

## Section 28 Hearing Procedures Guideline

### 1.0 PURPOSE

The purpose of the Section 28 Hearing Procedures Guideline is to guide the Kettle Creek Conservation Authority (KCCA) Hearing Board in conducting hearings under Section 28 of the Conservation Authorities Act.

The Conservation Authorities Act (Section 28) requires that the applicant be provided with an opportunity for a hearing by the local Conservation Authority Board for an application to be refused or approved with contentious conditions or permitted in absence of KCCA Policy. Further, where staff is recommending that a permit be cancelled under Ontario Regulation 181/06, a hearing will be held to provide the applicant with the opportunity to show cause why the permit should not be cancelled. Ontario Regulation 181/06 allows the Kettle Creek Conservation Authority to restrict or refuse development in areas where, in the opinion of the Authority, the control of flooding, erosion, dynamic beaches, pollution, or conservation of land may be affected by development in order to prevent the creation of new hazards or the aggravation of existing ones.

These procedures also recognize the ability to request a Hearing of the Board of Directors to address appeal processes within a Section 28 application process as recommended within the provincial guideline document entitled *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities* (MNRF, May 2010) and prescribed within KCCA's Administrative Procedures: Section 8, *Policies and Procedures for the Administration of Section 28 Regulations* (Sept, 2006).

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

The Hearing Board, which is comprised of the members of the Kettle Creek Conservation Authority Board of Directors, shall hear and decide whether the application will be approved with or without conditions or refused. In the case of hearings related to applications submitted pursuant to Section 28.0.1, the Hearing Board shall determine what conditions, if any, will be attached to the permission.

These procedures are intended to provide a step-by-step process to conducting hearings required under Section 28 (12), (13), (14) and Section 28.0.1(7) of the Conservation Authorities Act. The procedures ensure that hearings meet the legal requirements of the Statutory Powers Procedures Act without being unduly legalistic or intimidating to the participants.

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### 2.0 PREHEARING PROCEDURES

#### 2.1 Role of the Hearing Board

In considering the application, the Hearing Board is acting as a decision-making tribunal. The tribunal is to act fairly. Under general principles of administrative law relating to the duty of fairness, the tribunal is obliged not only to avoid any bias but also to avoid the appearance or reasonable apprehension of bias. The following are three examples of steps to be taken to avoid apprehension of bias where it is likely to arise.

- a. No member of the Authority taking part in the hearing should have prior involvement with the application that could lead to a reasonable apprehension of bias on the part of that member. Where a member has a personal interest, the test is whether a reasonably well-informed person would consider that the interest might have an influence on the exercise
- b. of the official's public duty. Where a member is a municipal councillor, the Municipal Conflict of Interest Act applies. In the case of a previously expressed opinion, the test is that of an open mind, i.e. is the member capable of persuasion in participating in the decision making.

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

- c. In instances where the Authority (or Executive Committee) requires a hearing to help it reach a determination as to whether to give permission with or without conditions or refuse a permit application, a final decision shall not be made until such time as a hearing is held. The applicant will be given an opportunity to attend the hearing before a decision is made; however, the applicant does not have to be present for a decision to be made.
- d. Where a hearing is required for applications submitted pursuant to s.28.0.1 of the Conservation Authorities Act (e.g. to determine the conditions of the permission), final decision on the conditions shall not be made until such time as the applicant has been given an opportunity to attend a meeting.

#### 2.2 Application

The right to a hearing arises where:

- Current legislation requires authorization of the Authority;
- Authority staff recommend the application be denied;
- Applications submitted pursuant s.28.0.1 of the CA Act;
- The application poses a significant controversy with a third party, such as a lawyer/municipal/provincial agency with respect to the Authority's position;
- The application, as deemed by the Regulation Approval/Officer(s), warrants a review by the Authority, for technical, policy or information purposes; or
- An applicant is not satisfied with the decision of staff on whether an application is deemed complete and has requested referral to a Hearing of the Authority Board.

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The applicant is entitled to reasonable notice of the hearing pursuant to the *Statutory Powers Procedures Act*.

### 2.3 Notice of Hearing

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

The Notice of Hearing must contain or append the following:

- a. Reference to the applicable legislation under which the hearing is to be held (i.e., the *Conservation Authorities Act*).
- b. The time, place and purpose of the hearing or for Electronic Hearings: The time, purpose of the hearing, and details about the manner in which the hearing will be held.  
Note: for electronic hearings the Notice must also contain a statement that the applicant should notify the Authority if they believe holding the hearing electronically is likely to cause them significant prejudice. The Authority shall assume the applicant has no objection to the electronic hearing if no such notification is received.
- c. Particulars to identify the applicant, property and the nature of the application which are the subject of the hearing.  
Note: If the applicant is not the landowner but the prospective owner, the applicant must have written authorization from the registered landowner.
- d. The reasons for the proposed refusal or conditions of approval shall be specifically stated. This should contain sufficient detail to enable the applicant to understand the issues so he or she can be adequately prepared for the hearing.
- e. A statement notifying the applicant that the hearing may proceed in the applicant's absence and that the applicant will not be entitled to any further notice of the proceedings.  
Except in extreme circumstances, it is recommended that the hearing not proceed in the absence of the applicant.
- f. Reminder that the applicant is entitled to be represented at the hearing by A representative such as legal counsel, if desired. The conservation authority may be represented at the hearing by counsel of staff.
- g. A copy of the Authority's Hearing Guidelines.

It is recommended that the Notice of Hearing be directed to the applicant and/or landowner by registered mail. Please refer to **Appendix 1** for an example Notice of Hearing.

It is sufficient to reference in the Notice of Hearing that the recommendation for refusal or conditions of approval is based on the reasons outlined in previous correspondence or a hearing report that will follow. It is recommended that the Notice of Hearing be directed to the applicant

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and/or property owner by registered mail. An example Notice of Hearing is included in **Appendix A**. The Notice of Hearing is normally also sent to the applicant and the agent (if any) by email.

### 2.4 Presubmission of Reports

If it is the practice of KCCA to submit reports to the Board members in advance of the hearing as part of the Full Authority Agenda. The applicant shall be provided with the same opportunity. The applicant shall be given two weeks to prepare a report once the reasons for the staff recommendations have been received.

Subsequently, this may affect the timing and scheduling of the staff hearing reports.

## 3.0 HEARING

### 3.1 Public Hearing

Pursuant to the *Statutory Powers Procedure Act*, hearings, including electronic hearings, are required to be held in public. For electronic hearings, public attendance should be synchronous with the hearing. The exception is in very rare cases where public interest in public hearings is outweighed by the fact that intimate financial, personal or other matters would be disclosed at hearings.

### 3.2 Hearing Participants

The *Conservation Authorities Act*, does not provide for third party status at the local hearing. The hearing however is open to the public. Any information provided by third parties should be incorporated within the presentation of information by, or on behalf of, the applicant or Authority staff as appropriate.

### 3.3 Attendance of Hearing Board Members

In accordance with case law relating to the conduct of hearings, those members of the Authority who will decide whether to grant or refuse the application must be present during the full course of the hearing. If it is necessary for a member to leave, the Remaining members can continue with the hearing and render a decision.

### 3.4 Adjournments

The Board may adjourn a hearing on its own motion or that of the applicant or Authority staff where it is satisfied that an adjournment is necessary for an adequate hearing to be held.

Any adjournments form part of the hearing record. For electronic hearings, the Board is not considered adjourned unless any member departs due to technical issues for more than 15 minutes.

### 3.5 Orders and Directions

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

### 3.6 Information Presented at Hearings

- a. The Statutory Powers Procedure Act, requires that a witness be informed of his right to object pursuant to the Canada Evidence Act. The Canada Evidence Act indicates that a witness shall be excused from answering questions on the basis that the answer may be incriminating. Further, answers provided during the hearing are not admissible against the witness in any criminal trial or proceeding. This information should be provided to the applicant as part of the Notice of Hearing.
- b. It is the decision of the hearing members as to whether information is presented under oath or affirmation. It is not a legal requirement. The applicant must be informed of the above, prior to or at the start of the hearing.
- c. The Board may authorize receiving a copy rather than the original document. However, the board can request certified copies of the document if required.
- d. Privileged information, such as solicitor/client correspondence, cannot be heard. Information that is not directly within the knowledge of the speaker (hearsay), if relevant to the issues of the hearing, can be heard.
- e. The Board may take into account matters of common knowledge such as geographic or historic facts, times measures, weights, etc or generally recognized scientific or technical facts, information or opinions within its specialized knowledge without hearing specific information to establish their truth.

### 3.7 Conduct of Hearing

#### 3.7.1 Record of Attending Hearing Board Members

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

#### 3.7.2 Opening Remarks

The Chair shall convene the hearing with opening remarks which generally; identify the applicant, the nature or the application, and the property location; outline the hearing procedures; and advise on requirements of the *Canada Evidence Act*. Please reference **Appendix C** for the Opening Remarks model. In an electronic hearing, all the parties and the members of the Hearing Board must be able to clearly hear one another and any witnesses throughout the hearing.

#### 3.7.3 Presentation of Authority Staff Information

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

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

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

### 3.7.4 Presentation of Applicant Information

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

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

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

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

### 3.7.5 Questions

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

Pursuant to the *Statutory Powers Procedure Act*, the Board can limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented. Please note that the courts have been particularly sensitive to the issue of limiting questions and there is a tendency to allow limiting of questions only where it has clearly gone beyond reasonable or proper bounds.

### 3.7.6 Deliberation

After all information is presented, the Board may carry a motion in open session or may adjourn the hearing and retire in private to confer. The Board may reconvene on the same date or at some later date to advise of the Board's decision or provide written notice of their decision following the Hearing. The board members shall not discuss the hearing with others prior to the decision of the Board being finalized.

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### 4.0 DECISION

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

It is important that the hearing participants have a clear understanding of why the application was refused or approved. The Board shall itemize and record information of particular significance which led to their decision.

#### 4.1 Notice of Decision

The decision notice should include the following information:

- a. The identification of the applicant, property and the nature of the application that was the subject of the hearing.
- b. The decision to refuse or approved the application, and in the case of applicants under s.28.0.1 of the CA Act, the decision to approve the application with or without conditions. A copy of the Hearing Board resolution should be attached.

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

#### 4.2 Adoption

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

### 5.0 RECORD

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

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

**Section 28 Hearing Procedures Guideline****APPENDIX A**  
**Notice of Hearing****Date: (date)****File:**

BY REGISTERED MAIL

**To:** (Name)  
(Address)  
(Address)**From:** General Manager, KCCA**Re: Notice of Hearing – (address of proposed work)**

Development, Interference with Wetlands &amp; Alterations to Shorelines and Watercourses Regulations (R.R.O. 1990 Reg. 181/06)

A hearing has been scheduled for **(date)**, concerning an application made by you, (applicant), to (proposed work) at (address). The hearing will take place at or after **(time)** during the Kettle Creek Conservation Authority's Board of Directors' regularly scheduled meeting. [for electronic meetings, include details about the manner in which the hearing will be held and provide an opportunity for the applicant to provide notice if they believe that holding the hearing electronically is likely to cause significant prejudice]

The subject lands are located within the (hazard) limit of (lake or watercourse) and are regulated under KCCA's Ontario Regulation 181/06.

The KCCA Hearing Procedures are attached and these will help you to understand how the hearing will proceed. The proceedings will be conducted according to the *Statutory Powers Procedure Act*. Please note in particular that, under Section 5 of the *Canada Evidence Act*, a witness may refuse to answer any question on the grounds that the answer may tend to incriminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

It is recommended that a hearing not proceed in the absence of the applicant; however, the hearing may proceed in the applicant's absence and the applicant will not be entitled to any further notice of



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proceedings. You are entitled to be represented at the hearing by counsel, if desired. If you are not able to attend the hearing scheduled (date) and wish to attend, please notify KCCA staff in advance so that the hearing may be rescheduled.

KCCA staff submits reports to the Board of Directors for their review in advance of the hearing. You are provided the same opportunity. To have your submission included in the package sent to the Board of Directors, KCCA staff should be in receipt of these documents by **(date for agenda package)**. If you need more time to prepare a submission, you can request the hearing be rescheduled for (date of the following regular meeting).

Through O. Reg. 181/06, Kettle Creek Conservation Authority Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses, KCCA may permit, restrict or refuse development and activities in or adjacent to river or stream valleys, Great Lakes shorelines, watercourses, hazardous lands and wetlands.

More specifically, as it relates to this application, O. Reg. 181/06 states that:

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 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 as shown in the most recent document entitled "Great Lakes System Flood Levels and Water Related Hazards" available at the head office of the Authority, plus the appropriate allowance for wave uprush,*
    - (iv) *an allowance of 15 metres inland;*
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.*

The proposed development does not conform to KCCA's policies for development in the (hazard) in (location). In KCCA staff's opinion, the control of (flooding) will be affected by the proposed development and, therefore, staff is recommending that the application be refused.

More detailed information and the reasons for the recommendation for refusal are set out in the hearing report that accompanies this notice. This hearing report is the staff report that will be provided to the KCCA Board in advance of the hearing as described above.

Sincerely,

General Manager/Secretary Treasurer

Kettle Creek Conservation Authority

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# APPENDIX B1 HEARING PROCEDURES

1. **Motion** to sit as Hearing Board.
2. **Roll Call**
3. **Chair's opening remarks.** For electronic meetings, the Chair shall ensure that all parties and the Hearing Board are able to clearly hear one another and any witnesses throughout the hearing.

### Presentations and Questions

4. **Staff will:**
  - a. introduce to the Hearing Board the applicant/owner, his/her agent and others wishing to speak;
  - b. indicate the nature and location of the subject application and the conclusions;
  - c. present the staff report included in the Authority agenda.
5. The Hearing Board will **question the staff**, if necessary.
6. **The Applicant** and/or his/her agent will speak to the application.
7. Staff and/or the conservation authority's agent may question the applicant and/or their agent if reasonably required for a full and fair disclosure of matters presented at the Hearing.
8. The applicant and/or their agent may question the conservation authority staff and/or their agent if reasonably required for full and fair disclosure of matters presented at the Hearing.
9. The Hearing Board will **question the applicant/agent**, if necessary.

### Deliberation and Decision

10. The Hearing Board may **move into closed session** (optional). For electronic meetings, the Hearing Board will separate from other participants for deliberation.
11. The Hearing Board will **move out of closed session**, if necessary.
12. Members of the Hearing Board will move and second **a motion**.
13. A motion will be carried which will culminate in **the decision**.

### Communicate Decision

14. The Chair will **advise the owner/applicant** of the Hearing Board **decision**.

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15. If decision is "to refuse", the Chair or Acting Chair shall **notify the owner/applicant of his/her right to appeal** the decision to the Mining and Lands Tribunal within 30 days of receipt of the reasons for the decision.
  
16. **Motion** to move out of Hearing Board.

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### APPENDIX B2 (Amended)

#### Hearing Procedures – Chair’s Sample Script

1. I will now read the motion for this committee to sit as a Hearing Board.
2. Recorder, will you please read off the Roll Call
3. I will now proceed with the opening remarks to this hearing (read Chair’s Remarks).

#### Presentations and Questions

4. I now call on KCCA staff for their report:
5. Does the Hearing Board have any questions for staff?
6. I now call on the applicant and/or agent to speak to the application.
7. Does the Hearing Board have any questions for the applicant/agent?
8. I now call upon any other interested parties who wish to speak to this application.
9. Does the applicant wish a rebuttal?
10. Does the Hearing Board have any more questions for staff or the applicant?

#### Deliberation and Decision

<p>11. If the Board wishes to further discuss this application, I need a motion for the Hearing Board to move into closed session.</p> <p style="text-align: center;"><b>↓ YES</b></p>	<p style="text-align: center;">NO <b>→</b></p>	<p><u>No discussion needed.</u> <u>Motion for decision.</u></p> <p>12. If no further discussion is needed, do I have a mover for the staff recommendation?</p> <p style="text-align: center;"><b>↓ YES</b></p>	<p style="text-align: center;">NO <b>→</b></p>	<p><u>No mover for the staff recommendation or motion is not successful.</u></p> <p>13. If I have no mover for the staff recommendation, I need a motion with respect to this application.</p>
<p>12. A motion is carried to move to Closed Session.</p>		<p>13. A motion is carried which culminates in the decision.</p>		<p>14. A motion is carried which culminates in the decision.</p>
<p><u>Move to closed session for further discussion.</u></p>				
<p>13. A recommendation will be put forward which will culminate in the decision duly passed in Open Session.</p>				
<p>14. I need a mover and a seconder for the Hearing Board to move out of closed session.</p>				
<p>17. I need a mover and a seconder for a motion that culminates in the Hearing Board’s decision.</p>				

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### Communicate Decision

15. As Chair, I am advising the owner/applicant of the Hearing Board decision. (read decision.)

16. If decision is "to refuse",

I wish to inform the owner/applicant of his/her right to appeal the decision to the Minister/Mining and Lands Tribunal within 30 days of receiving the reasons for the decision.

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## **APPENDIX C1**

### **CHAIR'S OPENING REMARKS**

when dealing with Hearings with to respect to Ontario Regulation 181/06

This is a Hearing under Section 28 of the *Conservation Authorities Act* in respect of an application by (applicant) for permission to (nature of the application) at (location, address).

The Province of Ontario has made Regulations under Section 28 of the *Conservation Authorities Act* which require the permission of the Authority for development within an area regulated by the Authority in order to ensure no adverse affect on the control of flooding, erosion, dynamic beaches or pollution or conservation of land or to permit alteration to a shoreline or watercourse or interference with a wetland.

The Staff has reviewed this proposed work and a copy of the staff report has been given to the applicant and the Board. The applicant was invited to file material in response to the staff report, a copy of which has also been provided to the Board.

The Conservation Authorities Act (Section 28 [12]) provides that:

*"Permission required under a regulation made under clause (1) (b) or (c) shall not be refused, or granted subject to conditions, unless the person requesting permission has been given the opportunity to require a hearing before the authority."*

In holding this hearing, the Authority Board is to determine whether or not a permit is to be issued. In doing so, we can only consider the application in the form that is before us, the staff report, such evidence as may be given, and the submissions to be made on behalf of the applicant.

The proceedings will be conducted according to the *Statutory Powers Procedure Act*.

Under Section 5 of the *Canada Evidence Act*, a witness may refuse to answer any question on the ground that the answer may tend to criminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

The procedure in general shall be informal without the evidence before it being given under oath or affirmation.

As the Hearing proceeds, the procedures listed in the Hearing Procedure summary provided may be relaxed or abbreviated for efficiency.

The Authority may ask questions of witnesses for clarification at any time.

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

## **APPENDIX C2**

### **CHAIR'S OPENING REMARKS**

when dealing with Hearings with respect to an appeal on complete application requirements

This is a Hearing under Section 28 of the *Conservation Authorities Act* in respect of an application by (applicant) for permission to (nature of the application) at (location, address).

The Province of Ontario has made Regulations under Section 28 of the *Conservation Authorities Act* which require the permission of the Authority for development within an area regulated by the Authority in order to ensure no adverse affect on the control of flooding, erosion, dynamic beaches or pollution or conservation of land or to permit alteration to a shoreline or watercourse or interference with a wetland.

The Staff has reviewed this application for completeness and a copy of the staff report has been given to the applicant and the Board. The applicant was invited to file material in response to the staff report, a copy of which has also been provided to the Board.

KCCA's administrative procedure policy provides that:

*"If an applicant is not satisfied with the decision of the administrative review [on whether an application is deemed complete], they may request their application be referred to a Hearing with the Authority Board of Directors to determine completeness of the application."*

In holding this hearing, the Authority Board is limited to a complete application policy review and will not include review of the technical merits of the application. The technical merits of the application will be considered at the next phase of the application process and could potentially be considered at a subsequent hearing if recommended for denial by staff.

The proceedings will be conducted according to the *Statutory Powers Procedure Act*.

Under Section 5 of the *Canada Evidence Act*, a witness may refuse to answer any question on the ground that the answer may tend to criminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

The procedure in general shall be informal without the evidence before it being given under oath or affirmation.

As the Hearing proceeds, the procedures listed in the Hearing Procedure summary provided may be relaxed or abbreviated for efficiency.

The Authority may ask questions of witnesses for clarification at any time.

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

## APPENDIX C3

### CHAIR'S OPENING REMARKS – SAMPLE SCRIPT FOR SUBSEQUENT HEARINGS

#### WHERE THE APPLICANT WAS PRESENT FOR THE FIRST READING OF THE CHAIR'S REMARKS

This is a Hearing under Section 28 of the *Conservation Authorities Act* in respect of an application by     (applicant)     for permission to     (nature of application)     at     (property address)    .

For the sake of efficiency, the entirety of the Chair's Remarks need not be re-read. Can the applicant please confirm that they were present when the Chair's Instructional Remarks were previously read?

(If yes:)

Then, in holding this hearing, the Authority Board is to determine whether or not a permit is to be issued. In doing so, we will consider the application in the form that is before us, the Staff Report, such evidence as may be given, and the submissions to be made on behalf of the applicant.

The Authority may ask questions of witnesses for clarification at any time.

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



## **APPENDIX C4**

### **CHAIR'S OPENING REMARKS**

when dealing with Hearings for applications submitted pursuant to s.28.0.1 of the CA Act

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

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

The Staff has reviewed this proposed work and prepared a staff report, including the proposed conditions of approval for the proposed work, which has been given to the applicant and the Board. The applicant was invited to file material in response to the staff report, a copy of which has also been provided to the Board.

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

In holding this hearing, the Authority Board/Executive Committee is to determine the prescribed conditions to be attached to the approved permission. In doing so, we can only consider the application in the form that is before us, the staff report, such evidence as may be given and the submissions to be made on behalf of the applicant. Only Information disclosed prior to the hearing is to be presented at the hearing.

The proceedings will be conducted according to the Statutory Powers Procedure Act. Under Section 5 of the Canada Evidence Act, a witness may refuse to answer any question on the ground that the answer may tend to incriminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

**THE PROCEDURE IN GENERAL SHALL BE INFORMAL WITHOUT THE EVIDENCE BEFORE IT BEING GIVEN UNDER OATH OR AFFIRMATION UNLESS DECIDED BY THE HEARING MEMBERS. IF THE APPLICANT HAS ANY QUESTIONS TO ASK OF THE HEARING BOARD OR OF THE AUTHORITY REPRESENTATIVE, THEY MUST BE DIRECTED TO THE CHAIRPERSON OF THE BOARD.**

**APPENDIX D1**

**RECORD OF DECISION**

**IN THE MATTER OF** the Conservation Authorities Act, R.S.O. 1990, Chapter 27

**AND IN THE MATTER OF AN APPLICATION**

By: Name

For: Project Description

**IN RESPECT OF THE FOLLOWING PROPERTY:**

Legal Address, Municipality, Regulated

Area

FOR the permission of the Kettle Creek Conservation Authority pursuant to Regulations made under Section 28, Subsection 12 of the said Act

At a Hearing held before the Kettle Creek Conservation Authority, on (date ), the Application was

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(approved / approved on the condition that.../ denied for the reasons outlined in the Notice of Decision)

Moved: \_\_\_\_\_ Seconded: \_\_\_\_\_

Carried.

Dated the \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019

KETTLE CREEK CONSERVATION AUTHORITY

Per: \_\_\_\_\_

Chair

## APPENDIX E

### Notice of Decision

(Date)

**BY COURIER**

(name)

(address)

Dear:

**RE: NOTICE OF DECISION**

**Hearing Pursuant to Section 28(12) of the Conservation Authorities Act**

**To (Nature of application) at (location, address). (Application #KCCA-##/##)**

In accordance with the requirements of the *Conservation Authorities Act*, the Kettle Creek Conservation Authority (KCCA) provides the following Notice of Decision:

On (*meeting date*), a Hearing pursuant to Ontario Regulation 181/06 made under Section 28 of the *Conservation Authorities Act* to permit development within an area regulated by KCCA within (location, address) was conducted. Following presentations by KCCA staff and yourself, questions and deliberation, the KCCA Board of Directors (approved, approved with conditions, refused) your application to (nature of application) (Resolution No. A-xx/xx). The Resolution reads as follows:

***THAT the Board of Directors (grants, refuses to grant) a "Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses" Permit for Permit Application KCCA-xx/xx (name) (on the condition that, for the following reasons):***

*I.*

In accordance with Section 28 (15) of the *Conservation Authorities Act*, an applicant who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons under subsection (14), appeal to the Minister who may refuse the permission; or grant permission, with or without conditions. Through Order in Council 332/2018 the responsibility for hearing the appeal has been transferred to the Ontario Land Tribunal. For your information should you wish to exercise your right to appeal the decision, a letter by you or your agent/counsel setting out your appeal must be sent within 30 days of receiving this decision addressed to:

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

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

Yours truly,

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General Manager/Secretary Treasurer