



Hearing Guidelines

Section 28.1 Conservation Authorities Act

Saugeen Valley Conservation Authority (SVCA)

1078 Bruce Rd 12, Formosa, ON N0G 1W0

February 20, 2025

Revision No. 5.0

Hearing Guidelines – Summary of Revisions

Last Amended February 20, 2025

Revision No.	Date	Comments	Approval Authority
0	October, 2005	Guidelines prepared as an update to the October 1992 hearing guidelines.	Ministry of Natural Resources Conservation Ontario Council
1	May, 2018	Housekeeping amendments made reflecting changes to appeal process as a result of the <i>Building Better Communities and Conserving Watersheds Act, 2017</i> and subsequent Order in Council. Note: changes to appeal process are no longer valid	Conservation Ontario Staff
2	September, 2020	Amendments made to incorporate the use of electronic hearings.	Conservation Ontario Council
3	September, 2021	Amendments made to incorporate hearings under 28.0.1 and update references to the Ontario Land Tribunal (OLT)	Conservation Ontario Council
4	May, 2023	References to the Executive Committee being the Hearing Board and replaced with the Board of Directors per the SVCA Administrative Bylaws.	SVCA Board of Directors
5	February, 2025	Updated references to <i>CA Act</i> section numbers and O. Reg 41/24; changed deadline to appeal to OLT from 30 to 90 days; removed guidance for hearings under 28.0.1 (repealed).	SVCA Board of Directors

1. Purpose of Hearing Guidelines

This SVCA Hearing Guideline was prepared to be consistent with the Hearing Guidelines prepared for all conservation authorities by Conservation Ontario.

The *Conservation Authorities Act* requires that the applicant be provided with an opportunity for a hearing by the local Conservation Authority Board, (sitting as a Hearing Board) as the case may be, for an application to be refused or approved with contentious conditions. The SVCA's Board of Directors acts as the Hearing Board and will be referred to as the Hearing Board or Authority henceforth. Further, a permit may be refused if in the opinion of the Authority the proposal adversely affects the control of flooding, erosion, dynamic beaches, unstable soil or bedrock, or poses a risk to human health, safety or property in the event of a natural hazard. The Hearing Board is empowered by law to make a decision, governed by the *Statutory Powers Procedures Act (SPPA)*.

The Hearing Rules are adopted under the authority of Section 25.1 of the 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 to establish rules to govern such proceedings.

The Hearing Board shall hear and decide whether the application will be approved with or without conditions or refused.

These hearing guidelines at the SVCA have been prepared as an update to the October 1992 hearing guidelines and are intended to provide a step-by-step process to conducting hearings required under Section 28.1 of the *Conservation Authorities Act*. Similar to the 1992 guidelines, it is hoped that the guidelines will promote consistency across the SVCA's proceedings, and consistency with other Conservation Authorities; as well as ensure that hearings meet the legal requirements of the *SPPA* without being unduly legalistic or intimidating to the participants.

2. 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 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.

- b) If material relating to the merits of an application that is the subject of a hearing is distributed to Hearing 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) 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.

Board approved SVCA Guidelines with regard to complete permit applications (to be completed), Administrative reviews (policies manual), permit approvals (policies manual), and enforcement matters (policies manual) are available via the SVCA's website for public access.

2.2 Application

The right to a hearing arises where staff is recommending refusal of an application or where conditions are being applied to the approval of an application where the applicant opposes such conditions. The applicant must request the hearing. 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 SVCA Board of Directors' availability.

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 the purpose of the hearing, OR for Electronic Hearings:
The time, purpose of the hearing, and details about the way 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.

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 a representative such as legal counsel, if desired. The conservation authority may be represented at the hearing by legal counsel or 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 A** for an example Notice of Hearing.

2.4 Pre-submission of Reports

It is the practice of the SVCA to submit reports to the Hearing Board members in advance of the hearing (i.e., inclusion on a Board of Directors meeting 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 as the staff report would need to be made available at least four weeks from the hearing date and the applicant's report available two weeks from the hearing date.

3. 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 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 Hearing 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.

3.5 Orders and Directions

SVCA 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 their 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 Hearing Board may authorize receiving a copy rather than the original document. However, the Hearing 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 irrelevant to the issues of the hearing, can be heard.
- e) The Hearing 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

1. Record of Attending Hearing Board Members

2. Opening Remarks

The Chairperson 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. 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. Presentation of Authority Staff Information

Staff of the Authority 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 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.

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 shall present information as it applies to the permit application in question. For instance, does the requested activity affect the control of flooding, erosion, dynamic beaches, unstable soils or bedrock, or pose a risk to human health, safety or property in the event of a natural hazard?

- The applicant may be represented by legal counsel or agent, if desired
- The applicant may present information to the Hearing Board and/or have invited advisors to present information to the Hearing 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.

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 Hearing 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.

6. Deliberation

After all the information is presented, the Hearing Board may adjourn the hearing and retire in private to confer. The Hearing Board may reconvene on the same date or at some later date to advise of the Hearing Board's decision. The Hearing Board members shall not discuss the hearing with others prior to the decision of the Hearing Board being finalized.

4. Decision

The applicant must receive written notice of the decision. The applicant shall be informed of the right to appeal the decision within 90 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 Hearing 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 approve the application. 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 Hearing Board's decision and particulars of the decision should be adopted.

5. 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) application for the permit;
- b) Notice of Hearing;
- c) any orders made by the Hearing Board (e.g., for adjournments);
- d) all information received by the Board;
- e) attendance of Hearing Board members;
- f) the decision and reasons for decisions of the Hearing Board;
- g) the Notice of Decision sent to the applicant.

Appendix A – Notice of Hearing

IN THE MATTER OF

The Conservation Authorities Act,

R.S.O. 1990, Chapter 27

AND IN THE MATTER OF an application by (APPLICANT NAME)

For The Permission of Saugeen Valley Conservation Authority

TAKE NOTICE THAT a Hearing before the Board of Directors of the Saugeen Valley Conservation Authority will be held under Section 28.1 (5) of the *Conservation Authorities Act* at the offices of the said Authority, 1078 Bruce Road 12, Formosa, Ontario, at the hour of **(TIME)**, **on the day of (Month/Day), 20XX**, [for electronic hearings, include details about the manner in which the hearing will be held] with respect to the application by **(NAME)** to engage in an activity regulated by the authority in an area regulated by the Authority on Lot/Con / Plan/Lot , Street) in the Municipality of, County of

TAKE NOTICE THAT you are invited to make a delegation and submit supporting written material to the Board of Directors for the meeting of **(meeting number)**. If you intend to appear [For electronic hearings: or if you believe that holding the hearing electronically is likely to cause significant prejudice], please contact **(name)**. Written material will be required by **(date)**, to enable the Committee members to review the material prior to the meeting.

TAKE NOTICE THAT this hearing is governed by the provisions of the *Statutory Powers Procedure Act*. Under the Act, a witness is automatically afforded a protection that is similar to the protection of the *Ontario Evidence Act*. This means that the evidence that a witness gives may not be used in subsequent civil proceedings or in prosecutions against the witness under a Provincial Statute. It does not relieve the witness of the obligation of this oath since matters of perjury are not affected by the automatic affording of the protection. The significance is that the legislation is Provincial and cannot affect Federal matters. If a witness requires the protection of the *Canada Evidence Act* that protection must be obtained in the usual manner. The Ontario Statute requires the tribunal to draw this matter to the attention of the witness, as this tribunal has no knowledge of the effect of any evidence that a witness may give.

AND FURTHER TAKE NOTICE that if you do not attend at this Hearing, the Board of Directors of the Conservation Authority may proceed in your absence, and you will not be entitled to any further notice in the proceedings.

DATED the (DAY) of (MONTH), 20XX

The Board of Directors of Saugeen Valley Conservation Authority

Per:

General Manager/Secretary-Treasurer

Appendix B – Hearing Procedures

1. Motion to sit as a Hearing Board.
2. Roll call followed by the Chairperson's opening remarks. For electronic hearings, the Chairperson shall ensure that all parties and the Hearing Board are able to clearly hear one another and any witnesses throughout the hearing.
3. Staff will introduce to the Hearing Board the applicant/owner, his/her agent and others wishing to speak.
4. Staff will indicate the nature and location of the subject application and the conclusions.
5. Staff will present the staff report included in the Authority agenda.
6. The applicant and/or their agent will present their material
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.¹²
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.¹³
9. The Hearing Board will question, if necessary, both the staff and the applicant/agent.
10. The Hearing Board will move into deliberation. For electronic meetings, the Hearing Board will separate from other participants for deliberation.
11. Members of the Hearing Board will move and second a motion.
12. A motion will be carried which will culminate in the decision.
13. The Hearing Board will move out of deliberation. For electronic meetings, the Hearing Board will reconvene with other participants. The Chairperson or Acting Chairperson will advise the owner/applicant of the Hearing Board decision.
14. If decision is "to refuse" or "approve with conditions", the Chairperson or Acting Chairperson shall notify the owner/applicant of his/her right to appeal the decision to the Ontario Land Tribunal within 90 days of receipt of the reasons for the decision.
15. Motion to move out of the Hearing Board and sit as the Board of Directors.

¹² As per the *Statutory Powers Procedure Act* a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

¹³ As per the *Statutory Powers Procedure Act* a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

Appendix C – Chairperson's Remarks

We are now going to conduct a hearing under section 28.1 of the *Conservation Authorities Act* in respect of an application by: (APPLICANT NAME), for permission to: (DESCRIPTION OF ACTIVITIES).

In accordance with Part 6 of the *Conservation Authorities Act* and Ontario Regulation 41/24, permission is required from the Authority to engage in development and alteration activities within an area regulated by the Authority.

Staff have reviewed the proposed activities and prepared a staff report, a copy of 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 28.1 (5) of the *Conservation Authorities Act*, the person requesting permission has the right to a hearing before the Authority Board of Directors.

In holding this hearing, the SVCA Board of Directors is to determine whether or not a permit is to be issued, with or without conditions. 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 D – Notice of Decision

(Date)

By Registered Mail

(name) (address)

Dear:

RE: Notice of Decision

Hearing Pursuant to Section 28.1 of the *Conservation Authorities Act*

Proposed (e.g. residential development, watercourse alteration etc.)

(LOT/CON/PLAN/ Municipality of) (Application #)

In accordance with section 28.1 (7) of the *Conservation Authorities Act*, the Saugeen Valley Conservation Authority provides the following Notice of Decision:

On (**meeting date and number**), the Hearing Board refused/approved your application/approved your application with conditions. A copy the Boards/Committee's resolution # has been attached for your records. Please note that this decision is based on the following reasons: ***the proposed (full description of activities) (is / is not) likely to adversely affect the control of flooding, erosion, dynamic beaches or unstable soil or bedrock; and (is / 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.***

In accordance with section 28.1 (20) of the *Conservation Authorities Act*, an applicant who has been refused permission or who objects to conditions imposed on a permission may, within 90 days of receiving the reasons under section 28.1 (7), 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 90 days of receiving this decision addressed to:

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

A carbon copy of this letter should also be sent to the Saugeen Valley Conservation Authority. Should you require any further information, please do not hesitate to contact (**staff contact**) or the undersigned.

Yours truly,

General Manager/Secretary-Treasurer