

Notes for an Address to the Heritage Resources Centre Conference on "Understanding, Planning, and Managing Wetlands" (University of Waterloo, November 7, 1991)

ONTARIO WETLANDS MANAGEMENT: PROGRESS AND PROBLEMS

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ABSTRACT: Despite the alarming loss of wetlands in southern Ontario, there has been only limited progress in wetlands protection initiatives within the province during the past decade. All levels of government have generally failed to implement effective and comprehensive wetland laws, policies and programs, and considerable reform is necessary to secure the long-term protection of the province's remaining wetlands.

1. INTRODUCTION

Wetlands have been traditionally viewed by landowners and others as unproductive wastelands possessing little or no value unless they are dredged, drained, filled, and converted to an urban or agricultural use. As a result, most of the original wetlands within southern Ontario have been permanently lost, damaged or converted to non-wetland uses, and many of the remaining wetlands are presently at risk from various kinds of unsustainable development. Nevertheless, there has been a growing public recognition that wetlands are extremely valuable resources which must be protected against further loss or degradation.

However, federal, provincial and municipal governments have generally failed to develop and implement comprehensive wetlands protection initiatives. Given the widespread consensus on the need for strong wetlands protection, this governmental inertia is difficult to understand, particularly in light of the continuing pressure on Ontario's wetlands. The purpose of this paper is twofold: to review the limited progress that has occurred respecting wetlands during the past decade; and to identify the reforms that are necessary to secure the long-term protection and conservation of Ontario's wetlands.

2. WHY PROTECT WETLANDS?

Ontario's Conservation Land Act, 1988 defines wetland in the following manner:

"wetland" means land,

(a) that is seasonally or permanently covered by shallow water, or

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(b) in respect of which the water table is close to or at the surface, so that the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic or water-tolerant plants.(1)

The same wetland definition is used in the Environment Canada/Ontario Ministry of Natural Resources (MNR) Evaluation System for Wetlands of Ontario South of the Precambrian Shield. However, "lands under active agricultural uses that are periodically 'soaked' or 'wet' are not considered to be wetlands" by the Evaluation System.(2) The Evaluation System goes on to describe the province's four major wetland types (i.e. bogs, fens, swamps, and marshes) and the four major wetland site locations (i.e. lacustrine, riverine, palustrine, and isolated wetlands) found within Ontario.(3)

Differences in wetland type and site location are significant because they can affect the nature and extent of the values that may be associated with a particular wetland. The various ecological, hydrological, and socio-economic values associated with wetlands at the local, national, and international level are well-documented and need not be described here in detail.(4) In short, there is an increasing awareness that wetlands are critically linked to many global environmental issues, including climate change, soil and water conservation, maintenance of biological diversity, and protection of rare, threatened or endangered species.

Notwithstanding the importance of wetland values, alarming wetland losses have occurred throughout Ontario, particularly within the southern portion of the province. Prior to European settlement, wetlands covered over 2.4 million ha of southern Ontario; however, by the 1980s, this area was reduced to 1.4 million ha, representing about 60% of the pre-settlement total. In some areas, wetland losses have been far greater; for example, some counties in eastern and south-central Ontario have experienced a 60-80% loss of original wetlands, while several counties in southwestern Ontario have experienced an 80-100% loss of original wetlands. Agricultural conversion accounts for the majority of Ontario's wetland losses, although urban growth is now occurring on good agricultural land and is expected to contribute to further wetland losses in rural areas.(5) These trends clearly point to the need for landowners, citizens' groups, and all levels of government to develop an effective and coordinated program to protect the remaining wetlands and to rehabilitate previously lost or degraded wetlands.

3. WETLANDS IN ONTARIO: HAS THERE BEEN ANY PROGRESS?

Despite the clear threat to the province's remaining wetlands, there is still no comprehensive wetlands protection legislation or regulation in Ontario. While certain laws, policies, and programs affecting Ontario wetlands exist at the federal, provincial, and municipal level, these initiatives have generally proven to be ineffective in stopping or reversing wetlands loss within Ontario. Moreover, many provincial and municipal governments are continuing to authorize, encourage or subsidize activities which result in further wetlands loss and degradation. Accordingly, one can only conclude that very limited progress has been made

with respect to wetlands protection in Ontario, and that much more work needs to be undertaken immediately in order to confer substantive protection upon the province's wetlands.

(i) Federal Initiatives

The federal government has been involved with several wetland conservation initiatives that affect Ontario wetlands. For example, the federal government has drafted policies intended to provide guidance to provincial wetland managers, and has assisted in the development of the MNR Evaluation System. Similarly, certain wetlands in Ontario have received some protective status under the federal parks system (i.e. the Point Pelee marshes are within a national park) or wildlife program (i.e. the Lake St. Clair marshes are within a National Wildlife Area).

Canada is also a signatory to the RAMSAR Convention on Wetlands of International Significance, which directs participants to designate wetlands that are outstanding examples of a region; highly productive communities; valuable for educational or scientific purposes; or valuable as critical wildlife habitat.(6) Several Ontario wetlands (i.e. Long Point wetlands, Lake St. Clair marshes, and Point Pelee marshes) have been designated under the RAMSAR Convention, but it is noteworthy that the RAMSAR designation has not prevented municipal authorities from approving developments which threaten the Long Point wetlands.(7)

The federal government has also participated in the development of the North American Waterfowl Management Plan (NAWMP), which is intended to protect approximately two million ha of Canadian wetlands in order to enhance international waterfowl populations and to assist in related soil and water conservation programs. A major regional project, known as the Eastern Habitat Joint Venture, has recently been initiated pursuant to the NAWMP and will involve some Ontario wetlands.

The federal government has not enacted legislation that specifically requires the protection or conservation of wetlands, and has not established a nationwide regime to regulate activities affecting wetlands. This inaction is to be contrasted with the American federal government, which exercises jurisdiction under a number of statutes (i.e. the Federal Water Pollution Control Act, the Rivers and Harbours Act, the Coastal Zone Management Act, the Clean Water Act, and other Acts) to control activities affecting wetlands.

However, a certain amount of wetlands protection may be inferred under some Canadian federal laws, notably the Fisheries Act, which prohibits the alteration, disruption or destruction of "fish habitat". Together with the federal "Management of Fish Habitat Policy", which calls for "no net loss/net gain of fish habitat", the Fisheries Act, in theory, provides a strong weapon against activities which impair wetlands. It is also noteworthy that the federal Environmental Assessment and Review Process (EARP) now applies to projects requiring approval under the Fisheries Act. However, the effectiveness of the Act has been

undermined by inconsistent application and selective enforcement within Ontario, where the Act and the Policy are administered by the MNR pursuant to a provincial/federal arrangement.

(ii) Provincial Initiatives

In 1981, the Ontario government responded to public concern about wetland loss by publishing a discussion paper entitled "Towards a Wetlands Policy for Ontario".(8) Among other things, this document identified the need for a provincial wetlands strategy, and called for the development of "planning guidelines" to ensure that land use planning and land management decisions recognize wetland benefits. A decade later, Ontario still lacks a comprehensive wetlands strategy, and still has not promulgated effective or enforceable guidelines for land use planning purposes.

This is not to suggest that the provincial government has failed to undertake any initiatives respecting wetlands during the past ten years. For example, in the early 1980s, the province developed an evaluation/classification system for wetlands south of the Precambrian shield.(9) This system has assisted in the identification of particularly significant wetlands, but there has been public criticism of the current system (i.e. that certain elements of the evaluation/scoring system are highly subjective; that the system does not properly assess the significance of small wetlands; and that Class IV to VII wetlands are perceived as being less deserving of protection). It should also be noted that no wetland evaluation/classification system is yet in place for wetlands within or north of the Precambrian shield, although the MNR is currently working on the development of such a system.

In 1984, the MNR released "Guidelines for Wetlands Management in Ontario" in order to "ensure that wetlands are managed in keeping with both present and long-term needs of the people of Ontario".(10) The Guidelines set out general planning principles intended to assist municipalities in protecting "significant wetlands" from "incompatible activities" through appropriate land use designations in official plans and zoning by-laws. Because the draft Wetlands Policy Statement (see below) has not been finalized, the Guidelines remain the operative MNR document regarding wetlands protection. This is unfortunate because many wetlands advocates have criticized the Guidelines for being too vague and for permitting the development of provincially significant wetlands.(11) Moreover, the Guidelines have not been issued under the Planning Act, and hence municipalities are not actually required to incorporate the document's planning principles into their land use and approvals process.

To address the shortcomings of the Guidelines, the MNR and the Ministry of Municipal Affairs (MMA) have circulated two draft Wetland Policy Statements pursuant to s.3 of the Planning Act. The first version, released for comment in 1989, invited municipalities to protect Class I and II (provincially significant) wetlands through either of two alternative strategies: a "no development" approach in which no new development would be permitted within or adjacent to these wetlands; or a "compatible development" approach in which only "compatible" (as defined in the "Implementation Guidelines") development would be

permitted within or adjacent to these wetlands.(12) Not surprisingly, the 1989 version generated considerable public comment, and a number of serious deficiencies were identified by wetlands advocates.(13)

Within the past two months, the MNR and MMA have circulated a second draft Wetlands Policy Statement for public comment.(14) This version purports to prohibit "development" within Class I, II, and III wetlands within the Great Lakes - St. Lawrence Region; however, compatible "land uses" may still be permitted within these wetlands. Compatible land uses and development may also be permitted within provincially significant wetlands in the Boreal Region. To date, Implementation Guidelines for the current draft have not been released for public review and comment, thereby making it difficult to assess the current draft policy statement.

Nevertheless, the Natural Heritage League has recently identified a number of serious deficiencies with the current draft, including: the lack of an overall objective that there be no loss of wetland area or function; the lack of adequate definitions of "land use", "compatible", or "wetland function"; the lack of real protection for boreal wetlands; the lack of buffer zone requirements; the failure to prohibit development within provincially significant wetland complexes; the failure to prohibit public utilities/facilities in provincially significant wetlands; and other deficiencies.(15) It should also be noted that the current draft does not address the protection of Class IV to VII wetlands, nor does it address the issues of wetland restoration, agricultural drainage, or municipal implementation of the policy statement. In light of these and other problems, it is clear that the draft policy statement must be substantially amended, and one must question the strength of the provincial government's commitment to wetlands protection when such a deficient policy statement has been circulated.

To its credit, the provincial government has undertaken other programs intended to promote wetlands protection within Ontario. For example, the MNR has established a limited acquisition fund to purchase privately owned wetlands of particular significance. Similarly, in 1988 the province established the "Conservation Land Tax Reduction Program" which permits owners of Class I, II, and III wetlands to obtain up to a 100% rebate of certain property taxes provided the landowner agrees to the long-term management of the wetland in its natural state. In addition, the province's revised "Strategic Plan for Ontario Fisheries" (SPOF II) contains several provisions and recommendations relating to wetlands protection.

However, like the federal government, Ontario still lacks a single statute which specifically requires wetlands protection and conservation. Accordingly, wetlands protection may be indirectly achieved through non-wetland statutes (i.e. the Conservation Authorities Act, the Lakes and Rivers Improvement Act, the Public Lands Act, or the Ontario Water Resources Act). At the same time, however, there are a number of other statutes still in effect which serve to encourage or authorize activities which result in wetlands loss or degradation (i.e. the Drainage Act, the Planning Act, or the Municipal Act). Accordingly, wetlands advocates have repeatedly called upon the provincial government to remove all statutory incentives to

drain or fill wetlands, and to immediately enact comprehensive wetlands protection legislation.

(iii) Municipal Initiatives

Although Ontario's municipalities could protect wetlands through the judicious use of Planning Act powers, municipalities have tended to map and designate wetlands in categories (i.e. "Hazard Lands", "Environmental Constraints", "Organic Soils", or "Marginal Resource") that are more concerned about the physical hazards associated with building structures within wetlands, as opposed to protecting the ecological, hydrological, and socio-economic values of wetlands. In general, municipalities have been reluctant to place wetlands in more restrictive designations (i.e. "Natural Environment", "Environmental Protection", or "Environmentally Sensitive Area") because of concerns over the potential loss of tax assessment base, the potential loss of jobs, or the potential "sterilization" of private property.

Even where a wetland is placed within a restrictive category, the long-term protection of the wetland is not assured since landowners can apply for official plan amendments or re-zoning by-laws which permit development of the wetland. In fact, many municipalities have used their Planning Act powers to permit the construction of subdivisions, golf courses, commercial facilities, roads, bridges and other infrastructure within provincially significant wetlands without properly considering the immediate and cumulative impacts of such development. This municipal short-sightedness, in turn, has often prompted members of the public to appeal local planning decisions to the Ontario Municipal Board (OMB), or to request that various development proposals be designated under the Environmental Assessment Act. Accordingly, it cannot be said that there has been much progress at the municipal level during the past decade with respect to wetlands protection in Ontario.

(iv) Private Initiatives

A number of wetland protection initiatives (i.e. private stewardship, conservation easements, restrictive covenants, charitable donations or trusts) have been available to individual landowners and private organizations within Ontario. These tools are particularly valuable in southern Ontario because many wetlands at risk are privately owned, and because public acquisition is not always feasible due to prohibitive costs. It should be pointed out, however, that conservation easements and restrictive covenants have not been commonly used to date to protect Ontario wetlands.

4. WHAT NEEDS TO BE DONE?

Although there has been general recognition that wetlands are valuable natural resources, Ontario's wetlands are still threatened by further loss and degradation. The federal, provincial, and municipal governments have jurisdiction in relation to wetlands, but to date the exercise of this jurisdiction has only resulted in a convoluted mix of generally ineffective

laws, policies, and programs. Consequently, there is a growing consensus that these governments must undertake a more aggressive and comprehensive approach to wetlands protection, including:

- the enactment of a specific wetlands protection statute based on the principle of "no loss of wetland area or function";
- the removal of all incentives and subsidies for wetlands drainage;
- the expansion of the public acquisition budget, and the extension of tax incentives to protect all classes of wetlands;
- the expansion of public education programs and wetlands values and stewardship;
- the timely and effective enforcement of existing statutes and regulations respecting wetlands;
- the ecologically sound restoration of wetlands which have been previously lost or degraded; and
- the reform of the land use planning process to ensure that wetlands are properly identified, inventoried, and protected, and to ensure that municipal planning is carried out on an ecosystem basis.(16)

If Ontario is serious about protecting wetlands and maintaining healthy ecosystems, then these and other long overdue reforms must be carried out forthwith.

ENDNOTES

1. Conservation Land Act, 1988, S.O. 1988, c.41, s.1.
2. Environment Canada/Ministry of Natural Resources, An Evaluation System for Wetlands of Ontario South of the Precambrian Shield (2nd. ed.) (MNR, 1984) p.7.
3. Ibid., pp.26 - 33.
4. See National Wetlands Working Group, Wetlands of Canada (Environment Canada, 1988); Environment Canada et al., Sustaining Wetlands: International Challenge for the 90's (Sustaining Wetlands Forum, 1990); and Great Lakes Wetlands Policy Consortium, Final Report: Preserving Great Lakes Wetlands - An Environmental Agenda (Wetlands Policy Consortium, 1990).
5. Elizabeth A. Snell, Wetland Distribution and Conversion in Southern Ontario (Working Paper No.48) (Environment Canada, 1987) pp.32-33.
6. National Wetlands Working Group, op cit., p.192.
7. Seasons (Autumn 1991) p.8, vol. 31.
8. Ministry of Natural Resources, "Towards a Wetland Policy for Ontario: Discussion Paper" (MNR, 1981).
9. See note 2, supra.
10. Ministry of Natural Resources, "Guidelines for Wetlands Management in Ontario" (MNR, 1984).
11. See, for example, "Brief of the Federation of Ontario Naturalists to the Minister of Natural Resources Regarding Guidelines for Wetlands Management in Ontario" (MNR, 1984).
12. Ministry of Municipal Affairs and Ministry of Natural Resources, Draft Wetlands Policy Statement (MMA/MNR, 1989). Note that "Implementation Guidelines" accompanied this draft policy statement.
13. See, for example, Federation of Ontario Naturalists and Ontario Federation of Anglers and Hunters, "Response to the Government of Ontario: Wetlands Policy Statement and Implementation Guidelines" (FON/OFAH. 1989).

14. Ministry of Municipal Affairs and Ministry of Natural Resources, Draft Wetlands Policy Statement (MMA/MNR, 1991).

15. Resolution of the Natural Heritage League (Annual General Meeting, October 24, 1991).

16. See Great Lakes Wetlands Policy Consortium, op cit. See also R.D. Lindgren, "Wetlands Protection and Restoration in Ontario: An Agenda for Reform", in Great Lakes Wetlands 2:1 (Winter 1991).

