



January 30, 2020

Stacey Vojtek
Crown Forests and Lands Policy Branch - Crown Lands Section
300 Water street
5th Floor, North tower
Peterborough, ON
K9J 3C7

Re: Conservation Ontario's comments on the "Proposal to amend Ontario Regulation 454/96 (Construction) to provide alternative regulatory approval requirements for repairs to existing low hazard wetland dams"

Thank you for the opportunity to provide comments on the *"Proposal to amend Ontario Regulation 454/96 (Construction) to provide alternative regulatory approval requirements for repairs to existing low hazard wetland dams"*. Conservation Ontario is the network of Ontario's 36 conservation authorities (CAs). These comments are not intended to limit consideration of comments shared individually by CAs through the review and consultation process for this proposal.

Conservation authorities (CAs) are resource management agencies that operate on the basis of local watersheds. Through regulations made under the *Conservation Authorities Act*, CAs are empowered to regulate development and activities in or adjacent to river or stream valleys, Great Lakes and inland lakes shorelines, watercourses, hazardous lands and wetlands. CAs operate many dams throughout the province for water and erosion control, and are committed to responsible dam ownership and operation. Conservation Ontario is highly supportive of the proposal to incorporate an alternative, optional, rules-in-regulation approach to wetland dam owners to repair existing low hazard wetland dams without obtaining approval under Section 16 of the *Lakes and Rivers Improvement Act*, provided requirements outlined in the regulation have been met. Ideally, it is recommended that eligible wetland dam owners be limited to groups with multi-disciplinary staff (e.g. engineers, biologist/ecologists, water quality specialists and hydrogeologists) such as Ducks Unlimited Canada, conservation authorities and other stewardship groups, rather than an individual private landowner who has a low hazard wetland dam outside of an agreement with one of these groups.

Conservation Ontario offers the following comments in response to the proposal:

1. Need for terms to be clearly defined in the regulation

Ontario Regulation 454/96 (Construction) does not currently provide a definition of what constitutes a "wetland dam". Without a clear definition, it is unclear if features such as tailing ponds would qualify for this exemption. To ensure that landowners are able to make a determination of whether an existing dam on their property would apply, a clear definition for "wetland dams" and "low hazard wetland dams" should be provided.

Additionally, a definition of “maintenance” should be provided to assist dam owners in understanding what alterations, improvements and/or repairs can be conducted through the streamlined approach. For instance, it is possible that proposed alterations could increase the size of the head ponds, storage or dam height, which may in turn increase upstream flood elevations. An alteration which results in an increase in flood elevations may require review under Section 28 of the *Conservation Authorities Act*. It is requested that when providing a definition for maintenance, the Ministry provides additional wording in the exemption criteria that certain maintenance activities which may pose the potential for increased risks, or result in a change to the “low hazard classification” of the eligible wetland dam, are not permitted through this approach. The Ministry currently provides a list of low-risk repair and alteration works which do not require approval under the *Lakes and Rivers Improvement Act*. It may be beneficial for the Ministry to develop a fact sheet of supported alterations, improvements and repairs which are included in the proposed rules-in-regulation approach to clarify eligible works for landowners with online wetland dams.

Lastly, it would be beneficial to clarify what definition of “wetlands” is being adopted to support the proposed rules-in-regulation approach. It is anticipated that the adopted definition will be based on a review of existing definitions (e.g. the Ecological Land Classification System, Ontario Wetland Evaluation System, and the Provincial Policy Statement).

2. Considerations for the proposed dam hazard classification studies

The proposal to streamline alterations, improvements and repairs to low hazard wetland dams states that dam owners must demonstrate their dams meet the “low hazard classification” criteria, as determined through a “rigorous dam hazard classification study” conducted by a licensed engineering practitioner. While Conservation Ontario supports the proposal for dam repairs to be stamped by a qualified professional engineer, we suggest that a licenced engineer may not be the most appropriate person to determine whether the impact of dam failure would not exceed “minimal loss to fish and wildlife habitat with a high capability of natural restoration”. It is recommended that in addition to the requirement for a licenced engineering practitioner to stamp the repair plans, the requirements also include a provision that these plans be reviewed by a qualified biologist / ecologist to confirm the low hazard classification is appropriate and impacts from the wetland dam are not considered detrimental to fish and wildlife habitat.

Further, with respect to the “dam hazard classification study”, Conservation Ontario recommends that the study include criteria to assess potential impacts of multiple / cascading dam failures, where applicable (i.e. if a wetland dam exists upstream from one or more other wetland dams).

Lastly, where the classification study recommends the structure be classified as a low hazard wetland dam, it is recommended that the study identify other permits or regulations which may apply to the range of anticipated maintenance works associated with the low hazard wetland dam.

3. Potential for additional streamlining for removal of existing low hazard wetland dams

In addition to streamlining maintenance activities for low hazard wetland dams, it is further recommended that the Ministry investigate the possibility of creating a separate streamlined approach for the removal of low hazard to mid-sized online dams. While the proposal to streamline alterations, improvements and repairs for low hazard wetland dams is beneficial, this process may increase the number of landowners choosing to repair their dams, rather than decommissioning older, potentially

unsafe dams. Streamlining the process for removal / decommissioning of dams would reduce administrative and cost burdens for dam owners, and may have the added benefits of improving dam safety, stream form and function, decreasing stream temperature and improving fish passage.

4. Need for Rules-in-Regulation Approach Implementation Guidelines

Conservation Ontario recognizes that implementation details are not available at this time. A clear framework and implementation guidelines for the rules-in-regulation approach for low hazard wetland dams is needed. There are many questions regarding implementation of this approach, such as whether there will be a registry of approved low hazard wetlands dams and how the Ministry and other agencies will be kept informed of ongoing work at these dams.

As an example, dam owners / operators will need to be aware that any alterations, improvements and/or repairs, including construction access routes and associated work areas, may require authorizations or permissions from the local conservation authority when works are being undertaken in a CA regulated area. Guidance materials will need to ensure proponents are aware that they may require authorizations or permits from other agencies (i.e. federal agencies, conservation authorities) to undertake repairs to existing dams.

Conservation Ontario would appreciate the opportunity to provide input to the Ministry or participate on the working group that will design the framework and implementation guidelines.

5. Additional guidance materials

In addition to the details to be provided in the regulation, it is requested that the Ministry develop additional guidance documents and/or procedures to assist landowners with completing alterations, improvements and repairs to low hazard wetland dams. These guidance materials should outline standard best management practices including, but not limited to: wildlife timing windows for works, erosion and sediment controls, consultation with neighbours, notification to affected groups and agencies (e.g. utility groups) and considerations for wetland-dependant species at risk which may be affected by the proposed works.

Thank you for the opportunity to review and provide comments on the *“Proposal to amend Ontario Regulation 454/96 (Construction) to provide alternative regulatory approval requirements for repairs to existing low hazard wetland dams”*. Should you have any questions about this letter please feel free to contact myself at extension 229.

Sincerely,



Nicholas Fischer
Policy and Planning Officer

c.c. All CA CAOs/GMs