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Provincial Wetland Policy Dries Up Northern Economic Opportunities

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By: Don McConnell and Laura McConnell

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Our main offices:

Thunder Bay on Robinson-Superior Treaty territory and the land is the traditional territory of the Anishnaabeg and Fort William First Nation.

Sudbury is on the Robinson-Huron Treaty territory and the land is the traditional territory of the Atikameksheng Anishnaabeg as well as Wahnapiitae First Nation.

Kirkland Lake is on the Robison-Huron Treaty territory and the land is the traditional territory of Cree, Ojibway, and Algonquin Peoples, as well as Beaverhouse First Nation.

Each community is home to many diverse First Nations, Inuit, and Métis Peoples.

We recognize and appreciate the historic connection that Indigenous peoples have to these territories. We support their efforts to sustain and grow their nations. We also recognize the contributions that they have made in shaping and strengthening local communities, the province, and Canada.

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About the Author

Don McConnell



Don McConnell recently retired as the Director of Planning and Enterprise Services for the City of Sault Ste. Marie, with over 40 years experience working as a planner in Northern Ontario. He has served as a Council Member on the Ontario Professional Planners Institute's Board, and has appeared on numerous occasions before the Ontario Land Tribunal (formerly Ontario Municipal Board) as an expert witness on planning matters.

Laura McConnell



His daughter, Laura McConnell, brings knowledge and passion for research and writing about policy issues, with an undergraduate degree in International Relations and Urban Studies from the University of Toronto and a Juris Doctor from the University of Windsor, Faculty of Law.

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Executive Summary

Wetlands are essential to ecosystems and provide multiple benefits, including flood prevention, water quality improvement, wildlife habitat, and economic and recreational opportunities. In Ontario, wetlands cover approximately one-third of the entire province, with over 90 per cent of these wetland areas located in Northern Ontario. However, most of these wetlands have not been evaluated for their significance and development potential. This paper aims to investigate whether the current provincial policies restricting wetland development in Northern Ontario are necessary or appropriate, while considering the overall objectives of the Provincial Policy Statement (PPS).

The PPS is a comprehensive land-use planning policy created by the Ministry of Municipal Affairs and Housing, which all municipalities and other approval authorities in Ontario are bound to follow. The wetland protection policies of the PPS supersede the requirements of other legislation, including the economic initiatives described in the Growth Plan for Northern Ontario. However, the PPS does not apply to the northernmost region of the province governed by the Far North Act.

Economic, environmental and social conditions are much different in Northern Ontario and different natural heritage policies and approaches to implementation are warranted. For this reason, the Province should look at wetland protection on a regional rather than a provincial basis. Barriers to economic growth in Northern Ontario should be removed where possible given that the current population is not sufficient to sustain present economic activities. Very little, if any population growth is projected to occur over the next 25 years in Northern Ontario.

This paper highlighted some of the challenges experienced by various communities in Northern Ontario posed by the PPS restrictions on wetland development and recommends that the restrictions on development of wetlands be limited to Southern Ontario. Approximately one third of all Northern Ontario is wetlands, most of which is Crown land. Given the vast natural heritage resources in Northern Ontario and the very limited demand for new development, not applying the PPS wetland policies to Northern Ontario would have minimal, if any impact in the region.

This approach would allow municipalities and other approval authorities to decide what wetland areas within their boundaries are locally significant and ensure that they are maintained as part of development approval processes. It will allow for a balancing of other factors such as economic growth and development to be considered alongside wetland preservation.



Introduction

More than 90% of wetlands in Ontario are located in Northern Ontario, covering approximately 1/3 of all land mass in Northern Ontario. As nearly 90% of Northern Ontario's wetlands are on Crown land, this paper will focus on the remaining 10% of wetlands which are privately owned and have development potential. To be developed, a wetland must not be provincially significant and not be a coastal wetland. All wetlands are assumed to be provincially significant unless a wetland evaluation confirms otherwise.

This paper will investigate whether current provincial policies restricting wetland development within Northern Ontario are necessary or appropriate, while considering the overall objectives of the Provincial Policy Statement.

Specifically, this paper will consider the importance and geographic distribution of wetlands; outline the differences between development in Northern and Southern Ontario; show how the existing Planning Act approval process applies to wetland development; discuss several examples of how the existing Provincial Policy Statement impacts development proposals; and recommend an approach which would be more appropriate in Northern Ontario.

Recently, there have been some proposed changes to the Ontario Wetland Evaluation Manuals. However, these proposed changes are largely technical in nature and, since there are no proposed changes to the Provincial Policy Statement, they are outside the scope of this paper.

Overall, the authors will assess the impact of the prohibition on wetland development while considering accepted good planning practices.



Provincial Policy Statement

Overview

The Provincial Policy Statement (PPS) is a comprehensive land use planning policy created by the Ministry of Municipal Affairs and Housing which all municipalities in Ontario are bound to follow.¹ This includes all municipalities, provincial agencies, conservation authorities and other local boards and commissions that exercise control over land use matters.

The intent was to have the many varied, land-use policies across various provincial ministries accessible in one document. Instead of consulting with the Ministry of Environment, Ministry of Natural Resources, Ministry of Transportation and others, all policies would be collectively itemized in the PPS for land use decision-makers.



Contents of PPS

Part I states, "...the Provincial Policy Statement provides policy direction on matters of provincial interest related to land-use planning and development."² It goes on to state that the PPS "provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment."³

Part III of the PPS states that "the Provincial Policy Statement is more than a set of individual policies. It is to be read in its entirety and the relevant policies are to be applied to each situation."⁴

Over the years, the Provincial Policy Statement has evolved through several versions and updates. The first PPS was created in 1996 and revised in 2005, 2014 and 2020. The Ministry of Municipal Affairs and Housing decides which revisions will take place during their consultation process. The current PPS came into effect on May 1, 2020.

The legislative authority for policy statements is contained in section 3 of the Planning Act which states:

"The Minister, or the Minister together with any other minister of the Crown, may from time to time issue policy statements that have been approved by the Lieutenant Governor in Council on matters relating to municipal planning that in the opinion of the Minister are of provincial interest."⁵

Prior to 2005, the responsibility of local municipalities and other agencies to have regard for provincial policy statements was set out in section 3 as follows:

"In exercising any authority that affects a planning matter, the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, **shall have regard to** policy statements issued under subsection (1)."⁶ [emphasis added]

"Shall have regard" meant that municipalities needed to consider all of the policy considerations of the PPS when making a decision. However, the municipalities had the ability to balance the weight they were giving to different parts of the PPS while making their decision and could give some sections of the PPS more weight than others.

¹ Planning Act, R.S.O. 1990, c. P.13, section 3.

² Provincial Policy Statement, 2020, page 1.

³ Provincial Policy Statement, 2020, page 1.

⁴ Provincial Policy Statement, 2020, page 2.

⁵ Planning Act, R.S.O. 1990, c. P.13, section 3(1).

⁶ Planning Act, R.S.O. 1990, c. P.13, Historical version for the period November 30, 2004 to February 28, 2005, section 3(5).

In 2005, this section was amended and currently reads as follows:

"A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter,

(a) **shall be consistent with** the policy statements issued under subsection (1) that are in effect on the date of the decision; and

(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be."⁷

"Be consistent with" has been interpreted to mean must conform to. In other words, when considering a development approval under the Planning Act, one must comply with all sections of the Provincial Policy Statement.

This is reinforced in the Implementation and Interpretation section of the PPS which states, "...this Provincial Policy Statement shall be read in its entirety and all relevant policies are to be applied to each situation."⁸

An application for development approval under the Planning Act must now satisfy all the limitations and prohibitions included in the Provincial Policy Statement. Failure to meet any one specific policy limitation or prohibition will result in the failure of the entire application despite any other benefits that may be achieved. It should also be noted that there is no opportunity to appeal a requirement of the PPS.

Municipalities previously had the ability to apply greater weight to some aspects of the PPS to achieve specific objectives, such as to balance the interests of promoting economic development with environmental protection. With this 2005 revision, municipalities cannot approve any project that does not conform exactly to the PPS, essentially losing the ability to use their own good judgment. The PPS centralizes decision making away from local decision-makers, forcing diverse communities across Ontario to comply with the singular PPS mandate.

Other Relevant Legislation

The Places to Grow Act, 2005 requires that where a growth plan conflicts with the Provincial Policy Statement, the growth plan prevails. But, where a matter relates to the natural environment or human health, then whichever document provides more protection prevails.⁹ This means that the 2011 Growth Plan for Northern Ontario will be trumped by the wetland protection provisions of the PPS. This is a major limitation that prevents effective implementation of the Growth Plan for Northern Ontario, providing no discretion for economic development.

The Far North Act 2010 covers approximately 42% of Ontario and stretches from Manitoba in the west to James Bay and Quebec in the east.¹⁰ The Far North Act 2010 provides the basis for community-based land use planning in the northernmost region of Ontario and sets out a joint planning process between the First Nations and the Province.¹¹ Although the PPS applies to all of Ontario and trumps Growth Plans, the PPS does not apply to lands covered by the Far North Act 2010.¹²



⁷ Planning Act, R.S.O. 1990, c. P.1, section 3(5).

⁸ Provincial Policy Statement, 2020, section 4.2.

⁹ Places to Grow Act, 2005, S.O. 2005, c. 13, section 14(2).

¹⁰ Far North Act of Ontario, published November 29, 2019. <https://www.ontario.ca/page/far-north-ontario#:~:text=boundary%20in%20detail,-,About%20the%20Far%20North,90%25%20of%20them%20First%20Nations>

¹¹ Far North Act, 2010, S.O. 2010, c. 18, section 1.

¹² Personal communication with Lisa Eddy, Senior Program Advisor, Far North Branch, Ministry of Natural Resources and Forestry, April 15, 2021.

Commentary on the PPS

The planning directors of the five large urban municipalities in Northern Ontario (Greater Sudbury, North Bay, Thunder Bay, Timmins and Sault Ste. Marie) have consistently and collectively commented on behalf of their municipalities as part of the Provincial Policy Statement review process. In 2010, the planning directors met to draft a joint letter to the Ministry of Municipal Affairs and Housing to voice their concerns. They noted that their collective experience in implementing the PPS "strongly points to the need to revise the PPS to better reflect the unique land-use planning circumstances that exist in Northern Ontario."¹³

The planning directors also noted that "the PPS appears to presume strong rates of population growth are occurring in all communities across Ontario" while all five large Northern Ontario municipalities have less population than they did 25 years ago.¹⁴ This signifies a lack of relevancy of the PPS to the reality of Northern Ontario as the systemic and continuing loss of population and the need to encourage economic development in the region are not considered. Given that most residential, commercial and tourism-related developments in Northern Ontario are very small scale, prohibiting development in wetland areas or requiring major technical studies is unnecessary and effectively obstructs development. In response to this, the planning directors stated that "some flexibility is needed when applying the PPS in Northern Ontario to ensure a better balance between environmental and economic considerations."¹⁵

With regard to wetlands, the planning directors recommended that "the PPS be revised to allow for some flexibility when assessing development and site alteration in and adjacent to these natural heritage features."¹⁶ They further recommended that "where planning approvals are concerned, programs and infrastructure projects contained in the Northern Growth Plan should take precedence over the policies of the PPS."¹⁷ In a subsequent letter to the Ministry, the planning directors repeated that "the type of flexibility that was available under the previous [PPS] "shall have regard to" approach would be appropriate for the unique circumstances in the north."¹⁸

Despite submissions from Northern Ontario planning officials, the Provincial Policy Statement remains a significant impediment to development in Northern Ontario.

Section Summary

- The Provincial Policy Statement is a comprehensive land-use planning policy created by the Ministry of Municipal Affairs and Housing which all municipalities and other approval authorities in Ontario are bound to follow.
- The changes to section 3 of the Planning Act from "shall have regard" to "shall be consistent with" eliminated the possibility of municipal councils and local planning boards to use discretion to consider numerous factors, including economic benefits, when deciding on a Planning Act development application.
- There is no opportunity for an applicant, municipal council, or local planning board to appeal a requirement of the Provincial Policy Statement. All other matters can be appealed to the Ontario Lands Tribunal (OLT).
- The wetland protection policies of the PPS supersede the requirements of other legislation, including the economic initiatives described in the Growth Plan for Northern Ontario.
- The Provincial Policy Statement does not apply to the northernmost region of the province governed by the Far North Act.
- Northern Ontario Planning Directors have repeatedly commented that the environmental and economic conditions in Northern Ontario are different, and that some flexibility is required as part of the land-use development approval process.

¹³ Letter to Audrey Bennett, Director, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing August 30, 2010, page 1.

¹⁴ Letter to Audrey Bennett, Director, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing August 30, 2010, page 2.

¹⁵ Letter to Audrey Bennett, Director, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing August 30, 2010, page 2.

¹⁶ Letter to Audrey Bennett, Director, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing August 30, 2010, page 6.

¹⁷ Letter to Audrey Bennett, Director, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing August 30, 2010, page 8.

¹⁸ Letter to Audrey Bennett, Director, Provincial Planning Policy Branch, Ministry of Municipal Affairs and Housing, December 17, 2012, page 2.

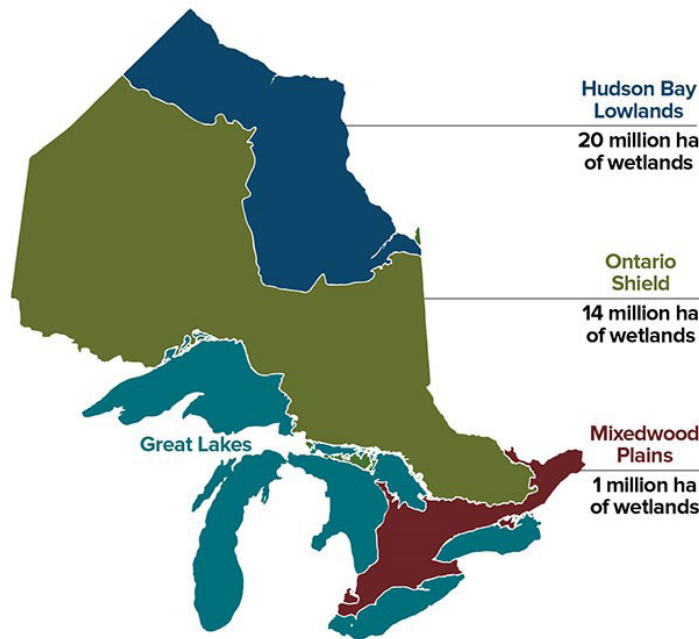
Wetlands

Overview

Whether or not an area is classified as a wetland by the PPS impacts its development potential. The Provincial Policy Statement defines wetlands as:

"lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water-tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens."¹⁹

The Ontario Ministry of Natural Resources and Forestry (MNRF) has identified around 35,000,000 hectares of wetlands in Ontario.²⁰ More than 90% of all wetland areas are in Northern Ontario. As the graphic below illustrates, an estimated 34 million hectares of wetlands are located mostly in Northern Ontario, and an estimated 1 million hectares of wetlands are located mostly in Southern Ontario.



Source: <https://www.ontario.ca/page/wetland-conservation-strategy#section-1>

Wetlands can be protected either through environmental regulations or Crown ownership. The Crown owns about 87% of all land in the province, including countless wetlands, the vast majority of which are in Northern Ontario.

²¹ The benefits of protecting wetlands include preventing flood damage, improving water quality, giving wildlife a home, providing valuable economic products like timber and furbearers, as well as recreational opportunities like hunting, fishing, and nature appreciation.²²

Despite these benefits, by the 1980s, 68% of Southern Ontario's wetlands had been converted to other uses.²³ No similar data is available for Northern Ontario, although the loss of wetlands in Northern Ontario is likely negligible as it remains a vast, largely Crown-owned, wilderness.

¹⁹ LPPS page 53.

²⁰ <https://www.ontario.ca/page/wetland-conservation>

²¹ <https://www.ontario.ca/page/crown-land>

²² <https://www.ontario.ca/page/wetland-conservation>

²³ <https://www.ontario.ca/page/wetland-conservation>

Wetlands Regulation under the PPS

The Provincial Policy Statement applies to and regulates all wetlands, regardless of whether they are on private land or provincial Crown land. The PPS divides wetlands into four types: wetlands, significant wetlands, coastal wetlands and significant coastal wetlands (see Appendix for full definitions). This is important because how a wetland is classified can impact its development potential.

The PPS expressly prohibits "development and site alteration" in all provincially **significant wetlands** throughout all of Southern Ontario and a portion of Northern Ontario classified as ecoregion 5E. Development and site alteration are also prohibited in all provincially **significant wetlands** north of ecoregion 5E (the rest of Northern Ontario) unless it can be proven that there is no negative impact on the natural features or their ecological function. The PPS prohibits development and site alteration of all provincially **significant coastal wetlands** anywhere in the province.

In applying this policy, it is practically impossible to demonstrate that a development proposal will have no negative impacts. The PPS defines negative impacts as "...degradation that threatens the health and integrity of the natural features or ecological functions for which an area is identified due to single, multiple or successive development or site alteration activities."²⁴

Demonstrating that there will be no negative impacts comes with all the challenges of trying to prove a negative. It is a difficult task that requires comprehensive ecological studies to verify that there will be no negative impacts on natural features or their ecological functions. Natural features include wetlands, fish habitat, woodlands, valleylands, endangered species habitat, significant wildlife habitat and significant areas of natural and scientific interest which are important for their environmental and social values. Ecological function includes the interactions between the living and non-living environments or between species, ecosystems and landscapes, including biological, physical and socio-economic interactions. It is challenging for biologists and other experts to predict that there will be no negative impacts from any biological or physical interactions between the development and the natural environment. Therefore, although wetland development is permitted if there are no negative impacts in provincially significant wetlands north of ecoregion 5E (being most of Northern Ontario), meeting the threshold to satisfy "no negative impacts" is practically impossible.



²⁴ Provincial Policy Statement, 2020, page 47.

Further, the PPS prohibits development on properties that are adjacent to wetlands if it cannot be proven that there are no negative impacts.²⁵ As above noted, it is very difficult, if not impossible, to accurately predict long-term development impacts on natural features and ecological functions of adjacent land to a proposed development. The prohibition on developing any coastal wetlands or land adjacent to coastal wetlands unduly restricts development in many areas of potential growth, such as areas in proximity to urban centres or high value waterfront locations.

In addition, there is still the practical problem of determining whether a wetland is provincially significant or not. Very few wetlands in Northern Ontario have been evaluated, so the classification of most wetlands remains unknown.²⁶ Northern Ontario also suffers from a lack of qualified wetland evaluators.²⁷ A property buyer risks purchasing land that, if later determined to be a provincially significant wetland, can never be developed. The cost of evaluating a wetland in Northern Ontario to determine if it is provincially significant or not is prohibitive for most landowners, only making an evaluation economically viable for large-scale proposed developments.

There is a database to identify what wetlands have been evaluated; however, most wetlands in Northern Ontario have not been evaluated.²⁸ When a wetland is evaluated, a private developer or landowner pays the cost for the evaluation and submits the results to the Ministry of Natural Resources and Forestry for review. It is possible that different evaluators could arrive at opposite conclusions about the same wetland. This was the scenario in the case study below of Pointes Estates, where the Ontario Land Tribunal (OLT) Board Member had to determine, on conflicting evidence between two opposing parties, which evaluation to accept to determine if a wetland was provincially significant or not. Ultimately, the OLT Board Member deferred to the Ministry of Natural Resources and relied on the Ministry's classification to decide that the wetland in question was not provincially significant.

Given all these challenges, the wetland policies of the Provincial Policy Statement are a major deterrent to cost-effective and straightforward development in Northern Ontario.

Section Summary

- Wetlands are an integral part of the ecosystem and provide multiple benefits including preventing flood damage, improving water quality, and providing wildlife habitat in addition to economic and recreational opportunities.
- Wetlands represent approximately 1/3 of the entire province. More than 90% of all wetland areas are in Northern Ontario.
- In Southern Ontario, more than two thirds of the wetland areas have been lost to development.
- As a majority of wetlands in Northern Ontario have never been evaluated, it is unknown whether they are provincially significant or not.
- Given the challenges of finding a qualified wetland evaluator, paying for a wetland evaluation, the risk of conflicting evaluation reports, and the time and cost involved before development can even be considered, the wetland policies of the Provincial Policy Statement are a major deterrent to development in Northern Ontario.



²⁵ PPS section 2.1.8.

²⁶ <https://geohub.lio.gov.on.ca/datasets/5216a770ef684d2fae8bcc13ee9c4357/explore?location=46.458125%2C-81.146139%2C11.00>

²⁷ <https://www.ontario.ca/page/wetlands-evaluation#section-4>

²⁸ <https://geohub.lio.gov.on.ca/datasets/5216a770ef684d2fae8bcc13ee9c4357/explore?location=46.458125%2C-81.146139%2C11.00>

Differences Between Northern and Southern Ontario

Overview

Northern Ontario, as traditionally defined, includes those areas north and west of the French River, Lake Nipissing, and the Mattawa River. This encompasses the Districts of Thunder Bay, Algoma, Cochrane, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, and Timiskaming. Northern Ontario comprises almost 90 per cent of Ontario's total land area.²⁹



Map source: NOHFC

Despite this large area, in 2021 only 810,682 or less than 6 per cent of Ontario's 14.7 million population live in Northern Ontario.³⁰ The 1996 population of Northern Ontario was 44,908 greater than the 2021 population of Northern Ontario.³¹ The five largest urban areas in Northern Ontario all suffer from declining population compared to their 1990s levels and struggle with managing population decline.

The Ministry of Finance has projected that Ontario's total population will increase by 31.5 per cent or almost 4.6 million over the next 27 years from 14.6 million in 2019 to 19.2 million in 2046.³² The population of Northern Ontario will be relatively stable over the projected timeframe, with a slight increase of 1.8 per cent, from 811,000 in 2019 to 826,000 by 2046.³³ This represents about 0.3 per cent of the total provincial population growth during this time.

The province produces growth plans for various regions to allow for orderly population increases with appropriate infrastructure and services. The difference between the Growth Plan for Northern Ontario and the other Growth Plans for Southern Ontario is that Northern Ontario has so little projected growth that the Growth Plan for Northern Ontario does not reference population growth.

In 2010, a letter to the Province from the Chief Administrative Officers of the five largest urban municipalities in Northern Ontario noted that the Growth Plan "does not make any reference to growing the population, economy or assessment base in Northern Ontario. At a minimum, the plan should clearly state that the province of Ontario commits to stabilizing these items..."³⁴

³⁰ Email from Malik Ljutic, Manager, Labour Markets and Demographics, Ministry of Finance, Ontario, providing Historical Population Northern Ontario data, from May 30, 2022.

³¹ Email from Malik Ljutic, Manager, Labour Markets and Demographics, Ministry of Finance, Ontario, providing Historical Population Northern Ontario data, from May 30, 2022.

³² Ontario population projections update, 2019 – 2046.

³³ Ontario population projections update, 2019 – 2046.

³⁴ Letter from 5 urban CAOs dated 2010.01.22.

Land Development Differences

Significant population growth in Southern Ontario has resulted in tremendous development pressures. This includes pressure to expand urban areas into wetland areas. Therefore, the policy focus in Southern Ontario concerns protecting wetlands and environmentally sensitive areas from the pressures of rapid, substantial, and continuous population growth.

In contrast, there is not a similar demand to expand the urban settlement area given the minimal population growth in Northern Ontario. Most of the development in Northern Ontario is smaller scale than Southern Ontario, including residential, commercial, industrial, roads and public infrastructure. Lower market demand and much lower land values are also key differences. Where possible, developers in Northern Ontario generally avoid purchasing wetlands as there are often less expensive sites which can be developed without requiring the cost and inconvenience of completing a wetland evaluation.

Northern Ontario also has very limited technical expertise. As of March 2021, there are only four qualified wetland evaluators in all of Northern Ontario.³⁵ The cost to obtain a wetland evaluation deters many small developments such as a simple lot severance where the evaluation and risk of being designated as provincially significant effectively prohibits any development.

Wetland Policy in Northern Ontario

Despite significant development and population differences between Northern and Southern Ontario, the wetland policies in the PPS apply to all parts of the province. Given the very limited economic growth opportunities in Northern Ontario, the PPS wetland policies further hinder development in Northern Ontario. As most wetlands are already protected by being Crown land, these limits to development in Northern Ontario are unnecessary and detrimental to sustaining Northern Ontario communities.

Northern Ontario communities are struggling with simply maintaining their existing population or managing population decline. Policies in Northern Ontario should focus on attracting growth and development. Where development is proposed on part of, or adjacent to, a significant or coastal wetland, it should be recognized that the overall impact on the ecological function and provincial significance is likely negligible given the vast number of wetlands in Northern Ontario.

Section Summary

- Despite having almost 90% of Ontario's land area, Northern Ontario has less than 6% of Ontario's population.
- Very little, if any population growth is projected to occur over the next 25 years in Northern Ontario. Therefore, Northern Ontario needs policies that attract development to maintain the existing economy and prevent further population loss.
- Banning development of provincially significant wetlands further constricts Northern Ontario's already very limited growth and development potential.



³⁵ Wetland Evaluation, <https://www.ontario.ca/page/wetlands-evaluation#section-4>

Planning Act Approval Process

In Ontario, the Planning Act sets out the required approval process for development. It is a regulated process that has been in place for decades. An example of how the planning approval process works is as follows: a proposed application for a land severance (also called a consent) is reviewed by planning, building and engineering staff. They circulate the proposal to other public agencies in the area such as public utilities, conservation authorities, First Nations, health units, school boards and, in some cases, to provincial ministries. If there are no outstanding issues, the severance is recommended by city staff for approval. A hearing by a Committee of Adjustments or City Council is held. Neighbours and other interested parties are sent notice from the City of the hearing date and given an opportunity to provide comments on the application. The application will then either be approved or denied by a vote of the Committee or City Council, and any interested party can appeal the decision to the Ontario Lands Tribunal.

This comprehensive process provides for transparency, predictability, and accessibility to everyone, including developers, neighbours, and the public in general, by providing fair notice and open meetings for everyone. Public consultation is a principal objective under the Planning Act. This approval process allows decision-makers to hear from all interested groups and balance competing interests from all parties. In this way, the planning approval process is a decentralized decision-making process, which allows local communities to, in some cases, prioritize environmental protection over development, or to permit economic development in some cases, all depending on the merits of each individual application and the community's needs.

However, consider the above example involving an application for a land severance, only in this case, the land severance is in or adjacent to a wetland. As part of a complete application for the severance, a wetland evaluation is required. This evaluation is reviewed by the Ministry of Natural Resources and Forestry to determine if the wetland is either a coastal wetland or provincially significant. If it is, then the application must be denied in accordance with the PPS. There is no appeal process because the PPS must be complied with.

While some parts of the PPS use enabling language such as "should," "promote" and "encourage", the PPS sections relating to wetlands protection state, "development and site alteration shall not be permitted." This prohibition provides no opportunity for reasonable alternatives to be considered or approved on a case-by-case basis by local municipalities and decision-makers. This outright prohibition conflicts with accepted planning processes in which all relevant factors are carefully balanced and considered when determining the best possible outcome.

Section Summary

- The development approval process as described in the Ontario Planning Act sets out a proven, fair, and comprehensive decision-making process. Affected parties have the right to appeal if they disagree with the decision.
- The wetlands section of the PPS is not consistent with existing principles of the planning approval process by not adopting a balancing of interests approach, providing for public consultation, or having an ability to appeal decisions.



Community Challenges with the Existing PPS Policy

The following examples in various Northern Ontario communities highlight some of the challenges posed by the PPS restrictions on wetland development.

A Home Depot (North Bay)

When the North Bay Home Depot was built, the property was designated in the City's Official Plan and zoned for a combination of industrial and commercial uses. However, a small amount of a wetland needed to be filled for the project to proceed. This represented only 0.1% of the entire Parks Creek provincially significant wetland area and would not result in any negative impact to the ecological function of the wetland.³⁶

As Conservation Authority approval would be required, consultations were undertaken by all affected parties. As part of the mitigation measures for development, the wetland area was expanded and included the creation of a new turtle nesting area and new habitat for the Eastern hog-nosed snake, listed as "threatened" under both the Ontario *Endangered Species Act 2007* and the federal *Species at Risk Act*.³⁷

The turtle and hog-nosed snake habitat was created and because the 1996 version of the PPS did not ban development in provincially significant wetlands at the time, the Home Depot could be constructed. This provided for a balanced approach to development and all parties were satisfied with the outcome.

The Home Depot store in North Bay could never have been built pursuant to the current PPS because the store encroaches on 0.4 ha of a 364 ha provincially significant wetland.³⁸ The North Bay Home Depot is an excellent example of how both environmental and economic benefits can be achieved when a balanced approach to development is possible.

Industrial Park (North Bay)

In the 1970s, the City of North Bay undertook a program to develop a major industrial park. The selected property on Birches Road was already designated industrial in the official plan, was very close to the Trans Canada Highway and had direct access to a major rail line. The Federal Department of Regional Economic Expansion (DREE) provided funding to extend services to the site.³⁹

However, the provincial government determined that despite being suitable for industrial development, the project could not proceed as the area was a provincially significant wetland. As a result, no development occurred.

In January 2019, North Bay City Council approved a resolution asking the provincial government to provide some flexibility when it comes to development in provincially significant wetlands.⁴⁰ The intent of the resolution was to allow development in provincially significant wetland areas where it can be demonstrated that there are no major negative impacts on the natural features or ecological functions. This would be consistent with the prior version of the PPS that was in effect between 1996 and 2005. To date, no response has been received from the provincial government.

This example demonstrates that prohibiting any development in provincially significant wetlands is causing lost opportunities and having significant negative effects on other economic development initiatives being undertaken by communities in Northern Ontario.

³⁶ Email from Beverly Hillier, Manager, Planning and Building Services, City of North Bay, Ontario, dated April 15, 2021.

³⁷ Environmental Impact Study, Fri Ecological Services, June 2004.

³⁸ Email from Beverly Hillier, Manager, Planning and Building Services, City of North Bay, Ontario, dated April 15, 2021.

³⁹ Email from Beverly Hillier, Manager, Planning and Building Services, City of North Bay, Ontario, dated April 15, 2021.

⁴⁰ City Council Resolution #2019-15, as approved at their meeting on January 15, 2019.

Junction Creek Wetland (Sudbury)

In Sudbury, Paul Temelini owns a large parcel of land located on the east side of Notre Dame Avenue and south of Lasalle Boulevard. The eastern portion of the property is divided by a rail line. This property is part of a large wetland called the Junction Creek Wetland.⁴¹

In or around 2014, a local non-governmental organization conducted a wetland evaluation of the Junction Creek Wetland.⁴² They determined that this wetland was 149 hectares in size and submitted their technical evaluation to the regional biologist at the local Ministry of Natural Resources and Forestry office.⁴³ Based on this report, the regional biologist deemed the Junction Creek Wetland to be a provincially significant wetland, meaning that any development potential for these 149 hectares was lost. The 149 hectares consists of both public and private property, such as Mr. Temelini's.

Mr. Temelini did not agree to have a wetland evaluation of his property and was only advised of this by City of Greater Sudbury staff who discovered the designation while researching another matter.⁴⁴ His property was deemed to be a provincially significant wetland without any opportunity for him as the property owner to make submissions, conduct negotiations or appeal the decision. Given recent construction developments that about this property along Notre Dame Avenue, Mr. Temelini had an expectation that at least a portion of his property had commercial development potential. Mr. Temelini considers this expropriation without compensation. Mr. Temelini has no recourse to recover any of the value of his land that has been lost.⁴⁵

This exemplifies that property owners may have no opportunity to participate in the process or appeal a decision by a provincial official to designate property as being provincially significant. This is contrary to the planning approval process, which makes decisions following submissions from all interested parties and provides an opportunity for appeal.

Pointe Estates Project (Sault Ste. Marie)

In 2007, Jeff and Patricia Avery proposed to develop a 91-lot rural estate subdivision with each lot having direct water access to a proposed canal connected to the upper St. Mary's River in Sault Ste. Marie. The applicants required an official plan amendment, rezoning, draft subdivision approval and draft condominium approval from the municipality in order to proceed. It was agreed that the applicants should obtain Conservation Authority approval prior to presenting the application to City Council.

At the time of the application, the 2005 PPS was in effect which prohibited development in provincially significant wetlands or provincially significant coastal wetlands. The applicants provided a wetland evaluation study, and the Ministry of Natural Resources and Forestry agreed that the wetland, which had no name, was not provincially significant, although it was coastal. Development would only be permitted if it could be demonstrated there would be no negative impacts on the natural features or their ecological functions.

When the applicants and other interested parties appeared before City Council on July 15, 2013, the application was denied in a close 7-6 vote.⁴⁶ The applicants appealed to the Ontario Municipal Board and a hearing was held in November 2014. The Board accepted a neighbour's submission that approximately 77 per cent of the wetland would be lost by this development.⁴⁷ In comparison, the City's Planning Director estimated that 40% of the wetland would be lost, which represented approximately 1% of the entire wetlands within the City of Sault Ste. Marie municipal limits.⁴⁸ Further, the applicants recognized that a loss of fish habitat and deer habitat was a concern, and proposed to develop over 84,000 square metres of new fish habitat along with incorporating green spaces with forested vegetation for deer throughout the development.⁴⁹

However, the PPS states that development and site alteration are not permitted in coastal wetlands unless it has been established that the development will have **no** negative impacts on the wetland. The Board did not accept that there would be no negative impacts on the wetland's natural features or ecological functions if the wetland was reduced by 77 per cent.⁵⁰ The Board dismissed the applicants' appeal and the project did not proceed.⁵¹

⁴¹ Conversation with Sarah Woods, Nickel District Conservation Authority, on June 24, 2022.

⁴² Conversation with Sarah Woods, Nickel District Conservation Authority, on June 24, 2022.

⁴³ Conversation with Sarah Woods, Nickel District Conservation Authority, on June 24, 2022.

⁴⁴ Email from Paul Temelini dated April 18, 2021.

⁴⁵ Email from Paul Temelini dated April 18, 2021.

⁴⁶ City of Sault Ste. Marie, Council Agenda, July 15, 2013.

⁴⁷ Jeff and Patricia Avery v. Pointes Protection Association, Ontario Municipal Board, PL130890, at para 139.

⁴⁸ Jeff and Patricia Avery v. Pointes Protection Association, Ontario Municipal Board, PL130890, at para 122.

⁴⁹ City of Sault Ste. Marie, Planning Division Report, at page 11. July 15, 2013.

⁵⁰ Jeff and Patricia Avery v. Pointes Protection Association, Ontario Municipal Board, PL130890, at para 138.

⁵¹ Jeff and Patricia Avery v. Pointes Protection Association, Ontario Municipal Board, PL130890, at para 151.

Conclusion

It is recognized that wetlands are an integral part of the ecosystem and provide multiple benefits including preventing flood damage, improving water quality and providing wildlife habitat. Wetlands represent approximately one third of the entire province. More than 90% of all wetland areas are in Northern Ontario.

Economic, environmental and social conditions are much different in Northern Ontario and different natural heritage policies and approaches to implementation are warranted. For this reason, the Province should look at wetland protection on a regional rather than a provincial basis. Barriers to economic growth in Northern Ontario should be removed where possible given that the current population is not sufficient to sustain present economic activities. Very little, if any population growth is projected to occur over the next 25 years in Northern Ontario.

Pursuant to the current PPS, there is no development permitted in any significant coastal wetlands. No development is permitted in any coastal wetlands, unless it has been demonstrated that there are no negative impacts. Further, there is no development permitted in provincially significant wetlands in some parts of Northern Ontario.

In effect, the PPS quashes any environmental, economic, or other benefits that may be realized by allowing a project to proceed and has very limited environmental benefits given the massive wetland areas in Northern Ontario. The cost required to complete comprehensive natural heritage studies in wetland areas in Northern Ontario is a major economic deterrent given the small scale of development that occurs.

This paper recommends that the restrictions on development of wetlands be limited to Southern Ontario. Approximately one third of all Northern Ontario is wetlands, most of which is Crown land. Given the vast natural heritage resources in Northern Ontario and the very limited demand for new development, not applying the PPS wetland policies to Northern Ontario would have minimal, if any impact in the region.

The existing development approval process, as regulated by the Planning Act and administered by municipalities, local planning boards and provincial ministries, provides the best forum for decision making while considering strategic objectives, public

consultation and technical expertise. Local wetland protection would still be considered when approving development applications under the Planning Act. Affected parties would retain the right to appeal decisions to the Ontario Land Tribunal if they are not satisfied with the municipality's decision. Wetland protection will remain a consideration for large-scale development projects such as mining and forestry throughout Northern Ontario where provincial approvals are required.

This approach would allow municipalities and other approval authorities to decide what wetland areas within their boundaries are locally significant and ensure that they are maintained as part of development approval processes. It will allow for a balancing of other factors such as economic growth and development to be considered alongside wetland preservation.



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Appendix

“Coastal wetland: means a) any wetland that is located on one of the Great Lakes or their connecting channels (Lake St. Clair, St. Mary's, St. Clair, Detroit, Niagara and St. Lawrence Rivers); or b) any other wetland that is on a tributary to any of the above-specified water bodies and lies, either wholly or in part, downstream of a line located 2 kilometres upstream of the 1:100 year floodline (plus wave run-up) of the large water body to which the tributary is connected.”⁵²

“Significant: means in regard to wetlands, coastal wetlands and areas of natural and scientific interest, an area identified as provincially significant by the Ontario Ministry of Natural Resources and Forestry using evaluation procedures established by the Province, as amended from time to time.”⁵³

The Provincial Policy Statement also distinguishes between different regions of Ontario as described in the following ecoregions map.



Map Source: <http://www.ontario.ca/document/forest-resources-ontario-2016/ecological-land-classification-ecoregions>

Ecoregions 6E, 7E and part of 5E comprise Southern Ontario. The remainder of ecoregion 5E and all other ecoregions comprise Northern Ontario.

The Provincial Policy Statement includes specific policies on wetlands as part of the Natural Heritage section which states:

“Development and site alteration shall not be permitted in:

- a) significant wetlands in Ecoregions 5E, 6E and 7E1; and
- b) significant coastal wetlands.

Development and site alteration shall not be permitted in:

a) significant wetlands in the Canadian Shield north of Ecoregions 5E, 6E and 7E1;

f) coastal wetlands in Ecoregions 5E, 6E and 7E that are not subject to policy 2.1.4(b)

unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.”⁵⁴

“Ecological function: means the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes. These may include biological, physical and socio-economic interactions.”⁵⁵

⁵² Provincial Policy Statement, 2020, page 41.

⁵³ Provincial Policy Statement, 2020, page 51.

⁵⁴ Provincial Policy Statement, 2020, section 2.1.4 – 2.1.5.

⁵⁵ Provincial Policy Statement, 2020, page 42.



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Kirkland Lake | Sudbury | Thunder Bay
P.O. Box 10117 Thunder Bay, ON P7B 6T6
info@northernpolicy.ca | 1-807-343-8956

northernpolicy.ca