



Grand River Conservation Authority

Policies and Procedures for Compliance with the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation

Ontario Regulation 150/06

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Compliance Policies and Procedures for Administering the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation

Ontario Regulation 150/06

Table of Contents

1	Introduction	1
1.1	The Grand River Watershed.....	1
1.2	Role of the Grand River Conservation Authority.....	1
1.3	Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation.....	2
2	Regulated Areas	2
3	Regulated Activities	3
4	Intent	4
5	Policy Objectives	5
6	Compliance	5
7	Violations	5
7.1	Access to Private Property.....	5
8	Policies	6
8.1	General Policies.....	6
8.2	Policies for Dealing with the Public.....	7
9	Procedures	7
9.1	Compliance.....	7
9.2	Violations.....	8
	<i>Permit Application Process for Violations</i>	9
	<i>Restoration Agreements</i>	9
	<i>Court Proceedings</i>	9
10	Definitions	9
11	Links to Key References	11

Figures

Figure 1.	The Grand River Watershed.....	1
Figure 2.	Example of Regulation Mapping.....	2

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1 Introduction

1.1 The Grand River Watershed

The Grand River and its major tributaries, the Speed, Eramosa, Nith and Conestogo Rivers drain an area in southwestern Ontario of just over 6800 km² – the largest direct drainage basin to Lake Erie on the Canadian side of the border with the United States (**Figure 1**).

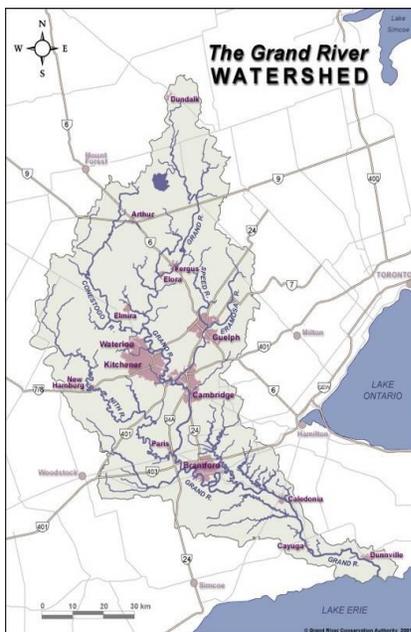


Figure 1. The Grand River Watershed

The Grand River Conservation Authority (GRCA) has a long history. Under the terms of the *Conservation Authorities Act*, the Grand Valley Conservation Authority was formed in 1948. The Authority, as it exists today, was established in 1966 through the amalgamation of the Grand River Conservation Commission (1938) and the Grand Valley Conservation Authority (1948). Its governing body is comprised of 26 representatives appointed by 34 member municipalities. This board approves the GRCA budget and policies and guides its activities. The objectives of the conservation authority are specified in the *Conservation Authorities Act*. The GRCA works closely with all levels of government to enhance watershed health by coordinating and implementing a variety of programs and services.

In 2009, approximately 975,000 people resided within the Grand River watershed, the majority living in the cities of Kitchener, Waterloo, Cambridge, Guelph and Brantford. About 3 per cent of the land use is urban, 79 per cent is rural and agricultural and 18 per cent is natural area. The watershed represents a diverse area, ranging from intense agricultural production to large, and rapidly expanding urban areas.

The wise management of our natural resources is essential to ensure a sustainable and healthy watershed which continues to meet the ongoing needs of a rapidly growing population.

1.2 Role of the Grand River Conservation Authority

The *Conservation Authorities Act* was passed in 1946 by the Ontario government in response to severe flooding and erosion problems experienced throughout the province. This legislation provided terms of reference and guidelines for watershed municipalities to voluntarily establish watershed partnerships for managing land and water resources.

The objectives of the Authority are to establish and undertake in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals (Conservation Authorities Act, RSO 1990, c. 27, s. 20).



Maps of the Regulated Areas are available on the Grand River Conservation Authority's website at www.grandriver.ca. Mapping is accurate to the scale at which the mapping was undertaken. Changes to the extent of the *Regulated Area* are made where more detailed studies determine a more precise boundary.

Existing mapping *does not* delimit the extent of all of the areas regulated by the *Regulation*. Mapping will be updated by the GRCA as more detailed information becomes available.

The Regulation applies to all areas described by the Regulation, whether mapped or not.

The *Regulation* does not:

- limit the use of water for domestic or livestock purposes,
- interfere with the rights or powers conferred upon a municipality in respect of the use of water for municipal purposes,
- interfere with any rights or powers of any board or commission that is performing its functions for or on behalf of the Government of Ontario, or
- interfere with any rights or powers under the *Electricity Act* or the *Public Utilities Act*,
- apply to activities approved under the *Aggregate Resources Act (Conservation Authorities Act, RSO 1990, c. 27, s. 28 (10, 11))*.

Works for which permission is required under this *Regulation* may also be subject to other legislation, policies and standards that are administered by other agencies and municipalities such as the provincial *Planning Act, Drainage Act, and Environmental Assessment Act* or the federal *Fisheries Act*, among others. It is the responsibility of the applicant to ensure that all other necessary approvals are obtained prior to undertaking any works for which a permit under this *Regulation* has been obtained.

3 Regulated Activities

The *Regulation* permits the GRCA to prohibit or regulate *development* in *Regulated Areas* and gives the GRCA the authority to prohibit or regulate *alterations* which would result in the straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, *stream, watercourse* or changing or interfering in any way with a wetland. *Development* is defined in the *Conservation Authorities Act*.

Development means:

- ***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 any material, originating on the site or elsewhere*** (*Conservation Authorities Act, R.S.O. 1990, c. 27, s. 28 (25)*).



The GRCA interprets *development* to mean works that by their scale or scope could have measurable impacts on flooding, erosion, dynamic beaches, pollution or the *conservation of land*. With the *exception of activities within wetlands*, the GRCA will generally not require permission for the following activities, including but not limited to:

- non-habitable accessory buildings associated with existing residential uses less than 9.3 square metres (100 ft²),
- maintenance and upkeep of existing buildings and structures which do not change the existing footprint (e.g. replacement of windows, siding, roofs, stairs, etc.),
- unenclosed decks and patios associated with existing uses,
- replacement of existing service connections (e.g. telephone, cable, water, sewer),
- seasonal or floating docks that do not require permanent structures to support them and that can be moved in the event of flooding,
- non-structural agricultural uses such as cropping, pasturing, and woodlot management,
- minor works such as landscaping or grading (excavation or filling) in an area of less than 1 hectare (2.5 acres) to a depth of less than 150 mm (6 inches) or a volume of less than 10 cubic metres (one standard dump truck load),¹
- minor alterations and on-going maintenance to existing dams in *watercourses* that would not affect the control of flooding, erosion, pollution or the *conservation of land* and that would not result in changes in the capacity to pass river flows or impacts on integrity of the structure or in-water works,
- on-going maintenance to stormwater management facilities that would not affect the control of flooding, erosion, pollution or the *conservation of land*,
- on-going operations associated with existing commercial/industrial uses that have been previously approved by the GRCA,
- municipal water monitoring wells that would not affect the control of flooding, erosion, pollution or the *conservation of land*, or
- other non-structural uses such as gardens, nurseries, open arboretums and forestry/wildlife management.²

Development in areas defined in the *Regulation*, *interference* with wetlands or *alterations* to river, creek, *stream* or *watercourse* channels requires permission from the GRCA. Each application is evaluated on its own merits, on a case-by-case basis, consistent with approved policies. Activities that are regulated by the GRCA and are undertaken without permissions are in contravention of the *Conservation Authorities Act* and *Ontario Regulation 150/06* and may be subject to legal action leading to fines and penalties.

4 Intent

This document outlines the policies and procedures for compliance followed by the Grand River Conservation Authority when 1) inspecting approved activities to ensure that the terms and conditions of the permit are complied with, 2) investigating possible and confirmed violations under the *Regulation*, and, 3) initiating court proceedings, if necessary. Application of these policies and procedures will ensure a consistent, timely and fair approach to implementing *Ontario Regulation 150/06*.

¹ This policy does not apply to the filling or excavation of a site on multiple occasions over an extended period of time. The cumulative impacts of such works may have measurable impacts on flooding, erosion, dynamic beaches, pollution or conservation of land and will require permission from the GRCA.

² It is recommended that any person undertaking work in areas defined by the *Regulation* contact the GRCA prior to the activity being carried out in order to determine whether or not the work requires permission from the GRCA.



5 Policy Objectives

The Grand River Conservation Authority strives to meet the following policy objectives when administering the *Regulation*. They include, but are not limited to:

- ❖ prevent loss of life, minimize property damage and social disruption, and avoid public and private expenditure for emergency operations, evacuation and restoration due to natural hazards and associated processes,
- ❖ prohibit *development* which, singularly or cumulatively, may restrict riverine channel capacities to pass flood flows, reduce storage capacity in floodplains and wetlands resulting in increased flood levels, and create potential danger to upstream and downstream landowners,
- ❖ prohibit *development* of flood and erosion susceptible river or *stream* valleys and shorelines which may increase hazard risk, create new hazards or aggravate existing hazards which would in future years require expensive *protection* measures,
- ❖ prevent interference with the *hydrologic functions* of wetlands throughout the Grand River watershed,
- ❖ avoid the degradation and loss of *significant natural features* and hydrologic and ecological functions in river or stream valleys, wetlands, shorelines and *hazardous lands*, and promote restoration and enhancement, wherever possible,
- ❖ prevent pollution of surface and ground waters associated with *development* in river or stream valleys, wetlands, shorelines and *hazardous lands*, and
- ❖ reduce potential nuisances associated with *development* by limiting the potential for floating objects and debris during flood events.

6 Compliance with Approved Permits

The Grand River Conservation Authority issues permits for works/activities that conform with the Board-approved objectives and policies for the administration of *Ontario Regulation 150/06*. These objectives and policies are subject to periodic review and amendment. Permit applications are reviewed and staff recommendations presented to the Board to reflect the policies in effect at the time the application was submitted and deemed complete. The GRCA Board can approve the permit with or without conditions. To ensure that works/activities approved under *Ontario Regulation 150/06* are in conformance with the permission granted, GRCA staff are entitled to complete inspections.

7 Violations

A violation of the *Conservation Authorities Act* and *Ontario Regulation 150/06* can occur in two ways:

- 1) the *development*, interference or alteration activities have taken place contrary to the terms and/or conditions stipulated in a permit issued by the Grand River Conservation Authority, or
- 2) *development*, interference or alteration activities have taken place within a regulated area without written permission from the Grand River Conservation Authority

If convicted, the person(s) committing the offence may be subject to a fine up to \$10,000 or to a term of imprisonment of not more than three months (*Conservation Authorities Act*, R.S.O. 1990, c. 27, s. 28, ss. 16). In addition, the *development, interference or alteration* may be required to be removed at the expense of the landowner. The landowner may also be required to rehabilitate the impacted area in a manner prescribed by the courts (*Conservation Authorities Act*, R.S.O. 1990, c. 27, s. 28, ss. 17).

7.1 Access to Private Property

When a possible violation has been observed by GRCA staff or reported to the GRCA, the Grand River Conservation Authority has the legal authority to investigate the activity to determine whether or not contravention of *Ontario Regulation 150/06* has occurred. In order to investigate a suspected violation,



the *Conservation Authorities Act* (RSO 1990, c. 27, s. 28 (20-24)) sets the terms and conditions for staff to access private property.

Powers of entry

- s. 28 (20)*** An authority or an officer appointed under a regulation made under clause (1) (d) or (e) may enter private property, other than a dwelling or building, without the consent of the owner or occupier and without a warrant, if,
- (a)*** the entry is for the purpose of considering a request related to the property for permission that is required by a regulation made under clause (1) (b) or (c); or
 - (b)*** the entry is for the purpose of enforcing a regulation made under clause (1) (a), (b) or (c) and the authority or officer has reasonable grounds to believe that a contravention of the regulation is causing or is likely to cause significant environmental damage and that the entry is required to prevent or reduce the damage.
- (21)*** Subject to subsection (22), the power to enter property under subsection (20) may be exercised at any reasonable time.
- (22)*** The power to enter property under subsection (20) shall not be exercised unless,
- (a)*** the authority or officer has given reasonable notice of the entry to the owner of the property and, if the occupier of the property is not the owner, to the occupier of the property; or
 - (b)*** the authority or officer has reasonable grounds to believe that significant environmental damage is likely to be caused during the time that would be required to give notice under clause (a).
- (23)*** Subsection (20) does not authorize the use of force.
- (24)*** Any person who prevents or obstructs an authority or officer from entering property under subsection (20) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Restriction on entry

- s. 30.1(1)*** An authority or an officer appointed under a regulation made under clause 28 (1) (d) or (e) shall not enter land without,
- (a)*** the consent of the owner of the land and, if the occupier of the land is not the owner, the consent of the occupier of the land; or
 - (b)*** the authority of a warrant under the *Provincial Offences Act, 1998, c. 18, Sched. I, s. 14*.

Exceptions

- s. 30.1(2)*** Subsection (1) does not apply to entry under clause 21 (1) (b) or subsection 28 (20). *1998, c. 18, Sched. I, s. 14*.

8 Policies

When carrying out inspections to ensure that the terms and conditions of a permit issued by the Grand River Conservation Authority are complied with and investigating possible and confirmed violations under the Regulation, the following policies will apply.

8.1 General Policies

- 8.1.1** Staff assigned responsibility for compliance will make every effort to resolve issues resulting from contraventions of the *Conservation Authorities Act* and *Ontario Regulation 150/06* within six (6) months of initiating an investigation.



- 8.1.2 The laying of charges against a landowner or other *individuals involved* may be pursued where a resolution to the issues resulting from contraventions of the *Conservation Authorities Act* and *Ontario Regulation 150/06* is not achieved.
- 8.1.3 Where other legislation and regulations in addition to the *Conservation Authorities Act*, such as the federal *Fisheries Act* and municipal by-laws have been contravened, the Grand River Conservation Authority may:
- a) notify the appropriate agencies and work with them to carry out a coordinated inspection, investigation and/or prosecution, and
 - b) encourage the agency with the strongest mandate to take the lead.
- 8.1.4 In addition to any penalty levied by the court upon conviction, the Grand River Conservation Authority will seek an order for rehabilitation of the site and/or removal of any building or structure ruled in contravention of *Ontario Regulation 150/06*.

8.2 Policies for Dealing with the Public

- 8.2.1 GRCA staff will use field inspections as an opportunity to inform and educate landowners, *individuals involved* and the public about the roles and responsibilities of the Grand River Conservation Authority in administering the *Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation, Ontario Regulation 150/06*.
- 8.2.2 When carrying out investigations, GRCA staff will carefully record and consider all of the facts and circumstances prior to taking action.

9 Procedures

This document outlines the procedures followed by the GRCA when 1) an inspection to monitor compliance is carried out, 2) a possible violation has been reported or observed, and 3) a violation has been confirmed.

9.1 Compliance with Approved Permits

Inspections of approved permits enable the Grand River Conservation Authority to meet stated policy objectives and achieve five operational goals:

- To ensure compliance with the terms and conditions of the permit issued
- To avoid the need for costly corrective actions through early identification of activities that do not comply with the terms and conditions of the permit issued
- To improve communication between the public and the Grand River Conservation Authority
- To provide greater surety to applicants about what activities are deemed acceptable to the Grand River Conservation Authority
- To clarify and improve the permit process

Completing inspections ensures that works and activities are completed in accordance with the specifications and site plans submitted with the permit application and any associated conditions that were approved by the Grand River Conservation Authority. In addition to inspections, the GRCA will work with other agencies and municipalities to ensure early detection of activities that are in non-compliance. During an inspection, GRCA staff can improve communications by addressing questions or concerns about the terms and conditions of the permit and clarify issues that arise during the inspection. Early identification of non-compliance activities allows GRCA staff to work with the permit holder to remedy issues at a minimal cost. When contraventions are easily remedied, there is no need to pursue legal action which could delay construction and result in costly fines, penalties and legal fees for the permit holder.



Inspections also help GRCA staff detect common activities that could lead to violations. By identifying these actions, staff can develop approaches to minimize future occurrences. For example, the failure to countersink new culverts properly may be discovered as a common fault. To resolve this concern, the GRCA may require more detailed plans outlining proper culvert installation as part of the application for a permit, as well as an onsite pre-construction meeting to adequately describe the process and the reasoning behind it.

9.2 Violations

Violations of *Ontario Regulation 150/06* occur as a result of *development, interference or alteration* activities occurring within a *Regulated Area* without written permission from the Grand River Conservation Authority. The landowner and/or *individuals involved* may be unaware that permission is required from the Grand River Conservation Authority. However, this does not absolve the landowner and/or *individuals involved* from obtaining permission.

Infractions of this sort are usually detected because a complaint has been received or a GRCA or municipal staff person has observed them in the field. Once identified, steps are taken to confirm whether or not the activity is in violation of *Ontario Regulation 150/06*.

There are two components to an initial investigation, an office investigation and a field investigation. The office investigation involves collecting background information on the property and the landowner and/or *individuals involved* and consulting with other agencies.

If the office investigation reveals information that confirms that a violation may have occurred, a field investigation begins. GRCA staff, a municipal building inspector or a municipal by-law enforcement officer may carry out an initial assessment where the activity is clearly visible from a public road and access to private property is not required. Photographs of the activity taking place and notes describing the activity will be taken. If the activity is not clearly visible from a public location, GRCA staff will attempt to arrange a site visit with the landowner and/or *individuals involved*. A determination regarding whether or not an offence has occurred is made. If it is found that no violation occurred, no further action is taken.

Where further action is required, a *Site Investigation Report* is completed. The report includes a description of all findings with a copy of photos, witness statements, maps and references to other related files, if applicable. A *Notice of Violation* is sent to the landowner and/or individuals involved as well as the Clerk of the respective municipality and others as appropriate.

A *Notice of Violation* is not a legal document. It is a formal letter that notifies the landowner and/or the *individuals involved* in committing the probable offence that a violation of *Ontario Regulation 150/06* has occurred. The *Notice of Violation* identifies the specific activities that are subject to the infraction as well as specifies the particular section of the *Regulation* that has been contravened. The notice requests the recipient to stop work and to contact the Grand River Conservation Authority to discuss options to resolve the violation. To ensure that the recipient receives the notice in a timely manner, it is delivered by personal delivery or sent by registered mail. The *Notice of Violation* contains the following information:

1. A map showing the location of the property and the *Regulated Area*
2. An information sheet explaining the nature and scope of the *Regulation* and the permit process administered by the GRCA under *Ontario Regulation 150/06*
3. Date of inspection
4. Offence Wording
5. Section of *Ontario Regulation 150/06* contravened
6. Description of the work
7. Contact information for the appropriate GRCA staff person



8. Due date by which to the GRCA must be contacted

The landowner and/or *individuals involved* have two options: 1) cease the activity and have the activity approved by the Grand River Conservation Authority through the permit process, provided that the activity adheres to the Board-approved policies for the administration of *Ontario Regulation 150/06*, or 2) remove the offending *development* or cease the activity and restore the area to its original condition at the owner's expense. If neither option is acceptable, the Grand River Conservation Authority may proceed to court.

It is the preference of the Grand River Conservation Authority to address the violation using the first two options. All efforts to avoid pursuing legal action will be made. However, if an offender refuses to negotiate a resolution, the Grand River Conservation Authority can lay charges.

Permit Application Process for Violations

If the offender chooses to apply for a permit after the *development, interference* or *alteration* has commenced or occurred, a fee surcharge applies. GRCA staff will work with the applicant to ensure that the works adhere to the GRCA policies for the administration of *Ontario Regulation 150/06*. If a permit is granted, the works may proceed.

Restoration

Where works have been undertaken without approval of the GRCA or where the works do not meet the terms and conditions of the approved permit and the landowner and/or *individuals involved* are willing to remove the works and/or satisfactorily restore the site to its original condition, a violation may be easily resolved. In this case, GRCA staff will work with the landowner and/or *individuals involved* to effect removal of the works and/or restore the site. Where restoration works require detailed plans or studies, the landowner and/or *individuals involved* will be required to apply for a permit.

Court Proceedings

Where violations cannot be resolved, the GRCA may decide to lay charges and initiate court proceedings by *laying an information* before a Justice of the Peace under oath. *Laying an information* is the procedure by which a magistrate is informed in writing of an offence for which a summons or warrant is required. If the Justice of the Peace considers that the allegations establish that an offence has probably been committed, a **summons** will be issued to the person(s) charged. A summons states when and where the person(s) named must appear to answer the charges.³

The formal trial begins with an arraignment. If the defendant pleads guilty, a trial is unnecessary. If the defendant pleads not guilty, the trial proceeds. Upon a guilty plea or conviction, the prosecution and the defence make submissions concerning sentencing. Through the prosecution, the GRCA will seek an order for rehabilitation of the site and/or removal of any building or structure ruled in contravention of *Ontario Regulation 150/06*, in addition to any penalty levied.

10 Definitions

Conservation of Land means the *protection*, preservation, management, or restoration of lands within the watershed ecosystem.

³ If the GRCA wishes additional witnesses to give evidence, a *summons to witness* is prepared and served to the appropriate persons. The summons may specify writings or things that the person must bring with him or her.



Development means:

- 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.

Ecosystem means systems of plants, animals and micro-organisms together with non-living components of their environment, related ecological processes and humans.

Fill means any material used or capable of being used to raise, lower or in any way affect the contours of the ground, whether on a permanent or temporary basis, and whether it originates on the site or elsewhere.

Hazardous Land means land that could be unsafe for *development* because of naturally-occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock.

Hydrologic Function means the functions of the hydrologic 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.

Individuals Involved includes a landowner's agent or contractor or any other involved individual who carries out works on lands regulated by *Ontario Regulation 150/06*, whether or not permission to do the works has been authorized by the landowner.

Laying an Information means the procedure by which a magistrate is informed in writing of an offence for which a summons or warrant is required.

Notice of Violation means is a formal letter that notifies the landowner and/or the *individuals involved* in committing the probable offence that a violation of *Ontario Regulation 150/06* has occurred.

Pollution means any deleterious physical substance or other contaminant that has the potential to be generated by *development*.

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* setbacks, zoning, fencing, conservation easements, etc.).

Regulated Area means river or *stream* valleys, wetlands, other areas where *development* could interfere with the hydrologic function of a wetland, lands adjacent to the shoreline of Lake Erie and inland lakes, and *hazardous land* and represents the greatest extent of these combined hazards plus a prescribed allowance.

Significant Natural Features means features and areas including all wetlands, fish habitat, valleylands, habitat of endangered species, significant wildlife habitat, confirmed habitat for provincially or regionally significant species, part of an ecologically functional corridor or linkage between natural areas, or any other features or areas that are considered ecologically important in terms of contributing to the quality and diversity of an identifiable geographic area or natural heritage system.

Site Investigation Report means a standard form completed by GRCA staff after an initial site investigation. After completion, the form will contain all of the particulars of the occurrence, including location, property owner, and site observations, and will be used as a reference for other GRCA staff.

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

Watercourse means an identifiable depression in the ground in which a flow of water regularly or continuously occurs.

Watershed means an area that is drained by a river and its tributaries.



Wetland means land that:

- is seasonally or permanently covered by shallow water or has a water table close or at the surface
- directly contributes to the hydrological function of a watershed through connection with a surface watercourse,
- has hydric soils, the formation of which have been caused by the presence of abundant water, and
- 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 wetland characteristics

11 Links to Key References

Provincial Legislation and Regulations – www.e-laws.gov.on.ca

Provincial Offences Act - http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p33_e.htm#BK2

Federal Legislation and Regulations - <http://laws.justice.gc.ca/en/>

Conservation Authorities Act – http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c27_e.htm

Ontario Regulation 150/06 – http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_060150_e.htm