



**NORTH PICKERING
DEVELOPMENT
CORPORATION**

**Annual Report
2006-2007**

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**TO THE HONOURABLE JIM WATSON,
MINISTER OF MUNICIPAL AFFAIRS AND HOUSING**

MINISTER:

On behalf of the Board of Directors, I am pleased to present to you the Annual Report of the North Pickering Development Corporation for the year ending March 31, 2007.

Respectfully submitted,

John S. Burke
Deputy Minister, Ministry of Municipal Affairs and Housing
Chair, North Pickering Development Corporation

Attachment

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**TO THE LIEUTENANT GOVERNOR
OF THE PROVINCE OF ONTARIO**

MAY IT PLEASE YOUR HONOUR:

For the information of Your Honour and the Legislative Assembly, we have the privilege of presenting the Annual Report of the North Pickering Development Corporation for the year 2006-07.

Respectfully submitted,

Hon. Jim Watson
Minister of Municipal Affairs and Housing

ROLE OF THE NORTH PICKERING DEVELOPMENT CORPORATION

The North Pickering Development Corporation was created by statute in 1974, under the *North Pickering Development Corporation Act, 1974*, to be responsible for community planning and development of the North Pickering Land Assembly. The directors are senior civil servants from the Ministry of Municipal Affairs and Housing (MAH), the Ministry of Public Infrastructure and Renewal (PIR) and the Ministry of Finance (FIN). The Corporation's mandate is to promote business growth, leverage private investment and enhance job creation by marketing the provincially owned land for development and facilitating the land use planning process. Administrative and support services are provided to the Corporation at no charge by MAH.

Background Information

In the early 1970s, the provincial government acquired approximately 8,100 hectares of land – which became known as the North Pickering Land Assembly – through expropriation and purchase. The original intent was to develop a community of approximately 250,000, in conjunction with a proposed federal international airport to the north. However, plans for the airport were discontinued and the Province did not proceed with development.

Parts of the original land assembly have since been allocated for the Rouge Park, the community of Cornell (located in the Town of Markham), and the Duffins Rouge Agricultural Preserve. The Seaton lands – approximately 2,800 hectares located in the City of Pickering – continue to be owned by the Province (see map entitled North Pickering).

In 1989, the Corporation was established as a Schedule II agency and was designated in the year 2000 as an Operational Enterprise agency. Funding for the Corporation was made possible through a loan from the Province of Ontario that was repaid on March 31, 2005.

In 2001, the Province acted to protect natural and water resource features on the Oak Ridges Moraine, preserve agricultural land and focus development in approved settlement areas. Following stakeholder and public consultation, the *Oak Ridges Moraine Conservation Act, 2001* was introduced on November 1, 2001 and received Royal Assent on December 14, 2001.

While the legislation was being developed, the Minister of Municipal Affairs and Housing asked David Crombie to mediate an agreement between private landowners and the Province to protect key lands in Richmond Hill and Uxbridge that were subject to development applications and Ontario Municipal Board hearings.

The resulting agreement protects certain sensitive lands on the Moraine through future land exchanges for provincially owned lands in North Pickering. To facilitate this exchange of lands, the Province created the North Pickering Land Exchange Team (NPLET) as part of MAH.

Negotiations between the Province and the landowners took place throughout 2002 and 2003. On November 4, 2003, the newly elected government sought a moratorium on further development on the Oak Ridges Moraine Richmond Hill lands until November 20, 2003. During this period a new agreement was negotiated with certain Richmond Hill landowners to protect additional Richmond Hill lands on the Moraine for a new park. This subsequent agreement would ensure that the Moraine lands are linked in a continuous corridor with lands to the east and west and create better protection of environmentally sensitive lands around kettle lakes, including Phillips Lake.

To acquire these additional lands in the Richmond Hill area, the government agreed to exchange additional lands in North Pickering.

On September 23, 2004, the Minister of Municipal Affairs and Housing announced that the government and the Richmond Hill landowners had signed an agreement that would result in the exchange of 1,057 acres of moraine lands for 1,275 acres of provincially owned lands in Seaton. Fairness Commissioner, Justice Lloyd W. Houlden stated, “The process used to reach the agreement was fair and appropriate; and the agreement constitutes a fair and reasonable outcome from the perspective of the taxpayers of Ontario.”

In April 2004, the Ontario Realty Corporation (ORC), in order to facilitate the land exchange, initiated a Category “C” Class Environmental Assessment for the acquisition of the lands in Richmond Hill and the disposition and severance of the lands in Seaton. The Notice of Completion of an Environmental Study Report (ESR) was posted on the Environmental Bill of Rights Registry on January 7, 2006, and advertised shortly thereafter (January 11, 2006) in local and large circulation newspapers and on ORC’s website. On May 29, 2006, the Minister of the Environment determined that an individual Environmental Assessment was not required.

As a result of this decision by the Minister of the Environment, there were two applications for judicial review made to the Divisional Court by Hollinger Farms No. 1 Inc. and Altona Farms Inc., and by Mr. David Sanford and seven First Nations. The Hollinger/Altona applicants alleged that ORC’s Class Environmental Assessment was inappropriate as the land exchange was not a traditional real estate transaction but that it was more complex and unique and an individual Environmental Assessment would have been the more appropriate assessment vehicle in this instance. In the case of the First Nations’ application, it was alleged that the Class Environmental Assessment process was flawed as it did not provide for adequate consultation with First Nations and that ORC did not appropriately address First Nations’ constitutional rights to consultation under section 35 of the *Constitution Act, 1982*.

On February 12, 2007 the Divisional Court unanimously dismissed the application of Mr. Sanford and the seven First Nations.

As of March 31, 2007, the Divisional Court had not rendered its decision on the application of Hollinger Farms No. 1 Inc. and Altona Farms Inc.

Additional details concerning litigation surrounding the land exchange follow in the Major Activities and Initiatives section of the Report.

During 2006-2007, the MAH continued its work on the preparation of a development plan for Seaton. Following an extensive consultation by Ministry staff and their consultants, which included an analysis of numerous submissions from members of the public, local municipalities, various ministries and agencies and non-government organizations, the Central Pickering Development Plan was approved by the Lieutenant Governor in Council (Cabinet) on May 4, 2006. The Plan was prepared under the authority of the *Ontario Planning and Development Act, 1994*. The final plan addressed both the long-term stewardship and protection of the natural heritage system while at the same time supporting a strong competitive economy. This was achieved by optimizing areas long designated for growth to create a compact, vibrant sustainable community.

During this period, Ministry staff continued to meet representatives of the Uxbridge landowner with the intent to try and conclude a fair and reasonable land exchange for environmentally sensitive lands in Uxbridge. On June 27, 2006 the province and the Uxbridge landowner entered into secondary minutes of settlement which established a rate of exchange and terms for a land exchange agreement. On December 19, 2006 an agreement was reached which allowed for the exchange of 250 acres of land in Seaton for 1,340 acres of land in Uxbridge. The agreement was approved by the government and executed by the Minister of Municipal Affairs and Housing. ORC must now achieve compliance with the *Environmental Assessment Act* in relation to the acquisition of the land in Uxbridge.

MAJOR ACTIVITIES AND INITIATIVES FOR 2006/07

- **Central Pickering Development Plan** – On May 4, 2006, the government approved a development plan for central Pickering (Seaton) which was created under the *Ontario Planning and Development Act, 1994* (OPDA). The Central Pickering Development Plan (CPDP) established a comprehensive new vision for Central Pickering: that of a sustainable urban community in Seaton integrated with a thriving agricultural community in the Duffins Rouge Agricultural Preserve and an extensive Natural Heritage System.

Eight Goals of the Central Pickering Development Plan:

Natural Heritage: The protection, maintenance and enhancement of natural features, functions and systems intended to sustain a viable and permanent natural eco-system. The Natural Heritage System is a key element to be functionally integrated into the community and to provide opportunities for certain recreational

and educational activities, while remaining cognizant of the proposed urban setting.

Cultural Heritage: The integration of cultural heritage into the new community fabric by drawing on the physical legacies of original Aboriginal and European occupations.

Agriculture: Ensuring that the Pickering portion of the Duffins Rouge Agricultural Preserve is permanently protected for agricultural and conservation uses by fostering a healthy near-urban agricultural community that integrates appropriately with the surrounding rural and urban areas. The Preserve is included in the Greenbelt Plan, where these lands are designated as Protected Countryside and are comprised of prime agriculture lands (predominately Class 1 and 2 farm land).

Social, Institutional, Open Space and Recreational Facilities: The provision of an appropriate distribution of facilities to serve residents, workers and visitors, linked by a network of parks and open spaces that complement the Natural Heritage System. This network of facilities is to be connected by trails, walkways and roads, and integrated with individual residential neighbourhoods, mixed use corridors and employment areas.

Transportation and Transit: The provision of a transportation system that provides for choices in transportation mode, including ensuring that the community is designed in a manner that supports public transit.

Housing and Mixed Uses: The provision of a range of housing types and densities that meets the needs of a diverse population, complements surrounding communities, and accommodates an eventual population of up to 70,000 residents at a population density that is transit supportive.

Servicing: Ensuring that the network of utilities required to serve the new urban community minimizes impacts on the environment, maximizes efficiency and use of existing infrastructure, and minimizes lifecycle costs.

Employment: The provision of high-quality employment opportunities that reflect the needs of the community, with the identification of sufficient employment lands to generate approximately one job for every two residents.

- **Implementation of the Central Pickering Development Plan** – When the government approved the CPDP, direction was given, in principle, to identify potential strategic infrastructure investments and a plan for the early servicing of provincial employment lands in Seaton through the identification of strategic transportation and transit investments; to undertake an economic development study of the provincial lands located along highway 407; and to create a management/stewardship plan for the provincially owned Natural Heritage System lands in Seaton. This direction was given to ensure that the CPDP can be implemented effectively and to provide assurance to the City of Pickering and the

Region of Durham that the province is committed to the success of the Seaton community.

Natural Heritage System Management Plan and Master Trail Plan:

The Natural Heritage System (NHS) Management Plan and Master Trails Plan is being undertaken by MAH and was initiated at the end of September 2006. The NHS represents approximately 53% of the Seaton lands in Central Pickering. The NHS is a significant component of the development area and is entirely in provincial ownership. MAH has retained a consultant to prepare the Management Plan and Master Trails Plan for the NHS, and the consultant is being assisted by a steering committee comprised of staff from MAH, the Ministry of Natural Resources, ORC, Durham Region, the City of Pickering and the Toronto and Region Conservation Authority. It is anticipated that this study will be completed by the spring of 2008.

The Plan will be a visionary document that establishes the principles, goals and objectives for the protection, restoration, long-term use, operation and maintenance of the NHS.

Highway 407 (Seaton) Corridors Economic Development Study:

The preparation of an economic development study of the provincially owned Highway 407 employment lands is being undertaken by ORC. This study supports the disposition and development of provincial land holdings in Seaton. The study identifies market issues, economic development strategies, and policies that could maximize the economic, social and environmental benefits generated by the development of the lands designated for Prestige Employment. It is anticipated that this study will be completed in late spring of 2007.

More specifically, the study identifies the types of business that will assist in marketing and servicing the land in appropriate stages. This study also includes a site and market analysis, a land use concept plan, and an implementation strategy.

The findings of this study will assist the province in making informed choices and decisions for this employment area, in regard to strategic infrastructure investment. The study results will also assist in the promotion of the timely marketing and disposition of provincially owned employment lands along the Highway 407 in Seaton.

Durham, Toronto, York Area Transit and Transportation Study:

The Ministry of Transportation (MTO) is undertaking a study to analyze the required transportation and transit needs in the eastern part of the GTA, with an objective of identifying recommended long-range strategic infrastructure investments that would support the provincial land holdings in Seaton and the eastern GTA component of the Growth Plan for the Greater Golden Horseshoe. MTO is being assisted by staff from PIR and MAH.

Key goals of the Durham, Toronto, York Area Transit and Transportation Study include: identifying future travel demand needs; identifying transit-first opportunities to encourage a more transit oriented community; identifying early transportation initiatives that are needed to allow development to proceed; and identifying key projects and jurisdictional responsibilities to move forward.

Through this transit and transportation study, the province will understand and document the inter-regional transportation needs of the larger Durham-Toronto-York area. Improving the inter-regional road and transit network will ensure that the land in Seaton will be serviceable and its value maximized. Ultimately, the study recommendations could form the basis for provincial/municipal investments.

The consultants are undertaking this study on behalf of MTO and are expected to complete the study in summer 2008. To date, the consultants have completed the first phase of the study, which includes the identification of the infrastructure and/or service-related improvements or planning processes that are considered essential and can be realized or initiated in the short-to-mid-term. These initiatives will facilitate growth in the study area while promoting the long term policy objectives of the provincial Growth Plan, including a transit first planning and investment policy.

- **Seaton-Uxbridge Land Exchange Agreement** – At the time of the enactment of the *Oak Ridges Moraine Protection Act, 2001*, which imposed a moratorium on development of lands located on the Oak Ridges Moraine, some of the lands located on the Moraine were already the subject of Ontario Municipal Board (OMB) appeals which sought to allow development to take place. In November 2001, the government entered into minutes of settlement with a landowner in Uxbridge who had an appeal before the OMB, to undertake a land exchange.

The process to arrive at an agreement with the Uxbridge landowner was a long undertaking. Mr. Alan Wells, Provincial Development Facilitator was asked to assist in the negotiations between the parties. In June of 2006 secondary minutes of settlement were signed between MAH and the Uxbridge landowner which established the parameters for the Seaton-Uxbridge Land Exchange Agreement. In December 2006, the Land Exchange Agreement was executed by the Uxbridge landowner. On March 1, 2007, the Minister of Municipal Affairs and Housing executed the Seaton-Uxbridge Land Exchange Agreement on behalf of the Province. The Agreement is subject to the compliance with ORC's Class Environmental Assessment process. Once this Agreement closes, 1,340 acres of environmental sensitive lands located on the Oak Ridges Moraine in Uxbridge will come into public ownership, to be protected from future development and in return, 250 acres of publicly owned developable land in the Seaton area of north Pickering will go into private ownership.

- **Fairness Commissioner's Report – Retired Justice L.W. Houlden, Q.C.** - On September 5, 2002, Justice Lloyd W. Houlden, Q.C. was appointed to provide an independent and objective review of the processes employed by the government and landowners in valuing and exchanging the private lands in Richmond Hill and Uxbridge for the publicly held lands in Seaton.

In his final report on the agreement with the Uxbridge landowner, dated December 20, 2006, Justice Houlden stated that the process used to reach the agreement was both fair and appropriate; and that the agreement constituted a fair and reasonable outcome from the perspective of the taxpayers of Ontario. Justice Houlden had previously issued a similar report concerning the Richmond Hill land exchange agreement in July 2004.

- **Land Surveying** – Throughout 2006/07, five survey firms finalized the surveying work required to delineate the boundaries of potentially developable lands in Seaton and the Duffins Heights Secondary Plan area from lands to be included in a Natural Heritage System in particular those lands related to the Uxbridge portion of the land exchange.
- **Class Environmental Assessment Process (Richmond Hill)** - ORC has the responsibility for following its Class Environmental Assessment (Class EA) process when acquiring or disposing of land. A Category "C" Class EA was commenced in April 2004, and covered both the acquisition of the Richmond Hill lands and the disposition and severance of provincially owned Pickering (Seaton) lands. Given the importance of the land exchange, ORC chose to carry out a more comprehensive assessment than normally required - the Category "C" Class EA undertakes a higher level of public consultation and study of the undertaking.

The Notice of Completion of an Environmental Study Report (ESR) was posted on the Environmental Bill of Rights registry on January 7, 2006, and advertised shortly thereafter (January 11, 2006) in local and large circulation newspapers and on ORC's website. A 30-day period for public comment on the ESR ended on February 10, 2006. On May 29, 2006, the Minister of the Environment determined that an individual Environmental Assessment was not required.

- **Litigation** – During 2006/2007, the Ministry was involved in 3 separate matters before the courts:

Duffin Capital Corporation v. Ontario (Minister of Municipal Affairs and Housing)

In April 2003 the Minister of Municipal Affairs and Housing established a development planning area in the City of Pickering under the *Ontario Planning and Development Act, 1994* (OPDA). In giving direction to the consulting firm, the Minister directed that the Seaton portion of the planning area was to be urban uses while the Duffins Rouge Agricultural Preserve (DRAP) part of the planning area was to be reserved for agriculture.

Duffin Capital Corporation (Duffin), which owns approximately 1,500 acres of land in Cherrywood, within the DRAP, brought an application for judicial review of the Minister's direction. The application was quashed by the Divisional Court in May 2005 as premature. However, Duffin received leave to appeal to the Ontario Court of Appeal.

In May 2006, at the commencement of the appeal hearing, the Court was advised that the OPDA plan had come into effect. Though prematurity was no longer an issue, the Court of Appeal decided that it would hear the appeal on the merits in June 2006. On June 30, 2006, the Court of Appeal released a decision dismissing Duffin's appeal. The Court held that the Minister had not breached the OPDA as his direction to the consultant was within the discretion conferred to him under the Act.

On September 29, 2006 Duffin applied to the Supreme Court of Canada for leave to appeal the Court of Appeal's decision. On February 15, 2007 Duffin's application for leave to appeal was refused by the Supreme Court. The refusal of the application for leave to appeal meant that Duffin had exhausted all its avenues of appeal.

Hiawatha First Nation v. Ontario (Minister of the Environment)

On May 29, 2006, the Minister of the Environment determined that an individual Environmental Assessment was not required in respect of the acquisition of the Richmond Hill lands and the disposition and severance of provincially owned Pickering (Seaton) lands. Mr. David Sanford and seven First Nations challenged the Minister's decision on the grounds that the Class EA process was flawed because it did not provide for adequate consultation with First Nations. The First Nations also claimed that ORC did not appropriately address their constitutional rights to consultation under section 35 of the *Constitution Act, 1982*. The hearing was held from November 21 to November 24, 2006 before the Divisional Court.

In a unanimous decision issued on February 12, 2007, the Court dismissed the application. The Court noted in its decision that there was a general agreement that the Anishnaabeg practice of honouring the burial sites of their ancestors satisfied the test of whether an applicant has an established Aboriginal right protected by subsection 35(1) of the *Constitution Act, 1982*. However, the Court found that the First Nations has surrendered all rights of any kind to lands, including the Seaton lands, in exchange for the promises made in the Williams Treaty of 1923. Therefore there was no Aboriginal right or potential Aboriginal right which triggered the duty to consult.

With respect to the consultation required under the *Environmental Assessment Act*, the Court found that while the consultation was not as broad as originally contemplated, the level of communication was not procedurally unfair.

Hollinger Farms No 1 Inc. v. Ontario (Minister of the Environment)

In May 2006 the Minister of the Environment issued a decision not to “bump-up” the Category “C” Class Environmental Assessment to an individual Environmental Assessment. In her letter to the requesters, the Minister outlined her reasons, including:

- The undertaking was the acquisition and disposition of land, and not the planning or changes in use for the Seaton lands, which appeared to be at issue with a number of the requesters’ concerns; and
- That ORC had considered a reasonable range of alternatives to the undertaking and had completed the necessary analysis.

On June 7, 2006, landowners in the Duffins Rouge Agricultural Preserve initiated an application for judicial review challenging the Minister of the Environment’s decision not to require an individual Environmental Assessment. The application alleges that the Minister failed to:

- 1) give appropriate consideration to relevant provisions of the *Environmental Assessment Act*;
- 2) provide adequate written reasons for her decision in accordance with the Act; and
- 3) order ORC to carry out an individual Environmental Assessment.

The matter was heard on February 5, 6, and 7 2007. The court’s decision is expected in early spring 2007.

- **Water Balance Evaluation Study** - In the Spring of 2005 a decision was made to undertake a water balance analysis in support of the OPDA planning exercise and the ORC’s Class Environmental Assessment process. The proposed work involved a multi-season monitoring program of eight representative wetlands within Seaton, with specific attention to water budget analysis for the wetlands being monitored. By establishing baseline (pre-development) conditions and monitoring inflows and outflows, air and water temperatures, water level fluctuations and associated impacts on vegetation, the work will assist in the sizing, location and control features of storm water management elements associated with the implementation of the OPDA plan. This study is expected to be completed in winter of 2007.
- **Oak Ridges Corridor Park and Trail** – In 2004/05, MAH and the Toronto and Region Conservation Authority (TRCA) agreed that management of the lands in Richmond Hill that are part of the land exchange would become the responsibility of TRCA following the land exchange. As part of this management role, the TRCA agreed to assume responsibility for completion of a master environmental plan for the park, which would allow for the construction of a trail by the current landowners, regeneration and other improvements to the lands over the long term.

In 2005/06, a proposed management plan was developed after considerable discussion with representatives from government, non-government organizations and private citizens. Numerous Advisory Committee and public meetings were held between June 16, 2005 and mid-January 2006, during which time a vision for the park and east-west trail alignment was established. Finally, a competition was initiated in the Spring of 2006 to provide an appropriate name for the park and trail system. Trail construction/development was started in January 2006.

FINANCIAL SUMMARY

Funding for the NPLET's 2006/07 fiscal year's activities, in support of the North Pickering Development Corporation's mandate, was provided directly by and through MAH. A similar financial structure will be used to finance fiscal 2007/08 activities. For the 2006/07 fiscal year the North Pickering Development Corporation was financially inactive. As a result, the Auditor General of Ontario has concluded that an annual audit is not required.