

**Procedures for Amending  
*Conservation Authorities Act* Section 28:  
“Development, Interference with Wetlands and Alteration to  
Shorelines and Watercourses Regulations”**

**Ministry of Natural Resources**

July 2011

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# PROCEDURES FOR AMENDING CONSERVATION AUTHORITIES ACT S. 28 DEVELOPMENT, INTERFERENCE WITH WETLANDS AND ALTERATION TO SHORELINES AND WATERCOURSES REGULATIONS

## 1.0 Introduction

This document intends to support conservation authorities in amending their individual *Conservation Authorities Act* Section (S.) 28 regulations to conform to recent amendments made to Ontario Regulation (O. Reg.) 97/04 by providing draft text for the amendments required, a draft sample 'amended' regulation, amendments that MNR requires, and other 'eligible' amendments that the Ministry would consider and a process to streamline the time taken to achieve Minister's consideration for approval. The Ministry has worked with Conservation Ontario and conservation authorities in developing this material, the additional eligible amendments, the draft wording for amendments and the amending process.

The ability to achieve a streamlined process will be dependent upon each conservation authority's adherence to the Ministry's proposed eligible amendments and dedication in moving through each of the outlined steps that involve the conservation authorities.

## 1.1 Background

In the past year, the provincial government and the Ministry of Natural Resources has approved a number of actions that have impacted the *Conservation Authorities Act* and related regulations, policy and operations of conservation authorities.

The first change came with the approval by the Minister of the "Policies and Procedures for Conservation Authorities Plan Review and Permitting Activities"; a new chapter to the provincial 'Policies and Procedures Manual for Conservation Authorities' which guides provincial aspects of conservation authority operations involving the provincial interest which is expressed in part through the eligible items for grants received through S. 39 of the Act.

A Conservation Authority Liaison Committee (CALC) was established in 2007 with representation from the building industry, the province (Ministry of Natural Resources (MNR) and Ministry of Municipal Affairs and Housing (MMAH) co-chairs), municipalities, Conservation Ontario, conservation authorities, and environmental organizations to clarify conservation authority roles in municipal planning under the *Planning Act* and the regulatory permitting process through S. 28 of the *Conservation Authorities Act*. The development industry had raised concerns regarding conservation authority activities in municipal planning and the permitting of development applications.

The Committee's work resulted in a draft of 'Policies and Procedures for Conservation Authority Plan Review and Permitting Activities' which describes conservation authority roles and responsibilities under various provincial legislation and in relation to municipalities and with proposed guidelines related to *Conservation Authorities Act* S. 28 permit applications. The 'Policies and Procedures' was posted on the Environmental Registry in November 2009, final Decision Notice posted on May 28, 2010 with the Minister's approval. Since that time, training initiatives have been undertaken by the Ministry internally, for other OPS Ministry staff, for conservation authorities and municipalities and for the building industry.

The delivery of this provincial policy document was considered part of the provincial government's Open for Business initiative. The guidelines provide a consistent approach to the permitting function undertaken by conservation authorities under the *Conservation Authorities Act*; improvements include for example streamlined policies pertaining to pre-consultation, complete applications, timelines for permit decision

making and administrative reviews of timelines, service delivery policies, all intended to increase conservation authority service delivery standards.

CALC was reconvened in June, 2010 to function in an advisory capacity to the Minister with a new Terms of Reference and expanded membership and continues to be a forum for resolving additional concerns and for increasing communication and understanding of conservation authorities and their responsibilities under different legislation and governments.

In the past year, MNR also proposed changes to four statutes administered by MNR through Bill 68 including the *Conservation Authorities Act*. The amendments to the Act are specifically to add clarity and streamline the approvals process for certain land dispositions related to municipal and provincial infrastructure and utility purposes, update the limitations period for offences from six months to two years from the date on which evidence of the offence is discovered or first comes to the attention of officers, and to clarify that terms of a permit must be adhered to and not doing so would be an offence. Additionally an amendment to the Act provides for regulation making authority to the Ministry to define any term in the Act that is currently not defined. Bill 68, the *Open for Business Act*, received Royal Assent on October 25, 2010 and is now in force.

Continuing with the Open for Business initiative, MNR proposed amendments to O. Reg. 97/04, the "Content of Conservation Authority Regulations under Subsection 28 (1) of the Act: Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" under the *Conservation Authorities Act*.

The proposed amendments were intended to simplify and streamline the permitting process that conservation authorities undertake under S. 28 of the *Conservation Authorities Act* through the 36 individual *Conservation Authorities Act* S. 28 regulations. The amendments are also intended to support conservation authority compliance with the timelines for decisions on *Conservation Authority Act* S. 28 permit applications as outlined in the 'Policies and Procedures for Conservation Authority Plan Review and Permitting Activities'. The proposed amendments were posted on the Environmental Bill of Right's Environmental Registry and the Regulatory Registry on October 29, 2010 with a closing date of December 13, 2010.

Conservation Ontario and conservation authorities proposed, and were in favour of, the two amendments, and the proposed amendments were endorsed by CALC. The amendments will rationalize the permit process for simple or straight forward permit decisions that would meet authority approvals, would reduce the burden on conservation authority boards and reduce friction with the public and the development industry.

Conservation Ontario has expressed that the ability to delegate positive decisions to staff and the ability to extend the validity of permits past two years under specific circumstances will result in increased efficiency and improved client service while maintaining the integrity of the regulations. Ministry staff worked with Conservation Ontario and conservation authorities on the regulation amendments for the delegations and consulted on criteria to consider in extensions of the validity of permits.

Taking into account the comments and the scoping details expressed by some responses received from the posting, the draft wording of the proposed amendments clarified criteria and conditions for the implementation of each of the proposed amendments.

A Regulation Amendment Package developed by MNR went before the Legislation and Regulation Committee on February 28, 2011 and the amendments were approved. The amendments to O. Reg 97/04 were filed with the Registrar of Regulations on March 4, 2011 through a new regulation O. Reg. 46/11, titled 'Ontario Regulation made under the *Conservation Authorities Act* Amending O. Reg. 97/04'. The amended O. Reg 97/04 was posted on March 8, 2011 on eLaws, O. Reg 46/11 on eLaws (under Source Law) and on March 19 was published in the Ontario Gazette.

The Ministry is streamlining the permitting process by:

- Enabling the conservation authority to delegate its powers under the regulation including the power to make positive permit decisions to the conservation authority's executive committee or conservation authority employees.
- Extending the maximum period of validity of a permit from 24 months to 60 months under certain criteria and conditions.

The O. Reg. 97/04 under the *Conservation Authorities Act* is a Lieutenant Governor in General (LGIC) approved template or 'generic' regulation that dictates the form and content of each individual *Conservation Authorities Act* S. 28 regulation. Pursuant to S. 28 of the Act and O. Reg. 97/04, each conservation authority has developed individual regulations, the "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulations", (O. Reg. 42, O. Regs. 146 -182, and O. Reg. 319) all of which conformed to the previous O. Reg. 97/04 and were approved by the Minister to come into force. With the newly approved amendments to O. Reg 97/04 in place, each individual regulation under S. 28 of the Act must be subsequently amended and approved by the Minister to reflect and enact the new amendments to the O. Reg. 97/04.

## 2.0 Eligible Amendments

The Ministry is proposing three types of amendments for consideration in this round of proposed regulatory amendments to the individual Conservation Authorities Act S. 28 regulations:

1. CA Act S. 28 regulation amendments to conform to the amended O. Reg. 97/04
2. MNR required amendments that include:
  - An amendment to clarify the intent of the regulation by deleting a clause that has led to legal interpretations of the regulation inconsistent with legislative intent; the deletion is required in all S. 28 regulations by MNR and dates from 2007 (see Appendix A: Letter from MNR Legal Counsel to the Otonabee Region Conservation Authority dated June 2007.)
  - For the CAs who are regulating inland lakes and shorelines (perhaps as watercourses) but may not have adapted and included in their regulation from O. Reg. 97/04 Subsection 3.(c) which reads: "areas that are adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beach hazards, including the area from the furthest offshore extent of the authority's boundary to the furthest landward extent of the aggregate of the following distances"....
  - For the reference to allowances for wave uprush and for an allowance inland in metres for dynamic beach movement in S. 2 (1) (a) (i) (iii), of your regulations, you may update the technical study referenced if appropriate, or provide an exact number as some regulations have. However if you have a phrase such as 'determined by the Authority' with no exact number or study referenced in either or both subclauses, we require that you provide a number or study reference.
3. 'Housekeeping Amendments' confirmed through a survey of conservation authorities by Conservation Ontario in 2010 and considered eligible by the Ministry.

The MNR required amendments stem from issues that have arisen since the introduction of the new regulations in 2006 and are aimed at clarifying the intent of the regulation, at clarifying to the public what areas are being regulated and on what basis. According to Conservation Ontario, the housekeeping amendments that were proposed are basically administrative; do not expand any regulatory authority (either process or geography) and do not require amendments to the Act or O. Reg 97/04.

The three categories of amendments are in tables presented in Appendix A and demonstrate the conformity to the O. Reg. 97/04, current regulation wording and proposed wording, the rationale for the change, if the change is required and if the amendment is 'housekeeping'.

A 'sample' proposed amended regulation (an 'amended' O. Reg. 42/06) with the proposed changes is provided in Appendix B for your consideration as a draft.

### **3.0 Process for Approving and Amending Individual CA Act S. 28 Regulations**

#### **1. Conservation Authority Board Adoption of Amended Regulation**

A resolution of adoption from the conservation authority board of directors is required in order for the local amendment of the proposed regulation to proceed. Conservation authority staff may need to develop a report that could be based in material provided through this document and other relevant considerations for the conservation authority board members to review at the earliest opportunity. It is recognized that situations vary among conservation authorities and the proposed amendments have some capacity to be tailored to suit local circumstances. Conservation authority staff are encouraged to contact the Ministry with any questions and concerns or requests in developing material for board consideration or addressing any board concerns.

Please contact Elizabeth Mikel, Policy Advisor, Great Lakes and Water Policy Section, Biodiversity Branch at Liz.Mikel@ontario.ca or (705) 755-1229.

The Ministry is anticipating that all 36 conservation authority boards would be able to review and come to some decision and resolution on amending their regulations by the end of August, 2011.

#### **Draft Wording for a Resolution by the Board of Directors of the Conservation Authority for adopting a proposed amended Regulation**

*Whereas a local Conservation Authorities Act Section 28 'Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation' has been prepared in conformity with the provisions outlined in Section 28 of the Conservation Authorities Act and the amended Ontario Regulation 97/04, and as per the eligible amendments identified by the Ministry of Natural Resources*

*THEREFORE BE IT RESOLVED THAT the \_\_\_\_\_ Conservation Authority adopts the proposed amendments to the subject regulation*

*AND THAT the said regulation proposal with eligible amendments be submitted to the Ministry of Natural Resources for review, posting on the Regulatory Registry, and depending on the results of the registry posting, for subsequent consideration for approval by the Minister of Natural Resources.*

#### **Submissions to MNR**

For efficiency of the Ministry's review, the conservation authority will need to submit an electronic package (in MS Word) of the following documents:

- Cover letter for the package
- A draft proposed Regulation
- A list of all proposed amendments made, and,
- A copy of the CA Board of Directors Resolution (dated)

In addition, the conservation authority will need to send the signed original copies of the above materials requested as well.

The electronic packages should be sent to:

[Laura.Lounsbury@ontario.ca](mailto:Laura.Lounsbury@ontario.ca)

The signed original copies should be directed to:

Attention: Ms. Laura Lounsbury  
Great Lakes and Water Policy Section  
Biodiversity Branch  
P.O. Box 7000, 300 Water Street  
5<sup>th</sup> Floor N  
Peterborough ON, K9J 8M5

### **MNR review of the 36 conservation authority proposed regulation submissions**

The Ministry has requested that the S. 28 Regulations Committee assist in the review of the 36 conservation authority submissions to ensure that the proposed regulation submissions conform with the agreed upon 'eligible amendments' and wording provided. The Committee which includes representation from Conservation Ontario, conservation authorities and the Ministry, will be convened as soon as all the 36 proposed regulations are received by the Ministry. The Committee will provide a report to the Director, Biodiversity Branch, Policy Division, Ministry of Natural Resources on the results of their review. Committee members from conservation authorities will not be reviewing their respective conservation authority's proposed regulations.

The Ministry will notify in writing each of the 36 conservation authorities as to the outcome of this review in relation to their submission. Non-conformity with eligible amendments and wording may result in the need for a resubmission with a new board resolution. If there are resubmissions required and depending on circumstance, the Ministry may call upon the S. 28 Regulation Committee for assistance in resolution of any outstanding issues or concerns. All proposed regulation submissions may be held until 36 successfully reviewed submissions have been received by the Ministry. Conformity ensures better consistency and effect among the individual *Conservation Authorities Act* S. 28 regulations.

### **Ministry Consultation and Approvals Process**

When 36 successfully reviewed submissions have been received by the Ministry, the consultation and approval process follows these general steps:

- MNR posts the 36 individual regulations for public consultation on Ontario's Regulatory Registry for 45 days
- MNR staff compile comments and submissions received and make recommendations based on comments and may consult conservation authorities as required.
- MNR sends the draft proposed 36 regulations to Legislative Counsel to draft new regulations with new numbers
- MNR sends to the 36 conservation authorities the Legislative Counsel written regulations for conservation authority board review and resolution to approve the proposed amended Regulation
- Conservation authorities send their board resolution and signed original proposed regulation to MNR
- MNR submits an approval package for the Minister's consideration

- If approved by the Minister each conservation authority will receive a letter to that effect and the new regulations will come into effect when filed and posted on eLaws.

### **Local Public Notification**

The amendments to O. Reg. 97/04 have undergone public consultation through the Environmental and Regulatory Registries postings and were subsequently approved and enacted by the province. All individual *Conservation Authorities Act* S. 28 regulations must conform to O. Reg. 97/04.

Although the Ministry does not require local public consultation on the amendments to the regulations, we do see this as an opportunity for you to inform and communicate with the public the changes that have occurred in the last year to the *Conservation Authorities Act*, the regulations, policy and operations of the conservation authority such as the introduction of the new 'Policies and Procedures for Conservation Authority Plan Review and Permitting Activities.'

Conservation authorities should consider an appropriate form to notify the participating municipality as to the changes and the origin of the changes to their regulation. The conservation authority could also undertake an information program to advise the public of changes to the regulation, the context and impacts of that change, and that the changes are being made to the local regulations in part to bring them into conformity with existing provincial legislation.

MNR will be posting for public review the intent of the amendments to the individual S. 28 CA Act regulations and potentially the proposed draft regulations on the provincial Regulatory Registry before consideration for approval from the Minister of Natural Resources.

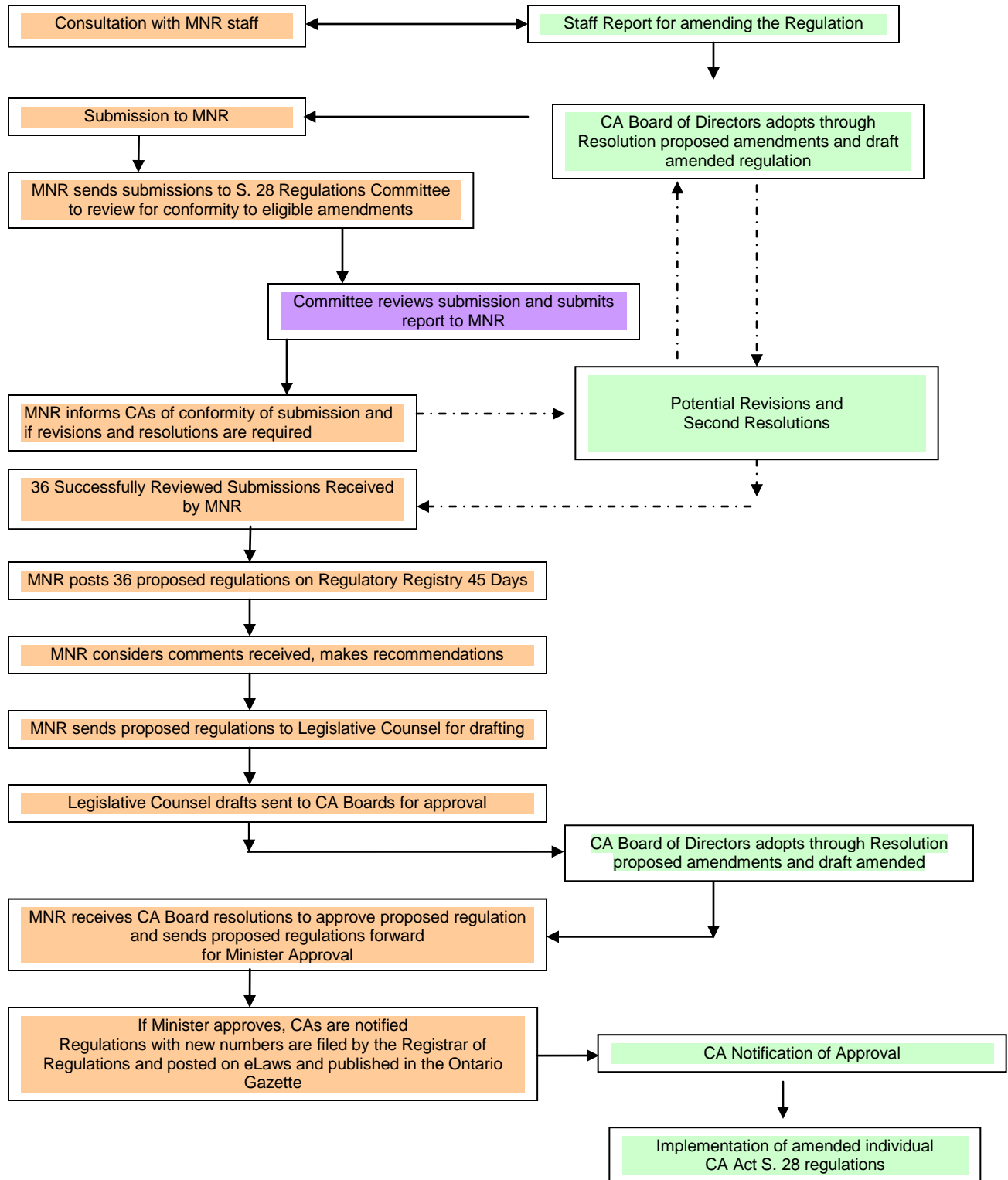
### **Notification of Approval**

It would be a good practice if notice was provided by the conservation authority to each participating municipality and posted on the authority's website if the proposed amendments to the regulation are approved and the effective date the amended regulation comes into force.

### **Transition Policies**

Conservation authorities should have Board of Directors approved policies in place to deal with the transition from the previous regulation to the implementation of the amended regulation. For example, the applicable regulation is the one in place at the time a permit application was submitted. Some thought may have to be given to applications submitted prior to the adoption of the amended regulation but that have not been approved.

## Amending Process Flowchart



## Appendix A: Eligible Amendments to Conservation Authority Act Section 28 Regulations

The *Conservation Authorities Act*, Ontario Regulation 42/06 “Central Lake Ontario Conservation Authority: “Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses” is used here as an example of a current individual *Conservation Authority Act* S. 28 regulation and how it is to conform to the amended LGIC O. Reg. 97/04, to MNR required amendments and to the ‘eligible housekeeping’ amendments brought forward by Conservation Ontario. Edits are provided in red font.

### CA Act S. 28 Regulation Amendment to conform to amended O. Reg. 97/04

Related Section in O. Reg. 97/04	Section of the Individual Regulation (O. Reg. 42/06) Current Wording	Proposed Amendment to an Individual Regulation	Rationale	Required or Discretion
<p>Section 7 of O. Reg. 97/04 is revoked and the following substituted:</p> <p><b>Application for permission</b></p> <p>7. A regulation shall specify the information that a person is required to provide to the authority in an application for a permission referred to in subsection 4 (1) or 6 (1). O. Reg. 46/11, s. 1.</p> <p><b>Validity of permission</b></p> <p>7.1 (1) A regulation shall specify that the maximum period of validity of a permission referred to in subsection 4 (1) or 6 (1), including any extensions, is,</p> <p>(a) 24 months, in the case of a permission granted for projects other than projects referred to in clause (b); and</p> <p>(b) 60 months, in the case of permissions granted for,</p> <p>(i) projects that, in the opinion of the authority, cannot reasonably be completed within 24 months from the day the permission is granted, or</p> <p>(ii) projects that require permits or approvals from other regulatory</p>	<p><b>Validity of permissions and extensions</b></p> <p>9. (1) A permission of the Authority is valid for a maximum period of 24 months after it is issued, unless it is specified to expire at an earlier date. O. Reg. 42/06, s. 9 (1).</p> <p>(2) A permission shall not be extended. O. Reg. 42/06, s. 9 (2).</p>	<p><b>Validity of permissions and extensions</b></p> <p>9. (1) The maximum period, including any extensions, for which a permission granted under section 3 or 6 may be valid is,</p> <p>(a) 24 months, in the case of a permission granted for projects other than projects described in clause (b); and</p> <p>(b) 60 months, in the case of permissions granted for,</p> <p>(i) projects that, in the opinion of the authority, cannot reasonably be completed within 24 months from the day the permission is granted, or</p> <p>(ii) projects that require permits or approvals from other regulatory bodies that, in the opinion of the authority, cannot reasonably be obtained within 24 months from the day the permission is granted.</p> <p>(2) A permission may be granted for an initial period that is less than the maximum period specified in subsection (1) where, in the opinion of the authority, the project can be completed in less than 24 months.</p> <p>(3) A permission granted for less than the</p>	<p>The proposed amendments support the government’s OFB initiative by streamlining the permitting process and reducing costs for proponents of development projects including businesses, residents and municipalities.</p> <p>The amendments also make it easier for CAs to operate and provide better service delivery.</p>	Required

<p>bodies that, in the opinion of the authority, cannot reasonably be obtained within 24 months from the day the permission is granted. O. Reg. 46/11, s. 1.</p> <p>(2) A regulation shall specify that the authority may grant a permission for an initial period of validity that is less than the maximum period specified in subsection (1) and shall specify,</p> <p>(a) the circumstances in which the authority may grant an extension of a permission granted for such an initial period; and</p> <p>(b) the procedures for obtaining the extension. O. Reg. 46/11, s. 1.</p>		<p>maximum period of validity may be extended to the maximum period if,</p> <p>(a) the person who was granted the permission submits a written application for the extension to the Authority at least 60 days before the expiry of the permission;</p> <p>(b) the application sets out the reasons why the extension is required and demonstrates that circumstances beyond the control of the person granted the permission prevented completion of the project within the initial period.</p>		
<p><b>Delegation of Powers</b></p> <p>7.2 If, as permitted under subsection 28(2) of the Act, a regulation delegates any of the authority's powers or duties under the regulation, subject to any limitations or requirements that may be set out in the regulation, the regulation shall not delegate the powers and duties to,</p> <p>(a) a body other than the authority's executive committee; or</p> <p>(b) a person other than an employee of the authority.</p>		<p><b>Permission to develop</b></p> <p>3. (1) The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development.</p> <p>(2) The permission of the Authority shall be given in writing, with or without conditions.</p> <p>(3) The Authority may designate the Authority's executive committee or one or more of its employees as a Regulation Approval Officer and that employee or employees may exercise the powers and duties of the Authority under subsection (1) and (2) with respect to the granting of permissions for development in or on the areas described in subsection 2 (1).</p>	<p>The amendment to delegate positive permits to CA senior staff would decrease the time required to approve straightforward permits. Permits that are contentious/ complex will proceed to the CA board for a final decision.</p>	<p>Required – Decision to implement expressed through CA Board approved policy</p>

		<p>Permission to alter</p> <p><b>6.</b> (1) The Authority may grant a person permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or to change or interfere with a wetland. O. Reg. 42/06, s. 6 (1).</p> <p>(2) The permission of the Authority shall be given in writing, with or without conditions. O. Reg. 42/06, s. 6 (2).</p> <p><b>(3)</b> The Authority may designate the Authority's executive committee or one or more of its employees as a Regulation Approval Officer and that employee or employees may exercise the powers and duties of the Authority under subsection (1) and (2) with respect to the granting of permissions for alterations in or on the areas described in subsection 6 (1).</p>	<p>The amendment to delegate positive permits to CA senior staff would decrease the time required to approve straightforward permits. Permits that are contentious/complex will proceed to the CA board for a final decision.</p>	<p>Required – Decision to implement expressed through CA Board approved policy</p>
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**CA Act S. 28 Regulation Amendment required by MNR for clarity of intent of the regulations, the area regulated and on what basis.**

Related Section in O. Reg. 97/04	Section of the Individual Regulation (O. Reg. 42/06) Current Wording	Proposed Amendment to an Individual Regulation	Rationale	Required or Discretion
<p><b>Prohibition of development in certain areas</b></p> <p>3. Subject to section 4, a regulation shall prohibit development in or on,</p> <p>(a)hazardous lands;</p> <p>(b)wetlands;</p> <p>etc.</p>	<p><b>Development prohibited</b></p> <p>2. (1) Subject to section 3, no person shall undertake development, or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,</p> <p>(e) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands and wetlands greater than 2 hectares in size, and areas within 30 metres of wetlands less than 2 hectares in size, <i>but not including those where development has been approved pursuant to an application made under the Planning Act or other public planning or regulatory process.</i> O. Reg. 42/06, s. 2 (1).</p>	<p>(e) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands and wetlands greater than 2 hectares in size, and areas within 30 metres of wetlands less than 2 hectares in size, O. Reg. 42/06, s. 2 (1).</p>	<p>Letter dated June 11, 2007 from MNR legal counsel: Provisions in CA Act S. 28 regulations dealing with areas of interference of a wetland subject to interpretations contrary to what the Province intended. (also see Appendix C)</p> <p>CAs should amend clause 2(1)(d) or 2(1)(e) of their current S. 28 regulations to delete the words, "but not including those where development has been approved pursuant to an application made under the Planning Act or other public planning or regulatory process."</p>	<p>Required</p>
<p><b>Prohibition of development in certain areas</b></p>	<p><b>Development prohibited</b></p> <p>2. (1) Subject to section 3, no person shall undertake development, or permit another person</p>	<p><b>Development prohibited</b></p> <p>2. (1) Subject to section 3, no person shall undertake development, or permit</p>	<p>MNR requests that if inland lakes and shorelines are being regulated by your CA and if this is not currently reflected in</p>	<p>Required</p>

Related Section in O. Reg. 97/04	Section of the Individual Regulation (O. Reg. 42/06) Current Wording	Proposed Amendment to an Individual Regulation	Rationale	Required or Discretion								
<p>3. Subject to section 4, a regulation shall prohibit development in or on,</p> <p>(c) areas that are adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beach hazards, including the area from the furthest offshore extent of the authority's boundary to the furthest landward extent of the aggregate of the following distances:</p>	<p>to undertake development in or on the areas within the jurisdiction of the Authority that are,</p> <p>(a) adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beaches, including the area from the furthest offshore extent of the Authority's boundary to the furthest landward extent of the aggregate of the following distances:</p>	<p>another person to undertake development in or on the areas within the jurisdiction of the Authority that are,</p> <p>(a) adjacent or close to the shoreline of the Great Lakes - St. Lawrence River System or to inland lakes <b>[...each Authority to determine which type of lakes apply and include them in the regulation...]</b> that may be affected by flooding, erosion or dynamic beaches, including the area from the furthest offshore extent of the Authority's boundary to the furthest landward extent of the aggregate of the following distances:</p>	<p>your regulation that you ensure that it is. For example if only regulating inland lakes and not on the Great Lakes, the added subclause would look like the following :</p> <p>(a) adjacent or close to the shoreline of inland lakes that may be affected by flooding, erosion or dynamic beaches, including the area from the furthest offshore extent of the Authority's boundary to the furthest landward extent of the aggregate of the following distances:</p>									
<p><b>Prohibition of development in certain areas</b></p> <p>3. Subject to section 4, a regulation shall prohibit development in or on,</p> <p>(c) areas that are adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beach hazards, including the area from the furthest offshore extent of the authority's boundary to the furthest landward extent of the aggregate of the following distances:</p> <p>(i) the 100 year flood level, plus an allowance in metres, determined by the authority, for wave uprush</p>	<p><b>Development prohibited</b></p> <p>2. (1) Subject to section 3, no person shall undertake development, or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,</p> <p>(a) adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beaches, including the area from the furthest offshore extent of the Authority's boundary to the furthest landward extent of the aggregate of the following distances:</p> <p>(i) the 100 Year flood level, plus the appropriate allowance for wave uprush shown in the column headed <b>"100 Year Flood Limit" found in Table 7.1 of the document entitled "Lake Ontario Shoreline Management Plan", December 1990</b>, which is available at or through the Authority at its head office located at 100 Whiting Avenue, Oshawa, Ontario, L1H 3T3,</p> <p>(iii) where a dynamic beach is associated with the waterfront lands, the appropriate allowance inland to accommodate dynamic beach movement shown</p>	<p><b>Development prohibited</b></p> <p>2. (1) Subject to section 3, no person shall undertake development, or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,</p> <p>(a) adjacent or close to the shoreline of the Great Lakes - St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beaches, including the area from the furthest offshore extent of the Authority's boundary to the furthest landward extent of the aggregate of the following distances:</p> <p>(i) the 100 Year flood level, plus an allowance of X <b>[...each Authority to insert the exact number of metres or a specific study...]</b> metres for wave uprush and for other water related hazards, such as ship-generated waves, ice piling and ice jamming, the amount of the allowance to be determined by the Authority,</p>	<p>References to specific studies may be deleted if these have been updated.</p> <p>The following are options that would be considered in substitution for removing outdated studies; the requirement of the substitution would be that the substitution be a specified amount or specific study and not a phrase to the effect "as determined by the Authority". If you have a phrase such as "determined by the Authority" currently in your regulation, we request that you amend this to one of the following options:</p> <p>Requirements for text in 2 (1) (a) (i) and (iii) by MNR</p> <p>Options</p> <table border="0"> <tr> <td style="padding-right: 10px;">1</td> <td>Keep existing referenced study or actual specified amount in the regulations</td> </tr> <tr> <td>2</td> <td>Replace with a reference to a current study being used</td> </tr> <tr> <td>3</td> <td>Put in a specified amount (15 metres, 30 meters)</td> </tr> <tr> <td>4</td> <td>Put in a specified maximum</td> </tr> </table>	1	Keep existing referenced study or actual specified amount in the regulations	2	Replace with a reference to a current study being used	3	Put in a specified amount (15 metres, 30 meters)	4	Put in a specified maximum	<p>Required</p>
1	Keep existing referenced study or actual specified amount in the regulations											
2	Replace with a reference to a current study being used											
3	Put in a specified amount (15 metres, 30 meters)											
4	Put in a specified maximum											

Related Section in O. Reg. 97/04	Section of the Individual Regulation (O. Reg. 42/06) Current Wording	Proposed Amendment to an Individual Regulation	Rationale	Required or Discretion
<p>and, if necessary, an allowance in metres, determined by the authority, for other water-related hazards, including ship-generated waves, ice piling and ice jamming,</p> <p>(iii) where a dynamic beach is associated with the waterfront lands, an allowance in metres inland, determined by the authority, to accommodate dynamic beach movement, ....</p> <p>(iv) an allowance in metres inland, determined by the authority, not to exceed 15 metres;</p>	<p>in the right-hand column of Table 7.1 of the document entitled "Lake Ontario Shoreline Management Plan", December 1990, which is available at or through the Authority at the address given in subclause (i), ....</p> <p>through the Authority at the address given in subclause (i), and</p> <p>(iv) 15 metres inland;</p>	<p>(ii)the predicted long term stable slope projected from the existing stable toe of the slope or from the predicted location of the toe of the slope as that location may have shifted as a result of shoreline erosion over a 100-year period,</p> <p>(iii)where a dynamic beach is associated with the waterfront lands, an allowance of X <i>[...each Authority to insert the exact number of metres or a specific study...]</i> metres inland to accommodate dynamic beach movement, and</p> <p>(iv)an allowance of 15 metres inland;</p>	<p>amount, i.e. up to 30 metres</p> <p>5 Reference a Provincial standard and specify which</p> <p>6 Combination of the above.</p> <p>Additionally as per a housekeeping amendment request from Conservation Ontario's survey of CAs for regulation amendments, references to an Authority's address may be deleted, as these addresses may change.</p>	

**Housekeeping Amendments as proposed by Conservation Ontario through a survey of Conservation Authorities and considered eligible by MNR**

Related Section in Ontario Regulation 97/04	Section of the Individual Regulation (O. Reg. 42/06) Current Wording	Proposed Amendment	Rationale

Related Section in Ontario Regulation 97/04	Section of the Individual Regulation (O. Reg. 42/06) Current Wording	Proposed Amendment	Rationale
	<p><b>Application for permission</b></p> <p>4. A signed application for permission to undertake development shall be filed with the Authority and shall contain the following information:</p> <ol style="list-style-type: none"> <li>1. Four copies of a plan of the area showing the type and location of the development.</li> <li>2. The proposed use of the buildings and structures following completion of the development.</li> <li>3. The start and completion dates of the development.</li> <li>4. The elevations of existing buildings, if any, and grades and the proposed elevations of buildings and grades after development.</li> <li>5. Drainage details before and after development.</li> <li>6. A complete description of the type of fill proposed to be placed or dumped.</li> </ol>	<p><b>Application for permission</b></p> <p>4. An application for permission to undertake a development in or on an area described in subsection 2 (1) shall be signed by the owner of the land on which the development is proposed or his or her agent and filed with the Authority and shall contain the following information:</p> <ol style="list-style-type: none"> <li>1. Four copies of a plan of the area showing the type and location of the development.</li> <li>2. The proposed use of the buildings and structures following completion of the development.</li> <li>3. The start and completion dates of the development.</li> <li>4. The elevations of existing buildings, if any, and grades and the proposed elevations of buildings and grades after development.</li> <li>5. Drainage details before and after development.</li> <li>6. A complete description of the type of fill proposed to be placed or dumped.</li> <li>7. <b>Such other technical studies or plans requested by the Authority.</b></li> </ol>	<p>Allows for the agent of the owner to sign an application for a permit Enables the CA to request other technical studies and plans as required by the permit application circumstances.</p>

Related Section in Ontario Regulation 97/04	Section of the Individual Regulation (O. Reg. 42/06) Current Wording	Proposed Amendment	Rationale
	<p><b>Application for permission</b></p> <p>7. An application for permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or change or interfere with a wetland shall be filed with the Authority and shall contain the following information:</p> <ol style="list-style-type: none"> <li>1. Four copies of a plan of the area showing plan view and cross-section details of the proposed alteration.</li> <li>2. A description of the methods to be used in carrying out the alteration.</li> <li>3. The start and completion dates of the alteration.</li> <li>4. A statement of the purpose of the alteration.</li> </ol>	<p><b>Application for permission</b></p> <p>7. An application for permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or change or interfere with a wetland shall be signed by the owner of the land on which the affected river, creek, stream or watercourse is situated, or his or her agent, and filed with the Authority and shall contain the following information:</p> <ol style="list-style-type: none"> <li>1. Four copies of a plan of the area showing plan view and cross-section details of the proposed alteration.</li> <li>2. A description of the methods to be used in carrying out the alteration.</li> <li>3. The start and completion dates of the alteration.</li> <li>4. A statement of the purpose of the alteration.</li> </ol> <p><b>5. Such other technical studies or plans requested by the Authority.</b></p>	<p>Allows for the agent of the owner to sign an application for a permit</p> <p>Enables the CA to request other technical studies and plans as required by the permit application circumstances.</p>
<p><b>Permission to develop despite prohibition</b></p> <p>4. (1) A regulation shall provide that .....</p> <p>(4) A regulation shall describe geographically or by reference to maps filed at the head office of the authority,</p> <p>(a) areas that constitute hazardous land, wetlands, areas that are adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes, river and stream valleys and other areas where, in the Minister's opinion, development should be prohibited, regulated or require the permission of the authority;</p> <p>.....</p>	<p><b>Areas included in the Regulation Limit</b></p> <p>12. Hazardous lands, wetlands, shorelines and areas susceptible to flooding, and associated allowances, within the watersheds in the area of jurisdiction of the Authority are delineated by the Regulation Limit shown on maps <b>1 to 31 dated May 2005</b> and filed at the head office of the Authority <b>at 100 Whiting Avenue, Oshawa, Ontario</b> under the map title "Ontario Regulation 97/04: Regulation for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses". O. Reg. 42/06, s. 12.</p>	<p><b>Development prohibited</b></p> <p>2. (1) <b>Subject to section 3, no person shall undertake development, or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,</b></p> <p>(2) <b>All areas described in subsection (1) that are within the jurisdiction of the Authority, including the allowances associated with the areas, are delineated as the "Regulation Limit" shown on a series of maps filed at the head office of the Authority under the map title "Ontario Regulation 97/04: Regulation for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses".</b></p>	<p>Note: The previous Subsection 12 has been moved to Subsection 2 under 'Development prohibited'</p> <p>To reflect updated regulation limit mapping, removed dates</p> <p>May delete an Authority address, as addresses may change</p>

## Appendix B: A draft ‘sample’ regulation

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reg2011.0207.e  
4-SF

### ONTARIO REGULATION

made under the

### CONSERVATION AUTHORITIES ACT

#### CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY: REGULATION OF DEVELOPMENT, INTERFERENCE WITH WETLANDS AND ALTERATIONS TO SHORELINES AND WATERCOURSES

##### Definition

1. In this Regulation,

“Authority” means the Central Lake Ontario Conservation Authority.

##### Development prohibited

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

- (a) adjacent or close to the shoreline of the Great Lakes - St. Lawrence River System or to inland lakes *[...each Authority to determine which type of lakes apply and include them in the regulation...]* that may be affected by flooding, erosion or dynamic beaches, including the area from the furthest offshore extent of the Authority’s boundary to the furthest landward extent of the aggregate of the following distances:
  - (i) the 100 Year flood level, plus an allowance of X *[...each Authority to insert the exact number of metres or refer to relevant document...]* metres for wave uprush and for other water related hazards, such as ship-generated waves, ice piling and ice jamming, the amount of the allowance to be determined by the Authority,
  - (ii) the predicted long term stable slope projected from the existing stable toe of the slope or from the predicted location of the toe of the slope as that location may have shifted as a result of shoreline erosion over a 100-year period,
  - (iii) where a dynamic beach is associated with the waterfront lands, an allowance of X *[...each Authority to insert the exact number of metres or refer to relevant document...]* metres inland to accommodate dynamic beach movement, and
  - (iv) **an allowance of 15 metres inland;**
- (b) river or stream valleys that have depressional features associated with a river or stream, whether or not they contain a watercourse, the limits of which are determined in accordance with the following rules:

- (i) where the river or stream valley is apparent and has stable slopes, the valley extends from the stable top of the bank, plus 15 metres, to a similar point on the opposite side,
  - (ii) where the river or stream valley is apparent and has unstable slopes, the valley extends from the predicted long term stable slope projected from the existing stable slope or, if the toe of the slope is unstable, from the predicted location of the toe of the slope as a result of stream erosion over a projected 100-year period, plus 15 metres, to a similar point on the opposite side,
  - (iii) where the river or stream valley is not apparent, the valley extends the greater of,
    - (A) the distance from a point outside the edge of the maximum extent of the flood plain under the applicable flood event standard determined under subsection (4), plus 15 metres, to a similar point on the opposite side, and
    - (B) the distance from the predicted meander belt of a watercourse, expanded as required to convey the flood flows under the applicable flood event standard determined under subsection (4), plus 15 metres, to a similar point on the opposite side;
  - (c) hazardous lands;
  - (d) wetlands; or
  - (e) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands and wetlands greater than 2 hectares in size, and areas within 30 metres of wetlands less than 2 hectares in size. *(Phrase removed)*
- (2) All areas described in subsection (1) **that are within the jurisdiction of the Authority, including the allowances associated with the areas, are delineated as the “Regulation Limit” shown on a series of maps filed at the head office of the Authority under the map title “Ontario Regulation 97/04: Regulation for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses”.** *(Previous Subsection 12)*
- (3) **If there is a conflict between the description of areas in subsection (1) and the areas as shown on the series of maps referred to in subsection (2), the description of areas in subsection (1) prevails.** *(Previous Subsection 2 (2))*
- (4) **The applicable flood event standards used to determine the maximum susceptibility to flooding of lands or areas within the watersheds in the area of jurisdiction of the Authority are,** *(Previous Subsection 11)*
- (a) **in the case of Pringle Creek and Darlington Creek ,the 100 Year Flood Event Standard described in the Schedule to this Regulation;**
  - (b) **in the case of Lake Ontario ,the 100 Year flood level plus wave uprush described in the Schedule to this Regulation; and**

**(c) in all other cases, the Hurricane Hazel Flood Event Standard described in the Schedule to this Regulation.**

**Permission to develop**

**3.** (1) The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development.

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

**(3) The Authority may designate the Authority's executive committee or one or more of its employees as a Regulation Approval Officer and that employee or employees may exercise the powers and duties of the Authority under subsection (1) and (2) with respect to the granting of permissions for development in or on the areas described in subsection 2 (1).**

**Application for permission**

**4. An application for permission to undertake a development in or on an area described in subsection 2 (1) shall be signed by the owner of the land on which the development is proposed or his or her agent and filed with the Authority and shall contain the following information:**

1. Four copies of a plan of the area showing the type and location of the development.
2. The proposed use of the buildings and structures following completion of the development.
3. The start and completion dates of the development.
4. The elevations of existing buildings, if any, and grades and the proposed elevations of buildings and grades after development.
5. Drainage details before and after development.
6. A complete description of the type of fill proposed to be placed or dumped.
7. **Such other technical studies or plans requested by the Authority.**

**Alterations prohibited**

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

**Permission to alter**

**6.** (1) The Authority may grant a person permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse in or on the areas described in subsection 2 (1) or to change or interfere with a wetland in or on the areas described in subsection 2 (1).

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

**(3) The Authority may designate the Authority's executive committee or one or more of its employees as a Regulation Approval Officer and that employee or employees may exercise the powers and duties of the Authority under subsection (1) and (2) with respect to the granting of permissions for alterations in or on the areas described in subsection 6 (1).**

#### **Application for permission**

**7. An application for permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or change or interfere with a wetland shall be signed by the owner of the land on which the affected river, creek, stream or watercourse is situated, or his or her agent, and filed with the Authority and shall contain the following information:**

1. Four copies of a plan of the area showing plan view and cross-section details of the proposed alteration.
2. A description of the methods to be used in carrying out the alteration.
3. The start and completion dates of the alteration.
4. A statement of the purpose of the alteration.
5. **Such other technical studies or plans requested by the Authority.**

#### **Cancellation of permission**

**8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met.**

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

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

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

**9. (1) The maximum period, including any extensions, for which a permission granted under section 3 or 6 may be valid is,**

- (a) **24 months, in the case of a permission granted for projects other than projects described in clause (b); and**
- (b) **60 months, in the case of permissions granted for,**
  - (i) **projects that, in the opinion of the authority, cannot reasonably be completed within 24 months from the day the permission is granted, or**

(ii) projects that require permits or approvals from other regulatory bodies that, in the opinion of the authority, cannot reasonably be obtained within 24 months from the day the permission is granted.

(2) A permission may be granted for an initial period that is less than the maximum period specified in subsection (1) where, in the opinion of the authority, the project can be completed in less than 24 months.

(3) A permission granted for less than the maximum period of validity may be extended to the maximum period if,

- (a) the person who was granted the permission submits a written application for the extension to the Authority at least 60 days before the expiry of the permission;
- (b) the application sets out the reasons why the extension is required and demonstrates that circumstances beyond the control of the person granted the permission prevented completion of the project within the initial period.

**Appointment of officers**

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

**SCHEDULE  
FLOOD EVENT STANDARDS *(new title)***

1. The Hurricane Hazel Flood Event Standard means a storm that produces over a 48-hour period,

- (a) in a drainage area of 25 square kilometres or less, rainfall that has the distribution set out in Table 1; or
- (b) in a drainage area of more than 25 square kilometres, rainfall such that the number of millimetres of rain referred to in each case in Table 1 shall be modified by the percentage amount shown in Column 2 of Table 2 opposite the size of the drainage area set out opposite thereto in Column 1 of Table 2.

TABLE 1

73 millimetres of rain in the first 36 hours
6 millimetres of rain in the 37th hour
4 millimetres of rain in the 38th hour
6 millimetres of rain in the 39th hour
13 millimetres of rain in the 40th hour
17 millimetres of rain in the 41st hour
13 millimetres of rain in the 42nd hour
23 millimetres of rain in the 43rd hour
13 millimetres of rain in the 44th hour
13 millimetres of rain in the 45th hour
53 millimetres of rain in the 46th hour
38 millimetres of rain in the 47th hour
13 millimetres of rain in the 48th hour

TABLE 2

Column 1	Column 2
Drainage Area (square kilometres)	Percentage
26 to 45 both inclusive	99.2
46 to 65 both inclusive	98.2
66 to 90 both inclusive	97.1
91 to 115 both inclusive	96.3
116 to 140 both inclusive	95.4
141 to 165 both inclusive	94.8
166 to 195 both inclusive	94.2
196 to 220 both inclusive	93.5
221 to 245 both inclusive	92.7
246 to 270 both inclusive	92.0
271 to 450 both inclusive	89.4
451 to 575 both inclusive	86.7
576 to 700 both inclusive	84.0
701 to 850 both inclusive	82.4
851 to 1000 both inclusive	80.8
1001 to 1200 both inclusive	79.3
1201 to 1500 both inclusive	76.6
1501 to 1700 both inclusive	74.4
1701 to 2000 both inclusive	73.3
2001 to 2200 both inclusive	71.7
2201 to 2500 both inclusive	70.2
2501 to 2700 both inclusive	69.0
2701 to 4500 both inclusive	64.4
4501 to 6000 both inclusive	61.4
6001 to 7000 both inclusive	58.9
7001 to 8000 both inclusive	57.4

2. The 100 Year Flood Event Standard means rainfall or snowmelt, or a combination of rainfall and snowmelt, that has a probability of occurrence of one per cent during any given year.

3. The 100 Year flood level means the peak instantaneous still water level plus an allowance for wave uprush and other water-related hazards that has a probability of occurrence of one per cent during any given year.

#### Revocation

**11. Ontario Regulation 42/06 is revoked.**

#### Commencement

**12. This Regulation comes into force on the day it is filed**

**Appendix C: Facsimile of Original Letter sent to Otonabee Conservation Authority  
by MNR Legal Counsel, June, 2007.**

Ministry of Natural Resources  
Legal Services Branch  
3<sup>rd</sup> floor, Room 3420  
99 Wellesley Street West  
Toronto ON M7A 1W3  
Fax: (416) 314-2030  
Direct Line (416) 314-2029

Ministère des Richesses naturelles  
Division des services juridiques  
3<sup>e</sup> étage, bureau 3420  
99, rue Wellesley ouest  
Toronto ON M7A 1W3  
Télex: (416)314-2030



Our File: "951.01.001

June 11, 2007

Mr. Donald E. Greer  
Manager, Source Water Protection Planning  
Otonabee Conservation 250 Milroy Drive  
Peterborough ON K9H 7M9

Dear Mr. Greer:

Re: Interpretation of Clause 2(1)(d) and Clause 2(1)(e) (Great Lakes Shorelines) in  
Conservation Authorities Regulations

The provisions in Conservation Authorities Section 28 regulations dealing with areas of interference of a wetland have been subject to interpretations which are contrary to what the Province intended. These provisions identify areas within 120 metres of all provincially significant wetlands, and areas within 120 metres or 30 metres of other wetlands depending on the wording of the individual regulation, which require approval for any development. In order to recognize that additional approvals should not be required where interference with a wetland has already occurred and was supported by a study demonstrating the development did not interfere with the hydrologic function of a wetland, a proviso was added stating *"but not including those where development has been approved pursuant to an application made under the Planning Act or other public planning or regulatory process"*. Unfortunately the wording of the exclusion appears not to clearly convey what was intended. This has resulted in situations where CA permits are not sought on the basis that development has already been approved under the Planning Act "or other public planning or regulatory process." The difficulty is that Planning Act approvals and other approvals do not necessarily address hydrologic interference which, for wetlands, is the primary concern of regulation by Conservation Authorities.

Conservation Authorities should amend clause 2(1)(d) or 2(1)(e) of their Section 28 regulations to delete the words, "but not including those where development has been approved pursuant to an application made under the Planning Act or other public planning or regulatory process." The draft amendments should be forwarded to MNR Legal Services as soon as possible so they may be submitted to Legislative Counsel for review and final drafting. This is also an opportunity to update references to studies and maps in the regulation.

In the interim, Conservation Authorities should be advised that the "interference" requirements of Sections 2 (1) (d) and 2.1(e) of their "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" continue to apply to all new development.

Yours sincerely,

*(originally signed by)*

Krystine Lintell  
Counsel  
Legal Services Branch

cc: Bonnie Fox  
Policy and Planning  
Conservation Ontario