

SCRCA SECTION 28 WETLAND POLICY

SCRCA Policies and Procedures of Administration of Section 28 Regulations Wetland Policies

Definitions section (Source: Section 28 CA Act)

Development means:

- a) the construction, reconstruction, erection or placing of a building or structure of any kind,
- b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,
- c) site grading, or
- d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.

Pollution means:

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

Watercourse means:

“... an identifiable depression in the ground in which a flow of water regularly or continuously occurs”

Wetland means land that (Note: Must meet all 4 tests below):

- a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface,
- b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse,
- c) has hydric soils, the formation of which has been caused by the presence of abundant water, and
- d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water,

but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause (c) or (d).

In addition, the *Conservation Authorities Act* and Ontario Regulation 97/04 do not define “Interference” nor was any definition found in any other planning document; hence, the **interpretation** below was developed by the Ministry of Natural Resources/ Conservation Ontario Section 28 Peer Review and Implementation Committee. Under the Regulation, “interference” only applies to projects within watercourses and wetlands.

Interference in any way is interpreted as:

“any anthropogenic act or instance which hinders, disrupts, degrades or impedes in any way the natural features or hydrologic and ecologic functions of a wetland or watercourse” (March 2008).

The common uses of words in this interpretation can be found in the Oxford Dictionary as follows:

Hinder means: to delay or impede

Disrupt means: to interrupt or disturb (an activity or process)

Degrade means: lower the character or quality of

Impede means: delay or block the progress or action of

For example, vegetation removal within a wetland boundary could be a regulation activity of “*interference in any way*” described under CAA Section 1(b) prohibiting, regulating or requiring the permission of the authority for straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland; (As per MNR/CO Section 28 Peer Review and Implementation Committee interpretation March 2008)

1.0 WETLANDS AND OTHER AREAS

1.1 St. Clair Region Conservation Authority Regulation 171/06

The SCRCA Regulation 171/06 contains the following sections dealing with wetlands.

“Development prohibited

- 2.(1) Subject to section 3, no person shall undertake development or permit another person to undertake development in or on areas within the jurisdiction of the Authority that are:
 - d) wetlands or...
 - e) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 m of all provincially significant wetlands, and areas within 30 metres of all other wetlands;

“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.”

“Alterations prohibited

5. Subject to section 6, no person shall ... change or interfere in any way with a wetland.”

“Permission to alter

- 6.(1) The Authority may grant a person permission ...to change or interfere with a wetland.
- 6.(2) The permission of the Authority shall be given in writing, with or without conditions.

1.2 Additional Definitions and Interpretations

A wetland means land that a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface, b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse, c) has hydric soils, the formation of which has been caused by the presence of abundant water, and d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water, but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause c) or d).

It should be noted that the *Conservation Authorities Act* and the individual CA Regulations all use the wording “in any way” when describing change or interference with a wetland. Activities proposed within the wetland boundary that could interfere in any way with the wetland, including both those activities that meet the definition of “development” and those that do not necessarily meet the definition of “development” are regulated as described in Sections 5 and 6 of the Regulation. An example of an activities that does not strictly meet the definition of “development” and could represent interference is vegetation removal.

There are a variety of sources for identifying wetlands. Many wetlands have been identified through the provincial wetland evaluation program. Conservation Authorities may also identify wetlands as part of other watershed programs such as environmentally significant area and ecological land classification (ELC) mapping. Soils mapping (i.e. OMAFRA) may also be useful in identifying organic soils which would indicate the potential of wetlands.

The province uses the Ontario Wetland Evaluation System (OWES), originally developed in 1983, to identify and evaluate wetlands primarily to support land use planning processes under the *Planning Act*. The OWES currently consists of two manuals: the Southern Ontario Wetland Evaluation System and the Northern Ontario Wetland Evaluation System (MNR, 1993a; and MNR, 1993b). While many components of the manuals are similar, differences between the evaluation manuals reflect differences in climate, geomorphology, hydrology, human uses and other factors between these two parts of the province. Wetlands identified and evaluated using the OWES can be a valuable resource for implementing Section 28 of the *Conservation Authorities Act*, however, it is important to note that a wetland must meet the definition of ‘wetland’ within the *Conservation Authorities Act*.

1.3 Discussion of Wetlands and Other Areas

To provide guidance in the regulating of wetlands and the associated allowances, it is necessary to highlight the functions of wetlands.

1.3.1 Functions of Wetlands

Wetlands provide functions that have both ecosystem and human values. From an ecosystem perspective these include primary production, sustaining biodiversity, wildlife habitat, habitat for species at risk, maintenance of natural cycles (carbon, water) and food chains. From a human perspective, wetlands provide social and economic values such as flood attenuation, recreation opportunities, production of valuable products, improvement of water quality and educational benefits.

Wetlands retain waters during periods of high water levels or peak flows (i.e. spring freshet and storm events) allowing the water to be slowly released into the watercourse, infiltrate into the ground, and evaporate. As well, wetlands within the floodplain of a watercourse provide an area for the storage of flood waters and reduce the energy associated with the flood waters.

Wetlands retain and modify nutrients, chemicals and silt in surface and groundwater thereby

improving water quality. This occurs temporarily in the plants of the wetland but long term in the organic soils.

In addition, wetlands provide a variety of hydrologic functions. Over 60 potential hydrological functions have been identified for wetlands when developing the Southern Ontario Wetland Evaluation System. However, confirmation of many of these functions requires hydrological experts and field studies by qualified hydrologists. Therefore, the Ontario Wetland Evaluation System utilizes easily identifiable features and measures as surrogate values for these hydrological features.

1.3.2 Development and Interference

Development in wetlands has the potential to interfere with many of the natural features or ecological functions of wetlands. Development may remove or impact wildlife species and their habitat, degrade or remove natural vegetation communities and impair water quality and quantity in both surface and groundwater. As a result, development within wetlands can impact conservation of land.

Portions of wetlands may also be regulated due to presence of hazardous lands such as regulated floodplains or unstable soils. The applicable sections of SCRCA guideline documents should be referenced with respect to these hazards.

Removal, filling, dredging, or changing the hydrologic regime of wetlands (e.g. ponds or drains) can result in reducing the capacity of wetlands to retain water. This can result in higher flows in watercourses with resulting increases in flooding and erosion. As well, with no ability to retain water, the ability to recharge the aquifer is reduced, and the hydrologic cycle is modified.

Many wetlands develop on organic soils and, as a result, when reviewing development within a wetland, the soil composition should be reviewed. Where the soils are organic then Hazardous Lands should also be reviewed and the policies from this section should be incorporated in the decision making of the SCRCA.

Pollution from development in the form of improperly installed or maintained septic systems or urban runoff has the potential to interfere with the wetland. Proposals to drain stormwater management facilities into wetlands do not benefit the wetland through constant flows for dilution and moving particulate matter. Nutrients, chemicals, and sediments could enter the wetland impeding the function of the wetland.

When reviewing an application with respect to **interference** or **development**, the evaluation done under the OWES may be used as an information resource because it identifies the features and functions of the wetland. It should be noted that when reviewing application with respect to **development** under the Regulation, the significance of the wetland as determined by the Ontario Wetland Evaluation System is not a reason to deny or approve the application. The application must be reviewed with respect to the control of flooding, erosion, pollution, dynamic beaches or the conservation of land.

Many individual and cumulative hydrologic impacts to a wetland commonly occur within the catchment area of the wetland. It is important to consider the linkages between small wetlands and headwater areas, impacts of stormwater, and upstream constrictions to flow. Impacts to the hydrologic function of a wetland due to development within the “other areas” may also result from changes in imperviousness/infiltration due to a removal or change in vegetation, soil compaction during construction, disruption or alteration of groundwater flow paths due to underground construction, etc.

Ontario Regulation 171/06 specifies that the regulated area extends 120 metres from the limit of Provincially Significant Wetlands and 30 metres from the limit of all other wetlands for all CAs.

1.3.3 Technical Analysis

1.3.3.1 “Interfere in Any Way”

As part of the review of an application, a CA may request an Environmental Impact Study (EIS) to address Interference with a wetland. An EIS is a mechanism for assessing impacts to determine the suitability of a proposal. The submission of an EIS does not guarantee approval of the works. An EIS must be carried out by a qualified professional, with recognized expertise in the appropriate area of concern and shall be prepared using established procedures and recognized methodologies to the satisfaction of the CA. Appendix F provides additional details on what an EIS may contain.

1.4 Implementation Guidelines for Wetlands and Other Area

The following sections outline guidelines for implementing the SCRCA’s Regulation with respect to wetlands and “other areas”. The SCRCA, in its role through the planning process, should review planning applications to ensure that, in general, all development can occur outside and be set back an appropriate distance from the wetland boundaries.

1.4.1 Development and Interference Within Wetlands

- 1) In general, development and interference shall not be permitted within wetlands;
- 2) In general, new ponds and drains shall not be permitted within wetlands;
- 3) In general, stormwater management facilities shall not be permitted within wetlands;
- 4) Notwithstanding Section 1.4.1 1), public infrastructure (e.g. roads, sewers, flood and erosion control works) and various utilities (e.g. pipelines) may be permitted within a wetland subject to the activity being approved through a satisfactory Environmental Assessment process and/ or if it has been demonstrated to the satisfaction of the SCRCA that the control of flooding,

erosion, pollution or the conservation of land will not be affected and the interference on the natural features and hydrologic and ecological functions of the wetland has been deemed to be acceptable by the SCRCA;

- 5) Notwithstanding Section 1.4.1 1), conservation or restoration projects may be permitted within a wetland if it has been demonstrated to the satisfaction of the SCRCA that the control of flooding, erosion, pollution or the conservation of land will not be affected and the interference on the natural features and hydrologic and ecological functions of the wetland has been deemed to be acceptable by the SCRCA;
- 6) Notwithstanding Section 1.4.1 1), development associated with public parks (e.g. passive or low intensity outdoor recreation and education, trail system) may be permitted within a wetland if it has been demonstrated to the satisfaction of the SCRCA that the control of flooding, erosion, pollution or the conservation of land will not be affected and the interference on the natural features and hydrologic and ecological functions of the wetland has been deemed to be acceptable by the SCRCA.

1.4.2 Development Within “Other Areas” (Areas of Interference/Adjacent Lands within which Development may interfere with the Hydrologic Function of the Wetland)

The regulated area as defined within Ontario Regulation 171/06 extends 120 metres from the limit of *provincially significant wetlands (PSW)* and 30 metres from the limit of all other *wetlands*. These areas are regulated as *development* may interfere with the *hydrologic function* of the wetland. It is important to note that the onus is on the applicant to demonstrate that the development will not result in a hydrologic interference. If there is concern that development could interfere with the *hydrologic function* of a wetland, the control of flooding, erosion, pollution, dynamic beaches and conservation of land should also be considered prior to making a decision on the permit application.

1.4.2.1 Area Within 30 Metres of a PSW and all other Wetlands

- 1) In general, development shall not be permitted within 30 metres of the boundary of the wetland;
- 2) Notwithstanding Section 1.4.2.1 1), public infrastructure (e.g. roads, sewers, flood and erosion control works) and various utilities (e.g. pipelines) may be permitted within 30 metres of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;
- 3) Notwithstanding Section 1.4.2.1 1), conservation or restoration projects may be permitted within 30 metres of a wetland if the

interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;

- 4) Notwithstanding Section 1.4.2.1 1), development associated with public parks (e.g. passive or low intensity outdoor recreation and education, trail system) may be permitted within 30 meters of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;
- 5) Notwithstanding Section 1.4.2.1 1), single family buildings or structures may be permitted within 30 metres of a wetland on vacant lots of record if the interference on the hydrologic function of the wetland has been deemed to be acceptable by the SCRCA. An EIS to assess the hydrologic impact shall be required if the submitted plans do not demonstrate the following:
 - a) All development (including grading) is located outside the regulated wetland and maintains as much setback as feasible;
 - b) Disturbances to natural vegetation communities contributing to the hydrologic function of the wetland are avoided;
 - c) The overall existing drainage patterns for the lot will be maintained;
 - d) Disturbed area and soil compaction is minimized;
 - e) Development is located above the high water table;
 - f) All septic systems are located a minimum of 15 metres from the wetland and a minimum of 0.9 m above the water table;
 - g) Impervious areas are minimized;
 - h) Best Management Practices are used to:
 - i) maintain water balance
 - ii) control sediment and erosion
 - iii) buffer wetlands
- 6) Notwithstanding Section 1.4.2.1 1), structural repairs to an existing building or structure may be permitted within 30 meters of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;
- 7) Notwithstanding Section 1.4.2.1 1), development associated with the construction or reconstruction of a building or structure may be permitted

within 30 meters of a wetland if there are no reasonable alternatives for locating the building or structure outside of the 30 metre setback and if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;

- 8) Notwithstanding Section 1.4.2.1 1), development may be permitted within 30 meters of a wetland if the proposed development does not encroach further into the setback from the wetland boundary than existing development and if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;

1.4.2.2

Area Between 30 Metres to 120 Metres of a Provincially Significant Wetland

- 1) In general, development may be permitted in the area between 30 metres to 120 metres of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;
- 2) Further to Section 1.4.2.2 1), public infrastructure (e.g. roads, sewers, flood and erosion control works) and various utilities (e.g. pipelines) may be permitted in the area between 30 metres to 120 metres of a wetland subject to the activity being approved through a satisfactory Environmental Assessment process and/or if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;
- 3) Further to Section 1.4.2.2 1), conservation or restoration projects may be permitted in the area between 30 metres to 120 metres of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;
- 4) Further to Section 1.4.2.2 1), development associated with public parks (e.g. passive or low intensity outdoor recreation and education, trail system) may be permitted in the area between 30 metres to 120 metres of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA;
- 5) Further to Section 1.4.2.2 1), single family buildings or structures may be permitted in the area between 30 metres to 120 metres of a wetland on vacant lots of record if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA. An EIS to assess the hydrologic impact shall be required if the submitted plans do not demonstrate the following:
 - a) All development (including grading) is located outside the 30 m

setback from the regulated wetland and maintains as much setback as feasible;

- b) Disturbances to natural vegetation communities contributing to the hydrologic function of the wetland are avoided;
 - c) The overall existing drainage patterns for the lot will be maintained;
 - d) Disturbed area and soil compaction is minimized;
 - e) Development is located above the high water table;
 - f) All septic systems are located at a minimum 0.9 m above the water table;
 - g) Impervious areas are minimized;
 - h) Best Management Practices are used to:
 - i) maintain water balance
 - ii) control erosion and sediment
 - iii) buffer wetlands
- 6) Further to Section 1.4.2.2 1), larger scale development associated with large commercial uses, industrial uses, multiple residential uses (condominiums, apartments, townhouses, etc.) and/or development into the water table may be permitted in the area between 30 metres to 120 metres of a wetland if the interference on hydrologic functions of the wetland has been deemed to be acceptable by the SCRCA. An EIS to assess the hydrologic impact shall be required.