



February 4, 2021

Sara Peckford
 Food Safety and Environmental Policy Branch
 1 Stone Road West
 Ontario Government Building, 2nd Floor, Southwest
 Guelph, On N1G 4Y2

Re: Conservation Ontario’s Comments on the “Drainage Act Regulatory Proposal” (ERO #019-2814)

Dear Ms. Peckford:

Thank you for the opportunity to provide comments on the “Drainage Act Regulatory Proposal” and to participate in the drainage stakeholder webinars. Conservation Ontario is the network of Ontario’s 36 conservation authorities (CAs). Comments submitted by Conservation Ontario are not intended to limit comments submitted by individual CAs as part of the consultation process.

In general, conservation authorities are quite supportive of the proposal. In addition, we appreciate the proposed inclusion of CAs as “prescribed persons” through the regulation made under the *Drainage Act*. Conservation Ontario offers the following comments in relation to the discussion questions with an aim of improving the overall proposal.

1. Do you agree with the proposed minor improvement criteria?

The majority of the criteria is administrative in nature and does not address technical matters or project scope. Having clearly defined technical and project scope criteria would assist in determining whether or not a project is truly minor in nature and whether the intent of the proposed regulation is being achieved. Having these criteria more clearly defined will serve to limit differences of opinion regarding what is considered to be a “minor improvement”. Failure to do so could ultimately undermine the intent of efficiency and timeliness.

Proposed Criteria	Conservation Ontario’s Comments
The improvement would be initiated by the property owner	<ul style="list-style-type: none"> • None
The improvement would take place on an individual property	<ul style="list-style-type: none"> • For clarity, we recommend including, “owned by the initiating property owner”. • The requirement for the landowner to have to apply for and pay for the work and have the work solely on their property may limit the amount of works that can be done under this option – especially if the intention of the works are to improve a municipal road but the work or part of the work

	<p>would need to expand onto private property.</p> <ul style="list-style-type: none"> • A drainage area can extend beyond an individual property. Clarification is needed that to be eligible for the proposed minor improvement process any changes will not impact the drainage area beyond the individual property boundary
The property owner would pay the full cost of construction for the minor improvement	<ul style="list-style-type: none"> • None
There would be no need for construction access on neighbouring properties or the property owner has already obtained consent from applicable neighbouring properties	<ul style="list-style-type: none"> • Recommend a formal process/form for demonstrating a landowner has obtained consent from applicable neighbouring property owners
The proposed minor improvement would not lead to changes as to how future repair and maintenance costs are allocated to other property owners in the watershed	<ul style="list-style-type: none"> • Further clarity is required on this point. For example, if a farm crossing is installed and in the future needed to be remediated, would that be assessed as a special assessment to that property owner or would it be included in the overall assessment for maintenance and repair?
The minor improvement project would maintain the existing drainage capacity	<ul style="list-style-type: none"> • In some cases the objective of a proposal may be to retain and/or slowly release drainage from a feature on the property. For example, rural stormwater management may benefit from restrictions on flow rates. Similarly, in some cases enhancements to drainage capacity should be considered, e.g. floodplain enhancements or engineered wetlands • As per the comments related to technical criteria and scope, it is recommended that drain enclosures should not be considered to be minor • Additional criteria should include not having an impact on upstream or downstream erosion rates

General Comments - Minor Improvement Process

Conservation authorities would appreciate the opportunity to participate as part of the initial site visit to identify any technical or regulatory constraints up front, which could then be included as part of the work of the appointed engineer. This will help to expedite the approval process when permission under Section 28 of the *Conservation Authorities Act* is being sought.

The proposal identifies that the regulation may permit a municipality to rely on a municipal staff engineer who has P.Eng credentials. It is recommended that the regulation instead reference that the municipality rely on a P.Eng. who has experience in this field. The engineer should be familiar with the *Drainage Act*, the DART protocol and any other protocol that may be provided for in the regulation.

Given the reduced timeframe proposed for appeals (10 days) the regulation should specify that the reports/notices should be sent to regulatory agencies and landowners via electronic means. As a result of the COVID-19 pandemic, many letters are not making it to their destination within 10 days. Conservation Ontario is concerned that the reduced timeframes may not give landowners (including CAs) and regulatory agencies adequate time to review a proposal. It is recommended that the proposal be increased to 20 **business** days (or approximately one month).

This proposal would allow for an appellant to sidestep the Drainage Tribunal and go directly to the Drainage Referee. The advantage of this proposal is unclear given the Drainage Tribunal's expertise in handling appeals.

Examples of minor projects were provided but were limited to examples related to agricultural farmlands. The *Drainage Act*, however, is also used to provide legal outlet for drainage associated with urban development. It is unclear whether some drainage associated with urban development may be considered minor projects. Given the heightened risk to people and property, it is recommended that drainage associated with urban development should not be considered a minor project.

Finally, the relative age of the Engineer's Reports should be considered when defining "minor improvements". Conservation authorities identify that many of the Engineer's Reports in their watersheds are more than 20 years old and therefore not reflecting current engineering best practices and regulatory approval standards. In some cases, these reports do not contain cross-section data. The lack of information in some of these reports will make it difficult for CAs to assess potential impacts upstream and downstream of a "minor improvement".

2. What types of improvements do you foresee fitting under the minor improvement process?

Conservation Ontario would be very supportive of the use of the minor improvement process to help incentivize stewardship activities for individual landowners. Improvements that could fit under the minor improvement process include: green infrastructure projects that maintain or improve the drainage capacity of the system; environmentally friendly bank stabilization/erosion protection works; replacement of existing gabion baskets or hardened retaining walls; and installation of vegetated buffers. In addition, replacement or repair of existing infrastructure, such as culverts and crossings on a like-for-like basis or upsizing where the risk of increasing flooding or erosion is low could be considered under the minor improvement process. Finally, localized bank stabilization and erosion control at outlets and bends should also be considered as a type of improvement fitting under the minor improvement process.

In general, Conservation Ontario does not support the use of the minor improvement process in wetland areas, associated with urban development or for drain enclosures.

3. What potential pre-approved designs do you foresee for being possible under a protocol for minor improvements?

Conservation Ontario is supportive of the proposal to develop pre-approved practices and respectfully requests an opportunity to participate in their development. It is recommended that the term "practice"

be used in place of “design”; this change in terminology would serve as a reminder to the Engineers and the regulators to ensure that the proposal fits the situation.

In general, Conservation Ontario supports the recommendation to consider straightforward farm crossings and erosion protection as potentially eligible projects for pre-approved designs.

4. Are there other opportunities to further reduce burden for minor improvements?

In order to further reduce burden for minor improvements, it is recommended that the province consider allowing a qualified conservation authority staff engineer who has P.Eng credentials to be appointed by a municipality to prepare a report. Many smaller municipalities do not have P.Eng on staff and this could be a way to support those municipalities on a watershed basis. Moreover, having the ability to appoint a conservation authority staff member may further serve to incentivize landowners to undertake stewardship programs.

It is recommended that the province form a working group with CAs and other regulatory agencies to create criteria for determining what should be considered a minor improvement as compared one that should follow the typical process. This will help to streamline the overall drain approval process. Moreover, the regulation should be designed to require that the Drainage Engineer engage as early as possible with conservation authorities and other regulatory bodies. In addition to undertaking regulatory approvals, CAs have considerable knowledge about the form and function of watercourses, which could assist with the design and approval of a project.

5. Are the proposed criteria for updating an Engineer’s Report appropriate?

It is understood that the proposed new Minister’s regulation would establish a new process for reflecting changes to a drain design in an Engineer’s Report. In the discussion paper, a variety of draft eligibility criteria are proposed. The first criterion is that “current agency approvals would support the required changes to the drain design”. The criterion does not identify who would be responsible for making that determination. Therefore, it is recommended that the criterion be amended to require consultation and clearance from approval agencies to reflect the changes to a drain design. This should be undertaken prior to granting the municipality authority to maintain the drain “as built”.

As a final step, the council-approved Engineer’s Report should be electronically distributed to approval agencies, including conservation authorities.

6. What new protocols would you prioritize?

Conservation authorities have experience administering streamlined Section 28 approvals for municipal drain maintenance and repair in accordance with the Drainage Act and Conservation Authorities Act (DART) Protocol since 2012. Our experience has confirmed that it provides consistency and efficiency for the approvals process. Adoption of the DART protocol by reference will formalize its status and will further the objectives of consistency and efficiency.

A second installment of the DART protocol to address these minor improvements on drains would be a welcomed addition and provide a standard throughout the province where conservation authorities

exist. There is also a need and opportunity for DART to refine what constitutes drain improvement under Section 78 of the *Drainage Act*.

Finally, as discussed, CAs are supportive of a protocol for pre-approved engineered designs for minor improvements. CAs should be consulted on these pre-approved designs to ensure that they are compliant with CA Act Section 28 requirements. Consideration should be given to including designs which prioritize green infrastructure as a way to further incentivize landowners to employ best management practices.

Once again, thank you for the opportunity to provide comments on the “Drainage Act Regulatory Proposal”. We are appreciative of the ongoing efforts to consult directly with conservation authorities throughout the process and we look forward to working with you as you further refine these proposals. Should you have any questions about this letter, please contact me at extension 226.

Sincerely,

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

Leslie Rich
Policy and Planning Liaison

c.c. All CA CAOs/GMs