



---

# Procedures for the Implementation of Ontario Regulation 172/06

Approved by the NVCA Board of Directors: October 26, 2018, Amended October 23, 2020

---



**Nottawasaga Valley**  
Conservation Authority

8195 8<sup>th</sup> Line, Utopia, ON, L0M 1T0  
705-424-1479 | [admin@nvca.on.ca](mailto:admin@nvca.on.ca) | [nvca.on.ca](http://nvca.on.ca)

# Contents

Introduction .....	1
2.0 Legislation .....	1
2.1 <i>Conservation Authorities Act</i> .....	1
2.2 Ontario Regulation 172/06 .....	1
2.3 Regulated Areas .....	2
2.4 Regulated Activities.....	3
3.0 Permit Process .....	3
3.1 Pre-Consultation .....	3
3.2 Completing an Application Form .....	4
3.3 Payment of Processing Fees .....	4
3.4 Timelines for Processing of Applications .....	5
3.5 Validity of Permits.....	5
3.6 Ratification of Permits .....	5
3.7 Transfer of Permits .....	6
3.8 Responsibility of the Applicant .....	6
3.9 Withdrawal of Permission.....	6
4.0 Hearing and Appeal Process .....	6
4.1 Refusal of Applications .....	6
4.2 Requests for a Hearing .....	7
4.3 The Hearing Process.....	7
4.4 The Appeal Process .....	8
5.0 Enforcement .....	8
Appendix A: Relevant Legislation & Guidelines .....	10
Appendix B: NVCA Hearing Guidelines .....	12
1.0 Purpose of Hearing Guidelines .....	12
2.0 The NVCA Hearing Board .....	12
3.0 Pre-Hearing Procedures .....	13
4.0 Pre-submission of Reports .....	15
5.0 The Hearing .....	16
6.0 Conduct Hearing .....	17
7.0 Hearing Decision.....	20
Appendix 1: Notice of Hearing.....	22
Appendix 2: Hearing Procedures .....	24
Appendix 3: Hearing Procedures—Chair’s Remarks .....	26
Appendix 4: Notice of Decision.....	28

**Alternative Format - If you require this document in an alternative format, please contact NVCA at 705-424-1479, extension 228 or [admin@nvca.on.ca](mailto:admin@nvca.on.ca).**

## 1.0 Introduction

This procedural manual was developed to aid landowners, developers, consultants and other stakeholders who are interested in obtaining *Conservation Authorities Act* approvals from the Nottawasaga Valley Conservation Authority (NVCA). The guidelines also assist staff in meeting the NVCA's permitting responsibilities under Section 28 of the Act. Further, the guidelines serve as a valuable source of information for the NVCA's Board of Directors, municipal staff, development industry and the public.

## 2.0 Legislation

### 2.1 *Conservation Authorities Act*

The *Conservation Authorities Act*, enacted in 1946, established conservation authorities as local agencies that respond 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 pollution or the conservation of land may be affected by the development."

### 2.2 Ontario Regulation 172/06

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 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; and

- Minimize the hazards associated with development in floodplains and areas which are susceptible to erosion.

## 2.3 Regulated Areas

Ontario Regulation 172/06 applies to **hazardous lands** that 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 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 Forestry (MNR) 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 over the areas shown as being regulated on the mapping of regulated areas.

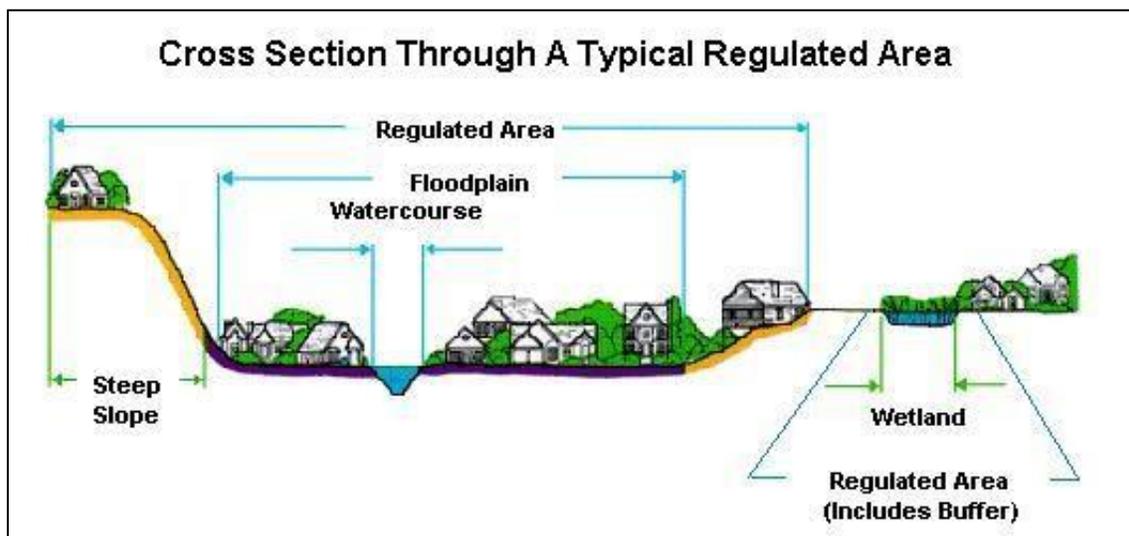


Figure 1 – Cross-section through a typical regulated area under Ontario Regulation 172/06

## 2.4 Regulated Activities

The following work requires permission within an area that 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.

## 3.0 Permit Process

### 3.1 Pre-Consultation

It is important for applicants to discuss their development proposal with NVCA staff prior to submitting a formal permit application. A preliminary consultation can help identify how the proposal may be affected by NVCA's policies and guidelines. NVCA staff will inform applicants of the general review and approval process, discuss potential study requirements, indicate whether the proposal is supported in principle and outline anticipated processing timelines. Preliminary consultation also allows staff to confirm what constitutes a complete application.

Furthermore, the NVCA has a dedicated staff member that is available for pre-consultation on projects directly related to agricultural practices. These services are provided free of charge for the applicant.

As a starting point, prior to pre-consultation applicants may wish to visit NVCA's website and use the Interactive Property Map to determine if their property is regulated by the authority ([nvca.on.ca/planning-permits](https://nvca.on.ca/planning-permits)).

### **3.2 Completing an Application Form**

Application forms are available at the NVCA's administrative office and on the authority's website ([nvca.on.ca/planning-permits](https://nvca.on.ca/planning-permits)).

Before submitting an application, property owners are encouraged to consult with NVCA staff 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 a complete 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. NVCA staff will advise applicants if other specific information is required in order to complete a review of their application.

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

### **3.3 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 ([nvca.on.ca/planning-permits](https://nvca.on.ca/planning-permits)).

Processing fees for applications submitted under Ontario Regulation 172/06 must be paid at the time an application is submitted. An application will be considered to be incomplete, and the applicant will be notified, if the associated processing fee has not been paid and will be placed on hold pending the submission of the processing fee.

The fee schedule identifies permit categories including: minor, intermediate, and major. The schedule also has separate categories addressing review fees for agricultural projects.

### 3.4 Timelines for Processing of Applications

Permit applications under the *Conservation Authorities Act* will be generally processed within timelines outlined in MNR's May 2010 "Policies and Procedures for Conservation Authority Plan Review and Permitting Activities." This report is available on the NVCA's website ([nvca.on.ca/planning-permits](http://nvca.on.ca/planning-permits)).

This document identifies that conservation authorities are to make a decision (i.e., recommendation to approve or recommendation for refusal with right to an appeal) with respect to a permission (permit) application and pursuant to the *Conservation Authorities Act* within 30 days for a complete minor application and 90 days for a complete major application. The NVCA will notify applicants, in writing, within 21 days of the receipt of a permission (permit) application, as to whether the application has been deemed complete or not. The applicant should pre-consult with NVCA staff prior to submission of an application to determine complete permit application requirements for specific projects.

### 3.5 Validity of Permits

In accordance with Ontario Regulation 172/06 (Section 9), there are two categories of permission:

- The first category (up to and including 24 months) is expected to address the majority of applications, where a proposed project can reasonably be expected to be completed within two years of receiving a permit from the NVCA. Staff note that NVCA currently issues all permits for a length of 24 months. This time period has been sufficient for the implementation of the vast majority of permits granted by the authority.
- The second category is expected to address larger-scale projects, such as municipal infrastructure and subdivisions, which cannot reasonably be expected to be completed within 24 months of receiving a permit from the NVCA. This could be due to the fact that the applicant may have to obtain approvals from other regulatory agencies and/or the project is of such a scale that the construction period will extend beyond 24 months. Permits for 60 months may be issued in these cases.

### 3.6 Ratification of Permits

All approved 60 month (5 year) permits will normally be ratified by the Board of Directors on a biannual basis. All other permit/clearance approvals will be brought to the Board of Directors for information on a biannual basis.

### **3.7 Transfer of Permits**

Permits issued under Ontario Regulation 172/06 are non-transferable. Permits will be issued to the registered property owner or an authorized agent unless otherwise authorized by the property owner.

### **3.8 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 (e.g., municipalities, Niagara Escarpment Commission), or complying with all conditions that have been imposed by other agencies.

### **3.9 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 cancelling a permit, the NVCA shall give the holder of the permit notice of the intent to cancel the permit, indicating that permission will be cancelled unless the holder can show cause why the permit should not be cancelled. If cause can be shown, NVCA shall hold a hearing with the opportunity to have the permit reinstated by the NVCA Hearing Board.

## **4.0 Hearing and Appeal Process**

### **4.1 Refusal of Applications**

Whenever possible, NVCA staff work with applicants in an attempt to find a solution to their proposal when an application is not in conformity with policies and legislation:

- NVCA Development, Interference with Wetlands and Alterations To Shorelines and Watercourses Regulation (Ontario Regulation 172/06);
- NVCA Planning and Regulations Guidelines (Aug 2009);
- NVCA Natural Hazards Technical Guide (Dec 2013);
- The Provincial Policy Statement and associated technical guidelines prepared by the Ontario Ministry of Natural Resources and Forestry; and

- All policy documents and guidelines approved by the NVCA Board of Directors.

However, there are occasions when a mutually agreeable solution cannot be reached, and NVCA staff will either:

- Issue a permit with specific conditions, or
- Recommend refusal of the application to the Board of Directors, and based on the Board's decision, refuse to issue a permit for the application.

NVCA staff will recommend that an application be refused if:

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

## **4.2 Requests for a Hearing**

If an applicant does not agree with conditions set by the NVCA in a permit, or NVCA staff recommends refusal of an application, the applicant has an opportunity to appeal this decision and request a hearing before the NVCA Board of Directors (who serve as the authority's Hearing Board; see Appendix B, Section 2.0).

If a hearing is requested, the NVCA will schedule 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. They will also be advised of the NVCA's hearing process.

## **4.3 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.

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.

Refer to Appendix B for the NVCA's Hearing Guidelines.

#### 4.4 The Appeal Process

In accordance with Section 28(15) of the *Conservation Authorities Act*, an applicant who has been refused permission by the Hearing Board 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 Office of the Mining and Lands Tribunal. The Tribunal may refuse the permission or grant permission with or without conditions.

Appeals should be forwarded to:

Office of the Mining and Lands Tribunal  
700 Bay Street, 24<sup>th</sup> Floor, Box 2400  
Toronto, ON, M5G 1Z6

#### 5.0 Enforcement

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 officers to enforce Ontario Regulation 172/06 as well as any subsequent regulations.

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 shall inspect observed and reported violations of the regulation and may issue a violation notice or an information letter to the owner of the property and to the person undertaking the work, if different from the property owner.

In general, where a violation has been identified, property owners have two options:

- 1) Immediately stop activity and contact NVCA to obtain the necessary permits, provided the activity adheres to NVCA requirements; or
- 2) Remove the offending development or stop the activity and restore the area to its original condition by methods acceptable to the NVCA.

Where neither of these options are exercised to NVCA's satisfaction, the authority may proceed to take the matter to court. Every person who contravenes the

regulation may be liable to a fine or a term of imprisonment. The courts may also order removal of development and/or rehabilitation of watercourses and wetlands.

It is the preference of the NVCA to avoid having to proceed to court. Rather, NVCA staff prefer to work with applicants to find a mutually agreeable solution that is in alignment with NVCA policies and guidelines.

## Appendix A: Relevant Legislation & Guidelines

Please note legislation and guidelines other than those listed below may be relevant in specific situations.

### NVCA Guidelines & Policies

The most current version of NVCA's guidelines and regulations can be found at <http://www.nvca.on.ca/planning-permits/planning-guidelines>. This includes:

- [Policies and Procedures for Conservation Authority Plan Review and Permitting Activities](#)
- [NVCA Planning and Regulation Guidelines](#)
- [NVCA Policy to Charge Fees for Services Related to Planning and Development Related Activities](#)
- [Procedural Guideline for the Placement of Large Quantities of Fill](#)
- [Ponds Policy](#)
- [Procedures for the Implementation of Ontario Regulation 172/06.pdf](#) (this document)
- Links to NVCA's Development Review Guidelines and Guidelines for Stormwater Management Review and Approval Guide
  - [NVCA Natural Hazards Technical Guide](#)
  - [NVCA Stormwater Technical Guide](#)
  - [NVCA Stormwater Management Pond Planting Guidelines](#)

### Provincial Legislation

The most current versions of the following Acts and regulations can be found at <http://www.ontario.ca/laws>.

- [Conservation Authorities Act](#)
- [Evidence Act](#)
- [Ontario Regulation 172/06](#) - Nottawasaga Valley Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses

- [Planning Act](#)
- [Provincial Policy Statement](#) (found at <http://www.mah.gov.on.ca/>)
- [Statutory Powers Procedure Act](#)

### **Federal Legislation**

The most current versions of the following Acts and regulations can be found at <http://laws-lois.justice.gc.ca/>.

- [Canada Evidence Act](#)

# Appendix B: NVCA Hearing Guidelines

## Hearing Guidelines

For Applications made under Section 28 of the *Conservation Authorities Act*

In Conformity with *Conservation Authorities Act* Hearing Guidelines (October 2005, Amended 2018, Amended 2020)

Prepared by Conservation Ontario and  
the Ontario Ministry of Natural Resources and Forestry

### 1.0 Purpose of Hearing Guidelines

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 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, erosion, dynamic beach, pollution or conservation of land.

The Nottawasaga Valley Conservation Authority (NVCA) Hearing Guidelines 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, Amended 2018, Amended 2020) prepared by Conservation Ontario and the Ontario Ministry of Natural Resources and Forestry, 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 and 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(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 NVCA, 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. These materials can be distributed electronically.
- (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 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 NVCA's 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 30 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 or manner in which the hearing will be held. If the meeting is to be held electronically, the notice will also include "The applicant should notify the Authority if they believe holding the hearing electronically is likely to cause them significant prejudice. The Authority shall assume the applicant has no objection to the electronic hearing if no such notification is received".
- (c) Identification of the applicant, the location of the property and the nature of the application which is 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 clerk and chief building official of the municipality in which the site of the proposed work is located; and
  - The district offices of the provincial government (e.g., MNRF, MOECC) if appropriate.

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

## **4.0 Pre-submission of Reports**

### **4.1 Disclosure to the Applicant**

The NVCA shall provide a copy of the following material to the applicant 14 days prior to the date of the hearing:

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

### **4.2 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.

### **4.3 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 in advance of the hearing, with the agenda for the upcoming meeting.

## **5.0 The Hearing**

### **5.1 Public Hearing**

Pursuant to the *Statutory Powers Procedure Act*, hearings, including electronic hearings, are required to be held in public. For electronic hearings, public attendance should be synchronous with the hearing. 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.

### **5.2 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.

### **5.3 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.

### **5.4 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.

### **5.5 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.

## **5.6 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 Hearing 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.

## **6.0 Conduct Hearing**

### **6.1 Record of Attending Hearing Board Members**

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

### **6.2 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*.

Refer to Appendix 3 for the Chair's Opening Remarks. In an electronic hearing, all the parties and the members of the Hearing Board must be able to clearly hear one another and any witnesses throughout the hearing.

### **6.3 Presentation of Information by NVCA Staff**

Staff of the NVCA 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 4 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 Director or designate shall coordinate the presentation of information on behalf of authority staff and will ask questions on behalf of authority staff.

### **6.4 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 Services 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 Hearing Board.
- The applicant's presentation may include technical witnesses (e.g., engineer, ecologist, hydrogeologist).

The applicant should not submit new information at the hearing as staff of the NVCA 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.

## **6.5 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.

## **6.6 Deliberation**

After all the information has been presented, the Hearing Board may adjourn the hearing and retire to closed session 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.

## **7.0 Hearing Decision**

The Hearing Board shall hold a recorded vote in open session, to decide on the decision motion before the Hearing 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 details on their right to appeal the decision within 30 days upon receipt of the written decision to the Mining and Lands Tribunal.

### **7.1 Notice of Decision**

It is important that the hearing participants be provided with a clear understanding of the reasons for the applications refusal or approval. The Hearing Board shall itemize and record information of particular significance which led to their decision.

The Notice of Decision notice shall include the following information:

- The identification of the applicant, property and the nature of the application that was the subject of the hearing.
- 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 has been included as Appendix 4.

### **7.2 Adoption**

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

### **7.3 Record of the Hearing**

The NVCA shall compile a record of the hearing. This record shall be comprised of the following documents:

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

- A copy of the minutes of the hearing.
- A copy of the decision of the Hearing Board and the reasons for their decision.
- 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 Mining and Lands Tribunal.

## Appendix 1: Notice of Hearing

### NOTICE OF HEARING

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

AND IN THE MATTER OF  
an application by <Name>

**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 Hearing Board of the NVCA 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 <time> on the <date, month> of <year> , [for electronic hearings, include details about the manner in which the hearing will be held]with respect to the application by <name> to permit <description of work and waterway/sub-watershed>, which is an area regulated by the authority on <Lot , Concession , Municipality, County> .

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 [For electronic hearings: or if you believe that holding the hearing electronically is likely to cause significant prejudice], please contact <appropriate NVCA staff name and title>. 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 effect of any evidence that a witness may give.

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

DATED this <date. month> of <year>

<Signature, Name>, Chief Administrative Officer

c.c. NVCA Chair, Members of the Hearing Board, Clerk of the municipality in which the site of the proposed work is located, District Office MNR, MOECC (if appropriate)

## Appendix 2: Hearing Procedures

1. Motion for the full authority to sit as Hearing Board.
2. Roll call of the Hearing Board members. For electronic hearings, the Chair shall ensure that all parties and the Hearing Board are able to clearly hear one another and any witnesses throughout the hearing.
3. Chair's Opening Remarks (see Appendix 3).
4. The Chief Administrative Officer shall introduce to the Hearing Board the property owner/applicant and their 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 their agent will speak and also make any comments on the staff report, if they so desire (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 closed session. For electronic meetings, the Hearing Board will separate from other participants for deliberation.
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 closed session.

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 Mining and Lands Tribunal 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 4) 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 Mining and Lands Tribunal within 30 days of receipt of the reasons for the decision.

## Appendix 3: Hearing Procedures—Chair’s Remarks

### Chair’s 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:

- <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 effect 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 and the Board. The applicant was invited to file material in response to the staff report, a copy of which has also been provided to the Board.

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. Only information disclosed prior to the hearing is to be presented at the hearing.

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: Notice of Decision

<Date>

BY REGISTERED MAIL

<Name>

<Mailing address>

Dear <Name>,

**RE: NOTICE OF DECISION**

Hearing Pursuant to Section 28(12) of the *Conservation Authorities Act*  
Proposed Residential Development

<Lot , Plan; Drive; City>

<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:

Office of the Mining and Lands Tribunal  
700 Bay Street, 24<sup>th</sup> Floor, Box 2400  
Toronto, ON M5G 1Z6

Should you require any further information, please do not hesitate to contact <Name>, Director of Planning Services, or the undersigned.

Yours truly,

<Signature, Name>, Chief Administrative Officer

c.c. Members NVCA Hearing Board  
Clerk of the Municipality in which the site of the proposed work is located  
District Office MNRF  
MOECC (if appropriate)