



March 30, 2021

Donna Shaw
Program and Policy Advisor
Crown Forests and Lands Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street, 5th Floor North Tower
Peterborough, ON K9J 3C7

RE: Conservation Ontario's Comments on the proposal to "Amend Public Lands Act Ontario Regulation 239/13 to remove the 10-day registry waiting period for existing shore land erosion control structures" Regulatory Registry Posting (21-MNRF008)

Dear Ms. Shaw:

Thank you for the opportunity to provide comments on the proposal to amend Ontario Regulation 239/19 under the *Public Lands Act* to remove the 10-day registry waiting period for existing shore land erosion control structures. We appreciate the opportunity to meet and discuss with you this regulatory registry posting on March 23rd. 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 conservation authorities.

It is understood that through O. Reg. 239/13, approval for maintenance, repair or replacement of existing shore land erosion control structures can be obtained from the Ministry of Natural Resources and Forestry (MNRF) by registering the work and following the rules in regulation. Currently, the applicant must wait ten days post registration to commence the work. More recently, the MNRF has been providing expedited work permits for projects which do not meet the rules in regulation. These work permits are generally issued in three days.

Section 8 of O. Reg. 239/13 sets out the rules which must be followed if an individual would like to undertake maintenance, repair or replacement work on existing erosion control structures on shore lands in Ontario following the rules in regulation approach under the *Public Lands Act*. These rules include: only conducting works if the individual is the property owner or is conducting work on behalf of the property owner, maintaining the same footprint of the original structure, and registering the works with the MNRF at least ten business days before work commences, among others. Through the above-noted consultation, MNRF is proposing to amend the rules to reduce the waiting period from ten to zero days which would allow the applicant to commence works in-line with the rules in regulation as soon as the registration has been completed.

While Conservation Ontario has no objection to the proposal to reduce the waiting period for maintenance, repair or replacement works for existing shore land erosion control structures, it is noted that the current regulation does not provide the necessary level of integration with the shoreline planning, management and regulation work being undertaken by conservation authorities on behalf of the province and

municipalities. The current process has presented conservation authorities with significant operational, compliance and enforcement challenges which could be mitigated with effective integration between the approvals provided by MNRF and those provided by the CAs under the *Conservation Authorities Act* and associated regulations. Alternatively, it is recommended that MNRF consider exempting these projects subject to this consultation in CA watersheds.

Should MNRF choose to proceed with this amendment as described, it is recommended that clarity be provided directly in the regulation or within the registration process in MNRF's Natural Resource Registry that **applicants may still be required to comply with any other applicable requirements of law, permits and approvals in respect of the proposed structure or works, including permission under Section 28 of the *Conservation Authorities Act***. Conservation Ontario notes that text was added to the public-facing webpage for the "streamlined Crown land work permits" announced in 2019 which clarifies that individuals seeking to undertake these works must determine if additional authorizations are required prior to commencing works. Similar text is available on the "Crown land work permits" page on Ontario.ca. It is strongly recommended that a similar piece of clarifying text be provided in the regulation or in the registration process for undertaking maintenance, repair or replacement works for existing shore land erosion control structures. This will assist individuals undertaking these works to be aware that the removal of the "waiting period" does not exempt them from obtaining other approvals as necessary, including those issued under Section 28 of the *Conservation Authorities Act*. Otherwise, MNRF should consider requiring clearance from the CA as part of the "mandatory information" requested on the form implementing the regulation.

It is understood that the ten day waiting period was originally included to enable MNRF staff to undertake routine compliance checks to ensure that the application would meet the rules in regulation requirements. The *Public Lands Act* provides officers with the powers to enter and inspect any private land for the purposes of the Act. These powers are clearly articulated in the "How to apply for a work permit" guidance provided on the "Crown land work permits" public-facing webpage. The webpage outlines that MNRF staff may visit sites to assess the proposed project, as well as inspect the site during the work process or following its completion to ensure compliance with the scope of work outlined in the permit. However, details of these inspection powers are notably absent from the guidance provided for those projects eligible for the rules-in-regulation approach which is the subject of this posting. This oversight should be remedied should the Ministry decide to proceed with this proposal. The Ministry is also encouraged to actively monitor and inspect these undertakings to ensure alignment with the rules outlined in O. Reg. 239/13 and to make any adjustments necessary as a result of impacts to the environment, as well as to ensure the safety of people and property from coastal processes, moving forward.

Through the "summary of proposal" for this consultation, MNRF has identified that maintenance, repair and replacement work on existing shore lands erosion control structures is deemed low-risk in terms of impacts to the environment. Recent shoreline management studies, particularly on the Great Lakes shorelines have demonstrated that cumulatively that is not always the case. These updated management studies and plans are based on modern analytical methods and they more accurately depict current shoreline coastal processes and anticipated impacts from a changing climate. In many cases, CAs are using these plans to guide their decision-making under Section 28 of the *Conservation Authorities Act*. Many existing and failing structures were created in an ad hoc manner and without being designed by a coastal engineer. Due to the high water levels, some of these structures are currently underwater. Their reinstatement following O. Reg. 239/13 would essentially construct a groyne. For these reasons, should better integration between approvals under O. Reg. 239/13 and those issued under the *Conservation Authorities Act* not be possible Conservation Ontario recommends that the Ministry exempt the aforementioned projects within CA watersheds.

Thank you for the opportunity to provide comments on the proposal to amend Ontario Regulation 239/19 under the *Public Lands Act* to remove the ten-day registry waiting period for existing shore land erosion control structures. Should you have any questions about this letter, please contact Leslie Rich at extension 226 or Nicholas Fischer at extension 229.

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

cc. All CA CAOs/GMs