

STAFF REPORT – May 19, 2011

TO: Chair and members of the Full Authority

Re: Large Commercial Fill Operations

The following staff report provides background information regarding large commercial fill operations and the applicability of the Ganaraska Region Conservation Authority regulation (O.Reg. 168/06) to deal these works. Additionally, staff has prepared a draft resolution for Board consideration, following the motion from the April Full Authority meeting. The motion attempts to capture the essence of the discussion and concerns raised by the Board at the previous meeting.

Background

1. *Conservation Authority Act* Regulation

The Ganaraska Region Conservation Authority (GRCA) has been given the ability to regulate *development* within a number of areas within its jurisdiction. The sections of the *Conservation Authorities Act* that provide for this regulation are listed below:

Excerpts from: *Conservation Authorities Act*, R.S.O. 1990, CHAPTER C.27

Regulations by authority re area under its jurisdiction

28. (1) Subject to the approval of the Minister, an authority may make regulations applicable in the area under its jurisdiction,

(c) prohibiting, regulating or requiring the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development;

Definitions

(25) In this section, “**development**” means,

(c) site grading, or

(d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere;

2. Areas Subject to Conservation Authority Regulation as defined in the Act

The sections of the *Conservation Authorities Act* that describe the areas that this regulation can be applied to are listed below:

Minister’s approval of development regulations

(5) The Minister shall not approve a regulation made under clause (1) (c) unless the regulation applies only to areas that are,

- (a) adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beach hazards;
- (b) river or stream valleys;
- (c) hazardous lands;
- (d) wetlands; or
- (e) other areas where, in the opinion of the Minister, development should be prohibited or regulated or should require the permission of the authority. 1998, c. 18, Sched. I, s. 12.

3. Areas and activities that can be regulated as described by Regulation

As noted above the Conservation Authorities Act allows the Ganaraska Region Conservation Authority to make a regulation. Excerpts from the regulation provide details of the regulated area and the things that can be addressed within this area.

Excerpts from: Ontario Regulation 168/06 made under the *Conservation Authorities Act* Ganaraska Region Conservation Authority: Regulation of development, interference with wetlands and alterations to shorelines and watercourses.

Development prohibited

2. (1) Subject to section 3, no person shall undertake development, or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,
- (d) wetlands; or
 - (e) **other areas** where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands and wetlands greater than 2 hectares in size, and areas within 30 metres of wetlands less than 2 hectares, 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.

4. Relationship Between Municipal Fill By-Law and Conservation Authority Regulations

The Municipal Act allows municipalities to make by-laws regarding the regulating of site alteration. Excerpts from the Act are noted below. You will note that Section 142, subsection 8 states that if a regulation made under Section 28 of the Conservation Authorities Act is in effect, the Municipal By-law is of no force or effect. Excerpts from the *Municipal Act* are provided below:

Municipal Act, 2001, S.O. 2001, CHAPTER 25

Site alteration Definition

142. (1) In this section, “topsoil” means those horizons in a soil profile, commonly known as the “O” and the “A” horizons, containing organic material and

includes deposits of partially decomposed organic matter such as peat. 2001, c. 25, s. 142 (1).

Powers of local municipality

(2) Without limiting sections 9, 10 and 11, a local municipality may,

- (a) prohibit or regulate the placing or dumping of fill;
- (b) prohibit or regulate the removal of topsoil;
- (c) prohibit or regulate the alteration of the grade of the land;
- (d) require that a permit be obtained for the placing or dumping of fill, the removal of topsoil or the alteration of the grade of the land; and
- (e) impose conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site. 2006, c. 32, Sched. A, s. 76 (1).

By-law ceases to have effect:

(8) **If a regulation is made under section 28 of the Conservation Authorities Act respecting the placing or dumping of fill, removal of topsoil or alteration of the grade of land in any area of the municipality, a by-law passed under this section is of no effect in respect of that area. 2001, c. 25, s. 142 (8).**

5. What a Conservation Authority can ask for in a permit application

As noted above the Conservation Authorities Act allows the Ganaraska Region Conservation Authority to make a regulation. Excerpts from the regulation provide details on what a Conservation Authority can ask for when receiving a permit application to undertake development, (e.g. place fill):

Excerpts from: Ontario Regulation 168/06 made under the Conservation Authorities Act (Ganaraska Region Conservation Authority's Development, Interference with Wetlands, Alteration to Shorelines and Watercourses Regulation.

Application for permission

4. A signed application for permission to undertake development shall be filed with the Authority and shall contain the following information:

1. Four copies of a plan of the area showing the type and location of the development.
2. The proposed use of the buildings and structures following completion of the development.
3. The start and completion dates of the development.
4. The elevations of existing buildings, if any, and grades and the proposed elevations of buildings and grades after development.
5. Drainage details before and after development.
- 6. A complete description of the type of fill proposed to be placed or dumped. O. Reg. 168/06, s. 4.**

Concerns

The following concerns have become evident in relation large fill operations that are regulated by the Conservation Authority regulation:

1. The municipality, GRCA board members, GRCA staff and the public have expressed concerns with a number of conditions included in Conservation Authority permitting requirements for large commercial fill operations;
2. As described above the Conservation Authorities Act and regulation defines what can and cannot be addressed when a Conservation Authority considers an application to place fill;
3. The Municipal Act clearly removes the ability of a municipality to regulate an area over which a Conservation Authority has a regulation;
4. The Conservation Authority regulation contains wording regarding the things that a Conservation Authority can require of an applicant and this wording is vague;
5. If an application for fill is proposed in an “other area” limited criteria can be used when assessing the application;
6. The Conservation Authorities regulation was not intended, nor does it have the capability to address the significant social and economic impact of large commercial fill operations on the neighbouring communities;
7. The Ministry of the Environment has stated that the regulation of fill sites is outside of its mandate; and
8. In Conclusion, the Conservation Authority regulation was not developed with large commercial fill operations in mind.

Given these issues, it is clear that the regulations developed under the Conservation Authorities Act do not adequately regulate large commercial fill operations. During its Board meeting of April 2011, the Ganaraska Region Conservation Authority Full Board requested that staff prepare a report for the May Full Authority meeting to provide background information regarding large commercial fill operations. Additionally, staff was asked to prepare a recommended resolution to be forwarded to several agencies and Conservation Ontario outlining concerns that were brought forward regarding this matter. A recommended resolution has been provided below:

RECOMMENDED MOTION:

WHEREAS Conservation Authority regulations in Ontario apply to “other areas” (within 120 metres) of wetlands; and

WHEREAS “other areas” are only regulated if development in these areas could interfere with the hydrologic function with the wetland; and

WHEREAS the section Section 142(8) of the Municipal Act exempts a

landowner of the requirements of a Municipality’s site alteration by-law, if a Conservation Authority has a regulation in effect;

WHEREAS the Conservation Authority regulations requires an applicant to submit “A complete description of the type of fill proposed to be placed or dumped”; and

WHEREAS it is beyond the resource capacity and scope of CA regulations to effectively deal with, large scale commercial fill operations; primarily with respect to the sources and quality of material they import;

WHEREAS it is the position of the MOE that the regulation of fill sites; or filling activity is not addressable through its legislation;

BE IT RESOLVED THAT the Ganaraska Region Conservation Authority request Conservation Ontario engage the Provincial government to develop and implement legislation to effectively deal with large scale commercial fill operations, and

FURTHER THAT the Full Authority forward this motion to local MPs and MPPs and to the watershed municipalities, requesting the municipalities engage the Association of Municipalities of Ontario to also work towards addressing concerns regarding large commercial fill operations.

Prepared By: _____

Mark Peacock, P. Eng.
Director, Watershed Services

Greg Wells
Manager, Planning & Regulations

Recommended by: _____

Linda J. Laliberte, CGA
CAO/Secretary Treasurer