

# NAVIGATING THE SWAMP

## Lessons on wetland offsetting for Ontario

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### Executive Summary

The Government of Ontario is proposing to develop a wetland offsetting policy to enable compensation for the negative impacts of development through the restoration or creation of new wetlands. The proposal has garnered considerable interest, both positive and negative, across sectors. On one hand, there is recognition that offsetting represents an opportunity to achieve important conservation gains by integrating the true environmental and social costs of wetland loss into development decisions. On the other, there is understandable concern that if the policy is poorly conceived, implemented or enforced, offsetting will undermine existing wetland protections and open the door to further loss.

As the Ontario government moves forward with its wetland offsetting policy, great care and attention are warranted. If done effectively, wetland offsetting could be a positive force for conservation, helping to reverse the ongoing trend of wetland loss in the province. If done poorly, however, it will do more harm than good.

*Navigating the Swamp: Lessons on Wetland Offsetting for Ontario* explores both the promise and the pitfalls of wetland offsetting, with the aim of informing policy development in Ontario. The report surveys relevant laws and policies in the United States and Canada, as well as those in Alberta, New Brunswick, Nova Scotia, Quebec, Saskatchewan, British Columbia, and Newfoundland and Labrador. It also reviews policy outcomes and lessons learned, particularly from those jurisdictions where wetland offsetting policy has been in place and implemented for many years.

The laws and policies reviewed illustrate a range of approaches to wetland offsetting at various stages of development and implementation. Nowhere is there a resounding success story, where offsetting has been demonstrated to achieve its full potential. Nevertheless, there are positive signs, and many governments are making a concerted effort to learn from the past and develop better ways forward. This report examines the major challenges, highlights best practices and promising approaches, and provides recommendations for the Government of Ontario, based on the evidence presented.



## Summary of Ontario Nature's recommendations:

1. The Government of Ontario's wetland offsetting policy should outline the provincial government's role and responsibilities in developing guidance, protocols and performance standards; setting up and managing reliable, publicly accessible information systems; authorizing and recording offsetting transactions; and monitoring and enforcing compliance.
2. The wetland offsetting policy should set clear, measurable performance standards to ensure consistency in program implementation and enable evaluation of program outcomes.
3. The Government of Ontario should commit to providing sufficient funds and expertise to effectively administer and oversee the wetlands offsetting program.
4. The administrative and oversight roles of government with respect to wetland offsetting should be kept distinctly separate and assigned to different government agencies.
5. The Government of Ontario should assign an independent body, such as the Environmental Commissioner of Ontario or a standing committee of experts and stakeholders, to provide regular, periodic review and evaluation of the wetland offsetting program.
6. The wetland offsetting policy should explicitly state that it is to be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982. It should also clearly indicate how the Crown's duty to consult is to be delegated to third parties, such as municipalities.
7. Ontario Nature recommends that the wetland offsetting policy recognize the right of Indigenous peoples to free, prior and informed consent, and provide relevant guidance.
8. The Government of Ontario should commit to investing the funds and resources needed to positively and proactively engage affected Indigenous communities and knowledge keepers in wetland offsetting planning and decisions.
9. The wetland offsetting policy should apply across Ontario to all key drivers of wetland loss, including infrastructure development and drainage works that are currently exempt from *Provincial Policy Statement* prohibitions.
10. The Government of Ontario should consult farmers and rural landowners to determine and address their unique challenges in preserving or restoring wetlands on their properties, and recognize both their interest in good stewardship and the beneficial role that they could play as offset providers for those who damage or destroy wetlands.



11. The wetland offsetting policy should ensure that provincially significant wetlands and significant coastal wetlands are strictly off limits to all forms of development, and that current protections under the *Provincial Policy Statement* and other provincial land use policies are upheld or strengthened.
12. In setting limits to wetland offsetting, the Government of Ontario should take into account the type, location, vulnerability and irreplaceability of wetlands, as well as their cultural significance to Indigenous peoples. In so doing, it should consider levels of risk and historic loss.
13. Ontario Nature recommends that the goal of the wetland offsetting policy be an overall net gain with respect to the extent and quality of wetland habitats, their functions and Indigenous cultural values.
14. The replacement ratio(s) for wetland offsets should be based on net gain, assuring that the tangible, on-the-ground benefits the offset provides exceed the corresponding losses (i.e., in area, function, Indigenous cultural values). The ratio(s) should reflect risk, uncertainty and time lags.
15. The wetland offsetting policy should stipulate that in determining equivalence, wetland offsets must take into account the quantity (area) and quality of the wetland features and functions, their landscape context, and associated social and economic values. It should provide standards and criteria for assessing and comparing gains and losses.
16. The wetland offsetting policy should position offsetting as the last step within a clear mitigation sequence, the first step and highest priority being to avoid negative impacts. Following this, any unavoidable negative impacts should be minimized to the extent possible. Offsetting, the final step, then offers a means to deal with residual impacts that cannot be addressed through avoidance or minimizing harm.
17. The wetland offsetting policy should define thresholds to be met for avoidance and minimization of adverse impacts, and include the consideration of alternatives. It should require development proponents to document all measures taken to meet the thresholds. It should also require regulators to carry out their own assessments of proponents' efforts to avoid and minimize impacts. Where efforts have been insufficient, the policy should direct regulators to refuse to grant authorizations for proposed developments.



18. The wetland offsetting policy should set out requirements for the consultation and engagement of Indigenous communities at each step of the mitigation sequence (with respect for Constitutional obligations, applicable land use policies and standards established in the United Nations Declaration on the Rights of Indigenous Peoples) and for the application of Indigenous Traditional Knowledge systems.
19. The wetland offsetting policy should outline an approach to siting offsets based on a consideration of the landscape context, desired conservation outcomes, Indigenous cultural values, the potential for long-term success and viability, and the equitable distribution of social costs and benefits.
20. Policy for wetland offsetting should ensure that offsets are designed, both technically and legally, to last in perpetuity, or at least as long as the project's adverse impacts. To deal with time lags between the impact occurring and the full achievement of the offset gains, where possible the offset should be in place before the impact occurs.
21. Averted wetland loss should be considered a valid offset only where it is demonstrated that securement of the wetland provides additional benefits to the baseline scenario, taking into consideration probable future threats and current or anticipated restrictions on the use of the site.
22. The Government of Ontario should carefully examine and provide direction on wetland banking, with input from Indigenous communities, municipalities and stakeholders. If it decides to enable conservation banking, it must address such issues as governance, oversight, limits to offsetting, equivalence, and equitable distribution of costs and benefits among affected communities.

