

Chief Executive Officer



December 19, 2022

VIA EMAIL (mnrwaterpolicy@ontario.ca)

Ministry of Natural Resources and Forestry
Resources Planning and Development Policy Branch
300 Water Street, 2nd Floor, South Tower
Peterborough, ON K9J 8M5

**Re: TRCA Response to Request for Comments
Conserving Ontario's Natural Heritage (ERO #019-6161)**

Thank you for the opportunity to comment on this posting on the Environmental Registry of Ontario (ERO) by the Ministry of Natural Resources and Forestry (MNRF). We understand that, through a discussion paper entitled, "Conserving Ontario's Natural Heritage," the Ontario government is seeking feedback on a policy framework to offset development pressures on wetlands, woodlands, and other natural wildlife habitat. We further understand that this offset policy would require a net positive impact on these features to help reverse the long-term loss of natural heritage in Ontario.

As the ERO posting states, Ontario has a housing supply crisis that must be addressed through continued action from all levels of government, the private sector, and non-profits, particularly if the Ontario government is to reach its stated goal of 1.5 million homes built over the next 10 years.

TRCA has an ongoing interest in the proposed changes given our roles as:

- A regulator under Section 28 of the *Conservation Authorities Act* (CA Act);
- A public commenting body under the *Planning Act* and the *Environmental Assessment Act* (EA Act);
- A delegated commenting body to represent the Provincial interest in natural hazards;
- A service provider to our municipalities, provincial and federal agency partners;
- A resource management agency operating on a local watershed basis; and
- One of the largest landowners in the Greater Toronto region.

In these roles, and as stated in the "Made-in-Ontario Environment Plan", and consistent with the four pillars of "Ontario's Flooding Strategy", CAs work in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources. With TRCA's roles, responsibilities, and experience in mind, we offer the following comments.

GENERAL COMMENTS

Off-setting should not be the default option

Significant growth across our jurisdiction continues to place stress on natural heritage systems, features, and functions. This situation of compromised and at-risk ecosystems emphasizes the importance of a systems approach to natural heritage planning for resilience to urbanization and climate change impacts. A robust, connected NHS is needed especially in highly urbanized watersheds of the Greater Golden Horseshoe. In the face of rapid urbanization and land use change, TRCA recognizes that ecological offsetting can, in some instances

as a last resort to avoidance of impacts, be an effective tool in helping to maintain ecological functions and biodiversity critical for resilience.

After extensive consultation, TRCA developed ecosystem compensation policies (pages 88 to 89 and 102 to 103 in *The Living City Policies*, 2014), that set the context for the development of TRCA's [Guideline for Determining Ecosystem Compensation](#) in 2018. The Guideline is a scientifically defensible approach for replacing natural features and ecosystem functions lost through the development and/or infrastructure planning process. Also developed after consulting with stakeholders, the Guideline is based on principles of the mitigation hierarchy including avoidance first and compensation as a last resort, an ecosystems approach and net gain, among others.

At the same time, in the land use and infrastructure planning process, TRCA recommends to approval authorities a "protection first" approach. TRCA's development of ecosystem compensation policies and technical guideline do not in any way diminish TRCA's commitment, or the commitment of its member municipalities, to the protection of the features, functions, and services of the natural system.

Accordingly, the Province's establishment of an ecological off-setting framework should not negate the need for development and infrastructure projects and plans to apply the mitigation hierarchy. In other words, natural feature off-setting scenarios should not be the default for land use proposals and avoidance of negative impacts to features and functions should take precedence in any process.

Ecological Off-setting Limits

Using the Guideline, TRCA and our municipal partners have gained valuable knowledge in the successes and challenges of implementation. Through this 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. As outlined in TRCA's *Living City Policies*, in many instances natural feature impacts and associated compensation are not the preferred option of environmental management, regardless of feature evaluation or the level of ecological function. As a diminishing resource and essential components of mitigation and resilience to climate change within a growing and intensifying Province, the natural system should not be viewed as expendable in favour of unchecked urban expansion. For an offsetting program to be effective it must be directed by a strong protective policy framework that clearly and specifically outlines when offsetting can, and cannot, be contemplated.

The objective of the approach outlined in the discussion paper is stopping the net loss of natural heritage in Ontario and reversing the trend by focusing on restoration and net gain. TRCA supports this objective, and we note that the principles and approach in our [Guideline for Determining Ecosystem Compensation](#) are in place to help achieve it. However, realizing this objective province-wide is dependent on maintaining and strengthening existing natural heritage protections within the *Planning Act*, the Provincial Policy Statement (PPS), and the CA Act. It is also dependent on collaborative partnerships between the Province, municipalities, conservation authorities (CAs), Indigenous communities, and other stakeholders. As stated in our response to other ERO postings related to Bill 23, we believe the enacted, proposed, and potential changes to the *Planning Act*, PPS, and CA Act regulations unless changed will undermine the ability to achieve the stated objective.

Effective implementation requires clarity and collaboration

Similar to the proposed changes to the Ontario Wetland Evaluation System, it is unclear who the implementers of the Offsetting Policy will be. The collaborative effort mentioned above is key to implementation and is tied back to Ontario's current planning framework. Once changed, there will be a lot of process unknowns. If offsetting becomes solely a municipal tool with no clarity from the Province on who will lead and be supported

from other stakeholders, such as CAs, there may be challenges in appropriate and successful implementation.

TRCA 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) to guide the development of a provincial ecological offsetting policy.

DETAILED COMMENTS

The government's discussion paper outlines five principles considered in the development of the 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.

- TRCA 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". 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 being removed from the landscape are replaced as soon as possible.

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. 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.

- TRCA 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, including TRCA, have developed offsetting policies and guidelines and 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.

- TRCA agrees with this principle.

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.

- TRCA agrees there should be limits to what should be eligible in an offsetting program. Despite a strong protective policy and regulatory regime that currently exists, natural features and their functions continue to decline.
- In accordance with the PPS and Provincial Plans, municipal Official Plans contain policies for protection of natural features and areas, natural hazards and water resources. However, through the planning and development process, non-provincially significant natural features that are not protected by any other provincial or federal regulation may be permitted to be impacted by the planning approval authority, should they deem it acceptable.
- Additionally, features may be impacted through the installation or expansion of public infrastructure under an environmental assessment process.
- In updating their OP environmental policies, some municipalities have included policy provisions that address the limited instances where impacts to local natural heritage features are permitted on condition that compensation is provided to make up for the loss of the feature. Similarly, TRCA recognizes that impacts to natural features, in specific circumstances where avoidance and mitigation are not feasible, may be permitted through the planning and development process as stated in Section 7.4.2 of TRCA's Living City Policies. These limitations should be outlined within the *Planning Act* and the PPS, and not simply within the offsetting program.
- Accordingly, beyond the policy framework within the *Planning Act* and PPS for protection of features and their functions, criteria should be provided 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, the age of the feature.
- Through our experience in developing and implementing offsetting policies in conjunction with municipalities, clear and specific eligibility of features can help expedite approvals.

In addition to the five principles above, TRCA suggests including the items below, either as standalone principles or for incorporation 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 (actual examples of proposed compensation). 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 appropriate zoning (e.g., Environmental Protection or similar), inclusion in the natural heritage system and/or via 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, we agree that offsets should be located within the same watershed as the impact. This should be strengthened in the form of a principle.
- **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 on the hook to offset the loss to the benefit of 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.

The discussion paper includes a short section on implementation considerations. As outlined above, TRCA has 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 considered at the provincial scale.

Principles 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.

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, non-governmental organizations, and others that are currently practicing in Ontario.

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 EA Act or CA 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.

Overlap with municipal programs/instruments for individual trees and natural areas

The offsetting policy should consider municipal requirements for maintaining and enhancing the urban tree canopy, and natural areas e.g., individual tree protection policies and by-laws ravine and natural feature bylaws and specifications for associated compensation. There are opportunities to avoid duplication, improve coordination and reduce costs by integrating compensation requirements where impacts to natural systems and ecosystem functions overlap with the urban tree canopy.

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 (it should be noted that in highly dense, urban areas sometimes these features are all the greenspace that exists and is therefore treasured). These same attributes often call into question whether the feature qualifies as a feature at all. Thus, greater clarity is required for defining features to facilitate quick decision making around feature management and offsetting.

Thank you for the opportunity to provide comments on this important initiative. Should you have any questions, require clarification, or wish to meet to discuss any of the above remarks, please contact the undersigned at 416.667.6920 or at john.mackenzie@trca.ca.

Sincerely,

<Original signed by>

John MacKenzie, M.Sc.(PI), MCIP, RPP
Chief Executive Officer

Cc: Laurie Nelson, Director, Policy Planning
Sameer Dhalla, Director, Development and Engineering Services