

APPENDIX A
REVIEW OF SVCA LETTER DATED MARCH 17, 2014

March 17, 2014

County of Grey
Planning and Development Department
595-9th Avenue East
Owen Sound, ON
N4K 3E3
ATTENTION: Sarah Morrison, Planner

Dear Mrs. Morrison:

RE: Proposed Official Plan Amendment 42-07-09-OPA-124 Flanagan Pit Expansion
Part Lot 1, Concession 16 Geographic Township of Egremont
Town of Southgate (H. Bye Construction)

The Saugeen Valley Conservation Authority (SVCA) has reviewed the proposed Official Plan amendment based on our policies and mandate.

The Saugeen Valley Conservation Authority (“CA”) policies and mandate are not sufficient to provide the criterion for a review of technical studies for OPA-124 as required under the Grey County Official Plan (“GOP”) and related ARA Provincial Standards (“ARA”), Provincial Policy Statement (“PPS”), and Planning Act (“PA”).

The CA’s letter dated August 24, 2013 to the Township states “review was based on Conservation Authority policies and mandate and the Memorandum Agreement between the Authority and the Township of Southgate.” The 2008 Memorandum Agreement with technical clearance was used for the Flanagan Pit No. 1 2009 OPA-4 not the Flanagan Pit No. 2 OPA-124.

Had the CA entered into a Memorandum Agreement that included a Technical Clearance Agreement with the County or Township for Flanagan Pit No. 2 providing criteria i.e. GOP 2.7.4 and related ARA Provincial Standards the CA would have determined that the Level 1 Natural Environment Study prepared by AET dated April 12, 2011 (“NES 2011”) and Hydrogeological Assessment Revised May 2008 (HGI Report 2008) were not stand alone reports and were non-compliant with GOP and related ARA Provincial Standards i.e. expansion - all site are new sites and require new studies. **See CAA 3.3, 3.4 below**

Definition of Stand Alone Report: means a report based on , ARA Provincial Standard Policies, current data and existing conditions on site and within 120m

The Hydrogeological Assessment Revised May 2008 was conducted on the Flanagan Pit site not the Flanagan Pit No. 2 site. The Flanagan Pit No. 1 site – 2009 ARA Licence Application was issued under license number 625041. The SVCA has no objection to the approval of the Official Plan amendment that will re-designate the subject property to allow for the expansion of a pit extraction use. We offer the following comments. The SVCA has reviewed the Site Plans Dated March 5, 2012 completed Hydrogeological Assessment Revised May 2008 prepared by Thomas S. Haygarth, Planning Report dated February 2012 by Cuesta Planning Consultants Inc., and Level 1 Natural Environment Study prepared by AET dated April 12, 2011. The SVCA provided comments dated August 28, 2012 to the related local Official Plan amendment and Zoning By-law amendment.

Hydrogeological Assessment Revised May 2008

The HGI Report 2008 was not a stand alone report. The applicant did not request an assessment for the Flanagan Pit No. 2 as required under GOP 2.7.4 and related ARA.

Did the SVCA request a professional engineering staff (hydrologist) to review the HGI Report 2008 in accordance with GOP 2.7.4 and related ARA 2.01.03, 2.01.05 and 2.01.06?

The Flanagan Pit No. 1 HGI Report 2008 does not identify any surface water other than the Beatty Saugeen River. The Beatty Saugeen River is flanked on both sides by riparian cover, swamp, wetlands which provide Fish Habitat and Wildlife Habitat and further site inspection is required to determine surface within 120m of Flanagan Pit No. 2.

Level 1 Natural Environment Study prepared by AET dated April 12, 2011

In an email, CA staff stated the neighbouring pit ("Peyton") did give some insight into what the CA needed for this area.

The Peyton Pit Natural Environment Study identifies a wetland on adjacent lands (Flanagan Property) west of northern extraction parcel which provided habitat for snapping turtles as well as fish habitat in the Beatty Saugeen River. During the County Public Meeting held on March 19, 2014, Doug Karrow confirmed there are snapping turtles and fish habitat within the area. See PPS 2.1.3, 2.1.4, 2.1.5 and 2.1.6 below

Why did the CA staff not question the applicant's NES 2011 with regard to fish habitat or snapping turtle habitat as mentioned in the Peyton Pit Natural Environment Study.

The Gamsby Mannerow Engineers letter dated November 22, 2013 states "The access road was shifted approximately 30m away from river" and review of aerial photos of the haul route indicates other areas of points which may be approximately 30m or less from river. The GOP requires a set back of 50m for fish habitat from site alterations. The Beatty Saugeen River and wetlands provide fish habitat and the setback of 30m is not sufficient.

The SVCA has no objection to the approval of the above noted amendment that would allow for an expansion to the existing extraction operation provided the lands to be re-designated encompass only the lands that are shown to be within the Area to be Licenced. For this pit application, we understand that there will be no extraction below the water table as established in the Hydrogeological Report.

The CA letter dated June 5, 2012 state "The applications propose to permit the expansion of an existing Class "A" Category 3 pit". This statement demonstrates the CA staff have not taken into account GOP 2.7.4 and related ARA 2.01.03 defines all sites as new site requiring new studies.

As such, it is our understanding that the lands designated Hazard Land and zoned Environmental Protection associated with the Beatty Saugeen River, its floodplain and adjacent wetlands areas will remain unchanged and unaltered as a result of the proposed pit operation.

CA letter dated June 5, 2012 confirms CA staff conducted a site inspection of the property on May 31, 2012.

The CA staff should have inspected Hazard land, Beatty Saugeen River, floodplain and wetlands and cross referenced location with Site Plan and Hydrogeological Assessment Revised May 2008.

The CA staff should have determined location of site alterations, (extraction, stock piling, grading ,haul routes), not only for Flanagan Pit No. 2 but for non-compliance issues relating to Flanagan Pit No. 1.

The Site Plan should have been reviewed by CA staff during site inspection to determine setbacks from Natural Heritage Features i.e. wild life and fish habitat within surface water; Beatty Saugeen River, floodplain and wetlands as referenced in Peyton Pit Natural Environment Study.

1. Set back distance from site alterations i.e. access road, haul route stockpiles that are within 30m or less of the surface water should be 50m from fish and snapping turtles habitat where road comes within 50m from river and wetlands.

2. Topsoil stockpiles stored outside of Flanagan Pit No. 1 without vegetation should have been questioned by CA staff?

3. How would CA staff determine setbacks from site alterations without Aggregate Stockpiles noted on Flanagan Pit No. 2?

Did CA consult with the MNR to determine current Natural Heritage data and provincial interest on natural hazards? See CAA 6.8 & 6.9 below.

Mitigated Measures

Mitigated measures (set backs) must be determined with regard to site alterations (excavation, grading, haul routes and stockpiling) in order to reduce the negative impact on fish habitat and endangered species habitat i.e. snapping turtle habitat located in the Beatty Saugeen River and adjacent wetlands area. *See PPS 2.1.3 below*

SVCA Regulation Please be advised that a portion of the property is subject to the Saugeen Valley Conservation Authority's Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation Grey County Official Plan Amendment 42-07-09-OPA-124 Grey County Official Plan Amendment 42-07-09-OPA-124 (Ontario Regulation 169/06). This Regulation is in accordance with Section 28 of the Conservation Authorities Act, R.S.O, 1990, Chap. C. 27.

This Regulation requires that a person obtain the written permission of the SVCA prior to any "development" in a Regulated Area or "alteration" to a wetland or watercourse. Although mapping showing the Regulation Limits on the subject property is not available at this time there are some approximate guidelines. The approximate screening area to which the Regulation could apply is the EP zone plus a 50 metre offset distance from the EP zone boundary.

"Development" and "Alteration"

Subsection 28(25) of the Conservation Authorities Act defines "development" as:

- 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.*

According to Section 5 of Ontario Regulation 169/06, "alteration" generally includes the straightening, diverting or interference in any way with the existing channel of a river, creek, stream or watercourse, or the changing or interfering in any way with a wetland.

Permission for Development or Alteration

If development or alteration including construction, reconstruction, conversion, grading, filling or excavation is proposed in or near the Regulated Area, the SVCA should be contacted, as a permit maybe required. Associated with the extraction use, within the approved licensed area, the Scan's Regulation does not apply. Outside of the licensed area, elsewhere on the property the Scan's Regulation is still in force and effect. Also, upon the completion of the extraction operations and approvals the SVCA's Regulation would again be applicable to the formerly licenced area.

Conclusion

The Authority has no objection to the approval of the above noted official plan amendment that will re-designate a portion of the property that will permit the expansion of an existing pit operation. We trust these comments are helpful. Should you have any questions, please do not hesitate to contact this office.

Conclusion:

I recommend that the County not accept the CA's review based on the following:

1. The CA and the County did not enter into as Technical Service Agreement in order to conduct a review for OPA-124 in accordance with GOP and related ARA, PPS and PA. **See CAA 3.3, 3.4 below**
2. The CA did not collaborate with the MNR regarding current Natural Heritage data related the OPA-124. See CAA 6.9
3. The CA accepted the NES 2011 which was not a stand alone study as required under GOP 2.7.4 and related ARA 2.01.07 and PPS 2.1.3, 2.14, 2.15 and 2.1.6
4. The CA accepted the Hydrogeological Assessment Revised May 2008 which was not a stand alone study as required under GOP 2.7.4 and related ARA 2.01.03 and 2.01.06.

Definition of Stand Alone Report: means a report based on , ARA Provincial Standard Policies, current data and existing conditions on site and within 120m.

Yours Sincerely,

Manager, Environmental Planning & Regulations

Saugeen Conservation

ED/

c.c: Sarah deBortoli, Aggregate Technical Specialist, via email

Randy Bye, H. Bye Construction, via email

Glen Irwin, SVCA Director, via email

Carol Watson, Clerk, Township of Southgate, via email

PROVINCIAL POLICY STATEMENT (PPS)

PPS 2.1.3 Development and site alteration shall not be permitted in:

- a. significant habitat of endangered species and threatened species;

Definition of Significant means: b) in regard to the **habitat of endangered species and threatened species**, means the habitat, as approved by the Ontario Ministry of Natural Resources, that is necessary for the maintenance, survival, and/or the recovery of naturally occurring or reintroduced populations of endangered species or threatened species, and where those areas of occurrence are occupied or habitually occupied by the species during all or any part(s) of its life cycle;

- b. significant wetlands in Ecoregions 5E, 6E and 7E1; and
- c. significant coastal wetlands.

Definition of Site Alteration: Means activities, such as grading, excavation and the placement of fill that would change the landform and natural vegetative characteristics of a site.

Definition of Wetlands: Means lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens. Periodically soaked or wet lands being used for agricultural purposes which no longer exhibit wetland characteristics are not considered to be wetlands for the purposes of this definition.

PPS 2.1.5 Development and site alteration **shall not be permitted in fish habitat** except in accordance with provincial and federal requirements

Fish habitat: as defined in the Fisheries Act, c. F-14, means spawning grounds and nursery, rearing, food supply, and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

Although the Province identifies only significant wetlands under PPS policies 2.1.3(b) and 2.1.4(a), **all wetlands providing fish habitat must be protected in accordance with PPS policy 2.1.5, regardless of whether the wetland has been evaluated and/or identified as significant.**

MNR Natural Heritage Reference Manual 11.3.1.6 Wetlands

Wetland types that are seasonally or permanently covered by water (i.e., marshes, swamps and some fens) can provide fish habitat. Fish use wetlands for cover, to forage on smaller fish and for spawning. The identification of wetland areas providing fish habitat should be supported by observations made seasonally and during peak flooding.

PPS 2.1.6 Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

CONSERVATION AUTHORITY ACT

CAA 3.3 CAs are considered public commenting bodies pursuant to Section 1 of the Planning Act and regulations made under the Planning Act. As such, CAs must be notified of municipal policy documents and applications as prescribed. To streamline this process, CAs may have screening protocols with municipalities, normally through service agreements, which identifies those applications that CAs should review.

See CAA 3.4 In addition to CAs' legislative requirements and mandated responsibilities under the CA Act, Section 28 Regulations as regulatory authorities, and Section 3.1 of the PPS as delegated plan reviewers for provincial interest, the CAs' role as watershed-based, resource management agencies also allows CAs to review municipal policies, planning documents and applications pursuant to the Planning Act as a 'public commenting body' as outlined in the CO/MNR/MMAH MOU on CA Delegated Responsibilities. (Appendix 1)

*To inform their review of municipal planning documents and planning applications, under the Planning Act, CAs may develop policies and strategies related to their CA Board mandates and **agreements for technical services** with municipalities and other levels of government. Such CA policies are advisory and may be incorporated into an Official Plan in which case they become adopted as municipal policy. When providing comments to municipalities or planning approval authorities, CAs should identify the role(s) and legislative authority under which they are doing so (e.g. PPS, 2005, CA Act Section 28 Regulations, Federal Fisheries Act, advisory, etc.).*

*CAA 3.5 Where CAs have entered into **an agreement** with municipalities or other levels of government for **any technical services**, CAs should provide the technical services (e.g. **providing natural heritage advice**), as prescribed by the agreement. **Technical service agreements** with municipalities may cover a broad range of issues, including stormwater management, natural heritage features and systems advice, groundwater monitoring, etc. These agreements may also include a process to resolve disputes that may occur in the delivery of the services between the municipality and a conservation authority*

CAA 6.6 Recognizing that there is no requirement for municipalities to invite CAs to pre-consultation meetings, CAs should also contact municipalities, where appropriate, to ensure that the CAs are involved in pre-consultation and attend associated meetings on Planning Act applications may trigger a related permit application under the CA Act S. 28. Technical service agreements between municipalities and individual CAs may formalize arrangements for CA involvement in pre-consultation. As coordinated by the municipality or planning approval authority, depending on the scope of the project, pre-consultation could include staff from the following parties: CAs, the municipality (for example, planning and engineering staff), the applicant, consultants, the developer (owner) and may be supplemented by staff from provincial ministries, Parks Canada and any other government agencies.

CAA 6.8 CAs shall operate in accordance with the provisions of the CO-MNR-MMAH MOU when undertaking their roles in plan review. This will include informing a municipality as to which of their CA comments or inputs, if any, pertain to the CA's delegated responsibilities for the provincial interest on natural hazards and which set of comments are provided on an advisory basis or through another type of authority (e.g. as a 'resource management agency' or as a 'service provider' to another agency or the municipality).

CAA 6.9 MNR has natural heritage responsibilities under the PPS 2005 and some provincial plans (as outlined in appendix 4) for the delineation and technical support in the identification of natural heritage systems, the identification or approval of certain natural heritage features as significant or key features, and the identification

of criteria related to these features. As part of the CA commenting or technical advisory function, some CAs identify natural heritage features and systems through the initial plan review process. CA developed natural heritage systems are advisory unless corresponding designations and policies are incorporated into the municipal Official Plan (i.e., municipality has the decision-making authority under the Planning Act). Where service agreements are in place with participating municipalities, CAs are encouraged to collaborate with local MNR District offices to ensure the appropriate and best available information on natural heritage is provided to a municipality. MNR is responsible for notifying municipalities and CAs when there is new information about a feature for which MNR has responsibilities; for example, a wetland is evaluated and approved as a provincially significant wetland (PSW), so that advice can be given and decisions made accordingly.

*CAA 6.10 CAs may provide input, as a public commenting body or 'resource management agency', on matters of local or regional interest within their watershed with respect to natural heritage with participating municipalities and liaise with the MNR regarding natural heritage interests including and beyond those covered by 6.9 (those of "provincial interest") **to promote sharing of the most up-to-date natural heritage information and to promote co-ordinated planning approaches for these interests***

MNR June 25, 2012 Letter states "the application and associated technical studies are to support a new ARA licence application and need to meet the MNR's Provincial Standards on their own. The MNR does not address the 2008 Hydrogeology Study did not include current data and current site conditions for the Flanagan Pit No. 2 as defined in the MNR's letter and ARA 2.01.06