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Policy and Procedural Document

For Land Use Planning and Regulation

Made Pursuant to the Requirements of

Section 12 of *Ontario Regulation 41/24*

Adopted by CLOCA Board Resolution #23/24

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Part B:
The Procedure Document

CHAPTER 8 – REGULATION PROCEDURES

8.1 Part VI of the Conservation Authorities Act

Part VI of the *Conservation Authorities Act* sets out how various development activities are regulated to protect people, property, and the environment in relation to flooding and erosion hazards.

Reference should be made to the Act and regulations available at ontario.ca/laws for the complete legal text.

In accordance with these requirements, this chapter sets out procedural information.

8.2 Prohibited Activities and Permit Tests for Approval

Section 28 of the *Conservation Authorities Act* sets out a series of prohibitions, as follows:

“No person shall carry on the following activities, or permit another person to carry on the following activities...

1. Activities to **straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse or to change or interfere in any way with a wetland.**

2. **Development activities** in areas that are...

I **Hazardous lands,**

II **Wetlands,**

III **river or stream valleys...**

IV **areas that are adjacent or close to the shoreline of [Lake Ontario] and that may be affected by flooding, erosion or dynamic beach hazards...**”

“Development Activity” is defined as:

- The construction, reconstruction, erection or placing of a building or structure of any kind,
- 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,
- Site grading,
 - The temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.

Section 28.1 of the *Conservation Authorities Act* establishes the legal tests for approval of permit applications. A conservation authority may issue a permit:

“if in the opinion of the authority,

- a) the activity is **not likely to affect the control of flooding, erosion, dynamic beaches or unstable soil or bedrock;**
- b) the activity is **not likely to create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property...**”

8.3 Exceptions

Section 5 of *Ontario Regulation 41/24* prescribes exceptions to the regulation of development activities for a list of specific types of development activities under certain conditions. These activities include certain types of docks, fencing, agricultural erosion control structures, non-habitable accessory structures, decks or patios. The specific list may be viewed here: <https://www.ontario.ca/laws/regulation/240041#BK4>

By contacting CLOCA staff and/or during the Pre-Submission Consultation process described below, the applicability of certain exceptions to the regulation of certain development activities may be verified.

8.4 Mapping of Regulated Areas

Section 4 of *Ontario Regulation 41/24* prescribes requirements for mapping of areas where development activities are prohibited. This includes requirements for annual review and updating, public access and notification.

Extensive mapping of the approximate regulated area has been undertaken by CLOCA in support of *Ontario Regulation 41/24* and will be updated annually pursuant to the regulation. The approximate, or conceptual extent, of the regulated area is delineated by mapping and identifies the area where the regulation is expected to apply. It is not a development setback, land use designation, zone, or a specific *development* limit. The regulated area includes flooding and erosion hazards associated with riverine systems and the Lake Ontario shoreline, hazard lands, along with wetlands and *areas of interference* around the wetlands. General mapping of the regulated areas is provided in [Figure 1](#).

Figure 1 – Regulation Mapping



It is important to note the approximate regulated area mapping is not definitive in terms of identifying areas subject to *Ontario Regulation 41/24*. There are often features described in *Ontario Regulation 41/24* that are not mapped but are still subject to the Regulation or which may be identified differently following site-specific investigation from what is mapped.

8.5 Permit Phases

Before work/*development* (filling, grading/site alteration, or construction) may proceed in an area regulated by CLOCA, a permit must be issued after a preconsultation, review, application, approval/refusal and hearing processes are followed.

There are five (5) primary phases in the permit application process:

1. Pre-requisite Approvals
2. Pre-submission Consultation or “Pre-Consultation”
3. Determination of a “Complete Application”
4. Technical Review, Commenting and Application Refinement

5. Decision: Recommendation for Approval (and Permit Issuance) or Refusal (and Hearing(s))

The phases listed above take place sequentially and are discussed in detail below.

8.6 Pre-requisite Approvals

CLOCA supports a “planning first” approach to its regulatory mandate, which means that development proposals should be evaluated through up-to-date provincially and municipally approved planning policy and zoning before any implementing regulatory requirements under the Conservation Authorities Act are applied. This ensures that the ‘principle of development’ has been determined through the appropriate planning approval and ensures that requirements under the Conservation Authorities Act are streamlined and focused on natural hazard concerns.

As part of the “Pre-requisite Approvals Phase,” applicants are required to ensure that Planning Act approvals or other agency approvals that establish the ‘principle of development’ or other first-principles associated with a development proposal, are obtained prior to commencing the permit application process with CLOCA

8.7 Pre-submission Consultation or “Pre-consultation”

Prior to the submission of an application for a permit, all applicants shall consult with CLOCA staff to assess the proposal and determine application requirements. Section 6 of *Ontario Regulation 41/24* sets out the concept of pre-submission consultation and directs that if an applicant requests a pre-submission consultation, CLOCA is required to engage in the pre-submission consultation. The pre-consultation process is intended to:

- determine if an application is required and if the required Planning Act approvals are in place prior to the permit application;
- determine the information required to be submitted with the application (e.g. studies, drawings, etc.) to ensure that comprehensive submissions are made that can efficiently lead to complete submissions;
- undertake site visit(s) to verify the presence or absence of features such as valleylands, wetlands and watercourses, as may be required;
- clarify the general process that is required to obtain a permission; and
- identify any concerns that CLOCA may have with the proposed undertaking and to provide a preliminary determination of compliance with the policies contained in the PPD.

The type, scale and location of the proposal will determine the extent and formality of the pre-consultation process. For complex or major applications, applicants should contact CLOCA staff to arrange a formal meeting which could involve a number of internal staff as well as external

municipal, agency, provincial and federal representatives who may have an interest in the review of the proposed activity. Pre-consultation meetings should also include input on the terms of references for technical requirements (e.g. Environmental Impact Studies or Slope Stability Studies) to ensure that the matters of interest are sufficiently addressed.

Where proposals also require approval under the *Planning Act*, joint pre-consultation meetings with the relevant municipality will be required. *Planning Act* approvals will be obtained prior to submission of permit applications and integrated with CLOCA technical input to ensure that most, if not all, matters are addressed proactively prior to the implementing permit process under the *Conservation Authorities Act*.

8.8 Complete Application

Once the applicant has completed the pre-submission stage, CLOCA staff will provide the applicant with a valid application form. An application for a permit must be made by an owner of the lands or an authorized agent, with a landowner having provided the required landowner authorization.

If required *Planning Act* approvals are in place, and the applicant has undertaken the required pre-submission consultation, and paid the required application fee, the application will be provided with the relevant application form for submission. E-stamped received and assigned a file number which can be referred to for processing. Applications will not be stamped received and a file will not be opened if *Planning Act* approvals are not in place and/or if the required application fee does not accompany the application. Applications will also not be received if there are outstanding violations of *Ontario Regulation 42/06* or *Ontario Regulation 41/24* on the subject lands.

At the time a permit application is received, CLOCA staff will determine if the application is considered complete and in accordance with this section and the provisions of Section 7 of *Ontario Regulation 41/24*, the applicant is to be notified in writing within 21 days, whether or not the application complies with the requirements of subsection 7 (1) of the regulation.

To ensure the application may be appropriately assessed, including the technical aspects of a proposal against the tests set out in subsection 28.1 (1) of the *Conservation Authorities Act*, the submission must include the compulsory information listed below. In addition, there are a number of potential technical information requirements that may be needed to assess the application as noted below. The scale, location, and complexity of a proposal and type of feature and or hazard existing typically determines which information items listed below will apply to an application. The level of detail required for studies and reports can vary widely depending on the property and the proposal. In some situations, a single-page letter from a qualified expert will be sufficient, while in other cases a major study will be necessary. CLOCA has prepared a number of best management guidelines to assist in determining the level of scope required for technical reports. In addition, in the absence of a full set of complete application information, it is not possible for staff to determine if an application may be recommended for approval or considered at a Hearing Board in the case of a recommendation for refusal.

Application Requirements, Including Prescribed Requirements Pursuant to subsection 7(1) of Ontario Regulation 41/24:

- In-force Planning Act approval(s)
- No outstanding violations of *Ontario Regulation 42/06* or *Ontario Regulation 41/24*
- completed application form (applications for large fill sites also require all information under “Schedule A” of the application form)
- Applicable staff-determined application fee in accordance with the Fee Schedule in force and effect
- a description of the works proposed
- appropriate to-scale plans/drawings including a key map and location of works showing the type and location of the proposed development activity or a plan of the area showing plan view and cross-section details of an activity to straighten, change, divert or interfere with the existing channel of a watercourse or change or interfere with a wetland
- the proposed use of any buildings and structures following completion of the development activity or a statement of the purpose of an activity 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
- the start and completion dates of the development activity or other activity
- a description of the methods to be used in carrying out the activity to straighten, change, divert or interfere with the existing channel of a watercourse or to interfere with a wetland
- the elevations of existing buildings, if any, and grades and the proposed elevations of any buildings and grades after the development activity or other activity
- drainage details before and after the development activity or other activity
- a complete description of any type of fill proposed to be placed or dumped
- a confirmation of authorization for the proposed development activity or other activity given by the owner of the subject property, if the applicant is not the owner
- any **other technical information, studies or plans** that CLOCA staff requests including information requested during pre-submission consultations between the authority and the applicant

Potential Technical Requirements (i.e. Other Technical Information, studies or plans per above and clause 7(1)(i) of *Ontario Regulation 41/24*)

- legal survey
- existing and proposed topographic and/or metric geodetic elevations
- flood line delineation study/hydraulics
- structural elevations and construction details
- architectural plans
- channel crossings assessment
- erosion and sediment control plans
- grading plans
- functional servicing plan
- geotechnical/slope stability study
- headwater drainage feature evaluation
- hydrogeological assessment
- landscaping/site rehabilitation plan/ecological compensation plans

- environmental impact study
- watercourse erosion analysis stream corridor protection study
- stormwater management study/design drawings
- water balance analysis
- Cut and fill analysis
- construction access and staging plans
- coastal engineering study
- soil quality report
- other reports/studies identified through staff consultation

Works that involve substantial site *development* should be prepared using the services of professionals. In all cases, it is necessary that the information provided with the application is clear as to the work proposed and is sufficient to allow CLOCA staff to complete a technical review and to make recommendations of approval or refusal.

When proposed *development* is also subject to *Planning Act*. *Planning Act* approvals will be obtained prior to submission of permit applications and integrated with CLOCA technical input so as to ensure that most, if not all, matters are addressed proactively prior to the implementing permit process under the *Conservation Authorities Act*. Information and study requirements will be co-ordinated with the applicable agency/municipality/ministry, if possible. If CLOCA staff are of the opinion that other approvals could result in revisions to description of proposed works/submitted plans/drawings, the application may be deemed incomplete and/or the applicant may be asked to withdraw the application pending the outcome of external or pre-requisite approvals.

8.9 Requests for Review

Pursuant to subsection 8 (1) of *Ontario Regulation 41/24*, an applicant may request a review by the Director of Planning and Regulation if:

- a) the applicant has not received notice from the authority within 21 days in accordance with subsection 7(2);
- b) the applicant disagrees with the authority's determination that the application for a permit is incomplete; or
- c) the applicant is of the view that a request by the authority for other information, studies or plans is not reasonable.

Requests must identify what element is to be reviewed (a, b or c above) and submit the request in writing to planningreview@cloca.com. Requesters should use "Section 8 Review Request" in the subject line.

Pursuant to subsection 8(2) of *Ontario Regulation 41/24*, a review request shall be completed by CLOCA no later than 30 days after it is requested and CLOCA shall, as the case may be,:

- a) confirm that the application meets the requirements of the application requirements of subsection 7(1) of the regulation and is complete or provide reasons why the application is

- incomplete; or
- b) provide reasons why a request for other information, studies or plans under clause 7(1)(i) of the regulation is reasonable or withdraw the request for all or some of the information, studies or plans.

8.10 Application Fees, Fee Reconsiderations and Fee Appeals

In accordance with subsection 21.2(4) of the *Conservation Authorities Act*, CLOCA is responsible for setting and collecting fees. Fees are set out in annual fee schedules approved by the CLOCA Board of Directors, pursuant to subsection 21.2(6) of the *Conservation Authorities Act* (the Act), for the administration and review of applications and must be paid in full at the time of submitting an application or as part of pre-submission consultation, as the case may be.

Pursuant to subsection 21.2(7) of the Act CLOCA's full *Fee Policy* has been adopted by the Board of Directors and may be found at cloca.ca

Note that the following provisions relate only to permit-related application fees and not to fees for planning services:

Pursuant to subsection 21.2 (13) of the Act applicants may request to reconsider a permit-related fee to planningreview@cloca.com. Requesters should use "Section 21.2 Review Request" in the subject line. CLOCA shall make its decision within 30 days after receiving the request.

Pursuant to subsection 21.2 (14) of the Act, if CLOCA does not reconsider a fee within 30 days of receiving a request for reconsideration, the person who made the request may appeal the amount of the fee directly to the Ontario Land Tribunal.

Pursuant to subsection 21.2 (15) of the Act, if, after reconsideration of a fee charged for an application for a permit CLOCA orders a person to pay the fee, the person shall pay the fee in accordance with the order.

Pursuant to subsection 21.2 (16) of the Act, a person who pays a fee under subsection (15) may: (a) when paying the fee, indicate to CLOCA in writing that the fee is being paid under protest; and (b) within 30 days after payment of the fee, appeal the amount charged by CLOCA upon reconsideration to the Ontario Land Tribunal.

The fee schedule is available at cloca.com/planning-permits. The fee for a technical review is triggered when a technical report(s) is required in order to review the application and deem it complete. The technical review fee is based on the number of technical reports submitted by discipline (e.g. an EIS, SWM Report, and geotechnical assessment equals three reports). The technical review fee must be paid at the time of submission of technical reports. Examples of technical reports include, but are not limited to, the following:

- environmental impact study
- stormwater management study
- functional servicing plan

- flood line delineation study/hydraulics
- geotechnical/slope stability study
- hydrogeological assessment
- watercourse erosion analysis
- channel crossings assessment
- stream corridor protection study
- coastal engineering study

CLOCA will undertake a update of the fee schedule annually to ensure that the cost recovery is appropriate and that fee rates are in-line with the prevailing inflation rate.

Permit applications for large fill proposals are also subject to a fee based on the volume of fill to be received. In order to establish the fee, CLOCA staff will confirm the application volumes through the review of pre and post elevation drawings prepared by an OLS and/or by undertaking a site visit to estimate the volume capacity. In accordance with the large fill policy, the permit holder will monitor the fill volume. If it is determined that fill volumes exceed the permitted amount, the applicant will be responsible for submitting the outstanding fee. Once the fill activity has reached half of the permitted volume there will be no refund of fees if the final volumes are less than originally permitted.

A Fees Implementation Guideline for both Regulation and Plan Review fees can be found at cloca.com/planning-permits.

8.11 Processing of Complete Applications

All applications are reviewed to determine if they have the required Planning Act approvals in place as a prerequisite and to ensure that they meet the legislative requirements and tests of both the *Conservation Authorities Act* and *Ontario Regulation 41/24* and, finally, that they conform to the policies set out in this document.

Site visits are typically conducted in order to confirm on-site or nearby features and application information. Site visits can also be used to determine and/or stake the limits of natural features, natural hazards including drip lines of vegetation communities and the physical top-of-bank of valley systems. Further, a site visit may reveal the need for technical studies that were not identified during the determination of a complete application. Boundaries of Provincially Significant Wetlands (PSW) are most often staked by CLOCA staff but will require confirmation by MNR staff once wetland evaluation information has been prepared and submitted to the ministry. Other wetland boundaries may be confirmed by CLOCA staff during the growing season (June-Sept).

In the review of certain technical studies there may be a need for CLOCA to retain external expertise to assist in the review (coastal hazards, soil quality/geotechnical). The cost of such a peer review is borne by the applicant.

When both a *Conservation Authorities Act* Section 28.1 permit application and a *Planning Act* application is required, CLOCA staff will coordinate the review to ensure that permit technical matters are addressed through the planning process to the fullest extent possible. This approach streamlines and reduces or eliminates duplication of review by ensuring that most, if not all, matters are addressed proactively prior to the implementing permit process under the *Conservation Authorities Act*. To ensure that permissions are given that reflect final design and plans, prior to issuing a permit for *development* that includes infrastructure works, the applicant is required to provide proof of all required *Planning Act* approvals before a CLOCA permit application will be received.

If an application remains inactive for one year after submission of materials or the issuance of CLOCA comments regarding a submission, CLOCA will consider the application to be abandoned and the file will be closed.

Electricity Act, 1998

Renewable energy projects proposed in areas regulated by CLOCA pursuant to Section 28.1 of the *Conservation Authorities Act*, require permission to ensure the control of flooding, erosion, dynamic beaches or unstable soil or bedrock are adequately addressed.

8.12 Decisions

Upon finishing a review of an application deemed complete, CLOCA staff will either:

- Issue a permit, with or without conditions; or
- Recommend approval, with or without conditions to the Authority Board for a decision; or
- Advise the applicant that the application cannot be supported and refer the application to a CLOCA Hearing Board with a recommendation for refusal.

Permits must be signed by the applicant/owner and the enforcement officer to be valid.

Approval granted by CLOCA under *Ontario Regulation 41/24* shall not be interpreted as eliminating the need to fulfill the requirements of other federal, provincial and municipal bylaws, statutes, regulations and requirements.

Staff Delegated Approvals

Authority appointed regulation officers are delegated the responsibility to:

- Obtain from an applicant, any surveys, studies, engineering models and other information as may be necessary to make a decision on an application and to be able to deem an application complete.

- Approve and issue permits in response to applications that: o comply with the policies of contained within the PPD; o are considered non-complex;
- Extend a permit that was granted under the 24 month category.

Examples of delegated non-complex applications within a hazard include:

- cable and pipeline watercourse crossings
- minor stream bank or valley erosion control works
- storm sewer outfalls
- minor bridge/road crossing work or repair
- any emergency repair work
- any permitted development activity in accordance with the policies contained within the PPD

Non-delegated Approvals

The following applications will be referred to the Authority Board for an approval decision prior to issuance:

- applications that can be supported by staff and are considered to be complex

Complex applications are those which are considered to be a significant departure to the applicable policies contained in the PPD. The PPD contains numerical figures. It is the intent that minor deviations (eg 10%) may be permitted and would not be considered a significant policy departure requiring the Board approval.

Applications referred to the Authority Board for approval will be accompanied by a staff report with rationale for support. The applicant will be notified of the Board meeting date and provided a copy of the staff report. If approved by the Authority Board, staff will issue a permit within 5 working days of the decision. Two copies of the permit are sent to the applicant and one copy is retained for CLOCA's reference.

Decision Timelines and Annual Reporting

Decision timelines are legislated pursuant to subsection 28.1(22) of the *Conservation Authorities Act*, which directs that if CLOCA has not provided notice of a decision within 120 days (4 months) of a complete application, an applicant may file an appeal with the Ontario Land Tribunal.

In addition to the legislated timelines, guidance related to service standards for Section 28.1 permit applications are specified in a document from the former Ministry of Natural Resources (MNR) titled *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities (2010)*. This guidance addresses administrative matters including determining "complete applications," and decision timelines for "minor" and "major" applications. Following receipt of a complete set of

information or “complete application,” this policy indicates that conservation authorities should aim to render a decision (i.e., complete the review of a complete application) within 30 days for a minor application or 90 days for a major application.

Further to the 2010 provincial guidance, Conservation Ontario created a second document titled *Client Service Standards for Conservation Authority Plan and Permit Review*. This guidance established a second, more aggressive, set of service standards that conservation authorities would strive to meet as a best practice beyond provincial guidance. Under this framework, for applications with complete information, conservation authorities would complete their review and make a decision within 28 days for “major” applications, 21 days for “minor” applications and within 14 days for “routine” applications.

Pursuant to subsection 8.1(1) of *Ontario Regulation 868/21*, CLOCA is required to prepare and publish an annual report that outlines statistics on permits, including reporting on timelines on permit applications, reviews and decision making. This report is published each January at cloca.ca

Refusal Decisions

If, in the opinion of CLOCA staff, an application cannot be supported, the applicant will be advised of options that may be pursued to either bring the application into conformity, withdraw the application or of steps that can be taken to proceed to a formal Hearing before the Authority Board. The hearing process is discussed below at section 2.13.

If the Authority Board disagrees with the recommendation report for approval, the application must be referred to a Board Hearing and notification requirements must be adhered to.

Period of Validity and Extensions

Pursuant to subsection 11(1) of *Ontario Regulation 41/24*, the maximum period of validity of a permit, including any extensions, is 60 months (5 years), however most standard permits will be issued with a 24 month (2 year) period of validity.

Pursuant to subsection 11(2) of *Ontario Regulation 41/24*, if a permit is granted for a period of time less than 60 months, the holder of a permit may, at least 60 days before the expiry of the permit, submit an application to CLOCA for an extension of the permit.

Pursuant to subsection 11(3) of *Ontario Regulation 41/24*, CLOCA may grant an extension of the permit to a total maximum validity period of 60 months (5 years).

Pursuant to subsection 11(4) of *Ontario Regulation 41/24*, if CLOCA refuses a request for a permit extension, CLOCA shall give “notice of intent to refuse” to the holder of the permit indicating that the extension will be refused unless the holder requests a hearing.

Pursuant to subsections 11(5) to (7) of *Ontario Regulation 41/24*, within 15 days of receiving a “notice of intent to refuse” a request for an extension, the holder of the permit may submit a written request for a hearing to CLOCA. CLOCA will then hold a hearing within a reasonable time and shall give the holder at least five (5) days’ notice of the date of the hearing. After holding a hearing, CLOCA may (a) confirm the refusal of the extension or (b) grant an extension for such period of time that it deems appropriate, as long as the total period of validity of the permit does not exceed 60 months (5 years).

8.13 Amending/Revising Permits

If a proposal is revised after the issuance of a permit but prior to completion of works, the permit may be amended/revised. An application to amend the permission along with any required information and the required fee must be submitted. Amendments can include changes to the proposal and/or changes to the conditions of approval. All revisions to a proposal that are not in keeping with the permission shall require approval from CLOCA. If approved, the permit shall be amended to reflect the revised permission.

For example, if changes are made to drawing to reflect requirements of a municipal building department that change drawings approved by CLOCA under the *Conservation Authorities Act*, then the CLOCA permit will need to be amended/revised.

Typically, such amendments will be addressed by staff without the need for a specific referral to the Authority Board. However, if it is deemed to be a significant revision that results in a new or changed activity that is considered a significant departure from CLOCA policy, the amending application may be referred to the Authority Board with a staff report or the applicant will be required to file a new permit application.

8.14 Hearing

The applicant has the right to a hearing before a CLOCA Hearing Board/Officer when:

- staff is recommending refusal of an application or the CLOCA Board of Directors cannot support a permit application (subsection 28.1(5) of the *Conservation Authorities Act*);
- The applicant objects to the conditions of approval (subsection 28.1(5) of the *Conservation Authorities Act*);
- CLOCA cannot support a request for an extension of a permit (subsection 11(5) of *Ontario Regulation 41/24*); or,
- CLOCA intends to cancel a permit (subsection 28.3(2) of the *Conservation Authorities Act*)

CLOCA staff shall, by personal service or by registered mail, give appropriate written notice of the time and place of the hearing of the application, together with a brief explanation of the nature of the application to: the applicant or their designated agent and will advise the Members of the CLOCA Hearing Board or Officer, as the case may be of an upcoming hearing event.

Upon hearing evidence submitted by the applicant or their designated agent and CLOCA staff in turn submitted in support or rejection of the application or request for extension, the CLOCA Hearing Board or Officer, as the case may be, shall approve (with or without conditions) or refuse the application or request for extension. Upon refusal of the application or if permission is granted subject to conditions, the CLOCA Hearing Board or Officer, as the case may be, shall give written

response to the applicant, including reasons, for its decision pursuant to subsection 28.1 (7) of the *Conservation Authorities Act*.

Detailed Hearing Procedures are included in Appendix B of the PPD.

8.15 Request for Minister's Review

Pursuant to subsection 28.1(8) of the *Conservation Authorities Act*, if, after a hearing by the CLOCA Hearing Board or Officer, as the case may be, and a permit is refused or there are conditions on a permit to which the applicant objects, the applicant may, within 15 days of receiving reasons for the refusal, submit a request to the Minister responsible for the *Conservation Authorities Act* (currently the Minister of Natural Resources and Forestry) to review the decision. Subsections 28.1(9) to (19) of the *Conservation Authorities Act* set out the further process for a Minister's Review once a request has been made.

8.16 Cancellation of Permits and Cancellation Appeals

Subsection 28.3(1) of the *Conservation Authorities Act* provides that CLOCA may, at any time, cancel a permit if it is of the opinion that the conditions of the permit have not been met.

Pursuant to Subsections 28.3(2) to (6) of the *Conservation Authorities Act*, before cancelling a permit, CLOCA staff shall give "notice of intent to cancel a permit" to the holder of the permit indicating that the permission will be cancelled on a date specified unless the holder requests a Hearing by submitting a written request to CLOCA within 15 days of receiving a "notice of intent to cancel a permit." CLOCA will then set a date and hold a Hearing by the CLOCA Hearing Board or Officer, as the case may be. After a Hearing, a decision may be made to confirm, rescind or vary the decision to cancel a permit. If the permit holder objects to the decision/order of the CLOCA Hearing Board or Officer, as the case may be, an appeal the decision to the Ontario Land Tribunal.

8.17 Appeals

An applicant who has been refused permit or is not in agreement with conditions of an approval may, within thirty (30) days of the receipt of the reasons for the decision, submit a request to the Minister of Natural Resources and Forestry as discussed above at Section 2.14 in this document.

Pursuant to subsection 28.1(20) of the *Conservation Authorities Act*, within 90 days after receiving the reasons of decision to refuse a permit from the CLOCA Hearing Board or Officer, as the case may be, the applicant may appeal the decision to the Ontario Land Tribunal except in instances where a request for Minister's review has been made (see subsection 28.1(21) of the *Conservation Authorities Act*).

Finally, pursuant to subsection 28.1(22) of the *Conservation Authorities Act*, an applicant may appeal an application directly to the Ontario Land Tribunal if no decision has been made 120 days (4 months) after a complete application is made.

The Minister may refuse the permit or may order CLOCA to issue the permit, with or without conditions.

8.18 Enforcement

Enforcement is an important component of CLOCA's mandate to ensure the integrity of the legislation and the protection of the environment, people and property in relation to flooding and erosion natural hazards.. Pursuant to section 30.1 of the *Conservation Authorities Act*, CLOCA has appointed Officers for the purpose of ensuring compliance with the Act and the regulations. These officers have the responsibility of liaising with applicants and inspecting properties. Responsibilities also include investigating and monitoring violation situations as well as undertaking all other enforcement work under the Act and *Ontario Regulation 41/24*. Regulation officers carry identification for inspection purposes.

Whenever necessary, each permit issued by CLOCA should be inspected by CLOCA staff prior to commencement of the activity, during the *development* activity and at a minimum at least once following completion of the *development*.

8.19 Violations

A violation of *Ontario Regulation 41/24* generally occurs in two ways:

- i. when *development* or interference activities have taken place in an area regulated by the CLOCA pursuant to *Ontario Regulation 41/24* without written approval;
- ii. when *development* or interference activities have been undertaken contrary to the conditions stipulated in a permit issued by the CLOCA.

CLOCA enforcement staff, in coordination with municipal building and/or by-law enforcement staff, may carry out an initial investigation where the activity is clearly visible from a public road or property where access to private property is not required or permitted. Photographs and field notes of the activity taking place are taken and landowner contact is initiated. If the activity is not clearly visible from a public location, CLOCA staff will attempt to contact the landowner to arrange a site visit to discuss the matter. Subsequent to this, a determination regarding whether or not an offence has occurred is made and the appropriate action is taken.

Part VII of the *Conservation Authorities Act*, sets out enforcement powers and offences including provisions related to appointment of officers, entry without warrant, searches, stop work orders, offences, a limitation period and rehabilitation orders.

The provisions of the *Conservation Authorities Act* and the *Provincial Offences Act* direct CLOCA

staff when investigating a violation. It is normal that in addition to any penalty levied by the court upon conviction, CLOCA will seek an order for rehabilitation of the site and/or removal of any buildings and/or structures ruled in contravention of Ontario Regulation 41/24.

8.20 Court Action

Penalties available to a Court under the *Conservation Authorities Act* are identified under subsection 30.5(2), which states that a person who commits an offence under the *Conservation Authorities Act* is liable on conviction, (a) in the case of an individual, (i) to a fine of not more than \$50,000 or to a term of imprisonment of not more than three months, or to both, and (ii) to an additional fine of not more than \$10,000 for each day or part of a day on which the offence occurs or continues; and (b) in the case of a corporation, (i) to a fine of not more than \$1,000,000, and (ii) to an additional fine of not more than \$200,000 for each day or part of a day on which the offence occurs or continues.

Despite the maximum fines contained in subsection 30.5(2) of the Act, pursuant to subsection 30.5(3) a court that convicts a person of certain offences under the Act may increase the fine it imposes on the person by an amount “equal to the amount of the monetary benefit that was acquired by the person, or that accrued to the person, as a result of the commission of the offence.”

8.21 Transition Provisions

Unless specifically referenced otherwise, the policies and procedures contained in this document will apply to in process applications and decisions on all permit applications as of **April 1, 2024**, which is the date several provisions of the *Conservation Authorities Act* and *Ontario Regulation 41/24* come into force.

It is recognized that there may be historic planning approvals that were made in the absence of current technical information or approvals that pre-date the approval of this Policy and Procedural Document which could now be considered to be contrary to the requirements of the *Conservation Authorities Act* and *Ontario Regulation 41/24*. Under such circumstances, CLOCA shall ensure that prior to the issuance of a permission all tests are satisfied. Where possible, if an issue remains unresolved, the CA will work with the proponent and the municipality to pursue a resolution.

8.22 Revisions and Updates to Policy and Procedures

This Policy and Procedure document will be reviewed and revised to keep in conformity with provincial natural hazard management policy and/or regulatory directions and every 5 years after 2024, whichever comes first. A draft document will be posted for public review and comment prior to adoption. Staff will be available to discuss the draft revisions upon request.

APPENDIX A - DEFINITIONS:

Access Allowance – forms part of hazardous lands that must remain undeveloped. In riverine systems, the access allowance shall be a minimum horizontal width of 6m extending beyond the stable slope allowance, meander belt or flood plain, whichever is greater and provides for long-term emergency access, construction maintenance access and to provide protection for unforeseen external conditions which could have an adverse effect on the natural conditions or processes. Minimum access allowances along the Lake Ontario Shoreline may be greater than 6 m depending upon site-specific shoreline conditions.

Accessory building or structure - a use of a building or structure that is subordinate and exclusively devoted to a main use, building or structure and located on the same lot.

Adverse hydraulic and fluvial impacts – any increase in flood elevation or impedance of flood and ice flows and/or an increase in the risk of flooding and erosion on adjacent upstream and/or downstream properties.\

Anthropogenic – adverse human impact.

Aquifer - an underground layer of water-bearing permeable rock or unconsolidated materials (gravel, sand, silt or clay).

Areas of interference – 30 metres surrounding a wetland (other areas) where development could interfere with the hydrologic function of a wetland.

Backwater area - a section of watercourse with a water surface elevation that is increased above the normal because of a downstream human-made obstruction such as a narrow bridge opening or culvert that restricts natural water flow.

Best management practices (BMPs) - methods, facilities and structures which are designed to protect or improve the environment and natural features and functions from the effects of development or interference.

Buffers - an area or band of permanent vegetation, preferably consisting of native species, located adjacent to a natural heritage feature and usually bordering lands that are subject to development or site alteration. The purpose of the buffer is to protect the feature and its function(s) by mitigating the impacts of the proposed land use and allowing an area for edge phenomena to continue. A buffer may also provide an area for recreational trails and a physical separation for new development that will discourage encroachment (adapted from Ontario Ministry of Natural Resources' Natural Heritage Reference Manual, 2nd Edition, 2010). The vegetation within a buffer can be managed (e.g. trimmed, cut, thinned, but not cultivated) providing that the integrity of the buffer remains intact.

Building Envelope – means the three dimensional area within which a building may be erected, located or used.

Confined River or Stream System - a watercourse located within a valley corridor, either with or without a floodplain, and is confined by valley walls. The watercourse may be located at the toe of the valley slope, in close proximity to the toe of the valley slope (less than 15 m) or removed from the toe of the valley slope (more than 15 m). The watercourse can contain perennial, intermittent or ephemeral flows and may range in channel configuration, from seepage and natural springs to detectable channels.

Development Activity - as defined by *Ontario Regulation 41/24*:

- The construction, reconstruction, erection or placing of a building or structure of any kind;
- 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;
- Site grading; or,
- The temporary or permanent placing, dumping or removal of material, originating on the site or elsewhere.

Development - as defined by the Provincial Policy Statement means the creation of a new lot, a change in land use, or the construction of buildings or structures, requiring approval under the Planning Act, but does not include:

- Activities that create or maintain infrastructure authorized under an environmental assessment process;
- Works subject to the Drainage Act; or,
- Underground or surface mining or minerals or advanced exploration on mining lands in significant areas of mineral potential in ecoregion 5e, where advanced exploration has the same meaning as under the Mining Act.

Dug-out or isolated ponds - anthropogenic waterbodies that are created by excavating basins with no inlet or outlet channels and in which surface and ground water collect.

Dwelling unit - a suite operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities.

Enclosure - a pipe or other conduit for carrying a creek, stream or watercourse underground.

Engineering principles - current coastal, hydraulic and geotechnical engineering principles, methods and procedures that would be judged by a peer group of qualified engineers (by virtue of their qualifications, training and experience), as being reasonable for the scale and type of project being considered, the sensitivity of the locations, and the potential threats to life and property.

Enhance - in the context of wetlands and wetland buffers, means the altering of an existing functional wetland to increase or improve selected functions and benefits.

Environmental impact study - a report prepared to address the potential impacts of development or interference on natural features and ecological functions.

Erosion access allowance - a 6 metre development setback applied to the stable slope allowance/top of stable slope/meander belt allowance and forming part of the erosion hazard for confined (apparent) and unconfined (not apparent) river or stream systems. The erosion access allowance is applied to provide for emergency access to erosion prone areas, provide for construction access for regular maintenance and access to the site in the event of an erosion event or failure of a structure, and, provide for protection against unforeseen or predicted external conditions which could have an adverse effect on the natural conditions or processes acting on or within an erosion prone area.

Existing use - the type of activity associated with an existing building or structure or site on the date of a permit application.

Habitable - that portion of a building or structure containing rooms or spaces required and intended for overnight occupancy and associated living space and includes those portions which contain facilities for storage, heating, air-conditioning, electrical, hot water supplies, etc., which are necessary to maintain the habitable condition.

Hazardous lands - as defined by the Conservation Authorities Act, means land that could be unsafe for development because of naturally-occurring processes associated with flooding, erosion, dynamic beaches, or unstable soil or bedrock.

Hazardous lands - as defined by the Provincial Policy Statement, means property or lands that could be unsafe for development due to naturally occurring processes. Along the shorelines of the great lakes - St. Lawrence River system, this means the land, including that covered by water, between the international boundary, where applicable, and the furthest landward limit of the flooding hazard, erosion hazard or dynamic beach hazard limits. Along the shorelines of large inland lakes, this means the land, including that covered by water, between a defined offshore distance or depth and the furthest landward limit of the flooding hazard, erosion hazard or dynamic beach hazard limits. Along river,

stream and small inland lake systems, this means the land, including that covered by water, to the furthest landward limit of the flooding hazard or erosion hazard limits.

Hazardous sites - as defined by the Provincial Policy Statement, means property or lands that could be unsafe for development and site alteration due to naturally occurring hazards. These may include unstable soils (sensitive marine clays (leda), organic soils) or unstable bedrock (karst topography).

Existing Vacant Lot of Record – A parcel or tract of land described in a deed or other legal document that is capable of being legally conveyed, containing no preexisting buildings or structures.

Material - includes earth, sand, gravel, stone or woody debris (e.g., root wads, fascines).

Meander belt allowance - a limit for development within the areas where the river system is likely to shift. It is based on twenty (20) times the bankfull channel width where the bankfull channel width is measured at the widest riffle section of the reach. A riffle is a section of shallow rapids where the water surface is broken by small waves. The meander belt is centred over a meander belt axis that connects the riffle section of the stream.

Minor addition - a minor addition shall not exceed provincial guideline of 50% of the total habitable floor area for riverine and shoreline flood hazards or 30% for riverine and shoreline erosion hazards to a total maximum structure habitable area of 5000 square foot (465 square meters) and shall not result in an increase in the number of dwelling units. Once the total floor area maximum has been reached no further additions shall be permitted. Only the habitable floor space shall be considered when determining the existing floor space. Minor additions include both ground and above ground additions. All minor additions approved from January 1, 1988 shall count to allowable maximum habitable floor area.

One hundred year flood event (100-year flood) - rainfall or snowmelt, or a combination of rainfall and snowmelt, producing at any location in a river, creek, stream or watercourse a peak flow that has a probability of occurrence of one per cent during any given year.

One hundred year erosion rate - the predicted lateral movement of a river, creek, stream or watercourse or inland lake over a period of one hundred years.

Other water-related hazards - water-associated phenomena other than flooding hazards and wave uprush which act on shorelines. This includes, but is not limited to ship-generated waves, ice piling and ice jamming.

Protect - in the context of wetlands, means the preservation of wetlands in perpetuity through implementation of appropriate physical and/or legal mechanisms (e.g. ecological buffers, development buffers, zoning, fencing, conservation easements, etc.).

Reconstruction - the removal of an existing building or structure and the construction of a new building or structure. Reconstruction does not include reconstruction on remnant foundations or derelict or abandoned buildings or structures.

River - a large natural stream of water emptying into an ocean, lake, or other body of water and usually fed along its course by converging tributaries.

Riparian vegetation - the plant communities in the riparian zone, typically characterized by hydrophilic plants.

Stream - a flow of water in a channel or bed, as a brook, rivulet, or small river.

Toe of slope - the lowest point on a slope, where the surface gradient changes from relatively shallow to relatively steep.

Top of slope - the point of the slope where the downward inclination of the land begins, or the upward inclination of the land levels off. This point is situated at a higher topographic elevation of land than the remainder of the slope.

Valley or valleyland - land that has depressional features associated with a river or stream, whether or not it contains a river or stream system.

Watercourse - a defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs.

Wave uprush - the rush of water up onto a shoreline or structure following the breaking of a wave; the limit of wave uprush is the point of furthest landward rush of water onto the shoreline.

Wetland - as defined by the *Ontario Regulation 41/24*, 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).

Wetland - as defined by the Provincial Policy Statement, means lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens.

APPENDIX B: CLOCA HEARING BOARD AND CLOCA HEARING OFFICER PROCEDURES

1.0 PURPOSE OF HEARING PROCEDURES:

The *Conservation Authorities Act* requires that the applicant be party to a hearing for an application to be refused or approved with conditions to which the applicant objects. Further, a permit may be refused if, in the opinion of CLOCA, the proposal does not meet the six (6) statutory tests described above. The Hearing Board or Hearing Officer, as the case may be, is empowered by law to make a decision, governed by the *Statutory Powers Procedures Act*. It is the purpose of the Hearing Board/Hearing Officer to evaluate the information presented at the hearing by both the Conservation Authority staff and the applicant and to decide whether the application will be approved with or without conditions, or refused.

2.1 PREHEARING PROCEDURES

2.2 Apprehension of Bias

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 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 Hearing Board, or Hearing Officer, taking part in the hearing should be involved, either through participation in committee or intervention on behalf of the applicant or other interested parties with the matter, prior to the hearing. Otherwise, there is a creation of an apprehension of bias, which could jeopardize the fairness of the hearing.
- (b) If material relating to the merits of an application that is the subject of a hearing is distributed to Hearing Board members or the Hearing Officer 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.
- (c) 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.

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, the

applicant shall be consulted to determine an agreeable date and time based on CLOCA's regular meeting schedule.

The Notice of Hearing shall contain the following:

- (a) Reference to the applicable legislation under which the hearing is to be held (CA Act).
- (b) The time, place and the purpose of the hearing.
- (c) Particulars to identify the applicant, property and the nature of the application, which are the subject of the hearing.
- (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.

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.

- (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 counsel, if desired.

The Notice of Hearing shall be directed to the applicant and/or landowner by registered mail and/or via electronic mail.

2.5 Pre-submission of Reports

The applicant shall be provided with all reports from staff that will be provided to the Authority. 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.

2.6 Hearing Information

Prior to the hearing, the applicant shall be advised of these hearing procedures.

3.1 HEARING

3.2 Public Hearing

Pursuant to the *Statutory Powers Procedure Act*, hearings are required to be held in public. 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.

3.3 Hearing Participants

The *Conservation Authorities Act* does not provide for third party status at the local hearing.

While the hearings will be held in public and are also open to attendance by the press, the filming of the hearing or the taking of pictures will not be permitted during the hearing by any person or persons.

3.4 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 hearing must be adjourned and resumed when either the member returns or if the hearing proceeds, even in the event of an adjournment, only those members who were present after the member left can sit to the conclusion of the hearing.

3.5 Adjournments

The Hearing Board may adjourn a hearing on its own motion or that of the applicant or CLOCA 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.

3.6 Orders and Directions

The Hearing Board/Officer is entitled to make orders or directions to maintain order and prevent the abuse of its hearing processes.

3.7 Information Presented at Hearings

(a) The *Statutory Powers Procedure Act*, requires that a witness be informed of his or her right to object pursuant to the *Canada Evidence Act*. The *Canada Evidence Act* indicates that no 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) The hearing procedure, in general, will be informal without the evidence before the Board being given under oath or affirmation.

(c) The Hearing Board/Hearing Officer may authorize receiving a copy rather than the original document, however, the Board/Officer 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 Hearing Board/Hearing Officer 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.

3.8 Conduct of Hearing

3.8.1 Record of Attending Hearing Board Members

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

3.8.2 Opening Remarks

The Chair/Hearing Officer shall convene the hearing with opening remarks, which generally; identify the applicant, the nature of the application, and the property location; outline the hearing procedures; and advise on requirements of the *Canada Evidence Act*.

3.8.3 Presentation of Applicant Information

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

The applicant shall present information as it applies to the permit or extension application in question. For instance, does the requested activity affect the six statutory tests?

- The applicant may be represented by legal counsel or agent, if desired
- The applicant may present information to the Hearing Board/Hearing Officer 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 may not submit new information at the hearing, as CLOCA staff will not have had time to review and provide a professional opinion to the Hearing Board/Hearing Officer.

3.8.4 Presentation of CLOCA Staff Information

CLOCA staff presents the reasons supporting the recommendation for the refusal or conditions of approval of the application. Any reports, documents or plans that form part of the presentation shall be properly indexed and received.

Staff and/or legal counsel for staff may not submit new information at the hearing, as the applicant will not have had time to review and provide a professional opinion to the Hearing Board/Hearing Officer.

3.8.5 Questions

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

Pursuant to the *Statutory Powers Procedure Act*, the Hearing Board/Hearing Officer can limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented. It should be noted 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.

3.8.6 Deliberation

After all the information is presented, the Hearing Board/Hearing Officer will deliberate and make a decision on the application. A resolution advising of the Hearing Board's decision and the particulars of the decision will then be adopted.

4.0. DECISION

The applicant must receive written notice of the decision. Except for decisions related to requests for an extension to a permission, the applicant shall be informed of the right to appeal the decision pursuant to the provisions of the *Conservation Authorities Act*.

The Hearing Board/Hearing Officer shall itemize and record information of particular significance, which led to their decision.

HEARING ORDER OF PROCEEDINGS

1. Motion to sit as a Hearing Board (if required).
2. Roll Call (if required) followed by the Chair's/Hearing Officer's opening remarks.
3. The applicant and/or his/her agent will make a presentation.
4. The staff and/or counsel will have the opportunity to ask questions of the applicant and/or his/her agents followed by questions from the Hearing Board/Hearing Officer.
5. Staff and/or counsel will present the staff report included in the agenda and the reasons why the application was recommended for denial.
6. The Applicant and or the applicant's counsel will have the opportunity to ask questions of staff based on their presentation.

7. Following the Applicant, the members of the Board can ask the staff questions.
8. The Hearing Board/Hearing Officer will move In Camera.
9. Members of the Hearing Board will move and second a motion (Hearing Board only).
10. A motion will be carried which will culminate in the decision (Hearing Board only).
11. The Hearing Board will move to reconvene in public forum (Hearing Board only).
12. The Chair or Acting Chair/Hearing Officer will advise the owner/applicant of the decision.
13. If the decision is "to refuse", the Chair or Acting Chair/Hearing Officer shall notify the owner of his/her right to appeal the decision.