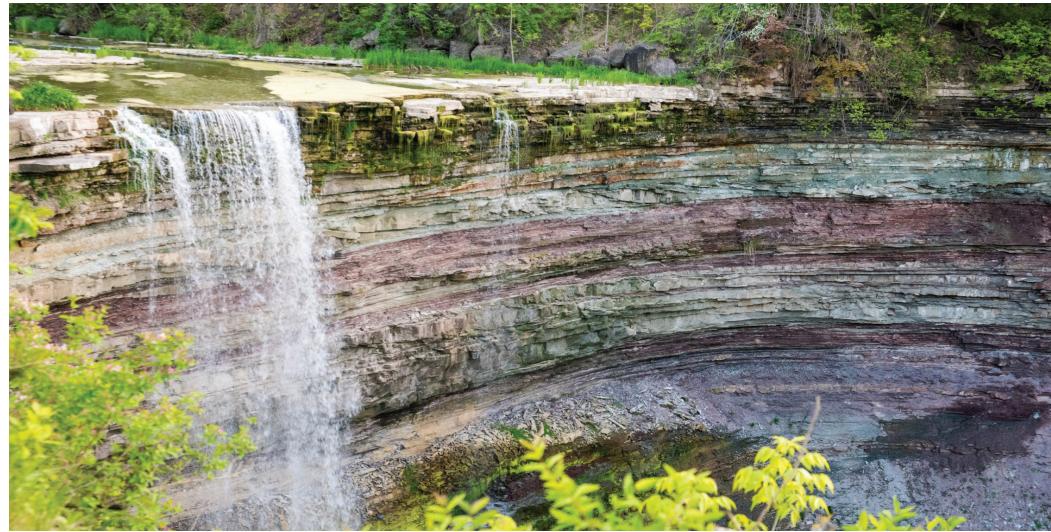




Office of the Auditor General of Ontario

Special Audit of the Niagara Peninsula Conservation Authority



September 2018



Office of the Auditor General of Ontario

To the Honourable Speaker
of the Legislative Assembly

I am pleased to transmit my report on the
Special Audit of the Niagara Peninsula
Conservation Authority, as requested by the
Standing Committee on Public Accounts under
Section 17 of the *Auditor General Act*.

A handwritten signature in black ink, appearing to read "Bonnie Lysyk".

Bonnie Lysyk
Auditor General

September 2018
Toronto, Ontario

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Niagara Peninsula Conservation Authority

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Special Audit of the Niagara Peninsula Conservation Authority

1.0 Reflections

In light of mounting criticisms of the Niagara Peninsula Conservation Authority (NPCA), the Standing Committee on Public Accounts of the Legislative Assembly of Ontario requested on October 25, 2017, that our Office conduct an audit of the NPCA. In Canada, conservation authorities are unique to Ontario and were created by the *Conservation Authorities Act* (Act) almost 75 years ago. The Act and its regulations lay out the mandate of conservation authorities and their governance through boards of directors that are largely composed of municipal mayors and councillors.

During our audit, we found significant operational issues specific to the NPCA. Many of these issues stem from a broader governance issue relevant to all conservation authorities that will need clarification and guidance from the Province to overcome. The Act states that conservation authority board members have the authority to vote and generally act on behalf of their respective municipalities. However, employees and the public have the different expectation that board members will act in the best interests of the conservation authority they represent.

In the case of the NPCA, Board members have been involved in day-to-day operations and other situations where they have put, or have been per-

ceived to have put, the interests of their municipality ahead of the interests of the conservation authority. This has contributed to internal and external criticisms of the NPCA over the last few years.

Our report includes recommendations directed to both the NPCA and the Province. The NPCA needs to restore community trust by making improvements in the areas of human resources, procurement, capital planning, flood mapping, restoration programming, complaint follow-up and violation enforcement, review of development proposals and permit applications, and performance measurement and public reporting. The NPCA Board and management have responded positively to these recommendations. As well, the Ministry of the Environment, Conservation and Parks (Ministry) has committed to work with the NPCA and monitor its progress on implementing them. It is also committed to working with municipalities to establish clear and consistent expectations for conservation authority roles and responsibilities.

In closing, we appreciate the opportunity to have worked with those both directly and indirectly involved in municipal governance. NPCA Board members, management and staff engaged in productive discussions with us throughout the audit. We thank them for their co-operation. We also value the input we received from the Ministry and Conservation Ontario, which represents the 36 conservation authorities in Ontario.

2.0 Summary

The Niagara Peninsula Conservation Authority (NPCA) is one of 36 conservation authorities in Ontario. Each of them delivers programs and services to manage natural resources and protect people and their properties from natural hazards such as floods and erosion.

The *Conservation Authorities Act* (Act) establishes the legislative framework for the creation, funding and operation of conservation authorities in Ontario. It is administered by the Ministry of the Environment, Conservation and Parks (Ministry, previously the Ministry of Natural Resources and Forestry). The Act requires that conservation authorities undertake activities to “further the conservation, restoration, development and management of natural resources.”

On October 25, 2017, in light of mounting criticisms of the NPCA, the Standing Committee on Public Accounts of the Legislative Assembly requested that our Office conduct a value-for-money audit of the NPCA.

Our audit covered the areas noted in **Figure 1**. As **Figure 1** shows, there were no issues in the NPCA’s management of its flood-control structures, water quality monitoring, and operation of its conservation areas to deliver recreational and educational programs to the public. For example, NPCA staff regularly monitor surface and groundwater quality across the watershed and publicly report the results of their monitoring annually. In addition, the NPCA delivers environmental education programs that highlight the importance of sustainable environmental management. This report focuses on areas for improvement.

The NPCA serves about half a million people in the Niagara Peninsula, encompassing the entire Niagara Region (made up of 12 local municipalities), 21% of the City of Hamilton and 25% of Haldimand County. The Board of Directors that governs the NPCA comprises 15 members who are appointed by the municipalities within the NPCA’s

jurisdiction (Niagara Region, Hamilton and Haldimand County). In 2017, the NPCA received about \$8.9 million (or 71% of its total revenues of about \$12.5 million) from municipalities, about \$380,000 from the Province, and the rest through federal funding, fees charged for specific services, and donations from individuals and organizations.

Overall Conclusion

Over the last few years, the NPCA has taken steps to improve its business functions and has several initiatives under way. In 2011, the NPCA Board identified the need to make operational changes and, in 2014, began implementing such changes. For example, the NPCA developed its first Strategic Plan in 2014 and in 2017 assessed its progress against the goals outlined in the plan. At the time of our audit, the NPCA was also developing its 2018–21 Strategic Plan, which was approved by the NPCA Board in July 2018. The 2018–21 Strategic Plan identifies the four areas where the NPCA will focus its efforts: using science and evidence to support watershed management decisions; planting trees and native plants to rebuild the canopy; creating more parks; and investing in its parks to meet public demand.

However, in our audit of the NPCA, we identified a number of opportunities for further improvement. We found that the NPCA needs to improve its processes to ensure that it delivers programs and services economically, efficiently and in accordance with relevant legislation, regulations, agreements and policies, and that the impact of human activities, urban growth and rural activities in the lands within the NPCA’s jurisdiction is effectively managed.

We also found that the NPCA does not have effective processes to measure, assess and publicly report on the operational effectiveness of its programs and services. As a consequence, the NPCA has not been able to fully demonstrate, and the Ministry and municipalities could not fully assess, how well the NPCA was fulfilling its legislative mandate to further the conservation, restoration,

Figure 1: Areas Covered in Our Audit

Prepared by the Office of the Auditor General of Ontario

	No Issues Noted	Issues Noted*
Activities NPCA Must Undertake as a Conservation Authority		
Control, alter or divert watercourses with infrastructure (e.g., dams) to reduce adverse effects of floods	✓	
Forecast floods and issue flood alerts		S. 6.1
Advise municipalities on where development is allowed		S. 6.2
Approve or deny applications from landowners for work permits		S. 6.2.1, 6.2.3
Activities NPCA May Undertake as a Conservation Authority		
Develop maps of flood- and erosion-prone lands and wetlands		S. 6.1
Develop policies for where to allow development and other changes to the environment		S. 6.2.1
Inspect sites for compliance with the <i>Conservation Authorities Act</i> and investigate complaints about suspected prohibited activities		S. 6.3
Monitor water quality	✓	
Work with landowners on projects to restore ecosystems on their properties		S. 6.4
Acquire lands for parks and protection		S. 6.5
Operate conservation areas and deliver recreational and educational programs	✓	
Other Areas		
Measurement of the impact of NPCA's programs and services		S. 6.6
Management of human resources, including hiring, promotion and restructuring		S. 6.2.3, 7.1
Management of financial and capital resources		S. 7.2
Board governance		S. 5.1, 5.2, 5.3, 5.4
Ministry's and municipalities' role in overseeing conservation authorities in general		S. 8.1, 8.2, 8.3

* The section numbers refer to the sections of this report that describe issues noted.

development and management of natural resources within its jurisdiction. And, given that the Ministry only requires conservation authorities to submit their audited financial statements and information about provincially funded activities, the Ministry also cannot assess how well any of the 35 other conservation authorities across the province are fulfilling their legislative mandate.

This report contains 24 recommendations with 75 action items. See **Appendix 1** for a summary of recommendations to the NPCA and the Ministry.

The following sections describe more detailed findings in the areas of governance and the NPCA's operations.

Governance

Our audit found that the governance structure established in the Act and weaknesses in the NPCA Board's oversight were two of the key contributors to the problems at the NPCA that have been the subject of concerns and criticisms.

- **Municipal priorities sometimes conflict with conservation authorities' interests.** Conservation authorities are governed by boards of directors whose members are appointed by the municipalities that provide funding to conservation authorities. The Act authorizes board members to "vote and generally act on behalf of their respective

municipalities.” This puts board members in a difficult position when municipal interests conflict with the interests and responsibilities of conservation authorities and their employees. Further complicating board members’ role is the fact that municipalities are the main source of funding for conservation authorities, accounting for, on average, almost half of their revenues. This dependence may present challenges for conservation authorities, including their boards, to make decisions independent from municipal pressures. The conflict is especially problematic when board members are also elected officials (mayors and councillors), whose municipal priorities include facilitating economic development in their municipalities. In certain cases, allowing such development may not be in line with the provincial legislation and policies that conservation authorities are mandated to implement. For example, in 2017, a municipal staff member contacted their Board representative at the NPCA when the NPCA assessed that the municipality’s proposed amendment to its municipal plan that would allow future development on a floodplain is not allowed under provincial legislation and policies. The Board member contacted the NPCA’s Chief Administrative Officer (CAO) to discuss the matter. Following the discussion, meeting notes on file indicate that the CAO told the municipality that the NPCA would not appeal if the municipality went ahead with the plan. The municipality did go ahead, and the NPCA did not appeal. Amendments made to the Act in 2017, if proclaimed, will give the Province powers to impose requirements regarding Board composition that could address the conflict. At the time of our audit, these amendments had not yet been proclaimed.

- **Not all NPCA Board members follow leading governance practice of keeping a distance from the NPCA’s day-to-day operations.** In their response to the

October 25, 2017 Hansard that contained the motion made by the Standing Committee on Public Accounts, the NPCA wrote that “the NPCA Board plays no part in the approval of planning applications or building permits.” However, we found instances of some Board members being involved in the NPCA’s day-to-day operations. Their involvement ranged from asking for information about a development application to attending meetings between the NPCA and municipal staff to advising NPCA staff to revise their comments about a development application. A key role of the Board is to provide a countervailing perspective by objectively assessing the assumptions and rationale behind management’s recommendations, and to do so through an official process at Board meetings. Any degree of Board involvement in day-to-day operations is inappropriate because it compromises the Board’s objectivity in fulfilling its oversight role. It also has the potential to create a difficult working environment for employees.

- **The Province and municipalities could do more to oversee conservation authorities.** According to the Ministry, the Province and municipalities share responsibility for overseeing conservation authorities. However, neither the Province nor municipalities are involved to the extent necessary to assess how well conservation authorities are fulfilling their mandate. In addition, the Act does not give the Ministry or municipalities powers to intervene to address serious concerns with conservation authorities. In the NPCA’s case, the Ministry and the Niagara Regional Council received numerous requests in the past from municipalities to conduct an independent audit of the NPCA, but both responded that they did not have jurisdiction to initiate an audit.
- **Conservation authorities need more direction from the Province to clarify priorities and ensure consistency in programs and services across the province.** Our survey

found that there are variations in how conservation authorities across the province interpret their mandate and their policies to meet that mandate. For example, 75% of the conservation authorities we surveyed indicated that they encountered conflicts between conservation and development in the work they did. However, the Province has not provided guidance to clarify what “development of natural resources” entails and to what extent conservation of natural resources must be prioritized. Amendments to the Act in 2017 will give the Province the ability to make additional regulations, but those amendments had not been proclaimed at the time of our audit.

Operations

We found weaknesses in how the NPCA delivers its programs and services. These weaknesses affect the NPCA’s effectiveness in fulfilling its legislative mandate. For example:

- **The NPCA does not have complete and up-to-date information about flood risks within the lands in its jurisdiction.** The NPCA does not have maps that identify flood-prone areas for over half of the watercourses in its jurisdiction. The unmapped areas include about 14,500 dwellings and commercial buildings near the watercourse. In addition, almost one-quarter of the maps that have been completed are outdated, having been completed between 20 and 43 years ago. About 51,700 structures are located near the flood lines shown in the outdated maps.
- **The NPCA has not used consistent criteria to assess the safety of proposed development.** In 2007, the Board approved the policies for where development is allowed, in line with the general stipulations of legislation. In 2013, NPCA senior management instructed staff to use more flexible criteria to review development proposals. Although NPCA senior management told us during our audit that staff no longer used the more flexible criteria, our review of a sample of recent reviews showed that the 2007 policies were not always followed. This leaves municipalities, individuals applying to do work on their property and other stakeholders unsure of what the NPCA’s rules are for controlling development in flood-prone areas and wetlands.
- **NPCA senior management proposed a project to allow wetland destruction in Thundering Waters.** In 2015, the NPCA proposed a pilot project to the provincial government to allow wetlands in Thundering Waters to be destroyed to facilitate the development of a multi-use residential, commercial and entertainment community. In compensation, the proposal was that new wetlands (three times as large in area as those that would be destroyed) would be recreated elsewhere. The NPCA had not studied the site’s ecosystems to determine if they contained unique features that cannot be replicated and an NPCA staff member expressed concerns to senior management that there was no scientific analysis to support the proposal.
- **The NPCA is taking longer to complete its review of development proposals and work permit applications than in 2013.** Overall, the average time to review development proposals increased from 16 days in 2013 to 38 days in 2017. This increase can be at least partly attributed to frequent organizational restructurings, which we further comment on below. Our analysis of review times for work permit applications found that the average review time increased from 29 days in 2013 to 37 days in 2017.
- **In some cases, the NPCA has taken little or no action when the *Conservation Authorities Act* is violated (for example, when wetlands are destroyed or debris is dumped into a waterway).** One-quarter of the complaints we reviewed from the public about possible Act violations between 2013 and 2017

were still open, meaning that the potential violation had not been dealt with and the damage or alteration to the environment had not been fixed. In one example, the NPCA had received 11 complaints about debris dumped on an embankment within the floodplain. The NPCA enforcement officer visited the site seven times between December 2014 and August 2017, and did find evidence of a violation. However, the officer did not issue a Notice of Violation ordering the offender to stop, and the offender eventually moved away. In another example, the NPCA found that a developer had destroyed wetlands in 2008 (10 years ago), but at the time of our audit there had been no restoration despite the developer being issued with a court order in 2010 to restore the wetlands by 2011. Although the NPCA normally employs one enforcement officer, there were 13 months between September 2016 and April 2018 that the NPCA had no dedicated enforcement officer, further contributing to delays in resolving violations.

- **The NPCA has not done any work on improving water quality since it suspended its restoration program in July 2017.** One way the NPCA undertook to improve water quality was through a program to carry out restoration projects in collaboration with landowners. In July 2017, the NPCA suspended this program after identifying concerns about the program and engaged an external consultant to review it. The NPCA began accepting applications for the new restoration program in August 2018.
- **The NPCA has not spent \$3 million it received from Ontario Power Generation (OPG) in 2007 as was agreed to with OPG.** The NPCA was to spend the funding between 2007 and 2012 on projects aimed at improving the health of the Welland River, but by 2018 had spent only \$1.45 million, and 27% of that amount (or \$390,000) has been spent on projects that do not meet the agreed-to eligibility requirements.

We noted that in 2014, the NPCA began implementing policies and functions to improve its human resources (HR), procurement and capital-planning processes. However, we identified areas where further work is necessary:

- **The NPCA has not developed a long-term plan for its staffing needs.** In the absence of a long-term plan for staffing, the NPCA implemented four organizational restructurings between 2012 and 2017, which were both costly and short-sighted (for example, eight positions were created only to be eliminated, on average, three-and-a-half years later).
- **The fairness of hirings and promotions is not always clear.** We noted that recruitment files do not always support the hiring of the selected candidate and that promotions are not always competitive.
- **The NPCA has experienced a high employee grievance rate and has many outstanding grievances.** In 2017, 13 of the NPCA's 37 unionized employees filed grievances. Of 51 total grievances filed since 2016, 19 were still unresolved and had been ongoing for an average of 344 days. In 13 of the 16 harassment or discrimination-related grievances and complaints since 2017, the NPCA did not conduct an appropriate or timely investigation of the incident or obtain sufficient information to determine if an investigation was required. Our survey of and interviews with staff found that half of NPCA employees had a negative view of the workplace.
- **Administrative spending has increased while spending on watershed services has decreased.** While the NPCA's overall expenses of \$9.6 million in 2017 were 3% lower than its expenses of \$9.8 million in 2012, expenses related to administrative support and corporate services increased by 49%, from \$2.3 million in 2012 to \$3.4 million in 2017. Spending on watershed services and management of conservation areas decreased by 18%, from \$7.54 million in 2012 to \$6.16 million in 2017.

- **The NPCA has not taken full advantage of opportunities for cost savings.** The NPCA did not acquire goods and services competitively as required by its procurement policy in half of the \$3.8 million of purchases we reviewed. Also, the NPCA's policies do not require that legal services be procured competitively. The NPCA has paid over \$500,000 in legal fees to 17 different law firms since 2015.
- **Given increases to planned capital spending, the NPCA needs to better detail needs and costs.** The NPCA has planned to undertake 237 capital projects between 2017 and 2032 at an estimated cost of \$45.8 million. The NPCA has not planned how to fund these projects and has not prioritized them to know which projects it can undertake with its available funds. As well, its cost estimates for some projects are not always supported. For example, the NPCA estimates in its capital plan that a new headquarters building will cost \$9.2 million, but other documentation it provided to us shows a cost estimate of between \$4.3 million and \$6.94 million.

NPCA OVERALL RESPONSE

The Niagara Peninsula Conservation Authority (NPCA) wishes to express its appreciation to the Auditor General of Ontario for conducting an extensive and thorough review of its operations. The NPCA is committed to openness, transparency and accountability. As the Auditor General has noted in this report, while the NPCA is not perfect, it has taken steps to make improvements to its operations.

The NPCA agrees with almost all of the Auditor General's recommendations in this report. As noted in the report, the NPCA, in recent years, has taken steps to address a number of deficiencies in its business functions. Examples in 2018 include hiring a procurement specialist to ensure best practices are followed for all procurements, and the NPCA Board providing a directive to develop and deliver a comprehen-

sive education/orientation program to ensure that Board members properly understand their roles, responsibilities and the legislative framework within which they operate. Significant investments have been made in our parks and campgrounds, with more planned. In addition, self-generated revenues have increased substantially in the last five years.

Some of the recommendations in this report go beyond the requirements under the current legislation and/or the ability of the NPCA to unilaterally bring about the recommended change. The NPCA looks forward to working with stakeholders including the Province, other conservation authorities and Conservation Ontario.

MINISTRY OVERALL RESPONSE

The Ministry appreciates the Auditor General's observations and recommendations resulting from the value-for-money audit of the Niagara Peninsula Conservation Authority (NPCA). Conservation authorities have played a significant role in the conservation, restoration, development and management of Ontario's natural resources for over 70 years. We are proud of the work undertaken by Ontario's conservation authorities to protect people from water-related natural hazards, provide recreational and educational opportunities, support science and research, and conserve and protect the natural environment.

The Ministry acknowledges that the NPCA has already taken or initiated a number of steps to help address the Auditor General's findings and that the NPCA has made additional commitments to making further improvements. The Ministry is committed to working with the NPCA, and monitoring the progress on the implementation of its action plan. In addition, we will work with participating municipalities, and the broader conservation authority community, to more broadly advance some of the Auditor General's suggested areas for enhanced effort.

A number of changes were recently made to the *Conservation Authorities Act* to provide the government with a suite of new tools for improving oversight and accountability in conservation authorities' operations and clarifying responsibilities. The Ministry will use the recommendations resulting from the audit of the NPCA to help determine how best to use these new tools to help restore responsibility, accountability and trust in the NPCA. Any actions taken by the Ministry to respond to the Auditor General's recommendations will be developed in close consultation with municipalities, conservation authorities and other interested stakeholders.

3.0 Background

3.1 Overview of Conservation Authorities

The Niagara Peninsula Conservation Authority (NPCA) is one of 36 conservation authorities in Ontario. Each is a local public-sector agency that delivers programs and services to manage natural resources and protect people and their properties from water-related natural hazards such as floods and erosion.

Each conservation authority's boundaries are determined by its watershed, instead of by the boundaries of its municipalities. A watershed is an area of land that drains or "sheds" the rain or snow it collects into a common body of water such as a marsh, stream, river or lake. Therefore, the water bodies into which water from an area drains determine the boundary of each watershed.

Approximately 90% of Ontario's population lives in a watershed managed by a conservation authority. See **Appendix 2** for a map of the 36 conservation authorities in Ontario and **Appendix 3** for key information about their operations.

3.1.1 What Conservation Authorities Do

The *Conservation Authorities Act* (Act), passed in 1946, establishes the legislative framework for the creation, funding and operation of conservation authorities in Ontario. Under the Act, conservation authorities are corporations with a degree of autonomy from the provincial government and municipalities; they are local public-sector organizations, but are not agencies, Boards, or commissions of the Province.

According to the Act, the objective of conservation authorities is "to provide, in the area over which [they have] jurisdiction, programs and services designed to further the conservation, restoration, development and management of natural resources." Other federal and provincial acts add to the authority and responsibilities of conservation authorities. **Figure 2** lists the key responsibilities and activities of conservation authorities under the Act and these other pieces of legislation.

The Province began creating conservation authorities after World War II in response to flooding, erosion and deforestation occurring in Ontario because of poor land, water and forestry practices in the 1930s and 1940s. **Appendix 4** shows the evolution of the activities and responsibilities of conservation authorities, including legislative amendments. In 2017, the Province amended the Act to improve oversight and accountability and provide clarification and consistency in programs and services delivered by conservation authorities. Some amendments have been proclaimed, but many have not (see **Appendix 4** for details).

Conservation authorities are unique to Ontario. As shown in **Appendix 5**, in most other Canadian jurisdictions, provincial and municipal governments deliver the key programs and services that in Ontario are delivered by conservation authorities. According to the Province, the watershed-based model under which conservation authorities operate is a meaningful scale to address local needs because changes in one part of the watershed may cause changes across municipal boundaries.

Figure 2: Mandatory and Optional Programs and Services Provided by Conservation Authorities (CAs)

Prepared by the Office of the Auditor General of Ontario

CAs Must	How CAs Do This	Source(s) of Authority	Covered in Our Audit ¹
Mandatory Programs and Services (<i>Conservation Authorities Act, s. 21.1(1)</i>)			
Control the flow of surface waters to prevent or reduce the adverse effects of floods or pollution	Own, operate and maintain flood- and erosion-control infrastructure such as dams, dykes and berms	<i>Conservation Authorities Act, s.21(1)</i> (i), (j), (k); s.39	✓
Erect works and structures, and create reservoirs by the construction of dams; and alter or divert watercourses to further the conservation, restoration, development and management of natural resources	Prohibit, restrict, regulate or grant permission: <ul style="list-style-type: none"> for development in or close to watercourses, shorelines, flood- and erosion-prone lands, wetlands and other areas where development could interfere with a wetland's ability to store water and mitigate flooding to straighten, change, divert or interfere with a watercourse, or to change or interfere with a wetland 	Develop specific policies/rules for <ul style="list-style-type: none"> where development, and changes to and interference with the environment, are prohibited and when allowed what conditions must be met in specific situations when development and changes are allowed Approve or deny work permit applications from landowners based on the CA's specific policies/rules	✓ <i>Conservation Authorities Act, s.28</i> <i>Conservation Authorities Act, O.Reg. 97/04</i> Various regulations under the <i>Conservation Authorities Act</i> ²
Describe the areas, such as waterways, shorelines, flood- and erosion-prone lands, and wetlands, over which it has jurisdiction	Develop maps of regulated areas and floodplain maps Develop a regulation under the <i>Conservation Authorities Act</i> that geographically describes where development is prohibited	<i>Conservation Authorities Act, s.28(4)</i> Various regulations under the <i>Conservation Authorities Act</i> ²	✓ <i>Conservation Authorities Act, s.28(4)</i> Various regulations under the <i>Conservation Authorities Act</i> ²
Develop and implement flood forecasting and warning systems	Monitor water levels and flow, and issue flood alerts	<i>Conservation Authorities Act, s.39</i>	✓
Help ensure that development is directed away from areas of natural hazards where there is an unacceptable risk to public health or safety or of property damage, and not create new or aggravate existing hazards Examples of natural hazard areas: lands next to shorelines that can flood and erode; "dynamic" (unstable) beaches	Develop specific policies/rules for when development is too close to a natural hazard area and should not occur Review municipal policy documents (e.g., official plans and zoning by-laws) and development proposals, and advise municipalities on where development should be restricted	Provincial Policy Statement ³ (issued under <i>Planning Act</i> , s.3), s.3.1 Memorandum of Understanding between Conservation Ontario, the Ministry of Natural Resources, and the Ministry of Municipal Affairs and Housing on Procedures to Address Conservation Authority Delegated Responsibility	✓

CAs May Optional Programs and Services to Further Objectives (Conservation Authorities Act, s. 21.1(1))	How CAs Do This	Source(s) of Authority	Covered in Our Audit ¹
Study and investigate the watershed to determine how natural resources may be conserved, restored, developed and managed	Develop Watershed Plans, water quality reports and floodplain maps	<i>Conservation Authorities Act, s.21(1)(a)</i>	
Acquire land for parks, recreational purposes, or other purposes to achieve its objectives	Buy land for conservation areas and to protect it from development (because it contains natural hazards) Own and operate conservation areas, and run recreation and education programs in them	<i>Conservation Authorities Act, s.21(1)(c),(e),(m)</i>	✓
Charge fees for admission to and use of facilities in acquired land	Conduct inspections of sites where landowners are doing work under approved work permits to ensure the work complies with permit conditions Investigate public complaints about suspected violations of the <i>Conservation Authorities Act</i>	<i>Conservation Authorities Act, s.30.1 to 30.4</i> Various regulations under the <i>Conservation Authorities Act</i> ²	✓
Appoint an officer to ensure compliance with the <i>Conservation Authorities Act</i> and its regulations	Enter into agreements with private landowners to carry out projects	<i>Conservation Authorities Act, s.21(1)(g)</i>	✓
Issue stop work orders and pursue issues of non-compliance with the provincial court	Collaborate with and enter into agreements with ministries and agencies of government, municipal councils and local boards and other organizations and individuals	<i>Conservation Authorities Act, s.21(1)(n)</i>	✓
Enter into agreements with private landowners to carry out projects	Work with landowners to carry out projects to restore ecosystems on their properties	<i>Conservation Authorities Act, s.21(1)(g)</i>	✓
Collaborate with and enter into agreements with ministries and agencies of government, municipal councils and local boards and other organizations and individuals	Work with ministries to monitor water quality	<i>Conservation Authorities Act, s.21(1)(n)</i>	✓
Enter into agreements with private landowners to carry out projects	Work with environmental non-profit organizations to undertake stewardship/ restoration projects	<i>Conservation Authorities Act, s.21(1)(n)</i>	✓
Plant trees	Undertake tree-planting projects through CA stewardship/ restoration programs	<i>Conservation Authorities Act, s.21(1)(o)</i>	✓
Allow research to be done	Issue permits to conduct research in CA-owned parks	<i>Conservation Authorities Act, s.21(1)(p)</i>	
Charge fees for services approved by the Minister	Charge fees for reviewing development proposals and work permit applications	<i>Conservation Authorities Act, s.21.2</i>	
Make regulations with respect to their own lands	Issue hunting and fishing permits	<i>Conservation Authorities Act, s.29(1)</i>	
Optional Programs and Services Provided on Behalf of Municipalities (Conservation Authorities Act, s. 21.1 (1))	Provide programs and services on behalf of a municipality, laid out in a memorandum of understanding with the municipality	Review development proposals for compliance with a municipality's policies relating to stormwater or natural heritage features	<i>Conservation Authorities Act, s.21(3)</i>
		Administer and enforce municipal forest conservation by-laws	
		Conduct technical studies (on, for example, low-impact development and strategizing for climate change)	

1. See Figure 1 for a summary of our findings.

2. There is a separate regulation for each conservation authority.

3. The Provincial Policy Statement is a document that establishes the policy foundation for regulating the development and use of land while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.

3.1.2 Who Funds Conservation Authorities

On average, conservation authorities receive over half of their annual funding from municipalities, about 10% from the Province, and about 3% from the federal government. The remainder is earned through donations from the public, service fees charged to landowners who apply for work permits, and fees charged to the public for admission to conservation areas.

3.1.3 Conservation Authorities' Relationships with Stakeholders

Conservation authorities work with provincial ministries and tribunals, municipalities, and other non-government entities. There are three main stakeholders: the Ministry of the Environment, Conservation and Parks, which administers the Act; municipalities, which provide funding through lev-

ies; and the public, whose interest the conservation authorities are mandated to protect. See **Figure 3** for a summary of conservation authorities' relationships with different stakeholders.

3.2 The Niagara Peninsula Conservation Authority

Established in 1959, the NPCA serves approximately 500,000 people in the Niagara Peninsula watershed, encompassing the entire Niagara Region (made up of 12 municipalities), 21% of the City of Hamilton and 25% of Haldimand County.

See **Appendix 6** for a map of the NPCA's jurisdiction, which covers an area of over 2,400 square kilometres. From a land-use perspective, approximately 64% of the Niagara Peninsula watershed is estimated to be used for agricultural activities, 21% is estimated to be wooded or in a natural state, and the remaining 15% is urbanized.

Figure 3: Entities That Have Interests in Conservation Authorities

Prepared by the Office of the Auditor General of Ontario

Provincial Government	
Ministry of the Environment, Conservation and Parks ¹	<ul style="list-style-type: none"> Administers the <i>Conservation Authorities Act</i> (Act), 1946. Approves municipalities' requests to create, amalgamate and dissolve conservation authorities. Provides grants to conservation authorities to operate and maintain flood- and erosion-control structures, implement flood forecasting and warning systems, and provide comments to municipalities regarding their land-use planning policies (e.g., Official Plans and zoning by-laws) on behalf of the Ministry. May make regulations about board composition and member qualifications, creation of advisory boards and external reviews of conservation authorities.
Other provincial ministries	<ul style="list-style-type: none"> May work with conservation authorities to undertake certain activities (e.g., monitor water quality, develop source-water protection plans).
Local Planning Appeal Tribunal ²	<p>Hears appeals from:</p> <ul style="list-style-type: none"> conservation authorities and members of the public that disagree with a municipality's decision to approve a development; and municipalities that disagree with how conservation authorities allocate special levies.
Mining and Lands Tribunal ³	<p>Hears appeals from:</p> <ul style="list-style-type: none"> municipalities that disagree with how conservation authorities allocate annual municipal levies; and private landowners who have been refused a work permit to develop lands in floodplains or wetlands or who object to the conditions of a work permit issued by a conservation authority.

Municipal Government

Municipal councils	<ul style="list-style-type: none"> • Appoint their representatives to conservation authority boards of directors. The Act prescribes the number of representatives based on the municipality's population. • Fund conservation authorities, through levies, to cover the cost of delivering their programs and services. The Act prescribes the formula for allocating the total levies among the municipalities within a conservation authority's jurisdiction.
Municipal planning departments	<ul style="list-style-type: none"> • Must consult with conservation authorities when developing and updating their municipal land-use planning policies. Conservation authorities provide comments to municipal planning departments.⁴ Municipal councils have authority to approve or deny municipal land-use planning policies. • Must consult with conservation authorities when they receive development proposals from private landowners. Conservation authorities provide comments⁴ to municipal planning departments, which approve or deny the development proposal.
Other	
Conservation Ontario	<ul style="list-style-type: none"> • Represents the 36 conservation authorities and provides input to government bodies about policies that affect conservation authorities. • Provides training and other services to conservation authorities. • Funded primarily by conservation authorities through membership fees.
Environmental non-government organizations	<ul style="list-style-type: none"> • May work with conservation authorities to carry out stewardship or restoration projects to help improve the health of the watershed. In some cases, these organizations may receive funding from conservation authorities.
Private landowners	<ul style="list-style-type: none"> • Must submit development proposals to municipal planning departments, which then consult with conservation authorities. • Must apply for work permits from conservation authorities to develop land in or close to watercourses, shorelines, flood- and erosion-prone lands, and wetlands. Conservation authorities may approve or deny the application.⁴ • May work with conservation authorities to carry out projects on their properties to help improve the health of the watershed. In some cases, landowners may receive funding from conservation authorities.
Members of the public	<ul style="list-style-type: none"> • Must pay fees for access to conservation areas. • May report suspected violations of the <i>Conservation Authorities Act</i> to conservation authorities. • May volunteer in conservation authorities' educational and conservation programs.

1. Before June 29, 2018, the Ministry of Natural Resources and Forestry administered the *Conservation Authorities Act*.

2. Named the Ontario Municipal Board prior to April 1, 2018.

3. Named the Ontario Mining and Lands Commission prior to April 1, 2018.

4. Conservation authorities review municipal land-use planning policies, development proposals, and work permit applications using policies developed by each conservation authority. Conservation authorities base their individual policies on the Provincial Policy Statement (section 3.1) and the *Conservation Authorities Act*. (In some cases, these documents prescribe specific development restrictions, such as the number of metres between a development and an environmental feature; in other cases, their requirements are more generally stated, and it is left up to conservation authorities to determine the rules to follow to meet these requirements.)

3.2.1 Board of Directors

The Board of Directors that governs the NPCA comprises 15 members—12 from each of the municipalities in the Niagara Region, two from the City of Hamilton and one from Haldimand County. See **Appendix 7** for a summary of how each participating municipality selects its member to the Board and the list of current NPCA Board members.

As shown in **Appendix 7**, the Niagara Region's process for Board appointments gives preference to elected officials. When the Board was last formed in 2015, this process resulted in 11 of the Niagara Region's 12 representatives (and 11 of the total Board membership of 15) being elected officials representing the local municipalities in the region.

3.2.2 Financial Operations

In 2017, the NPCA earned about \$12.5 million in revenues from various sources, including municipal levies, provincial and federal funding, fees charged for specific services, and donations from individuals and organizations. As shown in **Figure 4**, the NPCA earned about 71% of its 2017 revenues through municipal levies.

In 2017, the NPCA spent approximately \$9.6 million to deliver its various programs and services. As shown in **Figure 4**, the NPCA categorizes its expenditures based on the following three functions: watershed management, management of conservation areas, and administrative support and corporate services.

For the period from 2013 to 2017, the NPCA had an average annual surplus of about

\$2.7 million dollars. This means that revenues exceeded operating expenses in those years. As of December 31, 2017, the NPCA had accumulated a surplus of \$24.5 million, \$6 million of which is held in reserves for future operating and capital expenditures.

3.2.3 Programs and Services

As of May 1, 2018, the NPCA had 49 full-time staff in three areas of operations (see **Appendix 8** for the NPCA organizational chart). As shown in **Figure 5**, 14.5 of the 49 staff provide administrative services, such as human resources, finance and communications. The remaining 34.5 staff (or 71%) are involved in delivering the NPCA's various programs and services.

Figure 4: NPCA Revenues and Expenses, 2012–2017

Source of data: Niagara Peninsula Conservation Authority

	2012		2013		2014		2015		2016		2017		% Change ¹
	\$ 000	% of Total	\$ 000	\$ 000	\$ 000	\$ 000	\$ 000	% of Total	\$ 000	\$ 000	\$ 000	% of Total	
Revenue Sources													
Municipal levies	7,442	61	7,646	7,826	8,803	8,803	8,891	71					19
Fees, sales and admissions ²	1,584	13	1,578	1,770	1,914	2,006	2,258	18					43
Provincial funding	786	6	863	521	535	555	380	3					(52)
Federal funding	256	2	235	200	214	271	231	2					(10)
Other ³	2,188	18	849	643	730	629	767	6					(65)
Total Revenues	12,256	100	11,171	10,960	12,196	12,264	12,527	100					2
Expenses^{4,5}													
Watershed management	3,439	35	3,073	3,135	3,053	3,343	2,828	29					(18)
Management of conservation areas	4,099	42	3,198	2,862	2,908	2,986	3,330	35					(19)
Administrative support and corporate services	2,288	23	2,306	3,173	2,813	3,140	3,415	36					49
Total Expenses	9,826	100	8,577	9,170	8,774	9,469	9,573	100					(3)
Annual Surplus⁶	2,430		2,594	1,790	3,422	2,795	2,954						

1. Represents the percentage change in dollars earned and spent in 2012 and 2017.

2. Includes user fees and admissions revenue from conservation areas that are open to the public for recreational activities such as camping, hiking, fishing and skiing. It also includes fees for permitting services.

3. Includes transfers from the Niagara Peninsula Conservation Foundation (a registered charity that supports and fundraises for the NPCA) and interest income.

4. Expenses do not include amortization.

5. Expenses will not tie in to the amounts in the NPCA's audited financial statements. Beginning in 2014, the NPCA changed its method for allocating overhead costs, such as those for utilities and information technology. Before 2014, the NPCA allocated costs to the relevant departments. Beginning in 2014, all overhead costs are included in administrative and corporate services. The amounts in this figure reflect the adjustments made, based on available information, to allocate overhead costs to administrative and corporate services for all years.

6. The amount of revenues earned throughout the year in excess of expenses.

Figure 5: Staffing Breakdown, 2012 and 2018¹

Prepared by the Office of the Auditor General of Ontario

	Watershed Services ²		Management of Conservation Areas ³		Administration and Corporate Support ⁴		Total	
	2012	2018	2012	2018	2012	2018	2012	2018
# of management staff	6	7 ⁵	6	6.5 ⁶	3	5.5 ⁶	15	19
# of non-management staff ⁷	22	11 ⁶	9	10.0 ⁸	5	9.0	36	30
Total	28	18	15	16.5	8	14.5	51	49
% of Total Staff	55	37	29	34	16	29	100	100

Note: We have divided staff into the three categories of Watershed Services, Management of Conservation Areas, and Administration and Corporate Support based on the type of work they do, not on their place in the NPCA's 2018 reporting structure as shown in [Appendix 8](#). For example, the work of Geographic Information System (GIS) analysts involves mapping, measuring and monitoring features of the watershed, so they are included as Watershed Services staff, even though they are part of Corporate Resources in the NPCA's 2018 reporting structure.

1. 2018 staffing is as of May 1, 2018. Since then, two senior staff in Watershed Services have left the NPCA. The NPCA filled one position with a temporary external contract staff and had not filled the other when we completed our audit.
2. **Watershed Services** include reviewing development proposals and work permits, monitoring water quality, forecasting floods and issuing flood warning, restoring the natural state of the watershed and analyzing GIS data for mapping, measuring and monitoring features of the watershed.
3. **Management of Conservation Areas** includes developing programming for and running events at conservation areas, as well as operating the areas.
4. **Administration and Corporate Support** includes the functions of finance, communications, public relations, human resources and administrative support, as well as the work of the Chief Administrative Officer (CAO).
5. Management staff includes managers and supervisors. In [Appendix 8](#), the seven Watershed Services management staff are the Watershed Management Director; the Manager, Plan Review and Regulation; the one staff who reviews work permit applications (a supervisor); the one biologist (a supervisor); the Manager, Water Resources and Restoration; the one engineer who does source water protection and other work (a supervisor); and the Project Manager, Niagara River Remedial Action Plan.
6. In the NPCA's 2018 reporting structure, one Senior Director is responsible for overseeing both Management of Conservation Areas, and Administration and Corporate Support. This figure shows the division of the Senior Director's time as a 0.5 FTE in each of the two areas.
7. All 30 non-management staff in 2018 were part of the union. The union did not exist in 2012.
8. One staff in Watershed Services and two staff in Management of Conservation Areas were on parental leave at the time of our audit.

4.0 Audit Objective and Scope

On October 25, 2017, the Legislature's Standing Committee on Public Accounts (Committee) passed a motion requesting that the Auditor General conduct a value-for-money audit of the Niagara Peninsula Conservation Authority (NPCA). The motion was presented in light of increasing public criticisms against the NPCA.

See [Appendix 9](#) for a summary of the concerns raised during the deliberation before the motion was passed and [Appendix 10](#) for a chronology of events involving the NPCA over the last 10 years.

We accepted this assignment under Section 17 of the *Auditor General Act*, which states that the Committee can request the Auditor General to perform special assignments.

The objective of our audit was to assess whether the NPCA, in partnership with the Ministry of the Environment, Conservation and Parks (Ministry, previously the Ministry of Natural Resources and Forestry) and participating municipalities, has effective procedures and systems in place to ensure that:

- programs and services are delivered economically, efficiently and in accordance with relevant legislation, regulations, agreements and policies, such that the impact of human activities, urban growth and rural activities on the area of the watershed within the NPCA's jurisdiction is effectively managed; and
- operational effectiveness is measured, assessed and publicly reported on.

Our audit criteria (see [Appendix 11](#)) were established based on our review of applicable legislation, directives, policies and procedures,

internal and external studies, and best practices. Senior management at the NPCA reviewed and agreed with the suitability of our audit objective and related criteria.

We conducted the audit between January 8, 2018, and July 31, 2018, and obtained written representation from the NPCA and the Ministry on September 14, 2018, that they had provided us with all the information they were aware of that could significantly affect the findings or conclusion of this report.

Our audit focused on the NPCA's operations (and to some extent, the Ministry and participating municipalities' oversight of the NPCA's operations) in the five-year period between 2013 and 2017. We did not audit other conservation authorities, although we surveyed them about certain aspects of their operations.

The NPCA has a foundation called the Niagara Peninsula Conservation Foundation (a registered charity that receives donations and raises funds for the NPCA). The Foundation's primary activities include hosting three fundraising events annually and procuring goods and services for those events. As part of our audit, we reviewed the Foundation's procurement practices since those expenses comprise the majority of the Foundation's operating costs. We identified issues in the Foundation's procurement practices similar to those at the NPCA (described in **Section 7.2.1**). As such, the Foundation may benefit from implementing our recommendations related to procurement practices (see **Recommendation 20**). We did not perform any other audit work on the Foundation.

Appendix 12 further describes the work we did during our audit.

There has been significant staff turnover in almost all key positions at the NPCA resulting from four reorganizations within the six-year period from 2012 to 2017. In fact, half of the staff at the time of our audit had been employed at the NPCA for less than six years. This posed challenges for auditing various aspects of the NPCA's operations. These challenges were compounded by incomplete

documentation in certain areas, particularly prior to 2014 (a policy to retain records was not put in place until 2017). It is therefore possible that information may come to light after the release of this report that we were not, or could not, be made aware of, and therefore could not incorporate into our findings and conclusions.

Leaked Confidential Document

During the course of our audit, we provided a document to the NPCA for factual clearance describing our preliminary observations from our review of a sample of procurements. This working paper was inappropriately provided to the media by an unidentified individual prior to July 23, 2018. Since the document contained preliminary observations, the details in our report may differ from those reported in the media.

The Office of the Auditor General of Ontario has taken this release of our working papers seriously. Working papers are confidential under Section 19 of the *Auditor General Act*. We conducted an investigation into this matter, but could not reach a definitive conclusion as to who provided the confidential document to the media. However, we have advised the NPCA to take steps to protect confidential documents from being inappropriately disclosed in the future.

5.0 Detailed Audit Observations: NPCA Board Governance of NPCA Operations

The oversight of an organization by its board of directors is critical to ensure that the organization fulfills its mandate, achieves value for money, and operates in compliance with applicable laws, policies and standards.

We reviewed the NPCA's governance structure to assess whether the NPCA's Board operates

according to its legislated framework and leading governance practices. We found that while NPCA Board policies comply with the legislated governance framework, the Board's policies and practices are not aligned with leading governance practices, which has limited the effectiveness of the Board's oversight of the NPCA.

5.1 Board Not Sufficiently Independent for Objective Oversight

5.1.1 Municipal Priorities Sometimes Conflict With Board Responsibilities

The NPCA's Board of Directors decides on the NPCA's strategic direction, including its programs, services, policies and budget. Leading governance practices suggest that board members who are appointed as representatives of a stakeholder group should be vigilant in ensuring that representing their stakeholder group does not conflict with acting in the best interest of the organization they are overseeing. However, under Section 2(3) of the *Conservation Authorities Act*, "board members have the authority to vote and generally act on behalf of their respective municipalities." NPCA Board members said the same to us, confirming that they act primarily on behalf of their municipality when making NPCA Board decisions.

As shown in **Appendix 7**, 12 of the 15 members (or 80%) of the NPCA's Board of Directors are elected officials such as mayors and regional councillors. This is not unique to the NPCA. According to a 2016 Conservation Ontario survey of all conservation authorities, elected officials comprise, on average, 80% of conservation authority boards across the province. In fact, 11 of the 36 conservation authority boards are made up entirely of elected officials. There are only four conservation authority boards in the province with more non-elected officials than elected officials (Lake Simcoe, St. Clair, Sudbury and Upper Thames).

There are certain benefits in having elected officials on the NPCA Board: they know their municipalities and are accountable to the taxpayers they represent. However, due to this accountability, Board members may face situations where they have difficulties balancing their competing municipal and NPCA interests and responsibilities, compromising their ability to make objective decisions in the NPCA's best interest. As a result, these multiple competing interests may place Board members in actual or perceived conflict-of-interest situations. For example, in 2015, one Board member expressed concerns about the NPCA's proposed pilot project to create wetlands elsewhere to compensate for those that would be destroyed in a Niagara Region site called Thundering Waters (described in **Section 6.2.2**) and about which staff had also expressed concerns. The Board member stated that the proposal would create a "conflict of interest" for Board members from the Niagara Region because those Board members would benefit from the development being facilitated by the proposed pilot project.

The issue of competing municipal and NPCA interests is not strictly limited to elected officials—even non-elected officials are appointed to the NPCA Board to represent the interests of their municipalities. This was evident in 2015, when the NPCA Chief Administrative Officer (CAO) at the time, having found no formal agreement between the NPCA's funding municipalities to support the levy calculations in previous years, requested the Board's approval to determine Hamilton's municipal levy in line with the amount it should pay annually under the legislated levy calculation formula (see **Appendix 14** for additional details). Board members voted in line with their own municipality's interests even though the change in the calculation would not have changed the total amount the NPCA received—it would change only the portion of the total levy that each municipality paid. Specifically, representatives from the Niagara Region voted in favour of the increase in Hamilton's

payments, while the non-elected representatives from the City of Hamilton voted against it.

As part of the 2015 review of the Act, conservation authorities' board members' accountability was clarified in draft guidance developed by Conservation Ontario, with support from the Ministry, in 2017, which stated that "members have fiduciary responsibility to the conservation authority as their primary role." The guidance was intended to provide conservation authorities with a template for developing their administrative policies. However, the final version of the guidance released in April 2018 no longer refers to members' fiduciary responsibility to the conservation authority, and mirrors the wording in Section 2(3) of the Act.

RECOMMENDATION 1

To ensure effective oversight of conservation authorities' activities through boards of directors, we recommend that the **Ministry of the Environment, Conservation and Parks** clarify board members' accountability to the conservation authority.

MINISTRY RESPONSE

The Ministry agrees that the responsibilities of authority members need to be clarified.

Conservation authorities are a partnership of the Province and the municipalities that create them to address natural resource issues at the watershed scale. Once established, each municipality within the partnership is entitled to appoint members to the conservation authorities.

We agree that the role of Board members in providing effective oversight needs to be clarified—including how to balance being vigilant in representing the municipalities that appoint them while acting in the best interest of the organization.

The Ministry will work with the Ministry of Municipal Affairs and Housing to develop

governance training to be delivered to conservation authority members that clarifies the role of municipal appointees in providing oversight of conservation authorities' operations. This would include their role in ensuring the effective delivery of programs and services and the efficient use of taxpayer dollars. In addition, the Ministry will develop best management practices for the recruitment and selection of authority members, including best practices for the appointment of non-elected officials.

5.1.2 Conflict of Interest Not Clearly Defined and Understood

The NPCA's Code of Conduct requires Board members to avoid conflict of interest with respect to their fiduciary duties (that is, their duties to take care of the NPCA's resources and assets on behalf of the NPCA). However, the Board has not discussed how its members' various competing interests may give rise to apparent and actual conflict of interests given that Board members are appointed to represent their municipalities' interests. In addition, the Board has not developed any guidance on how to identify circumstances (such as those arising from multiple competing interests) and/or relationships that could lead to a potential or perceived conflict of interest and how to manage them. The onus is on Board members to recognize and declare if, in their opinion, they are in a conflict.

Board members told us in interviews that they did not believe that acting in their municipalities' interests created a conflict with their responsibilities to oversee the NPCA. They referred often to the definition of "conflict of interest" under the *Municipal Conflict of Interest Act*, which is limited to circumstances where an individual or a relative has pecuniary or financial interests in the matter being discussed. NPCA Board policies describe conflict of interest similarly—where a Board member's "private interests or personal considerations ... could compromise or reasonably appear to compromise

the member's judgment in acting objectively and in the best interest of the [NPCA]."

However, as discussed in **Section 5.1.1** above, Board members may face situations where their competing responsibilities place them in a conflict-of-interest position even though they will not directly benefit from the decision financially.

5.1.3 Board Involvement in Day-to-Day Operations and Decision-Making Compromises Board's Objectivity

We found Board member involvement in about 10% of the sample of development proposals and work permit applications between 2016 and 2018 that we reviewed. While this is not a high percentage, no degree of involvement by the Board is appropriate, and the cases we found had the potential to affect people, property and the environment on a large scale.

We also reviewed Board members' correspondence with staff between January 2012 and March 2018 to determine the nature and extent of Board involvement and found that Board members contacted staff about 14 additional development projects.

The nature and extent of Board member involvement ranged from asking for information and updates about a proposal, to attending meetings between the NPCA and municipal staff, and in 2016, instructing NPCA staff that the NPCA needed to support a proposal. See **Figure 6** for example situations where Board members involved themselves in operational matters.

Another example of the Board being involved in day-to-day operations is the new structure of the NPCA's program to restore water quality. In May 2018, the Board approved the proposed structure for its restoration program, whereby Board members will be involved in approving or denying grant applications (see **Section 6.4.1** for details).

A key role played by the Board is to provide a countervailing perspective by objectively assessing the assumptions and rationale behind manage-

ment's recommendations, and to do so through an official process at Board meetings. It cannot fulfill this oversight role when Board members are involved in day-to-day operations. Staff told us that the involvement of NPCA Board members in operational matters created an uneasiness in their workplace, especially when they perceive certain Board members as trying to influence their decisions.

Board members told us they got involved because they were perceived to be accountable to the taxpayers in their municipality. Regardless of Board members' intentions, Board involvement compromises the work and affects the morale of NPCA staff, who are required to review development applications in accordance with the Provincial Policy Statement and the Act. The NPCA Board's Code of Conduct also states that members must respect that staff are charged with making recommendations that reflect their professional expertise without undue influence from any individual Board member.

Our survey results (see **Appendix 13**) indicated that the boards of other conservation authorities are not as involved in day-to-day operations as the NPCA Board. Specifically, 89% of the other conservation authorities we surveyed indicated that their Board members, the majority of whom were also elected officials, were not involved in staff's reviews of development proposals and permit applications.

RECOMMENDATION 2

To ensure that the Niagara Peninsula Conservation Authority (NPCA) Board of Directors has the necessary independence and objectivity to oversee the NPCA's activities effectively, we recommend that the **NPCA Board**:

- adhere to its Code of Conduct, which states that Board members are to refrain from unduly influencing staff, being respectful of staff's responsibility to use their professional expertise and corporate perspective to perform their duties; and

Figure 6: Situations Where Board Members Involved Themselves in Operational Matters

Prepared by the Office of the Auditor General of Ontario

Board Member Involvement Resulted in Future Development Being Allowed in Floodplain

In October 2017, NPCA staff informed a town's municipal staff that the NPCA could not fully support the town's plan to amend its municipal plan, which would allow redevelopment of lands located on a floodplain. This location makes development on them naturally hazardous to the people and property involved because of flood risk (it is land along the Niagara River shoreline). Subsequently, a senior municipal planner from the town contacted the town's representative on the NPCA Board. The planner asserted that the floodplain lands were not in the NPCA's jurisdiction. However, the NPCA is responsible for implementing policies under Section 3.1.2 of the Provincial Policy Statement, which states that development is not permitted within flooding hazards along connecting channels such as the Niagara River. The Board member contacted the NPCA CAO to discuss the matter. Afterward, NPCA staff sent a letter to the town stating that the NPCA did not have jurisdiction over the floodplain but that the flooding hazard remained. The NPCA's comments on the flooding hazard were based on a 2007 floodplain map of the area. In addition, meeting notes on file indicate that the CAO told the municipal planners that the NPCA would not appeal the matter to the Local Planning Appeal Tribunal if the municipality decided to proceed with the plan (conservation authorities that disagree with a municipality's decisions regarding development matters after they have advised the municipality that the matter poses a risk to people and/or property can appeal to the Local Planning Appeal Tribunal; see **Figure 3**). The town approved the plan in March 2018, and the NPCA did not appeal.

Board Member Involvement Aimed to Allow a Development to Proceed

In May 2009, NPCA staff issued a Notice of Violation to a developer for altering and damaging a Provincially Significant Wetland in 2008 while preparing a site for development. Staff instructed the developer to stop the preparations and contact the NPCA to discuss how to remediate the damage. When the landowner did not, the NPCA pursued legal action, and the Provincial Offences Court issued a court order in December 2010 requiring the developer to restore the wetland by September 2011. The developer did not comply. In October 2013, when the developer asked to consult with the NPCA about the development, the NPCA responded that the developer needed to comply with the court order first. On two occasions, the Board member representing the municipality where the wetland was located became involved. In 2015, the Board member asked the NPCA CAO to meet with the developer, stating that "we need some traction" on the development project. The CAO and Director of Corporate Services met with the developer to discuss allowing the developer to begin construction before restoring the wetlands, provided that the developer give the NPCA financial surety for the cost of the restoration. The developer did not provide such surety. NPCA staff were not made aware of this discussion. In June 2017, the developer emailed the Board member citing concerns about the timeline of the development and stating that he wanted to get the project moving by "addressing the remaining environmental issues."

The Board member said he would bring in the developer "to get this done" and forwarded the email to the NPCA CAO. NPCA staff met with the developer in July 2017, reiterating that the developer needed to comply with the court order. In September 2017, the Board decided that before proceeding with the development, the developer should consult with the municipality and NPCA and hire a wetland evaluator to study the wetland and update the restoration timeline. At the time of our audit, the landowner had still not complied with the court order to restore the wetland that was destroyed 10 years previously.

Board Member Communication Undermined NPCA Staff's Concerns

In 2016, a town began the process to amend its municipal plan to allow a large development along the Lake Ontario shoreline. Both Ministry and NPCA staff had concerns that species at risk were present in the lands proposed for development, but the town allowed the developer to clear the lands before an environmental study could be done to confirm. Despite this, an NPCA Board member emailed a local councillor that "if the NPCA can lend any support as [municipal planning staff] gather comments from agencies and the public, don't hesitate to bring [any challenges with respect to shoreline or natural hazard areas] forward." An NPCA staff member was copied on this email.

- update its Code of Conduct to clearly define the circumstances and relationships that could lead to an actual or perceived conflict of interest beyond those defined in the *Municipal Conflict of Interest Act*.

NPCA BOARD RESPONSE

The NPCA Board agrees with the Auditor General's recommendation. In accordance with recent amendments to NPCA Board policies, the NPCA is now developing a Board education/orientation program to ensure that NPCA Board members properly understand their roles and responsibilities. The Chief Administrative Officer will deliver this orientation program to the new NPCA Board of Directors that will be formed after the October 2018 municipal elections.

The NPCA will review its 2017 Code of Conduct and define circumstances and any other relationships that could lead to an actual or perceived conflict of interest beyond those defined in the *Municipal Conflict of Interest Act*.

necessary skills and competencies to oversee the NPCA's activities effectively because it has not identified the knowledge, skills and diversity it needs to do so.

Board members advised us that they rely on the NPCA staff's expertise if the Board does not have expertise in particular areas. This may not be sufficient given the Board's oversight role. A board also needs to rely on the collective skills and expertise of its members to assess the assumptions and rationale behind management's recommendations, and ultimately to make strategic decisions.

In 2014, the NPCA formed an advisory committee—made up of representatives from the agriculture, development, business, land-use planning, conservation, and Indigenous communities—to provide advice to the Board. While this was an important step toward obtaining the perspectives of the NPCA's stakeholders, the Board has not assessed whether the committee's role is sufficient to fulfill any gaps in skills and competencies.

We also noted that the NPCA Board has not had board governance training to help its members understand the scope and limitations of their oversight role. Most Board members told us that they had little or no board-of-director experience when they first joined the Board.

During the Ministry's 2015–16 review of the Act, some stakeholders raised concerns regarding board qualification and composition, identifying the “need to balance board composition to reduce political influence” and stating that “the ideal board composition is a mixture of individuals engaged in governance (e.g., municipal councillors) and those who are experts in the field.” Amendments made to the Act in 2017 (see **Appendix 4**), if proclaimed, will give the Province powers to impose additional requirements regarding Board composition and member qualifications. At the time of our audit, these amendments had not yet been proclaimed.

5.2 Identifying Necessary Skills and Competencies Could Improve Board Effectiveness

The municipalities in the NPCA's jurisdiction do not appoint their NPCA Board members based on skills or competencies. The *Conservation Authorities Act* (Act) does not impose any requirement regarding Board composition and member qualifications beyond establishing the minimum number of representatives and requiring that Board members reside in the municipalities within the conservation authority's jurisdiction.

Some of the current NPCA Board members have backgrounds and expertise in business, law, education, engineering, biology and environmental consulting, and some have identified a personal interest in conservation. However, the NPCA Board cannot determine whether it collectively has the

RECOMMENDATION 3

To ensure that members of the Niagara Peninsula Conservation Authority (NPCA) Board of Directors collectively have the skills, experience and training necessary to oversee the NPCA's activities effectively, we recommend that the **NPCA Board:**

- determine the types of skills and experience required on the Board based on the NPCA's mandate, and develop and implement a strategy to address any gaps;
- work with the NPCA's funding municipalities to ensure that their Board appointment processes consider skills and experience requirements;
- assess the current role of its advisory committee to determine whether it is sufficient in fulfilling any gaps in Board skills and competencies, and revise as necessary; and
- identify initial and ongoing Board governance training needs.

NPCA BOARD RESPONSE

The NPCA Board will undertake an exercise to determine the skills and experience necessary on the Board based on the NPCA's mandate.

As part of this exercise, the NPCA Board will review the current role of its advisory committee to determine whether the committee fills any gaps in Board skills and competencies.

The results of this exercise may be provided to the Niagara Regional Council, Hamilton City Council and Haldimand County Council to assist them in selecting their representatives on the NPCA Board of Directors starting with the 2019–2022 term. The councils, however, ultimately have discretion over the selection and appointment process.

As members are appointed after the October 2018 municipal elections, the NPCA Board will determine the extent of Board governance training that is needed, if any.

RECOMMENDATION 4

We recommend that the **Ministry of the Environment, Conservation and Parks:**

- make a recommendation to the Executive Council of Ontario to proclaim Section 40 of the *Conservation Authorities Act*;
- once Section 40 is proclaimed, make a regulation prescribing requirements for board composition that result in board members having the independence and objectivity they need to fulfill their oversight responsibilities; and
- work with Conservation Ontario and conservation authorities to determine whether governance training should be developed and delivered province-wide for board members of conservation authorities.

MINISTRY RESPONSE

The Ministry agrees that actions need to be taken to strengthen oversight and accountability in decisions made by conservation authorities regarding the conservation, restoration, development and management of natural resources.

Section 40 of the Act enables the Executive Council of Ontario to establish minimum standards for the appointment of authority members, but this is only one tool recently added to the Act to help improve governance. Additional tools include the development of policies, procedures, best management practices, and training programs and materials that would support municipalities in making appointment decisions.

The Ministry will work with its municipal partners to develop best management practices for the recruitment and selection of authority members (which individual municipalities could use when making appointment decisions), and training and orientation materials for authority members. The determination of how best

to use these tools to improve oversight and accountability of conservation authority operations—including whether or not a regulation prescribing requirements for board composition is necessary—will be made in consultation with municipalities.

5.3 Board Does Not Assess CAO or Board's Performance

NPCA policies require that the Board regularly evaluate the CAO's performance against the NPCA's strategic plan and the financial and human resources goals of the organization. We found that the last formal CAO evaluation was conducted in 2001. Since then, the NPCA has had four different CAOs.

We also found that there is no formal process in place for the Board to self-evaluate its oversight processes and activities. The Board has also not established goals and performance indicators to enable such evaluation. Although neither the Act nor NPCA Board policies require a formal evaluation process, leading governance practices suggest that boards should periodically monitor and assess their performance in fulfilling their governance responsibilities. Doing so can help the Board members identify when, for example, their decisions were made in the interest of their municipalities and perhaps not the NPCA.

Many Board members indicated that since they were elected officials, their constituents can assess their performance on the NPCA's Board during municipal elections. However, this raises questions as to whether constituents are evaluating Board members' performance based on whether their decisions were made in the interest of the municipality or of the NPCA. Also, this process may not be as timely as regular and formal board evaluations in identifying areas where improvements are needed. Board evaluations can be designed to focus on specific areas, such as governance policies and processes, committee structures, board member participation and preparation, and the board's

information requirements and ability to obtain the information it needs.

In the absence of such a formal evaluation process, we asked Board members to assess their individual performance on the NPCA Board. Their assessments ranged from "mediocre" to "pretty pleased." Commitment to Board committees and activities also varied among Board members. Many Board members noted that they do not have much time to participate in Board activities due to municipal commitments. We found that three Board members participate in all of the three standing committees they are able to join, while four are only on one committee and two are not on any.

RECOMMENDATION 5

To ensure that the Niagara Peninsula Conservation Authority (NPCA) Board of Directors has all the information it needs to effectively oversee the NPCA and improve its oversight when needed, we recommend that the **NPCA Board**:

- regularly evaluate the performance of the NPCA's Chief Administrative Officer, as required by its policies;
- develop performance indicators to facilitate the Board's evaluation of its oversight processes and activities; and
- regularly evaluate both its collective performance and the performance of individual Board members.

NPCA BOARD RESPONSE

The NPCA Board agrees with the Auditor General's recommendation. The NPCA has recently implemented a performance evaluation process for all of its employees, including the Chief Administrative Officer (CAO). The Board plans to evaluate the CAO's performance in October 2018, and annually thereafter.

Previously, the NPCA Board assessed its collective performance based on its progress in implementing the actions in its

2014–17 Strategic Plan. For example, in 2017, the NPCA engaged a third-party consultant to make this assessment. The consultant concluded that the NPCA had made significant improvement in most areas that were evaluated.

After the approval of its 2018–21 Strategic Plan in July 2018, the NPCA is now developing key performance indicators to enable a formal evaluation of performance against the goals stated in the plan. The NPCA Board will also develop criteria against which individual Board members' performances can be assessed.

The NPCA Board will evaluate its collective performance and those of individual Board members annually.

5.4 More Clarity Needed Around Board Activities Eligible for Per Diem Payments

From 2010 to 2017, payments to NPCA Board members (including honorariums, per diems and travel expenses) increased mainly because per diem payments for Board members' attendance at a variety of meetings increased significantly.

Per diem payments in 2017 totalled \$47,700, compared with \$7,900 in 2010. The per diem rate increased from \$66 in 2010 to \$75 in 2017, which is in line with the average per diem rate of \$73 in the other conservation authorities we surveyed (see **Appendix 13**). However, the total number of meetings claimed by NPCA Board members increased 422% from 121 in 2010 to 632 in 2017. This is equivalent to 42 meetings for each NPCA Board member in 2017. In comparison, Board members in 28 of the other 35 conservation authorities we surveyed claimed an average of four meetings each in 2017.

For the five-year period from 2013 to 2017, we noted that the average annual payments per NPCA Board member (\$3,500) was more than twice the average annual payments per Board member in the other conservation authorities we surveyed (\$1,500). In the same period, each NPCA Board member also claimed an average of 25 meetings

annually—five times the number of meetings claimed by each Board member in the other conservation authorities we surveyed (five).

The NPCA's most recent Board policies (dated 2017) state that Board members may receive per diem payments for attending Board meetings, standing committee meetings, and "other business functions as may be from time to time requested by the Chair, through the CAO." The policies do not specify what "other business functions" may include. This has resulted in one Board member receiving per diem payments for 145 meetings in 2017 (an average of three meetings per week). Only 28 of the 145 meetings were Board or committee meetings; the rest were mainly for attendance at NPCA events, meetings with industry groups and municipal representatives, and performing administrative duties (such as signing Board meeting minutes), and, according to the Board member, preparing for Board and committee meetings.

In comparison, our survey of other conservation authorities found that:

- 68% of conservation authorities do not pay per diems to Board members for attending conservation authority events such as festivals and staff appreciation events;
- 50% of conservation authorities do not pay per diems to Board members for meetings with industry groups; and
- 75% of conservation authorities do not pay per diems to Board members for performing administrative duties such as signing Board meeting minutes.

According to the NPCA Board, 2016 and 2017 have been unusual years that have required increased Board involvement (from 355 per diems in 2015 to 429 in 2016 to 632 in 2017)—through increased Board and committee meetings and a more active presence in the community—in order to address new challenges faced by the NPCA. Although Board members may consider such activities part of their responsibilities, the unprecedented increase in per diems highlights the need for clear rules about payment eligibility.

RECOMMENDATION 6

To ensure that per diem payments to Board members are reasonable and transparent, we recommend that the **Niagara Peninsula Conservation Authority**:

- clarify its Board policies to specify the meetings and other functions for which Board members may receive per diem payments in the future; and
- continue to publish information on actual Board per diems and other expenses annually online.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation and will update its Board policies to specify the meetings and other functions for which Board members may receive per diem payments.

In March 2018, the NPCA published information on Board expenses from 2012 to 2017. The NPCA will continue to publish such information annually.

we found that the NPCA did not have complete and up-to-date information about flood-prone areas within its watershed. Without this information, the NPCA cannot ensure that development does not occur in these areas. According to the Insurance Bureau of Canada, property insurance does not cover flood damage if the structure is built in a flood-prone area.

6.1.1 No Floodplain Maps for Over Half of the Watercourses in NPCA's Watershed

The NPCA does not have floodplain maps for 117 (or 58%) of the 202 watercourses in its watershed. These include 70 watercourses for which the Ministry recommends floodplain maps be prepared because they drain land areas 125 hectares in size or larger.

Neither the Act nor the Ministry requires conservation authorities to develop floodplain maps. However, the NPCA indicated the need to use such maps to review and make decisions on development proposals and work permit applications, and to forecast floods. In addition, for the purpose of implementing the regulations of the Act that govern work permit applications, conservation authorities are required to detail the areas they regulate through a geographic description or by referring to maps.

The NPCA has not formally assessed the risk to the communities around the unmapped watercourses, which include about 14,500 dwellings and commercial buildings. The NPCA does not have a plan, nor has it estimated the funding and time necessary, to map these watercourses. Currently, the NPCA requires landowners who wish to develop near these watercourses to obtain a floodplain map of the area at their own cost.

In our survey of conservation authorities (see **Appendix 13**), we found that this issue is not unique to the NPCA. Almost half (46%) of conservation authorities reported that they have mapped less than 50% of all watercourses in their watershed with drainage areas of at least 125 hectares.

6.0 Detailed Audit Observations: Protection of People and Property from Flooding and Erosion

6.1 Identifying Flood-Prone Areas

According to the Canadian Disaster Database maintained by Public Safety Canada, flooding is the most frequent natural disaster in Ontario, costing an estimated \$946 million in insurance payments and government assistance in the last 10 years.

According to Conservation Ontario, floodplain maps, which predict when, where and how flooding will impact a community, are the foundation of any flood prevention program. At the time of our audit,

6.1.2 Almost One-Quarter of Existing Floodplain Maps Need Updating

The NPCA has identified that 12 (or 21%) of the 57 existing floodplain maps for watercourses, which were completed between 20 and 43 years ago, need to be updated due to their age and the development that has occurred around the watercourse. In addition, none of the maps were developed with consideration of the impacts of climate change. Flood lines can change with changes in land use, weather patterns and water flows. We noted the following about the 12 watercourses:

- About 51,700 structures—including sheds, dwellings and commercial buildings—are located near a flood line, which the NPCA has established as within 300 metres.
- People and property are at high risk from flooding in 35% of the floodplain areas (on average; in some areas, the high risk is for up to 80% of the area).
- In six of the watercourses, there is a high potential for existing urban infrastructure to exacerbate flooding.

Similarly to when floodplain maps do not exist, when floodplain maps are outdated, the NPCA's decisions regarding development proposals and work permit applications may be made without current information on actual flood risks.

Conservation Ontario's 2015 inventory of conservation authorities' floodplain maps noted that three-quarters of the existing floodplain maps in Ontario are outdated and that it will cost an estimated \$136 million to update them. As noted in **Appendix 4**, the amount of funding each conservation authority receives from the Ministry is for provincially mandated activities (such as operating flood forecasting systems, and flood and erosion control infrastructure) and is based on average operational costs in the 1990s.

The consequences of outdated floodplain maps were realized in August 2017 when flooding caused by Hurricane Harvey damaged more than 200,000 homes in Houston, Texas. A study published days

before Hurricane Harvey hit Houston determined that outdated floodplain maps of the area failed to identify 75% of the flooding damage from the five previous major flooding events.

RECOMMENDATION 7

To ensure that the Niagara Peninsula Conservation Authority (NPCA) has complete and up-to-date information about flood risks within its watershed, we recommend that the **NPCA**:

- assess the risk to communities around the unmapped watercourses;
- determine the time and cost for completing and updating floodplain maps; and
- schedule this work, based on its risk assessment and for the watercourses for which the Ministry of Natural Resources and Forestry recommends floodplain maps be prepared.

NPCA RESPONSE

The NPCA agrees that floodplain mapping is an important tool when reviewing and making decisions on development proposals and work permit applications and to forecast floods. In the past, due to funding limitations, the NPCA relied upon historical data and informal risk assessment to mitigate the risk to public health or safety or of property damage.

In response to this recommendation, the NPCA has set aside funds in its 2019 draft operating budget to undertake a formal floodplain risk assessment across the watershed. In addition, through its 2018–2021 Strategic Plan, the NPCA has committed to developing a long-term water resource management plan. The plan will include a floodplain mapping strategy that outlines the estimated cost and time frame to complete the necessary floodplain maps.

RECOMMENDATION 8

To ensure that conservation authorities have complete and up-to-date information about flood risks within their watershed, we recommend that the **Ministry of Natural Resources and Forestry** work with Conservation Ontario to:

- establish clear responsibility and criteria for developing and updating floodplain maps across the province; and
- review current funding levels to conservation authorities to determine how floodplain mapping can be completed in a timely manner.

MINISTRY RESPONSE

Under the *Planning Act* and Provincial Policy Statement, municipalities are delegated the responsibility of identifying areas subject to natural hazards and to take actions needed to limit exposure to public health and safety risks.

This responsibility includes identifying floodplains in municipal plans and incorporating policies to address new development consistent with provincial policy into the planning framework (for example, through incorporation into zoning bylaws).

Where an application for development is received for an area where mapping does not exist, proponents may be required to undertake studies to determine flood risks and appropriate mitigation measures. Where no development is being proposed, floodplain mapping may not be required.

While municipalities may choose to rely on the services of conservation authorities to undertake floodplain mapping, the responsibility for identifying these areas ultimately rests with municipalities.

The Ministry will work with the Ministry of Municipal Affairs and Housing and municipalities to determine how best to co-ordinate and clarify municipalities' and conservation authorities' roles and responsibilities for identifying flood-prone areas.

6.2 Controlling Development in Flood-Prone Areas and Wetlands

According to Conservation Ontario, restricting development in flood-prone areas protects people and prevents costly property and infrastructure damage from flooding. As noted in **Figure 3**, private landowners submit their development proposals to their municipal planning department, which then requests comments from the NPCA. The NPCA comments on whether the proposed development will affect the control of flooding, erosion, pollution or conservation of land as laid out in the *Conservation Authorities Act* (Act) and regulations, and the natural hazard policies under the *Planning Act*. If the municipality decides to accept the proposal and proceed with the development despite concerns from the NPCA, the NPCA can appeal to the Local Planning Appeal Tribunal.

Private landowners who want to make changes on their land—such as adding or removing fill; constructing or adding to buildings, swimming pools, bridges, docks and ponds; or changing a watercourse—must submit work permit applications to the NPCA. Under the Act, the NPCA is empowered to prohibit or regulate certain activities in or near watercourses, valleys, wetlands, in areas affected by flooding and erosion hazards (such as slopes that can erode), and along the Great Lakes shorelines.

6.2.1 Inconsistent Criteria Used to Review Development Proposals and Work Permit Applications

As noted in **Figure 2**, the Act empowers conservation authorities to develop specific policies for where development is allowed. Such policies are based on the Act and the stipulations of the Provincial Policy Statement that development be directed “away from areas where there is a risk to public health or safety or of property damage” and “to areas outside of hazardous lands...impacted by flooding and/or erosion hazards.” It is important for the NPCA, municipalities, individuals applying

to do work on their property and other stakeholders to share a common understanding of the NPCA's rules for controlling development in flood-prone areas and wetlands. See **Appendix 15** for an overview of what those policies/rules are and what they are based on.

Our review of a sample of development proposals and work permit applications since 2016 found that, in 13% of them, the NPCA's comments were inconsistent with NPCA policies. For example, in 2018, the NPCA approved the construction of a new house within a floodplain while both NPCA policies and the Provincial Policy Statement prohibit development within the floodplain. The NPCA informed us that, because both a consultant hired by the NPCA and a consultant hired by the property owner were able to show through technical engineering work that the house would not affect the existing flood risk, the NPCA believed it would be acceptable to give approval for the house to be built.

We found that the NPCA, at one time, had contradictory policies for reviewing development proposals and work permit applications. Specifically, in 2013, NPCA senior management developed "interim directives" that instructed staff to use more flexibility in reviewing development proposals and work permit applications near wetlands and valleys than allowed in the policies approved by the Board in 2007 (see **Appendix 15**).

At the time of our audit, NPCA senior management told us that staff no longer used these interim directives in reviewing development proposals and had reverted back to the 2007 policy. However, the NPCA was unable to provide evidence that staff had been so instructed. We also found that in 2014, staff had been instructed to use the interim directives until a comprehensive review and update of the existing policies was completed. This review began that same year. As of July 2018, the policies had still not been finalized but were expected to be presented to the NPCA Board for approval in September 2018. Furthermore, we found cases in 2016 and 2017 where staff did not follow the 2007 policy in certain development and work permit applica-

tions. They were either still following the directives or stretching their interpretation of the 2007 policy to be more permissive about where development can occur.

We reviewed the most recent draft of the NPCA's proposed policies and noted that the policies are generally similar to the 2007 policy, but also incorporate the more permissive policies under the interim directives regarding developments near wetlands and valleylands. For example, the 2007 policy states that no new development is permitted within 30 metres of a Provincially Significant Wetland. In comparison, the proposed new policy states that development is not permitted within 30 metres of any wetland unless the applicant can demonstrate that there are no negative impacts on the wetland's ecosystems and the wetland's ability to store water and mitigate flooding.

RECOMMENDATION 9

To ensure that development is directed away from areas of natural hazards where there is an unacceptable risk to public health and safety or of property damage, we recommend that the **Niagara Peninsula Conservation Authority (NPCA)**:

- finalize, as soon as possible, its policies for reviewing development proposals and work permit applications; and
- in finalizing such policies, ensure that the criteria for where development is allowed is consistent with Section 3.1 of the Provincial Policy Statement and the *Conservation Authorities Act*.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation. Following the public consultation process, the NPCA has recently completed the development of its new policy document, which will be presented to the NPCA Board of Directors for approval at the September 2018

Board meeting. The NPCA believes that the new policy document is consistent with Section 3.1 of the Provincial Policy Statement and the *Conservation Authorities Act*.

6.2.2 NPCA Proposed Project to Allow Wetland Destruction in Contravention of Provincial Policy

In 2015, a developer purchased a 195-hectare parcel of land in an area in the Niagara Region called Thundering Waters (in Niagara Falls) with the intention of developing it into a multi-use residential, commercial and entertainment community. About half of the land (100 hectares) is Provincially Significant Wetlands (PSW), which the Province has designated as important because of their biological and hydrological functions and the benefits they provide to society. According to the Provincial Policy Statement, PSWs cannot be altered or developed.

In March 2015, NPCA staff began attending consultation meetings with representatives from the City of Niagara Falls, Niagara Region and the developer to discuss the development proposal. Minutes from these meetings indicate that NPCA senior management informed the developer that it was working on an alternative way to address the obstacle posed by the wetlands within the land proposed for development.

In May 2015, the NPCA retained the services of a registered lobbyist firm to “advance key issues amongst senior levels of government.” The firm was involved in organizing meetings between the NPCA and senior provincial government officials about “biodiversity offsetting” in Thundering Waters. Biodiversity offsetting is the practice of recreating an ecosystem, such as a wetland, elsewhere to compensate for one that is destroyed due to development.

In December 2015, the then NPCA CAO, a Board member, and staff met with a Member of Provincial Parliament and an advisor to the then Premier to propose and obtain approval for a pilot biodiversity

offsetting project involving the Thundering Waters development. NPCA senior management informed us that this meeting was in response to a discussion paper on wetland conservation that the Province posted on the Ontario Environmental Registry in July 2015 and about which it requested comments from interested parties. The NPCA had previously submitted a public response to this discussion paper in September 2015, via the Ontario Environmental Registry, but this public response did not mention any specific sites for attempting biodiversity offsetting.

The NPCA stated the pilot offsetting project would result in three hectares of wetland being created elsewhere for every one hectare destroyed in Thundering Waters. However:

- The proposal was not based on any scientific analysis to determine the feasibility of offsetting in Thundering Waters. An NPCA staff member specializing in wetlands raised this concern to senior management, stating that there was no sound science to support the proposal given the type of wetlands in Thundering Waters.
- The NPCA had not gathered information on the ecosystems in Thundering Waters to determine if they contained unique features that cannot be replicated. Meeting notes on file indicate that when a Niagara Region representative asked if there would be an environmental study before attempting biodiversity offsetting, the then NPCA CAO stated that it would take too long. The CAO had planned to enter into a research partnership with an academic institution to conduct research on biodiversity offsetting in other provinces and countries, but only once the NPCA received approval from the Province for the pilot project.

The Province did not support the NPCA’s proposed pilot project. At the time of our audit, the development was still in the planning stages.

We noted that, in 2008, a municipal staff member requested that the NPCA, through its

Board of Directors, allow biodiversity offsetting on the same site. At the time, the Province had not yet classified the wetlands as PSWs, which meant that development of the wetlands was not prohibited under the *Planning Act*. However, NPCA staff expressed concerns to the Board, stating that although development was not prohibited, such a “large-scale wetland relocation to accommodate major development proposals [was] outside the parameters of [the NPCA’s] policies.” In 2010, the Province designated the wetlands as PSWs.

Our survey of conservation authorities found only two other conservation authorities (Kawartha Conservation and Toronto and Region Conservation Authority) allow biodiversity offsetting of Provincially Significant Wetlands. Kawartha noted that it would only do so when directed by the Board, and Toronto considered it as a last resort when major infrastructure projects are involved.

Our survey also found that, unlike the NPCA, the 16 conservation authorities that submitted comments on the Province’s wetland conservation discussion paper did not provide additional information to Members of Provincial Parliament beyond their submitted comments.

6.2.3 Frequent Reorganizations Have Affected NPCA’s Delivery of Mandated Services

The NPCA underwent four organizational restructurings between 2012 and 2017, under four different CAOs (three permanent and one acting). See **Figure 7** for a summary of the restructurings, including the financial costs associated with them (described later in **Section 7.1.1**). These restructurings have had a significant impact on staffing for the review of development proposals and work permit applications:

- Four staff were let go, one demoted, and four staff were hired to fill new positions in the 2012 restructuring.
- One staff was let go and three were hired to fill new positions in the 2014 restructuring.

- One staff was let go in the 2016 restructuring.
- Five staff were let go in the 2017 restructuring.

As shown in **Figure 5**, just over one-third of NPCA staff (37%) work in Watershed Services as of May 2018, compared to over half (55%) in 2012. This change was partly due to a reduction of 10 FTE Watershed Services staff (both management and non-management staff). Looking at just the non-management staff (i.e., the frontline staff doing the watershed work of reviewing development proposals, and restoring and monitoring water quality), 50% of staff (or 11 positions) were eliminated. After we completed our audit, an engineer and a biologist from Watershed Services resigned. The NPCA filled the biologist position through an external contract but had not determined how it would fill the other vacancy.

In contrast, Administration and Corporate Support staff increased by seven FTE positions over the same period. As a result, Administration and Corporate Support staff increased to 29% of total full-time NPCA staff in 2018, compared to 16% in 2012. This is, in part, due to the addition of corporate support staff who now perform administrative functions that were previously performed by front-line staff.

Our survey (summarized in **Appendix 13**) found that administrative and corporate support staff comprise, on average, 25% of total staff in other conservation authorities. Of the 28 conservation authorities that responded to the survey, 20 had a lower administrative and corporate support staff ratio than the NPCA, while eight had a higher one.

Some Restructuring Decisions Not Based on NPCA’s Needs

We noted that the decisions to restructure did not always appear to be based on the NPCA’s needs. For example, in September 2017, the NPCA laid off five staff involved in reviewing development proposals. One of the NPCA’s reasons for the layoffs was that the NPCA anticipated that the work involved in

Figure 7: Four Organizational Restructurings between 2012 and 2017

Prepared by the Office of the Auditor General of Ontario

	2012 Restructuring (Jan-Apr 2012)	2014 Restructuring (Aug 2013–Nov 2014)	2016 Restructuring (Nov-Dec 2016)	2017 Restructuring (Sept-Oct 2017)
Stated reasons and goals for restructuring	To “focus more on customer service” ¹ To “facilitate approvals while balancing conservation objectives” ¹	To meet the goals of the 2014–17 Strategic Plan, including a more streamlined development approvals process and an appropriately resourced communications department ²	To “realign resources and to more effectively fulfill budgetary obligations” ³ “Due to business demands” ⁴	To address concerns regarding accountability, financial stewardship, customer service and communications while ensuring that the delivery of the NPCA’s core mandate is strengthened ⁵
Staffing impact	6 firings: ⁶ <ul style="list-style-type: none"> • Planning/permit – 4 staff • Restoration – 2 staff 	13 firings: ⁷ <ul style="list-style-type: none"> • Planning – 1 staff • Restoration – 4 staff • Conservation areas – 6 staff, 1 manager • Communications – 1 manager 	3 firings: ⁷ <ul style="list-style-type: none"> • Water quality – 1 manager • Restoration – 1 manager • GIS⁸ – 1 staff 	9 layoffs and 1 firing: ^{7,9} <ul style="list-style-type: none"> • Planning – 1 manager (fired), 5 staff • Restoration – 3 staff • Conservation areas – 1 staff
	4 hires (external): <ul style="list-style-type: none"> • Planning/permit – 4 staff 	10 hires (external): <ul style="list-style-type: none"> • Planning – 2 managers, 3 staff¹⁰ • Conservation areas – 2 managers • Corporate services – 1 manager • Communications – 1 staff • Human resources – 1 manager 	0 hires	2 hires (external): <ul style="list-style-type: none"> • Communications – 2 staff
	1 demotion: <ul style="list-style-type: none"> • Planning – 1 manager 	3 demotions: <ul style="list-style-type: none"> • Restoration – 1 manager 	0 demotions	1 internal hire: <ul style="list-style-type: none"> • Communications – 1 manager
	3 reassignments ¹¹ /internal hires: <ul style="list-style-type: none"> • Restoration – 1 staff • GIS – 1 staff • Planning – 1 staff 	0 reassignments ¹¹ /internal hires: <ul style="list-style-type: none"> • Conservation area – 1 manager • Communications – 1 manager (later terminated) 	0 reassignments ¹¹ /internal hires: <ul style="list-style-type: none"> • Restoration to conservation areas – 1 staff • Conservation areas – 3 managers, 1 staff 	3 recalls: ¹² <ul style="list-style-type: none"> • Restoration – 2 staff • Planning – 1 staff

Associated Costs¹³	2012 Restructuring (Jan-Apr 2012)	2014 Restructuring (Aug 2013 -Nov 2014)	2016 Restructuring (Nov-Dec 2016)	2017 Restructuring (Sept-Oct 2017)	Total
	Staff compensation (\$)	234,205	493,012	245,269	
Consultants (\$)	—	41,226	—	—	41,226
HR counselling (\$)	—	18,952	9,831	4,916	33,699
Total (\$)	234,205	553,190	255,100	282,787	1,325,282

1. Email from CAO to staff dated January 11, 2012.
2. Strategic Plan 2014-2017.
3. Email from Acting CAO to staff dated November 22, 2016.
4. Termination letter to laid-off GIS staff dated December 15, 2016.
5. NPCA news release dated September 27, 2017.
6. To be laid off means the staff's work stopped temporarily because of restructuring and not because of poor job performance. There is an expectation in a layoff to be "recalled" back to work in the future.
7. To be fired means the staff's contract with the employer is permanently broken. It can be due to poor job performance. When it is not, it is a firing for no cause, and the employer should provide reasonable notice or compensate the staff instead of such notice. All employees were fired for no cause.
8. GIS stands for geographic information systems, which link computer-generated maps with databases.
9. Of the 10 staff laid off, two were recalled to new positions and one was bumped into a temporary contract.
10. One position was filled in June 2015, but was identified in the approved organizational chart, which was the basis for the 2014 restructuring.
11. To be reassigned is to be given a different job.
12. Includes one staff who was laid off and then bumped into a temporary contract.
13. Costs comprise compensation paid to staff for severance, salary continuation, costs associated with grievances filed at the time of firing and fees for consultants hired to assist in restructuring or firings. Costs do not include legal fees associated with the firings. See Section 7.1 for a discussion of total costs associated with human resource matters, including legal fees.

reviewing development proposals for the Niagara Region would be somewhat reduced. Specifically, it expected that the terms of a 2007 memorandum of understanding (MOU) between the NPCA and the Niagara Region would be changed so that NPCA staff would no longer review development proposals against the Region's policies relating to natural heritage features (such as woodlands, wildlife habitat and water resources). NPCA staff's review would be restricted to the natural hazard policies of the Provincial Policy Statement and the Act.

We found a report that an NPCA manager had prepared, in consultation with a number of management staff, prior to the 2017 restructuring. The report identified that, if the changes to the Niagara Region MOU were approved, no more than four positions could be eliminated in order to meet the NPCA's mandated responsibilities for the review of development proposals. Specifically, the report recommended a staffing complement of three planners and one ecological technician. The report also noted that any deviation from the proposed staffing changes "is anticipated to result in longer review times, an increased amount of overtime, all at a drastically-reduced level of service." The restructuring did deviate from the report, leaving the NPCA with only two planners and no ecological technician.

Time to Review Development Proposals and Work Permit Applications Has Increased

As shown in **Figure 7**, improved customer service in the review of development proposals and permit applications was a central reason for the 2012 and 2014 restructurings. However, the NPCA has not measured whether those staffing changes improved the NPCA's delivery of these services.

We analyzed review times for development proposals for any impact staffing reductions may have had. Our analysis found that overall, the average time to review development proposals increased from 16 days in 2013 to 38 days in 2017. For example, the average review time for proposals involving detailed site plans increased from 19

days to 72 days in this period. We also noted that the average review time for minor amendments to municipal bylaws, which are less complex, increased from six days to 12 days. Similarly, our analysis of review times for work permit applications found that the average review time increased from 29 days in 2013 to 37 days in 2017.

We also noted that review times for development proposals that required biology reviews have increased. Specifically, in the first quarter of 2017, review times for such proposals took 40 days, compared to 145 days in the second quarter of 2018. Planning staff in various municipalities within the NPCA's jurisdiction also advised us that the NPCA has taken longer to provide its comments on development proposals since the 2017 restructuring.

Although other factors, such as the type and complexity of applications received, may impact the average review times, the NPCA has not analyzed how much the staffing reductions have contributed to the increase in average review times.

RECOMMENDATION 10

To ensure that staffing decisions are focused on improving the operations of the Niagara Peninsula Conservation Authority (NPCA) to fulfill its legislative mandate and provide effective and efficient services, we recommend that the **NPCA**:

- develop a human resources (HR) plan that identifies current and future HR needs, as they relate to the strategic direction of the NPCA;
- in developing such an HR plan, review its staffing mix to determine the appropriate level of administrative and corporate support staff;
- base future HR decisions on its HR plan; and
- provide information about planned restructuring decisions, including their financial implications, to the NPCA Board prior to implementing such decisions.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation. The NPCA will soon begin developing operational and work plans to implement the actions in its 2018–21 Strategic Plan. In addition, the NPCA is currently developing a document that is intended to inform stakeholders about the NPCA's mandate, roles and responsibilities. Once completed, the NPCA will develop a long-term HR plan based on these documents that identifies the organization's staffing needs, including the appropriate staffing mix.

This long-term HR plan will be the basis for all future HR decisions. Although the Chief Administrative Officer has ultimate responsibility for staffing decisions, the NPCA Board will be informed about planned restructuring decisions in the future.

6.3 Responding to Public Complaints About Violations of the Conservation Authorities Act

6.3.1 NPCA Needs To Take Timely and Progressive Action After Complaints Received

Anyone who fills in or destroys wetlands, dumps debris into a watercourse or embankment, or alters a watercourse is in violation of the *Conservation Authorities Act* (Act). NPCA policies require staff to visit the site, take photographs and complete an inspection form upon receiving a report of a possible violation. If there is a violation, staff must first negotiate to get the violator to comply with the Act and remediate the site. If negotiations with the violator are unsuccessful, staff issue a Notice of Violation instructing the violator to stop the prohibited activity and discuss remediation steps with the NPCA. If the violator does not comply with the notice, the NPCA may proceed with legal action.

The 2017 amendments to the Act, once proclaimed,

would also give conservation authorities the power to issue stop work orders requiring landowners to stop engaging in activities that are in violation of the Act.

Timely enforcement action is important, not only to ensure that no further damage occurs, but because, under the Act, the NPCA cannot take legal action against the violator if it has been two years or longer since it became aware of the violation.

We reviewed a sample of public complaints about possible violations that the NPCA had logged as having been received between 2013 and 2017 and found that one-quarter of the complaints were still open, meaning that the violation had not been dealt with and the damage or alteration to the environment had not been fixed. Some dated as far back as 2014. For example:

- The NPCA received 11 complaints between September 2014 and August 2017 about debris being dumped on an embankment. An NPCA enforcement officer visited the site seven times between December 2014 and August 2017. Despite finding evidence of a violation, the NPCA never issued a Notice of Violation requiring the offender to stop the unauthorized activity. The offender has since moved to another property. The NPCA told us it would follow up on the violation when staffing permits.
- In July 2017, Ministry staff sent the NPCA aerial photographs showing a wetland had been destroyed. However, NPCA staff did not visit the site or follow up on the known violation. The NPCA advised us that it would do so once a permanent enforcement officer has been hired, which had not occurred as of August 2018.

From 2013 to 2017, the NPCA issued 13 Notices of Violation related to 11 identified violations, but nine of the violations were still unresolved in July 2018. This means that the violation is still ongoing and the NPCA has not yet pursued further enforcement action against the offender.

The lack of consistent, dedicated enforcement staff has contributed to delays in resolving violations. The NPCA normally employs one enforcement officer but did not have any enforcement officer between September 2016 and April 2017, and again between November 2017 and April 2018. In April 2018, the NPCA re-assigned one of its restoration staff, who had knowledge of ecological functions but had no prior enforcement training or experience, to work on investigating complaints about potential violations of the Act on a part-time basis.

Number of Actual Violations and NPCA's Response Cannot Always Be Determined

According to the NPCA's log of public complaints, the NPCA received 423 reports of suspected violations from 2013 to 2017. However, the NPCA does not consistently track complaints about possible violations and enforcement actions taken to address the complaint. Because of this, we could not determine the actual number of reported suspected violations and how many of those have been investigated and resolved.

In searching for enforcement files, we were able to locate 277 electronic files, but NPCA staff advised us that these files may not necessarily correspond to the reports listed in the complaints log. This is because, as mentioned previously, staff did not consistently track complaints.

We reviewed a sample of enforcement files between 2013 and 2017 to determine whether the NPCA took appropriate steps to address the complaint and resolve any identified violation. We found the following:

- For one-third of the complaints, dating as far back as 2012, the NPCA closed the files, but there was insufficient documentation to indicate whether the violation had been dealt with and whether the damage or alteration to the environment had been fixed. For example, between October 2012 and September 2014, the NPCA received three reports involving

the destruction of a wetland. After receiving the first complaint, the enforcement officer spoke with the landowner, who agreed to stop damaging the wetland. The NPCA subsequently received two more similar complaints, but the file was eventually closed when the landowner promised to stop damaging the wetland. There was no evidence that the enforcement officer visited the site to confirm that the landowner had indeed stopped damaging the wetland.

- Two-thirds of the files we reviewed indicated that the enforcement officer visited the site that was the subject of the complaint, but the files did not contain completed inspection or investigation reports. This is contrary to the NPCA's enforcement policy, which states that site visits must be documented in an inspection or investigation report.

In 2016, the NPCA put in place a computer application called CityView to manage the review of development proposals and work permit applications. It has the capability to track enforcement activities, but the NPCA was not using this feature at the time of our audit.

RECOMMENDATION 11

To ensure that reports of possible and known violations are appropriately addressed in a timely manner, we recommend that the **Niagara Peninsula Conservation Authority**:

- determine the number of enforcement staff necessary to address violations on a timely basis and staff accordingly;
- ensure that enforcement staff obtain the necessary training to discharge their responsibilities;
- revise its enforcement policy to provide guidance on the progressive actions enforcement staff should take to address violations taking into consideration the significance of the violations;

- revise its enforcement policy to require that enforcement activities be sufficiently documented and ensure that staff adhere to the policy; and
- use CityView to track reports of possible violations.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation and acknowledges that its documentation of enforcement activities needs to be improved. The NPCA will update its enforcement policy to require that enforcement activities be documented and to provide further guidance on progressive actions to address violations.

As part of the long-term HR plan that will be developed in response to **Recommendation 10**, the NPCA will determine, by April 2019, the number of enforcement staff necessary to address violations on a timely basis. In September 2018, the NPCA hired a new enforcement officer, who has the necessary training and experience to respond to reports of possible violations of the *Conservation Authorities Act*. Additional training will be provided as necessary.

Staff have recently begun reviewing options to improve the tracking and documentation of the NPCA enforcement program. Using CityView may be viable, but privacy concerns will need to be addressed prior to committing to this path.

6.3.2 Violations May Be Occurring Without the NPCA's Knowledge

Public Not Educated on Violations and How to Report Them

As mentioned, from 2013 to 2017, the NPCA received at least 423 reports of possible violations of the Act, but there may be more violations that NPCA staff are not aware of. This is because the NPCA relies entirely on public complaints to identify those individuals engaging in prohibited

activities. However, the NPCA has not informed the public about which activities are prohibited and how to report such activities to the NPCA.

Not knowing when or how to report violations to the NPCA, the public may not report all violations or may report them to the incorrect organization. For example, in May 2012, a member of the public notified a municipality of a potential violation of the Act (filling in of a wetland). The municipality did not inform the NPCA. In 2015, the NPCA became aware of the violation when the same member of the public filed a Freedom-of-Information request to the NPCA regarding the alleged violation. The NPCA enforcement officer visited the site with an ecological technician. While they found the violation may have occurred, they determined that too much time had passed between the violation and the discovery to gather evidence. The NPCA informed us that it received legal advice suggesting not to pursue a court case on the matter due to lack of evidence; however, the NPCA could not provide us with any documentation of this legal advice.

Our research found that Conservation Halton, Toronto and Region Conservation Authority and the Nottawasaga Valley Conservation Authority provide information on their websites about what constitutes a violation and how to report it. In addition, in our survey (see **Appendix 13**), 89% of conservation authorities that responded reported having proactive strategies for monitoring compliance with the Act; for example, selecting sites for inspection based on staff's assessment of risks associated with approved work permits. In particular, 44% of conservation authorities reported using other methods, such as partnerships with municipalities, to monitor compliance.

NPCA Does Not Know if Work Has Been Completed According to Permit Conditions

From 2013 to 2017, the NPCA issued 938 work permits, but we found that, in almost all cases, the NPCA did not conduct site visits to confirm that the landowners were complying with the conditions of

the permit. Depending on the nature of the work, the NPCA imposes certain conditions on the work permit to ensure that the landowner takes appropriate measures to mitigate risk to people, property and the environment.

In addition, all work permits issued by the NPCA include a condition that the NPCA be notified no later than two weeks after the work is completed. NPCA staff could not determine how often they received such notification. As a result, NPCA staff have little to no assurance that the work approved by the permit was completed according to the permit's conditions.

Subsequent to our audit fieldwork, in June 2018, the NPCA conducted some limited permit inspections. They included driving by the permit sites and taking some photos, but no further documentation was prepared.

RECOMMENDATION 12

To ensure that the Niagara Peninsula Conservation Authority (NPCA) can proactively identify unlawful activities before they result in risk to people, property and the environment, we recommend that the **NPCA**:

- institute a mandatory reporting mechanism for landowners to notify the NPCA that approved work has been completed in compliance with the conditions of the permit, and follow up with landowners who fail to report;
- develop a risk-based plan to conduct site visits to ensure that landowners have completed the approved work in compliance with the conditions of the permit; and
- update its website to provide information to the public about activities that are prohibited under the *Conservation Authorities Act* and how the public can report suspected violations to the NPCA.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation. An NPCA staff member has been tasked with implementing the action items in this recommendation.

6.4 Improving Water Quality

A key component of the NPCA's watershed management work to improve water quality is its "restoration program" (in **Figure 2**, this is one of the optional programs conservation authorities offer to further their objectives, under Section 21(1)(g) of the Act). Until 2017, this was a cost-sharing program where the NPCA worked with landowners to improve the habitat on their property, either through restoring wetlands or tree cover, or implementing agricultural best practices, to help improve the health of any waterbodies on or adjacent to their property. Through the restoration program, the NPCA provided over \$900,000 in grants to private landowners between 2012 and 2016 for 244 projects aimed at improving the habitat on their properties.

6.4.1 Restoration Program to Improve Water Quality Was Suspended for One Year

In July 2017, the NPCA suspended its restoration program and engaged an external consultant to review the program after it identified concerns about lack of financial controls and potential conflict of interest. The consultant noted that landowners were complimentary about the program but identified issues. These issues, which we confirmed in our review of a sample of completed restoration projects from 2012 to 2017, included:

- The program had been promoted primarily through word of mouth. As a result, there was potential bias in who knew about and took advantage of the program.

- Project evaluation left room for discretion because the criteria for approving applicants were subjective.
- Files lacked sufficient documentation. For example, it was unclear whether landowners were paying their share because there was no documentation of how the “in-kind” contribution was calculated.

In light of the results of the review, the NPCA Board expressed concerns about continuing with the program under the current structure. Anticipating that the program would change was one of the reasons the NPCA gave us for the 2017 restructuring, mentioned in **Section 6.2.3** and shown in **Figure 7**.

In September 2017, the Board’s audit committee selected a new structure for the program. It involved the NPCA giving grants to other organizations, such as environmental non-profit organizations or municipalities, instead of to private landowners, to undertake eligible projects.

In May 2018, eight months after suspending the old program, the Board approved draft terms of reference for the new restoration program that were in line with the structure selected by the Board in September 2017. Under the new program structure, private landowners wishing to undertake a restoration project must solicit the support of an established organization (such as an environmental, non-profit organization), which would then apply for a grant from the NPCA. The NPCA began accepting such applications in August 2018.

Under the new program structure, a review committee—which includes five voting Board members and three non-voting NPCA staff—will determine which applicants receive grant funding. However, as noted in **Section 5.1.3**, Board member involvement in day-to-day decision-making, such as approving grant applications, is inconsistent with governance best practices. Establishing a committee of the Board to review management’s approval of grant applications will help ensure that funding is directed in accordance with the goals of the program and keep the Board from getting involved in day-to-day operations.

6.4.2 Funding Under Former Restoration Program Not Directed to Where Restoration Is Most Needed

The NPCA did not establish clear goals for its restoration program, nor did it determine where restoration work was most needed.

In 2012 and 2018, the NPCA issued Watershed Report Cards to identify areas within the watershed where the NPCA needs to focus its efforts. They highlighted two areas of concern within the NPCA watershed:

- Surface water quality was poor, especially in the Niagara-on-the-Lake sub-watershed, due to contamination from agricultural runoff and sewage discharges.
- Forested areas were lacking, especially in the Niagara-on-the-Lake sub-watershed, the upper portion of the Welland River and Lake Ontario’s south shore.

Our review of all restoration projects between 2013 and 2017 showed that restoration grants were not directed toward these areas of concern and toward activities that would alleviate the concerns. Specifically:

- Projects to control agricultural runoff and wastewater discharges, which were identified as the primary reasons for poor surface water quality, comprised just 3% of all funded projects and received 10% of the total funding. Almost two-thirds of the NPCA watershed is used for agricultural activities, yet only 11% of funded projects and 19% of total grant funding awarded were related to encouraging best farm management practices.
- Projects relating to reforestation comprised just 18% of the total funding, and only two of the 88 projects were located in Niagara-on-the-Lake, which had been identified as an area with particularly poor forest cover.

The NPCA indicated that there was no systematic approach to distribute funding and that it was based on applications received in any given year.

RECOMMENDATION 13

To ensure that restoration funding is directed toward projects that best achieve the goals of the restoration program, we recommend that the **Niagara Peninsula Conservation Authority**, regardless of its chosen program delivery model, develop and implement a strategy to better target areas of the watershed based on water quality monitoring and other information on the health of the watershed.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation. The NPCA has recently redesigned its restoration program with a clear goal of supporting projects that improve water quality. The NPCA will work with its partners and volunteers to achieve the objectives set out in this recommendation.

6.4.3 Almost One-Third of \$3 Million in Welland River Funding Not Spent as Intended

In 2007, Ontario Power Generation (OPG) provided \$3 million in funding to the NPCA to carry out activities to improve the health of the Welland River; these included tree planting, wetland restoration, outreach activities to educate the public about the Welland River, and acquisition of wetlands and floodplain lands. These restoration projects aimed to reduce any potential impact OPG's hydroelectric power generation on the Niagara River might have on the Welland River. The OPG agreement required the NPCA to spend all the funds within five years of receipt, that is, by 2012.

We found that the NPCA has not met key expectations agreed to with OPG for the restoration projects. Specifically:

- The NPCA has spent only \$1.45 million (48%) of the total funds, and for 73% of the money spent (\$1.06 million), the NPCA could not

provide any details on the projects other than their amounts and locations. These projects were carried out between 2007 and 2014.

- For the remaining 27% of the money where we have sufficient details (\$390,000), we found that money was spent on, or approved for, projects that were not eligible for funding under the agreement with OPG. For example, the NPCA approved landscaping projects in Lincoln, Grimsby, Wainfleet, St. Catharines, Niagara-on-the-Lake and Hamilton, and plans to use OPG funding to purchase equipment to collect water quality data and aerial photography to be used in the entire watershed. The NPCA was also planning to spend about \$460,000 in 2018 on other projects not specifically aimed at improving the health of the Welland River.

In May 2018, the NPCA met with OPG staff to discuss the intent of the 2007 agreement and provide information on how the NPCA has spent and plans to spend the funds. Minutes of the meeting indicate that OPG staff requested additional details on the project expenditures, including where they were located within the watershed. Minutes also indicate that OPG staff approval is required for spending on projects outside the Welland River floodplain. The NPCA and OPG have now agreed to meet quarterly for the next year, and as needed after that.

RECOMMENDATION 14

To ensure that funding from Ontario Power Generation (OPG) helps improve the health of the Welland River as agreed to, we recommend that the **Niagara Peninsula Conservation Authority (NPCA)**:

- seek clarification with OPG regarding its expectations for how the remaining funds are to be spent;
- revise, as necessary, the formal agreement between the NPCA and OPG to outline such expectations; and

- develop and implement a plan that identifies the projects and their locations for which the remaining funds will be spent, ensuring that such projects focus efforts on areas of concern based on the watershed plans that have been developed for the Welland River.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation. Beginning in May 2018, NPCA and OPG staff have agreed to meet on a quarterly basis. Both parties have agreed to update and abide by a new Memorandum of Understanding (MOU) that will clarify roles, responsibilities and expectations for how the remaining funds are to be spent. Once the new MOU is drafted, the NPCA will develop a plan that identifies the projects and their locations for which the remaining funds will be spent, in accordance with the terms of a new MOU.

6.5 Buying Land for Conservation, Recreation and Education

The *Conservation Authorities Act* empowers the NPCA to acquire land to accomplish its objectives. The NPCA currently owns and manages 2,938 hectares of land within the watershed, which represents about 1% of the entire watershed.

In 2007, the NPCA developed a land acquisition strategy that identified over 800 parcels of land, covering 7,400 hectares across 15 municipalities, for protection. The strategy called for the highest-priority lands to be acquired in the next five years (i.e., by 2012) and recommended that the NPCA set aside \$500,000 annually to fund these acquisitions.

6.5.1 NPCA's 2007 Land Acquisition Strategy To Acquire Ecologically Sensitive Lands Not Followed

The 2007 strategy was based on scientific data and objective analysis. The NPCA identified sensitive

natural areas that were at risk of being lost and then prioritized the lands based on their proximity to future development, type of habitat and potential to connect important natural areas.

However, we found that the NPCA did not follow its land acquisition strategy between 2008 and 2017. It spent a total of \$3 million on 10 parcels of land totalling 109 hectares. A 2014 purchase, representing 66% of this amount (\$1.98 million) was of a 6.1-hectare Lakewood Beach property in Wainfleet that the 2007 strategy designated as low priority (scoring three out of a possible 15). In its report to the Board requesting approval for the purchase, the NPCA identified that the Town of Wainfleet supported the acquisition in order to provide the public access to waterfront areas. The Board report also indicated that the acquisition met the proposed new land acquisition criteria (see **Figure 8**), but did not describe how.

Only 5% of the \$3 million (\$146,000) was spent on land that was identified as a high priority in 2007—a 9.85-hectare piece of land with high ecological value.

6.5.2 Current Land Acquisition Plans Lack Details on How to Achieve Their Goals

In 2015, the NPCA developed a Land Management Plan to identify goals for current and future NPCA land holdings. In October 2017, the NPCA announced a 100-year land plan to acquire from 25,000 to 40,000 acres (10,100 to 16,200 hectares) of land in the 100-year period. Unlike the 2007 strategy, both the 2015 and 2017 land plans are less detailed and provide less direction about lands to be acquired. Specifically:

- Neither plan describes the process for prioritizing proposed acquisitions. Instead, the 2015 plan's criteria for land acquisition are six questions (see **Figure 8**), but it is unclear how the answer to each question will help determine whether the land should be acquired.
- Neither plan identifies how acquiring lands will fulfill the NPCA's mandate to protect

Figure 8: Current Land Acquisition Criteria

Source of data: NPCA 2015 Land Management Plan

1. Is the property outside the urban area?
2. Is the property already protected through legislation (e.g., Provincially Significant Wetland)?
3. Are there other organizations that may be more appropriate recipients of the property?
4. Is the acquisition the only means by which the land can be preserved and protected?
5. Is the acquisition clearly within the statutory mandate of the NPCA?
6. What are the long-term capital and operating costs associated with the property?
7. Property subject to an ecological assessment for Board consideration.

people and property from flood and erosion hazards. In comparison, both the Toronto and Region Conservation Authority and the Grand River Conservation Authority specify in their strategies acquiring lands for flood and erosion control projects, and lands that are unsafe for development because, for example, they are on floodplains or have steep slopes.

To meet the goal of its 100-year land plan, the NPCA will need to acquire at least 250 acres (100 hectares) per year—more than what it acquired over the last 10 years combined. NPCA management could not tell us how it established this goal and did not conduct any analysis to determine whether the goal is feasible. The NPCA has not estimated how much it would cost to achieve its goal, nor has it developed a plan to raise the necessary funds.

RECOMMENDATION 15

To ensure that lands are acquired to help the Niagara Peninsula Conservation Authority (NPCA) fulfill its mandate, we recommend that the NPCA:

- review and revise its land acquisition goals—both in its latest 2015 plan and in its 100-year plan—for reasonableness and to reflect the NPCA's responsibilities under the natural hazard policies of the Provincial Policy Statement;

- improve its current land acquisition criteria to provide clear direction on which lands should be acquired;
- prioritize its current land acquisition criteria to reflect the revised goals;
- determine the total cost of its land acquisition plan and how it will fund the acquisitions;
- develop and implement a plan to achieve its land acquisition goals; and
- monitor and report to the NPCA Board of Directors on land acquisition progress.

NPCA RESPONSE

The NPCA acknowledges that it has not followed a clear or comprehensive land acquisition strategy. In its 2018–21 Strategic Plan, the NPCA has committed to begin developing a detailed 100-year land plan for the watershed in early 2019. The plan calls on the NPCA to conserve, restore and protect more land in the watershed.

In developing the plan, the NPCA will consult with stakeholders to ensure that the plan is financially sustainable, enhances the watershed and incorporates the actions in this recommendation.

The NPCA will monitor and report on its land acquisition progress as part of its progress reports on its 2018–21 Strategic Plan.

6.6 Measuring the Impact of NPCA's Programs and Services

6.6.1 NPCA Public Reports Could Be Improved by Greater Focus on Results

The NPCA's annual reports describe the organization's achievements in the previous year. Beginning in the last quarter of 2015, the NPCA also began producing quarterly reports to provide more frequent updates regarding its activities. We found that the reports:

- did not always include key information about the NPCA's mandate (for example, of the annual reports from 2012 to 2017, only the 2012 and 2014 reports included a description of the different departments and core activities of NPCA);
- contained mainly narrative descriptions, often including a chronology of events, of the major projects completed during the year, with limited information about the benefits of such projects or how they contribute to the NPCA fulfilling its mandate; and
- included quantitative information—for example, the number of development proposals reviewed, number of work permits

issued, and the average time it took staff to review applications—but did not compare this information against pre-established goals or targets or include any trend analysis.

We also reviewed the NPCA's annual reports against best practices for performance reporting as outlined in the directives issued by Management Board of Cabinet for provincial agencies and guidance issued by the Public Sector Accounting Board. **Figure 9** summarizes our assessment.

In 2014, the NPCA developed its first Strategic Plan, which outlined its goals for the next four years, and identified specific action items to meet those goals. One of the action items in the NPCA's 2014–17 Strategic Plan was to design, implement and report on key performance indicators by the end of 2015. At the time of our audit, the NPCA was still in the process of developing a set of indicators against which to assess its performance.

6.6.2 Recent Assessment of NPCA's Performance an Important Step, But Some Information Missing

In 2017, the NPCA engaged a third-party consultant to assess its progress in achieving the goals it

Figure 9: Assessment of NPCA Annual Reports Compared with Public Performance Reporting Best Practices

Prepared by the Office of the Auditor General of Ontario

Included in Annual Report	2012	2013 ¹	2014	2015	2016	2017
Description of mandate and key activities	Y	—	Y	Y	N	N
Outputs of activities	Y	—	Y	Y	Y	Y
Operational analysis	Y ²	—	Y ²	Y ²	Y ²	Y ²
Linkage of financial and non-financial data	N	—	N	Y ³	Y ³	N
Outcome-based measures	N	—	N	N	N	N
Performance targets	N	—	N	N	N	N
Audited financial statements	N	—	N ⁴	N ⁴	N ⁴	N ⁴
Financial analysis	N	—	N	N	N	N
Risk discussion	N	—	N	N	Y	N

Note: Best practices include those outlined in Statement of Recommended Practice, Public Performance Reporting (SORP-2) issued by the Public Sector Accounting Board, and annual report content requirements issued in directives by Management Board of Cabinet for provincial agencies and broader-public-sector organizations.

1. The NPCA did not publish an annual report in 2013.

2. Reports outputs of activities, but not how well such activities help the NPCA meet its mandate.

3. Analysis not done consistently.

4. Audited financial statements reported publicly, but separate from annual report.

established in its 2014–17 Strategic Plan. The consultant, who previously assessed the NPCA in 2011 in preparation for the development of the 2014–17 Strategic Plan and helped develop the plan, concluded in 2017 that the NPCA had made significant improvement in most areas that were evaluated.

Our review of the consultant's report and other related documentation noted the following:

- The assessment was not based on the action items identified in the 2014–17 Strategic Plan. The Plan outlined 42 specific action items to help the NPCA achieve five goals. The consultant's report specifically stated that the consultant intentionally did not evaluate the NPCA's progress in completing each action item. Only focusing on what the NPCA has done, without identifying what the NPCA has not yet done, provides an incomplete picture of the NPCA's true progress in achieving the goals of its Strategic Plan.
- The conclusions were primarily based on steps taken by the NPCA to establish new policies and structures. The review did not assess whether the policies are being followed, nor did it evaluate whether the structures are achieving their intended results. For example, the report concluded that decision-making about land management has significantly improved, in part because of the new land acquisition criteria (see **Figure 8**). However, as discussed in **Section 6.5.2**, we noted concerns with the new criteria.

RECOMMENDATION 16

To enable the Niagara Peninsula Conservation Authority (NPCA) to assess its performance in fulfilling its mandate, we recommend that the NPCA:

- develop performance indicators that are tied to its mandate and overall program goals;
- establish targets against which each indicator will be assessed;

- regularly collect and analyze information about the impact of its programs and services on the Niagara Peninsula watershed to help adjust programs on an ongoing basis; and
- review, and revise as necessary, its annual and quarterly reports to better reflect how the NPCA's initiatives and projects are helping the NPCA fulfill its mandate and overall program goals.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation. The NPCA is now developing key performance indicators and targets. The NPCA will gather information about its programs to determine their impact on the NPCA watershed. This information will be reflected in the NPCA's annual and quarterly reports.

7.0 Detailed Audit Observations: NPCA's Business Practices

7.1 Managing Human Resources

7.1.1 NPCA Staffing Has Been Unstable with Frequent and Costly Restructurings

The NPCA has not developed a long-term plan for its staffing needs. In the absence of such a plan, the NPCA underwent four reorganizations under four different CAOs in the six-year period from 2012 to 2017 (see **Figure 7**). The organizational restructurings resulted in a total of 32 full-time employees out of an annual average of 60 being laid off or terminated from their positions, three of whom were subsequently recalled or reassigned to a contract position.

Because of these reorganizations, the NPCA's average involuntary turnover rate (the annual rate at which employees are dismissed or laid off, or employees' recurring contracts are not renewed)

in the 2012–17 period was 11%—two-and-a-half times the average rate of 4.4% for the public and private sectors in the same period reported by the Conference Board of Canada. At 11%, the NPCA has the highest involuntary turnover rate in the last five years than any of the conservation authorities we surveyed. In comparison, the involuntary turnover rate for other conservation authorities in the same period ranged from 0% to 7%, with an average of 1%.

Between 2012 and 2017, the NPCA has paid out over \$1.3 million in staff compensation, settlements related to grievances filed at the time of termination, and HR counselling and consulting fees relating to the terminations. The NPCA has also incurred \$217,000 in legal fees relating to terminations and grievances, some of which can be attributed to the restructurings. At the time of our audit, 14 termination-related grievances filed in that time period were still ongoing. In its 2017 financial statements, the NPCA estimated that it may incur about \$40,000 for settlements in addition to the \$1.3 million.

One of the consequences of not having a long-term plan for staffing needs is that positions are created only to be eliminated afterwards. As shown in **Figure 10**, this occurred for eight positions involved with the review of development proposals and work permit applications, restoration activities, and event co-ordination. On average, the positions were eliminated three-and-a-half years after

being created. The portion of the \$1.3 million in termination-related costs associated with these eliminated positions was \$87,800.

7.1.2 Improvements Made in Human Resource Processes Since 2014, But Best Practices Still Frequently Not Followed

In 2014, the NPCA began taking steps to improve its human resource (HR) practices. For example:

- In 2014, the NPCA hired an HR staff person on contract to begin developing the HR function within the organization. In 2015, the NPCA hired its first permanent HR staff. Prior to this, department managers recruited their own staff.
- In 2014, the NPCA began documenting the screening of applicants based on a comparison of the applicants' education and experience to the requirements in the job posting.
- In 2014, the NPCA formalized its recruitment process for summer students by developing application forms and, in 2015, standardized interview questions.
- In 2016, the NPCA revised its HR policies to prohibit immediate family members from being involved in any aspect of the recruitment process or being employed within the same division. The NPCA was aware of nepotism that had occurred in past hirings and supervision (for example, an NPCA staff hiring an

Figure 10: Positions Created and Eliminated in Restructurings

Source of data: Niagara Peninsula Conservation Authority

Position	2012	2014	2017
Development Services Technician ¹	1 position created	1 position eliminated	
Ecological Technician ^{1,2}	1 position created	1 position created ³	2 positions eliminated
Stewardship Program Assistant ¹	1 position created	1 position eliminated	
Event and Volunteer Co-ordinator		1 position created	1 position eliminated
Planner ¹		2 positions created	2 positions eliminated
Supervisor, Development Reviews ¹		1 position created	1 position eliminated

1. These positions provide watershed services, such as reviewing development proposals and working with landowners on restoration projects.

2. The position created in 2012 was called "Fish and Wildlife Technician," and the position created in 2014 was called "Watershed Technician." Both were renamed "Ecological Technician" and were eliminated in 2017.

3. The position was filled in June 2015, but was identified in the approved organizational chart, which was the basis for the 2014 restructuring.

immediate family member or supervising the work of a relative as recently as 2014).

However, we also noted that the NPCA has still frequently not followed HR best practices. Below are examples.

Recruitment Files Have Not Always Supported Hiring of Selected Candidate

The Ontario Human Rights Commission recommends that employers take the necessary steps to ensure a fair hiring process, including developing objective criteria, interview questions and marking schemes for selecting candidates. Without objective criteria and proper documentation, the employer could be vulnerable to claims of discrimination.

The NPCA hired 53 full-time employees (both permanent and on contract) between 2012 and 2017. Of these 53, 27 have since left the NPCA (seven of whom had been on short-term contracts that concluded as agreed upon).

Our review of all recruitment files since 2012 found improvements in some areas beginning in 2016. Specifically:

- Initial screening of applications is better documented. There was evidence of the initial screening of applications in only seven (or 19%) of the 37 hirings from 2012 to 2015. In comparison, there was evidence of the initial screening in 100% of the 16 hirings from 2016 to May 2018.
- Interviews are better documented. In 20 (or 54%) of the 37 hires from 2012 to 2015, there was no evidence that the candidates were interviewed. In comparison, there was documentation of interview notes in 100% of the 16 hirings from 2016 to May 2018.
- Interviews scores are better documented. In seven (or 19%) of the 37 hires from 2012 to 2015, the interviewers did not score the applicant's interviews. In comparison, there was documentation of interview scores in 100% of the 16 hirings from 2016 to May 2018.

Nonetheless, we also noted other concerns in three areas of the recruitment process in files from

2014 and 2017. The examples (some described in **Figure 11**) highlight the need to review existing recruitment policies and practices to ensure fairness and transparency. For example, we found:

- two cases where one of the applicants selected for interviews was ranked in the bottom half of applicants in the initial screening, calling into question the usefulness of the initial screening or the hiring managers' decisions in selecting the best candidates;
- two cases where the successful candidate's application did not have all of the required education or experience listed in the job posting; and
- four cases where actual or perceived conflicts of interest or bias in hiring staff were not mitigated.

NPCA Does Not Follow Its Policy for Assessing Staff Performance Annually

NPCA policy requires that staff appraisals be carried out annually. Only 36% of the 44 current staff who have been working at the NPCA for more than one year have a performance appraisal on file. No current employee has been evaluated more than once in the last five years.

Performance appraisals used to be done more consistently—76% of the 25 current staff who joined the NPCA before 2011 had one or more performance appraisals on file from 2011 or earlier.

Performance appraisals provide the opportunity to document progress and can be used to assist in decisions regarding promotions and salary increases. We noted that, in eight of the 11 promotions since 2012 that occurred without a competition, the employee did not have a performance appraisal completed in the year prior to their promotion.

NPCA senior management told us they have revised the performance appraisal process and included goal-setting, which they planned to implement on a rolling basis as employees' hiring anniversaries occur. The first performance appraisal was completed in May 2018.

Figure 11: Examples of Concerns of Fairness in the Hiring Process

Prepared by the Office of the Auditor General of Ontario

Board Member Becomes CAO

In October 2013, the NPCA Board agreed to have a Board member provide sole sourced consulting services to the NPCA, and in April 2014 the same Board member was awarded the CAO position. Both appointments could be perceived as a conflict of interest given the individual's involvement in decision-making processes prior to each hire:

- With regard to the contract position, the Board member was involved in proposing the creation of the consultant position he was later hired to fill. There was no replacement NPCA Board member during this leave. In fact, email communication with the NPCA Board Chair indicated the NPCA Board member would continue to receive Board-related communication during his leave.
- During his role as consultant, this individual was involved in staff restructuring decisions related to hirings and terminations, and negotiating the terms and timing of the then CAO's retirement. Shortly before the CAO vacancy was posted, this individual returned to the Board and submitted his application for CAO. He was on the Board (although not on the hiring committee) when the hiring committee selected which candidates to interview for the CAO position. He took a leave of absence only after being selected for an interview. Following the interviews, he was appointed to the CAO position. As before, there was no replacement NPCA Board member during his second leave of absence.

Unposted Position Awarded to Board Member

In 2013, the NPCA engaged the Niagara Region to help with the recruitment of a senior manager position. The Region helped conduct interviews with final candidates and reference checks for the selected candidate. A Board member (who was also an elected official) applied for the position and immediately requested a leave of absence from the NPCA Board. Another applicant won the competition, but the Board member was awarded another newly created senior manager position. There was no evidence that this job was posted for competition, even though the Chair of the NPCA Board and NPCA senior management had committed to a recruitment process for this position. Furthermore, the Region was not involved in recruitment efforts for this position, and no reference check was conducted. The position was offered to the NPCA Board Member while the then CAO was on vacation. At the time of this hiring, NPCA policies required "the approval of the CAO or his/her designate" for all positions below Director (Board approval was required for Director positions and above). The decision to hire was made by a selection committee, made up of three NPCA Board members, all fellow elected officials. The job offer was not signed or approved by the CAO. Following the hiring, the former Board member, still currently employed at the NPCA, also continued his position as a sitting elected official. NPCA's personnel policies are silent regarding employees holding public office. In contrast, we noted that the Grand River Conservation Authority requires employees to take an unpaid leave of absence while campaigning and that employees resign if they are elected as an official within the Grand River watershed. Similarly, the Toronto and Region Conservation Authority requires employees to take a leave of absence when they run for office.

Successful Candidate Applied Late and Did Not Have All the Required Experience

In the 2015 recruitment for a conservation area position, the successful candidate's application did not have all of the required education or experience listed in the job posting. The individual also submitted their application nine days after the posting closed and after the HR staff had already screened the applicants who had submitted their application on time. The candidate also had previously worked with and volunteered on the election campaign of one member of the recruitment panel at a different organization.

CAO Expresses Support to External Candidate Prior to Posting Union Position

In 2017, the NPCA hired two individuals, who had previously done consulting work for the NPCA, to fill a posting for one union position.

Almost two months before the job was posted, the CAO told one of the individuals about the job posting coming up and asked the individual if they were interested in the job. The CAO told the individual there was no one he would rather have in that role than the individual. The individual and CAO met off-site to discuss this in more detail. The day after their meeting, the individual emailed the CAO to express their interest in the position, and stating they “would love to accept.” Six days before the posting, the CAO forwarded the individual’s resume to HR.

The posting had been for one position, but during the interviews the NPCA decided to expand it to two positions. The NPCA did not conduct any analysis documenting the need for a second position. The individual was one of two hired for the position. The CAO was a member on the recruitment panel. Given his prior interaction with the candidate, his involvement in selecting the candidate may be perceived as a conflict of interest.

RECOMMENDATION 17

To ensure that the Niagara Peninsula Conservation Authority (NPCA) follows fair and transparent recruitment and promotion processes, and that the best-qualified individuals are hired and promoted, we recommend that the NPCA:

- update its recruitment policies to include the steps and documentation required to support hiring decisions and eliminate situations of real or perceived conflict of interest in recruitment and hiring;
- update its promotion policies to include the decision-making process required to be followed and documented for promotions and appointments;
- assess staff’s performance annually, as required by its policies; and
- provide quarterly updates to the NPCA Board of Directors on staffing changes and performance.

NPCA RESPONSE

The NPCA is committed to ensuring that the NPCA follows fair and transparent recruitment processes, and that the best-qualified individuals are hired and promoted. The NPCA will build on the improvements that began in 2014, including updating its policies to reflect the actions in this recommendation, and fully implementing its revised performance appraisal

process as employees’ hiring anniversaries occur. In addition, information on staffing changes and overall performance will be included in quarterly HR updates to the Board of Directors beginning in January 2019.

7.1.3 Staff Concerns Over Incidents Leading to Grievances and Complaints Not Always Addressed Appropriately by Management

In 2014, NPCA staff voted to have union representation, and in 2015, the collective agreement was ratified by staff, management and the Board of Directors. Since 2016, 21 NPCA staff have filed 51 grievances.

The NPCA’s grievance rate is high compared with the rate at the public and private companies surveyed by the Conference Board of Canada. These companies had an average of five grievances per 100 unionized employees in 2016—that is, a rate of 5%. Under its first collective bargaining agreement, the NPCA’s grievance rate was 42% in 2016 (14 grievances were filed by 16 employees, and the NPCA had 33 unionized employees) and 92% in 2017 (34 grievances were filed by 13 employees, and the NPCA had 37 unionized employees).

Twenty-nine of the grievances were filed after 10 staff were laid off or terminated from their positions in 2017. These grievances alleged improper layoff, being targeted for union activity, that management restricted staff from returning to another

position or returning to the same level of position after parental leave, and harassment.

At the time of our audit, 32 of the 51 grievances filed were resolved or settled, on average, within 100 days. Of the 32 grievances that have been completed:

- 26 were withdrawn by the complainant, often following a monetary settlement;
- five were resolved between the NPCA and the complainant prior to arbitration; and
- one was withdrawn by the complainant during the grievance process.

The remaining 19 grievances were still unresolved, with most awaiting arbitration dates. As of July 31, 2018, the unresolved grievances had been ongoing for an average of 344 days. The delay could be due to various factors beyond the NPCA's control, for example, the availability of the other parties (i.e., employee and arbitrator).

Out of all 51 grievances that have been filed since 2016, only one has been resolved through arbitration, where an independent third party makes the decision. In this case, the arbitrator sided with the complainant and ordered the NPCA to re-post an administrative assistant position and grant the complainant an interview should she apply. Following the arbitrator's decision, the NPCA did not re-post the position and filed for a review of the arbitrator's decision. The grievance, originally filed in 2016, is still ongoing.

In January 2018, the NPCA began providing quarterly reports to the NPCA Board summarizing the status of various HR functions such as recruitment, grievances, and performance appraisals. However, the reports have no details on the subject of the grievances or their financial implications.

Harassment Complaints Not Always Dealt With in Accordance with Legislation and Best Practices

Ten of the 34 grievances filed in 2017 alleged harassment or discrimination. NPCA staff also filed six harassment complaints in 2017—three against NPCA management, two against a Board member, and the last one against a member of the public.

We engaged an independent HR specialist to assess the reasonableness of the NPCA's response to these harassment grievances and complaints, based on the requirements of the *Occupational Health and Safety Act* and the *Ontario Human Rights Code*, as well as best practices outlined in the Ministry of Labour's Code of Practice. Our assessment did not include a determination regarding the merits of the grievances and complaints. We found that, for 13 of the 16 harassment grievances and complaints, the NPCA did not conduct an appropriate or timely investigation of the incident or obtain sufficient information to determine if an investigation was required. See **Figure 12** for a summary of the findings of our specialist.

We also noted that under the NPCA's organizational structure, the HR staff person reports directly to the CAO. This presents a conflict if the HR staff person receives a complaint against the CAO. In fact, although all NPCA employees we interviewed were aware of the procedure for reporting harassment concerns, one-third of them reported a concern that the HR staff person would not be able to properly investigate their concerns in an unbiased and neutral manner. According to the Code of Practice, the person conducting the investigation must not be under the direct control of the subject of the complaint. The NPCA's workplace harassment policy allows the CAO or the HR staff person to appoint an external investigator, but the NPCA had not done so for any of the grievances or complaints filed.

RECOMMENDATION 18

To ensure compliance with the *Occupational Health and Safety Act*, the *Ontario Human Rights Code* and the Ministry of Labour's Code of Practice, we recommend that the **Niagara Peninsula Conservation Authority (NPCA)**:

- for every harassment or discrimination complaint or grievance filed, fully assess and document whether an investigation is required and, if it is, conduct it in an appropriate and timely manner;

**Figure 12: Summary of Harassment- and Discrimination-Related Grievances and Complaints,
January 2017–May 2018**

Prepared by the Office of the Auditor General of Ontario

	Grievances¹	Complaints			Total
		Against Board Member	Against Member of NPCA Management	Against Member of Public	
# Where Issues Were Noted with NPCA's Response					
# where NPCA did not request additional information to determine if an investigation was required ^{2,3}	8	0	0	0	8
# where NPCA did not conduct an investigation, but should have	1	0	3	0	4
# where NPCA investigated, but response was not timely and appropriate ²	1	0	0	0	1
Total	10⁴	0	3	0	13
# Where NPCA's Response was Timely and Appropriate²	0	2	0	1	3
Total # of Harassment or Discrimination-Related Grievances or Complaints Filed⁵	10	2	3	1	16

1. Unionized employees may file grievances for violations of their rights under the collective agreement.
2. Based on our assessment of the NPCA's response, using as criteria the requirements of the *Occupational Health and Safety Act* and guidelines in the Ministry of Labour's Code of Practice.
3. The complainant and the union also failed in their duties to provide details of the incident.
4. Of the 10 harassment or discrimination-related grievances, four were still in arbitration at the time of our audit, two were withdrawn by staff who were recalled to work, and four were resolved through a settlement with the grievor.
5. Some employees filed multiple grievances and/or complaints. In total, 13 employees filed 16 grievances and/or complaints.

- use its ability, under its workplace harassment policy, to appoint an external investigator or develop mechanisms to ensure that complaints against the CAO are investigated by a party who does not report directly to the CAO; and
- provide additional information on grievances, staff complaints and investigations, including their subject and financial implications, as part of confidential updates to the NPCA Board of Directors.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation, recognizing that within a unionized environment some matters are dealt with through the agreed-upon union process. By

following this process, both the NPCA and the union (the Ontario Public Service Employees Union) are afforded opportunities to voice concerns as well as document responses, which include a determination of whether an investigation is required in response to a particular harassment grievance, should such a grievance be filed.

Additionally, the NPCA acknowledges and agrees with the recommendation regarding external investigation of complaints against the CAO, as stated in the current NPCA harassment policy. However, due to the cost of external third-party investigations, the NPCA will assess the need for other mechanisms to allow internal staff to determine if a complaint is frivolous or vexatious in nature, as a means to effectively manage costs.

Beginning in January 2019, additional information on grievances, staff complaints and investigations will be included in confidential reports to the NPCA Board of Directors.

7.1.4 Staff Have Divided Opinions About NPCA Workplace Culture

To determine whether harassment was a concern at the NPCA and objectively assess the current state of the work environment at the NPCA, we surveyed and interviewed all active NPCA staff. In response to our survey, about half of the staff either reported that the work environment was positive (citing training opportunities and support from colleagues and senior management) or had no view of it. The remaining half of the staff reported that mistrust between management and staff, lack of transparency regarding hiring and promotion practices, concerns about activities being monitored by management, and frequent terminations have all contributed to a difficult and distrustful workplace culture.

2017 Surveys Reflect Difficult Relationship Between Management and Staff

Prior to our survey in 2018, in 2017, the Ontario Public Service Employees Union (OPSEU) administered a staff survey in March/April, and NPCA management administered a second staff survey in November/December.

The NPCA management survey was conducted to fulfill an action item for the NPCA's Strategic Plan. As stated in the OPSEU survey summary, the OPSEU survey was done in response to numerous employees' allegations that "workers felt bullied by senior management," "management was investigating staff and searching emails," "hiring processes were unfair" and "staff were regularly threatened by job loss."

Figure 13 summarizes the relevant details of the two surveys, as well as the results of the survey we conducted in April/May 2018. Because of the dif-

ferences in questions asked, the results of the three surveys cannot be directly compared.

Both NPCA management and OPSEU had concerns with each other's respective surveys. The link to the OPSEU survey was public, and NPCA management was concerned that anyone (including individuals not employed at the NPCA) could have completed it. On the other hand, OPSEU noted that employees had to use their work emails to complete the NPCA management survey, and they were concerned that management could trace their responses back to them. We reviewed the NPCA management survey and could not link the responses to names of individuals; however, results could be grouped by department and tenure of the respondents.

Positive and Negative Outlooks Expressed by Employees

In response to our survey question about the NPCA work environment, 49% of NPCA staff responded "there is a negative work environment," 38% responded "there is a positive work environment," and 13% responded that they had "no view on this." These views were further communicated during our interviews where half of NPCA employees told us the workplace was generally positive, respectful and supportive, while the other half expressed concerns of harassment, fear and intimidation.

On the positive side, many employees highlighted management's investment in staff training and continuous development. In 2017, the NPCA spent \$55,000 on staff training and professional development. Several employees who had a positive view of the workplace commented that some employees, who were resistant to change, were not happy about efforts to change and modernize the organization.

Employees who had a negative view of the workplace said that they were fearful that if they disagreed with management or otherwise raised concerns about management's strategic direction, they would be fired or laid off.

Figure 13: Summary of OPSEU, NPCA and OAGO Surveys

Source of data: Ontario Public Service Employees Union, Niagara Peninsula Conservation Authority and the Office of the Auditor General of Ontario

	OPSEU Survey	NPCA Survey	OAGO Survey
Survey Administration			
When administered	March 28–April 9, 2017	November 23, 2017 and November 24–December 8, 2017 ¹	April 20–May 4, 2018
Development of survey questions	Questions were developed by an occupational hygienist from the Occupational Health Clinics for Ontario Workers based on the Copenhagen Psychosocial Questionnaire ²	Questions were developed by the NPCA HR staff person based on resources gathered mostly through the Human Resources Professionals Association, as well as from other conservation authorities	Questions were developed by OAGO in consultation with an external HR lawyer with expertise in HR matters
Delivery of survey	An OPSEU representative sent the survey link to employees' personal e-mail addresses	The NPCA HR staff person sent the survey link to employees, who had to sign in with their work email to complete the survey	Hosted in Canada Surveys (a secure proprietary survey software) sent a secure login to employees
# of employees surveyed	37 unionized NPCA employees ³	48 active full-time and contract NPCA employees	49 full-time and contract NPCA employees
Survey Content			
# of respondents	32 (86%)	Between 36 and 46 (75%–96%) ⁴	47 (95%)
Period covered	Last 12 months ⁵	Previous six months (June–November)	Approximately previous 16 months (January 1, 2017–time of survey)
Key areas covered ⁶	<ul style="list-style-type: none"> • Organizational climate and culture • Working conditions • Workload and work pace • Continuous learning opportunities • Level of engagement, job satisfaction • Quality of, trust in, leadership • Exposure to offensive behaviours 	<ul style="list-style-type: none"> • Communications (e.g., ability to share ideas) • Meeting NPCA customers' needs • Growth and development opportunities • Organization and culture (e.g., recognition) • Employment conditions (e.g., salaries) • Health and safety • Level of engagement 	<ul style="list-style-type: none"> • Employee knowledge of harassment policy/framework • Incidents of harassment or bullying experienced or witnessed • Management's response to harassment complaints • Employee perceptions of workplace culture and environment

OPSEU Survey	NPCA Survey	OAGO Survey
<p>Key findings^{6,7}</p> <ul style="list-style-type: none"> Lack of trust, respect and job security were top issues raised 37% experienced discrimination 55% stated that the workplace was toxic 67% experienced bullying in the previous year 87% agreed or strongly agreed that the NPCA tolerates behaviour that is harmful 	<ul style="list-style-type: none"> Level of engagement and competitiveness of benefits package scored highest 66% felt they were treated with dignity and respect 69% agreed or strongly agreed that they feel encouraged to share their opinions and ideas 86% felt comfortable approaching their manager with questions or concerns related to work 	<ul style="list-style-type: none"> 98% were aware of the procedure for reporting an act of physical, written or verbal harm and/or workplace harassment at the NPCA 83% stated they had not been subjected to an act of physical, written or verbal harm and/or workplace harassment 36% stated they were aware of, or have witnessed, an act of physical, written or verbal harm and/or workplace harassment 45% stated they were reluctant to report if they were aware of, or had witnessed, an act of physical, written or verbal harm and/or workplace harassment. 15% agreed or strongly agreed that NPCA senior management was responsive to recommendations from employees about matters related to physical, written or verbal harm and/or workplace harassment; 32% disagreed or strongly disagreed; 53% were not aware of recommendations 47% agreed or strongly agreed that workplace harassment is currently a concern at the NPCA 38% stated there is a positive work environment at the NPCA; 49% stated there is a negative work environment; 13% had no view on the work environment

1. The survey link was initially posted available on November 23, 2017, but was reposted the following day after the HR staff person received requests asking for more room in the comment sections.

2. The Copenhagen Psychosocial Questionnaire was first developed in 2000 by researchers from the National Research Centre for the Working Environment in Copenhagen to assess psychosocial risk factors at work.

3. NPCA management declined OPSEU's invitation to participate in the survey because, according to it, it had "already begun the process of creating an employee satisfaction survey to gather information in regards to a variety of identified areas."

4. The NPCA HR staff person could not determine how many employees completed the survey because the survey was distributed twice and the HR staff was not able to prevent duplicate responses.

5. The survey specified this time period only when asking staff about exposure to offensive behaviour.

6. Lists are not exhaustive.

7. Key findings from the NPOA Survey reflect the results from the first batch of responses from 35 employees. See note 1 above.

RECOMMENDATION 19

To ensure the Niagara Peninsula Conservation Authority (NPCA) operates as effectively and productively as possible, without workplace issues hindering its operations unnecessarily, we recommend that the NPCA:

- develop and implement an action plan to address workplace concerns;
- present this action plan and related timeline to the NPCA Board of Directors for review and approval; and
- report on its progress in implementing the actions within the approved timeline.

NPCA RESPONSE

The NPCA values its staff and strives to be a professional, positive, and productive workplace. Over the past year, efforts have been made to improve management-union relations. In addition, the NPCA has significantly increased its education, training and team-building budget to allow staff to grow and teams to thrive. The new mandatory performance evaluation process will help ensure that all employees understand their roles and responsibilities and are supported with resources, coaching and opportunities for growth.

Building on these initiatives, the NPCA will develop an action plan to address workplace concerns. Once completed, the NPCA will present the plan to the NPCA Board for approval. Progress in implementing the actions in the plan will be included in HR updates to the Board.

7.2 Managing Financial and Capital Resources

7.2.1 NPCA Has Not Taken Full Advantage of Cost Saving Opportunities Due to Procurement Practices

In the five-year period from 2013 to 2017, the NPCA spent an average of \$4 million annually on the procurement of goods and services. Our review of the NPCA's spending policies and practices found that the NPCA:

- did not acquire goods and services competitively as required by its procurement policy in half of the purchases we reviewed from 2012 to 2017. The total value of those purchases was \$2 million;
- can accept unsolicited proposals (proposals from companies to provide services that the NPCA is not explicitly seeking); and
- exempts legal services from competitive procurement.

Procurement Policy Not Followed in Half of Cases We Reviewed

Our review of a sample of purchases from 2012 to 2017 totalling \$3.8 million found that no documentation exists to show that the NPCA obtained verbal quotations in 100% of the cases where they were required and it did not issue a Request for Proposals (RFP) in 43% of the cases where it was required.

See **Figure 14** for the requirements under the NPCA's procurement policies.

For example, the NPCA did not issue the required RFP for information technology (IT) services, paying a single vendor over \$530,000 for these services between 2015 and 2017. The vendor had been providing limited IT services for the NPCA's website and flood-monitoring system under a monthly agreement since 2008. The low cost of the initial services only required written quotations, which staff had obtained. In 2015, NPCA staff recommended migrating all of NPCA's technology management needs to the vendor on a one-year

interim basis to allow staff to pursue a long-term solution. NPCA staff recommended entering into a three-year agreement with the vendor based on their satisfaction with the vendor's performance, without issuing the required RFP. The current agreement with the vendor is for indefinite automatic renewal. Subsequent to our audit, the NPCA advised us that it planned to competitively procure this service.

In March 2018, the NPCA hired a full-time procurement staff to ensure that goods and services are acquired competitively, in accordance with NPCA policies.

Unsolicited Proposals Accepted Without Competitive Procurement Process

In July 2014, the NPCA established a policy for accepting unsolicited proposals. The policy requires that, upon receiving an unsolicited proposal, the NPCA must determine if it needs the services pro-

posed and, if it does, it must procure the services competitively if the services are available in the market.

In May 2015, the NPCA received an unsolicited proposal from a communications firm to "develop a strategic communications strategy." The NPCA accepted the proposal in contravention of the policy established in 2014. Specifically, there was no documentation that the NPCA assessed whether it needed the service being proposed, and the NPCA engaged the firm without a competitive procurement, as required by its policy.

In addition, other than emails indicating that the firm arranged meetings between NPCA senior management and provincial government representatives, neither NPCA staff nor the firm could provide us with any of the deliverables outlined in the contract (including, for example, a contact plan for provincial ministries and briefing documents). The NPCA paid the firm \$27,000 over an eight-month period.

Figure 14: Comparison of NPCA Procurement Policies Before and After December 2015

Source of data: Niagara Peninsula Conservation Authority

	Before December 2015	December 2015 to Present
Standard Purchases		
No quotation required	Never	Up to \$5,000 ¹
One quotation	Up to \$2,500	n/a
At least three verbal quotations	\$2,501-\$10,000	\$5,001-\$35,000 ²
At least three written quotations	\$10,001-\$50,000	\$35,001-\$75,000 ³
Request for proposals	Over \$50,000	Over \$75,000 ³
Approval Requirements		
Department manager	Never	Up to \$5,000
Department head	Purchases up to \$5,000	\$5,001-\$35,000
Chief Administrative Officer	Purchases over \$5,000 Extra or change work orders above the approved amount	Purchases over \$35,000 Emergency purchases from \$10,000-\$54,499
Board	Never	Emergency purchases of \$55,000 and over
Exemptions		
	None	Legal fees Land appraisal fees Training and conferences Meal, accommodation and travel expenses Utilities (e.g., hydro, phone)

1. While no quotations are required, purchases up to \$5,000 must be demonstrated to have been made at fair market value.

2. Written quotations may also be obtained.

3. In addition, three satisfactory references are required if the NPCA has not used the contractor before.

Our research of other conservation authorities' policies found that accepting unsolicited proposals is not a common practice. The policies of the Essex Region Conservation Authority and the Toronto and Region Conservation Authority state that unsolicited proposals are not to be accepted.

Legal Services Exempt from Competitive Procurement

The NPCA's annual legal costs increased by 633% between 2012 and 2017, from \$45,000 to \$294,000 (see **Appendix 16**). This increase is due to the organizational restructurings (see **Section 7.1.1**), a dispute over the municipal levy the NPCA charges Hamilton (see **Appendix 14**) and civil suits.

Since 2015, when the NPCA exempted legal services from competitive procurement, the NPCA has paid over \$500,000 in legal fees to 17 different law firms. We noted that, for example, in 2017, the NPCA paid five different law firms for legal services related to HR matters.

Given that the NPCA now requires frequent legal services, it is all the more important to procure such services competitively to ensure that it does so cost-effectively. In addition, the NPCA may benefit from establishing continuity and familiarity by contracting with a preferred law firm for each field of law it requires services.

In comparison, other public-sector organizations, including the Ontario Government, require that all professional services, including legal services, be procured competitively.

RECOMMENDATION 20

To ensure that the Niagara Peninsula Conservation Authority (NPCA) receives value for money spent on goods and services, we recommend that the **NPCA**:

- follow its procurement policies for the acquisition of goods and services;
- revise its procurement policies to require that any needed services associated with

unsolicited proposals be obtained in a transparent and competitive manner;

- assess the benefits of establishing continuity and achieving cost savings from contracting with a preferred law firm for each field of law it requires services; and
- revise its procurement policies for legal services to implement the results of the above assessment.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation. The procurement specialist hired in March 2018 is expected to help ensure that procurement policies are followed when the NPCA acquires goods and services and that procurement policies reflect best practices as described in the actions in this recommendation.

7.2.2 Improvements in Managing Capital Spending Since 2015 an Important Step, But More Can Be Done

In 2014, the NPCA began spending more on capital projects to improve the facilities in its conservation areas in order to improve public safety and enhance customer experience. It spent \$2.5 million on capital projects between 2014 and 2017, compared to \$1.4 million between 2012 and 2014.

We noted the following improvements in how the NPCA plans and manages this spending:

- In 2015, the NPCA purchased an asset management system to track the condition, estimated useful life, and estimated replacement cost of each asset. Prior to this, the NPCA did not maintain an asset inventory.
- In 2016, the NPCA developed its first capital plan for internal planning purposes, which identifies 237 projects to be undertaken between 2017 and 2032 at a total estimated cost of \$45.8 million. Projects include new buildings, structures and equipment for

conservation areas, as well as replacements for electrical systems, septic tanks and equipment.

- In 2017, NPCA staff began preparing business cases for projects, identifying the reason for the proposed project and the estimated cost. Prior to this, conservation area staff identified required capital projects in their conservation areas, which senior management approved. Staff were not required to prepare business cases for projects.

However, we found that the capital plan was not presented to the NPCA Board for approval. NPCA senior management informed us that the document is only intended to be used by staff to track desired capital projects. In addition, we noted weaknesses in the capital plan that limit its effectiveness. Specifically:

- While the capital plan identifies the estimated costs of individual projects, there was little to no information to support the estimates for the 10 highest-costing projects. For example, the plan's most expensive project is to build a new NPCA headquarters in 2022 at an estimated cost of \$9.2 million. This is far more than the estimate in a July 2016 management report to the NPCA Board of Directors, where the amount for the headquarters was between \$4.3 million and \$6.94 million.
- While the capital plan identifies when projects are to be carried out, it does not prioritize the projects within particular years.
- The capital plan does not identify how the NPCA will obtain funding to implement the projects. For example, the plan identified 46 projects for 2018 at a total estimated cost of \$5.75 million, but the NPCA only had \$1.7 million in its capital reserves at the end of 2017—\$3.75 million less than needed.

RECOMMENDATION 21

To ensure that funds are available and that critical capital projects are completed in a timely manner, we recommend that the **Niagara Peninsula Conservation Authority (NPCA)**:

- update the information in its asset management system to reflect the actual replacement cost of assets (when this information is available) and the estimated useful life of assets based on their condition;
- obtain reliable information to support replacement cost estimates and cost estimates for planned capital projects;
- prioritize capital projects using an objective assessment of needs;
- identify how the NPCA will obtain funding to undertake these projects; and
- refine the capital plan, based on the above action items, and present it to the NPCA Board for approval.

NPCA RESPONSE

The NPCA agrees with the Auditor General's recommendation. The NPCA is committed to strong financial management and expects to make significant progress in implementing the actions in this recommendation within the next two budget cycles.

8.0 Detailed Audit Observations: Province and Municipalities' Oversight of Conservation Authorities in Ontario

8.1 Province Does Not Give Conservation Authorities Sufficient Direction and Guidance

8.1.1 More Direction Needed From Province to Clarify Priorities and Ensure Consistency in Programs and Services

The *Conservation Authorities Act* (Act) mandates that conservation authorities provide programs and services “to further the conservation, restoration, development and management of natural resources.” This is a broad mandate that may be interpreted in different ways. For example, the Act does not provide guidance on what “development of natural resources” entails and to what extent conservation of natural resources must be prioritized.

The Province and municipalities have not provided such guidance either. In fact, the Ministry told us that the Act allows each municipality, through its Board representative(s), to set priorities for its conservation authority. As discussed in **Section 5.1.1**, this creates a conflict when municipal priorities to facilitate economic development are at odds with conservation authorities’ responsibility to protect people and property. In fact, 75% of the conservation authorities we surveyed indicated that they encountered conflicts between conservation and development in the work they did.

In the 2015 review of the Act initiated by the Province, stakeholders indicated there was a lack of common understanding of the role of conservation authorities in managing natural resources. In response to this finding, amendments to the Act in 2017 emphasized that certain programs and services are mandatory, and others are at the conservation authorities’ discretion to provide. The

updated Act specifies that mandatory programs are those that are required by provincial legislation. However, there is currently no provincial regulation in place that describes which specific programs and services are mandatory. The amendments also did not specify which of the objectives of conservation authorities—conservation, restoration, development or management of natural resources—takes priority when conflicts arise between the various objectives.

In our survey (see **Appendix 13**), 85% of conservation authorities that responded stated that the 2017 amendments helped clarify the role of conservation authorities. However, we also noted from their responses that conservation authorities’ interpretations of their mandate varied greatly. For example, one conservation authority stated “the intent of the phrase ‘development and management of natural resources’ means to develop natural areas for the health, safety and enjoyment of all, to protect areas and direct incompatible uses away from these areas.” In contrast, according to its 2014–17 Strategic Plan, the NPCA has interpreted its mandate as “manag[ing] the watershed’s natural resources by balancing environmental, community and economic needs.”

Our survey also found variation among conservation authorities’ policies for where development is allowed. For example, the required buffer for new development ranged from zero to 120 metres from wetlands. Stakeholders, including those in the conservation and development communities, told us that this variation has caused difficulties in carrying out conservation and development activities across the province because the rules differ depending on where the activity is proposed.

8.1.2 Province Not Yet Able to Exercise New Regulatory Powers to Fill in Gaps

The 2017 amendments to the Act would give the Province the ability to make additional regulations, including those:

- prescribing additional requirements regarding the appointment, qualifications and composition of conservation authority boards of directors;
- describing programs and services that conservation authorities are required to provide; and
- establishing standards and requirements for conservation authorities' delivery of such programs and services.

However, at the time of our audit, the government had not yet proclaimed these amendments, so the Province is not yet able to use its regulatory-making powers to provide clear direction to conservation authorities on how to meet their mandate.

In addition to clarifying the meaning of "to further the development of natural resources" as noted in the previous subsection, the Ministry could, through regulations:

- define what "development of natural resources" entails;
- prescribe requirements for Board qualifications and composition;
- provide a consistent policy to be used province-wide for regulating development in flood-prone areas and wetlands (to replace the different policies developed by each conservation authority); and
- require that conservation authorities prepare floodplain maps (to ensure that conservation authorities have the necessary information to identify flood-prone areas and determine what programs and services it needs to deliver to manage the health of their watersheds).

RECOMMENDATION 22

To ensure that conservation authorities have the necessary information to interpret and fulfill their legislative mandate, we recommend that the **Ministry of the Environment, Conservation and Parks**, upon proclamation of Section 40 of the *Conservation Authorities Act*:

- clearly describe for conservation authorities what the development of natural resources entails, and how it differs from "development" in general;
- provide guidance to help conservation authorities prioritize the objectives of their programs and services (conservation, restoration, development and management of natural resources);
- use its regulatory powers to establish minimum requirements and standards for conservation authorities' delivery of programs and services; and
- establish the governance practices that it determines conservation authorities should be uniformly following province-wide.

MINISTRY RESPONSE

The Ministry agrees that action needs to be taken to increase clarity in conservation authority roles and responsibilities.

The Province will establish regulations outlining the programs and services conservation authorities are required to provide, including standards or other requirements to be met. These regulations will be developed in consultation with other ministries, municipalities, Indigenous communities, conservation authorities, stakeholders and the public. Once developed, these regulations will be supported with guidance designed to help conservation authorities fulfill these mandated requirements and report on their results.

While conservation authorities deliver a number of resource management programs and services on behalf of the Province, they also deliver programs and services designed to meet local resource management goals and objectives. These additional programs may be delivered on behalf of a participating municipality or as determined by the individual conservation authority as being advisable to further their objectives. While there is a need for greater consistency

and clarity in conservation authorities' roles and responsibilities, there is the desire to maintain the flexibility to tailor the scope and extent of their programs and services to reflect local needs and priorities—a key characteristic of the conservation authority model.

The Province will develop policies and procedures outlining standard expectations for programs and services being provided by conservation authorities on behalf of municipalities or as assigned by municipally-appointed members, including provincial expectations for reporting back to municipalities and appointed members on the results of these programs.

8.2 Neither the Ministry nor Municipalities Know How Conservation Authorities Are Fulfilling their Mandate

The Act requires conservation authorities to provide their annual audited financial statements to the Ministry and participating municipalities. Beyond this, the nature and depth of information requested by these oversight bodies from conservation authorities vary. Neither the Ministry nor the participating municipalities have been involved to the extent necessary to assess how well conservation authorities have been fulfilling their mandate.

8.2.1 Ministry Does Not Receive Reports on How All Responsibilities Delegated to Conservation Authorities Are Being Met

In addition to audited financial statements, the Ministry only requires conservation authorities to submit information on those of their activities that are provincially-funded—that is, those related to flood forecasting and warning, and flood and erosion control. Every year, conservation authorities must submit a year-end report that itemizes where its funding was spent and describes the conservation authorities' management of flood control structures, their operation of flood forecasting and warning

systems, and their review of municipal planning documents. The reports do not include information about how the conservation authorities' activities in these areas have helped them fulfill the responsibilities delegated to them by the Ministry.

Conservation authorities' financial statements may also be of limited usefulness to the Ministry because of inconsistencies in how conservation authorities allocate the costs of delivering their programs and services. For example, our initial review of the NPCA's 2013 and 2014 financial statements found that administrative and corporate services costs appeared to have nearly doubled, from \$1.4 million in 2013 to \$2.6 million in 2014. However, this apparent increase primarily reflects the fact that, in 2014, the NPCA changed how it allocates overhead costs, such as those for utilities and information technology. Before 2014, the NPCA allocated overhead costs to the departments incurring them. Beginning in 2014, all overhead costs are allocated to administrative and corporate services. To adjust for the change in cost allocation, we recalculated the distribution of 2012 and 2013 expenditures in **Figure 4** to better illustrate the changes in actual operational costs from 2012 to 2017.

We asked the Ministry if it has recently reviewed any aspect of conservation authorities' operations. The Ministry informed us that, in 2012, it conducted one-time reviews of conservation authorities' processes for establishing the service fees charged for reviewing development proposals and work permit applications, and the timeliness of their reviews of work permit applications. Aside from these reviews with limited scope, the Ministry has not reviewed conservation authorities' delivery of programs and services.

The 2017 amendments to the Act require conservation authorities to provide to the Ministry whatever information the Ministry requires about their operations, programs and services. However, as described in **Section 8.1.2**, the specific provision that empowers the Ministry to prescribe the type of information conservation authorities must provide had not yet been proclaimed at the time of our audit.

8.2.2 Municipalities Vary in How They Receive Updates from Conservation Authorities

Our discussions with NPCA Board members and representatives from the NPCA's three participating municipalities noted that there is no consistent, formal mechanism through which the municipalities hold the NPCA Board to account. Specifically:

- In Niagara Region, the NPCA has, on occasion, attended the regional council's Audit Committee meeting to respond to any questions that regional councillors may have on the audited financial statements.
- The City of Hamilton requests that the NPCA submit its annual budget to the city council's Budget Committee and report on the NPCA's financial performance, any budgetary pressures, and other relevant highlights.
- Haldimand County receives the NPCA's annual budget but does not generally request further information.

In addition, none of the three participating municipalities require the NPCA to submit information about the cost of projects for which the municipalities have been charged special levies, to ensure that the levies did not exceed the cost of the projects. From 2013 to 2017, the NPCA charged a total of \$16.9 million to the three participating municipalities for various projects, including acquiring land acquisition and improving conservation areas within a municipality.

Our survey of other conservation authorities found that the funding municipalities of 88% of the conservation authorities that responded requested more information than just their annual audited financial statements. The additional information requested includes operating and capital budgets, annual per diem payments to board members, board attendance, quarterly variance reports, and details of projects for which municipalities have been charged special levies.

RECOMMENDATION 23

To ensure that conservation authority boards of directors are held to account appropriately, we recommend that the **Ministry of the Environment, Conservation and Parks** work with municipalities to develop and implement a formal, cost-effective and purposeful reporting process that includes a discussion of the outcomes of conservation authorities' activities.

MINISTRY RESPONSE

The Ministry agrees that additional accountability is required to ensure conservation authorities are fulfilling their mandate.

The Province will work with municipalities to develop and implement a formal cost-effective and purposeful reporting process that includes a discussion of the outcomes of conservation authority activities. These reporting requirements will initially be focused on reporting on the results of provincially mandated roles and responsibilities.

This reporting process will take into account the variation in conservation authorities across the province in regard to the programs and services they deliver, as well as resourcing levels.

8.3 Neither the Ministry nor Municipalities Can Step In to Address Serious Concerns with Conservation Authorities

Despite the 2017 legislative amendments, the Act does not give the Ministry or municipalities powers to intervene in conservation authorities' operations when there are indications of operational issues. As shown in **Appendix 10**, various stakeholders began expressing concerns about the NPCA's activities around 2014. Since then:

- The Ministry has received about 90 pieces of correspondence expressing concerns about the NPCA's activities, many of which

requested that the Ministry audit or review the NPCA's operations.

- Nine local municipal councils in the NPCA's watershed have also passed motions requesting that the Province or the NPCA Board review the NPCA's operations. See **Appendix 17** for a list of motions passed by the various local councils.

In December 2016, the Ministry's response to municipalities' requests for it to conduct an independent audit of the NPCA stated that "the Ministry does not have the legislative ability to order a forensic audit. [The Ministry's] interests are in flood control and watershed management, and we have no hand in the operations or operational oversight of conservation authorities."

In June 2016, the Niagara Regional Council denied a request to initiate an audit of the NPCA, stating that "Regional Council does not have jurisdiction (legislative authority)."

Legislation Provides Mechanism for Province or Municipalities to Intervene in Other Sectors

In comparison, ministries in other sectors that have delegated responsibility to other government bodies have a mechanism for either the Province or municipalities to intervene. For example, the Municipal Affairs, Health and Education Ministers may appoint individuals to audit, supervise or take over the operations of housing providers, hospitals, and school boards that are having governance, leadership and operational issues. In fact, in 2011, 2016 and 2017, the Health Minister appointed a supervisor to take over the board and the administration of three hospitals that were having leadership issues and poor financial performance. Similarly, in 2012, the Education Minister appointed a supervisor to oversee the operations of two school boards that were having operational problems.

While it could be argued that conservation authorities receive far less provincial funding than hospitals and school boards, it remains the case that the Province and municipalities share over-

sight responsibilities for conservation authorities. As such, they need to have processes for dealing with issues beyond the ability of the conservation authorities to manage themselves.

RECOMMENDATION 24

To ensure that issues that are beyond conservation authorities' ability to manage themselves are dealt with appropriately and in a timely manner, we recommend that the **Ministry of the Environment, Conservation and Parks (Ministry)** work with municipalities to:

- determine the circumstances when Ministry and/or municipality intervention is warranted;
- establish mechanisms for the Ministry and/or municipalities to intervene when necessary in conservation authorities' operations; and
- formalize such mechanisms through a memorandum of understanding between the Ministry, municipalities and conservation authorities that clearly establishes the roles and responsibilities of each party and when intervention is necessary.

MINISTRY RESPONSE

We appreciate the extent to which this audit has identified specific concerns associated with the operation of the Niagara Peninsula Conservation Authority. While the Province takes these issues seriously, it is cautious to not assume that these issues are present in the operations of all of Ontario's 36 conservation authorities.

The Ministry appreciates the balanced recommendation by the Auditor General and agrees with the need to work closely with municipalities to determine the circumstances when it may be appropriate to intervene—and what type of intervention that might entail. The Ministry is committed to having these discussions with municipalities in order to ensure accountability and restore the public trust in them.

As outlined above, the Ministry is also committed to working with municipalities to establish clear and consistent expectations for conservation authority roles and responsibilities. Once established, these expectations will form the basis by which individual conservation authority decisions will be evaluated. Where decisions are not being made in accordance with these expectations, the Province and municipalities will work together to ensure effective action is taken.

Given that conservation authorities are also subject to other provincial legislation (for example, *Occupational Health and Safety Act*, *Accessibility for Ontarians with Disabilities Act*) and parts of legislation that governs municipalities (for example, *Municipal Conflict of Interest Act*, *Municipal Act*) the Ministry is committed to promoting the use of existing dispute resolution mechanisms that can be accessed by conservation authorities, municipalities, stakeholders and members of the public.

Appendix 1: Summary of Recommendations

Prepared by the Office of the Auditor General of Ontario

Recommendations to the Niagara Peninsula Conservation Authority (NPCA)

Report Sections	OAGO Recommendations
5.1.2 Conflict of Interest Not Clearly Defined and Understood	Recommendation 2 To ensure that the Niagara Peninsula Conservation Authority (NPCA) Board of Directors has the necessary independence and objectivity to oversee the NPCA's activities effectively, we recommend that the NPCA Board : <ul style="list-style-type: none">• adhere to its Code of Conduct, which states that Board members are to refrain from unduly influencing staff, being respectful of staff's responsibility to use their professional expertise and corporate perspective to perform their duties; and• update its Code of Conduct to clearly define the circumstances and relationships that could lead to an actual or perceived conflict of interest beyond those defined in the <i>Municipal Conflict of Interest Act</i>.
5.1.3 Board Involvement in Day-to-Day Operations and Decision-Making Compromises Board's Objectivity	Recommendation 3 To ensure that members of the Niagara Peninsula Conservation Authority (NPCA) Board of Directors collectively have the skills, experience and training necessary to oversee the NPCA's activities effectively, we recommend that the NPCA Board : <ul style="list-style-type: none">• determine the types of skills and experience required on the Board based on the NPCA's mandate, and develop and implement a strategy to address any gaps;• work with the NPCA's funding municipalities to ensure that their Board appointment processes consider skills and experience requirements;• assess the current role of its advisory committee to determine whether it is sufficient in fulfilling any gaps in Board skills and competencies, and revise as necessary; and• identify initial and ongoing Board governance training needs.
5.3 Board Does Not Assess CAO or Board's Performance	Recommendation 5 To ensure that the Niagara Peninsula Conservation Authority (NPCA) Board of Directors has all the information it needs to effectively oversee the NPCA and improve its oversight when needed, we recommend that the NPCA Board : <ul style="list-style-type: none">• regularly evaluate the performance of the NPCA's Chief Administrative Officer, as required by its policies;• develop performance indicators to facilitate the Board's evaluation of its oversight processes and activities; and• regularly evaluate both its collective performance and the performance of individual Board members.
5.4 More Clarity Needed Around Board Activities Eligible for Per Diem Payments	Recommendation 6 To ensure that per diem payments to Board members are reasonable and transparent, we recommend that the Niagara Peninsula Conservation Authority : <ul style="list-style-type: none">• clarify its Board policies to specify the meetings and other functions for which Board members may receive per diem payments in the future; and• continue to publish information on actual Board per diems and other expenses annually online.
6.1 Identifying Flood-Prone Areas	Recommendation 7 To ensure that the Niagara Peninsula Conservation Authority (NPCA) has complete and up-to-date information about flood risks within its watershed, we recommend that the NPCA : <ul style="list-style-type: none">• assess the risk to communities around the unmapped watercourses;• determine the time and cost for completing and updating floodplain maps; and• schedule this work, based on its risk assessment and for the watercourses for which the Ministry of Natural Resources and Forestry recommends floodplain maps be prepared.

Report Sections	OAGO Recommendations
6.2.1 Inconsistent Criteria Used to Review Development Proposals and Work Permit Applications	<p>Recommendation 9</p> <p>To ensure that development is directed away from areas of natural hazards where there is an unacceptable risk to public health and safety or of property damage, we recommend that the Niagara Peninsula Conservation Authority:</p> <ul style="list-style-type: none"> finalize, as soon as possible, its policies for reviewing development proposals and work permit applications; and in finalizing such policies, ensure that the criteria for where development is allowed is consistent with Section 3.1 of the Provincial Policy Statement and the <i>Conservation Authorities Act</i>.
6.2.3 Frequent Reorganizations Have Affected NPCA's Delivery of Mandated Services	<p>Recommendation 10</p> <p>To ensure that staffing decisions are focused on improving the operations of the Niagara Peninsula Conservation Authority (NPCA) to fulfill its legislative mandate and provide effective and efficient services, we recommend that the NPCA:</p> <ul style="list-style-type: none"> develop a human resources (HR) plan that identifies current and future HR needs, as they relate to the strategic direction of the NPCA; in developing such an HR plan, review its staffing mix to determine the appropriate level of administrative and corporate support staff; base future HR decisions on its HR plan; and provide information about planned restructuring decisions, including their financial implications, to the NPCA Board prior to implementing such decisions.
6.3.1 NPCA Needs to Take Timely and Progressive Actions After Complaints Received	<p>Recommendation 11</p> <p>To ensure that reports of possible and known violations are appropriately addressed in a timely manner, we recommend that the Niagara Peninsula Conservation Authority:</p> <ul style="list-style-type: none"> determine the number of enforcement staff necessary to address violations on a timely basis and staff accordingly; ensure that enforcement staff obtain the necessary training to discharge their responsibilities; revise its enforcement policy to provide guidance on the progressive actions enforcement staff should take to address violations, taking into consideration the significance of the violations; revise its enforcement policy to require that enforcement activities be sufficiently documented and ensure that staff adhere to the policy; and use CityView to track reports of possible violations.
6.3.2 Violations May Be Occurring Without the NPCA's Knowledge	<p>Recommendation 12</p> <p>To ensure that the Niagara Peninsula Conservation Authority (NPCA) can proactively identify unlawful activities before they result in risk to people, property and the environment, we recommend that the NPCA:</p> <ul style="list-style-type: none"> institute a mandatory reporting mechanism for landowners to notify the NPCA that approved work has been completed in compliance with the conditions of the permit, and follow up with landowners who fail to report; develop a risk-based plan to conduct site visits to ensure that landowners have completed the approved work in compliance with the conditions of the permit; and update its website to provide information to the public about activities that are prohibited under the <i>Conservation Authorities Act</i> and how the public can report suspected violations to the NPCA.

Report Sections	OAGO Recommendations
6.4.1 Restoration Program to Improve Water Quality Was Suspended for One Year	<p>Recommendation 13</p> <p>To ensure that restoration funding is directed toward projects that best achieve the goals of the restoration program, we recommend that the Niagara Peninsula Conservation Authority, regardless of its chosen program delivery model, develop and implement a strategy to better target areas of the watershed based on water quality monitoring and other information on the health of the watershed.</p>
6.4.2 Funding Under Former Restoration Program Not Directed to Where Restoration Is Most Needed	
6.4.3 Almost One-Third of \$3 Million in Welland River Restoration Funding Not Spent as Intended	<p>Recommendation 14</p> <p>To ensure that restoration funding from Ontario Power Generation (OPG) helps improve the health of the Welland River as agreed to, we recommend that the Niagara Peninsula Conservation Authority (NPCA):</p> <ul style="list-style-type: none"> • seek clarification with OPG regarding its expectations for how the remaining funds are to be spent; • revise, as necessary, the formal agreement between the NPCA and OPG to outline such expectations; and • develop and implement a plan that identifies the projects and their locations for which the remaining funds will be spent, ensuring that such projects focus on areas of concern identified on the watershed plans that have been developed for the Welland River.
6.5 Buying Land for Conservation, Recreation and Education	<p>Recommendation 15</p> <p>To ensure that lands are acquired to help the Niagara Peninsula Conservation Authority (NPCA) fulfill its mandate, we recommend that the NPCA:</p> <ul style="list-style-type: none"> • review and revise its land acquisition goals—both in its latest 2015 plan and in its 100-year plan—for reasonableness and to reflect the NPCA's responsibilities under the natural hazard policies of the Provincial Policy Statement; • improve its current land acquisition criteria to provide clear direction on which lands should be acquired; • prioritize its current land acquisition criteria to reflect the revised goals; • determine the total cost of its land acquisition plan and how it will fund the acquisitions; • develop and implement a plan to achieve its land acquisition goals; and • monitor and report to the NPCA Board of Directors on land acquisition progress.
6.6 Measuring the Impact of NPCA's Programs and Services	<p>Recommendation 16</p> <p>To enable the Niagara Peninsula Conservation Authority (NPCA) to assess its performance in fulfilling its mandate, we recommend that the NPCA:</p> <ul style="list-style-type: none"> • develop performance indicators that are tied to its mandate and overall program goals; • establish targets against which each indicator will be assessed; • regularly collect and analyze information about the impact of its programs and services on the Niagara Peninsula watershed to help adjust programs on an ongoing basis; and • review, and revise as necessary, its annual and quarterly reports to better reflect how the NPCA's initiatives and projects are helping the NPCA fulfill its mandate and overall program goals.

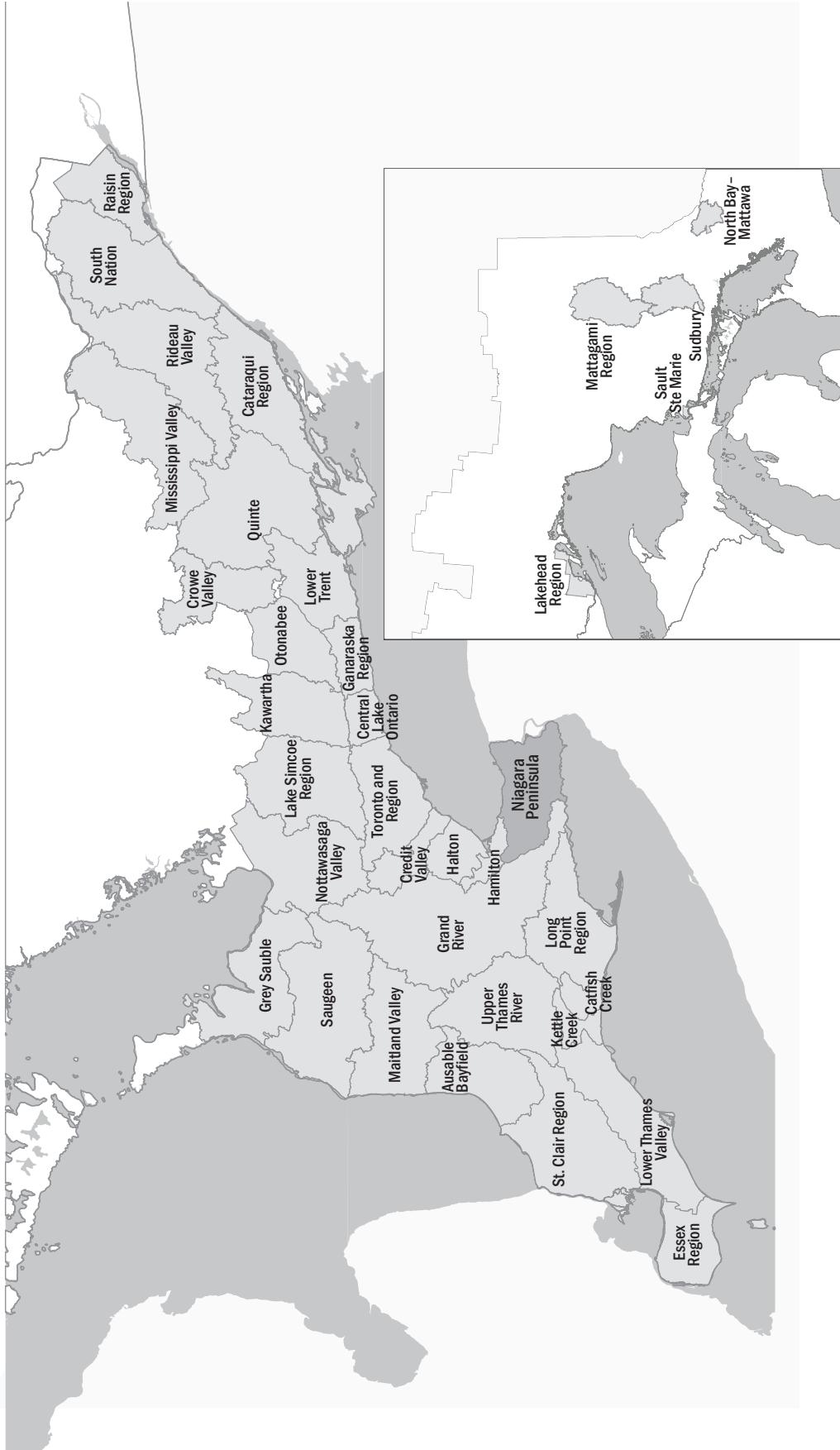
Report Sections	OAGO Recommendations
7.1.1 NPCA Staffing Has Been Unstable with Frequent and Costly Restructurings	<p>Recommendation 17</p> <p>To ensure that the Niagara Peninsula Conservation Authority (NPCA) follows fair and transparent recruitment and promotion processes, and that the best-qualified individuals are hired and promoted, we recommend that the NPCA:</p> <ul style="list-style-type: none"> • update its recruitment policies to include the steps and documentation required to support hiring decisions and eliminate situations of real or perceived conflict of interest in recruitment and hiring; • update its promotion policies to include the decision-making process required to be followed and documented for promotions and appointments; • assess staff's performance annually, as required by its policies; and • provide quarterly updates to the NPCA Board of Directors on staffing changes and performance.
7.1.2 Improvements made in Human Resource Processes Since 2014, But Best Practices Still Frequently Not Followed	<p>Recommendation 18</p> <p>To ensure compliance with the <i>Occupational Health and Safety Act</i>, the <i>Ontario Human Rights Code</i> and the Ministry of Labour's Code of Practice, we recommend that the Niagara Peninsula Conservation Authority (NPCA):</p> <ul style="list-style-type: none"> • for every harassment or discrimination complaint or grievance filed, fully assess and document whether an investigation is required and, if it is, conduct it in an appropriate and timely manner; • use its ability, under its workplace harassment policy, to appoint an external investigator or develop mechanisms to ensure that complaints against the Chief Administrative Officer (CAO) are investigated by a party who does not report directly to the CAO; and • provide additional information on grievances, staff complaints and investigations, including their subject and financial implications, as part of confidential updates to the NPCA Board of Directors.
7.1.4 Staff Have Divided Opinions About NPCA Workplace Culture	<p>Recommendation 19</p> <p>To ensure the Niagara Peninsula Conservation Authority (NPCA) operates as effectively and productively as possible, without workplace issues hindering its operations unnecessarily, we recommend that the NPCA:</p> <ul style="list-style-type: none"> • develop and implement an action plan to address workplace concerns; • present this action plan and related timeline to the NPCA Board of Directors for review and approval; and • report on its progress in implementing the actions within the approved timeline.
7.2.1 NPCA Has Not Taken Full Advantage of Cost Saving Opportunities Due to Procurement Practices	<p>Recommendation 20</p> <p>To ensure that the Niagara Peninsula Conservation Authority (NPCA) receives value for money spent on goods and services, we recommend that the NPCA:</p> <ul style="list-style-type: none"> • follow its procurement policies for the acquisition of goods and services; • revise its procurement policies to require that any needed services associated with unsolicited proposals be obtained in a transparent and competitive manner; • assess the benefits of establishing continuity and achieving cost savings from contracting with a preferred law firm for each field of law it requires services; and • revise its procurement policies for legal services to implement the results of the above assessment.

Report Sections	OAGO Recommendations
7.2.2 Improvements in Managing Capital Spending Since 2015 an Important Step, But More Can Be Done	Recommendation 21 To ensure that funds are available and that critical capital projects are completed in a timely manner, we recommend that the Niagara Peninsula Conservation Authority (NPCA) : <ul style="list-style-type: none">• update the information in its asset management system to reflect the actual replacement cost of assets (when this information is available) and the estimated useful life of assets based on their condition;• obtain reliable information to support replacement cost estimates and cost estimates for planned capital projects;• prioritize capital projects using an objective assessment of needs;• identify how the NPCA will obtain funding to undertake these projects; and• refine the capital plan, based on the above action items, and present it to the NPCA Board for approval.
Recommendations to the Ministry of the Environment, Conservation and Parks (Ministry) and to the Ministry of Natural Resources and Forestry	
Report Sections	OAGO Recommendations
5.1.1 Municipal Priorities Sometimes Conflict with Board Responsibilities	Recommendation 1 To ensure effective oversight of conservation authorities' activities through boards of directors, we recommend that the Ministry of the Environment, Conservation and Parks clarify board members' accountability to the conservation authority.
5.2 Identifying Necessary Skills and Competencies Could Improve Board Effectiveness	Recommendation 4 We recommend that the Ministry of the Environment, Conservation and Parks : <ul style="list-style-type: none">• make a recommendation to the Executive Council of Ontario to proclaim Section 40 of the <i>Conservation Authorities Act</i>;• once Section 40 is proclaimed, make a regulation prescribing requirements for board composition that result in board members having the independence and objectivity they need to fulfill their oversight responsibilities; and• work with Conservation Ontario and conservation authorities to determine whether governance training should be developed and delivered province-wide for board members of conservation authorities.
6.1 Identifying Flood-Prone Areas	Recommendation 8 To ensure that conservation authorities have complete and up-to-date information about flood risks within their watershed, we recommend that the Ministry of Natural Resources and Forestry work with Conservation Ontario to: <ul style="list-style-type: none">• establish clear responsibility and criteria for developing and updating floodplain maps across the province; and• review current funding levels to conservation authorities to determine how floodplain mapping can be completed in a timely manner.
8.1 Province Does Not Give Conservation Authorities Sufficient Direction and Guidance	Recommendation 22 To ensure that conservation authorities have the necessary information to interpret and fulfill their legislative mandate, we recommend that the Ministry of the Environment, Conservation and Parks , upon proclamation of Section 40 of the <i>Conservation Authorities Act</i> : <ul style="list-style-type: none">• clearly describe for conservation authorities what the development of natural resources entails, and how it differs from "development" in general;• provide guidance to help conservation authorities prioritize the objectives of their programs and services (conservation, restoration, development and management of natural resources);• use its regulatory powers to establish minimum requirements and standards for conservation authorities' delivery of programs and services; and• establish the governance practices that it determines conservation authorities should be uniformly following province-wide.

Report Sections	OAGO Recommendations
8.2 Neither the Ministry nor Municipalities Know How Conservation Authorities Are Fulfilling their Mandate	<p>Recommendation 23</p> <p>To ensure that conservation authority boards of directors are held to account appropriately, we recommend that the Ministry of the Environment, Conservation and Parks work with municipalities to develop and implement a formal, cost-effective and purposeful reporting process that includes a discussion of the outcomes of conservation authorities' activities.</p>
8.3 Neither the Ministry nor Municipalities Can Step In to Address Serious Concerns with Conservation Authorities	<p>Recommendation 24</p> <p>To ensure that issues that are beyond conservation authorities' ability to manage themselves are dealt with appropriately and in a timely manner, we recommend that the Ministry of the Environment, Conservation and Parks (Ministry) work with municipalities to:</p> <ul style="list-style-type: none"> • determine the circumstances when Ministry and/or municipality intervention is warranted; • establish mechanisms for the Ministry and/or municipalities to intervene when necessary in conservation authorities' operations; and • formalize such mechanisms through a memorandum of understanding between the Ministry, municipalities and conservation authorities that clearly establishes the roles and responsibilities of each party and when intervention is necessary.

Appendix 2: Ontario's 36 Conservation Authorities

Source: Niagara Peninsula Conservation Authority



Appendix 3: Key Information about Conservation Authorities in Ontario

Source: Conservation Ontario 2016 Conservation Authorities Survey and websites of individual conservation authorities

Conservation authorities are listed in order from highest to lowest expenditures in 2016.

#	Conservation Authority (CA)	# of Participating Municipalities	Size of Watershed (km ²)	Population within Watershed	Expenditures 2016 (\$ million)	Full Time Permanent Staff, 2016
1	Toronto and Region CA	6	3,467	3,505,052	100.9	520
2	Grand River CA	11	6,800	772,638	30.1	135
3	Credit Valley Conservation	4	1,000	609,672	26.5	150
4	Conservation Halton	4	1,000	449,456	23.0	135
5	Upper Thames River CA	7	3,432	381,119	16.1	72
6	Lake Simcoe Region CA	6	3,300	357,477	14.1	90
7	Hamilton CA	2	474	396,195	12.4	84
8	Niagara Peninsula CA	3	2,424	485,943	10.2	56
9	Rideau Valley CA	6	4,243	416,457	8.6	58
10	Essex Region CA	3	1,681	326,105	7.1	36
11	South Nation Conservation	4	4,384	287,720	6.3	38
12	St. Clair Region CA	3	4,100	149,181	5.4	28
13	Central Lake Ontario CA	1	638	296,944	5.3	44
14	Nottawasaga Valley CA	3	3,646	193,276	5.3	31
15	Ausable Bayfield CA	4	2,500	38,091	4.2	25
16	Long Point Region CA	5	2,893	97,222	4.2	19
17	Cataraqui Region CA	6	3,567	170,929	3.8	23
18	Quinte Conservation	6	6,000	101,220	3.8	21
19	Saugeen Conservation	4	4,675	73,576	3.5	19
20	Lower Thames Valley CA	4	3,275	100,501	3.4	0
21	Grey Sauble Conservation	2	3,146	59,216	3.3	16
22	Maitland Valley CA	4	3,266	52,132	3.1	16
23	Kawartha Conservation	3	2,563	52,238	3.0	20
24	Mississippi Valley Conservation	5	4,455	260,264	2.9	28
25	Otonabee Conservation	2	1,951	102,942	2.8	16
26	North Bay-Mattawa CA	10	2,984	55,559	2.7	18
27	Ganaraska Region CA	4	935	75,572	2.5	22
28	Kettle Creek CA	4	520	87,414	2.2	12
29	Lower Trent Conservation	3	2,121	58,841	2.2	18
30	Raisin Region CA	2	1,680	64,867	2.1	14
31	Lakehead Region CA	8	2,719	101,482	1.8	10
32	Nickel District CA	1	7,576	128,410	1.5	6
33	Catfish Creek CA	3	490	17,367	1.3	6
34	Crowe Valley CA	4	2,006	9,153	0.8	7
35	Mattagami Region CA	3	11,000	34,449	0.8	3
36	Sault Ste Marie CA	2	283	65,770	0.7	8

Appendix 4: Significant Events and Legislative Changes Relating to Conservation Authorities

Prepared by the Office of the Auditor General of Ontario

Date	Description of Event
1932	Following multiple floods in the Grand River Valley in the early 1930s, local authorities petition Ontario's Department of Lands and Forests to study the problem. The government publishes the 1932 <i>Report on Grand River Drainage</i> , which outlines the need to control water levels in the Grand River, for both flood protection and the safe disposal of sewage.
1938	Five municipalities form the Grand River Conservation Commission to address flooding on the Grand River.
1944	Conservation groups submit a proposal to the federal government requesting a watershed-based management strategy. The federal government agrees to jointly fund (with the province of Ontario) a survey of the Ganaraska watershed as a pilot project. The results of the survey are published in the Ganaraska Report in 1944. The report recommends that legislation be created to allow municipalities in any part of Ontario to undertake conservation programs. Specifically, the report recommends that the legislation combine the best features of the Grand River Commission and an American entity—the Muskingum Watershed Conservancy District—created in Ohio in 1933 to implement flood control and water conservation projects.
1946	The <i>Conservation Authorities Act</i> (Act) is passed.
1948	The Grand Valley Conservation Authority—Ontario's first conservation authority—is created under the new legislation. The Authority focuses on buying environmentally significant land, such as wetland and forests. (In 1966, it merges with the Grand River Conservation Commission to form the Grand River Conservation Authority.)
1954–1956	Because of the extreme flooding caused by Hurricane Hazel in 1954, the Act is amended in 1956 to allow conservation authorities to prohibit filling in floodplains. These regulations are broadened to include other areas that the conservation authority deems are at risk of flooding.
1959	The Niagara Peninsula Conservation Authority is created.
1996	The <i>Savings and Restructuring Act, 1996</i> , amends the Act to reduce provincial control over and involvement in conservation authorities. For example, the Province no longer appoints members to boards of directors and the Minister no longer selects the chair of the board or approves conservation authorities' budgets. Accompanying this legislation is a large decline in provincial funding to conservation authorities. Currently, the Ministry of Natural Resources and Forestry (Ministry) provides annual funding totalling approximately \$7.5 million to all conservation authorities for provincially mandated activities related to flood forecasting and warning, flood and erosion control, and the delegated responsibility for commenting on planning matters regarding the natural hazard policies under the Provincial Policy Statement. The Ministry also provides an additional \$5 million in application-based grants to conservation authorities for the maintenance and repair of existing flood- and erosion-control infrastructures. According to the Ministry, this is the minimum provincial funding level necessary to support conservation authorities' delivery of natural hazards management programs. The amount each conservation authority receives from the Ministry is a fixed amount based on an average of 1990s operational costs.
1998	Amendments to the Act expand conservation authorities' powers to also regulate development and activities in wetlands and the shorelines of the Great Lakes. Wetlands were added to conservation authorities' jurisdiction because of their ability to store water and mitigate floods. The regulation governing the content of conservation-authority-specific regulations came into effect in 2004. Conservation-authority-specific regulations were approved by the Minister in 2006.
2015–2017	The Ministry of Natural Resources and Forestry conducts a review of the Act.

Date	Description of Event
2017	<p>The government passed the <i>Building Better Communities and Conserving Watersheds Act</i>, which introduced a number of amendments to the Act. The intent of the changes was to strengthen oversight and accountability and provide clarification and consistency on roles and responsibilities of conservation authorities.</p> <p>The following amendments have been proclaimed:</p> <ul style="list-style-type: none"> • added a purpose statement to the Act; • changed the Board members' terms from three to four years, to align with municipal elections; • requires conservation authorities to create administrative bylaws for boards of directors; and • requires that programs provided to municipalities must be outlined in a memorandum of understanding. <p>The following amendments have not been proclaimed:</p> <ul style="list-style-type: none"> • requirement that MOUs with municipalities are to be made public and be reviewed periodically; • the transfer of the authority to make regulations concerning development and interference with watercourses or wetlands from individual conservation authorities to the Minister; • enhanced enforcement tools (for example, ability to issue stop work orders, increases to fines and penalties); • additional regulatory powers for the Province (through the Lieutenant Governor in Council), including making regulations to Board composition and qualifications of Board members, outlining the types of programs and services conservation authorities can provide, establishing minimum standards for service delivery, and enabling the Province with the ability to make regulations about apportionment of costs; and • additional regulatory powers for the Minister, including making regulations to require conservation authorities to provide or publish information, amend or prescribe additional bylaws to conservation authorities, require public consultation, revise criteria and information required for permits, and outline what types of services a conservation authority can charge fees for.
2018	Following the June 2018 provincial election, responsibility for administering the Act is transferred from the Ministry of Natural Resources and Forestry to the new Ministry of the Environment, Conservation and Parks.

Appendix 5: Entities that Manage Flood Risks and Watersheds in Canada

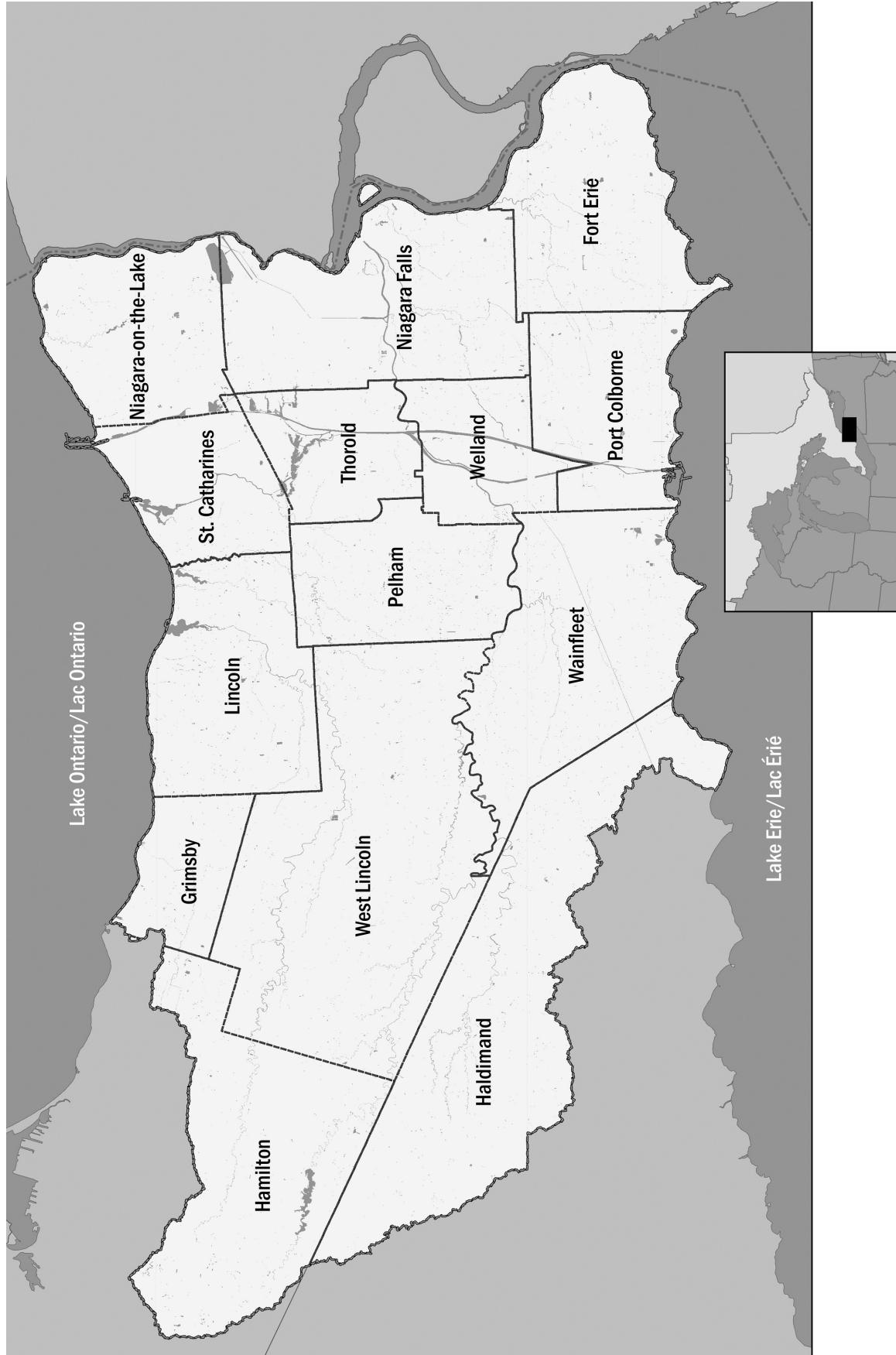
Prepared by the Office of the Auditor General of Ontario

	Management of Flood Risks			
	Operate Flood Control Structures ¹	Identify Flood Hazards ²	Controlling Development in Flood-Prone Areas ³	Management of Watersheds ⁴
Ontario	Conservation authorities	Conservation authorities	Conservation authorities	Conservation authorities
British Columbia	Province	Province issues flood warnings. Municipalities develop floodplain maps.	Municipalities	Province designates watersheds. Municipalities conduct watershed management.
Alberta	Province	Province	Municipalities	Watershed Planning and Advisory Councils ⁵
Saskatchewan	Province	Province issues flood warnings. Municipalities develop floodplain maps.	Municipalities	Province
Manitoba	Province	Province	Municipalities	Conservation Districts ⁶
Quebec	Province	Province	Municipalities	Municipalities
New Brunswick	Province	Province ⁷	Municipalities	Province
Nova Scotia	Province	Province ⁷	Municipalities	Municipalities
Prince Edward Island	n/a ⁸	Province ⁷	Municipalities	Public citizens
Newfoundland	Province	Province ⁷	Municipalities	Municipalities

1. Includes construction and management of dams and dykes.
2. Includes floodplain mapping, flood forecasting, and issuing flood warnings.
3. Includes issuing permits for development and/or reviewing and approving development proposals.
4. Includes ensuring the sustainability of the watershed through land conservation, habitat restoration and public education.
5. Watershed Planning and Advisory Councils are non-profit organizations designated by Alberta Environment and Parks to report on the health of the watershed; and to lead collaborative planning and education and stewardship activities on a watershed basis.
6. Conservation Districts are partnership organizations between provincial and municipal governments with the responsibility to protect, restore and manage land and water resources on a watershed basis.
7. The Atlantic Provinces—along with non-profit organizations, tribal governments, and industry—work together as part of the Atlantic Climate Adaptations Solutions Association to identify risks caused by climate change. Part of this work is floodplain mapping and analyzing flood risks.
8. There are no significant dams in Prince Edward Island.

Appendix 6: Map of Niagara Peninsula Watershed and the Municipalities Over Which NPCA Has Jurisdiction

Source: Niagara Peninsula Conservation Authority



Appendix 7: Municipalities' Board Member Selection Process and Members of NPCA Board of Directors, May 2018

Prepared by the Office of the Auditor General of Ontario

Niagara Region: The appointment is first offered to the Mayor and regional councillors. If more than one elected representative expresses interest, the regional council will decide by vote. If no elected member seeks appointment, the local council (of the lower-tier municipality) selects and recommends a citizen residing in the municipality for approval by the regional council.

Town of Fort Erie	Sandy Annunziata	Regional councillor*	Member since 2015
Town of Grimsby	Tony Quirk	Regional councillor*	Member since 2015
Town of Lincoln	Paul MacPherson	Councillor	Member since 2017
City of Niagara Falls	Jim Diodati	Mayor*	Member since 2015
Town of Niagara-on-the-Lake	Patrick Darte	Mayor*	Member since 2015
Town of Pelham	Brian Baty	Regional councillor*	Member since 2006
City of Port Colborne	John Maloney	Mayor*	Member since 2015
City of St. Catharines	Bruce Timms	Regional councillor*	Member since 2011
City of Thorold	Dominic DiFruscio	Citizen	Member since 1993
Township of Wainfleet	April Jeffs	Mayor*	Member since 2011
City of Welland	Frank Campion	Mayor*	Member since 2015
Township of West Lincoln	Douglas Joyner	Mayor*	Member since 2011

City of Hamilton: The city council advertises the appointment on the city's website and to local media. Citizens apply for the appointment and may be interviewed by the council's selection committee.

City of Hamilton	James Kaspersetz	Citizen	Member since 2015
City of Hamilton	James Stewart Beattie	Citizen	Member since 2011

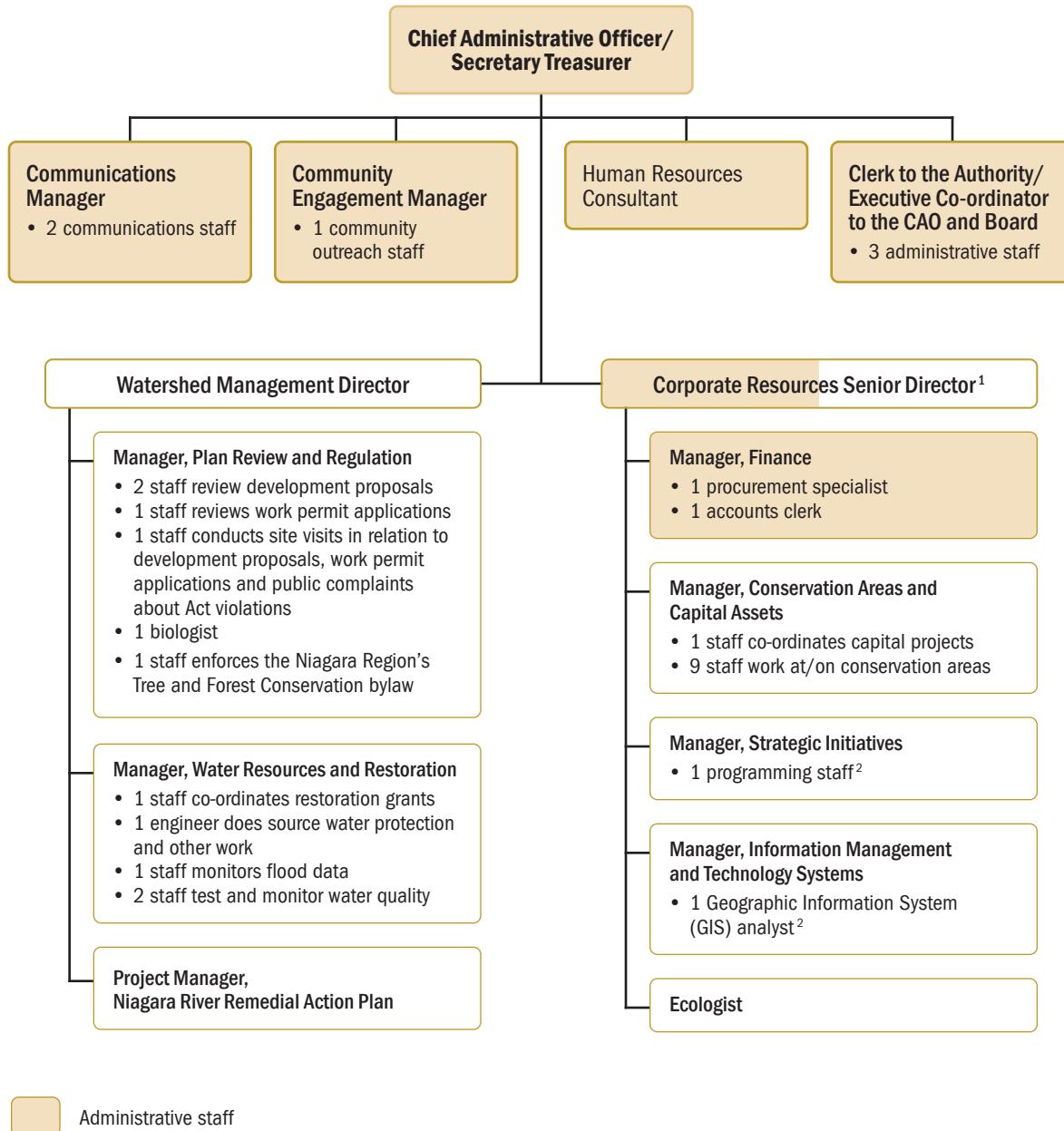
Haldimand County: The council selects an elected representative.

Haldimand County	Rob Shirton	Councillor	Member since 2015
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* These individuals are also members of the Niagara Regional Council. The Niagara Regional Council is made up of 31 members from the 12 local municipalities in the region. The mayor of each local municipality becomes a member of regional council by default. In addition, there are 18 regional councillors who are elected by voters in their municipalities. The number of regional councillors for each local municipality is determined by the Niagara Regional Council. The last member of regional council is the Regional Chair, who is elected by the other members of regional council at the first council meeting following the election.

Appendix 8: NPCA Organization, May 2018

Source of data: Niagara Peninsula Conservation Authority



1. The Corporate Resources Senior Director oversees both operations areas and the administrative function of Finance. The half-shaded box indicates the division of the Senior Director's time between administrative and non-administrative duties.

2. Three staff are on parental leave including two additional programming staff and one additional GIS analyst.

Appendix 9: Standing Committee of Public Account's Concerns about the NPCA

Sources of data: Hansard of October 25, 2017 Standing Committee on Public Accounts (Committee) meeting, NPCA's letter to the Committee dated November 10, 2017

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
Governance		
<i>Oversight of Conservation Authorities</i> Conservation authorities have no oversight other than following provincial government policy. The Ministry says it has no ability to address any of the issues that have been happening in NPCA.	No response. All conservation authorities appoint to their Board the same way. The way Boards are populated is outlined in the Act. The Act recently went through a two-year review, and the results of that review saw that no changes to how Boards are appointed are to be made.	Neither the Ministry nor the municipalities are involved to the extent necessary to assess how well conservation authorities are fulfilling their mandate. The Act does not give the Ministry powers to intervene in the operations of conservation authorities. See Section 8.3 for details.
<i>Board Composition</i> Conservation authorities appoint in different ways. In NPCA's situation, it is mostly elected officials and three public members.	 The individual took a leave of absence from the NPCA Board to carry out the restructuring work that was recommended in the Strategic Plan process. There was a full recruitment process for his position as CAO. It is not atypical for a Board member to transition to staff position. The Act states that 'no salary, expenses or allowances of any kind shall be paid to any of the members...' His restructuring contract is not considered a salary, expense or allowance. All the while, sitting as an NPCA Board member, which is in contravention of the Act because Board members should not profit from having a seat on the Board.	The Act authorizes municipalities to appoint conservation authority board representatives to generally act and vote on their behalf. Twelve of the NPCA's 15 Board members are elected officials. Amendments to the Act, if proclaimed, would give the Province the ability to make requirements for board qualifications or composition. See Section 5.1.1 for details.
<i>Board Compensation</i> During Carmen D'Angelo's tenure [on the NPCA board], he takes a leave of absence from the board, then he is awarded a contract by the Board for \$40,000 to work on a strategic plan. Once that is done, he goes back to the board ... takes another leave of absence, then he is appointed as NPCA CAO.	 The individual took two leaves of absence, first in October 2013 to implement a human resource (HR) restructuring plan that he proposed when he was a Board member, and then in March 2014 prior to being interviewed for the CAO position. The municipality did not fill the vacancy each time on the NPCA Board. In 2014, the individual received over \$40,000 for consulting services related to the NPCA's 2014-17 Strategic Plan. The NPCA did not competitively procure this service.	The individual took two leaves of absence, first in October 2013 to implement a human resource (HR) restructuring plan that he proposed when he was a Board member, and then in March 2014 prior to being interviewed for the CAO position. The municipality did not fill the vacancy each time on the NPCA Board. At the time, the Act stated that "no salary, expenses or allowances of any kind shall be paid to any of the members of the authority without the approval of the Ontario Municipal Board," but did not describe what such expenses would include. Therefore, it is unclear whether the payment was in contravention of the Act. See Section 7.1.2, Figure 11 (Board Member Becomes CAO) for details.

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
<p><i>Code of Conduct</i></p> <p>Because [former Board member] Bill Hodgson called for an audit of the agency, he was censured by the NPCA. The NPCA has refused to release to the public what Mr. Hodgson supposedly did.</p> <p>The NPCA has instituted a code-of-conduct policy recently that says if anybody on the Board speaks out against the NPCA, they will be censured.</p>	<p>The NPCA Board was presented with a confidential report regarding the actions of the Board member. The Board found it fitting to censure the member for his actions regarding interference with the Request for Proposal (RFP) process.</p> <p>The code-of-conduct policy that is referenced was revised by a subcommittee of the Board of Directors. The ‘unflinching loyalty’ section of the policy is from the approved policy at another conservation authority and was not included in the approved policy.</p>	<p>In November 2014, the Board amended its policies to state Board members cannot criticize any decision of the Authority or the Committee. In June 2017, the Board further amended its Code of Conduct to expand members’ responsibilities to provide a fair and balanced account of Board decisions even if they do not agree with them, and require members to refrain from making disrespectful comments about another member.</p> <p>The NPCA contracted a third-party consultant to provide an opinion on a former Board member’s potential breach of the Code of Conduct. At issue was an email the Board member forwarded to the CAO. Based on the consultant’s opinion, the Board censured the Board member for a perceived breach in the Board Code of Conduct prohibiting members from exercising undue influence on staff. An individual had emailed the Board member expressing an interest in submitting a bid to conduct the operational review of the NPCA. The Board member’s response email, which he forwarded to the CAO, stated, “Thank you for your interest in the process to undertake an operation review at the NPCA. I will be pleased to forward your email to the acting CAO.... He has been directed by the board to initiate a competitive procurement process to retain the services of an independent third party.” Our audit found other instances of Board member involvement in day-to-day operations that could be perceived as exercising undue influence on staff. See Sections 5.1.3. We did not consider this email to be in the same category.</p>

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
Mandate		
<i>Thundering Waters</i>	<p>The NPCA did not lobby the government to allow developers to build on Provincially Significant Wetlands. The NPCA hired a lobbyist to further its position [on various matters], including building more wetlands.</p> <p>The NPCA's position on wetlands aims to achieve the goal of a three-to-one ratio, should the province move forward with offsetting. The NPCA did attempt to get a pilot project started in Niagara, but not exclusively at Thundering Waters.</p> <p>Developers bought a property in Niagara Falls that the Ministry has determined is mainly protected wetlands ... almost 90% cannot be developed. But [NPCA lobbied] to try and get the Ministry of Natural Resources and Forestry to change their minds on this project.</p> <p>When the government called for comments on biodiversity offsetting, the NPCA was trying to get this significant wetlands on as a pilot project. It does not meet Ministry policy.</p>	<p>The proposed Thundering Waters development site is 195 hectares in size, 100 of which are Provincially Significant Wetlands. The Provincial Policy Statement under the <i>Planning Act</i> prohibits development of Provincially Significant Wetlands.</p> <p>In March 2015, the NPCA began attending consultation meetings with representatives from the City of Niagara Falls, Niagara Region and the developer to discuss the development proposal. Minutes from these meetings indicate that NPCA senior management informed the developer that it was working on an alternative way to address the prohibition of development on the wetlands portion of the site.</p> <p>In May 2015, the NPCA retained the services of a registered lobbyist firm to "advance key issues amongst senior levels of government." The firm was involved in organizing meetings between the NPCA and senior provincial government officials about biodiversity offsetting in Thundering Waters.</p> <p>In September 2015, the NPCA publicly responded to the Ministry regarding its proposed Wetland Conservation Strategy, recommending that the Province should aim for a net gain instead of no net loss for wetland compensation. The NPCA's public response did not mention biodiversity offsetting of Provincially Significant Wetlands.</p> <p>In December 2015, the NPCA CAO, staff and a Board member met with an MPP and an advisor to the Premier to obtain approval for a biodiversity offsetting project involving Thundering Waters. The Province did not approve the project.</p> <p>See Section 6.2.2 for details.</p>

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
<p>Responding to Violations</p> <p>[There have been] numerous complaints from local residents that when their issues go to the NPCA, they are ignored. They let developers move along and do whatever they choose to do, even if it's in violation, and they don't actually go after the developers when they are in contravention of the policies.</p>	<p>Although there have been instances where compliance to our regulations has not been met, it has often been due to a lack of evidence that charges have not been laid on landowners and developers. The NPCA's philosophy is to encourage compliance over conviction.</p>	<p>The NPCA does not consistently track complaints about suspected violations and enforcement actions taken to address the complaint. We could not determine the actual number of reported suspected violations and how many have been resolved or ignored. However, our review of available enforcement files found that violations continue for long periods without being resolved.</p> <p>See Section 6.3 for details.</p>
<p>Shifting Focus to Development</p> <p>The NPCA has moved more toward putting their focus on development as opposed to conservation.</p>	<p>The NPCA Board plays no part in the approval of planning applications or building permits. Those decisions are made by expert staff. As a regulator and commenting agency, the NPCA bases its conclusions and comments on policy. NPCA's current policy defines the standards for compliance for development within their development review areas. The NPCA is neither pro-development or anti-development.</p>	<p>We found examples where the NPCA appeared to support development projects. The NPCA's proposal for biodiversity offsetting in Thundering Waters was not based on scientific analysis; we noted examples of some NPCA Board members being involved in staff's review of some development proposals and permit applications; and staff have been instructed to be more flexible in reviewing development applications.</p> <p>See Sections 5.1.3 and 6.2 for details.</p>
<p>Human Resources</p> <p>Hiring Decisions</p> <p>A board member, who is also an elected regional councillor, takes a leave of absence ... While he is on that leave of absence, he is awarded a senior management position at the NPCA, a position he did not apply for. He had applied for the finance position; he was not successful at that, so then he was awarded a senior management position as director of operations.</p>	<p>The individual has contributed significantly to delivering on the objectives of the Strategic Plan 2014–2017. It is not at all atypical for a Board Member to transition to a staff position.</p>	<p>In November 2014, the individual took a leave of absence from the NPCA Board immediately after applying for a position at the NPCA.</p> <p>The individual was interviewed for a manager position, but was not selected to fill the role. The individual was offered a newly created senior manager position instead. There was no evidence of a separate recruitment process for this position.</p> <p>See Section 7.1.2 Figure 11 (Unposted Position Awarded to Board Member) for details.</p>

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
<p>Firing Decisions</p> <p>[At the same time as the two Board members' appointments to NPCA staff positions], 19 people were restructured out of their jobs. Since then, two more people have been terminated: a manager and a GIS technician.</p> <p>Over a period of three or three and a half years, a 60% turnover of the staff—at an agency that only has 50 employees, including their management staff.</p>	<p>The staffing changes made recently [in 2017] address these concerns [about accountability, financial stewardship, customer service and communications] while ensuring that the delivery of our core mandate is strengthened.</p> <p>The [2014 restructuring] was completed to bring the organization into good financial standing. The organization was mismanaged. There were several contract employees that were not renewed during the restructuring, as well as contracts that were completed yet the employee remained on staff without board approval for their salaries as full-time employees. The NPCA hired their first Human Resources employee in 2014 and added additional staff in the Finance department to better manage where and how funds are spent and allocated.</p>	<p>Between October 2013 and November 2014 there were 16 involuntary departures from the NPCA, 13 of which were related to restructuring. In 2016, three additional positions were terminated through restructuring.</p> <p>From 2014 to 2017, the NPCA's average staffing complement was 57 full-time equivalent (FTE) staff. During this period, there were 28 involuntary departures and 24 voluntary departures. The average annual turnover rate was 23%. The average annual involuntary rate during this period was 12%.</p> <p>See Sections 6.2.3 and 7.1.1 for details.</p>
<p>Firing Decisions</p> <p>There was a letter of understanding for the last 10 years between the region of Niagara and the conservation authority, which transferred some of the work of approving permits and dealing with those issues to the NPCA. Now the NPCA is saying that they are not going to do that work anymore; they are going to transfer that work back to the region.</p> <p>Before any discussion occurred with local municipalities, they laid off eight employees from the watershed program. They did not have them work the notice period; they just laid them off. People believe that they laid them off because that will assist them in balancing their budget for their legal fees.</p>	<p>The eight laid-off staff members were not solely from the watershed department. Subsequently, two staff members have been recalled to support the initiatives unveiled on October 25, 2017.</p> <p>The NPCA is not transferring responsibility to the Niagara Region. The NPCA, Niagara Region, and all 12 member municipalities entered into a Memorandum of Understanding (MOU) that delegated municipal responsibilities to the NPCA. Those responsibilities include planning reviews and their interpretation against the Niagara Region Official Plan (natural heritage). The protocols of the MOU have not been reviewed since they were agreed to in 2008. It was anticipated that the Niagara Region will take back their responsibilities under the MOU and for the NPCA to focus on their legislative mandate. The <i>Conservation Authorities Act</i> or section 3 of the <i>Planning Act</i> (wetlands) will remain under the purview of the NPCA, as designated by the province.</p>	<p>In summer 2017, the NPCA and Niagara Region began discussions to transfer the responsibility under the MOU back to the Region. In September 2017, the NPCA laid off five staff involved in reviewing development proposals. One of the NPCA's stated reasons for the layoffs was that the NPCA anticipated that the work involved in reviewing development proposals for the Niagara Region would be somewhat reduced when the MOU changed. However, we found a report that an NPCA manager had prepared in consultation with other management staff for the CAO before the layoffs stating that no more than four positions could be eliminated without "drastically reducing" service levels. In light of this, it is not clear why the NPCA laid off five staff. The changes to the MOU became effective January 2018, with a transition period lasting up until June 21, 2018 (i.e., until June 21, 2018, the work of reviewing development proposals was not completely reduced to exclude the Niagara Region work).</p> <p>See Section 6.2.3 for details.</p>

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
<p><i>Hiring Decisions</i></p> <p>The positions have not been filled with employees with any skills, abilities or expertise around the areas of conservation, but have been filled by friends of the new people who have been hired at the top.</p> <p>Recently, after terminating these eight watershed employees, they hired two more communications officers, so they now have three communications officers.</p>	<p>There is a gap in the education of what the NPCA does and is responsible for by the public and elected officials. The larger Communications Department will allow the NPCA to better educate and promote the work completed under their mandate as well as strengthen relationships with the community.</p> <p>In September 2017, the NPCA fired or laid off 10 individuals from the Watershed Services department, two of whom were recalled and one was reassigned to a contract position one month later. In the same month, the NPCA hired two additional communications staff, resulting in a three-person Communications department (one manager and two staff).</p> <p>See Section 6.2.3, Figure 7 (2017 Restructuring) and Section 7.1.2 for details.</p>	<p>Our review of all recruitment files since 2012 found four instances where the selected candidate either did not have all of the required education or experience listed in the job posting in their application and/or scored lower in the interviews compared to other applicants.</p> <p>In September 2017, the NPCA fired or laid off 10 individuals from the Watershed Services department, two of whom were recalled and one was reassigned to a contract position one month later. In the same month, the NPCA hired two additional communications staff, resulting in a three-person Communications department (one manager and two staff).</p> <p>See Section 6.2.3, Figure 7 (2017 Restructuring) and Section 7.1.2 for details.</p>
<p><i>Workplace Harassment</i></p> <p>There has been widespread workplace harassment ... 86% of the people who completed the survey [done by the Occupational Health Clinics for Ontario Workers, OHOW] indicated that they had been harassed or they had witnessed harassment in the workplace.</p> <p>One of the managers, who was terminated two years ago and spoke out about the widespread harassment, is now being sued by the NPCA.</p>	<p>There is zero record of bullying or harassment complaints at the NPCA since its Human Resources department was implemented four years ago.</p> <p>The NPCA's management rejects the survey's conclusions based on the validity of the methodology (including the fact that there were no controls in place to determine who was taking the survey, it was hosted on a public survey website, etc.). The administrators of the survey have acknowledged the shortfall in their methodology.</p> <p>A union staff member has come forward and disclosed to management that the survey by union members was initiated as a tool to tarnish the reputation of senior management.</p>	<p>Eighty-seven percent of unionized NPCA employees responded to the OHOW survey. Of the respondents: 67% stated they were exposed to bullying in the workplace in the last 12 months; 58% stated they witnessed discrimination aimed at others in the workplace in the last 12 months; 88% stated they witnessed bullying aimed at others in the workplace in the last 12 months. In addition, 10 of 34 grievances from 2017 alleged harassment or discrimination; six complaints also alleged harassment or discrimination. One-half of staff told us in interviews that harassment was widespread in the NPCA workplace and that there was a culture of fear and intimidation at the NPCA.</p> <p>See Section 7.1.4 for details (including Figure 13, OPSEU Survey).</p>

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
Spending		
<i>Legal Fees</i>	<p>The NPCA is currently suing a citizen for speaking out about the NPCA—a [Strategic Lawsuit Against Public Participation, SLAPP] suit—and have incurred \$200,000 in legal expenses in 2016. That does not count any of the legal expenses that have been incurred in 2017.</p> <p>Legal fees in 2016 are \$95,129. Total legal fees paid in 2015 & 2016 are \$177,288. The legal action taken against the citizen began in December 2016. The legal costs incurred by the NPCA include several business areas, including violations to the <i>Conservation Authorities Act</i>. Very little of the legal fees incurred in 2016 are associated with the legal action taken against the citizen. The citizen has since made delegations to the Board of Directors after being served with a lawsuit on two occasions. His public participation rights were never being suppressed.</p> <p>NPCA commenced litigation only after attempts were made to have the citizen's document corrected. Mr. Smith did not correct the record, so NPCA and the former NPCA CAO were left with the litigation as the only method available to have the record corrected, which they did.</p>	<p>The NPCA pursued legal action against an individual for defamation for publishing statements in a document called ‘A Call for Accountability at the Niagara Peninsula Conservation Authority.’</p> <p>The NPCA incurred no legal expenses related to the lawsuit in the 2016 calendar year. From January 2017 to March 2018, the NPCA paid \$127,705 in legal fees related to the suit. In addition, the court ordered the NPCA to pay the individual \$131,076 for legal costs. Therefore, total costs were about \$260,000.</p> <p>See Appendix 16 for details.</p>
<i>Salaries</i>	<p>In [NPCA's] latest budget, that they presented, they are proposing \$863,000 of salary cuts in watershed and corporate services, but they're increasing salaries in CAO and administration by half a million dollars.</p>	<p>In 2018, the NPCA created a new “CAO and Administration” category in its financial statements consistent with its reporting structure; previously, these costs were in Corporate Services. The 2018 budget projected a \$414,000 reduction in salaries. The appearance of an increase in salaries for the “CAO and Administration” component is due to these costs being presented separately.</p>

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
<p><i>Land Acquisition</i></p> <p>The NPCA, in 2014, bought a property at a much-inflated price and ... ended up getting ... 15 acres of a 54-acre piece of property that the Niagara Region had rejected eight years earlier, for 60% or 80% of the price.</p>	<p>The property in question is a Wainfleet beach property. NPCA had this property targeted for acquisition since 2007.</p> <p>The NPCA and Niagara Region have different priorities for land acquisition. The Niagara Region lakefront enhancement strategy does not consider ecological and/or hydrological significance of the land. This property contains significant Fowler's Toad habitat, which the NPCA values.</p> <p>In 2014, the NPCA purchased this property at approximately \$133k/acre, which was below its assessed value at the time. The property value was assessed by an independent third party prior to the purchase by the NPCA and was valued higher than the purchase price.</p>	<p>In March 2014, the NPCA purchased a 15.04-acre parcel of land in Wainfleet from Lakewood Beach Properties Ltd. at a total cost of \$1.98 million. At the time, the parcel of land had an appraised value between \$2.6 million and \$2.8 million.</p> <p>The entire parcel of land was an approximately 54-acre site purchased by Lakewood Beach Properties Ltd. in October 2006 for \$3.1 million.</p> <p>See Section 6.5.1 for details.</p>
<p><i>Transparency</i></p> <p><i>Freedom of Information Requests</i></p> <p>Freedom of Information requests are being stalled. Most recently, the NPCA is declining to respond to FOIs from Ed Smith, saying that he's being frivolous and vexatious.</p>	<p>The NPCA has been prudent in responding to the increasing volume of Freedom of Information (FOI) requests. Denying access to records is not always the decision of the NPCA. There are third parties involved that do not wish their information released to the public. NPCA has been diligent in following the legislation regarding access to information and has released many documents without redaction. The vast majority of requests are fulfilled without appeal to the Information and Privacy Commissioner of Ontario.</p> <p>The application of the frivolous and vexatious section of the <i>Municipal Freedom of Information and Protection of Privacy Act</i> (MFIPPA) is not taken lightly. The NPCA is a small organization and the number of access requests has tripled in 2017 and has burdened the resources of the organization.</p>	<p>Between September 6 and October 18, 2017, the NPCA denied a citizen's FOI requests seven times, stating they were deemed frivolous and vexatious. The NPCA denied another five requests from other parties for the same reason. All 12 denials were appealed to the Information and Privacy Commissioner of Ontario, after which the NPCA reissued an opinion (on January 31, 2018) stating that the information requested would be publicly disclosed within 90 days. The NPCA published the information at the end of March 2018.</p> <p>In 2017, the NPCA received 39 FOI requests. For 24 of these requests, the NPCA did not disclose all information requested. Of the 24 cases, 21 were appealed, and 16 of the appeals resulted in more information being disclosed. The other five were still in progress at the time of our audit.</p>

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
<p><i>Public Participation</i></p> <p>[The] NPCA has no accountability or transparency. The public has to register for the public meetings, but the NPCA will say that the meeting is full. Then the day before or of the meeting the NPCA will say there is room and there are only eight people in the meeting. So in fact, the meeting was not full.</p> <p>The NPCA announced a kickoff event about its new plans. MPP Forster's staff registered for her to attend the event. MPP Forster received an email saying that it was for NPCA family and friends and it was by invitation only.</p>	<p>The NPCA has had aggressive targets set to further the concept of open government. The NPCA is the only Conservation Authority to live-stream board meetings, one of only a few to disclose financials at each board meeting, and one of two Conservation Authorities to have prioritized public and sector-specific feedback through an advisory committee.</p> <p>There is no statutory requirement for the Conservation Authority to hold publicly open media events. All major media was invited to attend, along with our staff, their families, and key community partners. NPCA staff had to be mindful to not exceed the limits of the room as determined by the fire code.</p>	<p>The statement refers to the two public events held by the NPCA in September and October 2017. On September 12, 2017, the NPCA held a public meeting about the 2014-17 Strategic Plan Review. The venue had capacity to hold 200 people. Between September 8 and 11, the NPCA informed 21 individuals that they could not attend because the venue was full. On the day of the meeting, the NPCA sent an email to those individuals that the Board Chair made accommodations to increase the number of attendees. However, many responded that it was too late notice for them to attend. A total of six people attended the meeting. On September 26, 2017, the NPCA held a second meeting, which was attended by eight people.</p> <p>In October 2017, the NPCA publicly posted a link for members of the public to register for the "#ILoveNPCA Kickoff Party." NPCA staff subsequently emailed some parties stating the event was by invitation only, and was being held for staff, family and friends of the NPCA.</p>
<p><i>Other</i></p> <p><i>Auditor General</i></p> <p>We have been calling for the audit probably since January of last year. The Auditor General offered to do an audit, and it was declined by the Chair, saying that they were not ready to proceed.</p>	<p>The NPCA had been attempting to move forward with an audit since January 2017. A motion was approved in January 2017, and overturned in April 2017 after it was determined that an NPCA Board Member interfered with the process. At that time, the NPCA carried a motion to engage the Auditor General of Ontario for the purposes of conducting an audit. It was not until September 2017 when the NPCA received notice from Ms. Lysyk that the audit would not be moving forward.</p> <p>The Auditor General began the audit process on January 8, 2018.</p>	<p>In January 2017, the Auditor General offered to conduct an audit of the NPCA, but the Board Chair indicated that the Board needed more time to make its decision. In a letter dated February 14, 2017, the Auditor General acknowledged that the Board needed time to decide on the specifics of the audit. While respecting the time needed for the Board's process, she also indicated she would re-allocate her staff to another audit on February 21, 2017.</p>

Concern from October 25, 2017, Committee Meeting ¹	NPCA's November 10, 2017, Response ²	Audit Findings
<p><i>Provincial Supervisor</i></p> <p>The Auditor General and at least three municipalities have come on board to support a supervisor, but that is not anticipated under the Act.</p>	<p>No response.</p>	<p>The Auditor General did not state an opinion on the issue. At the time of the meeting, three local municipalities in the Niagara Region (Wainfleet, Port Colborne and St. Catharines) had passed motions asking the Province to appoint a supervisor to oversee the NPCA's operations. The <i>Conservation Authorities Act</i> does not give the Minister powers to appoint a supervisor.</p> <p>See Section 8.3 for details.</p>

Relationship with Municipalities

The City of Hamilton has been trying to end their relationship with the NPCA because they are attempting to increase their portion of the levy.

The NPCA is confident that the apportionment formula provided to conservation authorities from the Ministry of Natural Resources and Forestry is the correct method in the absence of an agreement between the City of Hamilton, Haldimand County, and the Region of Niagara. The NPCA continues to value the relationship with the City of Hamilton and has welcomed any discussions it would like to have regarding watershed management within the confines of the *Conservation Authorities Act*.

1. These statements are from the Committee meeting on October 25, 2018, at the end of which the Committee passed the motion for us to conduct the audit. The statements have been edited for grammar and length but otherwise are reproduced verbatim.

2. After the October 25 Committee meeting, the NPCA sent the Committee a letter in response. The letter, dated November 10, 2017, states, "NPCA felt it necessary to respond to the arguments, issues, and comments brought forth to the Standing Committee on Public Accounts, which were captured in the Hansard dated Wed. Oct. 25, 2017. NPCA has been working tirelessly to address the erroneous claims and misinformation that have unfortunately been perpetuated and circulated about our organization. As such, it is in the spirit of due diligence in maintaining transparency that we do the same in this instance, as it pertains to the excerpts outlined and addressed in the following document." The NPCA's responses are from this letter. The responses have been edited for grammar and length but otherwise are reproduced verbatim.

Appendix 10: Chronology of Key Events Involving the NPCA, 2008–2017

Prepared by the Office of the Auditor General of Ontario

Date	Nature of Event	Description of Event
2008–2010*		
May 1, 2008	Leadership	NPCA Board appoints a new Chief Administrative Officer (CAO) after long-time NPCA CAO retires.
2011–2014*		
January 2011	Board	New Board of Directors is appointed following the 2010 municipal elections. Thirteen of the 15 members are new appointees.
October 2011	Organizational review	NPCA engages a third-party consultant to conduct a “Situational Analysis,” which identifies a number of issues in the organization.
January–April 2012	Restructuring	NPCA lays off six staff, demotes one and hires four staff in the Watershed Services department.
October 17, 2013	Board	An NPCA Board member takes leave of absence from the Board to conduct work as a consultant to complete the human resources (HR) restructuring at the NPCA.
November 2013–January 2014	Restructuring	NPCA lays off 13 staff, demotes three staff, and hires nine staff.
December 5, 2013	Leadership	Another NPCA Board member is appointed to an unposted senior manager position at the NPCA.
January 15, 2014	Board	The NPCA Board member returns to the NPCA Board upon completion of the HR restructuring.
March 10, 2014	Organizational improvement	NPCA hires an HR specialist on contract.
March 17, 2014	Public concerns	MPP Cindy Forster (MPP-Welland) sends a letter to the Minister of Natural Resources and Forestry regarding her concerns with the NPCA. She notes high staff turnover since 2012 and a “shift in direction” at the NPCA towards land disposal and development.
March 19, 2014	Board	The NPCA Board member who implemented the HR restructuring in 2013/14 takes temporary leave from the Board (no reason provided).
April 2014	Strategic direction	The NPCA releases its 2014–17 Strategic Plan.
	Leadership	The NPCA Board member is awarded the position of NPCA CAO.
September 3, 2014	Union	NPCA staff votes to have union representation at the NPCA. (Collective bargaining begins on December 1, 2014.)
2015*		
January 2015	Board	New Board of Directors is appointed following the October 2014 municipal elections. Ten of the 15 members are new appointees.
February 26, 2015	Levies	NPCA requests new levy amount from City of Hamilton, which then appeals the apportionment to the Mining and Lands Commissioner.
September 21, 2015	Organizational improvement	NPCA hires a permanent HR staff.
November 3, 2015	Union	NPCA management and staff ratify the OPSEU collective agreement.
December 4, 2015	Thundering Waters	NPCA CAO, staff and a Board member meet provincial politicians to discuss a pilot project to allow the NPCA to experiment with biodiversity offsetting on the Thundering Waters site. See Section 6.2.2 for details.
December 16, 2015	Union	NPCA Board of Directors ratifies the OPSEU collective agreement.

Date	Nature of Event	Description of Event
2016*		
March 2016	Organizational improvement	NPCA hires its first accountant (holding the CPA designation) for the position of Manager of Finance.
October 2016	Public concerns	A citizen releases a document called "A Call for Accountability at the Niagara Peninsula Conservation Authority" detailing allegations about conflicts of interest and questionable practices at the NPCA. (One recipient was the Niagara Regional Police Service, which sent it to the OPP, which launched an investigation in November 2016.)
November 3, 2016	Public concerns	In an open letter, MPP Forster calls for a forensic audit of the NPCA immediately.
November 13, 2016	Leadership	The NPCA CAO resigns and becomes the new CAO of Niagara Region.
	Leadership	An NPCA senior management staff member is appointed as Acting CAO of the NPCA.
November-December 2016	Restructuring	NPCA fires three staff.
December 22, 2016	Litigation	The previous CAO and the NPCA file civil action lawsuits against a citizen (over the October 2016 document), jointly claiming \$100,000 in defamation lawsuits.
December 2016	Audit of the NPCA	Local municipalities in the Niagara Region begin requesting that the Province conduct an audit of the NPCA. Minister of Natural Resources and Forestry advises municipalities that the Ministry has no authority to implement a forensic audit.
2017-2018*		
March 9, 2017	Audit of the NPCA	NPCA Board approves an RFP to have independent accounting firms bid on an operational review and performance assessment of NPCA from 2011 to 2016.
April 21, 2017	Audit of the NPCA	NPCA Board votes to cancel RFP for operational review in order to request that OAGO conduct a VFM audit.
	Board	One week later, NPCA Board votes to censure a Board member for "behaving inappropriately in the RFP bidding process."
April 28, 2017	Leadership	Another NPCA senior management staff member is appointed as acting NPCA CAO (and is appointed permanent CAO on June 23, 2017).
May 18, 2017	Board	A Niagara Region representative resigns from the Board stating the reason as "an issue of bullying and harassment," and is replaced by another representative in October 2017.
September 2017	Restructuring	NPCA lays off nine full-time staff and one contract staff. Three of the nine full-time staff are subsequently recalled or reassigned to a contract position.
October 25, 2017	Audit of the NPCA	Public Accounts Committee passes motion for OAGO to conduct an audit of the NPCA.
	Strategic direction	NPCA launches its 100-year Plan covering eight areas. See Section 6.5.2 for details.
November 23, 2017	Litigation	A judge dismisses the NPCA and its former CAO's defamation lawsuits against a citizen stating that the NPCA "cannot sue an individual in defamation for criticizing it."
December 12, 2017	Legislation	The Province passes Bill 139 <i>Building Better Communities and Conserving Watersheds Act</i> . See Appendix 4 for details.
December 21, 2017	Levies	The Mining and Lands Commissioner rules in favour of the NPCA regarding the Hamilton levy apportionment dispute. See Section 5.1.1 and Appendix 14 for details.
January 25, 2018	Investigation	The November 2016 OPP investigation into any criminal activity regarding the NPCA found that there was no direct evidence of any criminal wrongdoing.
March 1, 2018	Organizational improvement	NPCA hires a Procurement Specialist.

* The events in this chronology are partly grouped by the periods under which the NPCA was governed by different Boards. That is, one Board governed the NPCA to 2010. After the 2010 municipal elections, the next Board was appointed and governed from 2011 to 2014. After the 2014 municipal elections, a new Board was appointed. We group subsequent events by year. The next municipal elections will be held in October 2018.

Appendix 11: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. Roles, responsibilities and accountability requirements for the delivery of conservation programs are clearly defined to ensure compliance with legislative, contractual and program requirements.
2. Programs and services are established and delivered in a consistent and timely manner, and informed by best practices on the conservation, restoration, development and management of natural resources within the applicable watershed.
3. Processes are in place to ensure resources are acquired and managed with due regard for economy and efficiency, and used for the purposes intended to meet the NPCA's objectives.
4. Timely, accurate and complete data on the effectiveness of the NPCA's programs and services, including financial, operational and ecological data, is regularly collected, analyzed and used by management and the Board for decision-making and program improvements.
5. Performance measures and targets are established, monitored and compared against actual results and publicly reported to ensure that the intended outcomes are achieved and corrective actions are taken on a timely basis when issues are identified.

Appendix 12: Work Done to Perform the Audit

Prepared by the Office of the Auditor General of Ontario

We did our work primarily at the NPCA head office in Welland. In conducting our work, we obtained a reasonable level of assurance from:

- reviewing applicable legislation, agreements, guidelines, policies, relevant files and other information;
- reviewing emails and files from 2012 to 2018;
- visiting the NPCA's four revenue-generating conservation areas (Ball's Falls, Binbrook, Chippawa and Long Beach) and its central maintenance workshop in Gainsborough Conservation Area;
- interviewing all current and 17 former NPCA staff, including five of its former Chief Administrative Officers;
- speaking with staff from the Ontario Public Service Employees Union (OPSEU), which represents two-thirds of NPCA staff;
- interviewing all members of the current NPCA Board of Directors and one former NPCA Board member; and
- speaking with representatives from Ontario Power Generation.

To understand their role and relationship with the NPCA, we:

- interviewed staff from the Ministry and the three municipalities in the NPCA's jurisdiction; and
- met with representatives from Conservation Ontario (Conservation Ontario was established in 1980 to represent the 36 conservation authorities in Ontario, and is mainly funded by its membership, project funding and contracts).

To obtain their perspectives on the programs and services that the NPCA delivers, we:

- spoke with representatives from various environmental non-government organizations such as the Niagara Restoration Council, Trout Unlimited and Ducks Unlimited;
- met with other stakeholders who contacted us about their views on the NPCA's activities; and
- spoke with representatives from the Environmental Commissioner of Ontario.

To identify best practices, we:

- surveyed the 35 other conservation authorities, and 28 of them responded (see **Appendix 13** for a summary of the survey results);
- visited or interviewed representatives from six conservation authorities (Toronto and Region, Central Lake Ontario, Essex Region, Grand River, Rideau Valley, and Upper Thames River); and
- researched other jurisdictions and international conservation organizations.

We engaged specialists in the areas of human resources (HR) and governance to:

- assess the workplace culture and the reasonability of NPCA management's response to employees' complaints about workplace harassment; and
- review the NPCA Board of Directors' oversight structure and activities.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—Direct Engagements issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada.

The Office of the Auditor General of Ontario applies the Canadian Standards of Quality Control and, as a result, maintains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Canadian Professional Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

Appendix 13: Summary of Conservation Authorities Survey Results

Prepared by the Office of the Auditor General of Ontario

To identify best practices, we surveyed the other 35 conservation authorities in Ontario and received responses from 28 of them (a response rate of 80%). The survey included questions about conservation authorities' mandate, programs and services, policies, performance measurements, staffing, and Board policies and involvement. Below is a summary of the survey results.

Conservation Authorities' Mandate

	Yes (%)	No (%)	Did Not Answer (%)
Do conservation authorities encounter conflicts between conservation and development?	75	25	0
Is the conflict between conservation and development a concern for conservation authorities?	29	68	3
Did the 2017 amendments to the <i>Conservation Authorities Act</i> clarify the role of conservation authorities?	86	14	0

	Conservation Only (%)	Conservation and Development (%)	Neither (%)
Conservation authorities' focus	21	75	4

Programs and Services

	Minimum (as % of Total)	Maximum (as % of Total)	Average (as % of Total)	Median (as % of Total)
Watercourses that drain areas larger than 125 hectares for which floodplain maps exist	2	100	52	50
Watercourses that drain areas less than 125 hectares for which floodplain maps exist	0	100	15	0

Buffer or Setback Distance Required for New Developments (metres)

	Minimum	Maximum	Average	Median
Flooding hazards	0	15	10	15
Erosion hazards	0	30	12	15
Dynamic beach hazards	0	60	14	15
Valley or stream corridors	0	50	13	15
Watercourses	0	30	17	15
Wetlands – Provincially Significant Wetlands (PSW)	120	120	120	120
Wetlands – non-PSW	30	30	30	30
Wetlands – both PSW and non-PSW	0	120	33	30
Areas adjacent or close to the Great Lakes-St. Lawrence River shorelines	0	200	22	15

Programs and Services (continued)

Policies Allowing Biodiversity Offsetting/Wetland Compensation			
	Yes (%)	No (%)	Did Not Answer (%)
Provincially significant wetlands	7	86	7
Locally significant wetlands	29	64	7
Non-significant wetlands	29	64	7

Visiting Sites to Inspect for Compliance with the <i>Conservation Authorities Act</i>			
	Yes (%)	No (%)	Did Not Answer (%)
Site visits are conducted to inspect for compliance with the Act	89	7	4
Sites are selected for inspection based on complaints received from the public about suspected violations of the Act	96	0	4
Sites are selected for inspection based on staff's assessment of the level of risk associated with work permits issued by the Conservation Authority	89	7	4
Sites are selected for inspection based on other methods such as partnerships with municipalities	46	50	4

Types of Restoration/Stewardship Program Delivered by Conservation Authorities	
	%
Rebate program ¹	18
Conservation Authority-led program ²	14
Education-only program ³	4
Partnership program ⁴	0
Other programs	46
None ⁵	4
Did not answer	14
Total	100

Performance Measurements

Activities that are Tracked by Conservation Authorities			
	Yes (%)	No (%)	Did Not Answer (%)
Average # of days to review each type of development proposal	46	50	4
Average # of days to review a minor work permit application	71	25	4
Average # of calendar days to review a major work permit application	71	25	4
Total # of complaints about suspected violations of the <i>Conservation Authorities Act</i>	57	39	4
Total # of site visits or inspections in response to public complaints	50	46	4
Total # of permit compliance inspections	36	64	0
Total # of watershed plans completed or updated	57	43	0

Information that is Provided by Conservation Authorities to Their Funding Municipalities			
	Yes (%)	No (%)	Did Not Answer (%)
Notice of levy apportionment	93	7	0
Audited financial statements	96	4	0
Other information specifically required by funding municipalities ⁶	89	11	0
Other information not specifically required by funding municipalities but the conservation authority chooses to provide ⁷	93	0	7

Organizational Structure

Staffing Complement				
	Minimum (as % of Total Staff)	Maximum (as % of Total Staff)	Average (as % of Total Staff)	Median (as % of Total Staff)
Watershed services staff	16	65	48	50
Management of conservation areas staff	4	39	17	20
Administrative and corporate support staff	15	50	25	23

Staffing Information: 2013–2017				
	Minimum	Maximum	Average	Median
# of full-time equivalent (FTE) staff during the year	6	549	58	28
# of FTE staff departures during the year	0	41	4	2
# of involuntary FTE staff departures (that is, employer-initiated) during the year	0	14	1	0
Involuntary turnover rate (%)	0	7	1	0

Board of Directors

Board Expenses	Average (\$)	Median (\$)
Board of Directors' current per diem rate	73	75

	Did Not		
	Yes (%)	No (%)	Answer (%)
Administrative duties (for example, signing meeting minutes)	25	75	0
Meetings with conservation authority staff outside formal Board or Committee meetings	39	61	0
Attendance at conservation authority events (for example, festivals, staff appreciation events)	32	68	0
Attendance at conservation authority foundation board meetings and events	32	57	11
Meetings with representatives from municipalities (for example, mayor, councillors, staff)	43	54	3
Meetings with Conservation Ontario Council members	75	25	0
Meetings with representatives from other stakeholder and interest groups (for example, environmental NGOs, industry groups)	50	50	0

Payments to Members of Conservation Authority Board of Directors, 2017				
	Minimum	Maximum	Average	Median
Total payments per Board member (including honorariums, per diem payments, travel and other) (\$)	64	3,474	1,468	1,253
Total # of meetings (all types) claimed per Board member	0	22	4	2
Total # of meetings (all types) claimed by the Chair of the Board of Directors	0	47	16	14

Payments to Members of Conservation Authority Board of Directors, 2013–2017				
	Minimum	Maximum	Average	Median
Total payments per Board member (including honorariums, per diem payments, travel and other) (\$)	48	6,859	1,508	1,194
Total # of meetings (all types) claimed per Board member	0	38	5	2
Total # of meetings (all types) claimed by the Chair of the Board of Directors	0	199	22	15

Board of Directors (continued)

Activities That Board Members Are Involved in	Did Not Answer (%)		
	Yes (%)	No (%)	Did Not Answer (%)
Developing and updating the Conservation Authority's Strategic Plan	96	4	0
Facilitating conservation authority staff's reviews of development proposals (for example, attending meetings with conservation authority staff, city staff and developers)	11	89	0
Facilitating conservation authority staff's reviews of work permit applications (for example, requesting information on behalf of landowners)	14	86	0
Facilitating negotiations with landowners regarding identified violations of the <i>Conservation Authorities Act</i>	4	96	0
Determining which applicants receive grant funding for stewardship/ restoration on private property	11	86	3

General Questions

Conservation Authorities' Response to the Province's 2015 Discussion Paper on Wetland Conservation in Ontario	Did Not Answer (%)		
	Yes (%)	No (%)	Did Not Answer (%)
Provided comments through Conservation Ontario	57	39	4
Provided comments directly to the Ministry of Natural Resources and Forestry	36	53	11
Provided comments to other provincial government representatives (for example, Members of Provincial Parliament, advisors to the Premier)	3	89	8
Staff met with government officials	25	67	8
Comments were made public (that is, posted to conservation authority's website)	25	67	8
Did not provide comments to the discussion paper	32	39	29

1. The Conservation Authority provides funding to private landowners who apply for grants to carry out a restoration project on their property. Landowners are responsible for completing the project. The Conservation Authority reimburses the landowner for all or a portion of the costs upon completion of the project.
2. The Conservation Authority provides funding to private landowners who apply for grants to carry out a restoration project on their property. Conservation Authority staff are responsible for completing the project. Upon completion of the project, the Conservation Authority invoices the landowner for their portion of the costs.
3. The Conservation Authority provides information to interested private landowners on how to enhance ecosystems and implement best management practices on their property, but does not provide grant funding to carry out restoration projects.
4. The Conservation Authority provides funding to environmental non-profit organizations to deliver stewardship/restoration programs within the watershed.
5. The Conservation Authority does not deliver stewardship/restoration programs for private landowners.
6. Examples include drafting annual financial budgets, Board per diem expenses, and long-term capital plans.
7. Examples include minutes of board meetings, and letter from Board Chair outlining priorities for coming year.

Appendix 14: Technical Explanation for the 2015 Increase in Hamilton's Municipal Levy

Prepared by the Office of the Auditor General of Ontario

Under the *Conservation Authorities Act*, conservation authorities are to set their budgets each year and then use the following formula to calculate what percentage of their operating costs budget each municipality in the watershed will pay the conservation authority in the form of the municipal levy:

$$\left[\frac{\text{Area of municipality within conservation authority's jurisdiction}}{\text{Total area of municipality}} \times \frac{\text{Assessed value* of land in entire municipality}}{\text{Assessed value* of land in entire conservation authority jurisdiction}} \right]$$

* Assessed land value depends on how the land is used (for example, land used for commercial purposes is valued at a higher amount than land used for farming).

Before 2000, what is now the single municipality of the City of Hamilton consisted of six separate municipalities: Stoney Creek, Dundas, Ancaster, Glanbrook, Flamborough and Hamilton. Just three of them—Stoney Creek, Glanbrook and Ancaster—were in the NPCA's jurisdiction. The total percentage of the NPCA's budgeted operating costs that they paid, combined, through their municipal levies was very small (less than 5%).

On January 1, 2000, all six municipalities amalgamated into the new City of Hamilton. As a result, the “assessed value of land in entire municipality” input of the levy calculation formula significantly increased. Most of that increase comes from the high assessed land value of the urban area of Hamilton. The formula applies even though this area is not in the Niagara Peninsula watershed. The amalgamation did not change the boundaries of the NPCA's jurisdiction. The result is Hamilton's portion of the municipal levy increasing to about 20% of budgeted operating costs, from the about 4% paid in total by Stoney Creek, Glanbrook and Ancaster before amalgamation.

The NPCA's CAO in 2000 verbally agreed to continue to charge Hamilton its pre-amalgamation rate. Until 2014, Hamilton paid 4% (pre-amalgamation rate), Haldimand paid 1% and Niagara Region paid 95% of the NPCA's budgeted operating costs. In 2015, when the NPCA decided to go back to the formula, Hamilton was asked to pay 20%, Haldimand 2% and Niagara Region 78% of the NPCA's budgeted operating costs. For Hamilton, this translated to \$1.2 million (compared to \$245,000 the year before).

Appendix 15: Main Policies Used by Conservation Authorities to Review Municipal Land-Use Planning Policies, Development Proposals and Work Permit Applications

Prepared by the Office of the Auditor General of Ontario

For Municipal Planning Policies and Development Proposals

Planning Act

Establishes the rules for land-use planning in Ontario.



Provincial Policy Statement (Section 3.1)

[Issued under the *Planning Act* to provide direction on land-use planning and development matters of provincial interest]

Development shall be directed away from areas of natural hazards where there is an unacceptable risk to public health or safety or of property damage, and not create new or aggravate existing hazards.

Development shall generally be directed to areas outside of:

- lands near the Great Lakes shorelines affected by flooding, erosion and unstable beach hazards
- lands near rivers, streams and inland lakes that are impacted by flooding or erosion hazards

Development and site alteration are not permitted within:

- portions of the flooding hazard along connecting channels such as the St. Mary's, St. Clair, Detroit, Niagara and St. Lawrence rivers
- unstable beaches
- a floodway or floodplain

Development and site alteration may be permitted if the effects and risk to public safety are minor and could be mitigated in line with provincial standards.

For Work Permit Applications

Conservation Authorities Act and regulations made under Section 28

No person shall undertake development in or on areas:

- near Great Lakes shorelines
- 15 metres from the stable top of the bank of a river or stream valleys
- flood- and erosion-prone lands
- wetlands
- other areas where development could interfere with wetlands' ability to store water and mitigate floods, including up to 120 metres of Provincially Significant Wetlands and wetlands two hectares in size or larger

Conservation authorities may grant permission for development in or on the above areas if, in its opinion, the control of flooding, erosion, unstable beaches, pollution or conservation of land will not be affected by the development.

NPCA-Developed Policies

2007 Board-Approved policies:

New development is prohibited:

- within the furthest distance from shores that people and property can be affected by flooding, erosion and unstable beaches
- within 15 metres of the stable top of the bank of a river or stream
- on a floodplain (as determined by a floodplain map)
- within 120 metres of a Provincially Significant Wetland and wetlands two hectares in size or larger
- within 30 metres of wetlands less than two hectares in size

Development may be permitted within any wetland when the development is only a replacement of an existing structure with the same dimensions and square footage as the original. When exceptions are made, the NPCA may require technical studies to ensure that the risk from natural hazards is not aggravated.

2013 Interim Directives issued by NPCA senior management:

Certain new developments may be permitted:

- within 30 metres of a wetland where an environmental impact study demonstrates there will be no net negative impact on the wetlands' ecological features and ability to absorb water and mitigate floods
- within river and stream banks where slopes are stable and developments are minor (e.g., storage sheds, stairs, decks, parking and septic systems)

Appendix 16: NPCA's Legal Expenses, January 1, 2012–March 31, 2018

Source of data: Niagara Peninsula Conservation Authority

	2012	2013	2014	2015	2016	2017	2018 ¹	Total
Human Resource Matters²								
# of firms engaged	1	2	3	2	4	5	2	11
Total amount spent (\$)	5,091	36,574	37,544	24,947	35,570	117,841	76,393	333,960
Levy Apportionment³								
# of firms engaged	0	0	1	1	1	1	1	2
Total amount spent (\$)	—	—	701	14,123	8,694	35,000	471	58,989
Property/Land Matters⁴								
# of firms engaged	1	1	1	5	1	1	0	7
Total amount spent (\$)	5,812	12,286	16,413	23,634	2,095	1,015	—	61,255
Regulation Violations⁵								
# of firms engaged	2	1	1	2	2	3	2	5
Total amount spent (\$)	33,946	11,589	5,936	25,264	7,756	41,053	8,948	134,492
Libel/Defamation Cases⁶								
# of firms engaged	0	0	0	0	1	3	1	4
Total amount spent (\$)	—	—	—	—	5,650	80,251	50,731	136,632
Other⁷								
# of firms engaged	0	0	1	1	4	2	0	6
Total amount spent (\$)	—	—	289	7,720	27,119	18,411	—	53,539
Total								
# of Firms Engaged	3	4	8	9	12	12	6	18
Total Amount Spent (\$)	44,849	60,449	60,883	95,688	86,884	293,571	136,543	778,867

- From January to March 2018.
- Fees associated with matters related to Human Resource such as dismissals, grievances, arbitrations, negotiations for settlements, personnel workplace investigations, and contract negotiations related to the collective agreement between the NPCA and OPSEU Local 217 (encompassing employees of the NPCA and the Niagara Parks Commission).
- Fees associated with the City of Hamilton's appeal to the Mining and Lands Commissioner regarding levy apportionment, as per section 2.1(b) of Ontario Regulation 670/00 of the *Conservation Authorities Act* (see [Section 5.1.1](#) and [Appendix 13](#)).
- Fees paid for services related to any actual or potential land transactions, and a legal opinion regarding Provincial Regulation 139-196.
- Fees paid for services related to the enforcement of the *Conservation Authorities Act* (Regulation 155-06). A small portion of these costs is for legal advice regarding planning and permit issues.
- Costs involved with a lawsuit and anti-SLAPP (Strategic Lawsuit Against Public Participation) proceedings involving Ed Smith, a St. Catharines resident who criticized the NPCA in a 45-page document called "A Call for Accountability at the NPCA"; a review of material regarding liability related to online information posted about the NPCA; and legal advice for a potential defamation case against a former NPCA employee.
- Other legal fees include: fees related to freedom-of-information (FOI) requests such as Affidavit Notarization and FOI adjudications; regulatory policy review and advice for flood plain mapping and potential regulatory negligence; code-of-conduct interpretations and staff conflict-of-interest training; advice regarding Hydro One and Chippawa Creek Campground property; and legal advice regarding landowner agreement reviews.

Appendix 17: List of Motions Passed by Local Municipal Councils Requesting an Audit

Prepared by the Office of the Auditor General of Ontario

Municipality	Date of Request	To Whom the Request Was Directed	Request
St. Catharines	December 5, 2016	Province	Initiate an investigation and forensic audit of the NPCA
	January 16, 2017	NPCA Board	Approve a third-party forensic audit, examining all of its operations, including land purchases and hiring processes from 2011 to 2016
Wainfleet	December 6, 2016	NPCA Board	Consider obtaining an independent audit such as a value-for-money and/or forensic audit
Niagara-on-the-Lake	December 12, 2016	Province	Conduct a forensic audit of the NPCA's reports and operations
Port Colborne	December 13, 2016	Province	Conduct a value-for-money and/or forensic/ operational audit of the NPCA
Niagara Falls	December 13, 2016	NPCA Board	Consider obtaining an independent audit such as a value-for-money audit and/or forensic audit
Hamilton	December 14, 2016	Province	Initiate a value-for-money and/or a forensic audit of applicable 2012 to 2016 transactions of the NPCA
Pelham	December 19, 2016	Province	Initiate a thorough investigation, be it a value-for-money or a forensic audit, of the NPCA
Welland	December 20, 2016	Province	Direct the appropriate Ontario provincial body to determine and fund the action required to determine if any inappropriate or illegal activity has occurred at the NPCA
Thorold	December 20, 2016	Province	Initiate an unrestricted thorough investigation, be it a value-for-money and/or a forensic audit



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