



February 18, 2020

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Ms. Peckford:

**Re: Conservation Ontario's Comments on the "Drainage Act Discussion Paper" (ERO # 019- 1187)**

Thank you for the opportunity to provide comments on the "Drainage Act Discussion Paper". Conservation Ontario (CO) is the network of Ontario's 36 conservation authorities (CAs). Conservation Ontario appreciates the webinar that the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) hosted to better inform CAs about this proposal and the acknowledgement within the discussion paper that CAs have worked closely with the agricultural and drainage communities to streamline approvals for low risk activities through the *Drainage Act and Conservation Authorities Act Protocol* ("DART"). These comments are not intended to limit comments provided directly by CAs on this discussion paper.

### **Comments on the Drainage Act Discussion Paper**

#### ***1. Supporting technical protocols – Authority to adopt protocols by reference in regulation***

Conservation Ontario is supportive of legislative changes that would allow for the Minister to collaboratively develop and sign off on technical protocol documents, such as the DART. Prior to Ministerial sign off, these protocols should also proceed through a public consultation process. Conservation Ontario agrees that the DART model is an appropriate model to emulate for future protocol development. The DART model has been successful as it focused on establishing mutually agreeable solutions that streamlined approvals, addressed stakeholder concerns and maintained environmental standards utilizing a multi-agency approach. Conservation authorities are prepared to assist in the development of future technical protocols and have identified additional potential protocols in response to question 1 below.

## **2. Streamlining Approvals – Creating a new process for minor improvements**

Conservation Ontario is supportive in principle of the proposal to create a new process for minor improvements to municipal drains. Through their stewardship programs, conservation authorities have been involved in many projects that which could have benefited from a streamlined approval process (e.g. reconnecting flood plain area due to drain spoil bank placement, bank protection, buffer enhancement, etc.) Streamlining the approval process for these projects would have provided an additional incentive for landowners to undertake these actions. It is noted that these activities would generally fit into the “addition of a feature with environmental benefits” example provided within the discussion paper.

The other examples of minor improvements provided within the discussion paper require careful consideration and further discussion with affected stakeholders. For example, “creating or widening a crossing” would not necessarily be considered a minor activity if it was proposed on a large watercourse with extremely high flow velocities. This new crossing could potentially restrict flow capacity leading to potential ice jams or increased erosion. “Relocating a drain on an individual property” may also not be considered a minor activity, given the size of individual properties and the nature of individual watercourses will vary significantly. The current DART protocol streamlines maintenance and repair of existing municipal drains, with approved engineers reports and a municipal by-law. The proposed examples of minor improvements may not conform to regulations made under the *Conservation Authorities Act* and any proposal to create a new process for minor improvements to municipal drains should acknowledge that additional approvals under other pieces of legislation may still be required. Given the shared interest in streamlining approvals and managing watercourses, Conservation Ontario respectfully requests direct involvement with the development of proposed technical protocols and regulations to streamline minor improvements to municipal drains.

## **3. Simplifying Administrative Processes – Accounting for changes to drain design during construction**

Conservation authorities are generally supportive of simplifying the process to account for minor changes to the design plans in the engineer’s report because of unforeseen site conditions in the field. The proposed “simplified process” should include a requirement to consult with the applicable CA. Any amendments to the engineer’s report must not contravene an existing permission under the *Conservation Authorities Act* and there may be a requirement to amend the permit to reflect the as-built condition. The requirement to consult with the applicable CA will prevent non-compliance issues under another piece of provincial legislation. The proposed simplified administrative process should require clearance from the local CA or the Ministry of Natural Resources and Forestry for areas outside of CA watersheds, prior to granting the municipality authority to maintain the drain “as built”.

### **Questions for Consultation**

- i. Beyond the DART Protocol, what additional protocols could be established to help streamline approvals?*

Conservation Ontario welcomes the opportunity to work in partnership with the drainage community to develop additional protocols to help streamline approvals. As previously indicated, Conservation Ontario is supportive of the DART model and acknowledges that an update to the group’s Terms of Reference

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could assist in broadening the scope of its work. In general, it is recommended that a process be established to monitor and report on the effectiveness of the existing and proposed streamlined protocols, looking at parameters including reduction of administrative burden, improved drainage and the maintenance of environmental standards.

Additional protocols to be considered include:

- **Bridge/Culvert Design and Approval Protocol (for upsizing)**

Currently, the *Drainage Act* does not allow deviation from an approved engineer's report to upsize an existing bridge/culvert or to add a new bridge/culvert to the existing report without re-opening the entire report. This results in money that could be used on improved infrastructure being spent on the approval process. The current process deters private landowners and occasionally municipalities from properly upsizing a stream crossing even when the existing structure is causing flooding and/or erosion. A streamlined protocol (and corresponding clauses in a proposed regulation for minor improvements) would encourage the installation of appropriately-sized watercourse crossings and should include reference to the local flood event standards.

- **Erosion Control Protocol**

It is recommended that a protocol document be developed which allows for the design, installation and streamlined approval/inclusion in the drainage report of field, bank and channel erosion controls. This will help to incentivize erosion control projects on municipal drains that do not currently conform to the existing drainage report.

- **S. 78 Drainage Act Improvements**

Conservation Ontario would support a new DART protocol for S. 78 Drainage Improvements to streamline very low risk activities and to clearly identify the types of activities that are likely to require permissions under the *Conservation Authorities Act*.

- **Invasive Species Management Protocol**

Given the shared concern between the municipalities and conservation authorities with regard to the spread of invasive species (e.g. Phragmites) via waterways, an invasive species management protocol may be appropriate. These invasive species can cause blockages that cannot be easily rectified via traditional drain maintenance.

- **Drainage Act and Conservation Authorities Act Compliance Protocol**

While it is acknowledged that this protocol would not assist with streamlining approvals, it would assist with the maintenance of approved municipal drainage projects. As drainage works often meet the definition of a watercourse under the *Conservation Authorities Act*, municipal Drainage Superintendents and CA staff should work together to achieve compliance related to *Drainage Act* and *Conservation Authorities Act* approvals.

ii. *What projects should be included in the definition of minor improvements? What else would you like a minor process to achieve?*

Conservation Ontario recommends that the definition of minor improvements should be developed in a collaborative, forum, similar to that of DART. Potential projects to consider include: installing new

appropriately-sized crossings, upsizing existing crossings, and the addition of a feature with environmental benefits (vegetative buffers, bio-engineering erosion control projects, etc.). Additional projects to discuss could include tile extensions/relocations/re-sizing; new catch basins/junction boxes; and works outside of a CA regulated area. In the development of the definition of minor improvements, there may need to be a differentiation between works within or outside of a CA regulated wetland.

iii. *Do you have any specific concerns with any of the items discussed in the paper?*

Conservation Ontario has previously identified concerns related to the proposed definition of minor improvements. Throughout this process of creating regulations and protocols it should be acknowledged that other approvals may still apply to the drainage works. These approval agencies (i.e. CAs) should be directly consulted with in the development of any protocols or regulations.

iv. *Do you have any additional suggestions to reduce burden or contribute to additional opportunities for your business?*

In addition to the current review, OMAFRA should consider:

- Modernizing the technical design standards for drainage works to better assist with rural stormwater management, flood mitigation and resiliency, and erosion protection;
- Modernizing the notification system regarding drain meetings under the Act (e.g. providing more options than regular mail) to encourage greater participation;
- Amending the timeframe requirements for the submission of a new Engineer's Report to Council to allow reasonable time for external agency review; and,
- Modernizing the assessment of costs process to incentivize landowners who employ BMPs such as buffer strips.

Thank you for the opportunity to provide comments on the "Drainage Act Discussion Paper" and for facilitating a webinar on this topic for conservation authority staff. Conservation Ontario appreciates OMAFRA's commitment to consult further on more specific changes to be included in a regulatory proposal for minor drain improvements and looks forward to working collaboratively with OMAFRA on this work, as well as in the development of future protocols. Should you have any questions about this letter, please feel free to contact me at [lrich@conservationontario.ca](mailto:lrich@conservationontario.ca) or extension 226.

Sincerely,



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Policy and Planning Liaison

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