

Direction on the Administration of Ontario Regulation 156/06 - Wetlands

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Based on: Draft Guidelines to Support Conservation
Authority Administration of the
“Development, Interference with Wetlands
and Alterations to Shorelines and
Watercourses Regulation” dated April 21,
2008

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In 2008 The Ministry of Natural Resources (MNR) and Conservation Ontario (CO) co-authored *Draft Guidelines to Support Conservation Authority Administration of the “Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation”* (the Guidelines). These Guidelines aim to support the development of policies to facilitate the implementation of conservation authority-specific regulations made pursuant to the *Conservation Authorities Act*. Ontario Regulation 156/06 is the regulation that governs the Nickel District Conservation Authority (Conservation Sudbury).

The following Direction on the Administration of Ontario Regulation 156/06 originate largely from the Guidelines. Sub-sections 1.4.1 9) and 1.4.2.1 7) were drafted by Conservation Sudbury staff to better reflect the development context in Sudbury and to provide staff an opportunity to make decisions that better align with the past practices of Conservation Sudbury. This is not an endorsement of those practices, but rather a way to be sensitive to past practices and the expectation of the development community.

This document speaks specifically to wetlands as features, however, readers should be aware that wetlands are associated with other hazards, such as flooding and hazardous (unstable) soils. These hazards are also regulated by Ontario Regulation 156/06 and their review will be incorporated into the decision making of Conservation Sudbury.

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1.0 WETLANDS AND OTHER AREAS

1.1 Individual Conservation Authority Regulations

Ontario Regulation 156/06 contains the following sections dealing with wetlands.

“Development prohibited

- 2.(1) Subject to section 3, no person shall undertake development or permit another person to undertake development in or on areas within the jurisdiction of the Authority that are:
- ...wetlands or...
 - other areas where development could interfere with the hydrologic function of a wetland, including areas ...[within specified distances of certain sizes of wetlands – see individual CA regulation]... , but not including those where development has been approved pursuant to an application made under the *Planning Act* or other public planning or regulatory process.”

“Permission to develop

- 3.(1) The Authority may grant permission for development in or on the areas described in subsection 2(1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development.”

“Alterations prohibited

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

“Permission to alter

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

Development is defined in the *Conservation Authorities Act* as:

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

1.2 Additional Definitions

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

The following section outlines definitions of this document.

1.2.1 Provincial Policy Statement

Hydrologic Function means:

the functions of the hydrological cycle that include the occurrence, circulation, distribution and chemical and physical properties of water on the surface of the land, in the soil and underlying rocks, and in the atmosphere, and water's interaction with the environment including its relation to living things.

This is a comprehensive definition for the hydrologic cycle, which allows many factors to be considered when reviewing interference to wetlands. The Northern Ontario Wetland Evaluation System (MNR, 2014) states "it must be recognized that many of the non-hydrological functions of a wetland depend, in part, on the wetland's hydrological setting and that changes in the basin beyond the boundaries of the wetland could have an effect on the ecological value of the wetland".

1.2.2 Additional Definitions and Interpretations

The PPS differentiates between wetlands in northern and southern Ontario. In Figure 1 and 2 the northern limit of Ecoregions 5E, 6E and 7E is used to separate Ontario into two areas for wetland protection as it relates to the *Planning Act*. Section 2.1.4 of the PPS states that:

“Development and site alteration shall not be permitted in:

- (a) significant wetlands in Ecoregions 5E, 6E and 7E (Vermilion River and Ponderosa Provincially Significant Wetlands, and any other wetland deemed significant by the MNR).

Further, Section 2.1.5 states that:

“Development and site alteration shall not be permitted in:

- (a) significant wetlands in the Canadian Shield north of Ecoregions 5E, 6E and 7E...unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.”

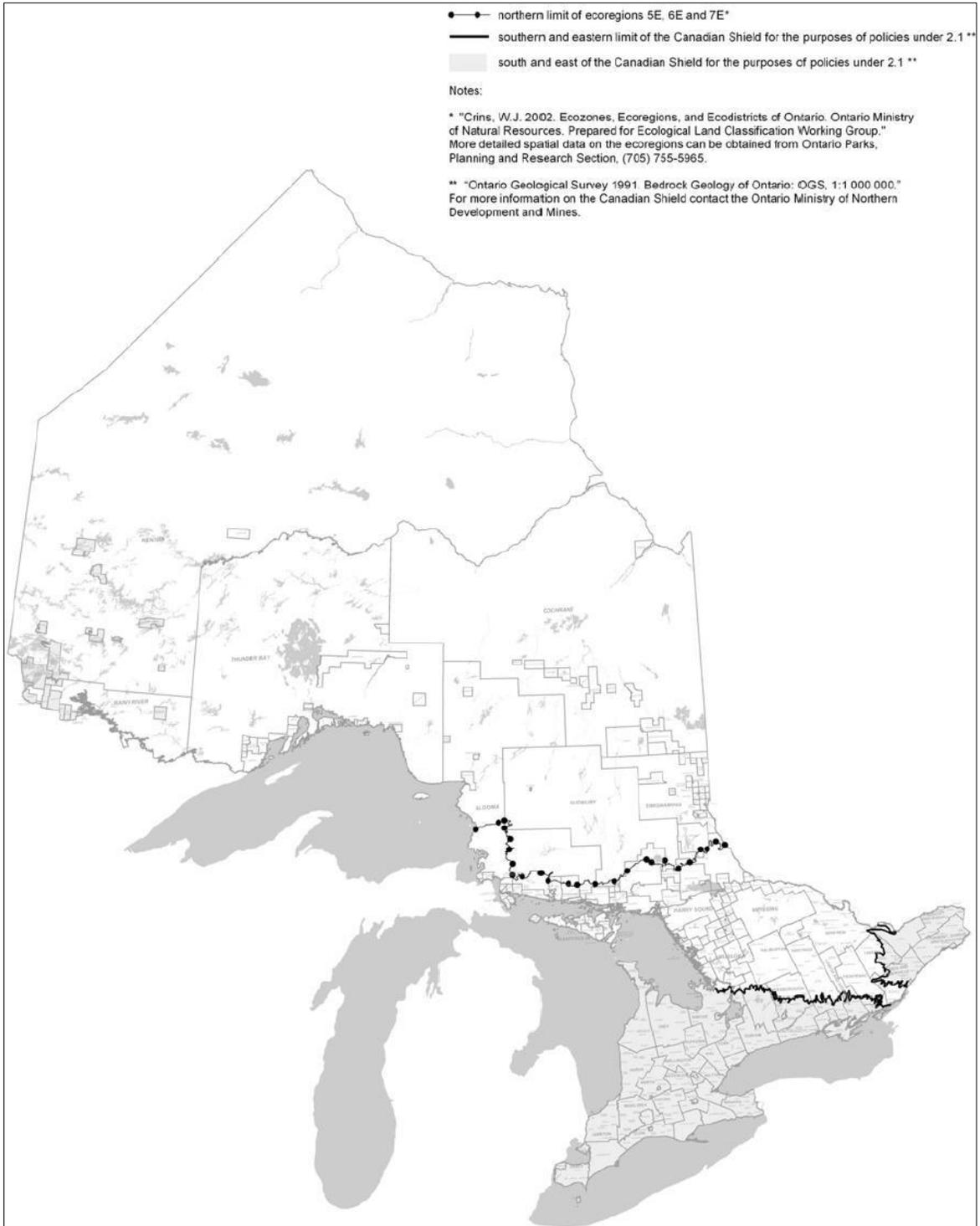


Figure 1 - Natural heritage protection line (source - Provincial Policy Statement)

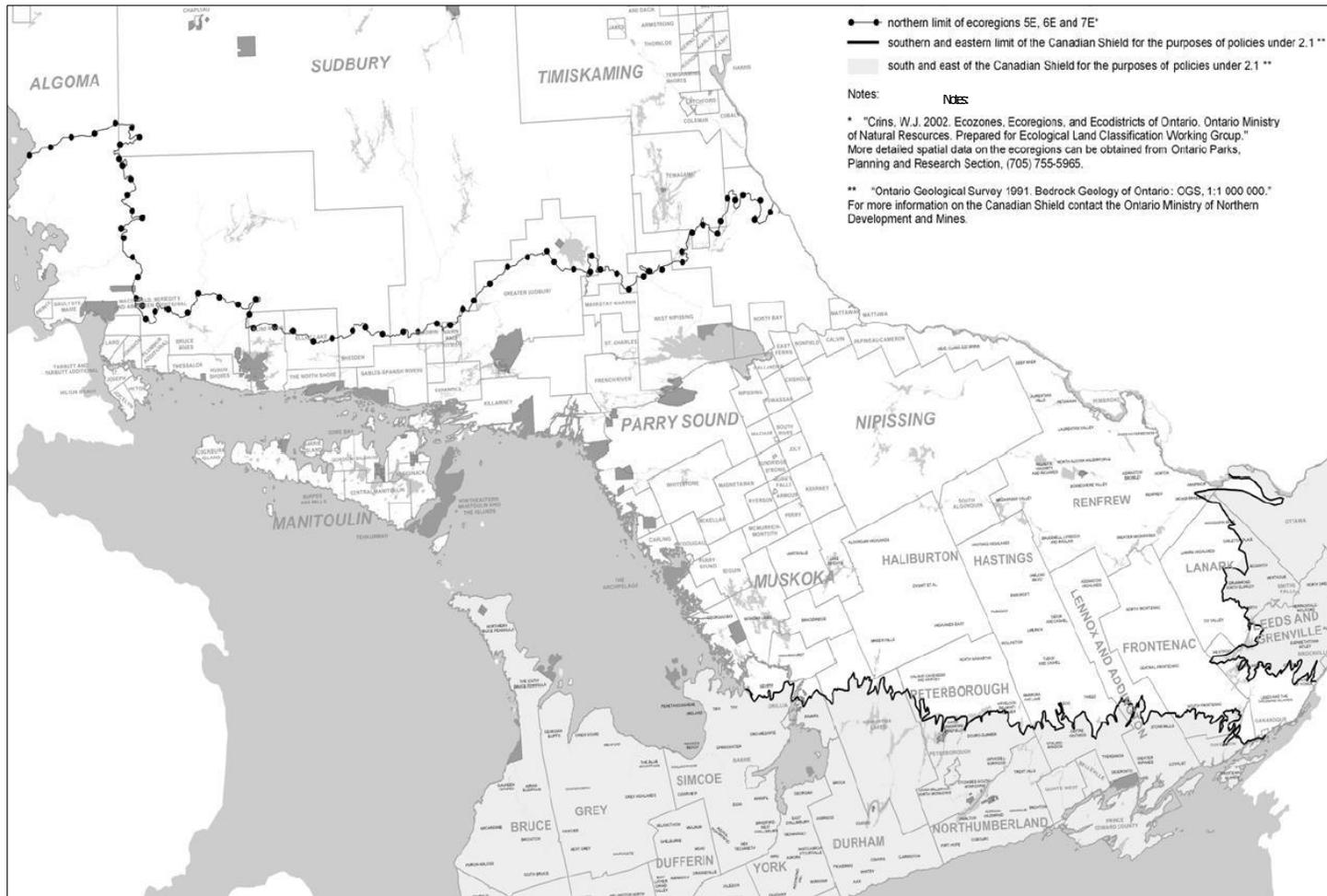


Figure 2 - Natural heritage protection line (source - Provincial Policy Statement)

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

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

The province uses the Ontario Wetland Evaluation System (OWES), originally developed in 1983, to identify and evaluate wetlands primarily to support land use planning processes under the *Planning Act*. The Ontario Wetland Evaluation System, Northern Manual (MNR 2014) applies in the jurisdiction of Conservation Sudbury. Wetlands identified and evaluated using the OWES can be a valuable resource for implementing Section 28 of the *Conservation Authorities Act*, however, it is important to note that a wetland must meet the definition of ‘wetland’ within the *Conservation Authorities Act*.

1.3 Discussion of Wetlands and Other Areas

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

1.3.1 Functions of Wetlands

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

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

Wetlands retain and modify nutrients, chemicals and silt in surface and groundwater thereby improving water quality. This occurs temporarily in the plants of the wetland but

long term in the organic soils. In addition, wetlands provide a variety of hydrologic functions.

1.3.2 Development and Interference

There are three ways through which the *Conservation Authorities Act* and individual CA Regulations address wetlands and other areas (areas of interference or adjacent lands within which development may interfere with the hydrologic function of the wetland) (Figure 1):

- **Development within the wetland boundary** (Section 2.1 (d) of Regulations)
To be regulated, the activity must meet the definition of Development. Applications for development must be assessed with respect to the five “tests” outlined in the *Conservation Authorities Act* (control of flooding, erosion, pollution, dynamic beaches and the conservation of land);
- **Development within the “other areas”** (Section 2.1 (e) of Regulations)
To be regulated, the activity must meet the definition of Development. Applications for development must be assessed only with respect to the hydrologic function of the adjacent wetland; and
- **Interference with Wetlands** (Section 5 of Regulations) To be regulated, the activity must occur within the wetland boundary and must constitute an interference in any way with the wetland. Applications for interference must be assessed with respect to the natural features and hydrologic and ecological functions of the wetland.

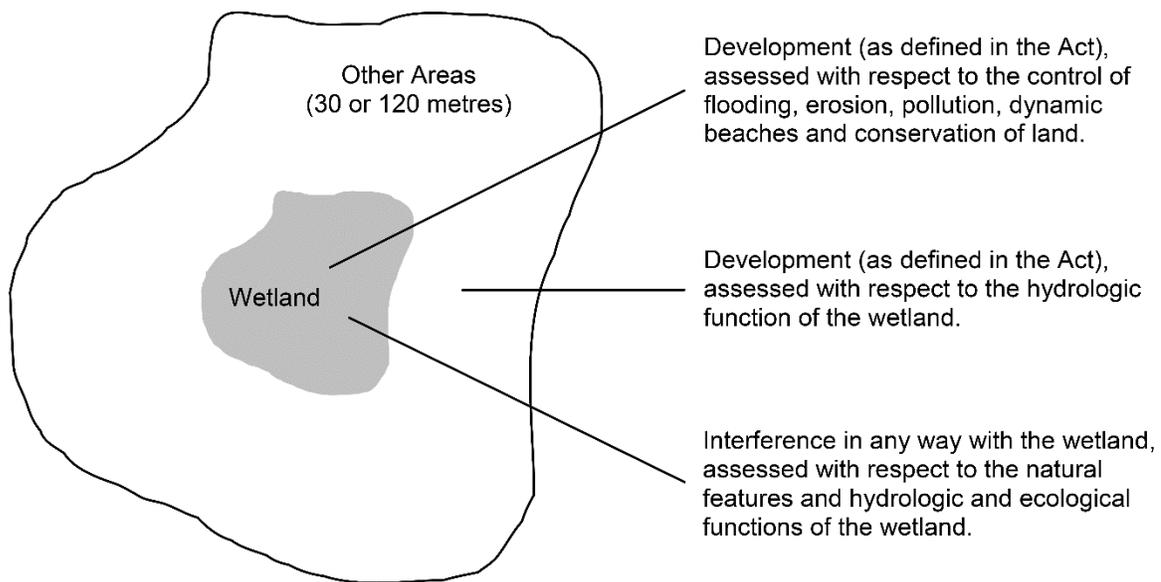


Figure 3 - Three ways through which the *Conservation Authorities Act* and individual CA Regulations address wetlands and other areas.

Portions of wetlands may also be regulated due to presence of hazardous lands such as regulated floodplains or unstable soils.

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

Development in wetlands has the potential to interfere with many of the natural features or ecological functions of wetlands. Development may remove or impact wildlife species and their habitat, degrade or remove natural vegetation communities and impair water quality and quantity in both surface and groundwater. As a result, development within wetlands can impact conservation of land (refer to Section 1.4.3).

Many wetlands develop on organic soils and, as a result, when reviewing development within a wetland, the soil composition should be reviewed.

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

Nutrients, chemicals, and sediments could enter the wetland impeding the function of the wetland.

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

Determining what represents an interference can be very challenging and is dependent on a variety of parameters such as the type and the scale of activity. The legal and practical implications associated with regulating interference will require ongoing discussions and court decisions over the upcoming years.

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

There are variations in the description of the “other areas” in each individual CA Regulation. In general, the regulated area extends 120 metres from the limit of Provincially Significant Wetlands and 30 metres or 120 metres from the limit of all other wetlands for all CAs.

1.3.3 Technical Analysis

1.3.3.1 “Interfere in Any Way”

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

1.4 Implementation Guidelines

The following sections outline the guidelines for implementing the individual CA Regulations with respect to wetlands (Section 1.4.1) and "other areas" (Section 1.4.2). CAs, in their role through the planning process, should review planning applications to ensure that, in general, all development can occur outside and be set back an appropriate distance from the wetland boundaries.

1.4.1 Development and Interference Within Wetlands

- 1) In general, development and interference shall not be permitted within wetlands;
- 2) In general, ponds and drains shall not be permitted within wetlands;
- 3) In general, stormwater management facilities shall not be permitted within wetlands;
- 4) Notwithstanding Section 1.4.1 1), interference with a wetland north of Ecoregions 5E, 6E, and 7E may be permitted if the interference on the natural features and hydrologic and ecological functions of the wetland has been deemed to be acceptable by the Conservation Authority;
- 5) Notwithstanding Section 1.4.1 1), development within wetlands north of Ecoregions 5E, 6E, and 7E may be permitted if it has been demonstrated to the satisfaction of the Conservation Authority that the control of flooding, erosion, pollution or the conservation of land will not be affected;
- 6) Notwithstanding Section 1.4.1 1), public infrastructure (e.g. roads, sewers, flood and erosion control works) and various utilities (e.g. pipelines) may be permitted within a wetland subject to the activity being approved through a satisfactory Environmental Assessment process and/ or if it has been demonstrated to the satisfaction of the Conservation Authority that the control of flooding, erosion, pollution or the conservation of land will not be affected and the interference on the natural features and hydrologic and ecological functions of the wetland has been deemed to be acceptable by the Conservation Authority;
- 7) Notwithstanding Section 1.4.1 1), conservation or restoration projects may be permitted within a wetland if it has been demonstrated to the satisfaction of the Conservation Authority that the control of flooding, erosion, pollution or the conservation of land will not be affected and the interference on the natural features and hydrologic and ecological functions of the wetland has been deemed to be acceptable by the Conservation Authority;
- 8) Notwithstanding Section 1.4.1 1), development associated with public parks (e.g. passive or low intensity outdoor recreation and education, trail system) may be

permitted within a wetland if it has been demonstrated to the satisfaction of the Conservation Authority that the control of flooding, erosion, pollution or the conservation of land will not be affected and the interference on the natural features and hydrologic and ecological functions of the wetland has been deemed to be acceptable by the Conservation Authority.

- 9) Notwithstanding Section 1.4.1 1), under limited circumstances, permission for development and/or interference may be issued within a lot of record or a future lot of record, the creation of which was previously supported by the conservation authority on or after May 4, 2006, if,
 - a) There is a demonstrated need, to the satisfaction of the Conservation Sudbury, and the cumulative interference of wetland does not exceed 0.20 hectares on the parcel; and,
 - b) It is demonstrated that the development is appropriate, the design supports the intended end use, and the interference of the wetland has been deemed to be acceptable by Conservation Sudbury.
 - c) The tests of Ontario Regulation 156/06 (or subsequent regulations made pursuant to the *Conservation Authorities Act*) have been met to the satisfaction of Conservation Sudbury; and,
 - d) The development also addresses other hazards regulated by the Conservation Sudbury; and,
 - e) There is no alternative; and,
 - f) In all cases of wetland interference, regardless of size, the proposal demonstrates the following to the satisfaction of Conservation Sudbury:
 - i) All development (including grading) is located outside the regulated wetland as much as feasible;
 - ii) Development is located above the high water table unless the hydrological and other concerns are addressed to the satisfaction of the Conservation Authority;
 - iii) Disturbances to natural vegetation communities contributing to the hydrologic function of the wetland are avoided as much as feasible;
 - iv) The overall existing drainage patterns for the lot will be maintained;
 - v) Disturbed area and soil compaction is minimized;
 - vi) All septic systems are located at appropriate setbacks as required by Public Health Sudbury and Districts or the appropriate regulatory agency.
 - vii) Foundation of structures shall not include basements or crawl spaces.
 - viii) Impervious areas are minimized;
 - ix) Best Management Practices are used to:

1. Maintain water balance
 2. Control sediment and erosion
 3. Buffer wetlands.
- x) For interference greater than 0.20 hectares, an environmental impact study (EIS) will be required, where compensation for wetland loss will be considered.

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

The regulated area extends 120 metres from the limit of Provincially Significant Wetlands and 120 metres from the limit of wetlands greater than 2 hectares. It extends 30 metres from all other wetlands

1.4.2.1 Area Within 30 Metres of the Wetland

- 1) In general, development shall not be permitted within 30 metres of the boundary of the wetland;
- 2) Notwithstanding Section 1.4.2.1 1), development within 30 metres of a wetland north of Ecoregions 5E, 6E, and 7E may be permitted if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury;
- 3) Notwithstanding Section 1.4.2.1 1), public infrastructure (e.g. roads, sewers, flood and erosion control works) and various utilities (e.g. pipelines) may be permitted within 30 metres of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury;
- 4) Notwithstanding Section 1.4.2.1 1), conservation or restoration projects may be permitted within 30 metres of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury;
- 5) Notwithstanding Section 1.4.2.1 1), development associated with public parks (e.g. passive or low intensity outdoor recreation and education, trail system) may be permitted within 30 meters of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury ;
- 6) Notwithstanding Section 1.4.2.1 1), small scale development such as single family residential development (i.e. single detached dwelling and its associated accessory structures), or other types of development at a similar scale may be permitted within 30 metres of a wetland on vacant lots of record if the interference on the hydrologic function of the wetland has been deemed to be acceptable by

Conservation Sudbury. An EIS to assess the hydrologic impact shall be required if the submitted plans do not demonstrate the following:

- a) All development (including grading) is located outside the regulated wetland and maintains as much setback as feasible;
 - b) Disturbances to natural vegetation communities contributing to the hydrologic function of the wetland are avoided;
 - c) The overall existing drainage patterns for the lot will be maintained;
 - d) Disturbed area and soil compaction is minimized;
 - e) Development is located above the high water table unless the hydrological and other concerns are addressed to the satisfaction of the Conservation Authority;
 - f) All septic systems are located at appropriate setbacks as required by Public Health Sudbury and Districts or the appropriate regulatory agency.
 - g) Impervious areas are minimized;
 - h) Best Management Practices are used to:
 - i) Maintain water balance
 - ii) Control sediment and erosion
 - iii) Buffer wetlands
- 7) Notwithstanding Section 1.4.2.1 1), the creation of lots of record through a consent to sever may be permitted subject to the proponent demonstrating that:
- a) A sufficient development envelope (including all structures, septic, well, driveway, service infrastructure, grading, etc.) exists outside of the wetland for each severed and retained lot; and
 - b) The cumulative impact to interference on hydrologic functions of the wetland has been deemed acceptable by the Conservation Authority. A hydrologic study may be required to describe cumulative impacts on the wetland.

A permit pursuant to Section 28 of the *Conservation Authorities Act* will be required prior to development. As part of the application, the proponent will be required to demonstrate compliance with section 1.4.2.1. 6) to the satisfaction of Conservation Sudbury.

- 8) Further to Section 1.4.2.1 1), larger scale development associated with commercial uses, industrial uses, multiple residential uses (condominiums, apartments,

townhouses, etc.), development requiring permission under the *Planning Act* and/or development into the water table may be permitted within 30 metres of a wetland if the interference on hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury. The submission of an EIS to assess the hydrologic impact may be required.

1.4.2.2 Area Between 30 Metres to 120 Metres of the Wetland

- 1) In general, development may be permitted in the area between 30 metres to 120 metres of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury;
- 2) Further to Section 1.4.2.2 1), public infrastructure (e.g. roads, sewers, flood and erosion control works) and various utilities (e.g. pipelines) may be permitted in the area between 30 metres to 120 metres of a wetland subject to the activity being approved through a satisfactory Environmental Assessment process and/or if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury;
- 3) Further to Section 1.4.2.2 1), conservation or restoration projects may be permitted in the area between 30 metres to 120 metres of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury;
- 4) Further to Section 1.4.2.2 1), development associated with public parks (e.g. passive or low intensity outdoor recreation and education, trail system) may be permitted in the area between 30 metres to 120 metres of a wetland if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury;
- 5) Further to Section 1.4.2.2 1), small scale development such as single family residential development (i.e. single detached dwelling and its associated accessory structures), or other types of development at a similar scale may be permitted in the area between 30 metres to 120 metres of a wetland on vacant lots of record if the interference on the hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury . The submitted plans must demonstrate the following:
 - a) Disturbances to natural vegetation communities contributing to the hydrologic function of the wetland are avoided;
 - b) The overall existing drainage patterns for the lot will be maintained;
 - c) Disturbed area and soil compaction is minimized;

- d) Development is located above the high water table; unless the hydrological and other concerns are addressed to the satisfaction of the Conservation Authority;
 - e) All septic systems are located at a minimum 0.9 m above the water table;
 - f) Impervious areas are minimized;
 - g) Best Management Practices are used to:
 - i) Maintain water balance
 - ii) Control erosion and sediment
 - iii) Buffer wetlands
- 7) Further to Section 1.4.2.2 1), larger scale development associated with commercial uses, industrial uses, multiple residential uses (condominiums, apartments, townhouses, etc.), development requiring permission under the *Planning Act*, and/or development into the water table may be permitted in the area between 30 metres to 120 metres of a wetland if the interference on hydrologic functions of the wetland has been deemed to be acceptable by Conservation Sudbury. An EIS to assess the hydrologic impact may be required.

APPENDIX A

Environmental Impact Study

ENVIRONMENTAL IMPACT STUDY

The scope of an Environmental Impact Study (EIS) should be adjusted according to the nature/sensitivity of the subject area and the type of work being proposed. The EIS may include:

1. Overview of the natural features and functions that may be impacted by the proposal. This could include, but not be limited to:
 - Valley Lands;
 - Environmentally Significant Areas (ESA's);
 - Areas of Natural and Scientific Interest (ANSI's);
 - Significant Habitat of endangered, threatened, and species of concern;
 - Woodlands;
 - Fisheries habitat;
 - Significant Wildlife habitat;
 - Cumulative impacts;
 - Hydrologic Setting
 - Groundwater recharge, discharge, quality, and quantity, including flow paths and contributions
 - Surface water quality and quantity, including flow paths and seasonal contributions
2. Detailed description of the natural environment and the development proposal, including a biophysical, hydrologic, and hydrogeologic inventory and analysis;
3. Detailed description of the development proposal;
4. Assessment of the potential impacts of the proposed development on the natural features and functions,
5. Cumulative impacts assessment, and
6. Analysis of the available techniques to avoid impacts, mitigation measures and their effectiveness to eliminate or reduce the potential impacts of development on natural area features and functions.