



# **Budget & Administration Committee Meeting Agenda**

Thursday, October 21, 2021



## **Budget & Administration Committee Meeting**

**October 21, 2021 at 6:00 P.M.**

**This meeting will be held in person for Budget and Administration committee members and designated, limited staff only.**

**The public may access the meeting by teleconference.**

**To access the meeting, please dial 1-866-219-8638.**

**Please then enter the conference access code: 4987945 and the # key.**

**1. Chair's Remarks** – Moccio

**2. Declaration of Conflict of Interest**

**3. Approval of Agenda**

**4. Delegations**

**5. Consent Items**

5.1. Approval of Budget & Administration Committee Minutes  
– September 16, 2021

**6. Business Arising from the Minutes**

**7. Staff Reports/Memorandums**

Memorandums to be Received:

7.1. 9-month Capital & Major Maintenance	– McDougall
7.2. 3 <sup>rd</sup> Quarter Vendor Report	– McDougall
7.3. Provincial Update to the Conservation Authorities Act	– Burnside

Reports for Recommendation:

7.4 2022 Operating Budget – Background and Outline Report to be presented at the meeting	– McDougall
7.5 Amendments to CA Act Hearing Guidelines	– Burnside

**8. New Business**

**9. In-Camera Items**

**10. Next Meeting – November 18, 2021**

**11. Adjournment**

## Hamilton Conservation Authority Minutes

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### Budget & Administration Committee

**September 16, 2021**

Minutes of the Budget & Administration Committee meeting held on Thursday, September 16, 2021 at 6:00 p.m., by videoconference and livestreamed on YouTube.

**Present:** Santina Moccio, in the Chair  
Dan Bowman  
Jim Cimba  
Lloyd Ferguson

**Regrets:** Maria Topalovic

**Staff Present:** Lisa Burnside, Matt Hall, Bruce Harschnitz, Neil McDougall and Jaime Tellier

**Others Present:** None

#### 1. Chair's Remarks

The Chair called the meeting to order and welcomed everyone present.

#### 2. Declarations of Conflict of Interest

The Chair asked members to declare any conflicts under the HCA Administrative By-law. There were none.

#### 3. Approval of Agenda

The Chair requested any additions or deletions to the agenda. There were none.

**BA 2127**

**MOVED BY: Dan Bowman  
SECONDED BY: Jim Cimba**

**THAT the agenda be approved.**

**CARRIED**

**4. Delegations**

There were none.

**5. Consent Items**

The following consent items were adopted:

5.1. Approval of Budget & Administration Committee Minutes – June 17, 2021

5.2. WSIB Injury Statistics from January – August 2021

**6. Business Arising from the Minutes**

6.1. Verbal Update re: Cootes to Escarpment EcoPark System

At the May 20, 2021 meeting, staff were asked about indigenous consultation in the Cootes to Escarpment project. Lisa Burnside contacted the EcoPark secretariat, Tomas Wiercioch and Dr. David Galbraith, from the Royal Botanical Gardens, and was advised Indigenous communities and First Nations were consulted specifically for this program.

There were formal consultations with Six Nations of the Grand River, the Mississaugas of the Credit First Nation, and the Huron Wendat Nation for each of the six Heritage Lands Management Plans created between 2014 and 2019.

In September 2019, with the support of the Hamilton Urban Indigenous Strategy office, a meeting was convened with individuals from Indigenous communities and partner agencies, to develop an opportunity for cultural sensitivity training.

Tomas and David reaffirmed that the EcoPark is an alliance of various individual agencies that own land, each of which has relationships with Indigenous communities, developed to varying degrees, and the EcoPark System does not intend to replace policy or programs of the partners or their current engagement with indigenous communities.

The members thanked Lisa for the response.

## 7. Staff Reports/Memorandums

### 7.1. 8-month Financial Results - Operating

Neil McDougall presented a summary of the memorandum. The members congratulated staff on the positive financial outlook. The members also commended staff on HCA's engagement of many new conservation area users and spoke of the potential to retain these users in the long-term.

**BA 2128**

**MOVED BY: Dan Bowman  
SECONDED BY: Jim Cimba**

**THAT the memorandum entitled HCA 8-month Financial Results – Operating be received.**

**CARRIED**

Lloyd Ferguson joined the meeting.

### 7.2. 2022 Capital Budget

Neil McDougall presented a summary of the report and answered the members' questions.

Jim Cimba inquired about a statement that fencing will assist with legal liability from trespassers under the Occupiers' Liability Act. Staff were asked if HCA has ever had a claim against it under this Act. Neil advised the Authority has not and noted the statement is meant to address parties who may claim enticement.

Dan Bowman inquired about timing for the campground expansion at Valens Lake Conservation Area and parking lot improvements at Artaban Road. Matt Hall advised there are municipal planning approvals required for the campground expansion. Work on the actual expansion will begin subject to timing of approvals. Matt also noted staff have been undertaking an Environmental Impact Study for the Artaban Road parking lot improvements. The proposed work will also require a Niagara Escarpment Commission approval. Work on the actual expansion will begin subject to timing of approvals and will also require coordination to minimize disruption to visitors.

Lloyd Ferguson inquired about the timing for trail improvements on the Jerseyville Road property currently transitioning from City of Hamilton to HCA ownership. Matt advised funding is currently earmarked for trail maintenance in this year's capital budget. Once the paperwork for the acquisition of the property is completed, staff will schedule maintenance. Matt advised that some improvements will be undertaken this year, with future work into next year. Lisa Burnside advised that City staff are

drafting the property transfer paperwork and HCA staff will finalize the process as soon as it is available.

Lloyd Ferguson also inquired about the status of the Wild Waterworks slide resurfacing tender. Matt advised that staff have considered a reduced scope of work to limit the resurfacing to the outside of the slides to make the project more affordable. Neil added that HCA has contacted City of Hamilton staff and will be meeting shortly to review options.

**BA 2129**

**MOVED BY: Jim Cimba**

**SECONDED BY: Dan Bowman**

**THAT the Budget & Administration Committee recommends to the Board of Directors:**

**THAT the 2021 Capital Budget request as presented herein be submitted to the City of Hamilton for consideration and be included in their block funding budget of 2022.**

**CARRIED**

### **7.3. 2022 Fee Schedule**

Neil McDougall presented the report and answered the members' questions. Lloyd Ferguson inquired about the additional admission fee for second horses. Neil commented that the adjustment was addressing that a second horse was previously not accounted for. The fee was discussed. It was decided that a nominal fee of \$2.00 be applied to admit entrance of second horses into conservation areas.

**BA 2130**

**MOVED BY: Dan Bowman**

**SECONDED BY: Jim Cimba**

**THAT the Budget & Administration Committee recommends to the Board of Directors:**

**THAT the 2022 Fee Schedule as presented herein, and amended to list a fee of \$2.00 for admission of second horses into conservation areas, be approved.**

**CARRIED**



#### 7.4. Governance Review

Lisa Burnside presented a summary of the report and answered the members' questions.

**BA 2131**

**MOVED BY: Lloyd Ferguson  
SECONDED BY: Jim Cimba**

**THAT the Budget & Administration Committee  
recommends to the Board of Directors:**

**THAT the Administrative By-Law be amended with the  
revisions noted in the attached draft, subject to and  
including any further revisions as noted during the  
September 16, 2021 meeting.**

**CARRIED**

#### **8. New Business**

There was none.

#### **9. In-Camera Items for Matters of Law, Personnel and Property**

**BA 2132**

**MOVED BY: Dan Bowman  
SECONDED BY: Jim Cimba**

**THAT the Budget and Administration Committee moves  
*in camera* for matters of law, personnel and property.**

**CARRIED**

**During the *in camera* session, one legal matter was discussed.**

##### 9.1. Confidential Verbal Update – BA/Sep 01-2021

Lisa Burnside provided the members with a verbal update regarding a legal matter and answered the members' questions.

**BA 2133**

**MOVED BY: Jim Cimba  
SECONDED BY: Dan Bowman**

**THAT the confidential verbal update be received and remain in camera.**

**CARRIED**

**BA 2134**

**MOVED BY: Dan Bowman  
SECONDED BY: Lloyd Ferguson**

**THAT the Budget and Administration Committee moves out of *in camera*.**

**CARRIED**

#### **10.Next Meeting**

The next meeting of the Budget and Administration Committee will be held on Thursday, October 21, 2021 at 6:00 p.m.

#### **11.Next Meeting Adjournment**

On motion, the meeting adjourned.

# Memorandum

**TO:** Budget & Administration Committee

**FROM:** Neil McDougall, Secretary-Treasurer

**MEETING DATE:** October 21, 2021

**RE:** HCA 9-month Financial Results – Capital & Major Maintenance, January – September, 2021

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Sixty three percent of the capital and major maintenance spend for the nine months ended September were spent on projects. The Lake Ontario and Fifty Point marina shoreline repair was the largest at \$365.6 thousand. The Valens Lake cabins was a close second at \$354.8 thousand. The cabins will be substantially complete this year with the landscaping around the cabins grown in next Spring to meet the target opening of the Victoria Day weekend. Parking improvements are underway at multiple locations such as Webster Falls, Tiffany Falls, Artaban and the major effort to open the Saltfleet Conservation area lot complete with Pay and Display technology.

The Major Maintenance grouping made up the remaining thirty seven percent of the total \$1.7 million spent to date. As usual, there was significant forestry work done in all locations. The spend on forestry alone totaled \$215.2 thousand. Within major maintenance, bridges and boardwalks continue to be a primary focus, in particular in the Hamilton Mountain conservation area were the Dofasco boardwalk work continuing during the early months of the year. And of course, the trails and roads are in constant need of upkeep, given the heavy use experienced these last two years.

### **Valens Lake Conservation Area**

#### **Major Maintenance                      12.7%**

Signage	\$	3,177
Bridges		7,489
Roads & Trails		6,425
Building maintenance		8,781
Forestry		32,735

#### **Project                                      87.3%**

West campground expansion		4,385
Service Road Culvert replacement		33,598
Cabins		354,816
Other		9,616
		<hr/>
	\$	461,022

### **Christie Lake Conservation Area**

#### **Major Maintenance                      85.3%**

Bridges	\$	9,736
Signage		5,547
Gates & fencing		3,574
Roads & Trails		47,913
Forestry		22,878
Other		5,855

#### **Project                                      14.7%**

Tews Falls EIS		1,620
Pay & Display (Webster / Middletown)		14,854
		<hr/>
		111,977

### **Dundas Valley Conservation Area & Woodend**

#### **Major Maintenance                      56.9%**

Bridges & boardwalks	23,431
Signage	20,715
Roads & trails	21,996
Forestry	80,064
Other	11,481

#### **Project                                      43.1%**

Woodend WP&E lab renovations	15,553
Tiffany Falls parking improvements	34,724
Artaban parking improvements	58,104
Other	11,201

277,269

### **Fifty Point Conservation Area**

#### **Major Maintenance                      23.7%**

Signage	\$	1,197
Building maintenance		14,594
Bridges/Boardwalks		9,092
Roads & trails		17,265
Masterplans		26,769
Forestry		51,836
Other		505

#### **Project                                      76.3%**

Boat launch ramp repair	15,458
Equipment	9,285
Lake and marina shoreline repair	365,567

511,568

### **Hamilton Mountain Conservation Area**

<b>Major Maintenance</b>	<b>61.8%</b>		
Signage		\$ 3,945	
Fencing/Gates		3,375	
Forestry		19,501	
Roads & trails		18,852	
Bridges/Boardwalks		120,402	
<b>Project</b>	<b>38.2%</b>		
Mt. Albion Pay & Display		2,278	
HMCA Karst autogates		6,842	
Karst equipment		7,168	
Saltfleet parking & trail		86,528	
			268,891

### **Westfield Heritage Village Conservation Area**

<b>Major Maintenance</b>	<b>52.4%</b>		
Other		\$ 267	
Signage		539	
Building maintenance		4,137	
Roads & trails		6,452	
Forestry		8,173	
<b>Project</b>	<b>47.6%</b>		
Water well supply		17,767	
			37,335

**Nine months Capital and MM** \$ 1,668,062

<b>Total Major Maintenance</b>	618,698	37.1%
<b>Total Projects</b>	1,049,364	62.9%

# Memorandum

**TO:** Budget & Administration Committee

**FROM:** Neil McDougall, Secretary-Treasurer

**MEETING DATE:** October 21, 2021

**RE:** HCA 3<sup>rd</sup> Quarter Vendor Report

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## Vendor Summary for Payments July - September, 2021

MARSH CANADA LIMITED	215,571.24	General insurance policies
FREW ENERGY INC	177,061.80	Gas & diesel
PARAMOUNT TRUCK SALES	98,876.80	Fleet purchase
KEY WEST INDUSTRIES INC.	60,263.47	Autogate equipment
CAMIS INC	48,155.05	Reservation fees
NEPTUNE SECURITY SERVICES INC	46,139.03	Spencer Gorge security
AUDCOMP GROUP INC.	37,889.13	Computer maintenance fees
HAMILTON, CITY OF, TAX SECTION	27,335.43	Property taxes
RONA INC	25,251.81	Miscellaneous
CORPORATE EXPRESS CANADA INC.	15,534.43	Janitorial services - Parks
NET ACCESS SYSTEMS INC	14,746.96	Internet service
CHAMBERLAIN PLUMBING AND MECHANICAL INC.	13,667.35	Valens cabins

DURABOND JANITORIAL SERVICES LTD	13,577.40	Cleaning service
EMTERRA ENVIRONMENTAL	13,082.81	Woodend
CENTRE LINE SIGNS	12,709.68	Waste removal
		Conservation area signage
PARAMOUNT PERMANENT ROOFING	12,612.75	Confederation work centre
JOHNSTON MASONRY	12,543.00	Head office
FAIRWAY ELECTRICAL SERVICES	12,093.64	flagstone
		Saltfleet service install
WES MABEE MECHANICAL	11,647.59	AC units
HR DOWNLOADS INC.	11,072.87	Training software
GOLDEN HORSESHOE WHOLESALE INC.	10,356.44	Product for resale
APC AUTO PARTS CENTRES	<u>10,197.31</u>	Miscellaneous supplies
	900,386	# OF LARGE VENDORS 22 10.4%
	76.3%	# OF SMALL VENDORS 190 89.6%
All other < \$10,000	<u>279,330</u>	
	\$	
	<u>1,179,716</u>	<u>212</u>





# Memorandum

**TO:** Budget & Administration Committee

**FROM:** Lisa Burnside, Chief Administrative Officer (CAO)

**MEETING DATE:** October 21, 2021

**RE:** Provincial Update of the Conservation Authorities Act

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## BACKGROUND

On May 13, 2021, the Ministry of the Environment, Conservation and Parks (MECP) posted Phase 1 of the Regulatory Proposals under the Conservation authorities Act to the Environmental Registry for public and agency review. These “Phase 1” proposals represent the first of two phases of regulatory amendments to implement the legislative changes previously made to the Conservation authorities Act. The Phase 1 proposals focus on regulations defining the mandatory programs and services and other aspects regarding governance, oversight and accountability of conservation authorities. The regulatory proposals were outlined in a consultation guide, including:

1. Mandatory programs and services all CAs would be required to provide
2. Requirement for agreements between CAs and participating municipalities (use of municipal levy to fund non-mandatory programs and services)
3. Details of the transition plan CAs must prepare (including preparing an inventory of the authority’s programs and services, and steps to enter into agreements with municipalities)
4. Requirements for each CA to establish a community advisory board; and,
5. Details around the consolidation of individual CA Conservation Areas regulations into a single Minister’s regulation

Consultation on the regulatory proposals took place from May 31 to June 27, 2021.

On October 7, 2021, MECP issued an email (attached as Appendix A) on the three new regulations have been made under the *Conservation Authorities Act*.

## **STAFF COMMENT**

The attached Table 1 provides a high level overview of the changes between the initial proposed regulations and the final version that was released. Many of Conservation Ontario's key concerns and challenges identified during the consultations have been addressed including extended implementation timelines and inclusion of passive recreation activities as a mandatory program and service.

The extended timelines are very necessary for conservation authorities and their member municipalities to establish funding agreements properly, and the general public will benefit from the additional support conservation areas' passive activities can receive as part of a mandatory program.

The regulations will now give conservation authorities until January 1, 2024, to complete the transition to a new budgetary framework with their municipalities. These extended timelines will provide sufficient time for conservation authorities to prepare a transition plan, finalize an inventory of programs and services, and enter into Memorandums of Understanding and/or Agreements with their participating municipalities.

Conservation Ontario will be preparing further details and summaries of the changes that HCA will review as well as updates to their template document to be used for the inventory of programs and services.

Staff will begin work on the transition plan to bring forward to an upcoming Board meeting and the inventory of programs and services will follow to meet the timelines noted in the new regulations.

## **STRATEGIC PLAN LINKAGE**

The initiative refers directly to the HCA Strategic Plan 2019 - 2023:

- **All Strategic Priority Areas – Organizational Excellence, Water management, Natural Heritage Conservation, Conservation Area Experience and Education and Environmental Awareness**

## **AGENCY COMMENTS**

N/A

## **LEGAL/FINANCIAL IMPLICATIONS**

There are no immediate financial implications to the 2022 or 2023 budgets. Transition plans and municipal agreements will be implemented as required and negotiated. Pending timing on completion of agreements and budget preparation timing processes, final impact will occur in either 2024 or 2025 budgets.

## **CONCLUSIONS**

HCA staff will continue to work collaboratively with all parties to better understand and determine what these changes will mean for conservation authorities in general and for our budgeting process.



**TABLE 1. Summary of Changes**

<p><b>Proposed Amendment from ERO:</b> Mandatory programs and services all CAs would be required to provide Six categories of Programs and services related to:</p> <ol style="list-style-type: none"> <li>1. Risk of Natural Hazards</li> <li>2. Conservation and management of lands</li> <li>3. Drinking Water Source Protection under the Clean Water Act</li> <li>4. Lake Simcoe Protection Act</li> <li>5. On site sewage systems approvals by North Bay-Mattawa CA under the building Code Act</li> <li>6. Other Programs and Services (provincial Water Quality &amp; Quantity Monitoring and Core watershed-based Resource Management Strategy)</li> </ol>	<p><b>Final Regulation:</b> The broad categories largely remain in tact</p> <ul style="list-style-type: none"> <li>• Staff will need to review all details on the regulations in each category</li> <li>• It is noted that Conservation and management of lands now includes low-maintenance passive recreation like trails, day use parks and picnicking areas in the list of mandatory programs and services.</li> <li>• The requirement for the development and implementation of various plans by December 31, 2024 is noted in various categories including: <ul style="list-style-type: none"> <li>- ice management plan(s),</li> <li>- natural hazard infrastructure operational management plan(s),</li> <li>- natural hazard infrastructure asset management plan(s),</li> <li>- a conservation area strategy,</li> <li>- a conservation land inventory, and,</li> <li>- a watershed-based resource management strategy</li> </ul> </li> </ul>
<p><b>Proposed Amendment from ERO:</b> Requirement for agreements between CAs and participating municipalities (use of municipal levy to fund non-mandatory programs and services).</p>	<p><b>Final Regulation:</b> Remains in place and provides some specifics that must be included in the agreements including:</p> <ul style="list-style-type: none"> <li>• Termination date</li> <li>• Review period for the purpose of renewal</li> <li>• Agreements must be approved by a resolution of the municipal council of each participating municipality that is a party to the agreement</li> <li>• Agreements must be made available to the public</li> </ul>
<p><b>Proposed Amendment from ERO:</b> Details of the transition plan CAs must prepare (including preparing an inventory of the authority's programs and services, and steps to enter into agreements with municipalities).</p> <ul style="list-style-type: none"> <li>• Development of transition plan and inventory of programs and services by December 31, 2021</li> </ul>	<p><b>Final Regulation:</b> Transition plan and inventory remains in place with updated timelines and some new details as follows:</p> <ul style="list-style-type: none"> <li>• Development of a transition plan by December 31, 2021</li> <li>• Preparation of an Inventory of programs and services by February 28, 2022 that now also provides costing information to deliver all</li> </ul>

<ul style="list-style-type: none"> <li>Quarterly reports by CAs on the status of progress made in attaining MOUS provided to the Minister quarterly through 2022</li> <li>All CA/municipal agreements in place by December 31, 2022 and be reflected authority budgets for January 1, 2023</li> </ul>	<p>mandatory and non-mandatory programs and services.</p> <ul style="list-style-type: none"> <li>Starting July 1, 2022 to October 1, 2023, six progress reports by CAs to be submitted to MECP</li> <li>The progress reports will include any comments received/changes to the inventory during consultation with municipalities, an update on the progress of negotiations of cost apportioning agreements, and any difficulties that the authority is experiencing with concluding the requirements prior to the end of the Transition Period</li> <li>All CA/Municipal agreements in place by January 1, 2024 and available to the public</li> <li>January 31, 2024, final report on inventory and statement of compliance regarding agreements</li> </ul>
<p><b>Proposed Amendment from ERO:</b> Requirements for each CA to establish a community advisory board</p>	<p><b>Final Regulation:</b> This requirement has been removed</p>
<p><b>Proposed Amendment from ERO:</b> Details around the consolidation of individual CA Conservation Areas regulations into a single Minister's regulation</p>	<p><b>Final Regulation:</b> This has been enacted with a regulation that consolidates the current individual conservation authority 'Conservation Area' regulations made under Section 29 of the <i>Conservation Authorities Act</i> into one Minister's regulation.</p> <ul style="list-style-type: none"> <li>The regulation reflects the rules of conduct that have been in effect in conservation areas to date on CA-owned land to protect against property damage, for public safety, to protect the resources on the land and public investment.</li> <li>Staff will need to review details but this essentially maintains business as usual with no substantive updates.</li> </ul>

## **Appendix A**

**From:** ca.office (MECP) <ca.office@ontario.ca>

**Sent:** October 7, 2021 3:54 PM

**To:** ca.office (MECP) <ca.office@ontario.ca>

**Subject:** Regulations under the Conservation Authorities Act – Ministry of the Environment, Conservation and Parks

**Ministry of the Environment,  
Conservation and Parks**

Conservation and Source Protection  
Branch

14<sup>th</sup> Floor

40 St. Clair Ave. West

Toronto ON M4V 1M2

**Ministère de l'Environnement, de la  
Protection de la nature et des Parcs**

Direction de la protection de la nature  
et des sources

14<sup>e</sup> étage

40, avenue St. Clair Ouest

Toronto (Ontario) M4V 1M2



Good afternoon:

As part of Ontario's efforts to implement amendments to the *Conservation Authorities Act* made in 2019/2020 to ensure that conservation authorities focus and deliver on their mandates of protecting people and property from flooding and other natural hazards, and conserving natural resources, three (3) new regulations have been made under the *Conservation Authorities Act*:

- Ontario Regulation 686/21: Mandatory Programs and Services. This regulation prescribes the mandatory programs and services conservation authorities would be required to provide, including core watershed-based resource management strategies.
- Ontario Regulation 687/21: Transition Plans and Agreements for Programs and Services Under Section 21.1.2 of the Act. This regulation requires each authority to have a 'transition plan' that would outline the steps to be taken to develop an inventory of programs and services and to enter into agreements with participating municipalities to fund non-mandatory programs and services through a municipal levy, among other things. It also establishes the transition period to enter into those agreements.
- Ontario Regulation 688/21: Rules of Conduct in Conservation Areas. This regulation consolidates the current individual conservation authority 'Conservation Area' regulations made under Section 29 of the *Conservation Authorities Act* into one Minister's regulation that regulates the public use of authority owned land.

The new regulations will focus conservation authorities on their core mandate by prescribing mandatory programs and services they must provide, giving municipalities greater control over which conservation authority non-mandatory programs and services they will fund, and will consolidate "conservation areas" regulations. A decision notice is available on the Environmental Registry of Ontario ([notice number 019-2986](#)).

The regulations reflect extensive comments received on the regulatory proposals posted on the Environmental Registry of Ontario for 45 days from May 13, 2021 until June 27, 2021. We received 444 submissions from municipalities, conservation authorities, Indigenous communities and organizations, environmental non-government organizations, community groups, industry, agricultural sector, and individuals. We also held 3 webinars with ministry staff in which over 500

people attended. All the feedback received during the consultation period was considered, and the final regulations were modified based on this feedback as follows:

- We extended the timeline that conservation authorities must complete the transition to the new funding framework to January 1, 2024.
- We clarified the requirements for municipal involvement in the preparation of the inventory of programs and services.
- We added the requirement for conservation authorities to provide costing information (e.g. total costs for the last 5 years) to deliver all mandatory and non-mandatory programs and services.
- We included low-maintenance passive recreation like trails, day use parks and picnicking areas in the list of mandatory programs and services.
- We provided an extended timeline for specific deliverables (i.e. core watershed-based resource management strategy) under the mandatory programs and services regulation (i.e. to be completed on or before December 31, 2024).
- We removed the requirement for conservation authorities to have community advisory boards (they will continue to be optional for conservation authorities). For clarity, conservation authorities will still have the opportunity for an agriculture representative to be appointed by the Minister.

These regulations will improve conservation and land management efforts, strengthen Ontario's resilience to climate change, ensure continued access to safe drinking water, protect people and property from extreme weather events like flooding, drought, and erosion, and most importantly protect the environment.

Thank you again for your input. You can reach the ministry at [ca.office@ontario.ca](mailto:ca.office@ontario.ca) if you have any questions. The Ministry will also be organizing webinars to answer technical questions in October. I look forward to continuing to work with you to ensure conservation authorities are in the best position to deliver on their core mandate.

Sincerely,

Kirsten Corrigan  
Director, Conservation and Source Protection Branch



# Memorandum

**TO:** Budget & Administration Committee

**FROM:** Neil McDougall, Secretary-Treasurer

**MEETING DATE:** October 21, 2021

**RE:** Overview of Operating Budget 2022

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## BACKGROUND

The goals established for 2022 are the same as in 2021 but the challenges to attaining those goals are quite different.

The specific goals remain as:

- 1) Engage in those activities identified as important in the HCA's 2019 – 2023 Strategic Plan
- 2) Execute the requirements of the Conservation Authorities Act and the tasks laid out in the three new regulations issued by the Ministry of the Environment, Conservation and Parks
- 3) Limit the levy increase asked of the City to no more than that suggested by Council
- 4) Operate on a cash neutral or positive basis

## STAFF COMMENTS

This year, more than ever before, goals 1 and 2 are becoming more tightly intertwined.

Stepping back to the 2021 Budget, contract staffing was added in Water Management, a Project Engineer, and in Natural Heritage Conservation, two invasive species technicians, both in support of Goal 1. These additions have proven to be very successful. In the 2022 Budget, these moves will be complemented by the addition of a Climate Change technician and a Junior Ecologist, both on a contract basis. These actions are not only in line with the Strategic Plan for the initiatives of developing climate change strategies and monitoring, maintaining and enhancing the natural heritage

features on our lands, they are also in line with the new directives of the Ministry in regard to mandatory programs and services and the development of various required plans and policies that will support the delivery of those programs and services, Goal 2.

Additionally, flowing out of the increased demands of the pandemic on Human Resources policies and programs and recent recruitment and retention trends, the 2022 budget contains provision for contract Human Resources support. Like other organizations, HCA has experienced staff retirements, turnover with shorter employment tenures that are the new normal and competition for staff. HCA will be undertaking a job evaluation and market salary survey for the organization in 2022 as approved by the board earlier this year and the additional professional contract staff person will also help deliver on this special project.

For Goal 3, which we have attained each year for the past decade, we will do so again by limiting the increase to the 2% as approved at the recent City of Hamilton GIC meeting, subject, of course, to Council's approval. Last year the operating levy was \$4,592,000. In calculating the 2021 levy, the levy request was first adjusted down in recognition of the windup of an existing loan before applying the allowed increase. The only remaining outstanding loan as at January 1<sup>st</sup> of this year was paid in full in June of 2021. Consequently, the levy request will again be lowered by the loan amount before applying the increase such that the 2022 levy will be \$4,500,000; an actual reduction of 2% in absolute terms.

For Goal 4, recent years' financial results have been very favourable for the HCA. While the pandemic was devastating many businesses, it was driving hiking, camping and general outdoor activities to unprecedented levels. There have never been as many weekday camping bookings and there have never been as many membership cards sold as in 2020 and 2021. The unknown, of course, is whether or not this will continue when other options, such as events, theatres, movies and malls are fully open and when other geographies such as the United States, once again become accessible. The 2022 Budget will be built under the assumption that the pre-pandemic year will be a base that is actually improved on. Not to the levels of 2020 and 2021, but still improved. There are more autogates installed so fewer free accesses, more people have now experienced our properties with some returning and in general, the area population continues to grow.

An inflationary increase of 3% has been included on salaries and wages which recognizes current COLA pressures and aligns with CPI statistics released from Statistics Canada.

One benefit of the recent good results is that there now is an operating reserve that may be accessed should other assumptions fail to come through. Therefore, Goal 4 is not at risk.

Detailed schedules supporting the above will be provided at the B&A meeting on October 21<sup>st</sup>.

# Report

**TO:** Budget & Administration Committee

**FROM:** Lisa Burnside, Chief Administrative Officer (CAO)

**MEETING DATE:** October 21, 2021

**RE:** Amendments to the *Section 28(3) Conservation Authorities Act Hearing Guidelines*

---

## STAFF RECOMMENDATION:

**THAT** the Budget & Administration Committee recommends to the Board of Directors:

**THAT** the *Section 28(3) Conservation Authorities Act Hearing Guidelines*, as contained in the HCA Administrative By-Law, be amended with the revisions noted in the attached draft, subject to and including any further revisions as noted during the October 21, 2021 meeting.

## BACKGROUND

The *Conservation Authorities Act Hearing Guidelines* were jointly released by the Ministry of Natural Resources and Forestry and Conservation Ontario in 2005 and have been subject to periodic review and amendment since that time. The last such amendment was in 2020 to reflect the need for an alternative means to provide hearings electronically during the Covid-19 pandemic.

Bill 229, which received Royal Assent on December 8, 2020, contained a clause that has been proclaimed, the permission for development, zoning order “MZO”. This requires a Conservation Authority (CA) to issue a permit where an MZO has been issued, providing the land is outside of the Greenbelt Area. While a CA must grant the permission, the CA can attach conditions to the permission and applicants have the ability to request a hearing should they object to any of the conditions included. The hearing is only to review the conditions attached to the proposed permit and not to determine whether or not to grant the permission. Updates to the hearing guidelines have been prepared to reflect the nuances associated with these hearings as well as modernizing some of the language in the guideline.

## **STAFF COMMENT**

Conservation Ontario staff have prepared proposed updates to the hearing guidelines to incorporate direction for hearings related to permissions for developments associated with MZOs. In this regard, a new content for the hearing guidelines has been added, including:

- a) Attachment 1 Hearings under Section 28.0.1 of the Conservation 'Authorities Act (Permission for Development, Zoning Order)
- b) New Appendices E, F, G and H which contain templates for Notices of Hearing, Hearing Procedures, Chairperson's remarks, and Notices of Decision.

Additionally, Conservation Ontario staff took the opportunity to modernize some of the language in the hearing guidelines. In this regard, revisions in the attached document are as follows:

1. Section 1.2 Purpose of Hearing Guidelines has been updated and streamlined.
2. Section 2.1 has been renamed Role of the Hearing Board, updated language and further information has been included for apprehension of bias.
3. Section 2.2 has been streamlined to better explain when the right to a hearing arises.
4. Section 2.3 Notice of Hearing has now noted that the CA may be represented at the hearing by counsel or staff and includes the information from section 2.5, removing that as a separate section.
5. Section 3.2 Hearing participants has been updated for greater clarity on third party status.
6. Section 3.3 has been amended to note that a hearing may continue by remaining members and a decision be rendered, if a member must leave, provided quorum is still maintained.
7. Section 5.0 Record has been amended as the minutes of the meeting made at the hearing are not required in the event of an appeal, only the attendance of hearing Board members.
8. Appendix B Hearing procedures has been amended in point 10 to reflect the modern term of closed session and replace the term "in camera".

## **STRATEGIC PLAN LINKAGE**

The proposed updates refer directly to the HCA Strategic Plan 2019-2023:

- **Strategic Goal – Organizational Excellence**

## **AGENCY COMMENTS**

Not applicable.

## **LEGAL/FINANCIAL IMPLICATIONS**

None

## **CONCLUSIONS**

The amendments from Conservation Ontario provide the basis for amendments to individual Conservation Authority Hearing Procedures. The revisions were approved by CO Council for distribution to all CAs on September 27, 2021. They ensure the document is current and provides guidance on hearings related to permissions for developments associated with an MZOs.



**SECTION 28 (3)**  
**CONSERVATION AUTHORITIES ACT**  
**HEARING GUIDELINES**

October 2005, Amended 2018 re. MLT, Amended 2020 re.  
Electronic Hearings, Amended 2021, re. Ontario Land Tribunal,  
and re. s. 28.0.1(7) Hearings



Conservation  
**ONTARIO**  
*Natural Champions*



Ministry of Natural Resources  
Ministère des Richesses naturelles

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## 1. PURPOSE OF HEARING GUIDELINES

The purpose of the Hearing Guidelines is to ~~reflect the changes to the 1998 Conservation Authorities Act~~ provide model hearing guidelines to be adopted by conservation authorities in respect to hearings under the *Conservation Authorities Act*.

The *Conservation Authorities Act* requires that the applicant be ~~party to~~ provided with an opportunity for 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*.

~~The Hearing Rules are adopted under the authority of Section 25.1 of the Statutory Power Procedures Act (SPPA). The SPPA applies to the exercise of statutory power of decision where there is a requirement to hold or to afford the parties to the proceeding an opportunity for a hearing before making a decision. The SPPA sets out minimum procedural requirements governing such hearings and provides rule-making authority to establish rules to govern such proceedings.~~

~~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~~ shall hear and decide whether the application will be approved with or without conditions or refused. ~~In the case of hearings related to applications submitted proposed to Section 28.0.1, the Hearing Board shall determine what conditions, if any, will be attached to the permission. See Attachment 1 for further details.~~

These guidelines have been prepared as an update to the October 1992 hearing guidelines and are intended to provide a step-by-step process to conducting hearings required under Section 28 (12), (13), (14) of the *Conservation Authorities Act*. Similar to the 1992 guidelines, it is hoped that the guidelines will promote the necessary consistency across the Province and ensure that hearings meet the legal requirements of the *Statutory Powers Procedures Act* without being unduly legalistic or intimidating to the participants. Additional considerations have been included related to hearings under Section 28.0.1(7) in Attachment 1.

## 2. PREHEARING PROCEDURES

### 2.1. Apprehension of Bias ~~Role of the Hearing Board~~

In considering the application, the Hearing Board is acting as 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 reasonable 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 Authority taking part in the hearing should ~~be involved, either through participation in committee or 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 have prior involvement with the application that could lead to reasonable apprehension of bias on the part of that member. Where a member has a personal interest, the test is whether a reasonably well-informed person would consider that the interest might have an influence on the exercise of the official's public duty. Where a member is a municipal councilor, the *Municipal Conflict of Interest Act* applies. In the case of a previously expressed opinion, the test is that of an open mind, i.e. is the member capable of persuasion in participating in the decision making.~~

- (b) If material relating to the merits of an application that is the subject of a hearing is distributed to Board members before the hearing, the material shall be distributed to the applicant at the same time. The applicant may be afforded an opportunity to distribute similar pre-hearing material. These materials can be distributed electronically.

~~(c) In instances where the Authority (or Executive Committee) 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.~~

~~(d)~~(c) 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.

Individual Conservation Authorities shall develop a document outlining their own practices and procedures relating to the review and reporting of Section 28 applications, including the role of staff, the applicant and the Authority or Executive Committee as well as, the procedures for the hearing itself. Such policy and procedures manual shall be available to the members of the public upon request and on the Authority's website. These procedures shall have regard for the above information and should be approved by the Conservation Authority Board of Directors.

## 2.2. Application

The right to a hearing ~~is required~~arises where staff is recommending refusal of an application or ~~where there is some indication that the Authority or Executive Committee may not follow staff's recommendation to approve a permit or the applicant objects to the conditions of approval~~is recommending conditions to the approval of an application. The applicant is entitled to reasonable notice of the hearing pursuant to the *Statutory Powers Procedures Act*.

## 2.3. Notice of Hearing

The Notice of Hearing shall be sent to the applicant within sufficient time to allow the applicant to prepare for the hearing. To ensure that reasonable notice is given, it is recommended that prior to sending the Notice of Hearing, the applicant be consulted to determine an agreeable date and time based on the local Conservation Authority's regular meeting schedule.

**The Notice of Hearing must contain or append the following:**

- (a) Reference to the applicable legislation under which the hearing is to be held (i.e.,

the *Conservation Authorities Act*.

- (b) The time, place and the purpose of the hearing. OR for Electronic Hearings:  
The time, purpose of the hearing, and details about the manner in which the hearing will be held.

Note: for electronic hearings the Notice must also contain a statement that 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) Particulars to identify the applicant, property and the nature of the application which are the subject of the hearing.

Note: If the applicant is not the landowner but the prospective owner, the applicant must have written authorization from the registered landowner.

- (d) The reasons for the proposed refusal or conditions of approval shall be specifically stated. This should contain sufficient detail 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 is 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 in extreme circumstances, it is recommended that the hearing not proceed in the absence of the applicant.

- (f) Reminder that the applicant is entitled to be represented at the hearing by a representative such as legal counsel, if desired. The conservation authority may be represented at the hearing by counsel or staff.

- ~~(f)~~(g) A copy of the Authority's Hearing Guidelines.

It is recommended that the Notice of Hearing be directed to the applicant and/or landowner by registered mail. Please refer to **Appendix A** for an example Notice of Hearing.

## 2.4. Presubmission of Reports

The applicant shall submit reports/materials to the Board members in advance of the hearing (i.e., inclusion on an Authority/Executive Committee agenda). The applicant shall be given two weeks to prepare a report once the reasons for the staff recommendations have been received. Subsequently, this may affect the timing and scheduling of the staff hearing reports.

## 2.5. Hearing Information

~~Prior to the hearing, the applicant shall be advised of the local Conservation Authority's hearing procedures upon request.~~

## 3. HEARING

### 3.1. 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.

### 3.2. Hearing Participants

The *Conservation Authorities Act* does not provide for third party status at the ~~local~~ hearing. It is only the information presented by the applicant and Authority staff, or their representatives, that will be considered by the hearing-board members.~~While others may be advised of the local hearing, any~~ Any information provided by third parties that they provide should be incorporated within the ~~presentation of information~~presubmitted reports/materials by, or on behalf of, the applicant or Authority staff, as appropriate.

The hearing however is open to the public. Generally, information received from the public will be incorporated in the agenda as part of the regular Board meeting as an item of correspondence or a delegation, following timeframes specified in the HCA Administrative By-Laws.

### 3.3. Attendance of Hearing Board Members

In accordance with case law relating to the conduct of hearings, those members of the Authority who will decide whether to grant or refuse the application must be present during the full course of the hearing. If it is necessary for a member to leave, the ~~hearing must be adjourned and resumed when either the member returns or if the hearing proceeds, even in the event of an adjournment, only those remaining~~ members who were present after the member left can sit to the conclusion of the hearing~~can continue with the hearing and render a decision, provided quorum is maintained.~~

### 3.4. Adjournments

The 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 form part of the hearing record.

### 3.5. Orders and Directions

The Authority is entitled to make orders or directions to maintain order and prevent the abuse of its hearing processes. A hearing procedures example has been included as **Appendix B**.

### 3.6. Information Presented at Hearings

- (a) The *Statutory Powers Procedure Act*, requires that a witness be informed of ~~his~~their right to object 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 should be provided to the applicant as part of the Notice of Hearing.
- (b) It is the decision of the hearing members as to whether information is presented under oath or affirmation. It is not a legal requirement. The applicant must be informed of the above, prior to or at the start of the hearing.
- (c) The Board may authorize receiving a copy rather than the original document. However, the Board can request certified copies of the 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.

### 3.7. Conduct of Hearing

#### 3.7.1. Record of Attending Hearing Board Members

A record shall be made of the members of the Hearing Board.

#### 3.7.2. Opening Remarks

The Chairperson shall convene the hearing with opening remarks which generally; identify the applicant, the nature of the application, and the property location; outline the hearing procedures; and advise on requirements of the *Canada Evidence Act*. Please reference **Appendix C** for the Opening Remarks model. 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.

#### 3.7.3. Presentation of Authority Staff Information

Staff of the Authority presents the reasons supporting the recommendation for the refusal or conditions of approval of the application. Any reports, documents or plans that form part of the presentation shall be properly indexed and received.

Staff of the Authority should 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.

Consideration should be given to the designation of one staff member or legal counsel who coordinates the presentation of information on behalf of Authority staff and who asks questions on behalf of Authority staff.

#### **3.7.4. Presentation of Applicant Information**

The applicant has the opportunity to present information at the conclusion of the Authority staff presentation. Any reports, documents or plans which form part of the submission should be properly indexed and received.

The applicant shall present information as it applies to the permit application in question. For instance, does the requested activity affect the control of flooding, erosion, dynamic beach or conservation of land or pollution? The hearing does not address the merits of the activity or appropriateness of such a use in terms of planning.

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

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

#### **3.7.5. Questions**

Members of the Hearing Board may direct questions to each speaker as the information is being heard. The applicant and /or agent can make any comments or questions on the staff report.

Pursuant to the *Statutory Powers Procedure Act*, the Board can 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.

#### **3.7.6. Deliberation**

After all the information is presented, the Board may adjourn the hearing and retire in private to confer. The Board may reconvene on the same date or at some later date to advise of the Board's decision. The Board members shall not discuss the hearing with others prior to the decision of the Board being finalized.

## 4. DECISION

The applicant must receive written notice of the decision. The applicant shall be informed of the right to appeal the decision within 30 days upon receipt of the written decision to the Ontario Land Tribunal.

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.

### 4.1. Notice of Decision

The decision notice should 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. A copy of the Hearing Board resolution should be attached.

It is recommended that the written Notice of Decision be forwarded to the applicant by registered mail. A sample Notice of Decision and cover letter has been included as **Appendix D**.

### 4.2. Adoption

A resolution advising of the Board's decision and particulars of the decision should be adopted.

## 5. RECORD

The Authority shall compile a record of the hearing. In the event of an appeal, a copy of the record should be forwarded to the Ontario Land Tribunal. The record must include the following:

- (a) The application for the permit.
- (b) The Notice of Hearing.
- (c) Any orders made by the Board (e.g., for adjournments).
- (d) All information received by the Board.
- (e) ~~The minutes of the meeting made at the hearing.~~ Attendance of Hearing Board members.
- (f) The decision and reasons for decisions of the Board.
- (g) The Notice of Decision sent to the applicant.



## APPENDIX A

### 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

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

**TAKE NOTICE THAT** a Hearing before the ~~Executive Committee~~Board of Directors of the Conservation Authority will be held under Section 28, Subsection 12 of the Conservation Authorities Act at the offices of the said Authority (ADDRESS), at the hour of , **on the day of , 20202021**, [for electronic hearings, include details about the manner in which the hearing will be held] with respect to the application by (**NAME**) to permit 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./alter or interfere with a watercourse, shoreline or wetland***) on Lot , Plan/Lot , Concession , (**Street**) in the City of , Regional Municipality of , River Watershed.

**TAKE NOTICE THAT** you are invited to make a delegation and submit supporting written material to the Executive Committee for the meeting of (**meeting number**). 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 (**name**). Written material will be required by (**date**), to enable the Committee members to review the material prior to the meeting.

**TAKE NOTICE THAT** this hearing is governed by the provisions of the Statutory Powers Procedure 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 a 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 this 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 at this Hearing, the Executive Committee of the Conservation Authority may proceed in your absence, and you will not be entitled to any further notice in the proceedings.

**DATED** the \_\_\_\_ day of , \_\_\_\_\_ 202X

The Executive Committee of the  
Conservation Authority

Per:  
Chief Administrative Officer/Secretary-Treasurer

## APPENDIX B

### Hearing Procedures

1. Motion to sit as Hearing Board.
2. Roll Call followed by the Chairperson's opening remarks. For electronic hearings, the Chairperson shall ensure that all parties and the Hearing Board are able to clearly hear one another and any witnesses throughout the hearing.
3. Staff will introduce to the Hearing Board the applicant/owner, his/her agent and others wishing to speak.
4. Staff will indicate the nature and location of the subject application and the conclusions.
5. Staff will present the staff report included in the Authority/Executive Committee agenda.
6. The applicant and/or their agent will present their material
7. Staff and/or the conservation authority's agent may question the applicant and/or their agent if reasonably required for a full and fair disclosure of matters presented at the Hearing.<sup>1</sup>
8. The applicant and/or their agent may question the conservation authority staff and/or their agent if reasonably required for full and fair disclosure of matters presented at the Hearing.<sup>2</sup>
9. The Hearing Board will question, if necessary, both the staff and the applicant/agent.
10. The Hearing Board will move into closed session for camera deliberation. For electronic meetings, the Hearing Board will separate from other participants for deliberation.
11. Members of the Hearing Board will move and second a motion.
12. A motion will be carried which will culminate in the decision.
13. The Hearing Board will move out of closed session camera. For electronic meetings, the Hearing Board will reconvene with other hearing participants.
14. The Chairperson or Acting Chairperson will advise the owner/applicant of the Hearing Board decision.
15. If decision is "to refuse" or "approve with conditions", the Chairperson or Acting Chairperson shall notify the owner/applicant of his/her right to appeal the decision to the Ontario Land Tribunal within 30 days of receipt of the reasons for the decision.
16. Motion to move out of Hearing Board and sit as the Board of Directors.

<sup>1,2</sup> As per the *Statutory Powers Procedure Act* a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

<sup>2</sup> ~~As per the Statutory Powers Procedure Act a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.~~

## APPENDIX C

### Chairperson's remarks when dealing with hearings (Section 28, Subsection 12 of the *Conservation Authorities Act*) with respect to Ontario Regulation 161/06

We are now going to conduct a hearing under section 28 of the Conservation Authorities Act in respect of an application by: \_\_\_\_\_, for permission to: \_\_\_\_\_

The 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 shoreline or watercourse or interference with a wetland.

The Staff has reviewed this proposed work and prepared a staff report, a copy of which 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.

Under Section 28 (12) of the Conservation Authorities Act, the person requesting permission has the right to a hearing before the Authority/Executive Committee.

In holding this hearing, the Authority Board/Executive Committee is to determine whether or not a permit is to be issued, with or without conditions. In doing so, we can only consider the application in the form that is before us, the staff report, 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. Under Section 5 of the Canada Evidence Act, a witness may refuse to answer any question on the ground that the answer may tend to incriminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

The procedure in general shall be informal without the evidence before it being given under oath or affirmation unless decided by the hearing members.

If the applicant has any questions to ask of the Hearing Board or of the Authority representative, they must be directed to the Chairperson of the board.

## APPENDIX D

### Notice of Decision

(Date)

BY REGISTERED MAIL

(name)

(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  
(name) Conservation Authority provides the following Notice of Decision:

On (**meeting date and number**), the Hearing Board/Authority/Executive Committee refused/approved your application/approved your application with conditions. A copy the Boards/Committee's resolution # has been attached for your records. 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 Ontario Land Tribunal 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 and/or forms by you or your agent/counsel setting out your appeal must be sent within 30 days of receiving this decision addressed to:

Ontario Land Tribunal  
655 Bay Street, Suite 1500  
Toronto, Ontario  
M5G 1E5

Website: olt.gov.on.ca

A carbon copy of this letter should also be sent to this conservation authority. Should you require any further information, please do not hesitate to contact (**staff contact**) or the undersigned.

Yours truly,

Chief Administrative Officer/Secretary Treasurer

Enclosure

## **ATTACHMENT 1:**

### **Hearings under Section 28.0.1 of the *Conservation Authorities Act***

#### **(Permission for Development, Zoning Order)**

Section 28.0.1 of the *Conservation Authorities Act* came into force with the Royal Assent of Bill 229, *Protect, Support and Recover from COVID-19 Act* (Budget Measures), 2020. This section applies to any application submitted to an authority under a regulation made under Section 28 of the Act for permission to carry out all or part of a development project associated with an approved Minister's Zoning Order (MZO). For such applications, an Authority **must** grant permission to the applicant to carry out the activity, provided an MZO has been made by the Minister of Municipal Affairs and Housing, and provided that the authority's regulated area in which the development activity is proposed to take place is not located in the Greenbelt Area designated under section 2 of the *Greenbelt Act*. A permission which is granted under s.28.0.1 may be subject to conditions as prescribed by the issuing Authority.

Understanding that an Authority **must** grant permission for applications submitted pursuant to an approved MZO (pending the above-noted conditions are met), hearings for these applications differ from those under Section 28(12) of the Act, in that a hearing **cannot** be held to determine if a permission should be refused. The Authority may refuse to grant a permit only if i) a zoning order has not been made to authorize the development project, ii) the project is proposed to be carried out in the Greenbelt Area, and iii) if all other prescribed requirements have not been satisfied. Per s.28.0.1 (7) of the Act, the applicant for a permission will be given the opportunity to be heard by the Authority prior to any conditions being attached to the granted permission.

The following table is intended to provide a step-by-step process to conducting hearings required under Section 28.0.1 (7) of the *Conservation Authorities Act*. It is recognized that much of the guidance provided in the body of the Section 28 Hearing Guidelines will be applicable to the s. 28.0.1 (7) hearing process. Where processes differ, the table outlines the necessary considerations for the s. 28.0.1 (7) processes. Where the processes are the same, the table refers to the appropriate sections of the Section 28(3) hearing guidelines.

<b>Sections of the <i>Section 28 Conservation Authorities Act</i> Hearing Guidelines</b>	<b><u>Specific Guidance and/or Processes for S. 28.0.1 (7) Hearings</u></b>
1.0 Purpose of Hearing Guidelines	<p>The purpose of the Hearing Guidelines is to provide model hearing guidelines to be adopted by conservation authorities in respect to hearings under the <i>Conservation Authorities Act</i>.</p> <p>The <i>Conservation Authorities Act</i> requires that the applicant be provided with an opportunity for 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</p>

	<p>conditions. <u>In the case of hearings related to applications submitted pursuant to s. 28.0.1 of the <i>Conservation Authorities Act</i>, the Authority must grant permission to the applicant, provided the requirements set out under this section are met. In this scenario, a hearing will only be held to determine conditions which will be attached to a permission.</u> 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. <u>In the case of applications submitted pursuant to s. 28.0.1 of the <i>Conservation Authorities Act</i>, the Authority may refuse to grant a permit only if i) a zoning order has not been made to authorize the development project, ii) the project is proposed to be carried out in the Greenbelt Area, and iii) if all other prescribed requirements have not been satisfied.</u> The Hearing Board is empowered by law to make a decision, governed by the <u>Statutory Powers Procedures Act</u>.</p> <p>The Hearing Rules are adopted under the authority of Section 25.1 of the <i>Statutory Powers Procedures Act</i> (SPPA). The SPPA applies to the exercise of a statutory power of decision where there is a requirement to hold or to afford the parties to the proceeding an opportunity for a hearing before making a decision. The SPPA sets out minimum procedural requirements governing such hearings and provides rule-making authority for to establish rules to govern such proceedings.</p> <p>The Hearing Board shall hear and decide whether the application will be approved with or without conditions or refused. In the case of hearings related to applications submitted pursuant to Section 28.0.1, the Hearing Board shall determine what conditions, if any, will be attached to the permission. See Attachment 1 for further details.</p> <p>These guidelines have been prepared as an update to the October 1992 hearing guidelines and are intended to provide a step-by-step process to conducting hearings required under Section 28 (12), (13), (14) of the <i>Conservation Authorities Act</i>. Similar to the 1992 guidelines, it is hoped that the guidelines will promote the necessary consistency across the Province and ensure that hearings meet the legal requirements of the <i>Statutory Powers Procedures Act</i> without being unduly legalistic or intimidating to the participants. Additional considerations have been included related to hearings under Section 28.0.1 (7) in Attachment 1</p>
2.0 Prehearing Procedures	<u>Not applicable to S.28.0.1(7) hearings</u>



<p>2.1 Apprehension of Bias</p>	<p>In considering the application, the Hearing Board is acting as 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 reasonable apprehension of bias. The following are three examples of steps to be taken to avoid apprehension of bias where it is likely to arise.</p> <p>(a) No member of the Authority taking part in the hearing should have prior involvement with the application that could lead to a reasonable apprehension of bias on the part of that member. Where a member has a personal interest, the test is whether a reasonably well-informed person would consider that the interest might have an influence on the exercise of the official's public duty. Where a member is a municipal councilor, the <i>Municipal Conflict of Interest Act</i> applies. In the case of a previously expressed opinion, the test is that of an open mind, i.e. is the member capable of persuasion in participating in the decision making</p> <p>(b) If material relating to the merits of an application that is the subject of a hearing is distributed to Board members before the hearing, the material shall be distributed to the applicant at the same time. The applicant may be afforded an opportunity to distribute similar pre-hearing material. These materials can be distributed electronically.</p> <p>(c) 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.</p> <p><u>(d) Where a hearing is required for applications submitted pursuant to s. 28.0.1 of the <i>Conservation Authorities Act</i> (e.g., to determine the conditions of the permission), final decisions on the conditions shall not be made until such a time as the applicant has been given the opportunity to attend a hearing.</u></p> <p>Individual Conservation Authorities shall develop a document outlining their own practices and procedures relating to the review and reporting of Section 28 applications, including the role of staff, the applicant and the Authority or Executive Committee as well as, the procedures for the hearing itself. Such policy and procedures manual shall be available to the members of the public upon request and on the Authority's website. These procedures shall have regard for the above</p>
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	information and should be approved by the Conservation Authority Board of Directors.
2.2 Application	The right to a hearing arises where staff is recommending refusal of an application or is recommending conditions to the approval of an application. <u>Additionally, in the case of applications submitted pursuant to s. 28.0.1 of the CA Act, the authority shall not attach conditions to a permission unless the applicant has been given an opportunity to be heard by the authority.</u> The applicant is entitled to reasonable notice of the hearing pursuant to the <i>Statutory Powers Procedures Act</i> .
2.3 Notice of Hearing	<u>Refer to Section 2.3</u>
2.4 Presubmission of Reports	<u>Refer to Section 2.4</u>
3.0 Hearing	<u>Not applicable to S.28.0.1(7) hearings</u>
3.1 Public Hearing	<u>Refer to Section 3.1</u>
3.2 Hearing participants	<u>Refer to Section 3.2</u>
3.3 Attendance of Hearing Board Members	<u>Refer to Section 3.3</u>
3.4 Adjournments	<u>Refer to Section 3.4</u>
3.5 Orders and Directions	<u>Refer to Section 3.5</u>
3.6 Information Presented at Hearings	<u>Refer to Section 3.6</u>
3.7 Conduct of Hearing	<u>N/A</u>
3.7.1 Record of Attending Hearing Board Members	<u>Refer to Section 3.7.1</u>
3.7.2 Opening Remarks	<u>Refer to Section 3.7.2</u>
3.7.3 Presentation of Authority Staff Information	<u>Refer to Section 3.7.3</u>
3.7.4 Presentation of Applicant Information	<u>Refer to Section 3.7.4</u>
3.7.5 Questions	<u>Refer to Section 3.7.5</u>
3.7.6 Deliberation	<u>Refer to Section 3.7.6</u>
4.0 Decision	<u>Refer to Section 4.0</u>
4.1 Notice of Decision	The decision notice should include the following information: (a) The identification of the applicant, property and the nature of the application that was the subject of the hearing.

	<p>(b) The decision to refuse or approve the application, <u>and in the case of applications under s. 28.0.1 of the CA Act, the decision to approve the application with or without conditions.</u> A copy of the Hearing Board resolution should be attached.</p> <p>It is recommended that the written Notice of Decision be forwarded to the applicant by registered mail. A sample Notice of Decision and cover letter has been included as <b>Appendix H.</b></p>
4.2 Adoption	<u>Refer to section 4.2</u>
5.0 Record	<u>Refer to Section 5.0</u>
Appendix E	<u>A new Appendix E has been prepared which provides an example "Notice of Hearing" for hearings under Section 28.0.1 (7) of the Conservation Authorities Act.</u>
Appendix F	<u>A new Appendix F has been prepared which provides an example "Hearing Procedures" for hearings under Section 28.0.1 (7) of the Conservation Authorities Act.</u>
Appendix G	<u>A new Appendix G has been prepared which provides an example "Chairperson's Remarks" for hearings under Section 28.0.1 (7) of the Conservation Authorities Act</u>
Appendix H	<u>A new Appendix H has been prepared which provides an example "Notice of Decision" for hearings under Section 28.0.1 (7) of the Conservation Authorities Act</u>

## APPENDIX E

### Notice of Hearing

#### (Subsection 28.0.1 (7) of the Conservation Authorities Act)

#### IN THE MATTER OF

The Conservation Authorities Act,  
R.S.O. 1990, Chapter 27

**AND IN THE MATTER OF** an application by

#### FOR THE PERMISSION OF THE CONSERVATION AUTHORITY

Pursuant to Regulations made under  
Section 28.0.1, Subsection 7 of the said Act

**TAKE NOTICE THAT** a Hearing before the ~~Executive Committee~~Board of Directors of the Conservation Authority will be held under Section 28.0.1, Subsection 7 of the Conservation Authorities Act at the offices of the said Authority (ADDRESS), at the hour of , **on the day of** , 20202021, [for electronic hearings, include details about the manner in which the hearing will be held] with respect to the application by (**NAME**) to permit development within an area regulated by the Authority in association with a Minister's Zoning Order (Regulation Number) on Lot , Plan/Lot , Concession , (**Street**) in the City of , Regional Municipality of , River Watershed.

**TAKE NOTICE THAT** you are invited to make a delegation and submit supporting written material to the Executive Committee for the meeting of (**meeting number**). 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 (**name**). Written material will be required by (**date**), to enable the Committee members to review the material prior to the meeting.

TAKE NOTICE THAT pursuant to Section 28.0.1 of the Conservation Authorities Act, a conservation authority is required to grant the permission applied for and may only impose conditions to the permission. The Hearing will therefore focus on the conditions to be imposed to the granting of the permission.

**TAKE NOTICE THAT** this hearing is governed by the provisions of the Statutory Powers Procedure 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 a 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 this 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 at this Hearing, the Executive Committee of the Conservation Authority may proceed in your absence, and you will not be entitled to any further notice in the proceedings.

**DATED** the \_\_\_\_ day of , \_\_\_\_\_ 202X

The Executive Committee of the  
Conservation Authority

Per:  
Chief Administrative Officer/Secretary-Treasurer

## APPENDIX F

### Hearing Procedures

#### (Subsection 28.0.1 (7) of the Conservation Authorities Act)

1. Motion to sit as Hearing Board.
2. Roll Call followed by the Chairperson's opening remarks. For electronic hearings, the Chairperson shall ensure that all parties and the Hearing Board are able to clearly hear one another and any witnesses throughout the hearing.
3. Staff will introduce to the Hearing Board the applicant/owner, his/her agent and others wishing to speak.
4. Staff will indicate the nature and location of the subject application and the conclusions.
5. Staff will present the staff report included in the Authority/Executive Committee agenda.
6. The applicant and/or their agent will present their material
7. Staff and/or the conservation authority's agent may question the applicant and/or their agent if reasonably required for a full and fair disclosure of matters presented at the Hearing.<sup>1</sup>
8. The applicant and/or their agent may question the conservation authority staff and/or their agent if reasonably required for full and fair disclosure of matters presented at the Hearing.<sup>2</sup>
9. The Hearing Board will question, if necessary, both the staff and the applicant/agent.
10. The Hearing Board will move into closed session for camera deliberation. For electronic meetings, the Hearing Board will separate from other participants for deliberation.
11. Members of the Hearing Board will move and second a motion.
12. A motion will be carried which will culminate in the decision.
13. The Hearing Board will move out of closed session camera. For electronic meetings, the Hearing Board will reconvene with other hearing participants.
14. The Chairperson or Acting Chairperson will advise the owner/applicant of the Hearing Board decision.
15. ~~If decision is "to refuse",~~ Ithe Chairperson or Acting Chairperson shall notify the owner/applicant of his/her right to appeal the decision to the Ontario Land Tribunal within 30 days of receipt of the reasons for the decision.
16. Motion to move out of Hearing Board and sit as the Board of Directors.

<sup>1, 2</sup> As per the *Statutory Powers Procedure Act* a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

## APPENDIX G

### Chairperson's remarks when dealing with hearings (Section 28.0.1, Subsection 7 of the Conservation Authorities Act) with respect to Ontario Regulation 161/06

We are now going to conduct a hearing under section 28.0.1 of the Conservation Authorities Act in respect of an application by: \_\_\_\_\_, for permission to: \_\_\_\_\_

Under Section 28.0.1 of the Conservation Authorities Act, an Authority is required to grant permission for any application submitted under a regulation made under subsection 28(1) for permission to carry out all or part of a development project, in an area regulated by the Authority, associated with a Minister's Zoning Order, provided the criteria listed under subsection 28.0.1 (1) are met. A permission is subject to any conditions as may be prescribed by the Authority.

The Staff has reviewed this proposed work and prepared a staff report, including the proposed conditions of approval for the proposed work, which 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.

Under Section 28.0.1 (7) of the Conservation Authorities Act, the person requesting permission has the right to a hearing before the Authority/Executive Committee.

In holding this hearing, the Authority Board/Executive Committee is to determine the prescribed conditions to be attached to the approved permission. In doing so, we can only consider the application in the form that is before us, the staff report, 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. Under Section 5 of the Canada Evidence Act, a witness may refuse to answer any question on the ground that the answer may tend to incriminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

The procedure in general shall be informal without the evidence before it being given under oath or affirmation unless decided by the hearing members.

If the applicant has any questions to ask of the Hearing Board or of the Authority representative, they must be directed to the Chairperson of the board.

## APPENDIX H

### Notice of Decision

#### (Subsection 28.0.1 (7) of the Conservation Authorities Act)

(Date)

BY REGISTERED MAIL

(name)

(address)

Dear:

RE: NOTICE OF DECISION

Hearing Pursuant to Section 28.0.1 (7) 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 (name) Conservation Authority provides the following Notice of Decision:

On (**meeting date and number**), the Hearing Board/Authority/Executive Committee approved your application/approved your application with conditions. A copy the Board's/Committee's resolution # has been attached for your records. Please note that this decision is based on the following reasons: (conditions are required to mitigate the effects of the development project on the control of flooding, erosion, dynamic beaches or pollutions or the conservation of land; or conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property).

In accordance with Section 28.0.1 (9) of the Conservation Authorities Act, an applicant who objects to conditions imposed on a permission may, within 15 days of receiving the reasons under subsection (8), submit a request to the Minister for the Minister to review the conditions. The Minister may confirm or vary the conditions as proposed by the authority. Alternatively, in accordance with Section 28.0.1 (19) of the Conservation Authorities Act, the holder of a permission who objects to the conditions proposed by an authority may, within 90 days of the reasons under subsection (8) being issued, appeal to the Ontario Land Tribunal to review the conditions. For your information, should you wish to exercise your right to appeal the decision to either the Minister or the Ontario Land Tribunal, a letter by you or your agent/counsel setting out your appeal must be sent within ~~30~~ 15 or 90 days respectively of receiving this decision, addressed to:

Minister of Northern Development, Mines,  
Natural Resources and Forestry  
Whitney Block, 99 Wellesley St W,  
Toronto, ON M7A 1W3

Ontario Land Tribunal  
655 Bay Street, Suite 1500  
Toronto, Ontario M5G 1E5



A carbon copy of this letter should also be sent to this conservation authority. Should you require any further information, please do not hesitate to contact (**staff contact**) or the undersigned.

Yours truly,

Chief Administrative Officer/Secretary Treasurer  
Enclosure