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UPDATE ON SOURCE PROTECTION PLANS

The Environmental Services Committee recommends the adoption of the recommendations contained in the following report dated April 24, 2012, from the Commissioner of Environmental Services and the Executive Director, Corporate and Strategic Planning.

1. RECOMMENDATIONS

It is recommended that:

1. Council endorse staff comments on the Draft Proposed Source Protection Plans, appended to this report as *Attachments 1 and 2*.
2. Council endorse a request to the Province to extend the deadlines for the Source Protection Plans submitted by South Georgian Bay Lake Simcoe and the Credit Valley, Toronto Region, Central Lake Ontario (CTC) Source Protection Committees.
3. Staff be directed to review Version 3 of the proposed Source Protection Plans and provide any comments to the relevant Source Protection Authorities on behalf of Council should deadlines for submission of the proposed Source Protection Plans not be extended by the Province.
4. This report and *Attachments 1 and 2* be circulated by the Regional Clerk to the Clerks of the local municipalities, and to the Chairs of the South Georgian Bay Lake Simcoe and the Credit Valley, Toronto Region, Central Lake Ontario (CTC) Source Protection Committees.

2. PURPOSE

This report updates Regional Council on activities underway to meet the *Clean Water Act, 2006* (Act) requirements, including actions to advocate Regional interests in Source Protection Plan policies. It also requests Council endorsement of staff comments on the Draft Proposed Source Protection Plans.

3. BACKGROUND

Source Protection Committees are developing plans to protect drinking water at the source as part of Provincially mandated requirements under the *Clean Water Act*

The two Source Protection Committees within York Region, comprised of members representing municipalities, economic interests and the public at large, are responsible for completion of the Assessment Reports. Provincially approved Assessment Reports identify existing threats to drinking water, and vulnerable areas relative to municipal wells and water intakes as shown in *Attachment 3* and summarized in previous council reports: May 12, 2010, February 9, 2011 and November 9, 2011

As the final deliverable to the Province in 2012, Source Protection Plans will detail actions to manage known *significant drinking water threats* and prevent new significant threats from emerging on the landscape

Over the past 18 months, Regional staff have actively been involved in source protection planning working groups to support both Source Protection Committees and provide local context across planning and environmental disciplines. Considerable efforts have been made by each Source Protection Committee to manage information and provide a common level of understanding. In some cases, meetings have been held twice or more per month to help break down information to manageable levels. In addition, the Province continues to issue information bulletins that explain the various implementation tools available under the Act.

Mandatory actions can only be assigned to land use activities identified as a *significant threat* as outlined in the regulation

As a first step, Source Protection Committees have been advised by the Province to focus on mandatory actions related to existing and future significant threats from land use activities within the highly vulnerable areas. Voluntary actions may also be proposed in the source protection plan to address moderate and low threats.

Tools being called upon by the Source Protection Committees include:

- Prescribed Instruments. These are pre-existing Provincial approvals that can effectively address existing and future activities through amendments to or refusal to issue an instrument (e.g. Environmental Compliance Approvals).
- Section 57 Prohibition. A new power afforded to municipalities by the Act, typically suggested to prevent new significant threat activities.

- Section 59 Restricted Land Use. This is a companion tool to Section 57 prohibitions. It is simply a means of communicating prohibitions through the planning process.
- Section 58 Risk Management Plans. Also a new power afforded to municipalities under the Act, primarily used to address existing significant threat activities, requiring establishment of a Risk Management Office.
- Land Use Planning approaches are used to compliment prescribed instruments or Section 57 Prohibitions, typically for storage activities.
- Education & Outreach policies are suggested to compliment a number of efforts.
- Incentives. The provincial stewardship program is considered an important complimentary tool to incent landowners to address the risks identified.
- Other tools are also suggested by the Source Protection Committees that are not specific to a vulnerable area, but help address significant threats, such as suggesting research efforts into alternatives to road salts.

Iterative process prescribed for development of Source Protection Plans

Source Protection Committees are required to draft the plan, issue it for review and comment, revise the plans after consideration of comments received, and then re-issue the plans, as outlined in Figure 1 below. Following the final consultation period (on Version 3 of the documents), the Committees cannot amend the Plans. Any unresolved comments at this stage are submitted to the Minister of the Environment with the Proposed Source Protection Plans for resolution.

Figure 1: Development Process for Source Protection Plans



Once complete, Source Protection Plans will be administered by the Source Protection Authorities and the Province, including a requirement for updates to both the Assessment

Reports and Source Protection Plans following a schedule to be prescribed by the Minister.

August submission of Source Protection Plans poses challenge to obtain Council endorsement of staff comments

Due to the complexity of developing Source Protection Plans, timelines originally estimated by the Province when the legislation was established in 2006 have compressed the current consultation period. Although the *Act* allows for submission of Proposed Source Protection Plans (Version 3 as illustrated in Figure 1) to the Minister to be accompanied by municipal resolutions expressing comments on the Proposed Plan, the summer submission timeline does not allow for Regional Council resolutions, as there are no Regional Council meetings scheduled in July and August. Although it is not uncommon for staff to comment on provincial policies or regulations, and seek Council endorsement after the fact, due to timing constraints, implications of the Source Protection Plans could be substantial.

Proactive efforts in the York Region Risk Management Office will ease the transition to implementing Source Protection Plans

In the fall of 2011, Council appointed a Risk Management Official and 3 Risk Management Inspectors in accordance with the *Act* to fulfill the Region's responsibilities for implementation (as previously reported to Regional Council in a report to the Environmental Services Committee November 9, 2011). The Risk Management Official, Don Goodyear has begun to establish a risk management program to meet the Provincial mandate for enforcement and monitoring. York Region continues to play a lead role in engaging of local municipalities, conservation authorities, source protection committees and the public to develop a common understanding of risks to drinking water sources. Regular engagement also allows for ongoing dialogue across science and planning disciplines including Local, Regional, Provincial and Conservation Authorities' boundaries.

The Risk Management Official and Risk Management Inspectors have all obtained or are in the process of obtaining required provincial training to undertake the prescribed duties of Risk Management Officials and Inspectors.

A data management system is being developed to assist with implementing the Risk Management Office. Oversight of Risk Management Plans will generate inspections, notices, orders, and potentially fines, all of which need to be tracked and maintained according to records retention requirements outlined in the *Act*. There is also an annual mandatory reporting requirement to outline activities undertaken to address significant threats and a need to provide updates on the threats inventory data to Source Protection Committees. The data management system will satisfy these requirements, and facilitate information sharing with local municipalities and external partners.

4. ANALYSIS AND OPTIONS

Source Protection Committees are responding to recommendations to improve Source Protection Plans

Although the timeline to comment on Version 1 of the policies was short, many local municipalities provided comments in time and those were included in the York Region submissions to each Committee. Staff have been effective in working with their municipal colleagues from Peel, Durham, Toronto and Barrie to communicate municipal concerns and advocate improvements to the Plans by direct participation on the Source Protection Committees and working groups. In the deliberations of working groups and the Committees, both groups responded with policy revisions to address many of the comments received during the pre-consultation exercise.

The net result of those revisions is a substantially improved set of policies (The Draft Proposed Source Protection Plans or Version 2, as illustrated in Figure 1). The revised policies are much simpler than the previous versions, more clearly worded and with less duplication. Importantly, the two committees have also achieved consistency between the two plans for the vast majority of policies.

Future land use activities that may be a *significant threat* are generally proposed to be controlled by prohibiting certain activities within highly vulnerable areas

For those future activities not yet on the landscape that could be a significant threat, the general approach by both Source Protection Committees is to prohibit the activity within sensitive areas. For example, prohibition of storage of large quantities (>2,500L) of fuel within 100m of a well has been proposed, while solvents and other related chemicals are prohibited within a five year wellhead protection area in the current proposed policies. This approach may pose a challenge for some employment areas where designated employment lands overlap with portions of wellhead protection areas. Consultation with the local municipal planning departments will be essential as the Plans are finalized to ensure the type of businesses that do not pose a threat to drinking water are encouraged in these growth areas.

Risk Management Plans are generally the proposed approach to manage existing activities

Risk Management Plans prescribed in Part IV of the Act are one of the new tools created to provide municipalities with new powers to protect drinking water. Part IV powers allow a municipality to address specific activities that are or would be significant threats to drinking water. These authorities were made available to address a gap in legislation. For example, the *Planning Act* addresses land use designation (e.g. commercial) but not specific activities that may harm drinking water (e.g. chemical handling and storage).

Where specified in the Source Protection Plan, the Region and local municipalities will be required to collaborate and:

- Require a person to negotiate a Risk Management Plan with the Risk Management Official prior to engaging in an activity subject to a Risk Management Plan policy
- Require a person to seek approval from the Risk Management Official prior to the issuance of a *Planning Act* approval or Building Permit in vulnerable areas subject to Section 59 Restricted Land Use and Section 57 Prohibition policies.

Landowners that currently engage in an activity that has a Risk Management Plan policy in the Source Protection Plan will be required to work with the Risk Management Official to negotiate a risk management plan. Once approved by written notice from the Risk Management Official, the land owner will be subject to routine inspections by Risk Management Inspectors. On an annual basis, the Risk Management Official will also be required to submit reports on the actions taken to the Source Protection Authorities.

Local and Regional Official Plans will need to conform to Source Protection Plans

Both the Region's and local municipalities' Official Plans and Zoning Bylaws must be brought into conformity with the Source Protection Plan once it is approved by the Minister of the Environment. This conformity will include policies for prohibition and risk management of activities specified in the Plan. Regional staff will bring forward a draft Regional Official Plan Amendment to Council after the Minister has approved the Source Protection Plans, which is anticipated in 2013.

Local municipalities and land development proponents will need to ensure they have the approval of the Risk Management Official as part of their complete application for certain types of land uses in certain vulnerable areas. Activities listed in the *Clean Water Act* (e.g. storage and handling of agricultural source material, fuels, and organic solvents) and their related land uses (e.g. agriculture, gas stations and industrial/commercial sites) will likely be included in this process. The complete application requirements will need to be specified by the local municipality within their Official Plan or Zoning Bylaw. Local municipalities will also be required to assist the Region in reporting to the Source Protection Authority on the number of applications received and processed.

Regional comments on the Draft Proposed Source Protection Plans (Version 2) that remain unresolved require further consideration by Source Protection Committees and Province

After review of the revised Source Protection Plans, staff continue to have unresolved concerns. The most significant items identified in the staff review are noted below. Detailed comments are provided in *Attachments 1 and 2*.

- Land use planning policies require further simplification
- Transition rules need to be developed by the Province for consistency and incorporated into a regulation under the Act
- Municipal costs will be incurred to comply with Source Protection Plans and should be financially supported by the Province
- Extending consultation timelines by the Province will promote effective implementation
- Version 2 policies are more closely aligned than Version 1, but consistency between the two Plans remains a concern to be addressed by Source Protection Committees

Link to Key Council-approved Plans

York Region membership on the Source Protection Committees supports sustainable infrastructure priority area within the 2011-2015 Strategic Plan

As our communities grow, it is critical that the Region sustain critical infrastructure over the long term. Managing or prohibiting specific land use activities near our drinking water sources, is an effective component of life cycle infrastructure management. The Source Protection Committee provides a vehicle for the Region to advocate effective implementation measures to ensure the plan is aligned with our water servicing strategy. Measures mandated within the Source Protection Plan, as approved by the Source Protection Committee, will directly protect vital drinking water sources over the long term.

5. FINANCIAL IMPLICATIONS

Although the Province has committed to fully funding the development of Assessment Reports and Source Protection Plans, there is currently no Provincial commitment to fund implementation. Implementation costs will be incurred to:

- Staff the Risk Management Office
- Amend Official Plans
- Implement new planning procedures
- Negotiate and enforce Risk Management Plans
- Undertake outreach efforts

- Address municipal operational threats (e.g. fuel storage)
- Verify and maintain records of Significant Drinking Water Threats
- Defend policies at the Ontario Municipal Board or Environmental Review Tribunal
- Report annually to Source Protection Authorities

Staff is currently developing long term estimates of full implementation costs for Source Water Protection. The 2012 approved Environmental Services operating budget includes \$1 million in source protection related effort that is not provincially supported. Some implementation costs will be incurred immediately and are already accounted for in operating budgets (e.g. staffing to negotiate and enforce Risk Management Plans), while others can be deferred for several years and represent new costs above the current support levels (e.g. Official Plan updates). Potential funding options available to consider include:

- Provincial subsidy
- Water rates
- Development charges (for growth related aspects of implementation)
- Permit fees

Final cost estimates for implementation and funding options will be brought to Council in early 2013 after the final policies are available and specific municipal responsibilities have been finalized.

6. LOCAL MUNICIPAL IMPACT

Once approved, the policies within the Source Protection Plans have legal effect under the *Clean Water Act, 2006*. The Region and local municipalities (as well as other implementing bodies) must conform to the policies targeting significant threats, and have regard for policies targeting moderate or low threats.

Municipalities will be primary implementers of Source Protection Plans

In the current versions of the Source Protection Plans, municipalities are responsible for implementing the bulk of policies including future prohibition policies (Region and local municipalities), Risk Management Plans (Region), Land Use Planning policies (Region and local municipalities), septic re-inspection program (local municipalities) and education and outreach policies (Region). Some of these policies require amendment to an existing process (e.g. land use planning policies can be accommodated through Official Plan updates), while others (such as future prohibition policies) require entirely new business processes and cooperation between the Risk Management Office and local municipal planning and building departments.

Source Protection policies and location of municipal water supplies need to be considered in long term planning decisions

Source Protection Plan policies will impact the type of growth, typically in portions of employment areas where the site overlaps with wellhead protection areas that are most vulnerable. Planning decisions must conform with Source Protection Plans once approved by the Minister. Regional staff will work closely with local municipal planning departments to help clarify and direct certain types of business, with significant threat activities, away from the vulnerable portions of wellhead protection areas and intake protection zones.

Staff will continue to assist with local municipal input on draft Source Protection policies

Regional staff continue to maintain regular communication with local municipalities regarding the progress of the Source Protection Plans. This regular communication will assist the Source Protection Committee members in addressing local concerns and comments from all interested parties. In addition, this interaction helps Regional staff to become more familiar with local municipal planning processes, which is extremely valuable as staff develop work plans for implementation of the Source Protection Plans.

7. CONCLUSION

***Clean Water Act, 2006* requires voluntary and mandatory actions to protect municipal drinking water sources**

Protecting drinking water at the source is the first step in providing safe drinking water to residents. York Region continues to implement Provincial, as well as Regional requirements to ensure drinking water sources are protected. Although existing actions, including treatment and testing, are standard practices at York Region and continue to demonstrate there has been no impact to source water quality, the additional proactive steps required in the Source Protection Plans will help ensure York Region's drinking water remains a protected resource for future generations.

Council endorsement of staff comments improves Region's ability to implement Source Protection Plans

Source Protection Committees are currently consulting on the Draft Proposed Source Protection Plans (Version 2). It is critical for the Region and local municipalities to review the policies contained in those plans, and provide feedback to the Source Protection Committees to ensure the final policies are practical to implement. Over the next three months, staff will continue to work with the Committees to resolve remaining municipal concerns, with a focus on ensuring that the final version submitted to the Minister has no outstanding issues. Regional Council's endorsement to request the

Minister to reconsider the submission deadline for the final Plan would help reinforce the requests already sent by the Source Protection Committees and demonstrate the criticality of municipal implementation of these actions specified in the Plan.

For more information on this report, please contact Laura McDowell, Director, Environmental Promotion and Protection at 905-830-4444, Ext. 5077.

The Senior Management Group has reviewed this report.

(The three attachments referred to in this clause are attached to this report.)

April 10, 2012

Lynn Dollin, Chair
South Georgian Bay Lake Simcoe Source Protection Committee
120 Bayview Parkway
Newmarket, ON L3Y4X1

Dear Chair Dollin:

Re: Comments on the Draft Proposed Source Protection Plan and Explanatory Document for the South Georgian Bay Lake Simcoe Region, released March 26 2012

York Region is pleased to provide comments to the South Georgian Bay Lake Simcoe Source Protection Committee (SPC) on the Draft Proposed Source Protection Plan and Explanatory Document released March 26, 2012 for public comment. We would like to congratulate the SPC on this milestone, and thank the Committee and staff for their efforts to address the comments provided during the pre-consultation exercise. Regional staff noted substantial improvements to the policies and readability of the document, as well as greater consistency between Source Protection Plans within York, all of which is appreciated.

York Region remains firmly committed to working with the SPC to ensure the final policies in the Source Protection Plan are practical for municipal implementation and protective of our drinking water sources. With this goal in mind, general comments relating to the Plan have been outlined below. Additional detailed comments for the SPC's consideration will follow in a separate submission.

Policies need to be clarified to ensure appropriate interpretation

Some of the detailed comments to be provided are intended to clarify the intent of some policies. Given the number of implementing bodies, it is essential that the language in the final policies is clear and concise to avoid varied interpretation. Implementation could differ from one jurisdiction to another within the Source Protection Region if the policy language is not consistent and explicit.

Leverage municipal planning expertise to simplify land use planning policies

York Region supports the use of land use planning tools to assist in communicating the intent of the Source Protection Plan. However, it is important that the policies do not go beyond the scope of the *Planning Act* and unintentionally increase the risk of appeals and litigation. A recent logistics review of implementation greatly assisted Regional staff in making recommendations for policy refinement. We recommend the SPC have a focused discussion or workshop with local

municipal planning, Building Officials and Bylaw experts on how to effectively use the *Planning Act*, *Building Code Act* and *Municipal Act* as implementation tools.

Transition rules should be established by the Province in Regulation

The current draft Plan does not have policies to allow existing approvals under the *Planning Act* or the *Environmental Assessment Act* to be treated as an existing activity. There are several pieces of legislation that allow for transition to a new regulatory framework e.g. *Greenbelt Act*, *Lake Simcoe Protection Act*, etc. These *Acts* all have transition regulations that specify exactly how applications that were underway when the *Acts* were introduced are to be considered. We recommend that the Province develop a transition regulation for the *Clean Water Act* to ensure that in-progress applications are addressed fairly and consistently across Ontario.

Tight timelines have constrained municipal comments.

Additional time for municipalities and other implementing bodies to assess the implications of the proposed policies and provide constructive feedback would greatly benefit the final Source Protection Plan, and subsequently improve the implementation process. The Source Protection Plan is a cross disciplinary document that requires multiple and complex conversations between departments. Having a two tier municipal structure adds further complexity. Regional Council has endorsed the request for extension by your SPC in a letter to the Minister of the Environment.

Consistency between Source Protection Regions remains an important goal.

York Region is pleased to note the degree of cooperation between the South Georgian Bay Lake Simcoe and CTC Source Protection Committees. Upon detailed review of each Draft Proposed Source Protection Plan, however, some discrepancies between the two plans remain. Continued collaboration is recommended to ensure the final policies are as closely aligned as possible. Although we recognize that the timelines are constrained, this consistency will greatly assist in implementation.

York Region is committed to source protection planning and appreciates the efforts needed to support implementation of the Act. Protecting drinking water at the source is the first step of the multi-barrier approach and is part of York Region's comprehensive 'from source to tap' strategy. We continue to keep in step with new Provincial directions to ensure multiple barriers are in place to deliver safe water.

April 10, 2012

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Comments on Draft Proposed Source Protection Plan for the South Georgian Bay Lake Simcoe Source Protection region, March 2012

We look forward to working with the SPC over the coming months to deliver an effective Source Protection Plan for the continued protection of our drinking water.

Sincerely,

Erin M. Mahoney, M. Eng.
Commissioner, Environmental Services

WK/DG/rc

Copy to: Laura McDowell, Director, Environmental Promotion and Protection, York Region / CTC SPC
Wendy Kemp, Manager, Water Resources, York Region / SGBLS SPC
Local Municipal Planning and Public Work Directors
Susan Self, Chair, CTC SPC
Neil Gervais, Ministry of Environment

#4127339

April 10, 2012

Susan Self, Chair
CTC Source Protection Committee

Dear Chair Self:

**Re: Comments on the Draft Proposed Source Protection Plan for the CTC region,
Original release March 19, 2012, March 29 Addendum, April 5 revised release**

York Region is pleased to provide comments to the CTC Source Protection Committee (SPC) on the Draft Proposed Source Protection Plan, released for public comment on March 19, 2012, followed by an addendum issued March 27, and subsequent revised release on April 5, 2012. We would like to congratulate the SPC on this milestone, and thank the committee and staff for their efforts to address the comments provided during the pre-consultation exercise. Regional staff noted substantial improvements to the policies and readability of the document, as well as greater consistency between Source Protection Plans within York, all of which is appreciated.

York Region remains firmly committed to working with the SPC to ensure the final policies in the Source Protection Plan are practical for municipal implementation and protective of drinking water sources. With this goal in mind, general comments relating to the Plan have been outlined below. Additional detailed comments for the SPC's consideration will follow in a separate submission.

Policies need to be clarified to ensure appropriate interpretation.

Some of the detailed comments to be provided are intended to clarify the intent of some policies as the desired outcomes remains unclear. Given the number of implementing bodies, it is essential that the language in the final policies is clear and concise to avoid varied interpretations and outcomes. Implementation could vary from one jurisdiction to another within the Source Protection Region if the policy language is not consistent and explicit.

Leverage municipal planning expertise to simplify land use planning policies

York Region supports the use of land use planning tools to assist in communicating the intent of the Source Protection Plan. However, it is important that policies not go beyond the scope of the *Planning Act* and unintentionally increase the risk of appeals and litigation. A recent logistics review of implementation greatly assisted Regional staff in making recommendations for policy refinement. We recommend the SPC have a focused discussion or workshop with local municipal planning, Building Officials and Bylaw experts on how to effectively use the *Planning Act*, *Building Code Act* and *Municipal Act* as implementation tools.

Transition rules should be established by the Province in Regulation.

The current draft Plan does not provide sufficient flexibility for municipal projects in transition and may require a more fulsome discussion. There are several pieces of legislation that allow for transition to a new regulatory framework e.g. *Greenbelt Act*, *Lake Simcoe Protection Act*, etc. These *Acts* all have transition regulations that specify exactly how applications that were underway when the *Acts* were introduced are to be considered. We recommend that the Committee work with the Province to develop a transition regulation for the *Clean Water Act* to ensure that in-progress applications are addressed fairly and consistently across Ontario.

Tight timelines have constrained municipal comments.

Additional time for municipalities and other implementing bodies to assess the implications of the proposed policies and provide constructive feedback would greatly benefit the final Source Protection Plan, and subsequently improve the implementation process. The Source Protection Plan is a cross disciplinary document that requires multiple and complex conversations between departments. Having a two tier municipal structure adds further complexity. Staff have requested Regional Council endorse the request for extension by your SPC in a letter to the Minister of the Environment.

Consistency between Source Protection Regions remains an important goal.

York Region is pleased to note the degree of cooperation between the CTC and South Georgian Bay Lake Simcoe Source Protection Committees. Upon detailed review of each Draft Proposed Source Protection Plan, some discrepancies between the two Plans remain. Continued collaboration is recommended to ensure the final policies are as closely aligned as possible. We recognize that time is limited, but this consistency will allow us to more effectively implement the actions specified in the Plan.

York Region is committed to source protection planning and appreciates the efforts needed to support implementation of the *Act*. Protecting drinking water at the source is the first step of the multi-barrier approach and is part of York Region's comprehensive 'from source to tap' strategy. We continue to keep in step with new Provincial directions to ensure multiple barriers are in place to deliver safe water.

We look forward to working with the SPC over the coming months to deliver an effective Source Protection Plan for the continued protection of our drinking water.

Sincerely,

Erin M. Mahoney, M. Eng.
Commissioner, Environmental Services

WK/DG/rc

Copy to: Laura McDowell, Director, Environmental Promotion and Protection, York Region / CTC SPC
Wendy Kemp, Manager, Water Resources, York Region / SGBLS SPC
Local Municipal Planning and Public Work Directors
Susan Self, Chair, CTC SPC
Claire Mitchell, Ministry of Environment

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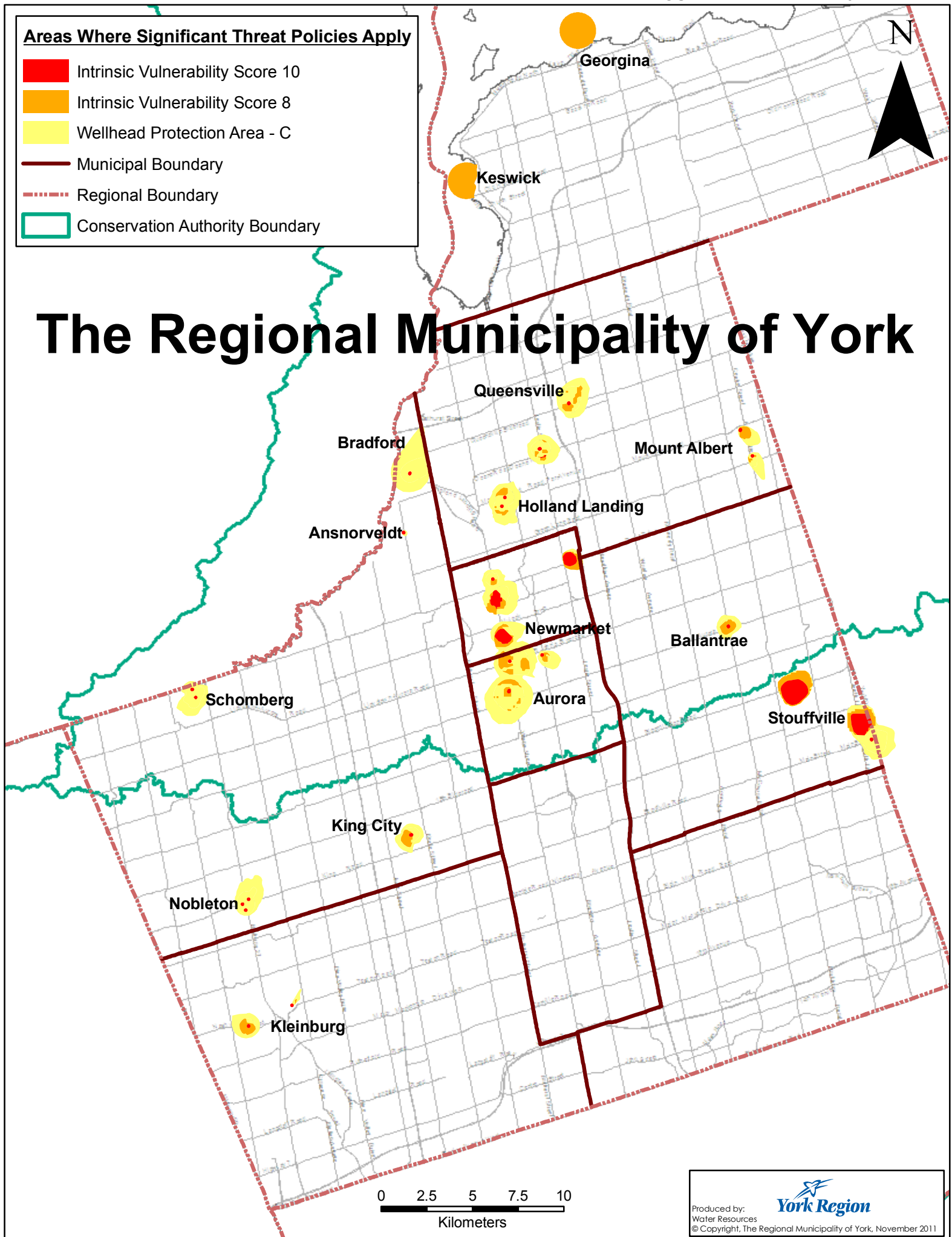
Areas Where Significant Threat Policies Apply

- Intrinsic Vulnerability Score 10
- Intrinsic Vulnerability Score 8
- Wellhead Protection Area - C
- Municipal Boundary
- Regional Boundary
- Conservation Authority Boundary

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The Regional Municipality of York



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Kilometers