

# A FRAMEWORK FOR LRIA AGREEMENTS FOR ALTERATIONS, IMPROVEMENTS AND REPAIRS TO DAMS



**Ministry of Natural Resources and Forestry**  
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## 1.0 Introduction

### 1.1 Purpose

This Framework provides guidance for *Lakes and Rivers Improvement Act* (LRIA) agreements that enable responsible dam owners with mature programs and the resources to demonstrate their ability to safely manage a portfolio of dams, to complete certain alterations, improvements and repairs to their dams without obtaining approval from the Ministry of Natural Resources and Forestry (MNRF).

The LRIA *Alterations, Improvements and Repairs to Existing Dams Technical Bulletin* details the below specific policy requirements that a dam owner must satisfy to be eligible for an agreement:

- a portfolio of dams
- extensive experience in operation and maintenance of dams and
- demonstrated successful design and implementation of similar proposed alteration, improvement and repair works at dams.

This Framework guides the development of agreements with dam owners and provides further details regarding:

- eligibility criteria a dam owner must meet to be considered for an agreement
- technical bulletins, guidelines and best management practices that may be applicable to a given work and
- specific terms and conditions that will be included in an agreement.

In accordance with Clause 2(1.1)(c) of Ontario Regulation 454/96 under the LRIA, an agreement must explicitly state that specific alterations, improvements and repairs within scope of an agreement do not require approval under Section 16 of the LRIA.

This Framework does not limit MNRF's ability to enter into other types of LRIA agreements for alternative purposes.

### 1.2 Legislative and Regulatory Context

Section 4 of the LRIA provides that the Minister of Natural Resources and Forestry (the Minister) may, for the purposes of the LRIA, enter into agreements with any government or person dealing with the management, protection or use of lakes and rivers and the design, construction, operation, repair, maintenance, alteration or removal of dams or other works in lakes and rivers. Section 16 of the LRIA provides that no person shall alter, improve or repair any part of a dam in the circumstances prescribed by Ontario Regulation 454/96, unless the plans and specifications for whatever is to be done have been approved by the Minister.

Under Clause 2(1)(b) of Ontario Regulation 454/96, Ministry approval is required to make alterations, improvements or repairs to a dam that holds back water in a river, lake, pond or stream to raise the water level, create a reservoir to control flooding or divert the flow of water, if the alterations, improvements or repairs may affect the dam's safety, structural integrity, the waters or natural resources.

Despite Clause 2(1)(b), no approval is required to make alterations, improvements or repairs to a dam in the circumstances described in that clause if, at the time the alterations, improvements or repairs are carried out, the Minister has entered into an agreement with the dam owner that is still in effect and,

- (a) sets out the nature and extent of the alterations, improvements or repairs to the dam
- (b) includes terms to address the dam's safety and structural integrity and the potential impacts of the alterations, improvements or repairs on the waters and natural resources and
- (c) states that the proposed alterations, improvements or repairs do not require approval under Section 16 of the Act.

### **1.3 LRIA Agreements for Repairs, Alterations or Improvements**

Agreements developed in accordance with this Framework will permit a dam owner to make certain alterations, improvements and repairs to dams without the plans and specifications for such works having to be approved by the Minister. An agreement is a legal contract between a dam owner and MNR that outlines the obligations of both parties. A decision to enter into an agreement with a dam owner is at the discretion of the Minister.

The intent of an agreement is to recognize the sophistication of certain owners of dams in Ontario in providing for dam and public safety and addressing potential environmental impacts by allowing them to manage their own alterations, improvements and repairs to certain or all dams in their portfolio. Further, the intent of the agreement is to encourage and incent the adoption of voluntary best practices with respect to dam and public safety.

Agreements will be specific to a dam owner and will specify the types of alterations, improvements and repairs to which the agreement applies or does not apply. Dams subject to the agreement will be identified in a schedule to the agreement. Agreements may further establish specific commitments or procedures including, but not limited to risk assessments, reporting and third party independent reviews.

Entering into an agreement with MNR does not relieve the dam owner from compliance with other applicable provisions of the LRIA or with the provisions of any other applicable federal, provincial, and/or municipal statutes, regulations or bylaws.

## **2.0 Eligibility Criteria and Agreement Process**

### **2.1 Eligibility**

To meet the eligibility criteria, dam owners must have established a robust dam safety program that encompasses the elements of the provincial standards and industry best practices. This dam safety program will include Dam Safety Reviews, Emergency

Preparedness and Response Plans, Public Safety Management Plans and Operations, Maintenance and Surveillance Manuals for dams covered under an agreement, as well as the dam owner's program to maintain the elements.

Dam owners must provide the following information to MNRF when requesting an agreement, to demonstrate their eligibility:

- a) an attestation that all dams owned or operated that are covered under the jurisdiction of the LRIA, are included within the portfolio of dams encompassed by an agreement, as set out in Appendix A
- b) a statement signed by the dam owner confirming that all dams are subject to a water management plan approved under LRIA Section 23.1, a site specific dam operating plan approved either under LRIA Section 23.1 or as part of previous LRIA plans and specifications approval, or subject to the requirements of the Lake of the Woods Control Board, Ottawa River Regulation Board or the International Joint Commission
- c) a copy of the dam owner's Safe Operations Policy (or equivalent) approved by the dam owner, setting out expectations for the safe operations of the corporation's dams and
- d) a statement signed by an officer of the company confirming that the owner's managed system (public safety around dams, inspection and surveillance, dam safety reviews and emergency management) is in compliance with the terms of the agreement.

Dam owners must have a good LRIA compliance record to be considered for an agreement and must maintain their eligibility qualifications throughout the life of the agreement.

## **2.2 Requesting an Agreement**

A dam owner may submit a request to MNRF to enter into an agreement provided all dams within the portfolio covered under the jurisdiction of the LRIA are included. The request must demonstrate that the necessary eligibility criteria are met by the dam owner and include the required documentation outlined in Section 2.1.

The determination of whether a dam owner meets the eligibility criteria and the decision to enter such discussions is at the sole discretion of MNRF.

The agreement must be signed by representatives of both parties. For the dam owner, an agreement must be signed by a representative who has authority to bind the dam owner.

## **2.3 Amendment, Review, Suspension and Termination**

An agreement will commence upon its execution by MNRF and the dam owner and may be amended at any time by mutual consent of the parties, provided the amendment is consistent with this Framework.

The term of agreements will be ten years, with the opportunity for renewal and extension. During the term of the agreement, an interim review will be scheduled to assess performance and compliance with the agreement and overall effectiveness of the agreement. This review will inform whether amendments to the agreement are required. The review is to be conducted by MNRF or an independent third party approved by MNRF.

Either party may terminate an agreement in writing with appropriate notice delivered to the attention of the offices of the signatories.

MNRF may terminate for any material breach by the owner to abide by the terms of the agreement, provided that the owner has received appropriate notice of such breach and the owner has not remedied the breach within an appropriate timeframe.

### **3.0 Terms and Conditions**

#### **3.1 Dam Owner Responsibilities**

The dam owner is responsible for:

- the safe maintenance and operation of dams and for identifying and preventing, minimizing and/or mitigating impacts on waters and natural resources associated with alteration, improvement and repair work
- maintaining eligibility criteria that initially qualified the dam owner to be eligible for an agreement
- preparing and maintaining documentation to demonstrate due diligence and compliance with the requirements of the agreement
- providing a copy of the owner's Dam Safety Managed System document upon request by MNRF, or not later than December 31<sup>st</sup> of the year following execution of the agreement, preparing a report by an independent third party paid for by the dam owner, which verifies that the owner's managed system is in compliance with the terms of the agreement and
- any liabilities arising from its acts or omissions including any liability to third parties.

#### **3.2 Valid Agreement**

The dam owner must have a valid and current agreement with MNRF prior to proceeding with work without approval under Section 16 of the LRIA. The agreement will not be considered valid if any of the following occurs:

- the agreement has been suspended by MNRF
- the agreement has been terminated by MNRF or the dam owner or
- the agreement has expired.

### 3.3 Screening Process

The dam owner is responsible for determining whether the proposed work is within scope of the types of alterations, improvements and repairs enabled through the agreement.

The dam owner is not required to submit its determination to MNRF for verification. The dam owner is required to document its determination with a description of the work and appropriate rationale used to make the determination and shall retain this documentation for as long as the dam remains in service and provide it to MNRF upon request.

An agreement does not relieve the dam owner from the requirement to obtain approval under Section 16 of the LRIA, where appropriate, for works not subject to the agreement.

### 3.4 Scope of Work

In accordance with Clause 2(1.1)(a) of Ontario Regulation 454/96, an agreement must set out the nature and extent of alterations, improvements and repairs to the dam.

#### Dams Excluded

The LRIA defines a dam as a structure or work forwarding, holding back or diverting water and includes a dam, tailings dam, dike, diversion, channel alteration, artificial channel, culvert or causeway.

The agreement framework is not applicable to:

- mining dams/tailing ponds
- water crossings (e.g. bridge, culvert, causeway)
- channelization works (e.g. diversion, channel alteration, artificial channel)
- enclosing or covering a length of river
- pipelines and cables and
- temporary dams for purposes of any of the above mentioned types of dams.

Eligible dams and basic identifying information will be listed in a schedule to the agreement. This schedule will be updated through an amendment to the agreement, if new or existing dams within the dam owner's portfolio are added, or any dams are removed from the owner's portfolio (i.e. transfer of ownership or decommissioned) at the request of the dam owner or at the request of the minister.

#### Type of Work Excluded

Alterations, improvements or repairs as detailed in Appendix C are explicitly excluded from agreement eligibility. Where a dam owner is undertaking work in scope of the agreement, the dam owner must do so in accordance with the terms of the agreement.

### 3.5 Standard Requirements

Ontario Regulation 454/96 requires that agreements under Section 16 of the LRIA include terms to address the dam's safety and structural integrity and the potential impacts of the alterations, improvements or repairs on waters and natural resources.

Where the dam owner determines that the proposed alteration, improvement or repair work falls within the scope of the agreement, work must be completed in accordance with the requirements set out in the agreement. The dam owner shall ensure that the documentation associated with such works is retained on file for as long as the dam owner owns the dams and the dam remains in service and shall be made available to MNRF upon request.

All works must be carried out applying:

- current MNRF and/or Canadian Dam Association technical bulletins and guidelines with respect to dam safety and structural integrity
- current MNRF and/or industry best management practices with respect to the mitigation of environmental impacts of construction (Appendix B).
- current best management practices to address the LRIA's provisions regarding the management, perpetuation and use of fish, wildlife and other natural resources dependent on the lakes and rivers, and the protection of the natural amenities of the lakes and rivers and their shores and banks.

Prior to any construction work, the dam owner must provide information notification of the works subject to an agreement within a reasonable timeframe (no less than 30 days) to riparian and adjacent landowners potentially impacted by the work, local Indigenous communities and local municipalities. Notification shall include the location of the dam and a description of the proposed work.

### 3.6 Emergency Situations

Emergency repairs to a dam may be required to address imminent threats to life, property or the environment. Some emergency repairs to a dam may not be in scope of an agreement. MNRF recognizes that emergency situations are a priority. In these circumstances, the *LRIA Administrative Guide* provides guidance on dam owner responsibilities during an emergency.

### 3.7 Reporting

Dam owners subject to an agreement will submit an Annual Report to MNRF which shall include at least the following:

- a summary of alterations, improvements and repairs in scope of the agreement completed during the previous year under the agreement
- a description of any dam safety events that may have occurred during the previous year and how they were addressed

- a list and description of projects proposed to commence within the next year, and projects that are in the planning phase for commencement in future years
- amendments to the schedule of dams subject to the agreement (if required) and
- an Annual Statement of Compliance with the agreement.

Appendix D provides further information regarding the contents of the Annual Report.

### **3.8 Aboriginal and Treaty Rights**

The Ministry respects the existing Aboriginal and treaty rights recognized and affirmed by Section 35 of the Constitution Act, 1982; and is committed to meeting its constitutional and other legal obligations in respect of these rights, including the Crown's duty to consult and, where appropriate, accommodate.

In developing this Framework, careful consideration has been given to established and asserted Aboriginal or treaty rights. Works that have the potential for moderate or significant environmental impacts are out of scope for an agreement (e.g. changes to water levels and flows, constructing new dams, upgrading waterpower facilities).

MNRF recognizes that some works enabled through an agreement may have the potential to impact established or asserted Aboriginal or treaty rights. As part of satisfying reporting requirements, dam owners will provide a list and description of work proposed to commence in the coming year, and work that is in the planning phase for commencement in future years.

Where the duty to consult is engaged, dam owners will carry out procedural aspects of consultation as delegated by MNRF. The Ministry will retain appropriate oversight to ensure that any consultation obligations are satisfied prior to project commencement.

### **3.9 Auditing**

To ensure that work is being carried out under the terms of an agreement, dam owners will prepare and maintain records related to their obligations under the agreement. Upon notice, the dam owner must permit MNRF, or a third party designated by MNRF and paid for by the dam owner, to examine, audit and copy any records or materials related to the dam owner's obligations under the agreement.

MNRF may review or audit projects for compliance with the agreement or other legal requirements. Such review or audit may involve requests for:

- design and as built plans and drawings
- investigation, design basis and as built reports which include the supporting analyse, calculations and assumptions
- technical and material specifications
- documentation and rationale of any deviation or departure from MNRF standards, as detailed in the agreement and/or the Annual Reporting

- results of any quality assurance/quality control reports on the work undertaken and
- MNRF may conduct site visits to review works in progress or completed, for purposes of verifying compliance.

Should MNRF determine that a dam owner has not complied with the agreement, remedial action may be taken and may include removal of a particular dam from the agreement (at any time subject to MNRF discretion), temporary or partial suspension of the agreement or termination of the agreement.

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## **Appendix A: Schedule of Dams**

A dam owner shall provide the following information in a schedule of dams proposed to be subject to the agreement as part of the request for an agreement:

- Dam name and location (latitude and longitude or UTM coordinates, water body)
- Waterbody
- MNRF District

Once an agreement is executed, an updated schedule is to be submitted to MNRF as part of the Annual Report where:

- updates to previously provided information are available and/or
- new dams within the dam owner's portfolio are added or existing dams are being removed through an amendment to the agreement.

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## Appendix B: Elements of a Dam Safety Managed System

Elements of a managed system for dam safety must be in accordance with the requirements of MNRF LRIA technical bulletins and best management practices or the requirements of the Canadian Dam Association's *Dam Safety Guidelines* and *Guidelines for Public Safety Around Dams*, where MNRF guidance does not address a specific design or construction requirement.

Potentially applicable technical bulletins, guidelines and best management practices include, but may not be limited to the:

- *LRIA Classification and Inflow Design Flood Technical Bulletin*
- *LRIA Seismic Hazards Criteria, Assessment and Considerations Technical Bulletin*
- *LRIA Structural Design and Factors of Safety Technical Bulletin*
- *LRIA Spillways and Flood Control Structures Technical Bulletin*
- *LRIA Geotechnical Design and Factors of Safety Technical Bulletin*
- *LRIA Public Safety Around Dams Best Management Practices*
- *LRIA Dam Safety Reviews Best Management Practices*
- *Canadian Dam Association Technical Bulletin – Surveillance of Dam Facilities*
- *Canadian Dam Association – Emergency Management for Dam Safety*
- MNRF In-water Work Timing Window Guidelines (fisheries)
- *Ontario Waterpower Association Best Management Practices for the Mitigation of Impacts from Waterpower Facility Construction*

All required documentation for alteration, improvement and repair work subject to the agreement shall be kept on file for as long as the dam remains in service and made available to MNRF upon request.

Agreements may incorporate and/or be amended to include additional or updated guidelines, bulletins and/or best management practices.

## **Appendix C: Scope of Work**

### **Out of Scope Work:**

- construction of a new dam
- decommissioning of a dam
- installation of fish passage
- retrofitting a dam
- redeveloping a dam
- dam replacement
- alterations and improvements that result in an increase to the storage capacity of a dam, or would change dam operations and affect the ability of the dam to comply with an LRIA water management plan or dam operating plan
- work involving alterations, or improvements or designs which deviate from MNRF standards described in MNRF Technical Bulletins

## Appendix D: Reporting

Dam owners subject to an agreement will submit an Annual Report to MNRF which includes, but is not limited to:

- a) A summary of alterations, improvements and repairs in scope of the agreement completed during the previous year under the agreement.
- b) A description of any dam safety events that may have occurred during the reporting period and how they were addressed.
- c) A list and description of projects proposed to commence within the next year and projects that are in the planning phase for commencement (where known) in future years. The list will include:
  - dam name
  - project title
  - project description
  - estimated date of planned commencement
  - estimated date of planned completion
- d) Proposed amendments to the schedule of dams subject to the agreement (if required), where a dam owner requests to add a dam to the schedule.
- e) An annual statement of compliance signed by the dam owner confirming that:
  - they have maintained all the eligibility criteria that originally qualified them for an agreement and
  - that required dam safety program elements are in place and current for all dams subject to the agreement.