



C.P.R. for Wetlands: Conserve, Protect, and Restore

Breathing new life into our sense of place

Community Involvement in Wetland Protection ONTARIO

Background

Southern Ontario, where most of the province's farmland is located and most of the population is based, has lost at least 70 percent of its wetlands since the time that European settlement began (about the year 1800). Most of the loss occurred due to draining for agriculture and other human uses of the land. Therefore, we have lost the vital ecological functions provided by wetlands (fish and wildlife habitat, groundwater recharge and discharge, water quality protection, flood and erosion control) and the increased biodiversity that wetlands provide. The remaining wetlands, both in the north and the south, are havens of biological richness, and include marshes, swamps, bogs and fens.

The Regulatory Landscape

The importance of protecting the remaining wetlands emerged in the 1970s, but it was not until 1992 that Ontario had wetland protection enshrined in provincial policy under the *Planning Act*. For purposes of wetlands protection, Ontario is divided into two regions: (a) the area south and east of the Canadian Shield (the Precambrian Shield); and (b) the rest of Ontario, i.e., on the Canadian Shield. Zooming in on the Great Lakes Basin in Ontario, "south and east of the Shield" includes most of our portion of the Lake Ontario watershed, all of our portion of the Lake Erie watershed, a minority portion of the Lake Huron watershed (i.e., much of it in Ontario is on the Shield), and none of the Lake Superior watershed (which is all "Shield country").



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Wetlands on the Canadian Shield

Ontario wetlands on the Canadian Shield do not receive very good protection. It is the responsibility of municipalities to decide whether or not they wish to protect wetlands, and which ones they wish to protect, by means of the policies in their official plans (i.e., land use plans). There is some language in the *Provincial Policy Statement (PPS)* under the *Planning Act* that helps these wetlands. It says that development and site alteration may be permitted in a "significant" wetland (see "significant" in next paragraph) on the Canadian Shield if it has been demonstrated (via an environmental impact statement or EIS) that there will be no negative impacts on the natural features or the ecological functions for which the wetland has been identified. Therefore, a developer may hire a consultant to produce an EIS that shows there will be no negative impacts. A citizens' group may appeal to the Ontario Municipal Board (OMB) a municipality's approval of a developer's plan to develop in a wetland on the Shield, but the language of the *PPS* and the *Planning Act* do not much favour Shield wetlands if they end up at an appeal hearing before the OMB.

Wetlands South and East of the Canadian Shield

The situation is better for wetlands that are south and east of the Shield. The *PPS* says that development and site alteration *will not be permitted* in significant wetlands south and east of the Shield. "Significant wetland" means "Provincially Significant Wetland" (PSW) as identified and evaluated (in some cases) and approved (in all cases) by the Ontario Ministry of Natural Resources. What this means is that municipalities south and east of the Shield are supposed to protect PSWs through the policies in their official plans. However, there are troubling caveats. For example, the definition of "development" in the *PPS* excludes most infrastructure projects, meaning that a road or highway could be rammed right through the middle of a PSW. Also, in carrying out their planning functions under the *Planning Act*, municipalities only have to "have regard to" the *PPS*. In other words, they

do not have to fully adhere to or comply with it. Similarly, an OMB hearing officer may choose to pay very little attention to the wetlands policies in the *PPS* in rendering a development decision. Fortunately, the new provincial government tabled a bill in December 2003 to change the *Planning Act* to state that municipalities' planning "shall be consistent with" the policies in the *PPS*.

Municipal Controls

Ontario municipalities are free to attempt to protect in their official plan policies those wetlands that are "only" regionally or locally significant rather than provincially significant. However, they may be challenged by developers, who may claim that the municipality is going beyond what provincial policy "allows."

Other Regulatory Aspects

A good feature of Ontario wetlands protection is that we do NOT have any explicit "no net loss" policies or "mitigation banking." When the *PPS* says you cannot develop in a Provincially Significant Wetland, that's it; i.e., it doesn't mean you can trade development in that PSW for the creation or protection of a wetland elsewhere. Ontario's municipalities make the decisions on wetlands protection, based on their implementation of the wetlands policies in the *Provincial Policy Statement* under the *Planning Act*. Municipal decisions on wetlands can be appealed (by a developer, a citizens' groups, etc.) to the Ontario Municipal Board, whose rulings are essentially final (i.e., routes of appeal from OMB decisions are narrow and rarely successful). Wetlands continue to be legally drained under the provisions of the provincial *Drainage Act*, which is administered by the Ministry of Agriculture and Food. Historically in Ontario, wetlands were valued only in that they could be drained, primarily for agricultural purposes. Not only is land drainage permitted under the Act, but is encouraged by a system of grants.

What You Can Do

Provincial laws and policies and municipal land use planning provide opportunities for Ontarians to participate in wetland protection. Here are ways you can get involved:

- (1) Review and comment on development applications that are made to your municipal government (for official plan amendments, zoning by-law amendments, plans of subdivision, etc.) pursuant to Ontario's *Planning Act*.
- (2) Promote good wetland stewardship among both public and private landowners, and get involved in wetland restoration projects.



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- (3) Ask the Ontario Minister of Municipal Affairs to consider *all* Ontario wetlands as "significant" under the *Provincial Policy Statement*; and ask that no development or site alteration be allowed in any wetland, wherever it is located in Ontario. Ask for a comprehensive overhaul of the *PPS*. E-mail: mininfo@mah.gov.on.ca; phone: (416) 585-7000; fax: (416) 585-6470.
- (4) Promote permanent protection of wetlands through conservation easements, land purchase, or other means of land securement.
- (5) Educate yourself and others about the ecological importance of wetlands and how to protect them.

Where to Go for More Information

To read about wetland protection in section 2.3 of the *Provincial Policy Statement*, go to www.mah.gov.on.ca and click on 'Provincial Policy Statement.'

To read the *Planning Act*, go to www.e-laws.gov.on.ca, scroll down to 'P' and click on 'Planning Act.' Warning: The *Planning Act* is long and somewhat cumbersome; start with sections 1 to 3 only!

To read about Great Lakes wetlands, obtain the Environment Canada publication *Where Land Meets Water* (limited number of hard copies available; unavailable on-line) by e-mailing jill@watershedcouncil.org or lindap@ontarionature.org.

To read about the multi-stakeholder Great Lakes Wetlands Conservation Action Plan (GLWCAP), go to www.on.ec.gc.ca/wildlife/wetlands/glwcap-e.cfm.

To take part in wetland protection at the municipal/community level: Contact your municipal councillor(s) and the planning department of your municipality. Find the stewardship council for your area by visiting www.ontariostewardship.org. Determine if there is a land trust in your area by contacting the Ontario Land Trust Alliance at www.ontariolandtrustalliance.org.

To keep up to date on actions you can take to protect wetlands and other natural habitats, watch the website of Ontario Nature - Federation of Ontario Naturalists at www.ontarionature.org.