ecological function and resiliency. Complexes of wetlands not only benefit the component wetlands, but also the interspersed upland areas, increasing overall biodiversity. In headwater areas, these wetland complexes may straddle several subwatersheds, providing core natural areas and supporting the functions and health of many different creeks, streams and rivers. The current OWES provides an appropriate and effective multi-dimensional tool for assessing and conserving the many, critical functions of wetlands and wetland complexes.

The importance of continuity in long-term land use planning

OWES plays an important role in the continuity and effectiveness of land-use planning in Southern Ontario. As discussed below, the proposed changes would re-open planning decisions going back decades. Under the requirements and direction of the Provincial Policy Statement (PPS), municipalities and planning authorities like Ottawa have long identified and protected natural heritage systems, many times centred on provincially significant wetland (PSW) complexes. At the same time, this process has identified those less significant natural features and areas in which development can be considered. The loss of those other natural and rural lands to development has been rationalized and balanced in policy and implementation by the protection of the most significant natural heritage features, including PSWs.

The proposed changes to OWES would destroy this balance, unraveling the logic of past planning policy and leading inevitably to increased loss of natural heritage and

biodiversity. In many cases, it would expose municipalities to increased costs for developing and servicing lands that were always deemed to be excluded from infrastructure, transportation, and transit planning. These consequences would undermine the overarching goal of provincial planning policy, which the PPS describes as providing for, “appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment” (p.1).

Recommendation 1: the proposed changes to the Ontario Wetland Evaluation System should be withdrawn and a multi-stakeholder working group, including municipalities and Conservation Authorities, struck to consider and recommend any necessary updates to the system.

Changes to rules for wetland complexing and endangered/threatened species

Removal of wetland complexing

- The removal of wetland complexing is inconsistent with ecological science, wetland science, water management science, and conservation science. There is no legitimate, scientific rationale for doing so.
- Total size is the most important factor in determining wetland scores in OWES, both directly and indirectly. Furthermore, the scoring thresholds for significance in the OWES are set very high to account for wetland complexing. Breaking up wetland complexes into individual wetlands for evaluation or re-evaluation, without reducing the scoring thresholds, drastically reduces the probability of newly-evaluated or re-evaluated wetlands qualifying as significant.

Removal of scores for Endangered and Threatened Species

- The second most important factor in determining wetland significance has been the presence of endangered and threatened species. Under the current OWES, the presence of such a species scores 250 points under Special Features, automatically qualifying the wetland as significant.
- Under the new system, endangered and threatened species would be recorded as Provincially Significant Animal and Plant Species, which score much lower.
- A reasonable rationale might exist for the change in scoring for endangered and threatened species if effective regulations and enforcement existed under the Provincial Endangered Species Act (ESA). An automatic, provincially significant wetland designation may not be appropriate for a small wetland that only qualifies based on the presence of an endangered or threatened species, especially if the individuals do not contribute to a sustainable population. In such cases, the Endangered Species Act provides a more appropriate policy and management tool.

These changes appear specifically intended to prevent the identification of new provincially significant wetlands and to encourage the incremental removal of protections from current, provincially significant wetlands.

Recommendation 2: the proposal to eliminate wetland complexing should be withdrawn.

Recommendation 3: the proposal to reduce the score for threatened and endangered species should be reconsidered in conjunction with a review of the effectiveness of ESA protections for wetland species.

Obstruction of wetland evaluations by non-consenting property owners

Currently, the OWES says that wetland evaluators may use other sources of information, such as aerial photography and LIDAR topographic data, to carry out wetland evaluations where property owners do not grant access. The proposed changes to the OWES eliminate this language, while still requiring that wetland evaluations include, “one or more field visits to the wetland being evaluated at an appropriate time of the year.” In cases where direct observation of a wetland is not otherwise possible, this change allows landowners to block evaluation of wetlands on their properties.

Recommendation 4: the language regarding the use of other sources of information where site visits are not possible should be retained.

Elimination of Provincial oversight and support

The proposed changes to the OWES would eliminate any role of the Province in wetland evaluations. The Province would no longer:

- Review wetland evaluations;
- Approve wetland evaluations;
- Keep and maintain wetland evaluation files (it is not clear what would happen to the thousands of wetland evaluation files held by the Ministry);
- Provide or update provincial wetland mapping;
- Provide any advice to wetland evaluators;
- Provide any information to wetland evaluators including information on:
 - wildlife records;
 - hunting and trapping;
 - fishing;
 - land ownership;
 - winter cover for wildlife;
 - waterfowl habitat;
 - fish habitat.

The proposed changes also:

- Remove references to the Provincial Policy Statement;
- Remove references to Provincial wetland policies;
- Remove references to use of wetland evaluations by Conservation Authorities;
- Remove references to use of wetland evaluations by the Province for natural resource management purposes.

Experience from other jurisdictions in North America and around the world demonstrates that effective conservation and management of wetlands requires strong policies and regulations of higher tier governments. Ontario has had effective protection of wetlands for the past three decades because of Provincial regulation and oversight. These changes appear intended to make wetland protection a municipal responsibility, subject to local political pressures, while removing Provincial policy backing for municipal decisions to protect wetlands at the Ontario Lands Tribunal.

Recommendation 5: the oversight and administration of the OWES and wetland evaluations should be retained by the Province and supported by continuing strong Provincial policies and regulations.

Municipal responsibility without authority

Although the proposed changes to the OWES appear to shift responsibility for conserving and managing significant wetlands to municipalities, another proposed change appears to prevent municipalities from reviewing the wetland evaluations that it receives.

“A wetland evaluation, re-evaluation or mapping update will be considered ‘complete’ once it has been *received* [emphasis added] by a decision maker addressing a land use planning and development or resource management matter.”

This change appears to say that the municipality or planning authority must accept the wetland evaluation as submitted, regardless of any deficiencies, mistakes, or omissions. In that case, the only authority for confirming the validity and objectivity of a wetland evaluation would be development proponent that commissioned it. This creates a clear conflict of interest, contrary to the fundamental objectivity and transparency of planning processes.

Recommendation 6: if responsibility for implementing wetland policies and the OWES is downloaded to municipalities, then a wetland evaluation should only be deemed “complete” when it has been reviewed and approved by the responsible planning authority.

Lack of municipal consultation on proposed changes to the OWES

Under Provincial wetland policy, most of the responsibility for protecting significant wetlands falls to municipalities and Conservation Authorities. However, it does not appear that the Province has consulted meaningfully with municipalities and Conservation Authorities on the proposed changes to the OWES. The way that the OWES is applied in municipal planning must be understood to appreciate fully the implications of the proposed changes.

Within the Ministry of Natural Resources and Forestry, few staff are familiar with municipal planning processes, relevant OMB/LPAT decisions, and the complexity of urban planning in relation to wetland protections and conservation. Organizations such as Ducks Unlimited Canada have even less familiarity with municipal planning. Excluding municipalities and Conservation Authorities from the consultation process on changes to OWES and other environmental planning policies can easily lead to policies with unforeseen, unintended negative consequences for municipal planning.

Recommendation 7: municipalities and Conservation Authorities should be included pro-actively in any on-going or future consultations on environmental policies and tools related to municipal planning.

Lack of need for the proposed changes

The ostensible reason for the proposed changes to the OWES is to help resolve Ontario's housing supply crisis. However, there is no obvious support for the argument that the current OWES restricts the supply or the approval of housing in the Province. Over the past several years, Ottawa and most other large municipalities in Southern Ontario have carried out comprehensive Official Plan reviews including analyses of growth and land supply requirements. Ottawa and all these municipalities have been able to identify sufficient land to meet Provincial requirements without needing to infringe upon provincially significant wetlands.

Furthermore, the current significant wetland policies in the PPS and the OWES provide a certainty that guides development proponents away from lands that may require substantial study, engineering, mitigation and compensation for development, to lands that are much less constrained. Weakening and muddying these policies will not speed municipal planning processes, but will divert municipal resources from desirable and easily approved development to more difficult, lengthy and unnecessary applications.

The availability and suitability of another planning tool

The City acknowledges that specific cases may exist where provincial priorities for growth and economic development come into conflict with policies for protection of significant wetlands. However, weakening protections for all significant wetlands through changes to the OWES is not necessary to address these cases. In Bill 109, the Province has already

provided for a more appropriate tool to address such conflicts: the Community Infrastructure and Housing Accelerator (CIHA). This tool allows municipalities to request the intervention of the Minister in cases where irreconcilable policy conflicts exist. It empowers the Minister to override Provincial policies and issue specific orders regarding land uses, zoning, and other related matters. The CIWA provides a fully transparent, democratic process for resolving conflicts on a case-by-case basis. Although the Province has received criticism for using such tools in the past (e.g. Municipal Zoning Orders), they are a legitimate and reasonable planning tool.

Recommendation 8: the need for the proposed changes to the OWES and related wetland policies should be reconsidered in light of the availability of a more appropriate planning tool, the CIHA.

Linking the changes to OWES to the proposed offsetting framework in the review of A Place to Grow and Provincial Policy Statement

The release of these two policy proposals at the same time, and the content of both proposals, suggests that the Province intends to replace protections for provincially significant wetlands with an offsetting or compensation framework for wetlands and other natural heritage features. However, under current planning policies and processes, these two approaches are nowhere near equivalent. Whereas current PPS policies prohibiting development in provincially significant wetlands apply to all planning decisions, an offsetting framework would likely apply only after the most important planning decisions have already been made.

In municipal planning processes, many decisions and requirements related to physical, on-the-ground development activities such as site preparation, grading, servicing, etc., do not apply until later planning and development stages: *i.e.*, draft plans of subdivision, site plan, and building permits. Instruments like Conservation Authority permits, ESA permits, site alteration permits, and tree removal permits are not typically required for higher level planning decisions and applications such as expansion of the urban boundary, Official Plan Amendments and Zoning Bylaw Amendments.

On first consideration, wetland offsetting seems similar to these other instruments in that it would likely only apply when permission is sought for physical, on-the-ground activities. It is difficult to conceive how it could be applied at the stage of an OPA or ZBA. However, once those higher-level planning decisions have occurred, many of the considerations that should inform wetland offsetting become moot. In particular, once an OPA or ZBA has established the principle of development, then the preferred options under the *Mitigation Hierarchy*, avoidance, minimization and mitigation typically become unavailable. Compensation becomes the default option.

Furthermore, in many instances, local compensation for wetland removals may be difficult or next to impossible to achieve. In Ottawa, as in many jurisdictions, viable wetland creation or

restoration sites are limited, small, and difficult to find. If the identification of a compensation site does not occur until the late planning stages, then it may be impossible to find an appropriate location. In that case, the default approach will be to contribute the proposed Provincial fund for off-site wetland compensation. Inevitably, such an approach will lead to local wetland loss and environmental degradation.

Offsetting is a useful and proven tool when supported by strong government policy, regulation, guidance and mechanisms. It should be available to planning authorities as a policy option for non-significant wetlands and other fungible natural heritage features. However, it should not be applied to provincially significant wetlands.

Recommendation 9: provincially significant wetlands should not be included within an offsetting policy framework, but should remain excluded from development and site alteration under Provincial policy.

Constructive suggestions for improvement of Provincial wetland policy and the OWES

Experience has shown that Provincial policies for significant wetlands can, in some cases, be unreasonably inflexible. In Ottawa, for example, we have seen cases where the presence of narrow areas of provincially significant wetland along road frontages have prevented landowners from accessing and building on the unconstrained rear portions of their properties. We have seen cases where the presence of a provincially significant wetland on a small portion of a property has prevented the owners from severing parcels (which is considered development under the PPS) to allow family members to build a home, even where the home could be constructed without impact to the wetland. In some cases, these circumstances have prompted property owners in frustration to carry out unauthorized alterations to provincially significant wetlands, resulting in damage that could have been avoided by a more flexible policy framework.

The OWES is a well-tested and scientifically sound tool for assessing the importance of wetlands. However, it could be improved. The guidance regarding complexing of wetlands remains too vague. For example, the OWES manual says that wetlands may be functionally related in a complex if they have, "similar or complementary biological, social and/or hydrological functions." Given that the definitions of *similar* and *complementary* appear to encompass all possible cases, it seems reasonable to ask what wetland would not qualify for complexing under that guidance? Similarly, the current scoring for habitat of threatened and endangered species automatically qualifies any wetland, not matter how small, as provincially significant. In effect, in those cases, the OWES and wetland policies have usurped the role of the Endangered Species Act. That is not the intent of the Provincial wetland policies or the OWES.

These issues with Provincial wetland policy and the OWES could be resolved through specific fixes, without the need to overturn decades of municipal and environmental planning.

Recommendation 10: among the changes that should be considered by a multi-stakeholder working group, the City of Ottawa recommends (a) adjusting the PPS policies for significant wetlands to allow minor development and alterations that do not affect the boundaries and functions of a wetland, (b) providing more clear guidance on the complexing of wetlands, especially as related to functional connectivity, and (c) adjusting the scoring for threatened and endangered species to make it more difficult for small wetlands to qualify as significant solely on that basis.