



January 21, 2013

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Ms. McKay:

**Re: Conservation Ontario's Comments on "Modernization of Approvals – Proposed Regulatory Amendments to Work Permits issued under the Public Lands Act" (EBR #011-7669)**

Thank you for the opportunity to provide comment on the Ministry of Natural Resources' (MNR) "Modernization of Approvals – Proposed Regulatory Amendments to Work Permits issued under the Public Lands Act". Conservation Ontario (CO) is supportive, in principle, of the Ministry's initiative to modernize the Public Lands Act (PLA) approvals process, however, it is noted that the posting does not provide a level of information to adequately assess the proposal. The potential relationship of these proposed amendments to approvals under the *Conservation Authorities Act (CAA)* is not addressed but Conservation Ontario looks forward to working with the Ministry to identify possible areas of intersection and increased efficiencies.

#### **KEY CONSIDERATIONS**

CO recognizes that this policy framework is for the streamlining of approval processes as part of MNR's overall Transformation Plan, but encourages MNR to consider the efficiencies that could be achieved through the consideration of delegation and formal partnerships. Although it is mentioned that MNR may remove itself from regulation where another organization regulates the activity, there is no mention of actual delegation. For clarity it should be acknowledged that while an organization might regulate an activity, its regulatory scope may not relate specifically to the mandate of the *Public Lands Act*. MNR is encouraged to consider a formal partnership or delegation to truly streamline approvals for proponents while ensuring that the primary considerations of the *Public Lands Act* are being addressed.

Two categories have been identified for the proposed regulatory amendments: Category i) rules in regulation for an activity, and, Category ii) registration with rules in regulation for an activity. This

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posting does not identify a compliance monitoring nor an enforcement scheme associated with the regulatory amendments. While the proposed changes will focus on eliminating the requirement for a work permit if rules are followed, there is no clear articulation of the priorities and outcomes of this proposal, making it difficult to evaluate its efficacy. It is recommended that an identification of priorities and outcomes be the starting point for this and future proposals for modernization of approvals. These priorities and outcomes should be consulted upon with key partners and stakeholders. As well, a system for evaluating the effectiveness of the proposal (including compliance monitoring) should be developed concurrently with the proposed regulatory amendments.

The Environmental Registry posting specifically references that, for “activities described in the regulation, persons undertaking an activity according to the rules in regulation would be responsible for complying with all other federal, provincial or municipal requirements”. There will likely be public and/or landowner confusion as to why other agencies require regulatory approvals when MNR considers such activities to be ‘low risk’. Clear communication of the differences between a *PLA* exemption and the requirement for a *CAA* permit will be critical.

## **AFFECTED WORK PERMIT REQUIREMENTS**

Conservation Ontario looks forward to an opportunity to review further details associated with these regulatory amendments. Given the lack of information provided, please consider these to be preliminary comments.

### **Category i)**

#### ***Dredging***

An exemption for maintenance dredging where the area has been dredged at least once within the previous five years may result in a sand-poor littoral environment. Consideration should be given to restricting the exemption for maintenance dredging to areas outside of dynamic beach systems.

When relocating rocks for boating and swimming access, an additional requirement should be that the rocks are relocated into a similar depth and substrate for healthy fish habitat.

#### ***Restoring, repairing or replacing an existing erosion control structure***

CAs support streamlining this particular type of approval under the *PLA* where CAs are providing reviews and issuing permits under the *CAA* already. When drafting this regulation, MNR should consider its obligations for public safety and natural hazard management in areas outside of CA jurisdiction, particularly if the erosion control structure has previously failed. Additionally, this regulation may incent landowners to simply replace their traditional ‘hardened’ shoreline protection measures instead of considering alternative, naturalized protection measures. In this regard, the regulation has the potential to impede future Great Lakes shoreline restoration initiatives conceived in some of the Lake Biodiversity Conservation Strategies.

#### ***Mechanical removal of native aquatic vegetation for swimming or boating access***

CA staff expressed some concern related to the amount of near-shore vegetation removal that will be allowed under this proposed regulation. This is of particular concern in non-shield lakes where the level of development is higher and thus, the potential for cumulative effects is similarly elevated.

### ***Mechanically removing invasive aquatic vegetation***

Conservation Ontario is supportive of the proposed exemption for mechanically removing invasive aquatic vegetation provided that MNR supplies specific direction to proponents. Improper removal has the potential to exacerbate the problem, however, removal of barriers to good stewardship practices is beneficial for the health of our aquatic systems.

### ***Proposed Common Rules***

With regard to the proposed rule that the location of the activity must be in front of the person's waterfront property, the regulation must be clear that MNR will be the arbitrator should disputes arise with regard to the location of the activity. As well, it is important to note that, where there is a high level of activity across numerous properties, there is the risk of cumulative impacts. A mechanism should be developed to allow the MNR to require work permits where cumulative impacts are of concern. At a minimum, evaluation of cumulative impacts should be built into a periodic review of the efficacy of these proposed regulatory amendments.

While it is understood that MNR provides the information related to in-water construction timing windows to Fisheries and Oceans Canada (DFO), the reference to DFO's website for further information is of concern. When drafting regulatory proposals, the possibility should be considered that other organizations through their own "streamlining/modernization" process may no longer oversee an activity. The posting and subsequent regulation should be clear that MNR would have the lead in enforcement of any in-water timing restrictions associated with these streamlined approvals.

### ***Minor Maintenance of Trails, Watercrossings and Roads***

No additional comments at this time.

### **Category ii)**

#### ***Construction of a building on surface rights being used under the authority of the Mining Act***

No additional comments at this time.

### ***Watercrossings***

Conservation Ontario supports that MNR is proposing to monitor approvals associated with the maintenance and replacement of clear span bridges and culverts on Crown land. The proposed regulation should explicitly require that detailed drawings, stamped by a Professional Engineer, be included as part of the registration process for clear span bridge maintenance and replacement, rather than referring generally to having an engineer "ensure the bridge is constructed properly". Depending upon the size of the drainage area and culvert, consideration should also be given to requiring that a professional engineer approve the design of those crossings. For both types of crossings, controlling erosion and sediment should be a requirement.

Once again, thank you for the opportunity to provide comment on "Modernization of Approvals – Proposed Regulatory Amendments to Work Permits issued under the Public Lands Act". Conservation Ontario looks forward to being provided further details of the proposal in order to present more specific comments on these regulatory amendments.

If you have any questions regarding these comments, please contact myself at extension 223.

Sincerely,

A handwritten signature in black ink that reads "Bonnie Fox". The signature is written in a cursive, flowing style.

Bonnie Fox  
Manager, Policy and Planning

c.c. All Conservation Authorities, Chief Administrative Officers