

Chapter 2

Section 2.01

Niagara Peninsula Conservation Authority

Follow-Up on *2018 Special Audit of the Niagara Peninsula Conservation Authority*

RECOMMENDATION STATUS OVERVIEW						
	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1		1			
Recommendation 2	2	1		1		
Recommendation 3	4	1	2	1		
Recommendation 4	3		2	1		
Recommendation 5	3	2	1			
Recommendation 6	2	2				
Recommendation 7	3	3				
Recommendation 8	2		2			
Recommendation 9	2	1	1			
Recommendation 10	4	1	3			
Recommendation 11	5	2	1	2		
Recommendation 12	3	1	2			
Recommendation 13	1	1				
Recommendation 14	3	3				
Recommendation 15	6		5	1		
Recommendation 16	4	1		3		
Recommendation 17	4	3	1			
Recommendation 18	3	3				
Recommendation 19	3	3				
Recommendation 20	4	4				
Recommendation 21	5	2	3			
Recommendation 22	4		4			
Recommendation 23	1		1			
Recommendation 24	3		3			
Total	75	34	32	9	0	0
%	100	45	43	12	0	0

Overall Conclusion

As of October 2020, the Ministry of the Environment, Conservation and Parks (Ministry) and the Niagara Peninsula Conservation Authority (NPCA) have fully implemented 45% of actions we recommended in our *2018 Special Report: Special Audit of the Niagara Peninsula Conservation Authority*. The Ministry and the NPCA have made progress in implementing an additional 43% of the recommended actions, but have made little or no progress on 12% of them.

Since our 2018 audit, the NPCA has updated its governance and operational policies to, for example:

- clarify the circumstances that could lead to actual or perceived conflicts of interest in the recruitment process;
- specify the types of meetings and functions for which Board members may receive per diem payments;
- require NPCA staff to consider whether proposed restoration projects are located in areas that have been identified as priority areas when approving project applications;
- clarify the steps and documentation required to support hiring;
- require that an external party investigate any harassment or discrimination complaint against the Human Resources staff, Chief Administrative Officer (CAO) and Board members; and
- clearly define the responsibilities of NPCA staff in each stage of the procurement process.

These policy updates, and the resulting improvement in processes, have helped address many of the NPCA staff's workplace concerns that we identified in our 2018 audit. The NPCA also developed a Human Resource (HR) plan to address other HR issues and any remaining workplace concerns.

In addition to the policy updates, the NPCA has also fully implemented our recommendations

to identify initial and ongoing board governance training needs; evaluate the CAO's performance; develop a plan to prioritize floodplain mapping projects; and provide quarterly updates about HR matters—such as restructuring, staffing changes, complaints and grievances—to the NPCA's Board of Directors.

At the time of our follow-up, the Ministry was in the process of reviewing and updating the *Conservation Authorities Act* to determine necessary legislative and regulatory changes to clarify conservation authorities' responsibilities and improve their governance, oversight and accountability.

The NPCA was in the process of, for example:

- evaluating the skills of its current Board members to identify and address any gaps;
- implementing a process to evaluate the collective and individual performance of its Board members;
- establishing a vendor of record for its legal services; and
- developing a new capital asset management plan that prioritizes capital projects based on needs.

However, the Ministry made little progress on implementing some of our recommendations, including to work with Conservation Ontario and conservation authorities to determine whether governance training should be delivered province-wide for board members of conservation authorities. The NPCA made little progress, for example, to revise its enforcement policy to require that enforcement activities be sufficiently documented and provide guidance on the progressive actions enforcement staff should take to address violations. The NPCA Board also made little progress in refraining from being involved in day-to-day operations, determining whether it collectively has the necessary competencies to oversee the NPCA's activities effectively, and evaluating Board members' performance of their oversight responsibility.

We stated in our 2018 audit that the NPCA needed 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 improvements we noted through our follow-up work, in not just one, but many of these areas, signal the NPCA's commitment to focus on delivering programs and services to improve the Niagara Peninsula watershed. While there is more work to be done, these efforts have gone a long way in restoring trust in the NPCA, both internally and externally.

The status of actions taken on each of our recommendations is described in this report.

Background

The Niagara Peninsula Conservation Authority (NPCA) is one of 36 conservation authorities in Ontario. Each is a local public-sector organization that delivers programs and services to manage natural resources and to protect people and property from water-related natural hazards such as floods and erosion. Conservation Ontario, which represents the 36 conservation authorities in the province, provides input to government bodies about policies that affect conservation authorities.

Under the *Conservation Authorities Act* (Act), passed in 1946, conservation authorities are corporations with a degree of autonomy from the provincial government and municipalities. The Act is administered by the Ministry of the Environment, Conservation and Parks (Ministry).

Currently, on average, conservation authorities receive 53% of their funding from municipalities, 8% from the Ontario government and 4% from the federal government. The remaining 35% comes from donations, service fees charged for work permits and fees charged to the public for admission to conservation areas.

Established in 1959, the NPCA serves about 500,000 people in the 2,400 square kilometres of the

Niagara Peninsula watershed. The area encompasses the entire Niagara Region (made up of 12 municipalities), 21% of the City of Hamilton and 25% of Haldimand County.

The NPCA Board of Directors comprises 21 members (up from 15 during our 2018 audit): 15 from the various municipalities in the Niagara Region, four from the City of Hamilton and two from Haldimand County.

In 2019, the NPCA earned about \$10.9 million in revenues (\$12.5 million in 2017), with 65% coming from municipal levies (71% in 2017) and the rest from provincial and federal funding, fees charged for specific services and donations. In the same year, the NPCA spent approximately \$12.1 million to deliver its programs and services, compared with \$9.6 million in 2017.

As of June 1, 2020, the NPCA had 50 full-time staff (49 as of May 1, 2018), of which 33.5, or 67%, delivered the NPCA's programs and services and 16.5 provided administrative services.

On October 25, 2017, in light of mounting criticism 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 found 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.

However, we found, for example, that the NPCA needed to improve its processes to ensure that it delivered programs and services economically, efficiently and in accordance with relevant legislation, regulations, agreements and policies. It also needed to ensure that it effectively managed the impact of human activities, urban growth and rural activities in the lands within its jurisdiction.

We also found that the NPCA did not have effective processes to measure, assess and publicly report on the effectiveness of its programs and services. As a consequence, the NPCA had not been able to fully demonstrate—and the Ministry and

municipalities could not fully assess—how well the NPCA was fulfilling its legislative mandate.

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 were the subject of concerns and criticism. Conservation authorities are governed by boards of directors whose members are appointed by the municipalities that partially fund the conservation authorities. However, we found that municipal priorities and interests sometimes conflict with those of conservation authorities. The Act authorizes board members to “vote and generally act on behalf of their respective municipalities,” which puts board members in a difficult position when a conflict arises.

Our 2018 audit noted that the dependence on municipal funding may also present challenges for conservation authorities and their boards to make decisions independently of municipal pressures. This is especially problematic when board members are also elected mayors and councillors whose municipal priorities include facilitating economic development in their municipalities.

In the period following our audit and up until our follow-up, the Chief Administrative Officer position was held by four different individuals in an interim or permanent role. The current CAO was hired in January 2020 in a permanent capacity.

Status of Actions Taken on Recommendations

We conducted assurance work between April 1, 2020 and July 21, 2020. We obtained written representation from the Ministry of the Environment, Conservation and Parks (Ministry) as well as the Niagara Peninsula Conservation Authority (NPCA) that, effective October 16, 2020, they have provided us with a complete update of the status of the recommendations we made in the original Special Report audit two years ago.

Board Not Sufficiently Objective for Independent Oversight

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.

Status: In the process of being implemented by summer 2021.

Details

Our 2018 audit found that, contrary to governance best practices, members of the NPCA Board of Directors acted primarily on behalf of their municipality when making NPCA Board decisions. We highlighted instances where Board members—both elected officials and citizen appointees—had difficulties balancing their competing municipal and NPCA interests and responsibilities, compromising their ability to make objective decisions in the NPCA’s best interest.

In our follow-up, we found that the *More Homes, More Choice Act, 2019* (Bill 108) amended the *Conservation Authorities Act* to require Board members to “act honestly and in good faith with a view to furthering the objects of the authority.” Bill 108 received royal assent in June 2019, but was not yet proclaimed at the time of our follow-up.

Subsequent to passing Bill 108, Ministry staff consulted with representatives from each of the 36 conservation authorities and stakeholder groups from October 2019 to February 2020. During these consultations, Ministry staff asked for feedback on how oversight of conservation authorities could be improved. In March 2020, the Ministry launched an online survey asking the public about aspects of conservation authorities’ functions, including oversight of their operations. The consultations and survey are part of the Ministry’s review of the *Conservation Authorities Act* that aims to improve overall governance, oversight and accountability of conservation authorities. At the time of our follow-up, the Ministry was reviewing the 2,380 survey

responses and feedback from the consultations it held, along with the relevant recommendations from our 2018 audit. The Ministry estimates it will complete its review of the *Conservation Authorities Act* by summer 2021.

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;*

Status: Little or no progress.

Details

Our 2018 audit found that NPCA Board members were involved in NPCA staff's evaluation of proposed development projects and landowner applications to build in or close to wetlands and flood- and erosion-prone lands. These proposals and applications are referred to as development proposals and work permit applications in this report.

We identified Board member involvement in about 10% of the sample of development proposals and work permit applications between 2016 and 2018 that we reviewed. The cases we found had the potential to affect people, property and the environment on a large scale. We also found Board member involvement in 14 additional development projects through our review of Board members' correspondence with staff between January 2012 and March 2018. The nature and extent of Board member involvement in those cases ranged from asking for information and updates about a proposal, to attending meetings between the NPCA and municipal staff, and instructing NPCA staff that the NPCA needed to support a proposal. Board members told us they got involved because they were perceived to

be accountable to the taxpayers in their municipality. However, the Board cannot objectively fulfill its oversight role when members are involved in day-to-day operations.

In our follow-up, we asked all NPCA staff who review development proposals and work permit applications whether they continued to be contacted by Board members about particular applications. Staff told us that they had been contacted by Board members about a total of 24 properties. We reviewed Board members' correspondence with staff for all 24 development projects and found that Board member involvement ranged from asking for information and updates about an application to providing suggestions to NPCA staff on addressing a potential violation. NPCA senior management told us that Board members either contact the Chief Administrative Officer (CAO) or copy the CAO when emailing staff with general inquiries. However, we found that in half of the 24 projects, the Board member contacted the staff directly.

In October 2020, the NPCA updated its Board of Directors Code of Conduct to state that Board members are not to use or attempt to use their authority or influence to intimidate, threaten, coerce, or otherwise improperly influence any NPCA employee with the intent of interfering with that employee's duties.

- *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.*

Status: Fully implemented.

Details

Our 2018 audit found that, although the NPCA's Code of Conduct required Board members to avoid conflict of interest with respect to their fiduciary duties, the NPCA Board of Directors had not developed any guidance on how to identify circumstances and/or relationships that could lead to a potential or perceived conflict of interest and how to manage them. It was up to the individual Board

members to recognize and declare whether or not, in their opinion, they were in a conflict.

In our follow-up, we found that the NPCA updated its Board of Directors Code of Conduct in October 2020 to state that members shall not use the influence of office for any purpose other than for the exercise of their official duties and to require members to “declare direct pecuniary interest, conflict of interest or indirect/apparent interest.” The Code no longer includes a previous requirement that members “avoid conflict of interest with respect to their fiduciary responsibility,” but states that members be cognizant of their position and the trust and influence afforded by such.

The updated Code defines the circumstances that could lead to an actual or perceived conflict of interest—that is, any situation where the member’s personal interest interferes, appears to interfere, or could potentially interfere in any way with the interests of the NPCA. The Code also provides examples of instances where members must recuse themselves from any decision-making process in which the member’s participation may result in conflict of interest. Such examples include financial interest in the outcome of the decision, and existing or previous association between the member and an interested party.

Identifying Necessary Skills and Competencies Could Improve Board Effectiveness

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;*

Status: In the process of being implemented by December 2021.

Details

In our 2018 audit, we found that the NPCA Board had not identified the knowledge, skills and diversity it needed to oversee the NPCA’s activities effectively. Board members relied on the NPCA staff’s expertise if the Board did not have expertise in particular areas. However, relying on staff’s expertise may not be sufficient given the Board’s oversight role.

Our follow-up found that, in October 2020, the NPCA Board approved guidance in terms of competencies and skills that are essential in Board members to help them perform the Board’s functions, understand conservation authorities’ functions and address issues faced by the NPCA. Examples include professional or volunteer experience in the areas of board governance, business management, finances, legal, human resources and public relations, as well as specialized environmental knowledge in the areas of legislation, environmental policies and watershed planning.

The NPCA Board planned to use the guidance to evaluate its collective skill set and identify any gaps following its November 2020 Governance Committee meeting. The NPCA will then use the results of this evaluation to develop and implement a strategy to address identified gaps by December 2021.

- *work with the NPCA’s funding municipalities to ensure that their Board appointment processes consider skills and experience requirements;*

Status: In the process of being implemented by December 2021.

Details

At the time of our 2018 audit, the municipalities in the NPCA’s jurisdiction did not appoint their NPCA Board members based on skills or competencies. In the Niagara Region and Haldimand County, NPCA Board appointments were generally first offered to elected officials such as mayors and councillors. In the City of Hamilton, citizens could apply and be selected for the appointment.

In our follow-up, we found that citizens in all three municipalities can now apply and be selected for appointment to the NPCA Board. However, all three municipalities' current appointment processes are the same as they were during our 2018 audit, meaning that they still do not consider the skills and experience of each potential appointee.

In March 2019, the Niagara Regional Council—which appoints 15 of the 21 members of the NPCA Board—requested that the NPCA provide recommendations regarding Board composition, qualifications and the appointment process. Neither the City of Hamilton—which appoints four members—nor Haldimand County—which appoints two members—made similar requests. In June 2019, the NPCA CAO met with representatives from the Niagara Region to present an early draft of the skills guidance described in the first action item of **Recommendation 3**. The NPCA, however, did not provide specific advice on Board composition, qualifications and appointment processes, stating that each municipality would approve the process that best suits it.

In November 2020, the NPCA planned to provide all three municipalities with recommendations regarding composition, qualifications and appointment processes for consideration for the next round of NPCA Board appointments in 2022. The NPCA also planned to meet with representatives from Hamilton and Haldimand County in 2021, in advance of the 2022 NPCA Board appointments.

- *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;*

Status: Little or no progress.

Details

Our 2018 audit noted that, 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 perspectives of the NPCA's stakeholders, the Board had not assessed whether the committee's role was sufficient to fulfill any gaps in skills and competencies.

In our follow-up, the NPCA told us that it amended the terms of reference for its advisory committee. However, our review of the revised terms found that the amendments were largely administrative—dealing with the number of representatives for each sector. The current committee has the same representation as in 2018 with two additional representatives who are members of the general public. The NPCA has not assessed the role of its advisory committee to determine whether it is sufficient in fulfilling any gaps in Board skills and competencies.

- *identify initial and ongoing Board governance training needs.*

Status: Fully implemented.

Details

Our 2018 audit found that the NPCA Board had not received 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 experience being on a board when they first joined the NPCA Board.

In our follow-up, we found that, in July 2019, the NPCA Board identified initial and ongoing training needs in the following areas:

- effective board governance, board team development and legal duties of members;
- the *Conservation Authorities Act* and the NPCA's legal mandate and jurisdiction;
- the NPCA's administrative bylaws, Code of Conduct and conflict of interest; and
- budgeting process and strategic planning.

The COVID-19 pandemic has delayed training that was planned in early 2020. In June 2020, the Board directed NPCA staff to prioritize training related to the NPCA's administrative bylaws, conflict of interest, Code of Conduct, floodplain mapping, and the Niagara Peninsula Conservation Foundation for the remainder of 2020 and into 2021.

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;

Status: In the process of being implemented by summer 2021.

Details

In our 2018 audit, we found that the *Conservation Authorities Act* (Act) did not impose any requirement regarding conservation board composition and member qualifications beyond prescribing the number of members that each funding municipality can appoint. But we also noted that 2017 amendments to Section 40 of the Act, if proclaimed, would give the province powers to impose additional requirements regarding board composition.

Our follow-up found that the *More Homes, More Choice Act, 2019* (Bill 108), described in **Recommendation 1**, repealed the 2017 amendments to Section 40. However, the Bill did not remove the amendment that would give the province powers to impose requirements regarding board composition. At the time of our follow-up, the Bill had not been proclaimed. The Ministry told us that all legislative and regulatory recommendations in our 2018 audit will be addressed when it completes its review of the *Conservation Authorities Act*, described in **Recommendation 1**, by summer 2021. The review includes consulting with stakeholders, including municipal representatives, regarding who ought to be on conservation authority boards.

- 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.

Status: Little or no progress.

Details

Our 2018 audit found that the NPCA Board did not have 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 experience serving on a board when they first joined the NPCA Board.

Our follow-up found that the NPCA Board members are in the process of receiving board governance training by early 2021, as described in the fourth action item of **Recommendation 3**. However, Ministry staff told us that they have not met with Conservation Ontario to discuss province-wide governance training for Board members of conservation authorities, but that it will do so as part of its review of the *Conservation Authorities Act* (described in **Recommendation 1**).

Board Does Not Assess CAO or Board's Performance

Recommendation 5

To ensure that the Niagara Peninsula Conservation Authority (NPCA) Board of Directors collectively 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;

Status: Fully implemented.

Details

In our 2018 audit, we found that the last formal evaluation of the NPCA's Chief Administrative Officer (CAO) was completed in 2001. From 2001 to 2018, the NPCA had four different CAOs, none of whom had undergone a performance evaluation. NPCA policies required 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.

In our follow-up, we found that the NPCA Board evaluated the performance of its interim CAO in August 2019, at the end of her initial five-month term. The interim CAO's term was then extended until December 2019 while the Board searched for a permanent CAO. The NPCA's new CAO began in January 2020. In March 2020, goals and priorities were established against which to evaluate the CAO's performance. In July 2020, the NPCA Board offered the new CAO a permanent tenure with the NPCA based on the Board's evaluation of her performance.

- *develop performance indicators to facilitate the Board's evaluation of its oversight processes and activities;*

Status: Fully implemented.

Details

Our 2018 audit found that the NPCA Board had not established goals and performance indicators to evaluate its performance. Many Board members told us that since they were elected officials, their constituents could assess their performance on the NPCA's Board through municipal elections. However, this raised questions as to whether constituents were evaluating Board members' performance based on whether their decisions were made in the interest of the municipality or of the NPCA. Evaluation through election may also not be as timely as regular and formal board evaluations in identifying areas where improvements are needed.

In our follow-up, we found that in July 2019, the NPCA Board approved criteria to help the Board assess its performance and its members' individual performance. The Board will be evaluated on how well it, for example, understands and furthers the NPCA's mission and its fiduciary responsibility; assesses and plans for the NPCA's short- and long-term needs; monitors programs and services based on adequate and objective information; fosters open and effective relation-

ships with NPCA staff, funding municipalities and members of the public; maintains positive Board dynamics; and commits to continuous development. The individual assessments evaluate whether a Board member has a good general understanding of the organization; has devoted the necessary time and energy to fulfilling his or her commitments; has maintained productive working relationships with other members; has competently dealt with issues presented to the Board; and has actively participated in Board meetings.

- *regularly evaluate both its collective performance and the performance of individual Board members.*

Status: In the process of being implemented by March 2021.

Details

Our 2018 audit found that there was no formal process in place for the Board to self-evaluate its performance, as discussed in the action item above. Although neither the *Conservation Authorities Act* nor NPCA Board policies required a formal evaluation process, leading governance practices suggest that boards should periodically monitor and assess their performance. We noted that doing so could help Board members identify when, for example, their decisions were made in the interest of their municipalities and perhaps not the NPCA.

In our follow-up, as discussed in the action item above, we found that the Board had developed criteria for evaluating its collective performance and evaluating individual members. The evaluations were to begin in November 2019 after the new Board was established. However, in October 2019, the interim NPCA Board voted to defer the Board evaluation for one year unless decided otherwise by the incoming CAO, who subsequently was hired effective January 2020. The deferral was to allow NPCA staff to research the assessment processes used by other conservation authorities. In October 2020, the Governance Committee approved the Board evaluation process recommended by NPCA

staff, which calls for an evaluation to be conducted in the first and last year of the members' term of appointments. Annual evaluation may be carried out at the discretion of the Chair of the NPCA Board. The current Board will conduct an evaluation in March 2021—the last year of its term.

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:

- 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.

Status: Fully implemented.

Details

In our 2018 audit, we found that per diem payments to NPCA Board members increased from \$7,900 in 2010 to \$47,700 in 2017. The total number of meetings claimed by NPCA Board members increased 422% from 121 in 2010 to 632 in 2017, which is equivalent to 42 meetings for each Board member in 2017. The NPCA's Board policies at the time of our audit stated 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 did not specify what "other business functions" may include.

In our follow-up, we found that, in June 2020, the NPCA Board approved the revised Board policies stating that per diems are to be paid no more than once per day. In addition, the revised policies clarify "other business functions" to include:

- attendance at municipal council meetings to present on behalf of the NPCA;

- attendance at meetings of working groups or committees when appointed as an official representative of the NPCA;
- attendance at workshops, conferences or tours hosted by the NPCA or Conservation Ontario; and
- other business as approved by the Chair and CAO.

Our follow-up also found that the NPCA has continued to publish quarterly and annual Board per diems and other expenses on its website. In 2019, the NPCA Board claimed a total of 472 meetings totalling \$24,900 in per diems. This is equivalent to 16 meetings for each member in 2019, compared with 42 in 2017.

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:

- assess the risk to communities around the unmapped watercourses;
- determine the time and cost for completing the 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.

Status: Fully implemented.

Details

In our 2018 audit, we found that the NPCA did not have floodplain maps for 117 or 58% of the 202 watercourses in its watershed. These included 70 watercourses for which the Ministry of Natural Resources and Forestry recommends floodplain maps be prepared because they drain land areas 125 hectares in size or larger. The NPCA had not formally assessed the risk to the communities around the unmapped watercourses, which

included about 14,500 dwellings and commercial buildings. We also noted that the NPCA did not have a plan, nor had it estimated the funding and time necessary, to map the watercourses.

In our follow-up, we found that in August 2019, the NPCA developed a workplan that prioritizes floodplain mapping for the watercourses within its jurisdiction based on a number of criteria. These criteria include whether the watercourse flows through an area where there is demonstrated risk to people and property and whether there are current development pressures within the watershed.

The workplan identifies the seven watercourses that the NPCA plans to map by 2025. The NPCA has estimated that the cost to map each of the seven watercourses will range from \$75,000 to \$200,000 and total \$1.075 million. Mapping the seven watercourses would increase the NPCA's flood-mapping coverage to 95% of the watershed. The remaining 5% are minor watercourses located in rural areas or of a size that flooding is not a current concern. The workplan also recommends setting aside \$200,000 each year beginning in 2026 to update floodplain maps that are older than 20 years. The cost estimates in the workplan are based on costs of previous floodplain mapping studies undertaken by the NPCA.

Recommendation 8

To ensure that conservation authorities have complete and up-to-date information about the 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.*

Status: In the process of being implemented by March 2022.

Details

In our 2018 audit, we noted that conservation authorities rely on floodplain maps to review development proposals and work permit applications to determine where development can occur. However, neither the *Conservation Authorities Act* nor the Ministry of Natural Resources and Forestry (Ministry) required conservation authorities to develop floodplain maps. We also noted that Conservation Ontario had estimated that three-quarters of existing floodplain maps in Ontario were outdated and it would cost about \$136 million to update them. However, at the time, conservation authorities received provincial funding only for provincially mandated flood infrastructure maintenance, monitoring and warning programs.

In July 2019, in response to significant spring flooding in various parts of Ontario, the province appointed Doug McNeil—a former deputy minister of Infrastructure and Transportation in Manitoba—as a Special Advisor on Flooding to review Ontario's flood mitigation policies and programs.

Consistent with our 2018 audit, in his October 2019 report, the Special Advisor highlighted issues with unclear responsibility for identifying hazardous areas, outdated and contradictory guidelines for flood-risk mapping, and needed funding to complete and update floodplain maps. Among his 66 recommendations, the Special Advisor recommended that the province establish a working group to prepare a multi-year approach to floodplain mapping.

In March 2020, the Ministry released Ontario's Flooding Strategy, in which it commits to establishing a flood-mapping technical team comprising members from various sectors such as municipalities and conservation authorities. The team, which the Ministry plans to establish in fall 2020, will work to clarify roles and responsibilities for flood mapping and explore funding partnerships. The Ministry estimates that the technical team will complete its work by March 2022.

Controlling Development in Flood-Prone Areas and Wetlands

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;*

Status: Fully implemented.

Details

In our 2018 audit, we found that the NPCA had contradictory policies for reviewing development proposals and work permit applications. Interim directives in 2013 instructed staff to use more flexibility in reviewing development proposals and work permit applications near wetlands and valleys than was allowed in the 2007 Board-approved policies. NPCA senior management told us that staff no longer used the 2013 interim directive, but we also noted that staff were instructed to use the interim directive until the 2007 policies were updated. At the time of our 2018 audit, the updated policies had not been finalized.

In our follow-up, we found that the revised policies for reviewing development proposals and work permit applications were approved by the NPCA Board in September 2018 and came into effect on November 1, 2018, subsequent to the release of our 2018 report.

- *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.*

Status: In the process of being implemented by December 2021.

Details

In our 2018 audit, we reviewed the most recent draft available of the NPCA's proposed policies for reviewing development proposals and work permit applications to determine whether they were consistent with Section 3.1 of the Provincial Policy Statement and the *Conservation Authorities Act* (Act). We found that they incorporated the more permissive policies under the interim directives regarding developments near wetlands and valley lands.

In our follow-up, we reviewed the final revised policies against Section 3.1 of the Provincial Policy Statement and the Act. We found that the new policy regarding development near wetlands is more permissive than both the 2007 policies and the 2013 interim directives, and may be more permissive than the direction set out in the regulation under the Act. For example, the regulation prohibits development in areas where the proposed development could interfere with the wetland's functions, including areas within 120 metres of a provincially significant wetland and 30 metres of other types of wetlands. Exceptions may be made if, in the conservation authority's opinion, the development will not negatively affect the area's ecological and hydrological functions. Under the NPCA's new policies, new development—including subdivisions and major commercial, industrial or institutional uses—may be permitted within 30 metres of a provincially significant wetland if NPCA staff determine that the reduced distance (from 120 metres to 30 metres) is warranted based on the scale, nature and proximity of the proposed development. The policies state that NPCA staff may consider various factors, including the presence of sensitive ecological features, and may require that an environmental impact or similar studies be conducted, but does not describe what steps the NPCA will take to assess and ensure no negative impacts. The NPCA will begin reviewing its current wetland policies in December 2020 to ensure the policies are appropriate, including clearly indicating the requirement for environmental impact studies. The NPCA expects to complete the review by December 2021.

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;

Status: In the process of being implemented by December 2020.

Details

In our 2018 audit, we found that the NPCA underwent four organizational restructurings between 2012 and 2017, under four different CAOs. These restructurings, which did not always appear to be based on the NPCA's needs, had a significant impact on staffing for the review of development proposals and work permit applications. For example, in September 2017, the NPCA laid off five staff involved in reviewing development proposals.

In our follow-up, we found that beginning in March 2019, the interim CAO asked staff to provide comments on, among other things, the staffing complement, including gaps. The CAO received 17 written submissions and had nine individual and group meetings with staff. NPCA senior management identified staffing gaps of one full-time equivalent staff in each of the following areas: enforcement, planning technician, restoration and finance. The assessment of staffing gaps was based on factors such as feedback from staff consultation and current volume of work.

These staffing gaps were identified in the Human Resources (HR) Plan that was presented to the NPCA Board for approval in September 2019. To address the gaps, the NPCA hired additional staff in the enforcement, planning, restoration and finance

departments. The HR Plan also recommends that further analysis regarding future HR needs to be completed after updating the NPCA's Strategic Plan in 2021 and when the Bill 108 amendments regarding mandatory and non-mandatory programs are proclaimed. The priorities identified in the Strategic Plan and Bill 108 amendments will determine where staffing resources will be needed in the future.

The Board approved the short- and medium-term priorities identified in the HR Plan. The long-term priorities and, therefore, future staffing needs are contingent on, and will be assessed during the development of, the NPCA's Strategic Plan. NPCA senior management told us that the new Strategic Plan will be completed by December 2020 and that future HR decisions will be based on the HR and Strategic Plan.

- provide information about planned restructuring decisions, including their financial implications, to the NPCA Board prior to implementing such decisions.

Status: Fully implemented.

Details

Our 2018 audit found that the four organizational restructurings between 2012 and 2017 resulted in a total of \$1.3 million in compensation paid to staff for severance, salary continuance, costs associated with grievances filed at the time of firing and fees for consultants who were hired to assist in the restructuring or firings. These costs did not include legal fees associated with the firings.

In our follow-up, we found that, in April and June 2019, NPCA staff provided reports to the Board about planned restructuring decisions to eliminate and re-allocate certain positions. The reports also included an analysis of the financial implications of the restructurings.

Responding to Public Complaints about Violations of the *Conservation Authorities Act*

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;

Status: Fully implemented.

Details

In our 2018 audit, we found that the lack of consistent, dedicated enforcement staff contributed to delays in resolving violations of the *Conservation Authorities Act* (Act). Anyone who fills in or destroys wetlands, dumps debris into a watercourse or embankment, or alters a watercourse is in violation of the Act. The NPCA did not have an 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 no prior enforcement training or experience, to work on investigating complaints about potential violations of the Act on a part-time basis.

As discussed in **Recommendation 10**, our follow-up found that the NPCA identified a staffing gap of one full-time equivalent staff in its enforcement area. In March 2019, the NPCA hired an enforcement officer to bring its total complement to two full-time enforcement officers. Both officers received the relevant training from Conservation Ontario in March 2019.

- 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 to ensure that staff adhere to the policy;

Status: Little or no progress.

Details

Our 2018 audit found that, 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 meant that the violation was still ongoing and the NPCA had not yet pursued further enforcement action against the offender. We also found that one-quarter of the public complaints of possible violations during the same period were still open. We also reviewed a sample of enforcement files. In one-third of the complaints, the NPCA closed the files without sufficient documentation to indicate whether the violation had been dealt with and whether the damage or alteration to the environment had been fixed. In addition, 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.

In our follow-up, the NPCA told us that, once the Bill 108 amendments are proclaimed and the Ministry develops the relevant regulations, it planned to develop NPCA-specific enforcement policies based on the sample policies that Conservation Ontario developed in September 2019. Enforcement officers were scheduled to receive training on these policies in January 2021. Our review of the sample policies noted, however, that they do not provide guidance on, for example, circumstances that would trigger the progressive use of enforcement actions to address violations.

According to the NPCA, it and other conservation authorities can benefit from stronger enforcement tools. In this regard, on October 1, 2020, Conservation Ontario sent a letter to the ministers of the Environment, Conservation and Parks and Natural Resources and Forestry to recommend that the province enact previously passed amendments

to the Conservation Authorities Act that would give conservation authorities stronger enforcement tools. These amendments were part of a number of changes made to the Act in 2017 through Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*. If enacted, the amendments will authorize enforcement officers to enter lands without a warrant and issue stop orders in specified circumstances.

- *use CityView to track reports of possible violations.*

Status: In the process of being implemented by December 2021.

Details

Our 2018 audit found that CityView—the computer application that NPCA staff had been using since 2016 to manage their review of development proposals and work permit applications—had the capability to track enforcement activities. However, the NPCA was not using this feature at the time of our audit.

In our follow-up, we found that NPCA enforcement staff have begun entering minimal data regarding potential violations into CityView. Information on active investigations or legal files to track investigations was not being entered because CityView currently cannot maintain the confidentiality of information regarding the violations. NPCA staff are tracking such information in a secure shared file system. The NPCA will review compliance- and enforcement-specific module options in early 2021 for implementation by December 2021.

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;*

Status: In the process of being implemented by December 2021.

Details

In our 2018 audit, we noted that all work permits issued by the NPCA included a condition that the NPCA needs to be notified that approved work has been completed in compliance with the conditions of the permit within two weeks of the applicant completing the work. NPCA staff could not determine how often they received such notification. As a result, NPCA staff had little to no assurance that the work approved by the permit was completed according to the permit's conditions. We also found that in almost all cases of work permits issued with conditions, the NPCA did not conduct site visits to confirm that the landowners were complying with the conditions of the permit. The NPCA issued 938 work permits from 2013 to 2017.

In our follow-up, we found that, beginning in April 2019, work permits issued by the NPCA now include a dedicated email address for landowners to send notifications. The NPCA told us that staff were monitoring the email once a week, but, because of serious resource constraints, did not track notifications to identify and follow up with landowners who fail to report. In addition, during the COVID-19 pandemic, site visits were reduced to only those absolutely necessary. The NPCA told us it recently hired additional planning staff to allow its enforcement officers to conduct such follow-up work.

We also found in our follow-up that, in June 2019, the NPCA Board approved a risk-based plan for inspecting landowners' compliance with the conditions of their work permit. The NPCA told us, however, it was waiting for Conservation Ontario policies to be approved so it can align its enforcement activities, which will include using the

plan to prioritize inspections based on the risk that work by landowners poses to people, property and the environment. Such policies will also depend on the results of the province's review of the *Conservation Authorities Act* (discussed in **Recommendation 1**), which will dictate key components of conservation authorities' compliance and enforcement activities.

The NPCA expects to implement its revised enforcement activities by December 2021.

- *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.*

Status: Fully implemented.

Details

Our 2018 audit found that the NPCA relied entirely on public complaints to identify individuals engaging in prohibited activities. However, the NPCA did not provide information to the public, for example through its website, about which activities are prohibited under the *Conservation Authorities Act* and how to report such activities to the NPCA.

In our follow-up, we found that the NPCA updated its website to include the areas that are regulated by the NPCA and the types of development activities for which property owners require a permit. The website also now includes information about the NPCA's enforcement responsibilities pertaining to the *Conservation Authorities Act* and a mechanism through which members of the public can inform the NPCA about work that is being done in an area that is or may be regulated by the NPCA.

Improving Water Quality

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.

Status: Fully implemented.

Details

Our 2018 audit found that the NPCA did not establish clear goals for its restoration program, nor did it determine where restoration work was most needed. The NPCA's restoration program—a cost-sharing program in which NPCA staff worked with landowners to, for example, restore wetlands, plant trees and implement agricultural best practices—was a key component of its work to improve water quality. Our review of all restoration projects between 2013 to 2017 showed that restoration grants were not directed toward areas of concern and toward activities that would alleviate the concerns. For example, the NPCA identified in its annual Watershed Report Cards that surface water quality was poor due to contamination from agricultural runoff and sewage discharges. However, projects to control this contamination comprise just 3% of all funded projects and received 10% of total funding. The NPCA suspended its restoration program in July 2017 and engaged an external consultant to review the program.

In our follow-up, we found that in June 2019, the NPCA Board approved guidelines for the new restoration program. The new guidelines and accompanying project evaluation criteria require NPCA staff to consider whether the proposed project is located in areas that have been identified as priority areas for water quality improvement, forest cover and wetland habitat. The NPCA has approved 50 projects since the start of the program based on the new guidelines and evaluation criteria.

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.*

Status: Fully implemented.

Details

In our 2018 audit, we found that the NPCA had not met key expectations for the \$3 million it received from the Ontario Power Generation (OPG). In 2007, OPG provided the funding to the NPCA for restoration projects—including tree planting and wetland restoration—aimed at reducing any potential impact that OPG’s hydroelectric power generation on the Niagara River might have on the Welland River. We found that the NPCA had spent only \$1.45 million of the total funds. The OPG agreement required the NPCA to spend all the funds by 2012.

Our 2018 audit also noted that for 73% of the money the NPCA spent (\$1.06 million), the NPCA could not provide any details on the projects other than their amounts and locations. For the remaining 27% of the money where we had sufficient details (\$390,000), the money was spent on projects that were not eligible for funding under the OPG agreement. 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 our follow-up, we found that NPCA staff had held quarterly meetings with OPG staff since May 2019. In July 2019, the NPCA and OPG finalized the revised Memorandum of Understanding (MOU), giving the NPCA until June 2027 to spend the remaining funds, which stood at \$1.26 million as of December 31, 2018. The revised

MOU reaffirmed that the funds are to be spent to restore, improve and benefit the Welland River and the Welland River watershed. The revised MOU requires the NPCA to prepare project proposals with detailed budgets for the use of the remaining funds. OPG must review and approve the proposals—to ensure they are consistent with the intent of the MOU—before the NPCA can proceed. In 2019, the NPCA spent \$201,000 on eligible projects as approved by OPG. These projects included the Welland River Floodplain mapping update, as well as survey equipment and software to measure river cross section and water velocity.

Buying Land for Conservation, Recreation and Education

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;*

Status: In the process of being implemented by spring 2021.

Details

Our 2018 audit found that the NPCA’s 2015 and 2017 land acquisition plans, which identified its goals for future land acquisitions, provided less direction than its 2007 land acquisition strategy. The 2015 plan contained six criteria that were framed in question

form, but it was unclear how the answer to each question would help determine whether a particular parcel of land should be acquired. The 2017 plan called for the NPCA to acquire from 25,000 to 40,000 acres of land in the next 100 years. To meet this goal, the NPCA would need to acquire at least 250 acres per year—more than what it acquired over the previous 10 years combined. Neither the 2015 nor the 2017 plan identified how acquiring lands would fulfill the NPCA’s mandate to protect property from flood and erosion. We also found that the NPCA had not estimated how much it would cost to achieve its 100-year land acquisition goal, nor did it have a plan to raise the necessary funds.

In our follow-up, we found that in May 2020, NPCA staff presented to the Board its revised land acquisition strategy, including criteria, acquisition methods and funding options. According to the strategy, the goals of land securement include “enhancing and protecting ecologically important lands and significant habitat for biodiversity and climate resilience.” The criteria to determine which lands would be of value to the NPCA are based on factors it determined would help it meet its mandate, including lands that contain significant ecological features and functions; pose natural hazards such as floodplains and valley lands; are adjacent to existing NPCA conservation areas; have historical significance; and need restoring. The next steps are for the NPCA to establish a land securement work program for 2021 to 2026. NPCA senior management told us it has engaged a consultant to help finalize the land acquisition plan, including determining the total cost of its plan and how it will fund the acquisitions. The NPCA expects to finalize the land acquisition plan for Board approval in spring 2021.

- *monitor and report to the NPCA Board of Directors on land acquisition progress.*

Status: Little or no progress.

Details

Our 2018 audit found that the NPCA did not follow its 2007 land acquisition strategy between 2008 and 2017. The 2007 land acquisition strategy called for the highest-priority lands to be acquired by 2012. We found that only 5% of the \$3 million that the NPCA spent from 2008 to 2017 was for land that was identified as a high priority in the 2007 strategy—a 9.85-hectare parcel of land with high ecological value.

In our follow-up, we found that the NPCA had not yet finalized its revised land acquisition strategy against which it can monitor and report on progress. Since our 2018 audit, the NPCA has purchased a 40-acre property in Hamilton adjacent to an existing conservation area for \$600,000.

Measuring the Impact of NPCA’s Programs and Services

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;*

Status: Little or no progress.

Details

In our 2018 audit, we noted that one of the action items in the NPCA’s 2014–17 Strategic Plan was to design, implement and report on performance indicators by the end of 2015. However, at the time of our audit, the NPCA was still in the process of developing a set of indicators against which it can assess its performance.

In our follow-up, we found that the NPCA has not yet begun developing these performance indicators. The NPCA Board's Strategic Planning Committee met for the first time in July 2020 to begin developing the Strategic Plan for 2021–2031. The performance indicators will be developed as part of the new strategic plan. In October 2020, the NPCA engaged an external consultant to help develop its Strategic Plan, including output-based and performance-based measures.

- *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.*

Status: Fully implemented.

Details

Our 2018 audit found that the NPCA's annual and quarterly reports contained mainly narrative descriptions of major projects completed during the year, with limited information about the benefits of such programs or how they contributed to the NPCA fulfilling its mandate. The reports also only included output 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.

In our follow-up, we reviewed all quarterly and annual reports that the NPCA has published since our 2018 audit—the 2018 fourth-quarter and annual reports as well as the 2019 first-, second-, third-quarter and annual reports—to determine whether they describe how the NPCA's initiatives and projects are helping the NPCA fulfill its mandate. The NPCA told us it has decided to discontinue issuing quarterly reports after the 2019 third-quarter report to allow it to conduct more detailed analyses for its annual report. Our review of the published quarterly and annual reports found that, similar to our finding in 2018, all the 2018 reports and the 2019 quarterly reports only included output

information and limited information about the outcomes of the NPCA's various activities.

In September 2020, the NPCA published its 2019 annual report, which included more detailed descriptions of how its projects and activities over the past year helped the NPCA fulfill its mandate and program goals. For example, the 2019 annual report describes how:

- the NPCA's floodplain mapping activities identified and helped inform property owners of flood risks along the main branch of the Welland River from the Binbrook Dam to the Niagara River;
- the NPCA's ecological monitoring activities helped gather information about the various species in its conservation areas;
- the NPCA's response to the 102 property inquiries it received during the year helped prospective property developers avoid purchasing land that is not suitable for development because of natural hazards; and
- the NPCA's various partnerships helped improve the public's understanding of the role of conservation authorities and complete restoration projects within the watershed.

Managing Human Resources

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;*

Status: Fully implemented.

Details

In our 2018 audit, our review of all recruitment files since 2012 noted concerns in three areas of the recruitment process in files from 2014 to 2017, highlighting the need to review existing recruitment policies and practices to ensure fairness and transparency:

- 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.

Our 2018 audit also found 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.

In our follow-up, we found that the NPCA Board approved revised recruitment and promotion policies in June 2019. The revised recruitment policy now has a section describing the steps and documentation required to support hiring decisions, including the minimum time required to post vacant positions internally and externally, screening, short-listing and interviewing applicants, and the selection process. The new section on conflicts of interest describes circumstances where an NPCA staff may be in a conflict, and requires the staff to recuse themselves from the recruitment process.

- *assess staff's performance annually, as required by its policies;*

Status: In the process of being implemented by December 2020.

Details

Our 2018 audit found that, of the 44 NPCA staff who had been working at the NPCA for more than one year at the time of our audit, only 36% had a performance appraisal on file. None of the employees had been evaluated more than once in the previous five years. NPCA policy required that staff appraisals be carried out annually. NPCA senior management told us at the time that they had revised the performance appraisal process and included goal-setting, which they planned to implement on a rolling basis as employees' hiring anniversaries occur.

In our follow-up, we found that the NPCA Board approved the revised performance appraisal policy in June 2019. The revised policy clarifies time-frames and expectations regarding the performance appraisal process. Specifically, the policy requires that employees' performance be evaluated at the end of their probationary period within a position and annually on their service anniversary date. We reviewed the NPCA's records of performance appraisals and found that as of July 2020, performance appraisals had not been completed for half of the 40 staff who had been working at the NPCA for more than one year. NPCA senior management told us that appraisals were delayed due to the COVID-19 pandemic, but the outstanding appraisals, and any that become due, will be completed by December 2020.

- *provide quarterly updates to the NPCA Board of Directors on staffing changes and performance.*

Status: Fully implemented.

Details

Our 2018 audit found that the NPCA underwent four reorganizations under four different CAOs in the six-year period from 2012 to 2017. 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. During this period, the NPCA paid over \$1.3 million in staff compensation, settlements

related to grievances files at the time of termination, and HR counselling and consulting fees relating to the terminations.

In our follow-up, we found that NPCA staff have provided quarterly updates to the NPCA Board that include information on recruitment activities, staffing changes, performance appraisals and labour relations.

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;

Status: Fully implemented.

Details

Our 2018 audit found that, in 2017, NPCA staff filed 10 grievances and six complaints alleging harassment or discrimination. We engaged an independent Human Resource 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. 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 whether an investigation was required.

In our follow-up, we found that in June 2019, the interim NPCA Board approved a revised Workplace Harassment Policy. Two significant changes include that the policy is applicable to Board members as well as specifying the instances when

an external party will lead the investigation into the complaint. Under the revised policy, harassment complaints against the Human Resources staff, CAO and Board members must be investigated by a third party. Since our 2018 audit, there have not been any harassment or discrimination complaints or grievances filed against any NPCA staff, the CAO or Board members.

- 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;

Status: Fully implemented.

Details

Our 2018 audit found that the Human Resources staff person reported directly to the CAO. This presented a conflict if the HR staff person received a complaint against the CAO. One-third of all NPCA employees we interviewed raised 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 Ministry of Labour's 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 at the time allowed 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.

In our follow-up, we found that the NPCA Board approved a revised Workplace Harassment Policy in June 2019. Two significant changes include that the policy is applicable to Board members as well as specifying the instances when an external party will lead the investigation into the complaint. Under the new policy, harassment complaints against the Human Resources staff, CAO and Board members are to be investigated by a third party. As discussed in the action item above, there have not been harassment or discrimination complaints reported against the current CAO, nor were any filed against the interim CAO.

- *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.*

Status: Fully implemented.

Details

Our 2018 audit found that the NPCA began providing quarterly reports to the NPCA Board of Directors in January 2018 summarizing the status of various HR functions such as recruitment, grievances and performance appraisals. However, the reports did not include details on the subject of the grievances or their financial implications.

In our follow-up, we found that the NPCA has continued to provide quarterly confidential updates to its Board of Directors. We reviewed all quarterly updates that have been provided to the Board since our 2018 audit and found that they have included the subject, financial implications if any, and the status of grievances and complaints.

Recommendation 19

To ensure that 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.*

Status: Fully implemented.

Details

Our 2018 audit found that NPCA staff had divided opinions about the workplace culture. In response to our survey, half of the staff either reported that the work environment was positive or had no view on it.

The remaining half 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 had all contributed to a difficult and distrustful workplace culture.

As discussed in **Recommendation 10**, our follow-up work found that beginning in March 2019, the NPCA CAO asked staff to provide comments on, among other things, any outstanding workplace concerns. The CAO received 17 written submissions and had nine individual and group meetings with staff. Staff were asked what positive actions had been taken, and what still needed to be taken, to address workplace concerns. Some of the positive actions identified by staff included updated HR policies, more professional and respectful work environment, good staff morale, no negative rumours or news among staff, and strong leadership. Some of the areas where staff identified improvements were still needed included the need for a new Strategic Plan, regular staff meetings, communications across departments and a new records management system.

Feedback from staff was used to develop the NPCA's Human Resources plan, which was presented to and approved by the NPCA Board in September 2019. Our review of the quarterly HR updates to the Board, described in **Recommendation 17** and **Recommendation 18**, noted that NPCA staff reported on their progress in implementing the short- and medium-term priorities in the HR plan.

Managing Financial and Capital Resources

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;*

Status: Fully implemented.

Details

In our 2018 audit, 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. Specifically, no documentation existed to show that the NPCA obtained verbal quotations in 100% of cases where they were required and it did not issue a Request for Proposals in 43% of the cases where it was required.

In our follow-up, we found that the NPCA Board approved a revised procurement policy in April 2020. Unlike the previous policy, it clearly defines the responsibilities of NPCA staff in each stage of the procurement process; centralizes the procurement responsibility with the Procurement Specialist, who is responsible for ensuring compliance with the procurement requirements; and no longer permits verbal quotations.

- *revise its procurement policies to require that any needed services associated with unsolicited proposals be obtained in a transparent and competitive manner;*

Status: Fully implemented.

Details

Our 2018 audit found that in 2015 the NPCA accepted an unsolicited proposal—a proposal from a company to provide communications services that the NPCA was not explicitly seeking—in contravention of its policy. The policy required that, upon receiving an unsolicited proposal, the NPCA must determine whether it needed the services proposed, and if it did, it must procure the services competitively if the services were available in the market. There was no evidence 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, neither NPCA staff nor the firm could provide us with any of the deliverables outlined in

the contract. The NPCA paid the firm \$27,000 over an eight-month period.

In our follow-up, we found that the NPCA's revised procurement policy specifically states that unsolicited proposals "shall not circumvent" the policy. The policy prohibits senior management from considering the proposal if it is similar in scope or nature to a current or planned competitive procurement, if the goods or services are readily available from other sources, or if the proposal is not in the best interests of the NPCA. Even if the proposal is deemed to be in the NPCA's best interests, the policy requires that NPCA staff evaluate the proposal against established criteria, and prepare a report for the Board's Audit and Budget Committee with a recommendation to accept, amend or reject the proposal. Since our 2018 audit, the NPCA has not received an unsolicited proposal.

- *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.*

Status: Fully implemented.

Details

Our 2018 audit found that the NPCA's annual legal costs increased by 633% from \$45,000 in 2012 to \$294,000 in 2017. From 2015—when the NPCA exempted legal services from competitive procurement—to March 2018, the NPCA paid over \$500,000 in legal fees to 17 different law firms. For example, in 2017, the NPCA paid five different law firms for legal services related to HR matters.

In our follow-up, we found that in December 2019, NPCA staff presented to the Board's Governance Committee its assessment of the options for acquiring legal services, with the recommendation that legal services continue to be exempt from competitive procurement. The recommendation, according to NPCA staff, is based on the limited

number of service providers in the area and similar practices in other public entities in the Niagara Region. The Board, instead, directed NPCA staff to develop a vendor of record for legal services and update the procurement policy to allow exceptions to competitive procurement requirements only in urgent circumstances. The revised procurement policy reflects this exception for “urgent legal circumstances that may occur that necessitates an immediate reaction or assistance that requires professional legal services.” At the time of our follow-up, NPCA staff were developing Request for Proposal documents in preparation for a competitive bid to establish a vendor of record for each type of legal service. The NPCA staff estimates that it will establish the vendor of record by January 2021.

Recommendation 21

To ensure that the 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;*

Status: Fully implemented.

Details

Our 2018 audit found that there was little to no information to support the estimates for the 10 highest-costing projects in the NPCA’s 2016 capital plan. The plan identified 237 projects to be undertaken between 2017 and 2032 at a total estimated cost of \$45.8 million for new and/or replacement buildings, equipment, electrical systems and septic tanks.

In our follow-up, we found that the NPCA competitively procured asset management software in April 2020, which, among other things, will help

track the costs of its capital projects. The NPCA has updated the information in this asset management software to reflect the actual replacement cost of its assets (based on independent appraisals), their current condition and their estimated useful life.

- *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.*

Status: In the process of being implemented by December 2020.

Details

Our 2018 audit also raised the following issues with the NPCA’s 2016 capital plan:

- While the capital plan identified when projects were to be carried out, it did not prioritize the projects within particular years.
- The capital plan did not identify how the NPCA would obtain funding to implement the projects.
- The capital plan was not presented to the NPCA Board for approval because the plan was only intended to be used by staff to track desired capital projects.

In our follow-up, we found that the NPCA is currently developing a new 10-year Capital Asset Management Plan, which incorporates the recommendations from our 2018 report. NPCA senior management told us that it estimates that the new Plan will be complete by December 2020. Policies will also be developed to address prioritization and long-term funding.

In April 2020, the NPCA competitively procured asset management software, which will help cost tracking and prioritization. The Fixed Asset and Capital Asset Planning modules of the software will also help inform the capital plan.

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 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.

Status: In the process of being implemented by summer 2021.

Details

Our 2018 audit found that the province had not provided guidance to conservation authorities on how to deliver on their broad legislative mandate. The *Conservation Authorities Act* (Act) mandates that conservation authorities provide programs and services “to further the conservation, restoration, development and management of natural resources.” At the time of our audit, the Act did not provide guidance on what “development of natural resources” entailed and to what extent conservation of natural resources must be prioritized.

The Ministry told us during our 2018 audit that the Act allowed municipalities, through their Board representatives, to set priorities for conservation

authorities they fund. However, as discussed in **Recommendation 1**, this created a conflict when municipal priorities to facilitate economic development were at odds with conservation authorities’ responsibility to protect people and property. Three-quarters of the conservation authorities we surveyed indicated that they encountered conflicts between conservation and development in the work they did.

The Ministry told us during our follow-up that all legislative and regulatory recommendations in our 2018 audit will be addressed when it completes its review of the *Conservation Authorities Act*, described in **Recommendation 1**, by summer 2021.

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

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.

Status: In the process of being implemented by summer 2021.

Details

Our 2018 audit found that the Ministry did not receive sufficient information from conservation authorities to determine how well they were fulfilling their mandate. In addition to their audited financial statements, the Ministry only required conservation authorities to submit a report that itemized where they spent their funding and described their activities in the areas for which the province has delegated responsibility to them—managing flood control structures such as dams, operating flood forecasting and warning systems,

and reviewing municipal planning documents. The reports did not include information about how the conservation authorities' activities helped them fulfill their delegated responsibilities or their legislative mandate. Similarly, our discussions with NPCA Board members and representatives from the NPCA's three funding municipalities noted there was no consistent, formal mechanism through which the municipalities held the NPCA Board to account.

In our follow-up, we found that the Ministry held consultations with stakeholder groups including municipalities from October 2019 to February 2020 as part of its review of the *Conservation Authorities Act* (described in **Recommendation 1**). During the consultations, Ministry staff asked for feedback on how oversight of conservation authorities could be improved. At the time of our follow-up, the Ministry was reviewing the 2,380 responses it received and feedback from the consultations it held along with the relevant recommendations from our 2018 audit. The Ministry estimates that it would complete its review of the *Conservation Authorities Act* by summer 2021.

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

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 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.

Status: In the process of being implemented by summer 2021.

Details

Our 2018 audit found that the *Conservation Authorities Act* (Act) did not give the Ministry nor municipalities powers to intervene in conservation authorities' operations where there were indications of operational issues, as was the case with the NPCA. When municipalities requested the Ministry conduct an independent audit of the NPCA, the Ministry responded that it did not have "the legislative ability to order a forensic audit." Likewise, the Niagara Regional Council denied a similar request to audit the NPCA stating that the Council did not have the legislative authority to do so.

In our follow-up, we noted that Bill 108 amended the Act to allow the Minister to appoint one or more investigators to investigate a conservation authority's operations, including the programs and services it provides. The amendments, however, did not include specific circumstances when such an investigation is warranted.

The Ministry told us that it will determine any further legislative and regulatory changes when it completes its review of the *Conservation Authorities Act*, described in **Recommendation 1**, by summer 2021.