The Ontario Soil Regulation Task Force is pleased to submit comments regarding the Conservation Authorities Act and associated regulations review.

Comments re ERO postings **#013-5018 and** **#013-4992** are contained in this submission.

The Ontario Soil Regulation Task Force (OSRTF) <http://osrtf.ca> has been involved with the issue of excess soil since its formation as a volunteer non-profit in 2015 by citizens groups that had been dealing since 2010 with the problems of the dumping of excess soil in inappropriate places. It now speaks for over 20 citizen groups from Clarington, to Ramara, to Chatsworth, to Grimsby in an arc over the greater golden horseshoe. Its leaders have taken several professional training sessions on soil contamination. Its members were instrumental in court cases and a federal legislative amendment that closed the federal aerodrome loopholes that were used at several sites. OSRTF has produced a peer reviewed model municipal site alteration by-law and presented to many town councils to improve their by-laws and was involved in OMB and the Normal Farm Practices Protection Board hearings in support of those by-laws. It was OSRTF members who pressed their MPP to initiate the review that has ultimately led to MECP’s proposed soil regulations. OSRTF has been involved with MECP in the policy review and the development of the soil regulations through the regular meetings of the Excess Soil Engagement Group.

Previously, by virtue of the Municipal Act, Section 142(8), land owners were exempt from municipal site-alteration by-laws if the local Conservation Authority had a regulation dealing with site-alteration in effect. The Municipal Act has been amended. Bill 68 received royal assent on May 30th, 2017 and is now law. Section 142(8) of the municipal act has been repealed, meaning that municipal site alteration by-laws now apply in conservation authority regulated areas (once the change has been incorporated into municipal site-alteration by-laws). We have been encouraging municipalities to amend their Site-alteration By-Laws to reflect this significant change.

Conservation Ontario recognized soil management as an important issue effecting Conservation Authorities and documented this in the 2012 Conservation Ontario Discussion Paper. The CA may grant permission for “development”, which includes fill placement (site-alteration) within Regulated Areas, provided it has been determined that there will not be an adverse effect on the following five tests: 1) Control of flooding; 2) Erosion; 3) Dynamic beaches; 4) Pollution; or 5) Conservation of land. CA’s issue “Development, Interference with Wetland, Alterations to Shoreline” permits. They are limited, compared to municipalities, in what they may or may not consider, request or require regarding applications within their regulated areas. We have had concerns with some of the current definitions (i.e. “pollution”) and the lack of relevant definitions (i.e. “conservation of land”) in CA regulations and how they are interpreted by various conservation authorities. Some CAs, like the Ganaraska Region Conservation Authority, have indicated that they may only be able to impose permit conditions regarding “pollution” and “conservation of land” that effect the specific feature, i.e. the wetland and not the land around the wetland which they regulate, hence not the ground water if the ground water does not directly affect the wetland (Ganaraska Conservation Authority Report 2011 –Morgan’s Rd. Application). This is a serious concern. Conservation Authorities need to exercise their own due diligence and ensure the placement of fill within their regulated areas will not have an adverse impact on the environment.

Conservation Authorities need to adopt Large Scale Fill Policies that incorporate the recommendations of the MOECC Best Management Practices for Excess Soils and any new excess soil regulations. Comprehensive oversight and compliance audits conducted by the Conservation Authority, at the proponent’s expense, is critical especially for large scale fill receiving sites. As members of the Board of Directors, municipal council members can ensure these provisions are part of CA policy. The Ministry of Natural Resources (MNR) needs to develop regulations that allow conservation authorities to go beyond the constraints of meeting the “five tests” so that various social and environmental issues, such as ground water contamination concerns, can be purposefully considered when permits are issued by conservation authorities. Any amendments to the Conservation Authority Act and Regulations need to consider these issues so that development permits that allow imported fill placement is regulated in a fulsome manner by the CA in conjunction with any municipal permit issued.

We have listed below some considerations and recommendations taken from the Toronto Region Conservation Authority (TRCA) draft comment submission that we feel should be re-iterated in the context of excess soil importation to CA regulated areas.

We also note that the ERO posting does not include the proposed written amendments to the Act or its associated regulations. We would assume that the conservation authorities, members of the public and other stakeholders will be given a chance to view and comment on the legal language changes before any final changes are adopted in order to ensure meaningful consultation.

**RE: Modernizing conservation authority operations - Conservation Authorities Act (ERO #013-5018)**

OSRTF supports all the recommendations from the TRCA regarding this positing with special emphasis to points 1, 2, 6, 7. 8 and **especially point 20 dealing with enhanced powers of enforcement and compliance.**

**TRCA recommends that:**

**1. The current purpose and objects in the *Conservation Authorities Act* remain broad and unchanged, to facilitate continued innovation and adaptation for local watershed-based solutions to current and emerging issues*;***

**2. The role of CAs in the land use planning and environmental protection process, as linked to legislation including the *Planning Act*, *Environmental Assessment Act*, and the CA Act in supporting the implementation of provincial and municipal priorities, be recognized as a core mandatory program and service;**

**3. The Province leverage the expertise of CAs in natural resource management, where capacity exists, for additional opportunities for efficiencies in public review processes to enable more timely reviews and approvals;**

**4. The core mandatory programs of CAs be consistent with the purpose of the Act and the *Made-in-Ontario Environment Plan* to include reference to the management and conservation of natural resources;**

**5. The identification of the management of conservation authority lands as a core mandatory function is important to include in the CA Act. Non-core functions such as restoration, recreation, education and community engagement functions of CAs on CA owned lands should be acknowledged as necessary to support these core activities in the amended Act and implementing regulations;**

**6. As school boards are enabled to enter into agreements with conservation authorities for the provision of lands, programs or services related to natural science or out-of-classroom experiences under Section 197.7 of the *Education Act*, the *Conservation Authorities Act* should be amended to explicitly acknowledge and permit the important role that CAs play in providing greenspace, scientific knowledge and experiences for Ontario students by including reference to natural science and outdoor education in the Act;**

**7. The Province maintain their financial and technical support for the Drinking Water Source Protection Program and that the identification of this program as a core mandatory program include continued financial support from the Ministry of Environment, Conservation and Parks for the role of Conservation Authorities, as prescribed under the Clean Water Act**;

**8. Consistent with the CA Act, the ability to manage local environmental issues on a watershed basis, be maintained for all conservation authorities;**

**9. The key role that many CAs play in the protection and restoration of the Great Lakes be identified and acknowledged as one of their core mandatory programs and services;**

**10. Increased transparency in how conservation authorities levy municipalities for mandatory programs and services be supported;**

**11. The review of non-mandatory programs occur every four years, coinciding with the second year of our partner municipality councils’ four-year terms;**

**12. Further guidance from the Ministry regarding the apportionment of levy be addressed within the update to the Act, to address cost constraints of our municipal partners while ensuring equity and timely resolution of disagreements;**

**13. The Province update the Act with general principles for transparency in levy funding, such as requiring cost recovery pricing for mandatory programs, based on transparent, full cost accounting and consultation with stakeholders, and require that all non-mandatory programs charge cost plus pricing to ensure they pay for their portion of a CA’s administration functions;**

**14. Entering into agreements for the delivery of non-core programs and services be mandatory practice, and proposes that the transition period for entering into these agreements be extended to December 2022, to coincide with the existing term end of municipal councils;**

**15. The Province or any partner municipality be allowed to request an audit of special purpose financial information limited strictly to how their funds have been spent, at their cost, and that overall financial accountability remain as a fiduciary responsibility of the CA’s Board of Directors;**

**16. TRCA supports the amendment to clarify that the duty of conservation authority board members is to act in the best interest of the CA;**

**17. The Province examine the size of CAs’ Board of Directors in the context of this review and any consider amendments to the CA Act regarding the maximum number of board members that may be appointed to a conservation authority by partner municipalities;**

**18. Flexibility be provided to CAs in respect of the charging of fees for diverse programs and services and that the CA Act be updated with general principles to be followed such as requiring cost plus pricing for associated fees, based on transparent, full cost accounting and consultation with stakeholders;**

**19. A clause of indemnification or statutory immunity for the good faith operation of essential flood and erosion control infrastructure and programming be added to the CA Act; and**

**20. Enhanced provisions for enforcement and compliance be added to the CA Act, including stop work orders, orders to comply, clarification for “after the fact” permits and a definition of an “officer” for enforcement purposes.**

**Re: Focusing conservation authority development permits on the protection of people and property ERO #013-4992)**

OSRTF wishes to reiterate the position of the TRCA with regards to the following for the ERO posting listed above. Excerpts from the TRCA draft comments are included below with specific OSRTF comments included at the end.

**TRCA draft comment excerpts:**

“Ultimately, the advisory and regulatory responsibilities of conservation authorities in the development process are not about slowing or preventing development and all its attendant economic benefits. Rather, they are about good environmental planning in which the municipality, the conservation authority and the development industry take a comprehensive, creative and collaborative approach early in the process. TRCA finds that when these efforts are made early and done well, it leads to innovative urban designs that result in shorter review times and cost reductions in the short and long term for all stakeholders. This approach of upfronting work, including all required studies to support timely approvals, also helps to avoid the delay and uncertainty associated with appeals to the Local Planning Appeal Tribunal and the Mining and Lands Tribunal.

At this time, the ERO posting does not contain proposed wording for new or amended legislation or regulations. We look forward to seeing the details of the proposed regulation in a future consultation process and would be pleased to provide further input at that stage.”

**Re: One Section 28 Regulation (Consolidation of 36 CA Regulations)**

“We understand that the Ministry is proposing to create a regulation to replace Ontario 97/04 that would further define the ability of a conservation authority to regulate prohibited development and other activities for impacts to the control of flooding and other natural hazards. We further understand the government’s intent is to consolidate and harmonize the existing 36 individual section 28 conservation authority regulations into one Minister of Natural Resources and Forestry regulation. This update is meant to ensure consistent requirements across all conservation authorities while still allowing for local flexibility for differences in risks posed by flooding and other natural hazards.

**TRCA supports the consolidation and harmonization of the existing 36 individual CA regulations into one regulation. Nonetheless, each CA must have the ability to establish individual, Board-approved policies that reflect local conditions.”**

**Regarding the definition of “Pollution”**

“The current CA Act definition of pollution is: “any deleterious physical substance or other contaminant that has the potential to be generated by development.” There is no definition, nor substantive reference to pollution in the PPS or in Provincial Plans, so it is unclear how this term will be defined to align with provincial land use planning policy. We acknowledge that pollution is referenced in the *Ontario Water Resources Act*; however, the only mention of pollution in the Provincial Plans is under the definition of “low impact development” as it relates to mitigating stormwater pollution. The use of the term pollution in the Ontario Water Resources Act (OWRA) differs slightly from the current CA Act in that the OWRA specifies recourse for the Ministry upon the occurrence of pollution. S.29 (3) of the OWRA states:

Where any person is discharging or causing or permitting the discharge of any material of any kind into or in or near any waters that, in the opinion of the Minister, may impair the quality of the water in such waters, the Minister may apply without notice to the Superior Court of Justice for an order prohibiting such discharge…

The CA Act contains no such provision for enforcement and compliance. In TRCA’s experience, major spills of sediment generated construction represent the most common form of pollution impacting watercourses. These spills typically occur at construction sites after large rain storms where erosion and sediment controls are either absent, inadequate, or poorly maintained. These suspended solids threaten water quality, temperature, increase erosion, and can impact fish habitat.

Notwithstanding the above noted omission for enforcement, the existing definition of pollution provides CAs with a broad range of discretion in controlling the release of harmful substances that may be associated with a development activity. The current definition allows CAs to regulate pollution of surface waters or soils and general ecosystem concerns within the watershed. Moreover, where a violation concerning pollution arising from human use of environmentally sensitive areas has been raised, the definition has been used to successfully defend decisions by a CA to regulate pollution.

**Therefore, TRCA recommends that the current CA Act definition of pollution be maintained but that its occurrence be tied to the enforcement and compliance provisions within the CA Act and associated regulations.”**

**Re: Conservation of land**

**“TRCA recommends that the definition for the conservation of land be consistent with the 1994 MLC decision, or at minimum, that it recognize the relationship between landforms, features and functions in order to protect, manage and restore natural resources within watersheds.”**

**Re: Exemptions for low-risk development activities:**

**Exempt low-risk development activities from requiring a permit, including:**

- **certain alterations and repairs to existing municipal drains subject to the Drainage Act provided they are undertaken in accordance with the Drainage Act and Conservation Authorities Act Protocol**

-**Allow conservation authorities to further exempt low-risk development activities from requiring a permit provided in accordance with conservation authority policies**

**“**Further, there are activities that should not be considered low risk such as large scale development, redevelopment, and fill placement. While we would support such an approach in order to facilitate streamlining, we would welcome further discussions with the Province in order to be clear on the criteria that would constitute “low risk” activities for appropriate implementation and compliance.

The immediate need for improved deterrents to non-compliance is acute in TRCA’s highly urbanized watersheds given current development pressures, increasing risks to health and safety and property damage from dumping, illegal activities and extreme weather events.

**TRCA supports enhanced provisions for enforcement of CAs’ permitting function through bringing into force un-proclaimed sections of the CA Act but would welcome further enhancement to deter infractions, including:**

o **orders to comply**

o **stop work order appeals only to the Minister**

o **clarification for “after the fact” permits**

o **definition of an officer for enforcement purposes. “**

OSRTF contends that when it comes to illegal dumping of soils, the “immediate need for improved deterrents to non-compliance is acute” in any CA regulated area. We draw your attention to the August 13, 2018 CBC news story, GTA building boom spawns shadowy 'black market' for waste soil, excerpt below:

“The housing development boom in the GTA has spawned an accompanying, much more dangerous business: illegal dumping of unwanted, and sometimes toxic, soil. The dirt dumps are popping up on farmers' fields and vacant lots across the region, according to the Lake Simcoe Region Conservation Authority —one of the organizations that's trying to curb the burgeoning trade in illegal soil.

"I've seen trucks —10, 20 deep—parked along the road coming in and dumping every couple of minutes. If you can generate 30 loads an hour at $100, that's three grand an hour," said Rob Baldwin, planning head at the LSRCA. If that's half the cost of a legal tipping site, that's the lucrative side for those companies that are disposing of the fill. It absolutely creates a black market.

"The problem arises from the fact that every time another basement in a new subdivision is excavated, the dirt has to be dumped somewhere. Rather than using the province's regulated, and costly, soil dump sites, some contractors are turning to soil brokers —middlemen who, for a fee, match builders with willing landowners. Lake Simcoe Region Conservation Authority planning head Rob Baldwin wants increased powers to investigate properties that he suspects are being used as illegal dump sites. (Tina Mackenzie/CBC)

And those middlemen, Baldwin says, are often members of organized crime groups…..

The LSRCA has become involved because wetlands and shorelines, which are often tantalizingly vacant, have become favourite options for illegal dumpers, Baldwin says. And there are serious risks to the public, he adds. When tonnes of dirt, toxic or clean, are dumped onto a flood plain, it raises the risk that the next heavy rainfall could lead to a serious flood. "If you have a thousand dump truck loads in the flood plain that take up all the space for the water, where is that water going to go? To the house next door?”

Respectfully submitted,

Ontario Regulation Task Force

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