

Attachment 3: Proposed Hearing Rules

1.0 AUTHORITY AND APPLICATION

These Hearing Rules apply to hearings addressing permit applications under Ontario Regulation 166/06 made pursuant to Section 28 or Section 28.0.1 of the *Conservation Authorities Act* (“Act”), and apply to hearings addressing the cancellation or extension of permits pursuant to Sections 8 and 9 of Ontario Regulation 166/06.

- A permit application made pursuant to Section 28 of the Act may be refused if in the opinion of the Authority the proposal adversely affects the control of flooding, erosion, dynamic beaches, pollution or the conservation of land. Subsection 28(12) provides:

Right to hearing

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

- A permit application made pursuant to Section 28.0.1 of the Act shall be approved and may be approved subject to conditions. Subsection 28.0.8(7) provides:

Hearing

(7) An authority shall not attach conditions to a permission unless the applicant for the permission has been given an opportunity to be heard by the authority.

- The Authority may cancel a permission granted under Ontario Regulation 166/06 if it is of the opinion that the conditions of the permission have not been met. Pursuant to subsection 8(2) of Ontario Regulation 166/06:

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

- The Authority may refuse to extend a permission granted under Ontario Regulation 166/06. Pursuant to subsection 9(7) of Ontario Regulation 166/06:

(7) Before refusing an extension of a permission, the Authority or its executive committee shall give notice of intent to refuse to the holder of the permission, indicating that the extension will be refused unless,
(a) the holder requires a hearing, which may be before the Authority or its executive committee, as the Authority directs; and
(b) at the hearing, the holder satisfies the Authority, or the Authority’s executive committee, as the case may be,
(i) that the requirements of clauses (3) (a) and (b) have been met, and
(ii) that circumstances beyond the control of the holder will prevent completion of the project before the expiry of the permission.

The Hearing Rules are adopted under the authority of Section 25.1 of the Statutory Powers Procedure Act (“SPPA”). The SPPA applies to the exercise of a statutory power of decision

where there is a requirement to hold a hearing before making a decision. The SPPA sets out minimum procedural requirements governing such hearings.

These Hearing Rules are based on the most recent version of the *Conservation Authorities Act Model Hearing Guidelines* (September 2021) published by Conservation Ontario and the Ministry of Natural Resources in October 2005.

2 PREHEARING PROCEDURES

2.0 Role of the Hearing Board

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. 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 councillor, 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.

2.1 Request for Hearing

The applicant is entitled to reasonable notice of the hearing pursuant to the SPPA. All requests for a hearing shall be in writing and directed to the Clerk.

2.2 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. Prior to sending the Notice of Hearing, the applicant shall be consulted to determine an agreeable date and time based on the Authority's regular meeting schedule.

The Notice of Hearing shall be sent to the applicant by email. Please refer to **Appendix A** for the form of Notice of Hearing.

2.3 Pre-submission of Reports

Staff of the Authority and the applicant may each submit written materials for distribution to the Hearing Board in advance of the Hearing. The staff report shall be provided to the applicant in advance of the deadline for submission of written materials by the applicant. The Clerk shall determine the deadlines for the submission of written materials, in accordance with the requirements governing regular meetings of the Authority.

3.0 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 the public interest in public hearings

is outweighed by the fact that intimate financial, personal or other matters pertaining to an identifiable individual would be disclosed at hearings.

3.2 Hearing Participants

The Act does not provide for third party status at the hearing. Any information including submissions provided by third parties should be incorporated to the extent possible in a summarized general manner within the presentation of information by, or on behalf of, the applicant or Authority staff as appropriate taking into account required timeframes imposed by the Chairperson for receiving this information in advance of the hearing.

3.3 Attendance of Hearing Board Members

The members of the Hearing Board who will make the decision must be present during the full course of the hearing. If it is necessary for a member to leave, the remaining members can continue with the hearing and render a decision. For clarity, a Member that has left a hearing where evidence is being presented cannot rejoin to participate in rendering a decision. If a short recess is required to attend to a matter this can be requested through the Chairperson.

3.4 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.

3.5 Orders and Directions

The Chairperson is entitled to make orders or directions to maintain order and prevent the abuse of the hearing processes. The general form of hearing procedure is included as **Appendix C**.

3.6 Information Presented at Hearings

- (a) The SPPA, requires that a witness be informed of 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 D** and **Appendix E** for the form of the Opening Remarks. In an electronic hearing, all those participating 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 shall not submit new technical information at the hearing without agreement or concurrence of the applicant to avoid a situation where the applicant will not have had time to review and provide a professional opinion to the Hearing Board.

3.7.4 Presentation of Applicant Information

The applicant has the opportunity to make a presentation 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 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, such as an engineer, ecologist, hydrogeologist etc.

The applicant shall not submit new technical information at the hearing without agreement or concurrence of the Authority to avoid a situation where 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 and Authority staff will also be provided with the opportunity to ask questions.

Pursuant to the SPPA, the Chairperson can limit questioning where it is satisfied that there has been full and fair disclosure of the information presented.

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.

3.7.7 Adoption

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

4.0. 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.

The Notice of Decision shall be forwarded to the applicant by registered mail.

4.2 Adoption

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

5.0 RECORD

In the event of an appeal, the Authority shall compile a record of the hearing and a copy of the record shall 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) Attendance of Hearing Board members
- (f) The decision and reasons for the decision.
- (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 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 , 202X**, [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 at the property municipally known as (ADDRESS).

TAKE NOTICE THAT this applicant is invited to make a presentation and submit supporting written material in advance of the Hearing. 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 Joanne Hyde, TRCA's Clerk and Manager, Policy: joanne.hyde@trca.ca. Written material will be required by (**date**), to enable the Hearing Board to review the material prior to the Hearing. Written materials shall consist of a presentation and an indexed compendium of any other supporting materials, in two separate PDF documents that are not password protected. These submissions must be provided by the deadline noted, via email, to Joanne Hyde, TRCA's Clerk and Manager, Policy: joanne.hyde@trca.ca. Failure to comply with this requirement may result in cancellation or postponement of the Hearing.

TAKE NOTICE THAT the Hearing will be streamed live on [TRCA's website](#). The rules governing the Hearing do not provide for third parties to participate. No delegations are permitted however members of the public may make written submissions to TRCA's Board of Directors and the applicant by (**DATE**), such that any public input can be included in the Hearing record. These submissions must be provided by the deadline noted, via email, to Joanne Hyde, TRCA's Clerk and Manager, Policy: joanne.hyde@trca.ca.

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 the applicant does not attend at this Hearing, the Executive Committee of the Conservation Authority may proceed the absence of the applicant.

DATED the ____ day of _____ 202X

The Executive Committee of the Toronto and
Region Conservation Authority

Per:

John MacKenzie, M.Sc.(PI) MCIP, RPP
Chief Executive Officer/Secretary-Treasurer

Appendix B

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 28.0.1, Subsection 7 of the said Act

TAKE NOTICE THAT a Hearing before the Executive Committee 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 , 202X**, [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 at the property municipally known as (ADDRESS)

TAKE NOTICE THAT the applicant is invited to make a presentation and submit supporting written material in advance of the Hearing. 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 Joanne Hyde, TRCA's Clerk and Manager, Policy: joanne.hyde@trca.ca. Written material will be required by (**date**), to enable the Hearing Board to review the material prior to the Hearing. Written materials shall consist of a presentation and an indexed compendium of any other supporting materials, in two separate PDF documents that are not password protected. These submissions must be provided by the deadline noted, via email, to Joanne Hyde, TRCA's Clerk and Manager, Policy: joanne.hyde@trca.ca. Failure to comply with this requirement may result in cancellation or postponement of the Hearing.

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 the Hearing will be streamed live on [TRCA's website](#). The rules governing the Hearing do not provide for third parties to participate. No delegations are permitted however members of the public may make written submissions to TRCA's Board of Directors and the applicant by (**DATE**), such that any public input can be included in the Hearing record. These submissions must be provided by the deadline noted, via email, to Joanne Hyde, TRCA's Clerk and Manager, Policy: joanne.hyde@trca.ca.

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 the applicant does not attend at this Hearing, the Executive Committee of the Conservation Authority may proceed in the absence of the applicant.

DATED the ____ day of , _____ 202X

The Board of the Toronto and Region Conservation
Authority

Per:
Chief Administrative Officer/Secretary-Treasurer

Appendix C

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.
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.
9. The Hearing Board will question, if necessary, both the staff and the applicant/agent.
10. The Hearing Board will move into 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 deliberation. For electronic meetings, the Hearing Board will reconvene with other 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 conclude Hearing.

Appendix D

CHAIRPERSON'S REMARKS WHEN DEALING WITH HEARINGS (Section 28, Subsection 12 of the *Conservation Authorities Act*) WITH RESPECT TO ONTARIO REGULATION _____ /06

We are now going to conduct a hearing under section 28 of the Conservation Authorities Act in respect of an application by _____ for a property located at _____.

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, a permit application shall not be refused or granted subject to conditions unless the person requesting permission is given the opportunity to require a hearing.

In holding this hearing, the Hearing Board 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 technical 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. Where a body exercises a statutory power of decision and is required by its enabling statute to hold a hearing, the Statutory Powers Procedure Act applies. The Act prescribes minimum procedural rules and permits the hearing body to enact its own rules. The hearing rules in the Authority's Administrative Bylaw are the rules that have been enacted for these proceedings

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.

Appendix E

CHAIRPERSON'S REMARKS WHEN DEALING WITH HEARINGS (Section 28.0.1, Subsection 7 of the *Conservation Authorities Act*) WITH RESPECT TO ONTARIO REGULATION ____ /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 a property located at _____

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 attached by the Authority pursuant to subsection 28.0.1(6).

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, an Authority shall not attach conditions to a permission unless the applicant for the permission has been given an opportunity to be heard by the authority.

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 technical 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. Where a body exercises a statutory power of decision and is required by its enabling statute to hold a hearing, the Statutory Powers Procedure Act applies. The Act prescribes minimum procedural rules and permits the hearing body to enact its own rules. The hearing guidelines in the Authority's Administrative Bylaw are the rules that have been enacted for these proceedings

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.