

# **Nottawasaga Valley Conservation Authority**



## **PROCEDURES**

### **FOR THE IMPLEMENTATION**

### **OF**

### **ONTARIO REGULATION 172/06**

**Approval by the NVCA Board of Directors – February 9, 2007**

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## 1.0 Introduction

The Conservation Authorities Act, enacted in 1946, established Conservation Authorities as local agencies, in response to flooding and erosion problems and the management of natural resources. Their geographic jurisdictions are watershed-based ecological systems.

Section 28(1) of the Conservation Authorities Act, allows Conservation Authorities to make regulations “prohibiting, regulating or requiring permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.”

The Nottawasaga Valley Conservation Authority’s (NVCA) Fill, Construction and Alteration to Waterways Regulation (Ontario Regulation 164 R.R.O. 1990), has been part of an overall water management program that includes:

- flood forecasting & warning;
- information & education;
- the construction & maintenance of flood control works; and
- environmental land use planning

In order to streamline the regulatory framework for development approvals, the Province of Ontario made changes to the Conservation Authorities Act in 1997. All Conservation Authorities were directed to produce a local regulation that complied with the generic regulation (Ontario Regulation 97/04) by May 1, 2006. Ontario Regulation 164 R.R.O. 1990 has been replaced by a generic regulation known as the Development, Interference with Wetlands and Watercourses Regulation (Ontario Regulation 172/06). Copies of these two Regulations can be found in Appendices B and C.

The Transitional Procedures contained within this document have been prepared to guide staff of the NVCA through the transition from Ontario Regulation 164 R.R.O. 1990 to Ontario Regulation 172/06.

## **1.1 Ontario Regulation 172/06 – Development, Interference with Wetlands & Alterations to Shorelines & Watercourses Regulation**

The Nottawasaga Valley Conservation Authority (NVCA) administers a regulation known as the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation (Ontario Regulation 172/06). This regulation replaced the NVCA's Ontario Regulation 164 R.R.O. 1990 on May 4, 2006.

The amended Regulation allows the NVCA to ensure that development proposals have regard for natural hazard features in order to:

- prevent loss of life
- minimize property damage and social disruption;
- reduce public and private expenditures related to emergency operations, evacuations and restoration;
- minimize the hazards associated with development in floodplains and areas which are susceptible to erosion.

## **1.2 Activities Which Require a Permit under Ontario Regulation 172/06**

The following work requires permission within an area which is regulated under Ontario Regulation 172/06:

- the construction, reconstruction, erection or placing of a building or structure of any kind with the exception of minor works such as decks, fences, playground equipment and structures less than 10 square metres (107 square feet ) in size;
- changes that would alter the use or potential use of a building or structure;
- increase the size of a building or structure or increase the number of dwelling units in the building or structure;
- site grading;
- the temporary or permanent placing, dumping or removal of any material originating on the site or elsewhere;
- the straightening, changing or diverting or interfering with the existing channel of a river, creek, stream or watercourse; or
- changing or interfering with a wetland.

### 1.3 Regulation Limit

Ontario Regulation 172/06 applies to **hazardous lands**.

**Hazardous lands** are defined in Section 28(25) of the Conservation Authorities Act as lands that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock. The regulation limit for Ontario Regulation 172/06 is the greater of the applicable hazard limits for a property.

Areas regulated by the NVCA under Ontario Regulation 172/06 have been mapped in accordance with guidelines from the Ministry of Natural Resources and Conservation Ontario. A cross section through a typical regulated area is shown by Figure 1.

In accordance with Section 2(2) of Ontario Regulation 172/06, the description of those areas regulated in Section 2(1) of the Regulation shall prevail of the areas shown as being regulated on the mapping of regulated areas.

**Cross Section Through A Typical Regulated Area**

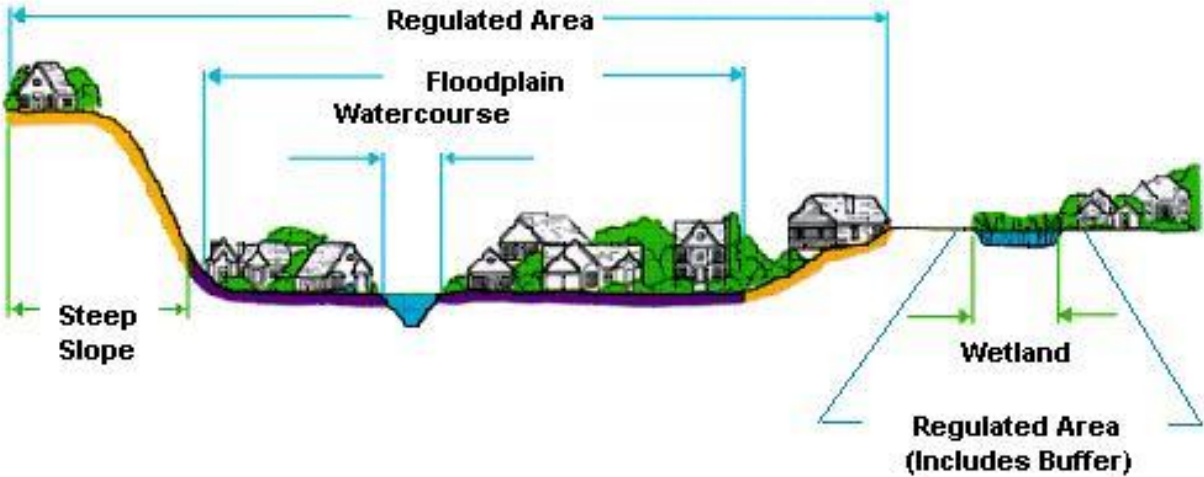


Figure 1 – Cross Section through a Typical Regulated Area under Ontario Regulation 172/06

## **1.4 Ontario Regulation 164 R.R.O. 1990 – Fill, Construction and Alteration to Waterways Regulation**

Areas regulated under Ontario Regulation 164 R.R.O. 1990 included:

- areas which were susceptible to flooding;
- areas described in specific fill schedules included the Townships of Springwater, Nottawasaga and Adjala; the Towns of Mono, Innisfil, New Tecumseth, and Bradford-West Gwillimbury and the City of Barrie as illustrated by Figure 2. (please refer to the regulation for a description of these areas); and
- watercourses.

Permission was not required under the NVCA's former Regulation for:

- construction, reconstruction of a building or structure, unless the construction was proposed within an area susceptible to flooding;
- changes that would alter the use or potential use of a building or structure;
- changing or interfering with a wetland.

Ontario Regulation 164 R.R.O. 1990 was revoked on May 4, 2006, following the approval of Ontario Regulation 172/06.



Figure 2 – Areas Regulated within the NVCA Watershed for the Placement of Fill Under Ontario Regulation 164 R.R.O. 1990

### 1.5 Determination of the Applicability of the Appropriate Regulation

Applications submitted to the NVCA prior to May 4, 2006 are subject to Ontario Regulation 164 R.R.O. 1990, provided that the application is complete to the satisfaction of the NVCA. A complete application consists of:

- a completed application form;
- payment for the applicable application review fee;
  
- a site plan showing the location of the proposed work, as well as specific details to describe the work that is proposed.

Applications which are deemed to be incomplete as of May 4, 2006 will be subject to the policies and procedures of Ontario Regulation 172/06.

## 2.0 Administration Guidelines for Ontario Regulation 172/06

### 2.1 Enforcement of the Regulation

The NVCA by virtue of the Conservation Authorities Act, R.S.O. 1990 as amended, Section 28,1(d) and regulations made pursuant to the Act, appoints the following staff as officers to enforce Ontario Regulation 172/06 as well as any subsequent regulations:

- the Environmental Officer(s);
- the Manager of Planning Policy & Regulations;
- the Director of Planning;
- the Chief Administrative Officer;
- and with full or limited authority under any policy, such staff as designated by the Chief Administrative Officer.

### 2.2 Completing an Application Form

Application forms are available at the NVCA's Administrative Office and on the Authority's website ([www.nvca.on.ca](http://www.nvca.on.ca)).

Before submitting an application, property owners are encouraged to consult with staff of the NVCA to determine if an application is required, and if so, what information should be submitted with the application. A final decision on whether or not a proposal would be supported by the NVCA can only be provided once an application and detailed plans have been submitted.

At the time an application is submitted, details of the proposed works must be provided. A checklist of the information which should also be submitted is attached to the application form. Staff of the NVCA will advise applicants if other specific information is required in order to complete a review of their application.

### 2.3 Payment of Processing Fees

The NVCA has established a ***Policy to Charge Fees for Services Related to Planning and Development Related Activities*** under Section 21(m.1) of the Conservation Authorities Act. This Policy is based on the user-pay principle. Fees and revenues generated through this Policy are designed to recover the costs associated with administering and delivering the services on a program basis.

This policy is reviewed on an annual basis to monitor the effectiveness of the schedule of fees. Any changes to the Fee Schedule are approved by both the NVCA Executive Committee and the Full Authority. The NVCA Fee Schedule for applications made under Ontario Regulation 97/04 is noted at the top of the Application for Permission.

- a) Processing fees for applications submitted Ontario Regulation 172/06 must be paid at the time an application is submitted.

An application will be considered to be incomplete if the associated processing fees for this application has not been paid and will be placed on hold pending the submission of the processing fee.

- b) Processing fees are non-refundable.

## **2.4 Processing of Applications**

- a) require an applicant to submit any additional information (i.e. surveys, technical reports) considered necessary for the NVCA to make a decision. The cost of these studies shall be the responsibility of the applicant.

## **2.5 Approval of the Application**

Please refer to Appendix E for the *NVCA Permitting Procedures for Applications Made Under The Conservation Authorities Act*.

## **2.6 Other Approvals**

A permit granted by the NVCA does not exempt an applicant from complying with any or all approvals (i.e. statutes, regulations, municipal by-laws) that may affect the property.

## **2.7 Work Undertaken Without Permission of the NVCA**

Any work undertaken in an area which is regulated under Ontario Regulation 172/06 without the written permission of the NVCA, is in contravention of the Regulation.

NVCA officers as described in Section 2.1 shall investigate observed and reported violations of the Regulation and shall issue a Violation Notice

(see Appendix D) to the owner of the property and to the person undertaking the work, if different from the property owner. A report of any Violation Notice issued by an officer shall be provided to the Executive Committee.

## **2.8 Refusal of the Application and the Hearing Process**

### **2.8.1 Refusal of Applications**

The NVCA officer shall recommend that an application be refused if:

- a) the application does not satisfy provincial, regional and local guidelines adopted by the NVCA;
- b) in the opinion of the officer, the application may affect the control of flooding, pollution or the conservation of land, erosion and dynamic beaches.

### **2.8.2 The Hearing Process**

The Conservation Authorities Act, Section 28(12) requires that the applicant be party to a hearing by the local Conservation Authority Board, or Executive Committee (sitting as a Hearing Board) as the case may be, for an application to be refused or approved with contentious conditions. Further, a permit may be refused if in the opinion of the Authority the proposal adversely affects the control of flooding, pollution or conservation of land, and additional erosion and dynamic beaches.

The Hearing Board is empowered by law to make a decision, governed by the Statutory Powers Procedures Act. It is the purpose of the Hearing Board to evaluate the information presented at the hearing by both the Conservation Authority staff and the applicant and to decide whether the application will be approved with or without conditions or refused.

Please refer to Appendix F for the ***NVCA's Hearing Procedures For Applications Made Under The Conservation Authorities Act.***

## 2.9 The Appeal Process

In accordance with Section 28(15) of the Conservation Authorities Act, an applicant who has been refused permission by the Hearing Tribunal or who objects to conditions specified on a permit, may within **30 days** of receiving the reasons for the decision under Section 28 (14), appeal the decision to the Minister of Natural Resources. The Minister may refuse the permission; or grant permission, with or without conditions.

Appeals should be forwarded to:

Minister of Natural Resources  
Queen's Park, Whitney Block  
99 Wellesley Street West, 6th Floor, Room 6630  
Toronto, Ontario M7A 1W3  
TEL:(416) 314-2301 FAX:(416) 314-2216

## **APPENDIX A**

### **Conservation Authorities Act** R.S.O. 1990, CHAPTER C.27

#### **Section 28 (only)**

# Conservation Authorities Act

R.S.O. 1990, CHAPTER C.27

## Section 28 (only)

[http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c27\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c27_e.htm)

Amended by: 1993, c. 27, Sched.; 1994, c. 27, s. 127; 1996, c. 1, Sched. M, ss. 40-47; 1996, c. 32, s. 66; 1997, c. 5, s. 64; 1997, c. 26, Sched.; 1997, c. 29, s. 54; 1997, c. 43, Sched. G, s. 19; 1998, c. 3, s. 33; 1998, c. 15, Sched. E, s. 3; 1998, c. 18, Sched. I, ss. 1-14; 2000, c. 5, s. 8; 2001, c. 8, s. 203; 2001, c. 9, Sched. K, s. 1; 2002, c. 17, Sched. F, Table.

### Regulations by authority re. area under its jurisdiction

**28. (1)** Subject to the approval of the Minister, an authority may make regulations applicable in the area under its jurisdiction,

(a) restricting and regulating the use of water in or from rivers, streams, inland lakes, ponds, wetlands and natural or artificially constructed depressions in rivers or streams;

(b) prohibiting, regulating or requiring the permission of the authority for straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;

(c) prohibiting, regulating or requiring the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development;

(d) providing for the appointment of officers to enforce any regulation made under this section or section 29;

(e) providing for the appointment of persons to act as officers with all of the powers and duties of officers to enforce any regulation made under this section. 1998, c. 18, Sched. I, s. 12.

### Delegation of powers

**(2)** A regulation made under subsection (1) may delegate any of the authority's powers or duties under the regulation to the authority's executive committee or to any other person or body, subject to any limitations and requirements that may be set out in the regulation. 1998, c. 18, Sched. I, s. 12.

### Conditional permission

**(3)** A regulation made under clause (1) (b) or (c) may provide for permission to be granted subject to conditions and for the cancellation of the permission if conditions are not met. 1998, c. 18, Sched. I, s. 12.

## **References to maps**

(4) A regulation made under subsection (1) may refer to any area affected by the regulation by reference to one or more maps that are filed at the head office of the authority and are available for public review during normal office business hours. 1998, c. 18, Sched. I, s. 12.

## **Minister's approval of development regulations**

(5) The Minister shall not approve a regulation made under clause (1) (c) unless the regulation applies only to areas that are,

(a) adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beach hazards;

(b) river or stream valleys;

(c) hazardous lands;

(d) wetlands; or

(e) other areas where, in the opinion of the Minister, development should be prohibited or regulated or should require the permission of the authority. 1998, c. 18, Sched. I, s. 12.

## **Regulations by L.G. in C. governing content of authority's regulations**

(6) The Lieutenant Governor in Council may make regulations governing the content of regulations made by authorities under subsection (1), including flood event standards and other standards that may be used, and setting out what must be included or excluded from regulations made by authorities under subsection (1). 1998, c. 18, Sched. I, s. 12.

## **Invalid regulation**

(7) A regulation made by an authority under subsection (1) that does not conform with the requirements of a regulation made by the Lieutenant Governor in Council under subsection (6) is not valid. 1998, c. 18, Sched. I, s. 12.

## **Transition**

(8) Subject to subsection (9), if a regulation is made by the Lieutenant Governor in Council under subsection (6), subsection (7) does not apply to a regulation that was previously made by an authority under subsection (1) until two years after the regulation made by the Lieutenant Governor in Council comes into force. 1998, c. 18, Sched. I, s. 12.

## **Same**

(9) If a regulation made by the Lieutenant Governor in Council under subsection (6) is amended by an amending regulation, subsection (7) does not apply, in respect of the amendment, to a regulation that was made by an authority under subsection (1) before the amending regulation, until such time as may be specified in the amending regulation. 1998, c. 18, Sched. I, s. 12.

## **Exceptions**

(10) No regulation made under subsection (1),

(a) shall limit the use of water for domestic or livestock purposes;

(b) shall interfere with any rights or powers conferred upon a municipality in respect of the use of water for municipal purposes;

(c) shall interfere with any rights or powers of any board or commission that is performing its functions for or on behalf of the Government of Ontario; or

(d) shall interfere with any rights or powers under the *Electricity Act, 1998* or the *Public Utilities Act, 1998*, c. 15, Sched. E, s. 3 (8); 1998, c. 18, Sched. I, s. 12.

## **Activities under the *Aggregate Resources Act***

(11) A requirement for permission of an authority in a regulation made under clause (1) (b) or (c) does not apply to an activity approved under the *Aggregate Resources Act* after the *Red Tape Reduction Act, 1998* received Royal Assent. 1998, c. 18, Sched. I, s. 12.

## **Right to hearing**

(12) Permission required under a regulation made under clause (1) (b) or (c) shall not be refused or granted subject to conditions unless the person requesting the permission has been given the opportunity to require a hearing before the authority or, if the authority so directs, before the authority's executive committee. 1998, c. 18, Sched. I, s. 12.

## **Powers of authority**

(13) After holding a hearing under subsection (12), the authority or executive committee, as the case may be, shall,

(a) refuse the permission; or

(b) grant the permission, with or without conditions. 1998, c. 18, Sched. I, s. 12.

## **Reasons for decision**

(14) If the authority or its executive committee, after holding a hearing, refuses permission or grants permission subject to conditions, the authority or executive committee, as the case may be, shall give the person who requested permission written reasons for the decision. 1998, c. 18, Sched. I, s. 12.

## **Appeal**

(15) A person who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons under subsection (14), appeal to the Minister who may,

(a) refuse the permission; or

(b) grant the permission, with or without conditions. 1998, c. 18, Sched. I, s. 12.

### **Offence: contravening regulation**

(16) Every person who contravenes a regulation made under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to a term of imprisonment of not more than three months. 1998, c. 18, Sched. I, s. 12.

### **Orders**

(17) In addition to any other remedy or penalty provided by law, the court, upon making a conviction under subsection (16), may order the person convicted to,

(a) remove, at that person's expense, any development within such reasonable time as the court orders; and

(b) rehabilitate any watercourse or wetland in the manner and within the time the court orders. 1998, c. 18, Sched. I, s. 12.

### **Non-compliance with order**

(18) If a person does not comply with an order made under subsection (17), the authority having jurisdiction may, in the case of a development, have it removed and, in the case of a watercourse or wetland, have it rehabilitated. 1998, c. 18, Sched. I, s. 12.

### **Liability for certain costs**

(19) The person convicted is liable for the cost of a removal or rehabilitation under subsection (18) and the amount is recoverable by the authority by action in a court of competent jurisdiction. 1998, c. 18, Sched. I, s. 12.

### **Powers of entry**

(20) An authority or an officer appointed under a regulation made under clause (1) (d) or (e) may enter private property, other than a dwelling or building, without the consent of the owner or occupier and without a warrant, if,

(a) the entry is for the purpose of considering a request related to the property for permission that is required by a regulation made under clause (1) (b) or (c); or

(b) the entry is for the purpose of enforcing a regulation made under clause (1) (a), (b) or (c) and the authority or officer has reasonable grounds to believe that a contravention of the regulation is causing or is likely to cause significant environmental damage and that the entry is required to prevent or reduce the damage. 1998, c. 18, Sched. I, s. 12.

### **Time of entry**

(21) Subject to subsection (22), the power to enter property under subsection (20) may be exercised at any reasonable time. 1998, c. 18, Sched. I, s. 12.

## **Notice of entry**

(22) The power to enter property under subsection (20) shall not be exercised unless,

(a) the authority or officer has given reasonable notice of the entry to the owner of the property and, if the occupier of the property is not the owner, to the occupier of the property; or

(b) the authority or officer has reasonable grounds to believe that significant environmental damage is likely to be caused during the time that would be required to give notice under clause (a). 1998, c. 18, Sched. I, s. 12.

## **No use of force**

(23) Subsection (20) does not authorize the use of force. 1998, c. 18, Sched. I, s. 12.

## **Offence: obstruction**

(24) Any person who prevents or obstructs an authority or officer from entering property under subsection (20) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 1998, c. 18, Sched. I, s. 12.

## **Definitions**

(25) In this section,

"development" means,

(a) the construction, reconstruction, erection or placing of a building or structure of any kind,

(b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,

(c) site grading, or

(d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere; ("aménagement")

"hazardous land" means land that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock; ("terrain dangereux")

"pollution" means any deleterious physical substance or other contaminant that has the potential to be generated by development in an area to which a regulation made under clause (1) (c) applies; ("pollution")

"watercourse" means an identifiable depression in the ground in which a flow of water regularly or continuously occurs; ("cours d'eau")

"wetland" means land that,

(a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface,

(b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse,

(c) has hydric soils, the formation of which has been caused by the presence of abundant water, and

(d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water, but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause (c) or (d). ("terre marécageuse") 1998, c. 18, Sched. I, s. 12.

### **Transition**

(26) A regulation that was in force immediately before the day the *Red Tape Reduction Act, 1998* received Royal Assent and that was lawfully made under clause (1) (e) or (f) of this section as it read immediately before that day shall be deemed to have been lawfully made under clause (1) (c). 1998, c. 18, Sched. I, s. 12.

**APPENDIX B**

**NOTTAWASAGA VALLEY CONSERVATION AUTHORITY  
REGULATION OF DEVELOPMENT, INTERFERENCE WITH  
WETLANDS AND ALTERATIONS TO SHORELINES AND  
WATERCOURSES**

**ONTARIO REGULATION 172/06**

**made under the**

**CONSERVATION AUTHORITIES ACT**

# ONTARIO REGULATION 172/06

made under the

## CONSERVATION AUTHORITIES ACT

### NOTTAWASAGA VALLEY CONSERVATION AUTHORITY: REGULATION OF DEVELOPMENT, INTERFERENCE WITH WETLANDS AND ALTERATIONS TO SHORELINES AND WATERCOURSES

Made: April 28, 2006

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#### Definition

1. In this Regulation,

“Authority” means the Nottawasaga Valley Conservation Authority.

#### Development prohibited

2. (1) Subject to section 3, no person shall undertake development, or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,

(a) adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beaches, including the area from the furthest offshore extent of the Authority’s boundary to the furthest landward extent of the aggregate of the following distances:

- (i) the 100 Year flood level, plus the appropriate allowance for wave uprush,
- (ii) the predicted long term stable slope projected from the existing stable toe of the slope or from the predicted location of the toe of the slope as that location may have shifted as a result of shoreline erosion over a 100-year period,
- (iii) where a dynamic beach is associated with the waterfront lands, a 30 metre allowance inland to accommodate dynamic beach movement,
- (iv) 15 metres inland;

(b) river or stream valleys that have depressional features associated with a river or stream, whether or not they contain a watercourse, the limits of which are determined in accordance with the following rules:

- (i) where the river or stream valley is apparent and has stable slopes, the valley extends from the stable top of bank, plus 15 metres, to a similar point on the opposite side,
  - (ii) where the river or stream valley is apparent and has unstable slopes, the valley extends from the predicted long term stable slope projected from the existing stable slope or, if the toe of the slope is unstable, from the predicted location of the toe of the slope as a result of stream erosion over a projected 100-year period, plus 15 metres, to a similar point on the opposite side,
  - (iii) where the river or stream valley is not apparent, the valley extends the greater of,
    - (A.) the distance from a point outside the edge of the maximum extent of the flood plain under the applicable flood event standard, plus 15 metres, to a similar point on the opposite side, and
    - (B.) the distance from the predicted meander belt of a watercourse, expanded as required to convey the flood flows under the applicable flood event standard, plus 15 metres, to a similar point on the opposite side;
  - (c) hazardous lands;
  - (d) wetlands; or
  - (e) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands and wetlands greater than 2 hectares in size, and areas within 30 metres of wetlands less than 2 hectares in size, but not including those where development has been approved pursuant to an application made under the *Planning Act* or other public planning or regulatory process.
- (2) The areas described in subsection (1) are the areas referred to in section 12 except that, in case of a conflict, the description of the areas provided in subsection (1) prevails over the descriptions referred to in that section.

### **Permission to develop**

3. (1) The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development.
- (2) The permission of the Authority shall be given in writing, with or without conditions.

### **Application for permission**

4. A signed application for permission to undertake development shall be filed with the Authority and shall contain the following information:

1. Four copies of a plan of the area showing the type and location of the development.
2. The proposed use of the buildings and structures following completion of the development.

3. The start and completion dates of the development.
4. The elevations of existing buildings, if any, and grades and the proposed elevations of buildings and grades after development.
5. Drainage details before and after development.
6. A complete description of the type of fill proposed to be placed or dumped.

### **Alterations prohibited**

5. Subject to section 6, no person shall straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse or change or interfere in any way with a wetland.

### **Permission to alter**

6. (1) The Authority may grant a person permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or to change or interfere with a wetland.

(2) The permission of the Authority shall be given in writing, with or without conditions.

### **Application for permission**

7. A signed application for permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or change or interfere with a wetland shall be filed with the Authority and shall contain the following information:

1. Four copies of a plan of the area showing plan view and cross-section details of the proposed alteration.
2. A description of the methods to be used in carrying out the alteration.
3. The start and completion dates of the alteration.
4. A statement of the purpose of the alteration.

### **Cancellation of permission**

8. (1) The Authority may cancel a permission if it is of the opinion that the conditions of the permission have not been met.

(2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled.

(3) Following the giving of the notice, the Authority shall give the holder at least five days notice of the date of the hearing.

### **Validity of permissions and extensions**

9. (1) A permission of the Authority is valid for a maximum period of 24 months after it is issued, unless it is specified to expire at an earlier date.
- (2) A permission shall not be extended.

### **Appointment of officers**

10. The Authority may appoint officers to enforce this Regulation.

### **Flood event standards**

11. The applicable flood event standards used to determine the maximum susceptibility to flooding of lands or areas within the watersheds in the area of jurisdiction of the Authority are the Timmins Storm Flood Event Standard, the 100 Year Flood Event Standard and the 100 Year flood level plus wave uprush, described in the Schedule.

### **Areas included in the Regulation Limit**

12. Hazardous lands, wetlands, shorelines and areas susceptible to flooding, and associated allowances, within the watersheds in the area of jurisdiction of the Authority are delineated by the Regulation Limit shown on maps 1 to 132 dated September, 2005 and filed at the head office of the Authority at 8195 8<sup>th</sup> Line, Utopia, Ontario under the map title "Ontario Regulation 97/04: Regulation for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses".

### **Revocation**

- 13. Regulation 164 of the Revised Regulations of Ontario, 1990 is revoked.**

### **SCHEDULE**

1. The Timmins Storm Flood Event Standard means a storm that produces over a 12-hour period,
  - (a) in a drainage area of 25 square kilometres or less, rainfall that has the distribution set out in Table 1; or
  - (b) in a drainage area of more than 25 square kilometres, a rainfall such that the number of millimetres of rain referred to in each case in Table 1 shall be modified by the percentage amount shown in Column 2 of Table 2 opposite the size of the drainage area set out opposite thereto in Column 1 of Table 2.

TABLE 1

15 mm of rain in the first hour
20 mm of rain in the second hour
10 mm of rain in the third hour
3 mm of rain in the fourth hour
5 mm of rain in the fifth hour
20 mm of rain in the sixth hour
43 mm of rain in the seventh hour
20 mm of rain in the eighth hour
23 mm of rain in the ninth hour
13 mm of rain in the tenth hour
13 mm of rain in the eleventh hour
8 mm of rain in the twelfth hour

TABLE 2

COLUMN 1	COLUMN 2
Drainage Area (square kilometres)	Percentage
26 to 50 both inclusive	97.0
51 to 75 both inclusive	94.0
76 to 100 both inclusive	90.0
101 to 150 both inclusive	87.0
151 to 200 both inclusive	84.0
201 to 250 both inclusive	82.0
251 to 375 both inclusive	79.0
376 to 500 both inclusive	76.0
501 to 750 both inclusive	74.0
751 to 1000 both inclusive	70.0
1001 to 1250 both inclusive	68.0
1251 to 1500 both inclusive	66.0
1501 to 1800 both inclusive	65.0
1801 to 2100 both inclusive	64.0
2101 to 2300 both inclusive	63.0
2301 to 2600 both inclusive	62.0
2601 to 3900 both inclusive	58.0
3901 to 5200 both inclusive	56.0
5201 to 6500 both inclusive	53.0
6501 to 8000 both inclusive	50.0

2. The 100 Year Flood Event Standard means rainfall or snowmelt, or a combination of rainfall and snowmelt, producing at any location in a river, creek, stream or watercourse, a peak flow that has a probability of occurrence of one per cent during any given year.

3. The 100 Year flood level means the peak instantaneous still water level plus an allowance for wave uprush and other water-related hazards for Lake Huron and Georgian Bay in the Great Lakes – St. Lawrence River System that has a probability of occurrence of one per cent during any given year.

NOTTAWASAGA VALLEY CONSERVATION AUTHORITY:

FRED NIX

CHAIR

WAYNE R. WILSON

*CHIEF ADMINISTRATIVE OFFICE/SECRETARY-TREASURER*

Date made: April 28, 2006

I certify that I have approved this Regulation.

DAVID JAMES RAMSEY

*Minister of Natural Resources*

Date approved: May 4, 2006

**APPENDIX C**

**NOTTAWASAGA VALLEY CONSERVATION  
AUTHORITY**

**FILL, CONSTRUCTION AND ALTERATION TO  
WATERWAYS REGULATION**

**ONTARIO REGULATION 164 R.R.O. 1990**

# ONTARIO REGULATION 164 R.R.O. 1990

made under the

CONSERVATION AUTHORITIES ACT

**Conservation Authorities Act**

**R.R.O. 1990, REGULATION 164**

*Amended to O. Reg. 118/95*

## **FILL, CONSTRUCTION AND ALTERATION TO WATERWAYS - NOTTAWASAGA VALLEY**

1. In this Regulation,

"Authority" means the Nottawasaga Valley Conservation Authority;

"building or structure" means a building or structure of any kind;

"drainage area" means, for a point, the area which contributes runoff to that point;

"fill" means earth, sand, gravel, rubble, rubbish, garbage or any other material whether similar to or different from any of the aforementioned materials, whether originating on the site or elsewhere, used or capable of being used to raise, lower or in any way affect the contours of the ground;

"fill line" means any line designated as such on the maps referred to in the Schedules;

"regional storm" means a storm producing in a twelve hour period in a drainage area of,

(a) ten square miles or less, a rainfall that has the distribution set out in Table 1, or

(b) more than ten square miles, a rainfall such that the number of inches of rain referred to in each case in Table 1 shall be modified by the percentage amount shown in Column 2 of Table 2 opposite the size of the drainage area set out opposite thereto in Column 1 of Table 2:

TABLE 1

0.6 inches of rain in the first hour
0.8 inches of rain in the second hour
0.4 inches of rain in the third hour
0.1 inches of rain in the fourth hour
0.2 inches of rain in the fifth hour
0.8 inches of rain in the sixth hour
1.7 inches of rain in the seventh hour
0.8 inches of rain in the eighth hour
0.9 inches of rain in the ninth hour
0.5 inches of rain in the tenth hour
0.5 inches of rain in the eleventh hour
0.3 inches of rain in the twelfth hour

TABLE 2

Column 1	Column 2
Drainage Area (Square Miles)	Percentage
11 to 20 both inclusive	97
21 to 30 both inclusive	94
31 to 40 both inclusive	90
41 to 60 both inclusive	87
61 to 80 both inclusive	84
81 to 100 both inclusive	82
101 to 150 both inclusive	79
151 to 200 both inclusive	76
201 to 300 both inclusive	74
301 to 400 both inclusive	70
401 to 500 both inclusive	68
501 to 600 both inclusive	66
601 to 700 both inclusive	65
701 to 800 both inclusive	64
801 to 900 both inclusive	63
901 to 1000 both inclusive	62
1001 to 1500 both inclusive	58
1501 to 2000 both inclusive	56
2001 to 2500 both inclusive	53

"river", "lake", "creek", "stream" or "watercourse" means any river, lake, creek, stream or watercourse under the jurisdiction of the Authority. R.R.O. 1990, Reg. 164, s. 1.

**2.** The areas described in the Schedules are areas in which, in the opinion of the Authority, the control of flooding or pollution or the conservation of land may be affected by the placing or dumping of fill. R.R.O. 1990, Reg. 164, s. 2.

**3.** Subject to section 4, no person shall,

(a) construct any building or structure or permit any building or structure to be constructed in or on a pond or swamp or in any area susceptible to flooding during a regional storm;

(b) place or dump fill or permit fill to be placed or dumped in the areas described in the Schedules whether such fill is already located in or upon such area, or brought to or on such area from some other place or places; or

(c) straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse. R.R.O. 1990, Reg. 164, s. 3.

**4.** Subject to the *Ontario Water Resources Act* or to any private interest, the Authority may permit in writing the construction of any building or structure or the placing or dumping of fill or the straightening, changing, diverting or interfering with the existing channel of a river, creek, stream or watercourse to which section 3 applies if, in the opinion of the Authority, the site of the building or structure or the placing or dumping and the method of construction or placing or dumping or the straightening, changing, diverting or interfering with the existing channel will not affect the control of flooding or pollution or the conservation of the land. R.R.O. 1990, Reg. 164, s. 4.

**5.** No person shall commence to construct any building or structure or dump or place fill or straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse in any area to which section 3 applies before permission to do so has been obtained under section 4. R.R.O. 1990, Reg. 164, s. 5.

**6.** (1) A signed application for permission to construct a building or structure shall be filed with the Authority and shall include,

(a) four copies of a plan of the property showing the proposed location of the building or structure, its elevation and the proposed final grade plan;

(b) four copies of a complete description of the type of building or structure to be constructed, including drainage details;

(c) four copies of a statement of the dates between which the construction will be carried out; and

(d) four copies of a statement of the proposed use of the building or structure following completion of the construction.

(2) A signed application for permission to place or dump fill shall be filed with the Authority and shall include,

(a) four copies of a plan of the property on which the fill is to be placed, showing the proposed location of filling, the depth to which it is proposed to fill and the proposed final grade of the land when filling is completed;

(b) four copies of a complete description of the type of fill proposed to be placed or dumped;

(c) four copies of a statement of the dates between which the placing or dumping will be carried out; and

(d) four copies of a statement of the proposed use of the land following completion of placing or dumping.

(3) A signed application for permission to straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse, shall be filed with the Authority and shall include,

(a) four copies of a plan on which shall be shown in plan view and cross section the details of such straightening, change, diversion or interference;

(b) four copies of a description of the protective measures to be undertaken;

(c) four copies of a statement of the dates between which the straightening, changing, diverting or interfering will be carried out; and

(d) four copies of a statement of the purpose of the proposed work. R.R.O. 1990, Reg. 164, s. 6.

7. The Authority may, at any time, withdraw any permission given under this Regulation, if, in the opinion of the Authority, the conditions of the permit are not complied with. R.R.O. 1990, Reg. 164, s. 7.

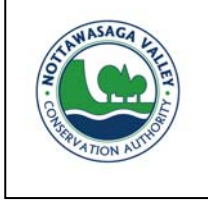
8. The Authority may, from time to time, appoint officers to enforce this Regulation. R.R.O. 1990, Reg. 164, s. 8.

**Note:** The schedules for Ontario Regulation 164 R.R.O. 1990 are not included in this document. Please refer to the NVCA Website [www.nvca.on.ca](http://www.nvca.on.ca) for the entire version of this Regulation.

**APPENDIX D**

**NOTTAWASAGA VALLEY CONSERVATION  
AUTHORITY**

**VIOLATION NOTICE**



**NOTTAWASAGA VALLEY CONSERVATION AUTHORITY**  
**John Hix Conservation Administration Centre**  
**8195 Concession Line 8**  
**Utopia, Ontario.**  
**LOM 1T0**  
**Telephone: (705) 424-1479 Fax: (705) 424-2115**

## **NOTICE OF VIOLATION**

**Development, Interference with Wetlands and Alterations to Shorelines and Watercourses  
Regulation  
Ontario Regulation 172/06**

**REGISTERED MAIL**

LOCATION OF VIOLATION:

PROPERTY OWNER:

MAILING ADDRESS:

DETAILS OF VIOLATION:

A new 16' x 24' building has been unlawfully constructed on your property which falls entirely within the Regional Storm Floodplain of the Nottawasaga River, which is in contravention of Ontario Regulation 172/06, Section \_\_\_\_\_. Fill has also been unlawfully placed on your property within an area that is regulated for fill placement by the NVCA, which is in contravention of Ontario Regulation 172/06, Section \_\_\_\_\_.

Development within an area susceptible to flooding and the placement of fill within an area regulated under Ontario Regulation 172/06 requires a permit from the Nottawasaga Valley Conservation Authority.

The NVCA is requesting that you either remove the new building or have a qualified professional engineer certify that the unlawfully constructed building will not be damaged by floodwaters and will not have a detrimental impact on other properties in the area. It is necessary that you contact the Environmental Officer indicated below either in writing or by telephone within 48 hours of receipt of this VIOLATION NOTICE, advising what remedial measures you propose to take.

Non-compliance with the above instructions may result in legal action under Section 28, Subsection 16 of the Conservation Authorities Act.

Dated at Utopia, Ontario this -----<sup>th</sup> day of January, 200--.

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**Beverley G. Booth**  
**Manager of Planning Policy & Regulations**

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**Charles F. Burgess, MCIP, RPP**  
**Director of Planning**

C.c. Chair - Nottawasaga Valley Conservation Authority  
W. Wilson, CAO/Secretary Treasurer - Nottawasaga Valley Conservation Authority  
Clerk – Township of \_\_\_\_\_  
Chief Building Official – Township of \_\_\_\_\_  
NVCA Full Authority Member

# APPENDIX E



**PERMITTING PROCEDURES  
FOR APPLICATIONS MADE UNDER  
THE CONSERVATION  
AUTHORITIES ACT  
and  
ONTARIO REGULATION 172/06**

## **1.0 BACKGROUND**

The Conservation Authorities Act Section 28 (1) allows Conservation Authorities to make regulations prohibiting, regulating or requiring permission of the authority for development if, in the opinion of the authority the control of flooding, erosion, dynamic beaches, wetlands, pollution or the conservation of land may be affected by the development. As a result, Ontario Regulation 172/06 was approved by the Ministry of Natural Resources which, in effect, establishes a permitting process.

## **2.0 PERMITTING PROCEDURES**

### **2.1 REVIEW OF APPLICATIONS**

All applications will be reviewed to determine if they are in conformity with:

- NVCA Development, Interference with Wetlands and Alterations To Shorelines and Watercourses Regulation (Ontario Regulation 172/06;
- NVCA Ponds Policy (amended May 2005);
- Natural Hazard Guidelines (2001) prepared by the Ontario Ministry of Natural Resources;
- Section 35(1) of the Fisheries Act as part of the NVCA's Level II Fish Habitat Agreement with Fisheries and Oceans Canada;
- NVCA Land Protection and Acquisition Policy (May 2002);
- All policy documents approved by the NVCA Board of Directors);
- NVCA Watershed Management Plan (1998); and
- NVCA Subwatershed Plans (i.e. Willow Creek, Black Ash Creek, Innisfil Creek).

### **2.2 APPLICATIONS NOT IN CONFORMITY**

NVCA staff shall work with applicants in an attempt to find a solution to their proposal, when an application is not in conformity with the policies and legislation listed in Section 2.1.

There shall also be an opportunity for dispute resolution between the NVCA and the applicant in order to find a mutually acceptable solution to their proposal. If the proposal cannot conform to the policies and legislation listed above, or the applicant is unwilling to amend the application, the application will be scheduled for a hearing in accordance with the Conservation Authorities Act Section 28 (12).

The applicant shall be advised of options that he/she may wish to pursue in order to bring the application into conformity or the NVCA's Hearing process.

### **2.3 APPLICATIONS IN CONFORMITY**

Applications which are in conformity of the policies and legislation listed in Section 2.1 will be recommended for approval with the appropriate conditions by an Environmental Officer by initialing the permit and provided to the Manager of Planning Policy and Regulations and/or the Director of Planning for issuance under Ontario Regulation 172/06.

The Director of Planning shall sign all permits which involve work linked to a Plan of Subdivision.

Prior to the issuance of a permit, the NVCA shall consult with all applicable agencies and member municipalities in order to address areas of mutual concern.

### **2.4 RATIFICATION OF PERMITS**

All approved permits will normally be ratified by the Board of Directors on a monthly basis.

### **2.5 VALIDITY OF PERMITS**

In accordance with Ontario Regulation 172/06 (Section 9):

- a) Permits are valid for a maximum period of 24 months from the date of issue, unless it is specified to expire at an earlier date;
- b) Permits shall not be extended;
- c) Any permit issued under Ontario Regulation 164 R.R.O. 1990 which has an expiry date beyond May 4, 2006 shall continue to be valid for the period specified on the permit.

If a permit expires prior to the completion of the development, the property owner will be required to apply for a new permit.

## **2.6 PROPERTY OWNERSHIP**

Permits can only be issued to the registered property owner or an authorized agent. A letter of authorization from the property owner must be submitted with the application if a permit is to be issued to anyone but the property owner.

## **2.7 TRANSFER OF PERMITS**

Permits issued under Ontario Regulation 172/06 are non-transferable.

## **2.8 RESPONSIBILITY OF THE APPLICANT**

Issuance of a permit under Ontario Regulation 172/06 does not relieve the applicant from the responsibility of obtaining approvals from all other appropriate agencies, or complying with all conditions that have been imposed by other agencies.

## **2.9 ONTARIO REGULATION 164 R.R.O 1990**

Permits issued under Ontario Regulation 164 R.R.O. 1990 will continue to be valid for the duration identified on the permit.

## **3.0 WITHDRAWAL OF PERMISSION**

The NVCA may revoke a permit, if it is of the opinion, representations contained within the application for permission are not accurate or the conditions of the permit have not been met.

Before canceling a permit, the NVCA shall give the holder of the permit a notice of its intent to cancel the permit, indicating that permission will be cancelled unless the holder can show cause at a hearing, why the permit should not be cancelled.

If through compliance monitoring it is discovered that work which is underway is not in conformity with a permit and in the opinion of staff this work would result in irreparable environmental damage, property damages or endangerment of life, the Director of Planning and the Manager of Planning Policy and Regulations shall be authorized to revoke a permit

immediately. The NVCA shall hold a Hearing with the opportunity to have the permit reinstated by the NVCA Hearing Board.

The NVCA shall give the holder of the permit notice of the date of the next available hearing.

# APPENDIX F



## **HEARING PROCEDURES FOR APPLICATIONS MADE UNDER THE CONSERVATION AUTHORITIES ACT**

**In Conformity with Conservation Authorities Act Hearing Guidelines  
(October 2005) Prepared by Conservation Ontario and  
the Ontario Ministry of Natural Resources**



## **1.0 PURPOSE OF HEARING GUIDELINES**

The Conservation Authorities Act (Section 28, Subsection 12) requires that the applicant be party to a hearing by the local Conservation Authority Board, or Executive Committee (sitting as a Hearing Board) as the case may be, for applications to be refused or approved with conditions. Typically, staff of a local Conservation Authority would recommend the refusal of an application if in their opinion, the proposal will adversely affects the control of flooding, pollution or conservation of land.

The ***NVCA Hearing Procedures for Applications Made Under the Conservation Authorities Act*** outline the practices and procedures of the NVCA when conducting hearings under Section 28 (12), (13), (14) of the Conservation Authorities Act. These guidelines and procedures are consistent with *Conservation Authorities Act Hearing Guidelines* (October 2005) prepared by Conservation Ontario and the Ontario Ministry of Natural Resources and meet the legal requirements of the Statutory Powers Procedures Act.

## **2.0 THE NVCA HEARING BOARD**

The Hearing Board is empowered by law to make decisions, governed by the Statutory Powers Procedures Act. It is the purpose of the Hearing Board to evaluate the information presented at the hearing by both the Conservation Authority staff and the applicant and to decide whether the application will be approved with or without conditions or refused.

The Conservation Authorities Act (Section 28, Subsection 12) specifies that a hearing may be conducted by the Authority or, if the Authority so directs, before the Authority's Executive Committee.

For the Nottawasaga Valley Conservation Authority, the Hearing Board shall be comprised of members of the Board of Directors. This will ensure that all municipal representatives are aware of permitting issues throughout the entire watershed area and that municipal representation is available for all applicants.

### **3.0 PRE-HEARING PROCEDURES**

#### **3.1 APPREHENSION OF BIAS**

In considering the application, the Hearing Board is a decision-making tribunal. The tribunal is to act fairly. Under general principles of administrative law relating to the duty of fairness, the tribunal is obliged not only to avoid any bias but also to avoid the appearance or apprehension of bias. The following are three examples of steps to be taken to avoid apprehension of bias where it is likely to arise.

- (a) No member of the NVCA Hearing Board taking part in the hearing should be involved, in intervention on behalf of the applicant or other interested parties with the matter, prior to the hearing. Otherwise, there is a danger of an apprehension of bias which could jeopardize the hearing.
- (b) If material relating to the merits of an application that is the subject of a hearing is distributed by NVCA staff to Hearing Board members before the hearing, the material shall be distributed to the applicant at the same time. The applicant shall be afforded an opportunity to distribute similar pre-hearing material.
- (c) In instances where the NVCA requires a hearing to help it reach a determination as to whether to give permission with or without conditions or refuse a permit application, a final decision shall not be made until such time as a hearing is held. The applicant will be given an opportunity to attend the hearing before a decision is made; however, the applicant does not have to be present for a decision to be made.

#### **3.2 RIGHT TO A HEARING**

In accordance with Section 28(12) of the Conservation Authorities Act, an applicant has the right to a hearing when:

- staff of the NVCA are recommending refusal of an application to the Full Authority; or
- an applicant objects to the conditions of approval listed on the permit.

**Note:** If the applicant is not the registered owner of the property, he/she must have written authorization from the registered owner in order to request a hearing.

### **3.3 DISPUTE RESOLUTION**

Prior to a hearing being scheduled before the NVCA Hearing Board, applicants shall have the opportunity for dispute resolution in order to attempt to find a mutually acceptable solution to their proposal.

Dispute resolution shall be comprised of the applicant(s) (including their associates), the Chief Administrative Officer, Director of Planning, Manager of Planning Policy and Regulations and where necessary Environmental Officer and other relevant NVCA staff.

The Chief Administrative Officer and the Director of Planning will facilitate the dispute resolution session.

These meetings will be held without prejudice.

### **3.4 NOTICE OF HEARING**

Prior to setting the date for a hearing, the applicant shall be consulted to determine an agreeable date and time based on the Nottawasaga Valley Conservation Authority's (NVCA) regular meeting schedule. In establishing the date for the hearing, both the applicant and the NVCA must be given sufficient time to prepare for the hearing.

The applicant is entitled to reasonable notice of the hearing pursuant to the Statutory Powers Procedures Act. A Notice of Hearing shall be sent to the applicant and his/her agent at least 60 days prior to the date of the hearing, by registered mail.

The Notice of Hearing must contain the following information:

- (a) Reference to the applicable legislation under which the hearing is to be held (i.e., the Conservation Authorities Act).
- (b) The date, time, and location of the hearing.
- (c) Identification of the applicant, the location of the property and the nature of the application which are the subject of the hearing.

- (d) The reasons for the proposed refusal or conditions of approval shall be specifically stated. Sufficient detail is to be provided to enable the applicant to understand the issues so he or she can be adequately prepared for the hearing.

It is sufficient to reference in the Notice of Hearing that the recommendation for refusal or conditions of approval are based on the reasons outlined in previous correspondence or a hearing report that will follow.

- (e) A statement notifying the applicant that the hearing may proceed in the applicant's absence and that the applicant will not be entitled to any further notice of the proceedings.

Except under extreme circumstances, a hearing before the NVCA Hearing Board shall not proceed in the absence of the applicant.

- (f) Reminder that the applicant is entitled to be represented at the hearing by counsel, if desired.

- (g) Copies of the Notice of Hearing to:

- The Chair of the NVCA;
- Members of the NVCA Full Authority;
- The CAO/Secretary-Treasurer of the NVCA;
- The Director of Planning of the NVCA;
- The Manager of Planning Policy and Regulations of the NVCA;
- The Clerk of the Municipality in which the site of the proposed work is located;
- The Chief Building Official in which the site of the proposed work is located;
- The district offices of the provincial government (i.e. MNR, MOE) if appropriate; and
- Fisheries and Oceans Canada if appropriate.

An example of a Notice of Hearing can be found in Appendix 1.

### **3.5 PRE-SUBMISSION OF REPORTS**

#### **3.5.1 DISCLOSURE TO THE APPLICANT**

The NVCA shall provide a copy of the following material to the applicant 45 days prior to the date of the hearing:

- the staff report;
- all documents to be entered as exhibits;
- a curriculum vitae for each the persons speaking at the hearing on behalf of the NVCA;
- witness statements;
- a copy of the NVCA Hearing Procedures.

#### **3.5.2 DISCLOSURE TO THE NVCA**

The applicant shall provide a copy of all material to be presented at the hearing to the NVCA 14 days prior to the hearing. This will allow the applicant an opportunity to prepare a response once the reasons for the staff recommendation has been provided to him/her. If the applicant does not wish to submit any material to the NVCA, he/she must indicate this in writing to the NVCA 14 days prior to the hearing.

#### **3.5.3 SUBMISSION TO MEMBERS OF THE HEARING BOARD**

The NVCA shall circulate copies of all material to be presented by staff and the applicant to members of the Hearing Board 7 days prior to the hearing.

### **4.0 THE HEARING**

#### **4.1 PUBLIC HEARING**

Pursuant to the Statutory Powers Procedure Act, hearings are required to be held in public. The exception is in very rare cases where public interest in public hearings is outweighed by the fact that intimate financial, personal or other matters would be disclosed at hearings.

## **4.2 HEARING PARTICIPANTS**

The Conservation Authorities Act does not provide for third party status at a hearing. While others may be advised of a hearing, any information that they provide should be incorporated within the presentation of information by, or on behalf of, the applicant or Authority staff.

## **4.3 ATTENDANCE OF HEARING BOARD MEMBERS**

In accordance with case law relating to the conduct of hearings, those members of the Hearing Board who will decide whether to grant or refuse the application must be present during the full course of the hearing.

## **4.4 ADJOURNMENTS**

The Hearing Board may adjourn a hearing on its own motion or that of the applicant or Authority staff where it is satisfied that an adjournment is necessary for an adequate hearing to be held.

Any adjournments shall form part of the hearing record.

## **4.5 ORDERS AND DIRECTIONS**

The Hearing Board is entitled to make orders or directions to maintain order and prevent the abuse of its hearing processes. The NVCA's Hearing Procedures are included as Appendix 2.

## **4.6 INFORMATION PRESENTED AT HEARINGS**

- (a) The Statutory Powers Procedure Act requires that a witness be informed of his/her rights pursuant to the Canada Evidence Act. The Canada Evidence Act indicates that a witness shall be excused from answering questions on the basis that the answer may be incriminating. Further, answers provided during the hearing are not admissible against the witness in any criminal trial or proceeding. This information shall be provided to the applicant as part of the Notice of Hearing.
- (b) Information presented at a hearing is to be presented under oath or affirmation. Witnesses taking part in the hearing must be informed of this requirement prior to the commencement of the hearing.

- (c) The Hearing Board may authorize receiving a copy rather than the original document. However, the Hearing Board may request certified copies of a document if required.
- (d) Privileged information, such as solicitor/client correspondence, cannot be heard. Information that is not directly within the knowledge of the speaker (hearsay), if relevant to the issues of the hearing, can be heard.
- (e) The Board may take into account matters of common knowledge such as geographic or historic facts, times measures, weights, etc. or generally recognized scientific or technical facts, information or opinions within its specialized knowledge without hearing specific information to establish their truth.

## **4.7 CONDUCT OF HEARING**

### **4.7.1 RECORD OF ATTENDING HEARING BOARD MEMBERS**

A record of attendance shall be made of the members of the Hearing Board attending a hearing.

### **4.7.2 OPENING REMARKS**

The Chair shall convene the hearing with opening remarks which:

- identify the applicant;
- the nature of the application;
- the property location;
- identify staff participating in the hearing;
- outline the hearing procedures; and
- advise participants of requirements under the Canada Evidence Act.

Please refer to Appendix 3 for the Chairs Opening Remarks.

### **4.7.3 PRESENTATION OF INFORMATION BY NVCA STAFF**

Staff of the NVCA Authority shall present the reasons supporting their recommendation for the refusal or conditions of approval of the application. The time allowed for this presentation shall generally not exceed 15 minutes.

Any reports, documents or plans that form part of the presentation shall be provided to the applicant and members of the Hearing Board as outlined in Section 3.5.1 and 3.5.3 of this document.

Staff of the Authority shall not submit new information at the hearing as the applicant will not have had time to review and provide a professional opinion to the Hearing Board.

The Manager of Planning Policy and Regulations or designate shall coordinate the presentation of information on behalf of Authority staff and will ask questions on behalf of Authority staff.

### **4.7.4 PRESENTATION OF INFORMATION BY THE APPLICANT**

The applicant has the opportunity to present information at the conclusion of the Authority staff presentation. The time allowed for this presentation shall generally not exceed 15 minutes.

Any reports, documents or plans which form part of the submission by the applicant are to be submitted to the NVCA's Director of Planning a minimum of 14 days prior to the hearing. This is to allow for the circulation of this material to the members of the Hearing Board and for the review of this material by NVCA staff.

It is recommended that the applicant provide information regarding the application as it applies to the control of flooding, erosion, dynamic beach or conservation of land, pollution or wetlands.

The NVCA Hearing Board will not consider the merits of the activity or appropriateness of such a use in terms of an application made under the Planning Act.

- The applicant may be represented by legal counsel or agent, if desired
- The applicant may present information to the Hearing Board and/or have invited advisors to present information to the Board
- The applicant's presentation may include technical witnesses (i.e. engineer, ecologist, hydrogeologist).

The applicant should not submit new information at the hearing as staff of the Nottawasaga Valley Conservation Authority will not have had time to review this material and to provide a professional opinion to the Hearing Board.

The Hearing Board shall allow both staff and the applicant an opportunity for rebuttal following these presentations. The time allowed for rebuttal shall not exceed 10 minutes.

#### **4.7.5 QUESTIONS**

Members of the Hearing Board may direct questions to each speaker as the information is being heard or pose their questions following the conclusion of the presentation.

The applicant and NVCA staff shall also have the opportunity to pose questions at the end of the presentation of the other party.

Pursuant to the Statutory Powers Procedure Act, the Hearing Board may limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented. Please note that the courts have been particularly sensitive to the issue of limiting questions and there is a tendency to allow limiting of questions only where it has clearly gone beyond reasonable or proper bounds.

#### **4.7.6 DELIBERATION**

After all the information has been presented, the Hearing Board shall adjourn the hearing and retire in-camera to consider information presented by staff and the applicant and to formulate a decision motion.

The Hearing Board may reconvene on the same date or at some later date to advise of their decision. Only those members of the Hearing Board who are present for the entire hearing may participate in the formulation of the decision. Members of the Hearing Board shall not discuss the hearing with others prior to the decision of the Board being finalized.

#### **5.0 DECISION**

The Hearing Board shall hold a recorded vote in open session, to decide on the decision motion before the board using simple majority rule. The applicant shall be provided a written Notice of the Decision within 5 days of

the date of the hearing by registered mail. The applicant shall be informed of the right to appeal the decision within 30 days upon receipt of the written decision to the Minister of Natural Resources.

It is important that the hearing participants have a clear understanding of why the application was refused or approved. The Board shall itemize and record information of particular significance which led to their decision.

## **5.1 NOTICE OF DECISION**

The Notice of Decision notice shall include the following information:

- (a) The identification of the applicant, property and the nature of the application that was the subject of the hearing.
- (b) The decision to refuse or approve the application and reasons for the decision. A copy of the resolution by the Hearing Board shall be attached to the Notice of Decision.

The written Notice of Decision shall be forwarded to the applicant by registered mail. A sample Notice of Decision and cover letter has been included as Appendix 4.

## **5.2 ADOPTION**

A resolution advising of the Hearing Board's decision and the reasons for this decision should be adopted by the Board.

## **6.0 RECORD OF THE HEARING**

The Nottawasaga Valley Conservation Authority shall compile a record of the hearing. This record shall be comprised of the following documents:

- (a) A copy of the application for the proposed work;
- (b) A copy of the Notice of Hearing;
- (c) A copy of any orders made by the Hearing Board (i.e., for adjournments).
- (d) Copies of all information/exhibits submitted to the Hearing Board;

- (e) A copy of the minutes of the hearing.
- (f) A copy of the decision of the Hearing Board and the reasons for their decision;
- (g) A copy of the Notice of Decision sent to the applicant.

In the event of an appeal, a copy of this record should be forwarded to the Minister of Natural Resources/Mining and Lands Commissioner.



**NOTTAWASAGA VALLEY CONSERVATION AUTHORITY**  
John Hix Conservation Administration Centre  
8195 Concession Line 8, Utopia, Ontario. L0M 1T0  
Telephone: (705) 424-1479 Fax: (705) 424-2115

NOTICE OF HEARING

IN THE MATTER OF  
The Conservation Authorities Act,  
R.S.O. 1990, Chapter 27

**APPENDIX 1**

AND IN THE MATTER OF  
an application by \_\_\_\_\_

FOR PERMISSION OF THE  
NOTTAWASAGA VALLEY CONSERVATION AUTHORITY  
Pursuant to Regulations made under  
Section 28, Subsection 12 of the said Act

TAKE NOTICE THAT a Hearing before the Executive Committee of the Conservation Authority will be held under Section 28, Subsection 12 of the Conservation Authorities Act at the offices of the said Authority, 8195 Concession Line 8, Utopia, Ontario, at the hour of \_\_\_\_\_ a.m./p.m. on the \_\_\_ th day of \_\_\_\_\_, 200\_\_, with respect to the application by \_\_\_\_\_ to permit the reconstruction of a dam across the existing channel of Innisfil Creek which is an area regulated by the Authority on Lot \_\_\_, Concession \_\_\_, in the Municipality, County of specify.

TAKE NOTICE THAT you have the opportunity to make a delegation and submit supporting written material to the Hearing Board for the meeting of date. If you intend to appear, please contact Beverley Booth, Manager of Planning Policy and Regulations. Written material will be required by date, to allow staff and members of the Hearing Board an opportunity to review the material prior to the meeting.

TAKE NOTICE THAT this hearing is governed by the provisions of the Statutory Powers Procedures Act. Under the Act, a witness is automatically afforded a protection that is similar to the protection of the Ontario Evidence Act. This means that the evidence that a witness gives may not be used in subsequent civil proceedings or in prosecutions against the witness under the Provincial Statute. It does not relieve the witness of the obligation of this oath since matters of perjury are not affected by the automatic affording of the protection. The significance is that the legislation is Provincial and cannot affect Federal matters. If a witness requires the protection of the Canada Evidence Act that protection must be obtained in the usual manner. The Ontario Statute requires the tribunal to draw this matter to the attention of the witness, as the tribunal has no knowledge of the affect of any evidence that a witness may give.

AND FURTHER TAKE NOTICE that if you do not attend this Hearing, the Executive Committee of this Conservation Authority will proceed in your absence, and you will not be entitled to any further notice in the proceedings.

DATED this \_\_\_ th day of \_\_\_\_\_, 200\_\_.

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Charles F. Burgess, M.C.I.P., R.P.P.  
Director of Planning

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Beverley G. Booth, M.Sc.  
Manager of Planning Policy and Regulations

C.c. NVCA Chair  
Members of the Hearing Board  
Mr. W. Wilson - NVCA, CAO  
Mr. C. Burgess - NVCA, Director of Planning  
Ms. B. Booth - NVCA, Manager of Planning Policy & Regulations  
Clerk of the Municipality in which the site of the proposed work is located  
District Office MNR, MOE (if appropriate)  
Fisheries and Oceans Canada (if appropriate)



## APPENDIX 2

1. Motion for the Full Authority to sit as Hearing Board.
2. Roll Call of the Hearing Board members.
3. Chair's Opening Remarks (see Appendix C).
4. The Chief Administrative Officer shall introduce to the Hearing Board the property owner/applicant and his agent (if applicable) and NVCA staff who will be participating in the hearing.
5. NVCA staff shall introduce the application and the location for the proposed works.
6. NVCA staff shall present the staff report (the time allowed for this presentation shall generally not exceed 15 minutes).
7. Staff will provide a recommendation to the Hearing Board for the proposed application.
8. The applicant and/or his agent will speak and also make any comments on the staff report, if he so desires (the time allowed for this presentation shall generally not exceed 15 minutes).
9. The Hearing Board shall allow NVCA staff an opportunity for rebuttal (the time allowed for rebuttal shall generally not exceed 10 minutes and shall be confirmed prior to the commencement of the hearing).
10. The Hearing Board shall allow the applicant an opportunity for rebuttal (the time allowed for rebuttal shall generally not exceed 10 minutes and shall be confirmed prior to the commencement of the hearing).
11. The Hearing Board shall question, if necessary, both the staff and the applicant/agent.
12. The Hearing Board shall move into camera.
13. Members of the Hearing Board shall consider the information presented by staff and the applicant and formulate a decision motion.
14. The Hearing Board shall move out of camera.
15. The Hearing Board shall hold a recorded, simple majority vote in open session to formalize the Hearing Board's decision.
16. The Chair shall advise the owner/applicant and NVCA staff of the Hearing Board's decision.

17. If there is a decision to refuse permission of the application, the Chair shall notify the owner/applicant of his/her right to appeal the decision to the Minister of Natural Resources within 30 days of receipt of the reasons for the decision.
18. Motion to move out of Hearing Board and to sit as the Full Authority.
19. The Chief Administrative Officer shall advise the owner/applicant in writing (Notice of Decision – see Appendix D) of the Hearing Board's decision, the reasons for the decision as well as the owner/applicant of his/her right to appeal the decision to the Minister of Natural Resources within 30 days of receipt of the reasons for the decision.

## APPENDIX 3

# CHAIRS REMARKS WHEN CONDUCTING HEARINGS FOR APPLICATIONS MADE UNDER SECTION 28 OF THE CONSERVATION AUTHORITIES ACT

We are now going to conduct a hearing under Section 28 of the Conservation Authorities Act in respect to an application by specify for permission to:

- 1) describe proposed work(s)

The Nottawasaga Valley Conservation Authority has adopted regulations under Section 28 of the Conservation Authorities Act which requires the permission of the Authority for development within an area regulated by the Authority in order to ensure no adverse affect on (the control of flooding, erosion, dynamic beaches or pollution or conservation of land) or to permit alteration to a watercourse or interference with a wetland.

Staff has reviewed this proposed work and a copy of the staff report has been given to the applicant.

The Conservation Authorities Act, Section 28(12) provides that:

Permission required under a regulation made under Subsection 1(a), (b) or (c) shall not be refused or granted subject to conditions unless the person requesting permission has been given the opportunity to require a hearing before the authority.

In holding this hearing, the Hearing Board is to determine whether or not a permit is to be issued. In doing so, we can only consider the application in the form that is before us, the presentation by staff, and such evidence as may be given and the submissions to be made on behalf of the applicant.

The proceedings will be conducted according to the Statutory Powers Procedure Act.

Witnesses have the protection of the Canada Evidence Act which does not excuse them from answering proper questions on the ground that the answers may tend to incriminate them or expose them to liability in civil proceedings, but such answers may not be used against the witness in subsequent criminal proceedings, except in a prosecution for perjury.

The procedure in general shall be informal. Evidence will be given under oath or affirmation.

If the applicant has any questions to ask of the Hearing Board or of the Authority representatives, they must be directed to the Chair of the Board.

**APPENDIX 4**

(Date)

**BY REGISTERED MAIL**

(name)  
(mailing address)

Dear:

**RE: NOTICE OF DECISION**  
**Hearing Pursuant to Section 28(12) of the Conservation Authorities Act**  
**Proposed Residential Development**  
**Lot , Plan ; ?? Drive City of**  
**(Application #)**

In accordance with the requirements of the Conservation Authorities Act, the Nottawasaga Valley Conservation Authority provides the following Notice of Decision:

On (**meeting date**), the Hearing Board of the Nottawasaga Valley Conservation Authority has **refused/approved your application/approved your application with conditions**. Please note that this decision is based on the following reasons: (***the proposed development/alteration to a watercourse or shoreline adversely affects the control of flooding, erosion, dynamic beaches or pollution or interference with a wetland or conservation of land***).

In accordance with Section 28 (15) of the Conservation Authorities Act, An applicant who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons under subsection (14), appeal to the Minister who may refuse the permission; or grant permission, with or without conditions. For your information, should you wish to exercise your right to appeal the decision, a letter by you or your agent/counsel setting out your appeal must be sent within 30 days of receiving this decision addressed to:

The Honourable David Ramsay, Minister of Natural Resources  
Queen's Park, Whitney Block  
99 Wellesley Street West, 6th Floor, Room 6630  
Toronto, Ontario M7A 1W3  
TEL:(416) 314-2301 FAX: (416) 314-2216

Should you require any further information, please do not hesitate to contact Beverley Booth or the undersigned.

Yours truly,

Wayne R. Wilson  
Chief Administrative Officer/Secretary Treasurer

C.c. Members NVCA Hearing Board  
Clerk of the Municipality in which the site of the proposed work is located  
District Office MNR, MOE (if appropriate)  
Fisheries and Oceans Canada (if appropriate)

**For More Information Contact**



**Nottawasaga Valley Conservation Authority  
Planning Department  
John Hix Administrative Centre  
8195 8<sup>th</sup> Line  
Utopia, Ontario.  
L0M 1T0**

**Telephone: (705) 424-1479  
Fax: (705) 424-2115**