



Report to: Development Services Committee

Report Date: September 24, 2013

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**SUBJECT:** Toronto and Region Conservation Authority – The Living City Policies (Draft) and Conservation Ontario Whitepaper on Watershed Management Futures for Ontario

**PREPARED BY:** Lilli Duoba, Manager, Natural Heritage (x. 7925)

**REVIEWED BY:** Marg Wouters, Senior Manager, Policy and Research

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**RECOMMENDATION:**

- 1) That the report and staff presentation entitled “Toronto and Region Conservation Authority – The Living City Policies (Draft) and Conservation Ontario Whitepaper on Watershed Management Futures for Ontario” dated September 24, 2013, be received;
- 2) And that the TRCA, Conservation Ontario and Ministry of Municipal Affairs and Housing be forwarded a copy of the City’s staff report;
- 3) And that TRCA be requested to address the matters identified in this report prior to approval of the document;
- 4) And that the Ministry of Municipal Affairs and Housing be advised:
  - a) of Markham’s interest in participating in discussions relating to the Conservation Ontario Whitepaper on Watershed Management Futures for Ontario and any matters relating to jurisdictional changes to the implementation of natural heritage system planning; and
  - b) that Markham does not support the delegation of authority from municipal councils to conservation authorities for policy interpretation of natural heritage matters identified in the *Planning Act*;
- 5) And that staff be authorized and directed to do all things necessary to give effect to this resolution.

**EXECUTIVE SUMMARY:**

The purpose of this report is to provide comments on the TRCA’s The Living City Policies (LCP) document and provide information on the Conservation Ontario Whitepaper on Watershed Management Futures for Ontario document. The TRCA’s The Living City Policies (LCP) is a compilation of existing plan and permit review policies and practices intended to guide the implementation of TRCA’s legislated and delegated roles and responsibilities in the planning and development approvals process and new policies related to TRCA programs and external planning and development initiatives. This report provides support to the TRCA in its effort and also identifies

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areas of concern and specific comments on the draft LCP for consideration of the TRCA. Of particular concern in the LCP are the environmental planning policies which overlap with the City's policies. City staff have provided detailed comments in Appendix 'A' where potential policy clarity is needed, where potential policy conflicts could occur and where jurisdictional matters should be clarified. This report also recommends that the TRCA continue to consult with Markham to ensure the significant matters are addressed in advance of approval of the policy document.

The Conservation Ontario Whitepaper of Watershed Futures for Ontario discusses the complexities associated with natural heritage planning including the broad mandate of the conservation authority, declining support for financial priorities and inconsistent policy support. The report recommends that the Province open a dialogue with conservation authorities on options to improve natural heritage planning including the potential transference of natural heritage responsibilities from municipalities to conservation authorities. This report recommends that the Province be advised that Markham opposes a natural heritage planning model that would transfer existing municipal responsibilities to the conservation authorities. This report also recommends that Markham be engaged in any future dialogue that would result in changes to the manner in which natural heritage resources are managed by municipalities.

**PURPOSE:**

The purpose of this report is to provide comments on the TRCA's Living City Policies (LCP) document. The TRCA's LCP includes a compilation of existing plan and permit review policies and practices intended to guide the implementation of TRCA's legislated and delegated roles and responsibilities in the planning and development approvals process and new policies related to TRCA programs and external planning and development initiatives.

This report also provides information on the Conservation Ontario Whitepaper on Watershed Management Futures for Ontario which is a discussion paper aimed at identifying the issues related to natural heritage management by conservation authorities. The purpose of the Whitepaper is to open up a Provincial dialogue of significant legislative changes to the manner in which natural heritage protection measures are delivered in the Province.

**BACKGROUND (TRCA Living City Policies):**

The TRCA's Living City Policies (LCP) is a compilation of the existing plan and permit review policies and practices intended to guide the implementation of TRCA's legislated and delegated roles and responsibilities in the planning and development approvals process and new policies related to TRCA programs and external planning and development initiatives. The entire document can be accessed at: [www.trca.on.ca/LCP](http://www.trca.on.ca/LCP) This is the first time that the TRCA have compiled such a comprehensive policy document. The TRCA describes the purpose of the LCP as:

1. To guide TRCA review of planning applications and environmental assessments;
2. To provide the basis for approving permit applications under Section 28 of the *Conservation Authorities Act*;

3. To inform TRCA's advocacy role for the Living City in the planning and development process; and,
4. To assist and enable their partners' and stakeholders' contributions to building the Living City.

The LCP will replace the current TRCA Valley and Stream Corridor Management Program (VSCMP) which contains the requirements and practices for valley and stream corridor protection including the valley setback standard of 10 metres. The City has supported the VSCMP since the mid 1990's and included supportive policies for watercourse setbacks in the Official Plan. It is important to note that the current setback standards (buffers or vegetation protection zones) in the City's new Official Plan address natural heritage requirements and generally exceed the TRCA setbacks. This is due to the specific scoped criteria that the TRCA applies to its buffers. As the City moves forward with the implementation of the new Official Plan, City staff will have a stronger role in the interpretation and implementation of vegetation protection zones and the TRCA minimum standards will be exceeded.

The LCP document was released by the TRCA in February 2013 for public consultation with stakeholders, agencies and the public. Staff attended an orientation session on March 8, 2013 and provided high level comments in April 2013. Staff also participated in a municipalities session on July 12, 2013 hosted by the Region of York.

Although the LCP functions like an Official Plan, being a compilation of policies, it is noted that this is a non-statutory document and cannot be appealed to an external tribunal. Notwithstanding this, staff feel it is very important that the document be compatible with the City's new Official Plan as this document is intended to direct the actions of the TRCA into the future and will impact the City's development approvals processes.

#### **DISCUSSION (TRCA Living City Policies):**

The LCP provides policy guidance on a number of matters both regulatory (hard, specific policies that direct a specific action under the jurisdiction of the TRCA) and non regulatory (soft, encouraging policies directed to support natural heritage matters falling under the jurisdiction of another level of government). As noted, the LCP provides policies that must be considered, policies that should be considered and policies that may be considered. Under the *Planning Act* municipalities have authority for natural heritage planning and under the *Conservation Authorities Act* the conservation authorities have authority to administer permits on regulated lands (floodplain and wetlands). Their jurisdiction is summarized as follows:

1. Regulatory Authority under the *Conservation Authorities Act* for permits on regulated lands (floodplain and wetlands). ***This is decision making authority.***
2. Delegated Provincial Interest through the *Planning Act* on natural hazards to provide comments on municipal policy documents and applications as part of the Provincial One-Window Plan Review Service. ***Comments must be considered.***
3. Public Commenting Body under the *Planning Act* on policy documents and planning and development applications. ***Comments should be considered.***

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4. Public Commenting Body under federal and provincial environmental assessment legislation on Class EA's. *Comments should be considered.*
  5. Resource Management Agency that develop programs that reflect local resource management needs. *Comments may be considered.*
  6. Service Provider where service agreements and Memorandum of Understandings (MOU's) are in place. *Authority depends on Terms of Service Agreements.*
  7. Landowner. *Comments may be considered.*

The compilation of TRCA policies and practices into a single document provides an effective way to communicate the policies and practices of the TRCA to the partner municipalities and the public. The document provides policies which address:

- Stormwater Management
- Wetland and Lake Ontario Shoreline
- Natural System Protection
- Natural System Management
- Environmental Assessment, Master Plan and Infrastructure
- Policies that emphasize 'ecosystem services'
- Policies to address flood risk reduction and redevelopment
- Sustainable Communities

Staff have reviewed the LCP to ensure that the policies and practices identified by the TRCA are compatible with the City's new Official Plan and natural heritage protection practices. A complete set of staff comments are provided in Appendix 'A'. A summary of our main comments are presented here. The document also provides a very good summary on the role of the TRCA in their various commenting functions. Application of environmental policy has become complex over the years with the introduction of new standards and Provincial Plans. The TRCA's Living City document will be helpful in defining the TRCA role in natural heritage matters. Overall, the intent of the policies generally align with the City's new Official Plan and support Markham's efforts to manage the City's natural resources in a sustainable and comprehensive manner. Where City staff have the most comments are in the policy wording to ensure clarity and appropriate direction.

The advocacy policies for sustainable communities comprising Chapter 6 of the LCP were developed under the TRCA role as a resource management agency and are designed to support the indirect aspects of planning and development approvals processes. The TRCA sustainable policies address climate change, energy, sustainable transportation, green buildings, near-urban agriculture, green infrastructure, ecological design, cultural heritage and environmental education and stewardship. These policies are generally soft policies encouraging and supporting actions that are consistent with the City's new Official Plan to support conservation and sustainable practices. Staff have few specific comments on these policies.

The policies for environmental planning contained in Chapter 7 of the LCP guide TRCA in its commenting roles under the *Planning Act* and *Environmental Assessment Act* as a

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resource management agency. The City is the authority for environmental/natural heritage planning through the *Planning Act*, except for the specific matters identified in the *Conservation Authorities Act* for management of watercourses and wetlands. The City has always worked closely with TRCA in our mutual objectives to protect natural resources and identify and protect a natural heritage system (City's Greenway System). In review of the TRCA's environmental planning policies, the City is looking to ensure there is clarity in the LCP. Because the responsibility for these matters can sometimes overlap, the City is looking for clear guidance and wording that clearly distinguishes responsibilities. This has not always been achieved in this section of the LCP. Of particular concern are:

- The identification of a TRCA Natural System that is not the same as the City's Natural Heritage Network which could create potential policy conflicts between the TRCA's Living City document and the City's new Official Plan.
- Policy direction reliance on TRCA documents where comparable municipal documents also exist such as Stormwater Management Criteria, Compensation Protocols and TRCA's Low Impact Development Planning and Design Guide. The document also references a Compensation Protocol which has not yet been prepared. The policies addressing these matters need to consider municipal practices and authority in these areas.
- Where the authority for a decision is outside of the TRCA jurisdiction, the wording of the policies should be written to advocate their position, rather than require a specific action.

Chapter 8 contains the policies and procedures related to TRCA's responsibilities under legislation and agreements and the policies are specific, detailed and hard which generally require certain actions. These policies relate to the regulatory role of the TRCA and as such staff comments are confined to areas where potential conflict with the City's policies may occur. Generally staff have limited comments related to this chapter as these are the policies related to TRCA jurisdictional requirements under the *Conservation Authorities Act* and agreements.

Staff will continue to work with the TRCA to provide input into the Living City document and to ensure policy clarity and appropriate policy language based on jurisdictional authority. Given the importance of ensuring a compatible fit with the TRCA policies and municipal statutory Official Plans, staff recommend that the TRCA be encouraged to ensure municipal issues are addressed in a satisfactory manner before bringing forward such an important document for final TRCA approval.

**BACKGROUND (Whitepaper on Watershed Management Futures for Ontario):**

In October 2012, Conservation Ontario prepared a Whitepaper on Watershed Management Futures in Ontario (see Appendix B) to stimulate discussion between conservation authorities and the Province of Ontario on the future of watershed management. Conservation Ontario is the umbrella organization for all conservation authorities in Ontario. The purpose of the whitepaper is to review the manner in which natural heritage policies and programs are implemented and provide options for a more streamlined approach to watershed management. Currently, the TRCA obtains their

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authority for floodplain and hazard lands management through the *Conservation Authorities Act*. Authority for the broader scope of natural heritage management rests with municipalities through the *Planning Act*. The Province and Federal Government also have natural heritage responsibilities including provincial plans for the Oak Ridges Moraine and Greenbelt, Federal and Provincial Endangered Species legislation and Federal and Provincial Fisheries and Water Resources legislation.

The myriad of policies and programs related to natural heritage systems planning and land use planning has led to some conflict with conservation authorities, the development industry, landowners and municipalities with respect to conservation authorities being perceived as operating outside their scope and responsibilities. This is often perpetuated by conservation authorities having to service urban municipalities well staffed to manage natural heritage issues (such as Markham) and capable of addressing complex natural heritage issues, as well as smaller municipalities which do not employ natural heritage specialties and who rely on more support from conservation authorities.

**DISCUSSION (Whitepaper on Watershed Management Futures for Ontario):**

One of the solutions identified in the whitepaper to disentangle and streamline natural heritage approvals is to remove the responsibility for natural heritage management as delegated from the Province to municipalities and reassign these responsibilities to the conservation authorities. This would remove the municipal responsibilities for natural heritage management and the ability of the local municipalities to protect and manage their natural heritage systems, which in the case of Markham, is a fundamental structural component of the City with its five watersheds and significant watercourse system. City staff are not in support of this recommendation as natural heritage planning is a significant City priority closely tied to the development approvals process, community design considerations, Trees for Tomorrow enhancement program and urban forest management responsibilities.

The whitepaper deals with conservation authority and provincial relationship but does not identify or discuss the conservation authority and municipal relationship or identify the success of natural heritage planning at the local level. The whitepaper fails to address the positive and successful aspects of natural heritage planning at the local level. Markham for example, has provided significant leadership in small streams protection (Markham Small Streams Study), natural systems planning (City's Greenway System) and natural heritage restoration (Trees for Tomorrow).

The whitepaper encourages dialogue and discussion between the conservation authorities and the Province but does not identify municipalities as a significant stakeholder in this process. The recommendations of the whitepaper would have far reaching implications to Markham. Staff recommend that the Province be advised that Markham has a significant interest in the matter of redefining natural heritage responsibilities and that municipalities should be included in all future discussions regarding any potential changes to *Planning Act* responsibilities for natural heritage protection and management.

**FINANCIAL CONSIDERATIONS:**

Not applicable.

**HUMAN RESOURCES CONSIDERATIONS:**

Not applicable.

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

The TRCA the Living City Policies and Conservation Ontario Whitepaper on Watershed Management Futures for Ontario relate to the City's environmental strategic priorities of Building Markham's Future Together.

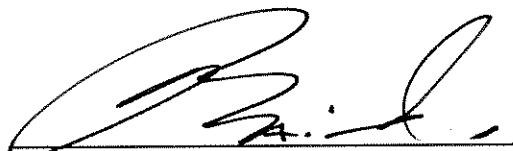
**BUSINESS UNITS CONSULTED AND AFFECTED:**

Business units across Markham have been consulted and provided opportunities to comment on the TRCA the Living City Policies and Conservation Ontario's Whitepaper on Watershed Management Futures for Ontario including Asset Management, Development Engineering, Heritage Planning, Urban Design and the Sustainability Office. Where applicable, staff comments have been reflected in this report. Appendix 'A' is a consolidation of staff comments from policy and heritage planning, asset management, development engineering and urban design.

**RECOMMENDED BY:**



Rino Mostacci M.C.I.P., R.P.P  
Director of Planning and Urban Design



Jim Baird M.C.I.P., R.P.P  
Commissioner of Development Services

**ATTACHMENTS:**

Appendix 'A' Markham Staff Comments on TRCA's the Living City Policies  
Appendix 'B' Conservation Ontario Whitepaper on Watershed Futures for Ontario

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## Appendix 'A'

### **City of Markham Consolidated Staff Comments (Policy Planning, Heritage Planning, Asset Management, Development Engineering and Urban Design) Toronto and Region Conservation Authority "The Living City Policies" Draft January 25, 2013**

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#### *Chapter 3*

Table 3.2, page 21, references 'Rouge Park Alliance' which no longer exists as a management agency.

Section 3.2.1, Table 3.2 Terrestrial Natural Heritage System Strategy identifies "as it is anticipated to be incorporated into Official Plans". We suggest "as it is anticipated to be used by municipalities and considered in the development of local natural heritage systems". In this regard, there does not appear to be clear policy around the TRCA TNHSS as their guiding tool for the identification of the Natural System. It would be helpful to have policy around this.

#### *Chapter 5*

Strategic Objective 1: Healthy Rivers and Shorelines notes that the objective is to restore the integrity and health of the region's rivers. Should this objective also address enhancement?

Strategic Objective 2: This objective speaks to protecting and restoring the systems of the natural areas. Is there a reason why the objective does not include water quality?

Principle 2: "The design of sustainable communities is based on the inter-dependent relationship between humans and the environment..." Perhaps this principle could be clearer. While the inter-dependent relationship is important, this is not the only factor in the design of sustainable communities. The design of sustainable communities is based on many factors such as the mix of land uses, availability of all modes of transportation, etc. To say it is only based on the relationship between humans and the environment ignores all the other important factors.

Principle 4: This principle suggests the protection of life and property from flooding is dependent on the management of the natural heritage system. Markham has flooding conditions resulting from insufficient man made conveyance systems outside of the valleyland system. These may require upgrades, rather than just protection or restoration. Perhaps this should also be addressed.



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Principle 5: More details and discussion is required on the interpretation of “incremental changes”.

Principle 7: “...to incorporate innovative community design that maximizes long term economic, social, cultural, and environmental benefits.” There should be a goal of net overall benefits. Perhaps the use of the word “optimizes” instead of “maximizes” is more appropriate and achievable.

Principle 8: This principle references “adaptive watershed management”, which should be defined or explained as it is not a commonly used term. This principle is based on parameters that are difficult or impossible to measure, e.g., potential impacts of urbanization and climate change. While climate change was mentioned throughout the document, the TRCA is still designing for 100-year and Regional storms. Increase in flooding due to climate change can only be addressed through scientifically acceptable studies, standards and guidelines backed by approvals from municipalities and agencies like the MOE.

Principle 9: This principle references ‘greenlands system’ while the policies reference ‘natural system’. There should be consistent references in the document to prevent confusion.

### ***Chapter 6 – Advocacy Policies***

Section 6.2: This section mentions increased flooding, erosion and water damage to properties, extreme weather, etc., due to climate change and indicates that both mitigation and adaptation are required but there is no guidance on how to build adaptable communities and construct infrastructure using these two approaches. This document does not appear to change the design and acceptance criteria for stormwater management.

Section 6.2.1: The wording in the policy should include the TRCA working with the affected municipalities and stakeholders to achieve these objectives since it is the municipalities that usually implement the required work (restoration, remediation, etc.).

Section 6.2.1 b): This section deals with an adaptive approach to watershed management. What exactly is this approach, and what are some of the minimum requirements?

Sections 6.3 & 6.4: These policies deal with energy and transportation and encourage the reduction of transportation energy consumption and green house gas through land use and development patterns. We support these (intensification and mixed-use) policies which is consistent with the Markham Transportation Strategic Plan (MTSP) direction and the OP policies. Compact, mixed-used development encourages other modes of Transportation because the length and number of vehicular trips are reduced.

Sections 6.7 & 6.8: These policies deal with Green Infrastructure and Ecological Design. While we see the benefits of these initiatives/policies, it is not clear how these initiatives

are to be mandated and regulated.

Section 6.8.1 b): This policy only references 'ecological design'. We feel there is still a need and place for "engineering design" and perhaps this should also be referenced.

Section 6.9: This section deals with cultural heritage. Under the description of cultural heritage landscapes we suggest the examples include heritage conservation districts since these are some of the most major cultural heritage landscapes. What does the term "unique riverine association" mean? It would be helpful to provide clarification on whether the designation policies of Part IV and Part V of the *Ontario Heritage Act* apply to TRCA? Are they a creature of the province and therefore not subject to municipal/local authority? Or are they subject to Part III.1 – Standards and Guidelines for Provincial Heritage Properties, the same as the province? This document does not speak at all to whether TRCA is actually subject to the provisions of the OHA. In the introduction, reference is made primarily to addressing cultural heritage resources at time of development. It is also desirable for the maintenance of existing resources where development is not occurring (Rouge Park, Bob Hunter, TRCA protected lands). How does TRCA prioritize built heritage sites for preservation, continued use and funding of maintenance and restoration? Do they evaluate and rate their resources, or do they rely on the municipality to do that?

Section 6.9.1 a): This policy should be more direct. Rather than "to encourage the protection and enjoyment..." we suggest it should be "To protect and conserve cultural heritage resources in TRCA ownership and on TRCA managed lands".

### ***Chapter 7 – Environmental 'commenting' policies***

General: The language of these policies should reflect TRCA's role as a commenting agency and should focus on 'encouraging and supporting' actions. The policies should also clearly identify 'who' the policy is directed at, the TRCA or municipality.

Section 7.2.1.a): This policy directs that TRCA provide advice to municipalities to achieve decisions that 'conform to the Greenbelt Plan and Oak Ridges Moraine Conservation Plan'. It is the responsibility of the municipality to ensure Greenbelt and ORM conformity. Currently, TRCA comments to Markham do not include Greenbelt Plan interpretation. This policy should be clarified. We note, consistent with Table 3.2 in the LCP that municipalities are responsible for the interpretation of Greenbelt policy matter and technical clearances, where necessary, are provided by the TRCA.

Section 7.2.1 b): This policy directs that watershed plans be used in the review of development proposed in the Provincial Greenbelt. There appears to be a different standard being advocated for the use of watershed plans inside the Greenbelt. We are not clear why this is being proposed. Policy 7.2.4 e) seems to address the watershed plan reference.

Section 7.2.1 d): This policy references lands on and off the Greenbelt so perhaps it is better located in the general policies rather than the Greenbelt policies.

Section 7.2.2 a) and b): These policies address restoration in the Urban Landscape. Restoration cannot be fully funded through “redevelopment” by landowners. In most situations, once the ecosystem services and natural system are destroyed or degraded through previous development, they cannot be restored. This policy should be softer and include ‘where appropriate and feasible’.

Section 7.2.4: Markham supports planning large greenfield areas on a watershed basis.

Section 7.2.4 d): This policy recommends that watershed plans be completed or updated prior to approval of municipal urban area expansions. Urban expansion areas are often identified first and watershed plans are more for mitigation rather than to identify the limits of the expansion. The reference to ‘prior to approval of municipal expansion’ should be removed or reworded. This policy should ‘encourage’ municipalities to complete or update watershed plans but not recommend. There is no specific provincial requirement that obligates the preparation of watershed plans.

Section 7.2.4 g): This policy deals with the protection of valley and stream corridors and seems out of place in the watershed policies.

Section 7.3.1: If policies are to be introduced to address the management of a TRCA Natural System then this system should be identified through mapping. We note the potential conflict of providing policies for a Natural System that can be potentially different than a municipal natural heritage system identified in statutory Official Plans. We would prefer if the TRCA scoped these policies to support the statutory natural heritage systems designated in local Official Plans which TRCA participates in developing.

Section 7.3.1.a): This policy identifies what is included in the TRCA Natural System. The TRCA system is described differently than the City’s Greenway System providing for potential conflict in the implementation of these systems. The City’s Natural Heritage Network is defined in a more comprehensive manner and mapped.

Section 7.3.1.b) c) and d): These policies deal with land use and as a municipal function and appear to go beyond the ‘commenting’ role of the TRCA. We suggest that the wording be clarified to align with municipal Official Plans. For example, we suggest policy wording, “That the TRCA recommend to municipalities that policies be included in Official Plans which identify that development and site alteration not be permitted in the Natural System except as provided for in the Sections 7 and 8 of the LCP and as provided for in Official Plans”.

Section 7.3.1 e): This policy directs the determination of the Natural System in consultation with municipalities. This is confusing given that municipalities have already defined natural heritage systems in their Official Plans. The policy suggests an outer

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limit which would include municipal Official Plan's as a component suggesting a larger natural system is potentially contemplated. Technical reports are subject to only TRCA standards and provincial standards but not municipal standards. There is a high potential for conflict with the City's Natural Heritage Network as it is defined differently.

Section 7.3.1.1 c): This policy identifies that all water resources be protected from development. This is a hard and specific policy, yet water resources are not defined and needs more clarification. For example, some water resources features may be managed (i.e., removed, altered, and relocated) depending on their importance and following the Markham Small Stream Study recommendations, as long as functions are preserved). Some groundwater features such as *Clean Water Act* Highly Vulnerable Aquifers have been assigned low vulnerabilities and do not require risk management policies. Protection should apply to defined sensitive features. We are also concerned with the use of 'all' as there may be exceptions that warrant consideration. This policy defers to the policies in section 7.3.1 which are high level and vague (see previous comments).

Section 7.3.1.1 d): This policy addresses the protection of groundwater resources. Protection policies should apply to sensitive resources or hydrologic functions supporting sensitive natural features. Less restrictive management policies can apply to other resources. We question why the notwithstanding policy linked to policy c) to protect the function of groundwater is only linked to section 7.4.1.1 (stormwater). Stormwater management infrastructure may not be the only infrastructure which may need an exception.

Section 7.3.1.2 a): This policy identifies the protection of 'all' natural features and areas within the Natural System. This policy is too vague describing the protection of 'all' features without distinguishing the needs for study and assessment. The policy seeks to protect features described in a vague manner and not mapped.

Section 7.3.1.2 b): This policy directs all features outside of the Natural System (vaguely described and not mapped) be assessed to determine the need to protect the features. Perhaps this policy should identify features located outside of the municipal natural heritage systems that are not currently protected by policy be assessed. Again the use of the word 'all' is problematic since the some of the key terms are not defined. Clarification is required if this means assessment of site plans on all table lands in the jurisdiction.

Section 7.3.1.3: These natural hazards policies are similar to policies in Markham's Official Plan. These policies need to identify the exception to the hazard land policies being the Special Policy Area policies and should have a specific policy reference to section 7.4.3.2.4.

Section 7.3.1.4: This section deals with potential natural cover and buffers. Markham staff have concerns with the manner in which the 'potential natural cover' policies are articulated. This is perhaps the most difficult aspect of natural heritage management –

restoration and enhancement of non-natural heritage lands. These policies are far too vague and need to have a stronger alignment with municipal Official Plans.

Section 7.3.1.4 a): This policy identifies that ‘all areas of potential natural cover’ be protected for restoration and enhancement’. We do not support this policy as the TRCA potential natural cover lands are unmapped and there is no way to confirm that these lands would be consistent with the City’s enhancement lands. This policy exceeds TRCA’s ‘commenting’ role by directing that ‘all areas of potential natural cover be protected’. This policy should be reworded to direct the TRCA to work with or encourage municipalities to protect municipally identified enhancement areas.

Section 7.3.1.4 b): This policy identifies the TRCA buffer requirement. The TRCA buffer requirements are generally less than those now required in Official Plans. The exception is noted as the last policy comment. We recommend that a stand alone policy be included to identify that other buffers as may be prescribed in Provincial Plans or Official Plans may exceed the TRCA buffer requirements and shall be identified and applied by municipalities.

Section 7.3.1.4 c): This policy deals with the protection of all buffers from stripping or grading. Although we appreciate the intent of this policy and generally support the principle, there should be some flexibility to allow some grading as these buffers will transition urban uses from natural heritage uses. We also note that recreational uses such as trails in appropriate locations, should be permitted in addition to restoration and enhancement.

Section 7.3.2 f): This policy references the preparation of archaeological assessments in accordance with TRCA’s Procedural Manual. The City of Markham undertakes archaeological assessments in accordance with City and Provincial policies and procedures. This policy should also reflect municipal practices.

Section 7.3.2 e): This policy directs fencing at the property limit of the Natural System. Markham does not generally fence off the Natural System, except in residential areas. This policy should be softer and direct decisions regarding fencing to the context of the landscape.

Section 7.4.1.1: Objective bullet #4 deals with water balance. Clarification and or definition is needed regarding ‘natural features’ where runoff volume and distribution objective would apply. TRCA SWM Criteria document page 26 indicates this objective would apply to features identified for protection in an OP, watershed plan, etc., and not all natural features. Protecting and restoring runoff volumes to all natural features (e.g., all watercourses) is not technically possible. The Objective should focus on critical, or sensitive, natural features. This issue is also closely tied to permanent dewatering (see comments on later on Section 7.4.4.1.1). In terms of flood control, climate change should be mentioned as a contributory factor of flooding, and more research into this area is required to update stormwater management criteria. In terms of Low Impact Development (LID), there is currently no design criteria or design “credit” for the

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implementation of LID. The maintenance of LID on private properties remains a risk that has to be managed. The TRCA SWM Criteria document does not mention climate change impact mitigation as the basis for any flood control, water quality management, erosion control or water balance/recharge criteria. The reference to climate change should be removed until impacts can be quantified/estimated and mitigation is explicitly considered in the stormwater criteria document, or in impact assessments. The policies in 7.4.1.1.1 that follow do not have a tie in to climate change and only refer to pre and post development conditions and not future, projected conditions.

Section 7.4.1.1.1 a): This policy directs that all development and site alteration meet TRCA's stormwater management criteria. Clarification is required if development includes single lot residential infill where impervious surface is converted (e.g., larger driveways and homes). Markham has a Special Policy Area and other flood vulnerable areas where this is of interest. Where properties do not undergo site plan approval, there is no review process where policies would be applied/enforced or technical analysis required (i.e., minor variances, or single lot residential per TRCA SWM Criteria document page 6). Policy should apply where there is a review process for enforcement and legal authority. In terms of redevelopment & site alteration, this policy only requires meeting current SWM criteria if the pervious surface is being converted to impervious. Markham requires any redevelopment to meet current SWM criteria even if the existing surface is impervious, (e.g., a paved surface parking lot.)

Section 7.4.1.1.1 b), c) and d): These policies deal with redevelopment and site alteration. Implementation of SWM criteria is usually through a plan of subdivision and site plan control process. It appears that applying SWM criteria to OPA and ZBA is premature. Markham does not agree that "retrofit plans be developed in consultation with TRCA" if the development area is outside of the TRCA regulatory area. Markham will implement its own SWM criteria. Staff do not agree with policy d) except where the development or site alteration areas are within TRCA regulatory areas. All technical reports do not need Terms of Reference (ToR) to define scope, as only large scale studies (e.g., subwatershed study, MESP) may require ToRs. The scope should be determined by the municipality in consultation with TRCA. Many smaller technical reports (e.g., design briefs) may follow only a standard Table of Contents. Policy h) need further elaboration regarding how and where to "promote development design". Will this be on the developed site or for updates to design criteria?

Section 7.4.1.2.1 a) ii): This policy deals with lead partner role in education, stewardship and outreach. Clarification is required regarding the role of York Region and the municipality. Has the Region's role been delegated to TRCA? There is considerable coverage of low vulnerability score areas (no significant threat potential) in Markham that require this education, stewardship and outreach.

Section 7.4.2.1 a): This policy deals with reduction in buffer width under specific conditions. Markham supports this TRCA policy which allows a reduction in buffer width for redevelopment subject to certain TRCA conditions.

Section 7.4.2.1 c): This policy directs natural heritage compensation in accordance with the TRCA's Compensation Protocol. We understand that this document has not yet been prepared. Markham currently addresses compensation matters in accordance with our own protocols (currently Trees for Tomorrow). This policy should be clarified to address compensation in accordance to TRCA with either municipal standards.

Section 7.4.2.1 d): This policy deals with the timing of compensation requests in 'appropriate level of the planning and development process..' Staff suggest that this should specifically state at the time of Pre-consultation for an application.

Section 7.4.3.2.1.c): This policy directs update and reviews of Flood Emergency Response Plans. Markham updates and reviews all our emergency procedures regularly and in accordance with Provincial legislation. We take direction from the Province on this matter.

Section 7.4.3.2.4: This policy identifies the requirements for Special Policy Areas which allows development on certain flood prone lands but ties the policies to the Section 7.3.1 which tends to prohibit development in the natural system (including flood plain lands). This creates a policy conflict and should be corrected. Staff feel that there is an opportunity to clarify the ongoing confusion regarding SPA development. For example, "a SPA is not intended to allow for new or intensified development and site alteration". What is considered "new" development? What does "intensified" actually mean? Could the TRCA also define the term "Intensified Development".

Last figure Page 82, (Unconfined System): Please verify the figure; meander belt allowance is not shown in the figure.

Page 82: Confined System and Unconfined System. The diagrams for "Confined System A" and "Unconfined System" appear to be the same. Please amend.

Section 7.4.4: This section deals with how infrastructure will compensate for impacts to the Natural System. The policies need to be more descriptive on how compensation is to be interpreted and implemented.

Section 7.4.4.1 k): Markham does not use the term 'utilidors'. Perhaps this could be phrased differently or defined.

Section 7.4.4.1.2: This section deals with transportation infrastructure policies. We support the use of current TRCA requirements for all new transportation infrastructure crossing valley and stream corridors. We are concerned about applying current TRCA requirements on replacement and upgrades. We will require further clarification on how these policies are to be interpreted.

Section 7.4.4.1.2 a): This policy indicates that the location and design of transportation infrastructure crossing valley and stream corridors, including new, replacements or upgrades have to meet current "standards" and policies. Existing infrastructure should be

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“grandfathered” in terms of replacements and upgrades. We are concerned that existing culverts and structures may not be allowed to be replaced because they may not meet current TRCA requirements.

Section 7.4.4.1.2 c): This policy deals with water quality control for road widenings. We feel there should be some flexibility in this policy (current TRCA requirements applying to both the existing road and the new road) depending on the amount of widening, age of the infrastructure, overall environmental impact, and funding. Clarification is required if quantity, erosion and water balance control for road widening is required in addition to quality control.

Section 7.4.4.1.3 b): This policy, dealing with risk associated with SWM facility failure needs more clarification. Does it mean that the downstream flooding and risk of life, similar to dam break analysis, shall be investigated if the pond fails? Single individual pond failures might have very negligible downstream effect; but a group of ponds failure at a time might have a cumulative, severe downstream impact.

Section 7.4.4.1.3 e) ii): This policy deals with SWM facility location outside of the Regional flood plain. For consistency with MOE’s design guideline, it is Markham policy that the SWM facilities shall be located outside of the 100 yr flood line. Further clarification is required why the SWM facility should be located outside of the Regional flood line.

Section 7.5.2.2 b): This policy on watershed plans is a duplicate of policy 7.2.1.d). Staff commentson policy 7.2.1.d) apply.

Section 7.5.2.2 c): This policy directs that TRCA Natural System not form part of areas to be designated for development. The comments in section 7.3.1 apply. The City will use its Greenway System and Natural Heritage Network in the Official Plan to delineate lands to be protected.

Section 7.5.2.5 a): This policy provides criteria for the development of a lot of record. This policy is too restrictive. Development of a legal lot in accordance with the zoning by-law, cannot be prohibited under applicable law.

Section 7.5.2.7 a): This policy restricts development and site alteration in the natural system for minor variance applications. This policy is not reasonable and does not fit into the criteria established under the *Planning Act* for consideration of minor variance applications. Some flexibility is required.

### ***Chapter 8 – Regulatory Policies***

Section 8.2: This section deals with TRCA’s regulated areas. Staff have concern with the use of the word ‘apparent’ in the paragraph in the 1st green box on page 99. A better classification system or description should be included to identify what should be included as a valley corridor.



Section 8.2.3: This section deals with regulation tests. It is almost impossible to avoid impact of development on erosion (volume control) and to date there are no guidelines or standards that can have a development with zero increase in the volume of stormwater. The word “adjacent to valley corridor” is not clear.

Section 8.4: More clarification and discussion is required regarding “systems contributing to the conservation of land”. This same wording was used in other sections (8.5.1.3 h).

Section 8.5.1.3 b): This policy deals with the hydraulic floodway. The delineation criteria based on depth, flow, and velocity factors for the hydraulic floodway and floodway delineation in the One Zone concept could be referenced for consistency with MNR documents.

Section 8.8.2: this policy deals with the TRCA Headwater Features Study. Given the City’s endorsement of the Markham Small Streams Study, we suggest “in addition to the TRCA’s Evaluation, Classification and Management of Headwater Drainage Features Guideline another municipal study meeting the intent of the protocol, may also be considered as a management tool”.

Section 8.11: Policy on dewatering, dewatering discharge and water taking. Please see comments above regarding Policy 7.4.4.1.1 a).

### *Glossary*

Ecosystem Services: Can this definition be elaborated with examples.

Natural System: The natural system definition and associated policies as presented provide high risk of conflict and interpretation relative to the City’s Official Plan. As written the Natural Heritage System appears to be a TRCA’s own system, yet the policy direction is to municipalities. We suggest the definition be revised to state that “natural system is comprised of water resources, natural features and areas, natural hazards, restoration areas, buffers and other natural or hydrologic elements as defined by municipalities and incorporated into Official Plans. Once incorporated into Official Plans the Natural System policies in The LCP apply to municipally defined systems.”



Conservation  
**ONTARIO**  
Natural Champions

# Watershed Management Futures for Ontario

Conservation Ontario Whitepaper

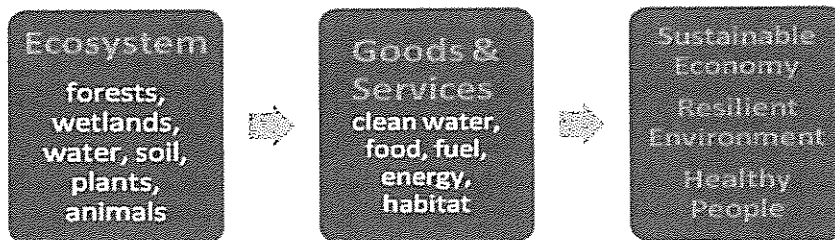
October 3, 2012

## Introduction

This whitepaper, entitled **Watershed Management Futures for Ontario** has been developed by Conservation Ontario<sup>1</sup> to stimulate a discussion between Conservation Authorities (CA's) and the Province on options for a renewed watershed management partnership. It responds to issues and concerns that have been raised by partners, including municipalities and Ministries, non-government organizations (NGOs), the development industry, landowners, and CAs themselves.

The call for greater government efficiency and effectiveness from the *Commission on the Reform of Ontario's Public Services (2012)* is spurring a modernization and transformational change across the Ontario provincial government. Against this backdrop the fiscal imperative that is driving the modernization and transformation agenda presents a prime opportunity for those working in the environmental sector to leverage resources and streamline operations in order to meet growing environmental challenges within a more constrained economic model.

Given our daily reliance on natural resources in Ontario, it is critical we build resilient local watersheds in order to ensure healthy people and a reliable economy.



## Challenges to Ontario's Environment

The physical jurisdiction of the 36 Conservation Authorities is limited to approximately ten percent of Ontario's vast geography, yet more than 90% of Ontario's population - roughly 12 million people - lives in this area.

In addition to the rapidly growing population, this area contains most of Ontario's agricultural lands (close to 35 percent of land area), supporting one of the province's leading industries, contributing more than \$33 billion to the economy every year. The importance of agriculture coupled with the rapid rate of urban development creates significant pressures on Ontario's environment, and seriously challenges the health and security of our future water and land resources critical to the environment, economy and, most important, the health of Ontario's residents.

<sup>1</sup> Conservation Ontario represents Ontario's 36 Conservation Authorities, local watershed management agencies that deliver natural resource management programs to protect water and other related resources.

It is within this context that a meaningful discussion needs to take place about the current and future relationship between Conservation Authorities and the Province's ministries, most particularly Natural Resources and Environment.

These discussions should include the role and mandate of both the Province and Conservation Authorities to address issues that currently create barriers to implementing a more streamlined approach to watershed management in Ontario.

It is recognized that such a sweeping review of watershed management in Ontario has implications for the Conservation Authority model itself, the refinement of which must certainly be on the table. Conservation Authorities are already pursuing internal discussions on ways to address current deficiencies to provide a more consistent level of service. (See Appendix A: *Contemporary Conservation Authority Watershed Management Programs*)

Building from current successes such as the source protection program, many Great Lakes initiatives, as well as flood and erosion control, this discussion must address how to leverage resources between the Province and Conservation Authorities in order to more effectively implement provincial policy in Ontario's local watersheds.

Ontario's 36 Conservation Authorities have produced this whitepaper to spur dialogue that acknowledges the increasing demands of urban growth and to begin to address the growing challenges of a changing climate.

### Ontario's Watershed Management Challenges

Provincially and federally, there is a complex maze of legislation, often duplicative, frequently conflicting and always accompanied by administrative structures and processes which are to some degree independent. This scenario is costly, inefficient and not always effective at obtaining the desired outcomes. Trends in government over time have been to address each new problem (municipal drinking water protection, for example) with new legislation, thereby adding to the regulatory burden which is frequently cited as a barrier to economic activity, and an undue imposition on landowners' interests. As front-line service delivery organizations, Conservation Authorities frequently find themselves at the nexus of the necessary interaction of the public and government, and are often seen as part of the problem.

Water-Related Federal Legislation	Water-Related Provincial Legislation	
<ul style="list-style-type: none"> <li>• Canada Water Act</li> <li>• Canadian Environmental Protection Act</li> <li>• Environmental Contaminants Act</li> <li>• International River Improvement Act</li> <li>• International Boundary Waters Treaty Act</li> <li>• Fisheries Act</li> <li>• Navigable Waters Protection Act</li> </ul>	<ul style="list-style-type: none"> <li>• Ontario Water Resources Act</li> <li>• Environmental Assessment Act</li> <li>• Environmental Protection Act</li> <li>• Conservation Authorities Act</li> <li>• Lakes and Rivers Improvement Act</li> <li>• Lake Simcoe Protection Act</li> <li>• Beds of Navigable Waters Act</li> <li>• Aggregate Resources Act</li> <li>• Clean Water Act Planning Act</li> </ul>	<ul style="list-style-type: none"> <li>• Municipal Act</li> <li>• Public Utilities Act</li> <li>• Drainage Act</li> <li>• Nutrient Management Act</li> <li>• Pesticides Act</li> <li>• Public Lands Act</li> <li>• Safe Drinking Water Act</li> <li>• Water Opportunities Act</li> </ul>

The Province has documented these conditions in many policy papers and action plans, often calling for a more comprehensive approach to deal with these complex problems and detailing numerous specific actions that could be taken on their own, or in partnership. Two examples are the 2011 provincial climate change adaptation plan and strategy, and more recently the Province's 2012 proposed *Great Lakes Act and Strategy*:

- **Climate Ready: Ontario's Adaptation Plan and Strategy 2011 – 2014**, recognized the impacts of climate change, particularly with regard to temperatures and extreme weather conditions and highlighted areas of special concern: human health, infrastructure and personal property, far north, agriculture, forestry, wildlife and biodiversity, water resources, and tourism and recreation. Around a vision that strives to minimize risks to health and safety, the environment and the economy, the report developed five goals with 37 specific actions.
- **Great Lakes Protection Act and Ontario's Draft Great Lakes Strategy (2012)**, suggests that the current problems around the Great Lakes are overwhelming some of the past successes in addressing environmental pressures. According to this report, the "cumulative impacts of many pressures are hurting the Great Lakes' ability to naturally adapt to changes and stresses"<sup>2</sup>. The report warns that the Great Lakes are at a 'tipping point of irreversible decline'<sup>3</sup>. Similar to the Climate Ready report, the Great Lakes Strategy addresses a broad range of issues across sectors with 6 goals and over 100 actions.

As Ontario's environmental problems become more complex, there are fewer resources to address them. The Drummond Report recognized a shifting economy with a much slower rate of growth, therefore calling for significant transformation within the provincial government in order to accomplish two objectives: decrease/eliminate the deficit over the next few years, and change the way government spends in order to spend less more strategically. Mr. Drummond himself pointed out that "action must begin very soon"<sup>4</sup>. The Drummond Report suggests that a new 'paradigm' needs to be developed among the various agencies working in Ontario's environmental management sector<sup>5</sup>.

Conservation Authorities have long advocated for reforms to this complicated system and support an integrated approach which looks at the watershed as a system involving natural resources, people, and the economy as elements that need to be taken into account in developing solutions. An integrated watershed approach offers a unique opportunity for the province to leverage local expertise and resources. (see *An Integrated Approach for Ontario's Watersheds*, pg 4) With limited strategic investments and changes to the way Conservation Authorities themselves operate, there is potential for a new relationship to be developed based on the solid successes of our current joint work with the Province.

Maintaining the status quo and continuing on the current path will result in expensive and serious consequences. The current environment offers opportunities. It is a time to be bold, to think

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<sup>2</sup> Ontario's Draft Great Lakes Strategy, pg 6

<sup>3</sup> IBID, pg 5

<sup>4</sup> Commission on the Reform of Ontario's Public Services - Public Services for Ontarians: A Path to Sustainability and Excellence, pg vii

<sup>5</sup> IBID, pg 335

strategically and to consider the range of possibilities that could be implemented through partnerships that leverage resources and expertise.

## A New Approach for Watershed Management in Ontario

While the management of Ontario's watersheds involves a very wide range of participants, this whitepaper specifically addresses what Conservation Authorities can provide to the Province in response to the increasingly complex problems that threaten Ontario's natural resources.

There is a lot of good work going on in Ontario that protects water, land, and wildlife; reduces climate change impacts; and promotes awareness about the issues with Ontario residents. What Conservation Authorities bring to the table is their demonstrated ability to leverage local watershed management expertise and knowledge, resources, and support – across the province. The Conservation Authorities' work in watershed science, monitoring, and reporting is critical to informing strategic local and provincial decision-making.

Internationally and within Canada, many jurisdictions have identified an integrated watershed management (IWM) approach as the most efficient and effective way to manage issues around water and related resources. Conservation Authorities believe an integrated watershed management framework provides an effective frame of reference for integration of provincial and federal policy and science into local decision-making to ensure that natural resources and water in particular, are sustainable for environmental, economic, and social uses in our watersheds. Conservation Authorities already have multiple business relationships with several ministries that with better coordination could lead Ontario toward an effective IWM approach.

## Conservation Authority Relationships with Provincial Ministries

### Ministry of Natural Resources

The Ministry of Natural Resources is an important and long-standing partner of Conservation Authorities. MNR's ongoing transformation process, coupled with the continued reductions in Conservation Authority transfer payments, provide a basis for discussions with the MNR Minister/senior management regarding future roles, relationships and opportunities. Potential topics of discussion include:

## An Integrated Approach for Ontario's Watersheds

Integrated Watershed Management (IWM), or Integrated Water Resources Management, is the process of managing human activities and natural resources on a watershed basis taking into account social, economic and environmental issues, as well as community interests in order to manage water resources sustainably.

It is an evolving and continuous process through which decisions are made for the sustainable use, development, restoration and protection of ecosystem features, functions and linkages. IWM allows us to address multiple issues and objectives; and enables us to plan within a very complex and uncertain environment. This approach allows us to protect important water resources, while at the same time addressing critical issues such as the current and future impacts of rapid growth and climate change.

Integrated watershed management is increasingly being adopted in Canadian and international jurisdictions as a fundamental principle for managing water resources. The Canadian Council of Ministers of the Environment (CCME) incorporated IWM into *Strategic Directions for Water* and many provinces are incorporating IWM in their water management strategies.

- **MNR restructuring of field operations** that impact Conservation Authority business areas such as stewardship, natural heritage, etc. and the need for operational, science-based delivery of provincial policies and science.
- Implementation of **hazard management responsibilities**; should they be cost-shared or the sole responsibility of the municipal partners augmented by potential Federal investments in infrastructure, or in specific flood damage reduction programs.
- Support for a Conservation Authority role in **implementation of Climate Ready action items related to CA business** such as the Low Water Response Program.
- **MNR governance and accountability role** under the Conservation Authorities Act given the shift of responsibility for Conservation Authority watershed management activities to the municipal side of the partnership.

### Ministry of Environment

The Conservation Ontario/MOE relationship has changed significantly over the last decade as a result of the Ontario Drinking Water Source Protection Program; Conservation Authorities now have a variety of business arrangements with the Ministry of the Environment. The impending transition of the source protection program from planning to implementation, as well as the potentially significant role of Conservation Authorities in the draft Great Lakes Strategy, make this an appropriate time to open a dialogue with the Ministry of the Environment on our collective future. Specific issues that require discussion and are alluded to in the draft Great Lakes Strategy include:

- The **transition of the Source Protection Program to implementation** will shift the role of Conservation Authorities from plan development to support for plan implementation. Anticipating funding from MOE for plan implementation, the transition also means that source protection moves from being a special project to part of ongoing Conservation Authority business. This will require a restructuring of the MOE /CA relationship.
- The proposed **Great Lakes Protection Act and draft Great Lakes Strategy**, which MOE leads, signal a potentially significant role for Conservation Authorities in implementation of Great Lakes programs. This will require the development of a new business relationship with MOE and potentially also the Ministry of Natural Resources, depending on the respective roles of each Ministry.
- Conservation Authorities and MOE have a long term relationship with the Ministry's **Environmental Monitoring and Reporting Branch (EMRB)** to implement the Provincial Water Quality Monitoring Network. This relationship has expanded in recent years to include Provincial Groundwater Monitoring Network, the Ontario Benthos Biomonitoring Network, and more recently, climate change monitoring. Conservation Ontario has also led a number of initiatives with EMRB to undertake provincial scale analysis and improve accessibility to MOE data. Taken collectively these CA/MOE partnerships now form the core of water monitoring in Ontario.
- **Climate Ready: Ontario's Adaptation and Action Strategy**, the Province's climate change adaptation strategy, which is being led by MOE, contains a number of areas that could affect Conservation Authority businesses and the CA/MOE relationship.

## **Other Ministries**

In addition to MNR and MOE, Conservation Authorities have informal relationships with other ministries. These could be expanded and formalized.

For example, the **Ministry of Municipal Affairs and Housing** leads planning and development in Ontario through the Provincial Policy Statement, Planning Act, and provincial plans (e.g. Greenbelt, Oak Ridges Moraine); while the **Ministry of Infrastructure** has leadership around infrastructure planning and regional Growth Plans. The role of Conservation Authorities in translating provincial policy direction into science-based information to support informed local municipal decision-making is a valued responsibility that needs ongoing recognition and support.

The relationship between the **Ministry of Agriculture, Food and Rural Affairs** and Conservation Authorities has been focused primarily on collaborating with various agencies to provide technical services, knowledge transfer and financial support to local agricultural producers for agricultural environmental stewardship. This relationship is particularly evident in watersheds where agriculture is a primary land use.

## **Refining the Conservation Authority Model**

Conservation Authorities acknowledge that there are issues with the current CA model that need to be addressed in order to improve watershed management. The Conservation Authorities are undertaking their own discussions to address CA-specific issues and explore ways to improve their own effectiveness through program improvements, streamlining operations, and better collaborations among themselves. These discussions need to expand to include the provincial government due to the number and complexity of the various relationships.

## **Issues Impacting Conservation Authority Effectiveness**

There are a number of issues relating to the roles of Conservation Authorities and their relationship to the Province which impact CA effectiveness to move forward:

- Broad legislative mandate under Section 20 of the *Conservation Authorities Act*<sup>6</sup> leads to “questions of legitimacy” raised by some individuals / businesses whose interests appear to be impacted (eg landowners, developers, municipalities)
- Declining provincial support for financial priorities
- Inconsistent provincial policy support and interpretation
- Variability in Conservation Authority capacity often correlating to local tax base, local issues

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<sup>6</sup> Section 20 of the *Conservation Authority Act* states, “The objects of an 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”. (R.S.O. 1990, c. C.27, s. 20)

### Broad Legislative Mandate

The role of Conservation Authorities and their relationship to various partners including member municipalities and the provincial government derives primarily from their enabling legislation, the *Conservation Authorities Act* of Ontario. This legislation provides a broad mandate and suite of powers which empowers Conservation Authorities to largely define their own programs, set priorities in collaboration with member municipalities, government ministries and departments, organizations and individuals, and enter into partnerships. It is important to recognize that Conservation Authorities have multiple business relationships with multiple ministries, agencies, municipalities and others, depending upon circumstances, needs, shared goals and opportunities.

In addition to the *Conservation Authorities Act*, other provincial legislation can directly affect Conservation Authority activity including the Planning Act, the Clean Water Act, the Municipal Act, and the Environmental Assessment Act.

The broad mandate of Conservation Authorities, coupled with the complex array of provincial and federal statutes and corresponding Ministries, departments and agencies, has not been well understood by many players and, in fact, has given rise to criticism that Conservation Authorities operate outside of or beyond their scope and mandate. (See *Conservation Authorities Operating in Ontario Today*, pg 8) These perceptions need to be addressed going forward to enhance the legitimacy of the Conservation Authorities and to provide clear lines of responsibility and clear lines of accountability. The Ministry of Natural Resources' (May 2010) *Policies and Procedures for Conservation Authority Roles and Responsibilities for Plan Review and Permitting* which was developed through a multi-stakeholder and multi-ministry process is a good start.

### Declining provincial funding for provincial priorities

The original vision of the Legislature in passing the *Conservation Authorities Act* was one of a shared provincial/municipal responsibility for managing natural resources on a watershed basis. This "partnership" has undergone many changes over time and to some extent simply reflects changing philosophy of government in terms of its role in society and its relationship to other levels of government.

In the 1990's Ontario and its municipalities underwent a very thorough exercise in "disentanglement" that attempted to rationalize roles and responsibilities while increasing accountability of various levels of government by improving the link between taxation and program responsibility. For example, the province would fund major social programs including health care and education from its broad (and

## Conservation Authorities Operating in Ontario Today

The Conservation Authorities' program has been a success story by any number of measures, and yet there has been a history of controversy and concern that continues to this day.

It is possible to ascribe much of this concern to power sharing – the degree to which a Conservation Authority's power and influence is seen to impact the interests of stakeholders, including its member municipalities; developers and landowners; and environmentalists; and the scope of their "mandate" as prescribed under Section 20 of the *Conservation Authorities Act*.

The impacts are manifested in a number of ways, from the power to "levy" the member municipalities to pay for programs and services; to the Conservation Authority role in the land use planning and development process, (largely a municipal sphere); to the "Development, Interference and Alteration" regulation; to their limited ability to expropriate land for the construction of public works such as dams, dykes and channels.

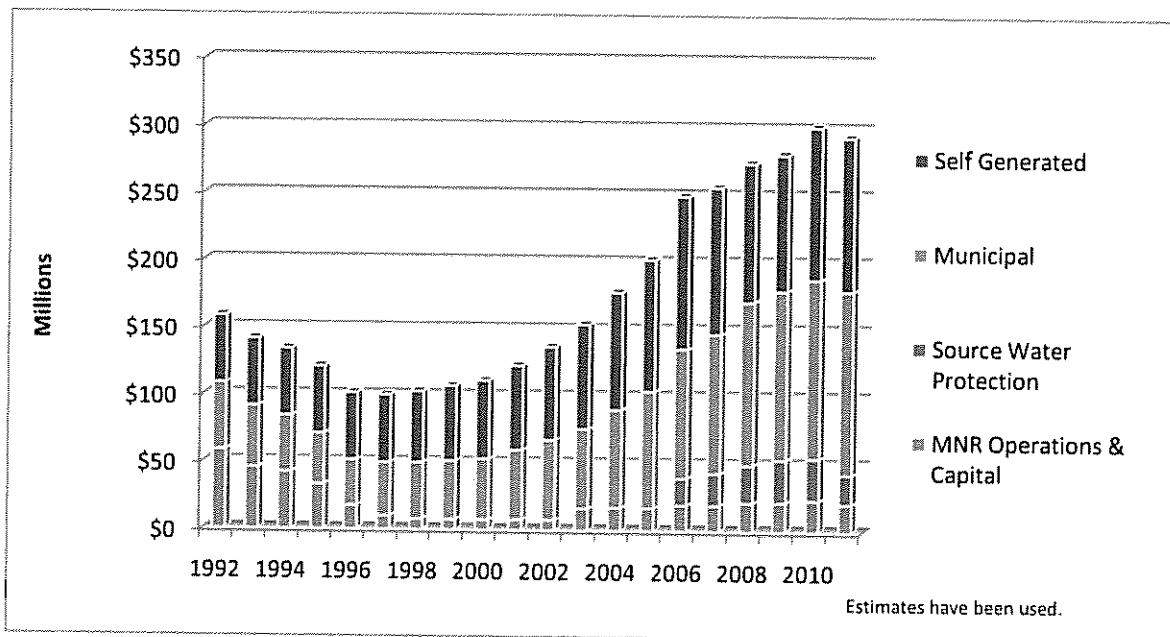
While Conservation Authority programs and projects are undertaken "for the public good" the extent to which other interests are perceived to be impacted negatively gives rise to arguments of too much power and lack of accountability.



deep) tax base while municipalities would fund more place-based services such as roads, sewers and water through the property tax system or other appropriate rates.

Within this context, what had been significant provincial transfer payments to the Conservation Authorities in the early 1990s, often exceeding the municipal share, declined drastically to the point that municipalities contribute three or four times as much as the remaining transfer payments even for provincially mandated programs such as flood hazard management.

Figure 1: Provincial, Municipal and Self Generated Revenue for Conservation Authorities 1990 – 2010



The funding inequity for Conservation Authority programs is an irritant in CA-municipal relations, and in some cases, particularly where population and the local property tax base are sparse, creates significant financial hardship and variability in Conservation Authority capacity.

#### Inconsistent provincial policy support and interpretation

Also contributing to the confusion around Conservation Authorities is the duplication and lack of clarity of provincial policy in relation to Conservation Authority business.

To some extent, the Province has attempted to grapple with this particularly around the land use planning process and the Planning Act. In this model, responsibility for land use planning from the creation of official plans to zoning bylaws to approval of development applications resides (appropriately) at the municipal level. The Provincial Policy Statement addresses issues such as natural hazards, natural heritage and the appropriate range of housing types and densities. Municipalities are given significant authority under the Planning Act, subject to the requirement that decisions “shall be

consistent with” matters of provincial interest. In some cases, such as flood and hazard policy, there is a very mature and robust policy in place with supportive technical guidelines and the responsibility has been delegated to the local Conservation Authority to represent provincial interests.

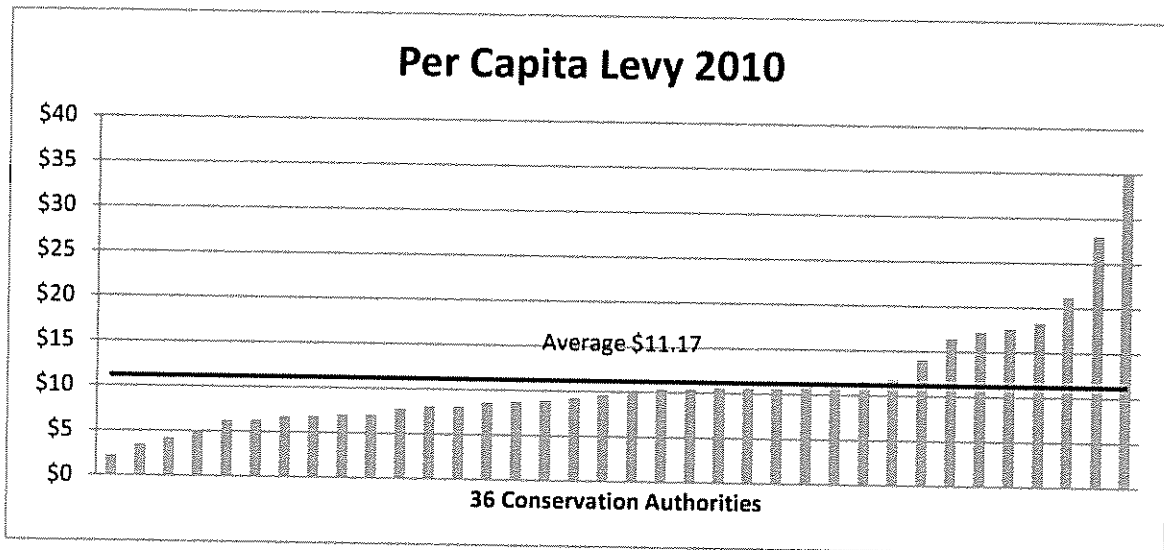
In other cases, such as natural heritage systems, the policy is less robust, there is no provincial standard and limited provincial guidance has only become available recently. Many Conservation Authorities have often been invited to fill the gap by their local municipalities who recognize that the Conservation Authority has the capacity and expertise. As part of its overall watershed plan, some Conservation Authorities have identified the linkages between the natural heritage system, hazard lands, water resources, and so on. In these cases, the Conservation Authority has taken the initiative to “market” a natural heritage system to the municipalities which they are free to incorporate, modify or reject through their Official Plan amendment process.

It is this interface between natural heritage systems planning and land use planning where some municipalities, the development industry, and the provincial government often have conflicting notions of the Conservation Authority role, questioning their legitimacy in any involvement in the process. Notwithstanding a lengthy multi-stakeholder discussion and policy development exercise around this issue [i.e. *Policies and Procedures for Conservation Authority Roles and Responsibilities for Plan Review and Permitting* (Ministry of Natural Resources’, May 2010)], the controversy remains. The most obvious solution from a Conservation Authority perspective is to obtain delegated responsibility from the Province for Natural Heritage implementation under the *Planning Act*.

#### Variability in Conservation Authority capacity

Conservation Authorities have been criticized for not being able to provide a consistent level of services across all watersheds. While many Conservation Authorities operate with a full suite of professional, technical, scientific and administrative expertise, there are some which are not able to do so due to a limited local tax base. It has to be acknowledged that the local financial burden is not equitable across all Authorities and that this problem is not resolvable locally. Figure 2 illustrates the inequities among the per capita levies across the Conservation Authorities.

Figure 2: Per Capital Levy Across All 36 Conservation Authorities



In reality, there is some merit to the capacity argument, although it is not a fair generalization; and Conservation Authorities, themselves, have recognized this in the current Conservation Ontario Strategic Plan<sup>7</sup>. In the past, one proposed solution has been amalgamation. While this may be appropriate in some circumstances, there are other approaches that can ensure the necessary skills and capacity are available, while avoiding the creation of geographic units that are too large for efficient service delivery. For example, the Ontario Drinking Water Source Protection Program has addressed this issue through clustering of Conservation Authorities to create Source Protection Regions - thereby achieving an economy of scale, necessary technical and professional skills and expertise while maintaining traditional governance frameworks at the local Conservation Authority.

## Opportunities for Provincial Discussion

The issues described above have been identified by Conservation Authorities from their perspective, and while the list may not be complete, these issues are considered to be fundamental questions that need to be addressed. Ultimately, the discussion must incorporate the following five elements, all of which are interrelated:

1. Confirmation of a Conservation Authority mandate
2. Enhancements of CA-Ministry relationships
3. Revamped CA Governance Model
4. Development of a sustainable funding formula
5. Improved Accountability Framework

<sup>7</sup> *The Road Ahead: Sharing Conservation Authority Strengths. Strategic Direction 2011 – 2015*, Conservation Ontario ([www.conservationontario.ca](http://www.conservationontario.ca))

## **1. Confirmation of the Conservation Authority Mandate**

As discussed earlier in this whitepaper, the Conservation Authority mandate has been a long-standing debate, viewed either through the lens of provincial direction (section 28 regulations, PPS natural hazards) or with a broader interpretation of Section 20 of the *Conservation Authority Act*. Closely tied to the mandate are arguments about overlap and duplication. The issue of multiple pieces of legislation impacting water and related resources has been identified, and the resulting complexity leads to confusion as to who is responsible for what.

It is fair to observe that Conservation Authorities have often willingly extended their programs into areas of emerging need, or to fill a gap created by withdrawal by another agent. The steady decline of the field presence of the Ministry of Natural Resources has, to some extent, been offset by expansion of Conservation Authority programs. It can be argued that more local control of these services has been a beneficial outcome; others may argue its provincial download. Conservation Authorities have taken the position that an integrated approach to watershed management is not only more efficient and effective, it is more equitable in that there is an opportunity for local stakeholders to participate in the process. However, progress toward this paradigm will not be significant unless the province acknowledges the value of IWM and commits to the necessary discussions that will lead to this transformation. Flowing out of a confirmation of a watershed management entity mandate would be a discussion of the relationship with the key Ministries in the watershed management sector.

## **2. Enhancement of Conservation Authority-Ministry Relationships**

Taking a more integrated approach to watershed management is dependent on collaboration among the various agencies with water management responsibilities. Given the existing diversity and complexity of the CA-provincial relationships and the need to enhance these relationships, Conservation Ontario proposes a series of bilateral discussions with the relevant ministries, to take place within an overall framework of a multi-Ministry/stakeholder steering committee.

### **Renewed Conservation Authority-MNR Relationship**

The Ministry of Natural Resources has been responsible for administering the Conservation Authorities Act for the past forty years. The Minister is accountable to the Legislature for the Conservation Authorities program, yet the devolution of the partnership toward a municipally dominated model, leaves the Minister with inadequate tools to meet his or her responsibilities. The extent to which Conservation Authorities operate as autonomous, corporate entities, governed by their own Boards within a provincial policy framework, must be reconciled within an appropriate legislative, policy and governance framework.

Conservation Authorities have historically operated programs that were on the surface, duplicative of those provided through the Ministries own operating entities. Over time, this issue has resolved itself. However an important question remains around the implementation of Natural Heritage. Conservation Authorities believe that the Province needs to retain a strong science and policy role regarding Natural Heritage, and acknowledge the need for a local watershed-based implementation mechanism that can support municipal responsibilities under the Planning Act and the Provincial Policy Statement.

### **Formalize CA-MOE relationship**

The current CA-MOE relationships have evolved on an ad hoc basis and are managed within individual branches of the Ministry of Environment, usually by annual memorandums of agreement. This approach is administratively inefficient and given the complexity and apparent longevity of the CA/MOE relationship it would seem reasonable to discuss with MOE the possibility of rationalizing/normalizing the overall MOE/CA relationship.

### **Explore opportunities with other ministries**

Conservation Authorities have had a successful history of collaboration with a number of other Ministries, including OMAFRA and the agricultural sector to implement initiatives that investigate the supporting science and that undertake Agricultural environmental BMPs at the local watershed level. Management of these partnerships has been through various ad hoc agreements with OMAFRA and others. As OMAFRA develops priorities for research and BMP implementation in priority watersheds (eg. Great Lakes Initiatives, nutrient management), as well as transfers of the knowledge from these watersheds to others in the province, it would seem strategically beneficial to discuss the role of Conservation Authorities in supporting associated objectives.

Other important relationships with Ministries including Municipal Affairs and Housing, Northern Development and Mines, Infrastructure, Education and Tourism need to be examined to identify opportunities for further discussion.

## **3. Revamped Conservation Authority Governance Model**

Governance can simply be defined as the framework in which decisions are made. Under the *Conservation Authorities Act*, municipalities appoint Conservation Authority members. It is important to note that board members are appointed by the municipalities in accordance with their individual and collective policies. For example, some municipalities appoint citizens, while others appoint members of council. The result is that, currently, approximately two-thirds of Authority Board members (province-wide) are concurrently elected to municipal council, although in some instances, this proportion is 100%.

The case for appointing elected members relates to perceptions of accountability, the theory being that elected members will tend to reflect the will of their appointing municipal council more so than will citizen appointees. The principal of fiduciary responsibility would suggest, however that the members should vote in accordance with the best interests of the watershed.

Some members of the environmental non-governmental organization community believe that a Conservation Authority Board comprised of municipal councilors will tend to favour development, while a citizen board will have a more environment-friendly position. There is also merit to the argument that the Conservation Authority would function with greater balance if interests beyond those of municipalities were represented at their Boards. However, as long as municipalities provide the major share of financing for the program, and Conservation Authority Boards retain the power to levy, it is unlikely that the power of appointment would be willingly relinquished by municipalities.

#### **4. Development of a sustainable funding formula**

Some discussion on the current financial model has already been provided in this document. It is arguable that Conservation Authorities provide mainly place-based services such as flood control that are reasonably born on the property tax base. It is also a reality that local tax bases are not always commensurate with need, and that a mechanism must exist to create equity. The Province should consider retaining or designing a cost-sharing formula that takes local ability to pay into account, and this should be permanent rather than project-based. In addition, the Province and municipalities must incorporate Conservation Authority infrastructure into the pool of municipally owned infrastructure, or at least develop mechanisms whereby the flood and erosion infrastructure needs can be met within an appropriate asset management framework.

It should also be recognized that Conservation Authorities have been leaders in developing non-tax base revenues including user fees and charitable foundations. In fact, the second largest pool of funding for Conservation Authority programs is self-generated, comparable to the municipal levy but less than total municipal funding. This greatly enhances the value of the Conservation Authority program in terms of its ability to leverage revenues from all levels of government.

#### **5. Improved Accountability Framework**

Governance, finance, mandate, and accountability are all closely linked and need to be considered in an integrated fashion. The current accountability framework for Conservation Authorities has been criticized as inadequate from some stakeholders and interests. Some would prefer stronger provincial oversight or control; while others would lobby for greater stakeholder influence.

As previously stated, the Minister of Natural Resources carries the responsibility for the *Conservation Authorities Act* and everything that occurs as a result of it, but he or she has very limited means to hold the Conservation Authority Board to account. Prior to the reduction in transfer payments in the 1990s, the Minister had considerable leverage through the financial and project approval mechanism. At the present time, the Conservation Authority is required to seek the approval of the Minister only for a relatively minor set of needs.

The Conservation Authority is required to conduct an annual financial audit under Public Sector Accounting Board rules, and report to the Minister. It is also subject to the Municipal Conflict of Interest Act and a number of other statutes which compel it to conduct the business of the Authority in a responsible fashion. Implementation of an integrated watershed management approach will require the establishment of a decision making process that gives the various partners and stakeholders an appropriate voice in future watershed management decisions. Refining the Conservation Authority accountability framework to be consistent with this process would address these accountability concerns.

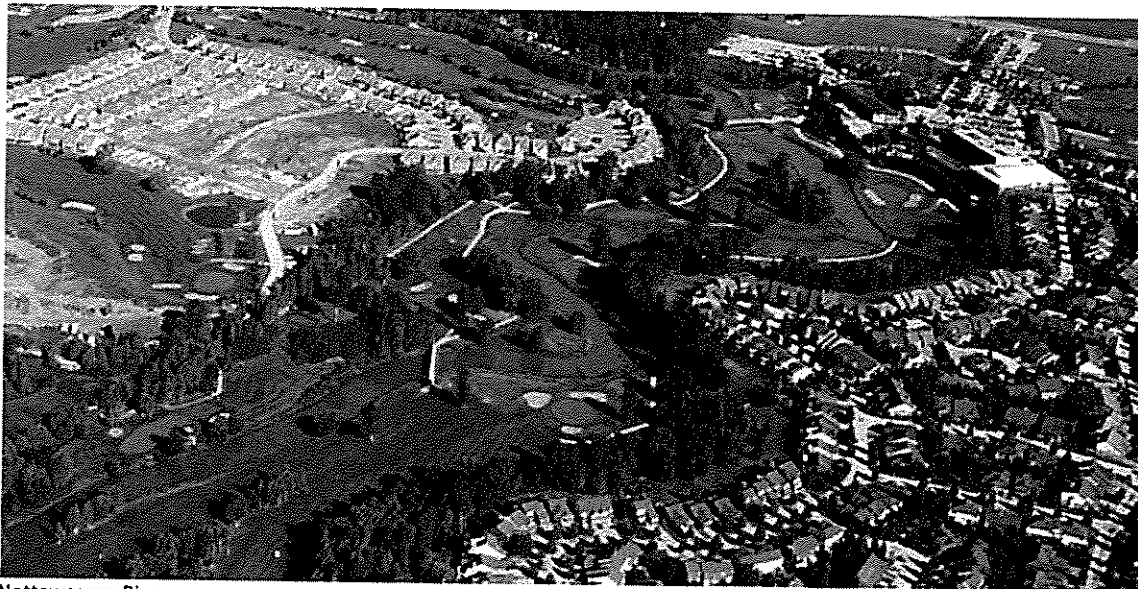
## Conclusion

This paper identifies a number of specific challenges with the existing watershed management policy and governance framework in Ontario. These challenges are currently compromising the Province's ability to effectively and efficiently manage its water and other natural resources for environmental, economic, and social benefits. The current fiscal reality further exacerbates these challenges. That said, the transformational agenda that is currently underway presents an opportunity to redesign the watershed management framework.

Conservation Authorities have identified an integrated watershed management approach as the most efficient and effective way to manage issues around water and related resources while providing stakeholders with timely and meaningful opportunities to participate in decision making processes that will ultimately affect their quality of life. The watershed management perspective provides an effective frame of reference for integration of provincial and federal policy and science into local decision-making ensuring that natural resources and water, in particular, is sustainable for all economic, social, and environmental uses in our watersheds and managed to avoid future flood damages.

It is within this context that meaningful discussion must occur and should include all stakeholders (Province, municipalities, non-governmental organizations, and the Conservation Authorities) in order to move forward. These discussions must include the role and mandate of both the Province and Conservation Authorities in order to address issues that create barriers to a more streamlined approach to watershed management. Conservation Ontario recognizes that a sweeping review of watershed management in Ontario will include the refinement of the Conservation Authority model itself.

The Province must accept a leadership role in establishing this dialogue at the earliest possible date, and commit to implement a sustainable, responsive, and effective watershed management future for the benefit of all Ontarians.



Nottawasaga River

## Appendix A

### A Brief History of Watershed Management in Ontario

It is no accident that a very comprehensive history of the Conservation Authorities Program, published in 1972 by Dr. AH Richardson, one of the founders of the “Conservation Movement” is entitled, *Conservation by the People*. The *Conservation Authorities Act*, passed by the Ontario Legislature in 1946, was a bold, forward looking piece of legislation that was founded on three principles:

- jurisdiction based on the watershed, a fundamental unit for managing water related resources;
- cost-sharing, reflecting a partnership between the province of Ontario and the municipalities within a Conservation Authority’s jurisdiction; and
- local initiative, a program that was locally designed to respond to issues that municipalities had determined to be priorities and for which they were prepared to fund on a cost shared basis.

In fact, local municipalities had control over whether or not a Conservation Authority was formed, in that the legislature did not “impose” Conservation Authorities, rather it “enabled” municipalities to form them by majority vote (passed by 2/3 of the municipalities present).

In the formative years, dating back to the 1940s, the provincial government undertook resource surveys of watersheds and developed a suite of recommendations under the categories of flood control, land use, forestry, and recreation. The resulting “Conservation Reports” formed the basis for the Conservation Authority program until the 1980s when contemporary watershed planning came into being. It is interesting to note that the recommendations not only incorporated natural heritage (forestry, wetlands, and conservation of land) but cultural heritage as well.

Implementing these reports, Conservation Authorities purchased wetlands and marginal agricultural lands for reforestation, often under agreement with the Department of Lands and Forests, the MNR’s predecessor. The development of Conservation Areas to provide public access and recreation opportunities was undertaken, often in conjunction with large water control structures. In order to justify the major expenditures involving in many cases all three levels of government, dams and reservoirs and their surrounding lands were designed for multiple purposes – flood control, flow augmentation, recreation and wildlife - to maximize the return on public investment. The provincial government amended the Conservation Authorities Act in the 1950s to provide grants for the development of facilities to promote public access and use.

From a contemporary perspective, Conservation Authorities have acquired some 150,000 ha of lands that provide outdoor recreation opportunities for more than 6 million visitors annually. These Conservation Areas are largely self-sufficient from either user fees or donations or in some cases the work of service clubs and organizations, and fill a niche in the fabric of greenspace that our rapidly urbanizing population requires to meet their basic needs. In its recently published Strategic Plan, *The Road Ahead: Sharing Conservation Authority Strengths: Strategic Directions 2011 - 2015*<sup>a</sup>, Conservation Ontario has identified the increasingly apparent linkages between human health and access to abundant

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<sup>a</sup> Conservation Ontario’s 2011 – 2015 Strategic Plan can be found at [www.conservationontario.ca](http://www.conservationontario.ca)



and healthy greenspace, as key to managing our future health care costs and improving quality of life in both social and economic terms.

The most recent comprehensive review was undertaken by the Provincial Government in 1986, resulting in a report entitled, *A Review of the Conservation Authorities Program* (1987). This report contained a number of recommendations including changes to provincial funding formulae; reduction in the number of Conservation Authorities through amalgamation; and rationalization of a number of programs to address concerns of overlap and duplication with programs delivered by the Ontario Ministry of Natural Resources and others. Few of the recommendations were implemented and provincial transfer payments were drastically reduced in the late 1990s, making municipalities responsible by default for a greater share of funding for the “partnership”.

## Contemporary Conservation Authority Watershed Management Programs

Conservation Authorities deliver practical, cost effective programs that ensure healthy ecosystems which enable them to generate and maintain valuable goods and services.

### **Watershed Management**

- Planning, implementation, monitoring, reporting

### **Flood & Erosion Control/ Prevention**

- Structures, monitoring & warning systems, maintenance, prevention
- Conservation Authority flood and erosion control programs including dams, other water control structures and regulations preventing development in hazardous areas, have resulted in avoided flood damages of more than \$100 million annually in Ontario<sup>9</sup>.

### **Water Quality & Quantity**

- Monitoring networks, source protection, watershed reporting, Dams, reservoirs, stormwater, wetlands, septic system approvals

### **Regulatory Responsibilities**

- Regulate development & activities in or adjacent to river or stream valleys, Great Lakes and large inland lakes shorelines, watercourses, hazardous lands & wetlands

### **Natural Heritage Protection**

- Sensitive land acquisition & securement, tree planting, official plan input and review, land management

### **Watershed Stewardship**

- Rural water quality programs, rehabilitation and restoration programs, fish & wildlife, Ontario Drinking Water Stewardship Program, woodlot management

### **Technical Support & Land Use Planning**

- Plan input & review, technical advice & studies, community sustainability plans, Class EA reviews, EIS reviews, emergency response, engineering and hydrogeologic support, fishery reviews, geotechnical reviews, stormwater / low impact studies, natural heritage systems design

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<sup>9</sup> Protecting People and Property – A Business Case for Investing in Flood Prevention and Control – Conservation Ontario, August 2009

### **Recreation & Education**

- Outdoor recreation activities, environmental education programs for 475,000 students, outreach activities, water festivals

### **Conservation Authorities Address Consistency and Effectiveness**

At a two day workshop in June 2012, the Conservation Authorities identified a number of areas to continue to address. Conservation Authorities are currently pursuing these issues.

- **Development of a common core competency/capacity (eg. minimum standards, service levels, etc) that all Conservation Authorities agree to meet.** This would include not only the core Conservation Authority legislative responsibilities but must also include a consensus of the basic Conservation Authority role envisioned in the IWM concept.
- **A process for all Conservation Authorities to meet those standards either internally or through formal collaboration within a Conservation Authority grouping or cluster.** There were a variety of variations on this idea at the workshop but the key is that these be formal, e.g. written agreements, financial arrangements and reasonable permanency.
- **A process to address Conservation Authority governance** to give the various non-municipal stakeholders a voice. (eg advisory boards as in the *Conservation Authorities Act*, the task force approach, etc)
- **Identification of potential external partnerships and a plan to engage these partners**
- **Review and clarification of the role of Conservation Ontario**