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December 16, 2022

**RE: Conserving Ontario's Natural Heritage (ERO#019-6161)**

To Whom It May Concern:

Thank you for the opportunity to comment on “Conserving Ontario’s Natural Heritage” ([ERO#019-6161](#)). Conservation Ontario is the network of Ontario’s 36 conservation authorities (CAs). The following comments are not intended to limit consideration of comments shared individually by CAs through this review and consultation process.

The Province’s discussion paper is proposing to develop an Offsetting Policy. Conservation Ontario recognizes that ecological offsetting can be an important and effective tool in helping to maintain ecological functions and biodiversity in the face of rapid urbanization and land use change. Some Conservation Authorities have developed offsetting policies and have gained valuable knowledge in the successes and challenges of implementation. Through this implementation experience it has become clear that offsetting, although beneficial in some circumstances, has significant limitations and cannot practically replace ecosystem structure and function of many ecosystem types and scales. Therefore, for an offsetting program to be effective it must be directed by the best available science and a strong protective policy framework that clearly and specifically outlines when offsetting can, and cannot, be contemplated.

The Province’s stated objective is to stop the net loss of natural heritage in Ontario and reverse the trend by focusing on restoration and net gain. Conservation Ontario supports this objective and Conservation Authorities have several existing programs and services in place to help achieve it. Realizing this objective is dependent on maintaining and strengthening existing natural heritage protections within the *Planning Act*, the Provincial Policy Statement (PPS), and the *Conservation Authorities Act (CAA)*. It is also dependent on collaborative partnerships between the Province, Municipalities, Conservation Authorities, Indigenous communities, and other stakeholders. The amendments to the *Planning Act*, PPS, and *CAA* through Bill 23 will undermine the ability to achieve the stated objective.

Like the proposed changes to the Ontario Wetland Evaluation System, it is unclear who will implement the proposed Offsetting Policy. The collaborative effort mentioned above is key to implementation and is tied back to Ontario’s current planning framework. Once changed, there will be significant process

unknowns. If offsetting becomes solely a municipal tool with no support from other stakeholders, including CAs, there may be challenges in appropriate and successful implementation.

Conservation Ontario encourages the Province to follow the recommendations provided by the Wetland Conservation Strategy Advisory Panel report titled "[Considerations for the Development of a Wetland Offsetting Policy for Ontario](#)" (May 2018). It was prepared to guide the development of a provincial ecological offsetting policy and the then General Manager of Conservation Ontario co-chaired the Advisory Panel with Ducks Unlimited Canada. Additionally, the Province is encouraged to leverage CA experience in offsetting policy development and implementation to inform this proposal.

### **Principles for Consideration in the Development of an Offsetting Policy**

The Province's discussion paper outlines five principles being considered in the development of the proposed Offsetting Policy. These principles are outlined below, followed by our feedback.

**Net Gain.** *The goal of the offsetting policy should be net gain with respect to the extent and quality of natural heritage features or their functions, within a reasonable period of time.*

- Conservation Ontario supports the principle of net gain in theory. However, it can be very difficult to implement in practice, further highlighting the need for strong protection policies.
- The "or" between features **or** their functions should be changed to "**and**", as replacement of a feature without consideration for the array of functions and ecosystem services it provides would lead to a degradation of ecosystem services across Ontario (e.g., flood attenuation, species habitats, etc.). The current way the principle is written may allow for the lost ecological functions to be replaced with engineered green infrastructure or low impact development elements.
- The "reasonable timeframe" within this principle should be defined to minimize the time lag between feature removal and feature restoration. This is crucial to ensure the ecosystem services ("functions") being removed from the landscape are replaced as soon as possible. Natural heritage features provide important functions which help to mitigate impacts of flooding, erosion and drought which put people, property and built infrastructure at risk. Many natural heritage features such as wetlands and woodlots require significant time and monitoring to reestablish their ecosystem services on the landscape. As such, removal of natural heritage features and offsetting should only be employed in limited circumstances where features and their functions can be re-established in a timely manner to ensure development activities do not further exacerbate risks to people and property.

**Avoidance first.** *Offsetting should be the last step after other options to avoid and mitigate any impacts on natural heritage are considered.*

- This should be the first principle, as avoidance of impact should be explored before any other principles apply. For example, all other options must be explored and exhausted, including consideration of developable lands (e.g., brownfields) and infilling, prior to impacting natural heritage lands to facilitate development projects. A strong and clear policy framework and supporting definitions must be provided in support of this principle to ensure decisions on offsetting are made without delay.
- Change "should" to "must" and change "considered" to "explored and exhausted" and add "minimize" after "to avoid" so that the principle reads as follows: *Offsetting must be the last*

*step after other options to avoid, minimize and mitigate any impacts on natural heritage are explored and exhausted.*

**Informed.** *Offsetting should consider the best available science, and knowledge, including Traditional Ecological Knowledge.*

- Conservation Ontario agrees that contemplating the removal and offsetting of natural features must be informed by a comprehensive understanding of the structure and function of the feature and the surrounding natural system.
- Some CAs have developed offsetting policies and have gained valuable knowledge in the successes and challenges of implementation. These CAs should be given the opportunity to participate and collaborate with the Province in the development of the offsetting policy.
- This principle appears to be inconsistent with recently proposed changes to the Ontario Wetland Evaluation System and other policies. The proposed changes to these policies are diminishing the need for ecological data and knowledge to inform decisions.
- Development of offsetting ratios for ecosystem structure loss should be informed by science. Recommendations included in Considerations for the Development of a Wetland Offsetting Policy for Ontario (May 2018) should be followed when developing such ratios.

**Transparency and accountability.** *The offsetting policy should incorporate provisions for oversight, tracking and public reporting on the effectiveness of implementation.*

- Conservation Ontario agrees with this principle. To ensure consistency in public reporting on the effectiveness of implementation, monitoring of offsets for an extended period must be incorporated as a mandatory component of the offsetting policy. See further comments under Adaptive Management below.

**Limits to Offsets.** *Some wetlands, like coastal wetlands, bogs and fens in southern Ontario, and other areas that historically have been important for recreation and tourism should be ineligible for offsetting.*

- Conservation Ontario agrees there should be limits to what should be eligible in an offsetting program. However, these limitations should be outlined within the *Planning Act* and the PPS, and not simply within the offsetting policy.
- The policy framework within the *Planning Act* and PPS should outline criteria to guide which features should or should not be eligible for offsetting. Some of the criteria to be considered could be the replaceability of the feature, whether the feature is helping to mitigate a natural hazard, the habitat quality of the feature, whether the feature provides support for species at risk, the degree of isolation or ability of the feature to persist on the landscape should development surround it, the size of the feature, and the age of the feature.
- It is the experience of those CAs with offsetting policies that a lack of clarity and specificity on eligibility of features can result in significant delays in approvals.

In addition to the five principles above, Conservation Ontario suggests including the items below. These could either be standalone principles or be incorporated into those above:

**Prompt on-the-ground ecological restoration.**

- Offsets shall be used to replace the ecologic and hydrologic features and functions lost. Offset funds should not be used for engineered infrastructure, public transit, manicured open spaces/ornamental trees, or brochures. These are actual examples of proposed compensation

which CAs have received and rejected. Development of a calculation tool could function as an effective method to clearly communicate acceptable offsetting options given the removals proposed.

- Natural heritage features created or restored by offsets shall be protected for the long-term through zoning as Environmental Protection or similar, inclusion in the natural heritage system and/or a restrictive covenant. Requiring or incentivizing implementation prior to removal should be considered in the development of the policy.

#### **Proximity.**

- A principle that speaks to the proximity between the impact and the offsetting should be added. As outlined in the discussion paper, Conservation Ontario agrees that offsets should be located within the same watershed as the impact (see comments under “Net Gain” re: ecosystem services and exacerbation of natural hazard risks (e.g., flood, erosion) to people and property). This should be strengthened in the form of a principle.
- The discussion paper further states that offsets could be considered outside the watershed where there is opportunity for greater conservation outcomes. While Conservation Ontario appreciates the intent behind this approach, ‘greater conservation outcomes’ should not be at the expense of protecting people or property from increased risk due to loss of features and their function on the landscape. Additionally, applying different types of offsets outside the area of impact would result in a net loss of specific natural heritage features and habitat, and may result in a fragmentation of the natural heritage system in certain parts of the province. For these reasons, compensation outside the watershed should be utilized in limited circumstances.

#### **Like for Like.**

- A principle should be added that outlines the need to replace the impacted feature with the same type of feature where possible. For example, offsetting the removal of a forest with restoring a forest. Where this is not possible, the offsetting restoration should be guided by local habitat restoration plans and strategies.

#### **Ratios.**

- The offsetting policy should establish ratios that, in part, address the time lag associated with like for like offsetting for certain features. For example, a restored forest will take several years before smaller, planted trees and shrubs provide an equivalent level of ecosystem services to the mature feature being removed.

#### **Land Base.**

- A principle should be added outlining the need to add new lands to the natural heritage system for restoration in the offsetting actions. Ensuring the overall size of the natural system is not reduced due to land use change is critical to meeting the objective of stopping the net loss of natural heritage in Ontario and reversing the trend by focusing on restoration and net gain. Land securement of existing natural areas does not replace the size or functions of the natural heritage system lost to development. Offsets must demonstrate additionality.

#### **Costs.**

- The proponent shall cover the full cost of offsets (including labour, maintenance, and monitoring). Taxpayers should not be required to pay for offsetting – these costs must be fully absorbed by the proponent of the development.

### **Adaptive Management.**

- The importance of using an adaptive management approach to inform offsetting should be highlighted in a principle. This should include the need for monitoring, program evaluation, and commitment to modify the policy if evaluation indicates it is not meeting the core natural heritage objectives. Also see above comments on Transparency and Accountability.

### **Implementation**

The Province's discussion paper includes a short section on implementation considerations. As outlined above, some Conservation Authorities have several years of experience implementing offsetting programs and can bring a wealth of knowledge to help inform the proposed provincial program. Some initial considerations are outlined below.

**Scale.** There are several challenges with effective implementation of an offsetting program. This is made even more difficult when offsetting actions are considered at the provincial scale.

The principles of the offsetting policy and program can be consistent across the province, however, implementation needs to be tailored to specific areas. In much of southern Ontario, the watershed is the ideal scale to sustain a connected natural heritage system. Organizations such as CAs may maintain baseline information on the natural heritage system and ecological communities in their watersheds which may be used to monitor whether offsetting actions are effective.

**Feasibility.** Some habitat types that may be made available for offsetting, through policy or process changes, can be extremely difficult to replicate elsewhere. Wetlands, for example, require several criteria to be met to ensure long term persistence on the landscape. Sourcing of viable opportunities for wetland creation requires a site of adequate size and appropriate soils and a significantly larger catchment area to feed the wetland. At the larger scale that an offsetting fund may desire, identification of sites may prove extremely difficult.

Other factors, such as ownership/land availability, encumbrances on neighboring lands, existing habitat/natural heritage values also play a role in determining feasibility. One of the main challenges to implementing restoration/creation of features through offsetting is finding suitable land. The policy should explain how land will be obtained for the purpose of feature creation to avoid significant time lags from feature removal and restoration. Options for establishing processes to find suitable lands, including a potential land bank, should be explored.

**Capacity.** Proposed and potential changes to policy and guidance documents may result in significant quantities of habitat available for offsetting. The resulting scale of implementation could potentially be far greater than the capacity of the consultants, contractors, agencies, NGOs, and others that are currently practicing in Ontario.

Additionally, across Ontario there is uneven availability of baseline data necessary to guide implementation of offsetting. As such, where offsetting is considered, proponents are strongly encouraged to engage with watershed-based organizations such as Conservation Authorities to review and incorporate existing information and knowledge of natural heritage features and systems in the watershed to inform offsetting actions.

**Policy Implementation.** It is unclear if the proposed offsetting policy would only apply to approvals under the *Planning Act*, or if it would apply to applications under other planning or permitting instruments, such as the *Environmental Assessment Act* or *Conservation Authorities Act*. The pressures noted in the introduction do not stop at land use planning. Infrastructure projects and other activities that do not trigger a planning approval represent significant pressures on natural heritage in Ontario.

A clear legislative framework should be identified that includes the circumstances when offsetting applies and how governance and administration will be undertaken.

**Defining Features.** A lack of clarity in definitions and criteria for identifying natural heritage features currently plays an important role in the offsetting process in Ontario. Where ambiguity in the status of a feature or potential feature exists, the planning process slows considerably. This delay is often then attributed to offsetting. Most offsetting policies in Ontario identify smaller, less complex, isolated features as being appropriate for offsetting. These same attributes often call into question whether the feature qualifies as a feature at all. Thus, greater clarity is required for defining features in order to facilitate quick decision making around feature management and offsetting.

Thank you for the opportunity to comment on the “Conserving Ontario’s Natural Heritage” ([ERO#019-6161](#)). As noted throughout this letter, select Conservation Authorities have experience in developing and implementing offsetting policies in Ontario. Further, as local, watershed-based organizations, CAs maintain a wealth of knowledge of natural heritage features and systems within their watershed. The Province is encouraged to leverage this experience and knowledge-base. Conservation Ontario would be pleased to identify CA staff to participate in the development of the offsetting policy and implementation framework.

Sincerely,



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c.c.: All CA CAOs/GMs

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