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FINALIZATION OF SOURCE PROTECTION PLANS AND RESOURCE REQUIREMENTS FOR IMPLEMENTATION

The Environmental Services Committee recommends the adoption of the recommendations contained in the following report dated September 25, 2012, from the Commissioner of Environmental Services and the Commissioner of Transportation and Community Planning.

1. RECOMMENDATIONS

It is recommended that:

1. Council endorse staff comments on the *Draft Proposed Source Protection Plans*, appended to this report as *Attachment 1*.
2. This report and *Attachment 1* 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 requests Council endorsement of staff comments on the final draft of Source Protection Plans scheduled for submission to the Minister of the Environment on October 22, 2012 as required by the *Clean Water Act, 2006* (the Act). It also updates Council on activities underway to implement the Source Protection Plan requirements and provides information on cost recovery and resources required to fulfill municipal responsibilities as required under the Act.

3. BACKGROUND

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

Since 2006, work has been underway across the province to protect municipal drinking water sources as an additional barrier to prevent another Walkerton tragedy. Assessment Reports were approved by the Province in January 2012, which identify existing threats to drinking water quality, and vulnerable areas relative to municipal wells and surface water intakes as summarized in previous council reports: May 12, 2010,

February 9, 2011, November 9, 2011 and May 17, 2012. The final deliverable under this Act to the Minister of the Environment is the Source Protection Plan which specifies actions required to address potential significant drinking water threats to ensure those activities cease to be and future activities do not become significant threats.

The current public consultation phase represents the final opportunity for municipal comment

Source Protection Committees were required to conduct extensive public consultation on all published documents, including the Source Protection Plans. The current September 2012 consultation period is the last opportunity for municipal councils to formally comment on the policies within the Source Protection Plans. Following the final consultation period, the committees may make only minor editorial revisions and any unresolved comments at this stage are submitted to the Minister of the Environment with the Proposed Source Protection Plans for resolution.

Once complete, Source Protection Plans will be administered by the Source Protection Authorities and the Ministry of the Environment, including a requirement for updates to both the Assessment Reports and Source Protection Plans following a schedule to be prescribed by the Minister.

Risk management program established in York Region to deliver provincial requirements to protect drinking water and meet legislative duties

In the fall of 2011, Council appointed a Risk Management Official and three Risk Management Inspectors in accordance with the Act to fulfill the Region's responsibilities as a provider of safe drinking water as previously reported to Council in a report to the Environmental Services Committee November 9, 2011.

Regional implementation responsibilities as outlined in the *Clean Water Act, 2006* and further detailed in the Source Protection Plans will include:

- Negotiating and enforcing Risk Management Plans (Section 58 policies)
- Working with local municipalities to screen development applications within vulnerable areas against prohibited activities (Section 57 / 59 and land use planning policies)
- Enacting mitigation measures to address Regional threats (e.g. sanitary sewage lines)
- Collaborating with the Province and Conservation Authorities to implement Education & Outreach policies
- Defending Official Plan and Source Protection Plan policy challenges at the Ontario Municipal Board and Environmental Review Tribunal
- Annual reporting to the Province via the Source Protection Authorities
- Maintenance of records associated with all of the above activities

Local Municipal implementation responsibilities will include:

- Oversight of septic re-inspection programs within highly vulnerable areas (Building Code)
- Working with the Region to screen development applications within vulnerable areas against prohibited activities (Section 57 / 59 and land use planning policies)
- Enacting mitigation measures to address Local Municipal threats (e.g. fuel storage)
- Summarizing their efforts for inclusion in annual reports to the Province via the Source Protection Authorities

4. ANALYSIS AND OPTIONS

Municipal recommendations have improved final draft of Source Protection Plans

York Region has been effective in working with colleagues from Peel, Durham, Toronto and Barrie to communicate municipal concerns and advocate for revisions to the Plans through direct participation on Source Protection Committees and working groups. The Minister of the Environment also granted an extension for the two Plans based on the Region's recommendation to request additional time to resolve outstanding issues. The Source Protection Plan policies have continued to improve and the final list of staff concerns has been reduced. The final draft policies are fewer in number, simplified and more clearly worded than previous versions. The two committees have also achieved consistent approaches on how significant threats are to be addressed with few exceptions.

Some Regional comments on the Proposed Source Protection Plans (Version 3) for consideration by the Minister of the Environment remain unresolved

As a result of the collective efforts by Region staff, committee members and Conservation Authority staff to refine the Source Protection Plans, there are few remaining concerns for the Minister of the Environment to address. A summary of the items identified in the staff review are noted below and detailed in *Attachment 1*.

- Timely updates of the Assessment Report are required to allow the Region to apply the Source Protection program to recently commissioned and future well supplies.
- Municipalities, as one of the primary implementers of the Source Protection Plans, will incur costs to comply with Source Protection Plans and should be financially supported by the Province.
- A practical and consistent approach to managing domestic home heating oil would ease implementation.

Risk Management Plans continue to be the primary tool to manage existing drinking water threats from business activities

Risk Management Plans prescribed in Part IV of the *Act* are one of the tools created to provide municipalities with new powers to protect drinking water. Unlike the *Planning Act*, which can be used to direct and control future development, Part IV powers allow a municipality to address existing activities that are significant threats to drinking water.

Landowners that currently engage in an activity that has a Risk Management Plan policy implication for 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. If the landowner chooses not to comply with the Risk Management Plan, the landowner would be subject to an enforcement process as per the *Act*. This enforcement could include notices, orders, warrants and in extreme cases prosecution. On an annual basis, the Risk Management Official will also be required to submit detailed reports on all actions taken to the Source Protection Authorities.

Field verification of significant threats demonstrates the initially estimated 1,100 significant drinking water threats in York Region was conservative

The technical work completed for the Assessment Reports was primarily a desktop exercise. At the time, the estimated significant water threats represented the best information available. Although the effort to confirm or remove the more than 1,100 significant threats on approximately 500 properties across the Region is on-going and the exercise is indicating that the original assessment was conservative. Of the 360 business properties in the Region, over two-thirds have been canvassed to date. As a result of those efforts, more than 30 significant threats have been removed and 70 confirmed, with the remainder in process. Verification of land use activities has proven to be a time consuming effort, requiring multiple interactions, including face to face meetings to discuss these new requirements. This work has identified the need for extensive data collection and robust record keeping to meet specified reporting requirements outlined in the *Act*.

Implementation of Source Water Protection Plans through Official Plans is an important next step

The Regional Official Plan (2010) currently contains a section on Source Water Protection and this section will need to be updated to reflect the greater suite of Source Water Protection policies proposed in the Plans once they are approved. Amendments at the Regional level will include adding policies to prohibit certain activities where they would be a significant threat, such as the storage of fuel or pesticides. Environmental Services staff and the Region's Community Planning and Long Range Planning staff in

the Office of the CAO will be working towards establishing the final set of Regional Official Plan policies.

In addition, similar policies will need to be added or updated in Local Official Plans and ultimately zoning bylaws. Community Planning will be responsible to co-ordinate and approve these related amendments to conform to Source Protection Plans.

Compliance with new Source Water Protection Policies require additional steps in the review of Development Applications under the *Planning Act*

New development applications located within vulnerable areas will be reviewed by Regional staff to capture new Source Water Protection policy requirements. Additional consultation, co-operation and collaboration will be required with the local municipalities who are the approval authority for plans of subdivision and condominium, site plans, zoning bylaws, consents, and committee of adjustment applications.

York Region is the approval authority for Regional Official Plan amendments, local Official Plans, and Regionally significant local Official Plan amendments. The Region's protocol ensures any Regional modifications on Official Plans or Official Plan amendments are reviewed by the local municipalities, prior to being presented to Regional Committee and Council for endorsement. Any Source Water Protection requirements related to these local Official Plans and/or secondary plan documents will now be added to the protocol procedure.

The Community Planning Branch of the Transportation and Community Planning Department currently acts as the One – Window for Development Applications at the Regional level. The business processes to implement Source Water Protection requirements are being developed jointly by the relevant Regional Departments, in consultation with local municipalities.

Once implementation begins, resolution of issues may require meetings with proponents and/or local municipalities, and defending the Regional position at the Ontario Municipal Board or Environmental Review Tribunal may also be required.

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. Managing or prohibiting threat activities near drinking water sources is an effective component of life cycle infrastructure management. Measures mandated within the Source Protection Plan, as approved by the Source Protection Committee, will directly protect vital drinking water sources as well as protect our infrastructure investment over the long term.

5. FINANCIAL IMPLICATIONS

Implementation of Source Protection Plans will result in new costs to the Region. These costs include:

- Direct costs to mitigate Region owned threats.
- Instituting a financial incentive program to assist affected landowners.
- Consulting support
- Additional staffing resources

Many of the tools and resources necessary for implementation are already in place at the Region, however remaining resource gaps need to be addressed

York Region has a long history of drinking water protection and, as a result, currently has in place much of the expertise and many of the business processes and tools necessary for source protection implementation.

- Hydrogeologists within the Water Resources department, previously responsible for technical project management and plan review have been re-purposed and appointed as Risk Management Inspectors.
- A data management tool has been developed to warehouse the risk management plans, inspection reports, and associated documentation, as well as facilitate the legislated annual reporting on implementation effort.
- Existing development review business processes have been revised to include consideration of source protection policies.
- In 2009, Council approved funding for land acquisitions surrounding Regional wells.
- Existing Conservation Authority stewardship programs funded through the Region can be expanded to address drinking water risk mitigation projects.

These existing tools, processes and experts, which have been part of the Environmental Services approved budgets for several years, will ease the transition to implementation and dampen cost implications. Collaboration with many groups continues as staff refines existing business processes to avoid duplication.

Additional staff resources necessary to fulfill legislated implementation and annual reporting requirements

Although the Region is well positioned to address source protection requirements, the work plan for implementation includes critical tasks that the existing staff complement cannot address. The current field verification efforts have demonstrated that source protection data management is challenging, resulting in the purchase of software to track

inspections and enforcement activities. Amendments to the Region's Records Retention Bylaw have also been made to comply with the new record requirements under the Act.

It is imperative that these records are organized to support staff participation at Ontario Municipal Board or Environmental Tribunal appeals that may arise. In addition, the regulatory requirement to maintain detailed records of implementation efforts, including risk management plans, inspections, notices, warrants and other enforcement duties is onerous. Appropriate management of this information is critical, as it must be maintained and summarised in comprehensive annual reports to the Province in a specified digital format. These information management and reporting responsibilities necessitate a data management specialist.

Much of the Source Protection Plan policies will be implemented through the planning approval process. Source Water Protection requirements need to be integrated with other land use considerations through Community Planning's "One Window" approval process. Resolution of issues arising will need to be managed, necessitating an additional staff resource to be shared between Development Review and Approval functions.

Detailed business cases for these new resource requirements are included in the proposed 2013 budget process.

Financial incentive program recommended to assist York Region landowners and expedite risk reduction efforts

Engagement with business owners has highlighted the fact that, in the current economic climate, risk reduction projects are low on the list of their priorities. While the *Clean Water Act, 2006* provides the authority to require Risk Management Plans, staff recommended an incentive program as an effective tool to help reduce non-compliance. This incentive program approach is directly linked to the Conservation Authority stewardship programs and is similar to other Regional programs like Water for Tomorrow and Greening Strategy.

The incentive program would subsidize the cost to business and land owners to implement Risk Management Plans. Easing the financial burden is anticipated to accelerate implementation of risk mitigation projects and increase compliance with Risk Management Plans.

Although some variables must be confirmed after the Source Protection Plans are approved, estimates of implementation cost are approximately \$1 million over historical budget levels

Implementation effort and associated cost will peak during the period between 2014 and 2018, when costs associated with full program phase-in will occur. The 2013 program costs for source water protection are expected to be about \$600,000 higher than the 2012 program budget. This increase results from additional staff resources and consulting

support required for implementation, an incentive program to assist affected landowners and direct costs to mitigate Regional threats. This increase represents considerably less than 1 per cent of the Environmental Services rate supported budget.

It is anticipated that the incentive program, consulting support and Regional threat mitigation efforts and costs will drop and the program will transition into a maintenance phase after 2018, when most Risk Management Plans are in place and Regional threats addressed.

Consideration of funding options for implementation include a blend of permit fees and water rate supported budgets

Although the province has invested in over \$200 million in development of Source Protection Plans and Assessment Reports, there is no provincial commitment to fund implementation. Staff has reviewed the various funding options, including development charges, tax levy, water rate and permit fees. Staff recommends implementation should be funded by those residents that receive the benefit of safe drinking water, through the water rate, supplemented by fees recovered through the plan review process.

A two-phased approach for fees is recommended. In the first year after the Plan is approved, staff will document implementation effort to determine appropriate fee amounts.

In the subsequent year, staff will develop and present to Council a fee structure as enabled under the *Clean Water Act*, 2006 and Environmental Services and Community Planning staff will work together to update the Region's development applications fee schedule to reflect source water protection requirements.

Full cost recovery through permit fees is not feasible as it would require significant charges. Funding implementation primarily through water rate revenues can be accommodated in the current Council-approved rate structure. Source protection implementation cost estimates represent less than 1 per cent of annual water rate revenue, and will not result in rate increases, although funds devoted to source protection implementation will slightly reduce the near-term contribution to water reserves.

6. LOCAL MUNICIPAL IMPACT

Significant threat policies are legally binding and require collaboration between local and Region levels of government

As previously reported to Council in May 2012, 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. Although Official Plan updates will be required within five years to conform to the Source Protection Plans, all municipal planning decisions must be consistent with the significant threat policies upon approval of the Source Protection Plans.

Joint efforts with the Region and local municipal planning staff will be required to conform to the Source Protection Plans and ensure new threats do not emerge on the landscape

Local municipal staff are the first point of contact for most residents and businesses who wish to develop lands and build new structures. It is imperative that these new policy requirements that prohibit future significant threat activities be implemented jointly between the Region, where the Risk Management Official resides, and local municipalities, where the *Planning Act* and *Building Code Act* applications are received and approved. Development proponents will need the approval of the Risk Management Official as part of their complete application to local municipalities for certain types of land uses in certain vulnerable areas. Activities listed in the *Clean Water Act, 2006* (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.

Regional staff have been engaging local municipalities throughout the Source Protection program and have made several Council deputations, held workshops, conducted regular meetings with planning and public works staff, and individual meetings with front-line staff.

In May 2012, a Planner from the Town of Aurora was seconded for a period of one year to assist Environmental Services with the development of integrated business processes and procedures to aid implementation at the local municipal level.

Currently, local municipal planning staff are being consulted on the business processes needed to facilitate approvals, the results of which will be used to develop an implementation toolkit.

7. CONCLUSION

Finalization of the draft Source Protection Plans represents last opportunity to provide municipal input on the actions required to protect municipal drinking water sources

Protecting drinking water at the source is the first step in providing safe drinking water to residents. For the past six years, York Region has remained committed to the development of the Source Protection Plans through ongoing communication, collaboration and active participation with many groups. These efforts have proven to be

successful in driving results that are more consistent, clear and reasonable actions that protect drinking water sources.

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

Source Protection Committees are currently consulting on the Proposed Source Protection Plans (Version 3). Comments submitted at this stage of the process will be considered directly by the Minister of the Environment and represent the last opportunity to influence the content of the Source Protection Plans.

Additional staff resources to meet legislative requirements will be considered in the 2013 Budget

Early efforts to verify the 1,100 significant drinking water threats has demonstrated an additional staff resource is required to maintain the appropriate data and records mandated under the Act. Dedicated record keeping is critical to support any legal challenges that may arise at Ontario Municipal Board or Environmental Review Tribunal hearings. This new position will ensure that appropriate tracking of all risk management plans, inspections, notices, warrants and orders occurs, and that those activities are reported in accordance with the annual reporting and data transfer requirements to the Province and Source Protection Authorities. Implementation of Source Protection Plans also requires changes to Official Plans to include the Source Protection Plan policies and review of all development applications within the vulnerable areas including subdivisions, condominiums, and site plans; in conjunction with local municipalities. This will necessitate a new position, dedicated to ensuring Source Protection Plans are implemented through planning approvals.

For more information on this report, please contact Laura McDowell, Director, Environmental Promotion and Protection at 905-830-4444, Ext. 5077 or Heather Konefat, Director, Community Planning, Ext. 1502.

The Senior Management Group has reviewed this report.

(The attachment referred to in this Clause is attached to this report.)

October 10, 2012

The Hon. Jim Bradley
Minister of the Environment
11th Floor, Ferguson Block
77 Wellesley Street West
Toronto, ON M7A 2T5

Dear Minister Bradley:

Re: Comments on the Proposed Source Protection Plans for the Credit valley, Toronto and Region, and Central Lake Ontario (CTC) and South Georgian Bay Lake Simcoe (SGBLS) regions

York Region is pleased to provide comments on the Proposed Source Protection Plans for the CTC and SGBLS Source Protection Regions. We would like to congratulate the Source Protection Committees on this milestone, and thank them and staff for their efforts to address the comments provided during the previous consultation exercises. Regional staff noted substantial improvements to the policies and readability of the documents, as well as greater consistency between the Source Protection Plans within York, all of which is appreciated. The following comments are offered to ease implementation of the Source Protection Plans.

Continued Provincial investment in the Source Water Protection program is critical

Estimates of municipal implementation costs are being developed, and they are substantial. While permit fees are permissible under the Act, those fees would have to be unreasonably large to recover the full cost of implementation in York Region. Provincial support to help offset these new costs would help expedite implementation, and also help ensure the application of policies is consistent across Ontario.

The costs to those engaged in significant threat activities could also be substantial. Both the CTC and SGBLS plans include policies encouraging the province to continue with the Ontario Drinking Water Stewardship Program. York Region would like to emphasize the importance of maintaining a stewardship fund (Ontario Drinking Water Stewardship Program or equivalent) to ease the burden of implementation.

Continuous improvement philosophy needs to be supported

The current approved Assessment Report for Lakes Simcoe and Couchiching / Black River Source Protection Area requires an addendum to include the new municipal well system for the community of Ballantrae to allow Regional staff to consistently implement source protection

policies. Without reference to this new groundwater system, source water protection approaches cannot be applied and represents a gap in mitigating potential significant threats. In addition, the water quantity study to evaluate potential threats for the Yonge Street Aquifer is nearing completion and will also drive the need for changes in Assessment Report and potentially the Source Protection Plans. Timely and regular Assessment Report and Source Protection Plan updates are required to ensure consistent practices and approaches to delivering safe water can be applied.

Additionally, once implementation begins and the effectiveness of Source Protection Policies becomes apparent, policy revisions may be warranted to ensure significant threats are being appropriately managed. The Province has, to date, financially supported the development of Assessment Reports and Source Protection Plans, and should continue to fund the maintenance of those critical documents.

The policies need to be practical and consistent to facilitate implementation

The South Georgian Bay Lake Simcoe (SGBLS) plan includes a requirement for Risk Management plans for domestic home heating oil tanks that are Significant Threats. York is concerned that individually negotiating Risk Management Plans with homeowners is not an efficient use of Risk Management Office resources. Given that the approach to address those threats will be consistent and the existing framework for managing fuel storage is rigorous, York is of the opinion that an education program would effectively manage the risk posed by domestic heating oil storage. The CTC has proposed an education and outreach policy targeting residential properties for this threat activity, so consistency is another reason we have suggested a revision to the South Georgian Bay Lake Simcoe policy.

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.

Sincerely,

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

WK/DG/rc

Copy to: Susan Self, Chair, CTC SPC
Lynn Dollin, Chair, South Georgian Bay Lake Simcoe SPC

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