

Generic Regulation - Approval Process Document

A Guideline Document to Assist Conservation Authorities with the
Process of Obtaining Approval for their new Conservation Authorities
Act, Development, Interference of Wetlands and Alteration to
Watercourses Regulation

February 2, 2004

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1.0 Introduction

The Conservation Authorities regulation of Fill, Construction and Alteration to Waterways under the Conservation Authorities Act was reviewed as part of the Ontario Government's Red Tape Reduction initiative. This review resulted in a recommitment of the government to the regulation of natural hazard processes under the Conservation Authorities Act and the identification of a number of changes to the regulatory framework to assist Conservation Authorities with undertaking this activity. One significant change involves the replacement of existing regulations for individual Conservation Authorities with one Generic Regulation for all Conservation Authorities. This new regulation is referred to as the Development, Interference of Wetlands and Alteration to Watercourses Regulation.

Each Conservation Authority is required to prepare a local regulation that complies with the Generic Regulation for submission to the Minister of Natural Resources (MNR) for approval. This Approval Process document has been developed to assist Conservation Authorities with the preparation and submission of a local regulation that complies with the Generic Regulation. This document deals specifically with the approval process and it is one in a series of guideline documents that are being developed to assist Conservation Authorities with the new regulatory framework.

The Approval Process document is divided into four sections:

- 2.0 Conservation Authority Adoption Component
- 3.0 Conservation Authority Peer Review Component
- 4.0 MNR Approval Process
- 5.0 Post Approval Process

The Approval Process Document identifies some components as being mandatory and some as being optional, setting out the minimum process to be followed in obtaining approval of a local regulation while providing some suggestions for local enhancements based on local circumstances. This document will give Conservation Authorities a clear outline of the steps required, which will assist in planning for the approval of a local regulation. As a guideline approved by Conservation Ontario, it will promote consistency in the processes employed across the Province by establishing minimum requirements.

2.0 Conservation Authority Adoption Component

The internal and external consultation requirements for a Conservation Authority to secure local adoption of the regulation (in the form of a resolution from the CA Board of Directors), can be divided into the following steps:

- 2.1 Regulation Preparation – includes internal communications and consultation
- 2.2 External Consultation/Communication - includes guidance on the standards for consultation and communication and provides some key messages for assistance
- 2.3 Regulation Adoption by the Board of Directors – includes recommended wording for the Board of Directors resolution

It is recognized that situations vary among Conservation Authorities and the requirements will need to be tailored to suit local circumstances.

2.1 Regulation Preparation

Each Conservation Authority must review the Generic Regulation with consideration for existing regulations, local geography and the key messages section of this document (Section 2.2.4). Where a map based regulation is being pursued, the Conservation Authority is expected to identify and adopt mapping criteria that are appropriate to their watershed and are consistent with the Generic Regulation Guidelines for Developing Regulation Schedules.

Each Conservation Authority must consider what they anticipate can be accomplished within the available timeframe for the regulation to be implemented and available resources. A Conservation Authority may decide to edit or amend existing mapping to reflect the mapping standards, or to prepare new mapping, or to prepare textual descriptions for areas where mapping cannot be completed within the required time frame or is not desired, or a combination of these activities. Conservation Authority contact with municipal staff, especially in the planning and building departments, is encouraged.

Upon determining a work plan including mapping standards, Conservation Authorities should begin preparing the mapping and/or description schedules for their regulation. Once completed, the Conservation Authority's Board of Directors needs to consider the proposed regulation schedules for adoption for the purpose of stakeholder review. This leads to external communication/consultation.

2.2 External Consultation/Communication

The Conservation Authority will need to undertake a public information program to advise its constituency when adopting a new regulation. Conservation Authorities are encouraged to undertake a comprehensive and transparent consultation process. The process should anticipate the possibility of objections to the Authority's intent to continue to regulate land or to regulate new areas and a process to deal with such concerns should be prepared.

Conservation Authorities are familiar with the processes required for consultation in adopting their original regulation. At that time, a Conservation Authority required a number of specific resolutions and approvals from outside agencies. The approach outlined here differs in that it accounts for the fact that regulations are already in place, and that this process is necessary to conform to legislative amendments approved by the provincial government. The only resolution required prior to submission for approval is that of the Conservation Authority Board of Directors. The Act and the anticipated Regulation do not contain an appeal process and it is therefore recommended that the local consultation process anticipate objections and include a clear process for reviewing and documenting concerns raised.

The public information program should be based upon the following objectives:

- a) to ensure the public understands that changes are a result of legislative amendments of the provincial government;
- b) to educate the public regarding the definition of lands to which the regulation applies; and
- c) to inform municipal staff, development interests, and landowners regarding the new areas of regulation application and the process for review of development, alteration to waterways and interference with wetlands.

In their consultations/communications, Conservation Authorities need to be clear concerning the scope of comments that can be addressed through this process. Conservation Authorities have been regulating since 1956; the amendments to the Conservation Authorities Act have been in place since 1997. The new “Generic Regulation” will have been approved. Therefore, the Conservation Authority must be clear that changes are being made to the local regulations to bring them into conformity with existing provincial legislation. It is only the local implementation of the changes that is the focus of this consultation.

2.2.1 Minimum Standards for Consultation

The minimum standards for consultation are roughly based upon Planning Act consultation requirements in place as of the date of writing of this document. It must be noted that these are the minimum requirements only. Each Conservation Authority must determine for itself whether and how to expand these requirements.

Mandatory consultation includes:

- A Conservation Authority must hold at least one public meeting to provide information and receive comments.
- Notice of the meeting to inform the public of the new regulation requirements must be given at least 20 days in advance by publication in a newspaper or newspapers of generally sufficient circulation in the area to provide the public with reasonable notice of the meeting.
- Notice of the public meeting must also be sent to:
 - The Clerk of every municipality within the jurisdiction of the Conservation Authority;
 - The secretary of every municipal or other corporation operating an electric utility in the jurisdiction of the Conservation Authority;

- The secretary of every company operating a natural gas utility in the jurisdiction of the Conservation Authority;
- The Executive Vice-President, Law and Development, of Ontario Power Generation Inc.;
- The secretary of Hydro One Inc.;
- The secretary of every company operating an oil or natural gas pipeline in the jurisdiction of the Conservation Authority;
- The secretary of every school board within the jurisdiction of the Conservation Authority;
- The Chief of every First Nation Council within the watershed boundary;
- Fisheries and Oceans Canada; and
- The District Office(s) of the Ministry of Natural Resources in the jurisdiction of the Conservation Authority.
- The Manager, Community Planning and Development, Ministry of Municipal Affairs, Municipal Services Office and the Director, Provincial Planning and Environmental Services Branch, Municipal of Municipal Affairs

Where applicable, notice must also be sent to:

- Parks Commissions (e.g. St Clair, Niagara, St Lawrence)
 - Parks Canada
 - The Niagara Escarpment Commission
 - The Manager, Planning and Environmental Office, Ministry of Transportation (St Catharines, Ontario)
- The notice must include:
 - The date, time and location of the meeting;
 - A description of the purpose of the regulation as well as the activities and areas to which it applies, i.e. (i) straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, (ii) changing or interfering in any way with a wetland and (iii) development in areas that are:
 - 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 beach hazards;
 - b. river or stream valleys;
 - c. hazardous lands;
 - d. wetlands; or
 - e. other areas where, in the opinion of the Minister of Natural Resources, development should be prohibited or regulated or should require the permission of the authority;
 - A map of the Conservation Authority's area of jurisdiction;
 - Where and when additional information regarding the regulation will be available to the public for inspection.

2.2.2 Additional Consultation

In addition to the mandatory requirements Conservation Authorities should also consider additional contacts and alternate methods of communication with the following local constituents:

- additional newspaper advertising and news articles;
- interviews with watershed media;
- information postings on websites; and
- local seminars and workshops to explain the process requirements.

As Conservation Authorities are already involved in the regulations process within their watershed jurisdictions, they are also familiar with their local constituents that have an interest in the principles of watershed management or may be affected by the regulations. Communications should occur with these interests that include:

- municipal staff,
- development industry,
- real estate,
- agricultural community,
- cottage associations,
- environmental advocacy,
- MPs,
- MPPs,
- federal departments,
- provincial ministries,
- ratepayer organizations,
- canals, harbours and port authorities

Conservation Authorities may also have developed communication networks for local issues that complement this listing.

2.2.3 Consultation Record

Conservation Authorities will be required to prepare a consultation record that documents these activities for submission to the Peer Review Committee. A copy of the form to be used for this submission is appended.

It is recommended that the Conservation Authority also keep a detailed consultation record for their files. This consultation record should include:

Notice of public meeting

- Mailing list of contacts (both mandatory and additional)
- Sign in sheets from Public Meeting
- A list including an outline of the context of all submissions received and responses provided by the Conservation Authority.

2.2.4 Products Developed to Assist Conservation Authorities in Consultation

A number of key messages have been developed to assist Conservation Authorities in their communications related to the Regulation of Development, Interference with Wetlands and Alteration to Watercourses under the Conservation Authorities Act.

Result of Red Tape Reduction Act

Since 1995, under the auspices of the Red Tape Reduction Act, the Red Tape Commission has been responsible for streamlining provincial government acts and regulations. A key focus of the Commission is to bring clarity and consistency to existing legislation and eliminate regulations that are no longer needed. While the Commission has a focus on making it easier to do business in the province, a primary objective is also to maintain legislation that protects public health, safety and the environment.

The Red Tape Commission process identified a need to make amendments to the Conservation Authorities Act. These amendments were subsequently tabled and the process of public consultation culminated with the enactment of amendments to the Conservation Authorities Act in 1997. The development of the Generic Regulation and the development of local regulations to implement the Generic Regulation are direct requirements of the amended Conservation Authorities Act.

Amendment of Existing Regulations

This Generic Regulation is not a new piece of legislation. The Conservation Authorities Act was originally created in 1946 in response to watershed management issues and the recognition that these and other natural resource initiatives were best managed on a watershed basis. Fill, Construction and Alteration to Waterways regulations were subsequently developed for all Conservation Authorities in Ontario. There are currently 39 regulations in place. Many of these regulations have been in place since the 1960s and were last amended in 1990. The Generic Regulation is designed to achieve consistency province-wide in the Regulation of Development, Interference of Wetlands and Alteration to Watercourses.

Complementing the Planning Act

This regulation, made under the Conservation Authorities Act, complements implementation activities related to the Planning Act. For example, the Provincial Policy Statement (1997) provides land use planning policy guidance on matters related to natural hazards. The Provincial Policy Statement is referenced when a Planning Act Application such as a severance, a subdivision plan or a comprehensive official plan amendment is considered. Using the guidance provided by the Provincial Policy Statement, natural hazards are identified in the planning process and appropriate restrictions can be implemented. In cases where a Planning Act Application is not required, the Provincial Policy Statement cannot be applied and, in these cases, the Province's natural hazard management program can be implemented through the Conservation Authorities Act. In this way, the Planning Act is a tool to proactively identify and regulate hazards while the Conservation Authorities Act can regulate activities in those cases where municipal plans have not been updated and in those cases where the municipal plan may allow the activity subject to certain requirements which can be addressed through the Conservation Authorities Act approval process.

A Preventative Approach

A principal mandate of Conservation Authorities is to prevent the loss of life and property due to flooding and erosion, to prevent pollution and to conserve and enhance natural resources. This regulation is a key tool in fulfilling this mandate because it prevents or restricts development in areas where in the opinion of the Authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

Powers Under Section 28 Regulation

Conservation Authorities' powers under this regulation include the ability to:

- a) Prohibit, regulate or require permission for straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream, watercourse or changing or interfering with a wetland.
- b) Prohibit or regulate or require permission for development if the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

2.3 Regulation Adoption by the Board of Directors

Upon completion of the external consultation, the preparation of documentation for submission of the regulation is required. This includes the regulation, including completing any text edits that may be required, and the finalization of the schedules (areas where the regulation is to apply, any exemption areas, and the flood event standard(s)). The local regulation is to be consistent with the Generic Regulation and reflect input received during consultation as deemed possible/warranted.

As well, each Conservation Authority must document the steps taken during the adoption process to demonstrate consistency with the province-wide process guidelines.

The regulation package then is considered by each Conservation Authority's Board of Directors for adoption. Voting is on a non-weighted basis, carried by majority. To indicate consistency with process guidelines, a sample resolution is as follows:

Whereas a local regulation to manage development, interference with wetlands and watercourses has been prepared in conformity with the provisions outlined in Section 28 of the Conservation Authorities Act, and standards for mapping and public consultation have been followed;

Therefore, the _____ Conservation Authority adopts the subject regulation;

And further, that the said regulation and related documentation be submitted to the Conservation Ontario Peer Review Committee and subsequently to the Ministry of Natural Resources for approval by the Minister.

3.0 Conservation Authority Peer Review Component

Conservation Ontario will take a significant role in ensuring that the individual Conservation Authorities' updated regulations are consistent with the Generic Regulation. To achieve these responsibilities, a Peer Review Committee will be formed and will report to Conservation Ontario.

3.1 Committee Responsibilities and Roles

The Peer Review Committee's key responsibilities include determining that the individual Conservation Authority's regulation (text) and schedules (mapping) are in conformity with the Generic Regulation and that the approval process has been followed. The written endorsement of this committee will be required prior to submission of the updated regulation and schedules to the Minister of Natural Resources for approval.

The Peer Review Committee will be required to advise the Minister of the following:

- that the updated regulation and schedules followed the agreed upon approval process, and
- that the peer review committee has reviewed and endorsed the updated regulation and schedules and they are in conformity with the Generic Regulation.

The committee would also review and provide recommendations on anomalies such as "other lands" and "exemptions."

As part of the review role, the Peer Review Committee should also provide pre-consultation advice with Conservation Authorities prior to submission of the regulation and schedules, and on going technical advice throughout the preparation of the regulation and schedules.

3.2 Committee Structure

The Peer Review Committee will be structured as one multi-disciplinary committee covering all Conservation Authorities. The creation of regional sub-committees or an advisory committee may be considered to assist the Peer Review Committee and provide guidance to Conservation Authorities on local or regional matters that may affect the preparation of the regulation.

The Peer Review Committee would be comprised of six to 10 members representing the Conservation Authorities' main business areas such as water resources engineering, ecology, planning and regulations, mapping/GIS, and management. In addition to Conservation Authority representation, the Peer Review Committee will also include participant(s) from the Ministry of Natural Resources. The Conservation Authority representatives would be appointed by Conservation Ontario and the members would be exempt from reviewing their respective Conservation Authority's regulations.

3.3 Submissions to the Peer Review Committee

- The Approval Process Guidelines and the Guidelines for Developing Regulation Schedules will provide guidance and direction for the committee in carrying out its function.

In order to have the Peer Review Committee undertake their review, a CA will need to submit a package including:

- ❑ A draft Regulation
- ❑ A completed Consultation Record
- ❑ A copy of the CA Board of Directors Resolution, and
- ❑ If pursuing a map based regulation:
 - Executive Summary Mapping for the entire CA jurisdiction to provide the Peer Review Committee with a context of the areas proposed to be regulated. This may consist of a reduced scale map of either the entire CA jurisdiction or a series of maps based on a logical division such as major catchments or municipalities.
 - 10 – 15 samples of detailed mapping sheets which will allow the committee to review how the hazard lines were interpreted across the watershed. The mapping sheets selected will depict the range of conditions and types of base mapping and should be accompanied by a key map showing the location of the specific sample maps within the CA jurisdiction
 - A summary that details the method used to prepare the mapping

3.4 Peer Review Committee - Letter of Endorsement

Once the Peer Review Committee has reviewed the documentation provided it will respond to the submitting CA providing:

- ❑ A letter outlining any revisions required, as well as a recommendation regarding the need for further consultation, or
- ❑ A letter of endorsement

4.0 MNR Approval Process

Once the Conservation Authority regulation has received the written endorsement of the Conservation Ontario Peer Review Committee, the regulation may be submitted to the Ministry of Natural Resources for approval. A completed package from the Conservation Authority is to be submitted to the Director, Lands and Waters Branch, Ministry of Natural Resources. The completed package is to include the following information:

- a cover letter outlining what is in the package, requesting a letter of approval from the Minister, and clearly identifying a lead staff contact at the Conservation Authority for questions and clarification;
- the resolution from the Conservation Authority;
- the letter of endorsement from the Peer Review Committee; and
- the text of the regulation and “executive summary” scale mapping.

The MNR approval process will consist of the following steps:

- legal services review to ensure consistency;
- approval at the Deputy Minister level;
- submission to the Minister; and
- Minister's Letter of Approval to the Conservation Authority's Board of Directors.

5.0 Post Approval Process

5.1 Notification of Approval

Notice will be provided by the Conservation Authority to each member municipality and advertised in area newspapers. The notice should indicate the effective date for implementation of the revised regulation and a copy of the notice should be kept for future reference. Copies of available mapping will be provided to the municipalities.

5.2 Transition Policies

Conservation Authorities are strongly encouraged to have Board of Directors approved policies in place to deal with the transition from the previous regulation to the implementation of the new regulation. It is recommended that policies be in place to cover the following items:

- Applications that were submitted prior to the adoption of the new regulation but that have not been approved. It may be appropriate to have this policy distinguish between complete and incomplete applications. It may also be appropriate to identify a cut off date for the application of this particular policy.
- Extensions of approvals granted under the old regulation
- Modifications to permits and conditions that were provided under the old regulation

5.3 Maintenance

Additions or modifications to regulation schedules that maintain the intent and improve the accuracy of the regulated area, such as updated wetland boundaries, will not require an approval process. These will normally be site-specific amendments. The Conservation Authority will consult the affected municipality and keep a listing of these modifications to the regulated area and file a report with the peer review committee and MNR.

Additions or modifications to the regulation schedules resulting from comprehensive or larger scale studies require re-circulation through the Peer Review/MNR process and notification if they substantially change the impact of the regulation. A copy of the mapping highlighting the proposed modification(s) and the rationale for the change(s) as well as a record of any consultation will be provided to the Peer Review Committee in support of the amendment application.

***Sample Public Consultation Record
For Local Regulation***

Notice of public meeting	Please attach copy of the meeting notice and proof of publication of newspaper notices
Notification of mandatory contacts	Please attach copy of sample notification provided
Public Meeting	Date(s) _____ Location : # of attendees _____
Please provide a short summary of the results of the consultation process	

Approval Process Flowchart

