



**NIAGARA PENINSULA CONSERVATION AUTHORITY  
FULL AUTHORITY**

**WELLAND**

**AGENDA**

**DECEMBER 19, 2012 – 7:00 P.M.**

**ROLL CALL**

**DECLARATION OF CONFLICT OF INTEREST**

**BUSINESS:**

**(1) MINUTES FULL AUTHORITY MEETING – November 21, 2012**

Attached are the Minutes of the Full Authority Meeting held November 21, 2012.

**(2) BUSINESS ARISING FROM MINUTES**

**(3) CHAIRMAN'S REMARKS**

**(4) CAO'S REMARKS**

**(5) DELEGATION - PERMIT RECONSIDERATION**

A delegation from Sullivan Mahoney LLP may be in attendance to present further information regarding reconsideration of a previously denied permit.

**(6) PERMIT RECONSIDERATION – W. WAKULICH – REPORT NO. 63-12**

Attached is staff Report No. 63-12 and recommendations regarding the request for reconsideration of the permit for Mr. W. Wakulich, City of St. Catharines.

**(7) PROPOSED DEBENTURE MOU WITH NIAGARA REGION - REPORT NO. 64-12**

Attached is Report No. 64-12 regarding an MOU to address debenture issues.

**(8) BORDER PASS PROPOSAL – BINBROOK CONSERVATION AREA – REPORT NO. 65-12**

Attached is Report No. 65-12 regarding this proposal.

**(9) PLANNING MOA – CITY OF HAMILTON – REPORT NO. 66-12**

Attached is Report No. 66-12 regarding the Planning MOA with the City of Hamilton.

**(10) NPCA REGULATION AMENDMENTS – REPORT NO. 67-12**

Attached is Report No. 67-12 regarding Housekeeping Amendments to the NPCA Regulation 155/06.

(11) **POS COMPOUNDS AT THE BINBROOK RESERVOIR (update) – REPORT NO. 68-12**

Attached is an update report on this matter.

(12) **PROJECT STATUS REPORT**

Attached is Report No. 69-12 regarding the Project Status Report.

(13) **OTHER BUSINESS**

(14) **IN-CAMERA**

- (a) Violation Status Report No. CR-17-12
- (b) Tree By-law Report No. CR-18-12
- (c) Personnel Matters – Verbal Report and Report CR-19-12

**ADJOURNMENT**



**NIAGARA PENINSULA CONSERVATION AUTHORITY**

**WELLAND**

**NOVEMBER 21, 2012**

**7:00 p.m.**

**MEMBERS PRESENT:**

B. Baty  
D. Barrick  
S. Beattie  
T. Dalimonte  
C. D'Angelo  
D. DiFruscio  
T. Easton  
A. Jeffs  
D. Ransom  
B. Sharpe  
B. Steckley  
B. Timms (Vice-Chairman)

**MEMBERS ABSENT:**

D. Eke (with regrets)  
D. Joyner (with regrets)  
B. Maves (Chairman) (with regrets)

**STAFF PRESENT:**

T. D'Amario, CAO/Secretary-Treasurer  
L. Sawatzky, Recording Secretary  
D. Baker, Director, Land Management  
M. Stack, Director, Communications  
G. Furtney, Superintendent, Binbrook Conservation Area

**OTHERS PRESENT:**

W. Wakulich  
T.A. Richardson  
G. Robins  
L. Aarts  
K. Young-Chin  
B. Lepard  
N. Johnson  
P. Maloney

**BUSINESS:**

The Chairman was not available for the meeting and the Vice Chair would be assuming the Chair, however, he was detained and therefore it was necessary to appoint a temporary Chair until his arrival. The following resolution was presented.

**FA-117-12**

**MOVED BY:** M. DiFruscio

**SECONDED BY:** A. Jeffs

**THAT:** Doug Ransom be appointed Acting Chair until the Vice Chair arrives.

**"CARRIED"**

Mr. Ransom assumed the chair and called the meeting to order at 7:12 p.m., welcomed all in attendance and requested anyone who had a conflict of interest to declare it.

(1) **MINUTES – OCTOBER 17, 2012 FULL AUTHORITY MEETING**

It was noted in the minutes that both David Barrick and Doug Ransom were absent, however it should have shown with regrets and will be changed accordingly. Also Brian Baty was absent and shown as being both present and absent, this will be changed to show absent only. The following resolution was amended

**FA-118-12**

**MOVED BY:** B. Steckley

**SECONDED BY:** T. Easton

**THAT:** the Minutes of the Full Authority meeting held October 17, 2012, be received and approved as amended.

**"CARRIED"**

(2) **BUSINESS ARISING FROM THE MINUTES**

There was no business arising from the minutes.

(3) **CAO'S REMARKS**

The CAO provided his remarks pending arrival of the Vice-Chair.

The CAO noted that he had presented the 2012 budget to the Region of Niagara Committee of the Whole on November 18<sup>th</sup> and it was well received. He noted that he will appear on January 11<sup>th</sup> at noon to present the budget to Hamilton council.

The Chairman reminded the members that the Achievement Award reception is on November 28<sup>th</sup> at Balls Falls 7:00 p.m. noting this is an annual event with very good turnout of volunteers for recognition. He asked that if anyone who is planning to attend, to please advise Loretta.

As a final note the CAO announced that Loretta is leaving the office to go to Ball's Falls to assume the Administrative Assistant position there. He noted that he looked forward to having her there and she would be a good addition to the site.

(4) **CHAIRMAN'S REMARKS**

The Vice Chair arrived at this point and assumed the chair apologizing for being late to the members and delegation.

He noted that the Chairman was in Toronto on business and was unable to attend.

(5) **DELEGATION – PERMIT RECONSIDERATION**

The Acting Chairman advised that in previous meetings when this matter was brought forward he had declared a possible conflict. Upon checking into it further he noted that he was not in conflict. He requested that Mr. Tom Richardson from the law firm of Sullivan Mahoney address the Board regarding the refusal of the permit to Mr. Wakulich.

Mr. Richardson thanked the board and provided some background on the matter as well as providing the board members with printed matter. He noted that the purpose of his attendance is to find a resolution to save costs of both parties. He noted he has been

directed by Mr. Wakulich to work with the NPCA to satisfy the concerns of the Authority. He also indicated that Mr. Wakulich has an outstanding appeal with the Mining and Lands Commission.

He spoke of a decision from divisional court on another permit which he felt impacts on this matter and outlined what those impacts are. He then outlined the reasons for the appeal. He then referred to the information contained in the information booklet which he provided to the Board members.

He noted that he had two requests, the first of which is to reconsider Mr. Wakulich's application, and make approval of the permit conditional upon providing a geotechnical study indicating there would be no negativity to the slope. Alternatively, to adjourn the matter and request Mr. Wakulich provide a geotechnical study. He noted that they would rather not go to Mining and Lands.

The Vice-Chairman thanked Mr. Richardson for his presentation and then requested comments/questions. There being none, the following resolution was presented.

**FA-119-12**

**MOVED BY:** B. Baty

**SECONDED BY:** T. Easton

**THAT:** the presentation provided by Mr. Richardson be received.

**"CARRIED"**

**(6) JORDAN VILLAGE STAIRCASE – TWENTY VALLEY - REPORT NO. 56-12**

The Director, Land Management provided an outline of the report which was requested at the last meeting regarding funding possibilities for this project. He noted that the 20 Valley Tourism was most promising and the Jordan Valley Merchants.

He noted that this matter should be dealt with as soon as possible as staff is keeping an eye on the property and have found that although it is signed to the contrary, it is still being used and staff are concerned about unsafe situations for the public.

Questions were raised on what kind of other money may be available and whether staff have looked into it. He did note that one of the key members, Len Pennachetti was willing to promote activities to raise funds. He also noted that staff found with local partners that because the original staircase was invested by them they were disappointed that it did not last as long as was originally thought.

The following resolution was then presented.

**FA-120-12**

**MOVED BY:** T. Easton

**SECONDED BY:** S. Beattie

**THAT:** Report No. 56-12 regarding the Jordan Village Staircase be received and that staff be authorized to begin work preparing the corridor for the trail project.

**"CARRIED"**

(7) **CABLE WAKEBOARD PROPOSAL – BINBROOK CONSERVATION AREA – REPORT NO. 57-12**

The Director, Land Management introduced Gregg Furtney, Superintendent at Binbrook, who was in attendance to provide any further information that may be required regarding the proposal details. He also noted that staff feels it would be a good feature to add to Binbrook. He advised that the organizers were invited to come and see Binbrook and they were very impressed. Boarder Pass likes the area and there is lots of potential which will benefit the NPCA.

Included in the report was info on website references for more information. Questions were raised on the liability aspect, what the impact might be on the shoreline, the benefits to the Authority and the PFOS issue. The Director, Land Management responded to all questions noting most would be included in the agreement. The PFOS issue has been discussed and noted that MOE will be monitoring the situation. The shoreline, he noted would likely not be too adversely affected, however, it would not be known for sure until the end of the trial period.

Dave Barrick noted that he was on City Council at Port Colborne when they installed their project and advised that we should try to get them to come out and make a presentation. He advised it is very popular in Port Colborne and there were no complaints. It also brought more visitors into the area. This is a new demographic for this type of project and we need to look at the agreement, however, they are reputable.

Thanks to park staff who are always looking for new things to do. The following resolution was then presented.

**FA-121-12**

**MOVED BY:** C. D'Angelo

**SECONDED BY:** B. Steckley

**THAT:** Report No.-57-12 regarding the Proposed Cable Wakeboard System at Binbrook Conservation Area be received;

That the proposal be approved, in principle; and,

That staff be directed to work with Boarder Pass to draft a one-year agreement for consideration at the December Board Meeting.

**"CARRIED"**

(8) **BALL'S FALLS THANKSGIVING FESTIVAL – REPORT NO. 58-12**

The Director, Land Management noted it is the first Festival report In 8 years, and provided background material regarding attendance and noted the changes made in 2012. Another element was the entertainment and the venue. Each year staff request Vendor feedback. He did note that the numbers were down this year, possibly due to the weather. As well, staff is looking to see if some of the setup fees can be reduced. He did note as well that it continues to be one of the top 100 festivals in Ontario.

April Jeffs advised that she was not aware of the Centre for Conservation and also heard a lot of people comment they just go to Vineland. She also noted that she likes the atmosphere at Ball's Falls as opposed to Vineland which is just crafts.

Darcy concurred that ours is a paid show and we provide a different atmosphere.

A question was raised with respect to whether or not exit surveys were done. The Director, Land Management advised that not recently, however, may do one next year. It was suggested that we should contact Niagara College to do an exit survey for next year. He did note that Vendors do provide exit surveys.

A question was raised regarding the attendance figures and it was noted that there is a downward trend and wonder if the NPCA is eligible to apply for festival grants like Festival Ontario. The Director, Land Management advised that staff is looking into it.

Darcy agreed that yes staff did a good job noting it is a fine oiled machine. He noted that staff wants to grow the event and the Site Administrator is happy to receive any comments.

Doug Ransom questioned whether other groups are invited to the wrap up meeting and if not, they should be. He also commended staff on a job well done.

Carmen D'Angelo commented that it is a tremendous event and that Vineland was packed by taking full advantage of our event. He questioned whether we can diversify by inviting wineries and local dining establishments to the event to and make it unique.

The Acting Chair thanked staff for the report and would like it to be provided on an annual basis. He also noted that he would like to see a report with a review of the plans for 2013. The Director, Land Management advised that he will come back with a report in early summer.

The following resolution was then presented.

**FA-122-12**

**MOVED BY:** S. Beattie

**SECONDED BY:** C. D'Angelo

**THAT:** Report No. 58-12 regarding Ball's Falls Thanksgiving Festival be received for information purposes.

**"CARRIED"**

**(9) PFOS COMPOUNDS AT THE BINBROOK RESERVOIR (update) – REPORT NO. 59-12**

The Director, Land Management provided an update outlining the report on this ongoing matter noting he is hoping to have more information in December.

A comment was made that airport management has the site contained and there is a plan to mitigate the site. A buffer has been established and it was noted that we do need to know what the impacts are. He thanks the Director, Land Management for the monthly reports. The following resolution was presented.

**FA-123-12**

**MOVED BY:** M. DiFruscio

**SECONDED BY:** C. D'Angelo

**THAT:** Report No. 59-12 regarding PFOS Compounds at the Binbrook Reservoir be received.

**"CARRIED"**

**(10) SUPERSTORM SANDY REPORT – REPORT NO. 60-12**

The CAO provided information on this storm and noted we were lucky that we did not get the full impact of it. Although the amount of rainfall was equivalent to a 100 year storm it occurred over a longer period of time, therefore decreasing the impact of the event.

April Jeffs advised that she had several calls from residents along the river and had marked out both sets of lines, noting that the difference was interesting and the water did not reach even the old flood line. She commented that since the residents already have structures in the existing lines, maybe something to consider is to have them sign a waiver.

Brian Baty questioned whether we can use this data and put it up against the model to see if it is accurate? The CAO advised that yes, we can.

Trevor Easton commented that the global warming lobby would say it is a precursor to worse events and needs to be considered during the peer review. Our historical data may need to be adjusted.

The following resolution was then presented.

**FA-124-12**

**MOVED BY:** D. Ransom

**SECONDED BY:** B. Steckley

**THAT:** Report no. 60-12 be received.

**"CARRIED"**

**(11) 2012 BUDGET YEAR END ESTIMATES REPORT NO. 61-12**

The CAO advised that documents were provided in the agenda. He then outlined the changes from original budget and after a brief discussion, the following resolution was presented.

**FA-125-12**

**MOVED BY:** B. Beattie

**SECONDED BY:** T. Easton

**THAT:** the Budget Status Report for the period ending September 30, 2012 be received.

**"CARRIED"**

**(12) PROJECT STATUS REPORT – REPORT NO. 62-12**

Brian Baty commented that there is a change in the public school participation with respect to the Canopies for Kids program noting that it has decreased and requested that the



Director, Communications look into what the reasons for this change might be.

Doug Ransom made comments on the sewage disposal bed at the Centre for Conservation and whether the disturbed area would be dealt with at this time. The Director, Land Management advised that staff is planning to seed it in the spring and mulch it in the meantime.

The following resolution was then presented.

**FA-126-12**

**MOVED BY:** D. Ransom

**SECONDED BY:** B. Steckley

**THAT:** Report No. 62-12 outlining the status of Authority projects / programs be received for information.

**"CARRIED"**

**(13) OTHER BUSINESS**

Carmen D'Angelo advised that Enbridge has a proposal which received approval to reverse line 9 which runs through Binbrook to flow bitumen through the lines. He noted it is in reverse flow at this time and there are concerns about line reversal and the bitumen that is being piped through it. He questioned whether the NPCA has any jurisdiction on this proposal as either landowner or through our regulations. The CAO advised that with respect to utilities, if it is a crown corporation they are exempt, otherwise anything running through a watercourse would require a permit. If they follow procedures they could go ahead without approval. The Director, Land Management noted that pipeline integrity digs are part of testing and they are excavating down to touch the pipeline to confirm info they have. We have been in contact with people who are testing and a follow up will take place to confirm that sections in our areas are in good shape.

Carmen D'Angelo requested a report on both responsibilities for us as a commenting agency and a landowner in this matter. Also, can we include in the report what is being presented in the City of Hamilton that the national energy board provide integrity studies on pipeline life expectancies and studies on bitumen.

April Jeffs questioned who to call about the cell towers being permitted in Port Robinson and noted that the Authority provided comments. The CAO noted that it was a cell tower and that staff issued a permit for it not because of the tower, because of the road leading to the tower. He noted that although residents are concerned about health issues, we have no mandate in regard to the tower itself.

**(14) IN-CAMERA**

The following resolutions were presented.

**FA-127-12**

**MOVED BY:** C. D'Angelo

**SECONDED BY:** S. Beattie

**THAT:** this meeting do now move in-camera.

Received at 9:05 p.m.

**"CARRIED"**

**FA-128-12**

**MOVED BY:** T. Easton  
**SECONDED BY:** B. Sharpe  
**THAT:** this meeting do now move back into open session.

Received at 9:24 p.m. **"CARRIED"**

As a result of the in-camera session, the following resolution was presented.

**FA-129-12**

**MOVED BY:** C. D'Angelo  
**SECONDED BY:** M. DiFruscio  
**THAT:** the reports received in the In-Camera session be received.

**"CARRIED"**

**FA-130-2**

**MOVED BY:** D. Barrick  
**SECONDED BY:** A. Jeffs  
**THAT:** Confidential Report No. CR-16-12 be deferred pending a further legal opinion from the Authority's solicitors

**"CARRIED"**

There being no further business, the following resolution was presented.

**ADJOURNMENT**

**FA-131-12**

**MOVED BY:** S. Beattie  
**SECONDED BY:** B. Sharpe  
**THAT:** this meeting do now adjourn.

Received at 9:26 p.m. **"CARRIED"**

**"L. Sawatzky, Recording Secretary**

**D. Bruce Timms, Vice-Chairman"**

**CONFIDENTIAL**

**TO: The Chairman and Members of the Authority**

**DATE: December 10, 2012**

**SUBJECT: Request for Reconsideration – Wakulich - Report No. 63-12**

This report follows a delegation from the November 21, 2012 meeting in which the NPCA Board was requested to reconsider the decision to deny a permit to Mr. Wakulich for an already-built and installed Solar Panel array on the valley slope of Twelve Mile Creek in the City of St. Catharines. Mr. Wakulich has appealed the NPCA denial to the Mining and Lands Commission, which will set a hearing date at Mr. Wakulich's request.

The request was brought forth as a result of a recent Divisional Court decision allowing an appeal on the NPCA and Saine matter, and remitting the matter back to the Mining and Lands Commission before a different Commissioner. It was the position of the delegation that the NPCA's policies did not allow Mr. Wakulich to make efforts to address the issues identified by the NPCA. The stated basis for this reconsideration request is provided in the attached correspondence from Mr. Wakulich's legal counsel (November 30, 2013).

Stated briefly, the Divisional Court's decision on the Saine appeal was that the Mining and Lands Commissioner made an error in law by giving the NPCA's policies the force of a mandatory rule allowing for no exceptions, no matter what the circumstances. The Court further stated that the Commissioner erred in finding that the legislator's primary intention was clearly to prohibit development in certain areas and that the applicable policy was consistent with this. The Court held that development is not prohibited unless the permission made possible by the legislation (i.e., section 3 of the NPCA's Regulation) is not granted having regard to the criteria set out in that section.

The Wakulich application was denied for the following reasons:

**“The construction of the works imposes an artificial load on the valley slope which can undermine the stability of the slope both currently and in the long term.**

**The placement of structures on a valley slope results in an unnecessary risk to property and safety.**

**That the construction of a structure on a regulated valley slope is contrary to section 3 of NPCA Policies, Procedures and Guidelines for Administration of Ontario Regulation 155/06 and Land Use Planning Policy Document, dated December 12, 2007.”**

In considering the decision of the Division Court on the Saine matter, the NPCA may consider revising and/or clarifying its policies regarding applicants' abilities and opportunities to make submissions prior to the NPCA forming an opinion on whether or not the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development.

Despite the above, the opinion of the NPCA with respect to the subject proposal has not changed and there are no studies or analysis presented that confirm that the works were designed and constructed with proper consideration of bank loading and stability. In addition, there is no information that confirms the stability of the slope over the anticipated life of the structure, nor any information regarding the preventing of unnecessary risk to property and safety.

Based on the above information and with input from the NPCA's solicitor, the following comments and recommendations are presented:

The Divisional Court decision on the Saine appeal did not hold that a denial of a permit was necessarily wrong, but it did hold that the decision to deny or approve a permit must be reasonable and made with reference to the express criteria of the legislation. The Court held that an absolute prohibition based on policies and without considering applicable legislative criteria was not the proper exercise of discretion with respect to the permit process. In the result, the Court did not require the NPCA to grant a permit, but, in fact, set aside the decision of the Mining and Lands Commission and referred the matter back for another hearing before a different Commissioner to consider the individual application.

The Wakulich matter has already been before the Board on this issue, and the Board made a decision that a permit should not be granted. It undermines the Board's authority for it to reconsider this same issue with no basis for a reconsideration. Additionally, it sets a precedent that the Board may reconsider every decision it makes upon request by applicants or other members of the public.

Mr. Wakulich has already appealed the Board's decision denying a permit to the Mining and Lands Commission, and it is incumbent upon him to pursue that appeal in that jurisdiction. The decision on this issue is properly before the Mining and Lands Commission.

The NPCA is obligated to enforce its Regulation. The decision has already been made by the NPCA to prosecute Mr. Wakulich, and that prosecution is ongoing and in the hands of the prosecutor. A reconsideration of the permit application undermines the prosecution.

Given the above, it is my position that the NPCA is not in a position to reconsider its decision on the Wakulich application. I recommend that the NPCA allow the process to continue as a prosecution and an appeal to the Mining and Lands Commission, where the applicant would be afforded the opportunity to present his position in that forum.

**RECOMMENDATION:**

**That Report 63-12 be received and that the Wakulich request for reconsideration for a permit for the construction of solar panels on the bank of Martindale Pond/Twelve Mile Creek at 9 Pine Street, City of St. Catharines, be denied.**

Respectfully Submitted By:



Tony D'Amario, P. Eng. CAO/ Secretary-Treasurer



**TO:** The Chairman and Members of the Authority

**DATE:** December 10, 2012

**SUBJECT:** Debenture MOU – Niagara Region - Report No. 64 -12

The Board will recall an outstanding issue with respect to debt financing of past NPCA capital projects by the Niagara Region. Over the last several years, the NPCA budget reflected a debt payment to the Niagara Region which has been in turn levied as a special benefitting levy to the Niagara Region. The NPCA 2011 approved financial statements included a note that indicates the debt payment, but did not indicate or otherwise reconcile the total outstanding debt on the financial statements. The reason for this was, based on our legislation, that our yearly invoice to the Niagara Region was and is a statutory levy. However, as indicated above, the Authority is committed to making repayments on the debt charge until paid as per our previous understanding and agreement.

The Niagara Region staff have indicated concerns that the NPCA financial statements do not recognize the debt on our books and accordingly there is no transparent record of the debt in either of the NPCA or Region's financial statements. In an effort to deal with this matter, NPCA and Region staff, legal representatives and auditors met to discuss viable options. Our auditors reviewed the financial statements of the other Conservation Authorities in Ontario and found no other municipalities that have borrowed on behalf of the Authority to finance the Authority's capital levy. As there was no model to refer to in this regard, the group developed an appropriate MOU for consideration by the Authority that would address the issues.

Attached is a copy of the proposed MOU for consideration of the Board as reviewed and endorsed by both the NPCA solicitor and auditor as appropriate given the circumstances. It is important to note that:

- the MOU deals with the historical debt amounts only (balance as of year-end 2012 will be \$7,512,782);
- the MOU would end when the historical debt is paid (Year 2020)
- the MOU does not limit the NPCA right to levy for operating or capital expenditures in the future
- the 2012 debt payment of \$1,628,851 is included in the NPCA base budget and will continue in subsequent years notwithstanding that the debt payments will reduce over time.

The final draft MOU was forwarded to the Niagara Region staff for comment, however due to unavoidable issues, their input was not received in time for this agenda. Additional information and/or comments received in this regard will be presented at the meeting.

Once approved, the MOU will be signed by the NPCA Chairman and CAO as well as appropriate Region Representatives

**RECOMMENDATION:**

**That Report 64-12 be received and that the NPCA approve the Proposed Debenture MOU with the Niagara Region.**

Respectfully Submitted By:

A handwritten signature in black ink, appearing to read "Tony D'Amario".

\_\_\_\_\_  
Tony D'Amario, P. Eng. CAO/ Secretary-Treasurer



NIAGARA PENINSULA  
**CONSERVATION**  
AUTHORITY

**TO:** The Chairman and Members of the Authority

**DATE:** December 10, 2012

**SUBJECT:** Border Pass Proposal – Binbrook Conservation Area – Report No. 65-12

At the November Full Authority Meeting, board members asked a number of questions about the cable wakeboard system, proposed at the Binbrook Conservation Area. The following information is offered for clarification:

### **Rental Agreement**

The proposed rental agreement will be prepared by the Conservation Authority's lawyer following the lease format used at other NPCA properties, such as the Jordan Harbour Conservation Area. It will specify operating hours, insurance requirements, and provide a clear indication of NPCA expectations.

### **Rental Rate**

The Conservation Authority will receive a rental of \$500 per month, from Border Pass. Staff anticipate a significant increase in the amount of promotion and visitation as a result of this new activity. In addition to the monthly rent, the NPCA will receive increased revenues from gate admissions and retail sales at the park store.

### **Insurance**

The NPCA's insurance provider advised staff that the cable wakeboarding system would not increase the current insurance premium. It is their opinion that the insurance policy carried by the owner/operator will serve to protect the Conservation Authority.

In addition to the operator's insurance coverage, the Conservation Authority will be identified through the lease agreement and waivers, signed by participants using the wakeboard system.

### **Wave Impacts**

The surface waves generated by wakeboarding will not be any greater than the natural wave action already experienced along this section of the reservoir shoreline. Existing shoreline protection should be more than sufficient to prevent erosion. To confirm this, staff will monitor the site to ensure that any impacts from the activity are recognized early and remediated through changes in operation or modified protection works.

Another concern was raised about potential disturbance of sediments on the bottom of the reservoir. Based on discussions with other sites where this system is in use, the wakeboard activity does not impact bottom sediments. In spite of assurances from the operator, staff believe additional water testing, throughout the summer, will help to assure other park visitors that bottom sediments or

contaminants are not being disturbed.

### **Conclusion**

Based on the above, staff recommend that the Board authorize staff to enter into a 1-year trial agreement with Border Pass to operate a cable wakeboard system in the Binbrook Reservoir, based on a monthly rent of \$500.

Representatives from Border Pass will be at the December Full Authority Meeting to make a brief presentation and answer questions.

### **RECOMMENDATION:**

**That Report No. 65-12 regarding BoarderPass Binbrook Reservoir be received; and,**

**That staff be authorized to enter into a 1-year, trial agreement with Border Pass to operate a cable wakeboard system at Binbrook Conservation Area;**

Prepared by: Darcy B. Baker, Director-Land Management

Respectfully Submitted by: \_\_\_\_\_



Tony D'Amario, CAO/Secretary-Treasurer



**TO: Chairman and Members of the Authority**

**DATE: December 13, 2012**

**RE: City of Hamilton Planning Memorandum of Agreement- REPORT NO. 66-12**

### Background

In 1996 the Niagara Peninsula Conservation Authority, Hamilton Conservation Authority and Halton Conservation Authority entered into a Memorandum of Agreement (MOA) with the Region of Hamilton-Wentworth to provide plan review and technical clearance services for Natural Heritage and Natural Hazard issues under the Planning Act to the Region (See NPCA Report No. 407-96) attached. Staff have been working with this MOA since 1996. This is very similar to the Niagara Planning Memorandum of Understanding that came into place in 2008. The NPCA also has a MOA with the former Region of Haldimand Norfolk dates back to the late 1990s as well.

### Report

Over the last two years the City of Hamilton and the four Conservation Authorities that provide services to the City have worked on updating the Memorandum of Agreement to clarify roles and responsibilities of the various parties (see Appendix A to the MOA) and to make some housekeeping changes (e.g. changing Region of Hamilton-Wentworth to City of Hamilton).

The updated MOA will have little impact on the existing NPCA workload. The table below identifies the number of Planning Act applications the NPCA has reviewed over the last 5 years. The table shows that the majority of our workload comes from the Region of Niagara.

<b>Planning Appl'ns</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>NIAGARA</b>	169	278	242	275	239
<b>HAMILTON</b>	13	33	19	12	6
<b>HALDIMAND</b>	9	8	7	4	7
<b>TOTAL NPCA</b>	<b>191</b>	<b>319</b>	<b>268</b>	<b>291</b>	<b>252</b>

From the City's perspective it is important to update the MOA to include all four Conservation Authorities that provide them services (the original agreement did not include the Grand River Conservation Authority). The MOA also helps to clarify roles and responsibilities of the City and the Conservation Authorities.

The City will take a report to their Council in February 2013. The MOA is scheduled to take effect on March 1, 2013. Staff will continue working under the existing 1996 MOA until that time. The MOA is for a period of 5 years, after which it may be renewed for a further period of 5 years on written consent of all parties. It may also be amended from time to time in writing with the mutual consent of the parties. Also, any party may terminate the MOA at any time, in writing to all other parties to the agreement, with a minimum of 60 calendar days notice.



**Attachments:**

Attachment 1 – NPCA Report No. 407-96

Attachment 2 - City of Hamilton MOA

**Recommendation:**

**That Report No. 66-12, regarding the Memorandum of Agreement with the City of Hamilton, Hamilton Conservation Authority, Conservation Halton, Grand River Conservation Authority and Niagara Peninsula Conservation Authority be received and,**

**That the CAO/Secretary Treasurer of the NPCA be directed to formally enter into this MOA.**

Prepared by: Suzanne McInnes, MCIP, RPP Manager, Watershed Development Services

Respectfully Submitted by:



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Tony D'Amario, P.Eng.  
Chief Administrative Officer/Secretary-Treasurer



**TO: Chairman and Members of the Authority**

**DATE: December 13, 2012**

**RE: REPORT NO. 67-12**

### **Background**

As part of the provincial Open for Business initiative, the Ministry of Natural Resources (MNR) proposed amendments to O. Reg. 97/04, the "Content of Conservation Authority Regulations under Subsection 28 (1) of the Act: Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" under the Conservation Authorities Act. After public consultation through the Environmental and Regulatory Registries, these amendments were approved and filed with the Registrar of Regulations on March 4, 2011.

Pursuant to S. 28 and O. Reg. 97/04, each authority has current individual regulations, the "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" regulations. With amendments to O. Reg 97/04 in place, each individual regulation must be amended and approved by the Minister to enact the amendments to O. Reg. 97/04.

### **Report**

The Board previously considered reports on amendments to the NPCA Regulation in 2011 (Reports No. 48-11 and 60-11). The Board's resolutions, along with comments on the EBR posting were considered by MNR resulting in three types of amendments to Conservation Authority Regulations:

1. Principal Amendments to achieve conformity to the amended Regulation 97/04 including: delegation of permit decisions to conservation authority's executive committee or to designated conservation authority employees to make positive permit decisions and enabling extending the maximum period of validity of a permit from 24 months to 60 months under certain criteria and conditions.
2. Clarifying Amendment: MNR required amendment that clarifies the intent of the regulation (deleting a clause that led to legal interpretations inconsistent with legislative intent).
3. Housekeeping Amendments: confirmed through a survey of conservation authorities by Conservation Ontario in 2010. These housekeeping amendments do not expand regulatory authority and do not require amendments to the Act or O. Reg. 97/04.

The details of the 3 types of changes are included in Attachment A.

Attachment B includes a consolidated Regulation 155/06 so the Board can see the impact of approving the 'amending' regulation. Attachment C includes the 'amending' regulation.

MNR staff have advised that signed regulations from the 36 Conservation Authorities will be submitted for the Minister's approvals in two lots: one lot going forward on Monday January 7,

2013 and a second and last lot on Friday January 25, 2013. They will require all approved signed regulations prior to those dates. MNR staff anticipate that it will take 6 weeks or more for Minister's Approval process.

**Summary:**

Staff would advise the Board that the proposed amendments do not expand NPCA's regulatory jurisdiction or prohibitions. The Amendments simply clarify a number of technical discontinuities and more importantly, allow NPCA to process approvals in a more timely fashion as well as, extend the validity of permit approvals, something the development community has been requesting for a number of years now.

As discussed in previous reports, changes to the NPCA Regulation will require a number of companion changes to the NPCA's Policies, Procedures and Guidelines for Administration of Ontario Regulation 155/06 and Land Use Planning Policy document, however as the Board is aware in light of other recent regulatory/court decisions, revisions to our Policy document are already necessary and so, the necessary revisions resulting from this can be done concurrently.

**Attachments:**

- 1) **MNR, October 2012 – sample of 3 types of Amendments to Conservation Authority Regulations**
- 2) **Proposed Consolidated NPCA Regulation including the three types of Amendments**
- 3) **Amending Regulation that the Board is being asked to approve**

**Recommendation:**

**That Report No. 67-12 be received and the following resolution be adopted:**

Whereas an 'amending' regulation to the individual Conservation Authorities Act Section 28 'Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation' has been prepared in conformity with the provisions in Section 28 of the Conservation Authorities Act and the amended Ontario Regulation 97/04;

THEREFORE BE IT RESOLVED THAT the Niagara Peninsula Conservation Authority adopts the subject 'amending' regulation that will amend the individual Conservation Authorities Act Section 28 'Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation'; O. Reg (155/06)

AND THAT the said 'amending' regulation be submitted to the Ministry of Natural Resources for consideration by the Minister of Natural Resources for the Minister's approval.

Prepared by: Suzanne McInnes, MCIP, RPP, Manager, Watershed Development Services

Respectfully Submitted by: \_\_\_\_\_

  
Tony D'Amario, P.Eng.  
Chief Administrative Officer/Secretary-Treasurer



NIAGARA PENINSULA  
**CONSERVATION**  
AUTHORITY

**TO: The Chairman and Members of the Authority**

**DATE: December 10, 2012**

**SUBJECT: PFOS Compounds at the Binbrook Reservoir (update) – Report No. 68-12**

There is no further progress to report on the PFOS issue at the Binbrook Reservoir. The Ministry of the Environment is still reviewing a clean-up proposal for the Hamilton International Airport site, prepared by consultants working for Tradeport.

Staff will continue to follow-up with the Ministry of the Environment to get the most recent information on sport fish consumption guidelines to pass along to visitors who are ice fishing.

**RECOMMENDATION:**

**That Report No. 68-12 regarding PFOS Compounds at the Binbrook Reservoir be received.**

Prepared by: Darcy B. Baker, Director-Land Management

Respectfully Submitted by:

  
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Tony D'Amario, CAO/Secretary-Treasurer



**TO: Chairman and Members of the Authority**

**DATE: December 13, 2012**

**RE: PROJECT/PROGRAM STATUS REPORT - REPORT NO. 69-12**

## **WATER MANAGEMENT**

### **I. Watershed Development Services Division**

#### 1) Municipal and Development Plan Input and Review

- i) To the end of November, staff have reviewed and processed 315 planning applications (of various types/complexity) and 306 building permits. In addition staff responds to many general enquires both from local municipalities and the public. Inquiries from landowners, real estate agents, etc. regarding floodplain mapping for the Welland River in Wainfleet, West Lincoln, Pelham and Welland continues to be higher relative to other systems.
- ii) The NPCA is involved in the review of the Niagara Planning Memorandum of Understanding. The Manager of Development Services sits on a Committee comprised of local and Regional staff who will be guiding the process.
- iii) The NPCA provided assistance to the Township of West Lincoln regarding the OMB hearing for the new Lincoln Agricultural Society Centre. Staff were able assist the Township with a Terms of Reference for a Hydrogeological study that was an important component of Minutes of Settlement presented to the Ontario Municipal Board.

#### 2) NPCA 'Regulation of Development, Interference with Wetlands, and Alteration to Shorelines and Watercourses'

##### i) Permits

To date, 149 permits have been issued.

##### ii) Violations

A separate Confidential Violation Status Report has been prepared for November.

##### iii) NPCA-DFO Partnership Agreement

As part of the NPCA-DFO Partnership Agreement, NPCA staff work as a liaison between DFO Assessors and proponents to recommend appropriate fish habitat compensation projects. To date, NPCA's Biologist has been consulted on approximately 69 matters.

## **II. Watershed Technical Services Division**

### **1) Source Water Protection Plan**

Source protection staff continues to liaise with municipal staff for the implementation of the Source Protection Plan (SPP). Presentations were given to City of Thorold planners and the Lake Gibson Committee. Other source protection tasks included troubleshooting and QA/QC of provincial database uploads, and coordinating other source protection requests from the province.

### **2) Water Quality Monitoring Program**

- Surface water quality monitoring is now completed for the 72 sample stations in the NPCA watershed. These samples are analysed for bacteria, metals, nutrients and general chemistry.
- Staff is continuing to monitor water levels at all Provincial Groundwater Monitoring Network (PGMN) wells. The NPCA has completed the water level correction review as part of the regular maintenance of this data. Staff collect water quality samples from PGMN wells.
- Staff collected benthic samples in the fall for the Hamilton Airport and Glanbrook Landfills biomonitoring projects.
- Staff continues to assist the MOE with two projects: 1) the nutrient track down in Beaver Creek and Big Forks Creek watersheds; 2) and the Balls Falls Climate Change station.

### **3) Geographic Information Systems**

#### **a) Source Water Protection Support Activities**

- Staff are working on several lingering issues with the water quantity database after another round of provincial peer review.
- Archiving of project workspaces and organization of valuable data elements not captured in the MOE prescribed information deliverables continues when time permits.

#### **b) Watershed Development Services Support Activities**

- Technical development tasks and associated programming with the Property Info Summary application are advancing. This application will compile regulation and other plan review information associated with Authority responsibilities at the parcel level in a highly accessible format.
- In 2012, the spatial data for the Authority regulation hazard inventories were restructured into improved data models designed to better support the automated generation of screening derivatives through advanced geoprocessing workflows.
- The creation of improved documentation for the Authority hazard inventories and screening derivatives is also underway. Objective is to develop a single document containing enhanced metadata, detailed mapping methodologies, data dictionaries for table attributes, diagrams and descriptive explanations detailing the

geoprocessing/analysis routines behind regulation hazard inventory and screening derivative compilations.

- Floodplain mapping/generic regulation updates to integrate latest CWR lines. All linework, polygon feature classes, reports and maps have been prepped for potential approval and release. Updates were also completed of the area, parcel and building footprint statistics for the new floodplain extents

### **c) Corporate GIS and Information Management Support Activities**

- Port Colborne, Wainfleet, Pelham, Welland, Grimsby and Lincoln, have been delivered as part of the Niagara Watershed's 1 meter contour supporting Digital Terrain Model (DTM) update funded through the Niagara Water Strategy. Staff are triangulating/rendering these into surfaces for visual QA/QC.
- Information on surface water features (and how they are compiled from the DTM update) was communicated to the NWS Water Advisory Group, and Geomatics Niagara Information Advisory Group (GNIAG) The surface water features will be used in the Niagara Water Strategy project, 'Contemporary Mapping of Watercourses from an Environmental Risk and Management Perspective'.
- As part of the broader IT network and due to a common enterprise GIS data management environment, the office migrated in step with the Region to ArcGIS 10.0, which is the Authority's desktop GIS software.
- An accompanying data out-package for the Nature for Niagara's Future natural heritage system assessment project has been compiled and is ready for release pending a decision on the final report.
- The extent of MNR evaluated wetlands in the Ecological Land Classification mapping (from the Natural Areas Inventory project) continues being inferred to the community series level from the community class level they are provided in to make the product more consistent.
- The creation of flow charts for development services processing workflows continued this past month.

## **4) Flood Control**

### **a) Monitoring & Major Maintenance**

- i) Staff continues to monitor the water levels at the Binbrook reservoir on a daily basis. The reservoir's water level is currently sitting at the normal holding stage.
- ii) Staff are coordinating the replacement of the existing Binbrook Control Building 10' wide equipment access doors. The existing doors are original to the building (1971) and have deteriorated to the point where they cannot be closed completely and are required to be chained shut. The replacement overhead rolling steel door is scheduled to be installed by mid-January 2013.
- iii) Staff continues to routinely monitor the water levels at our 14 stream gauge stations, climatic data at our 15 climate stations, and undertake routine maintenance, calibration, and inspections at all 25 installations, as part of the NPCA's routine flood forecasting and warning duties. The public may access this real-time water level and rainfall information through the NPCA's website.

iv) On December 17, the NPCA will host the next quarterly Regional Flood Forecasting and Warning meeting in order to ensure that the NPCA flood forecasting and warning efforts remain consistent and integrated with our local Conservation Authorities (Hamilton, Grand River, and Long Point CAs).

#### **5) Other**

a) Technical Services staff continues to provide on-going technical engineering support to the Development Services, Restoration, and Lands Divisions as requested.

b) Presented at the ESRI ArcGIS Conference on "Source Water Sewage System Analysis", Toronto, Ontario

c) Participated in provincial meetings for (i) Ontario Geological Survey data needs assessment, (ii) Ministry of Natural Resources Ontario Low Water Response program review

d) Niagara Water Strategy technical support for Liquid Assets Report and Water Use Survey

#### **Ball's Falls Conservation Area**

Applications are being sent out to potential vendors for the 39<sup>th</sup> Annual Ball's Falls Thanksgiving Festival.

The Canadian Museum Operating Grant program provided feedback on our application. All is well but there are areas to improve upon. The Site Administrator is moving forward with plans to achieve these desired results and met with the local Ministry of Culture and Communications advisor. One of the objectives for 2013 will be the development of a strategic plan for the museum operations. This will be completed in cooperation with the advisory board before being brought to the NPCA Board for review and consideration.

A new video, showcasing the facilities rental program, has been posted on Facebook and the Ball's Falls website. Positive response was seen in less than 24 hours with two bookings. The Canada at Play Exhibit is now on in the temporary gallery and will run until March 25. The Site Administrator is working on the next exhibit which is the Bee exhibit.

Historical buildings were prepared and decorated for the school and public programmes. The weekend of December 1<sup>st</sup> and 2<sup>nd</sup> saw the return of "A Visit with Santa". The program went well in spite of the rain on Sunday.

A number of the school program bookings have been cancelled as a result of job actions by Ontario's elementary teachers. Cancellations continue to come in, as this report is being prepared, so an assessment of the final impact may not be available until the end of the year. Six outstanding circa 1860's costumes were donated to the Site Supervisor who promptly donated them to Ball's Falls. These costumes, complete with accessories, will start off the move toward improved historical interpretation through costumes.



## **Binbrook**

The 2012 waterfowl hunting season is now over. Staff noticed a decrease in the number of hunters participating in the program. We will be auditing the program over the next few months and speaking with hunters to determine if there are changes that would improve operations.

The beach expansion project was completed this past month and is ready for use next season. This project doubles the amount of beach area available for public use and will help keep up with the demand for park use experienced during the busy summer season.

## **Chippawa Creek**

Preliminary designs for the new washroom building for the campground are completed. Next steps will involve final preparations of the building plans and submission for permit with the Township of Wainfleet. In the meantime, the building site is now cleared and secured for the winter.

## **Gord Harry Conservation Trail**

We are working with the staff in Haldimand County and with Trans Canada Trail (TCT) to finalize project plans and TCT funding for trail connections between Niagara Region and Haldimand County. This project is an important piece for TCT to complete their trail links in this area, and help fulfill their vision of connecting the Trans Canada Trail coast to coast by 2017 for Canada's 150<sup>th</sup> anniversary.

This trail connection will be completed with both an "on road" section along the Feeder Canal Road together with the development of an abandoned railway line owned by the County of Haldimand, and connecting to the western end of our Gord Harry Conservation Trail. The total length of the trail project comprises approximately 5.2 kilometres, the NPCA portion of the Gord Harry Trail to be developed is approximately 1.2km.

In June 2006 the Gord Harry Conservation Trail officially opened to the public and has been well used by walkers, cyclists, horseback riders, and nature enthusiasts. The completion of the western end of the trail in Wainfleet, and connection with Haldimand, will allow visitors another opportunity to discover and experience the beauty and fascinating history of this part of the Trans Canada Trail.

## **Property Assessments**

The property assessments from MPAC for our conservation lands are being received and reviewed by the Conservation Planner. We have received assessment information from Niagara Region and Haldimand County, still waiting on Hamilton to complete our full review. Once we receive all the assessment information a more detailed report will be prepared and shared. Where possible, our conservation properties are enrolled in the Conservation Land Tax Incentive Program (CLTIP) and Managed Forest Tax Incentive Program (MFTIP) for tax breaks. Each year our property assessments are analyzed and paperwork is submitted by staff to these programs. Staff also assist with landowner inquiries about these tax incentive programs and provide information and direction for the public to the appropriate MNR staff to contact for further assistance.

## **20 Valley - Jordan Stairs**

Staff are following up on reviewing and securing the site for the winter season while pursuing funding options for stair and trail construction with Ontario Heritage Trust and local stakeholders. Currently barricades and signage are posted to advise the public the trail is closed to use.

## **Town of West Lincoln – School Trails Project**

Staff are offering their expertise with trail planning and construction in consultation with the Town of West Lincoln and Grade 9 geography students at the Smithville Christian High School. The students are receiving hands-on learning experiences while helping the Town with parkland and trail ideas for implementation in Smithville.

## **COMMUNITY RELATIONS**

### **Conservation Achievement Awards**

218 people attended the Conservation Achievement Awards reception on November 28<sup>th</sup>. Thanks to members and staff who assisted in making the evening special for our guests. Feedback has been very positive.

### **Strategic Plan Sub-Committees**

The working groups are continuing to meet and making progress to achieving their performance targets. At this time the work plan will take them into the new fiscal year at which time they will be in a better position to determine timelines for completing their tasks. Members are very enthusiastic and diligent about their involvement in this very important process and the contributions will be of great assistance to the Strategic Planning committee.

### **Delegation from China**

NPCA receives numerous requests throughout the year to host groups of professionals from other countries. Staff will be hosting a delegation of officials from the Henan Association for Science and Technology on January 22, 2013. The group has secured their visas and the purpose of their visit is to learn about the structure of the NPCA, funding, and our role in natural resource management.

### **Twenty Valley Tourism Association**

As a founding partner of the Twenty Valley Tourism the NPCA continues to reciprocate through opportunities that allow for cross promotion of events. The Association is currently planning for the annual Twenty Valley Winter WineFest to be held January 12 & 13, 2013 in Jordan Village – times: Saturday 11am-10pm • Sunday 11am-6pm  
Free Admission • Free Parking with shuttles to site

This event gives us a great opportunity to promote our conservation areas and programs especially Ball's Falls to many visitors.

### **WaterSmart Niagara**

Staff attended a meeting of the Water Advisory Group on November 29<sup>th</sup>. Project participants were able to provide reports on a number of projects that were completed with assistance of funding from the WaterSmart program. WaterSmart Niagara, formerly known as "The Niagara

Water Quality Protection Strategy" (NWQPS), was released in October, 2003. The result of a 14 month multi-stakeholder consultation effort, WaterSmart Niagara is a strategy that works towards the common goals of protection, restoration and management of water resources across the Niagara watershed. The strategy guides users on how to best manage activities that affect our ground and surface water resources. It is intended to build on past successes, current initiatives, and future plans of stakeholders and area municipalities.

**Conservation Ontario Whitepaper (October 2012)**

Ontario's Conservation Authorities have developed a whitepaper to promote discussion around Watershed Management Futures for Ontario. The purpose of the whitepaper is to spur discussion between Conservation Authorities and the Province about how to more effectively manage Ontario's watersheds by leveraging local and provincial resources in order to create efficiencies in Ontario's watershed management services and programs.

It is suggested that discussions focus on the roles and responsibilities for managing Ontario's watersheds, as well as how to redefine relationships between Conservation Authorities and provincial ministries. 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.

To move forward, the whitepaper acknowledges that the dialogue must include municipalities and other stakeholders and asks that the province take a leadership role in establishing the dialogue at the earliest possible date. Through this dialogue the goal is to more effectively leverage local and provincial efforts to protect Ontario's natural resources.

**Freedom of Information Requests**

Staff received 5 freedom of information requests during the month of November. All requests have been responded to.

**Recommendation:**

**Report No. 69-12 outlining the status of Authority projects/programs be received for information.**

Respectfully Submitted by:   
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Tony D'Amario, P.Eng.  
Chief Administrative Officer/Secretary-Treasurer