

# **EVOLUTION OF THE PROPERTY VALUE PROTECTION PROGRAM – A STUDY OF HOW A COMPENSATION PLAN TO ADDRESS PROJECT-RELATED DIMINUTION HAS EVOLVED TO MEET CHANGING NEEDS**

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## **ABSTRACT**

The Property Value Protection (PVP) Program offers an innovative approach to address the risk of individual property value loss resulting from the cleanup and long-term management of low-level radioactive waste in the Port Hope area in Southern Ontario, Canada. This cleanup is taking place through the Port Hope Area Initiative (PHAI), a federally sponsored waste remediation project.

The Program came into effect on October 1, 2001, having been established as a key element of the Legal Agreement for the Port Hope Area Initiative, signed between the Government of Canada and the municipalities of Port Hope and Clarington. The PVP Program was designed in direct response to the concerns expressed by the agreement's two municipal signatories that protection of local property owners from the risk of property value loss was critical to their acceptance of the Port Hope Project and Port Granby Project.

The PVP Program compensates owners of residential, commercial or industrial properties for a loss in fair market value on the sale or rental of their properties. Increased mortgage refinancing costs and expenses incurred as a result of delayed sales that can be attributed to the Port Hope Area Initiative are also compensated.

## **1. INTRODUCTION**

The Property Value Protection (PVP) Program, delivered by the Port Hope Area Initiative (PHAI) Management Office, came into effect on October 1, 2001. The program was established as a key element of the Legal Agreement<sup>1</sup> for the PHAI, which was signed between the Government of Canada and the municipalities of Port Hope and Clarington. The Port Hope Area Initiative includes two separate projects, the Port Hope Project and the Port Granby Project, to address the remediation and long-term management of low-level radioactive waste in the Port Hope area. The PVP Program applies equally to each project.

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<sup>1</sup> An Agreement for the Cleanup and the Long-Term Safe Management of Low-Level Radioactive Waste Situate in the Town of Port Hope, the Township of Hope and the Municipality of Clarington was finalized between the Government and Canada, the Municipality of Port Hope and the Municipality of Clarington on March 29, 2001 to launch the Port Hope Area Initiative. (The Town of Port Hope and the Township of Hope amalgamated to form the Municipality of Port Hope.)

The PVP Program was designed in direct response to the concerns expressed by the municipalities that protection of local property owners from the risk of project-related property value loss was critical to their acceptance of the projects. The establishment of the PVP Program, therefore, is regarded as an integral component of the PHAI. It reflects the desire and commitment of the councils and the federal government to mitigate potential, interim economic effects that may arise from the projects to clean up and manage the wastes.

Together, the Port Hope and Port Granby projects will address the cleanup and long-term management of approximately 1.7 million cubic metres of contaminated soil and refinery wastes resulting from the past waste management practices of Eldorado Nuclear Limited, a former Canadian Crown corporation, and its private sector predecessors. The waste was generated between the 1930s and late 1980s from the refining of radium and, subsequently, uranium.

Today, 10 years since the inception of this unique, socio-economic effects management program, the PVP Program continues to build stakeholder confidence by mitigating the risk of economic vulnerability of current and prospective property owners, thereby contributing to stability in the local real estate market.

## **2. PROTECTING PROPERTY OWNERS FROM POTENTIAL LOSS**

Few precedents across North America or the rest of the world have been found for a property value compensation program as comprehensive as the PHAI's PVP Program: the PVP Program has the potential to compensate hundreds of property owners, totaling millions of dollars, over its lifespan.

The Program compensates owners of residential, commercial or industrial properties for a loss in fair market value on the sale or rental of their properties if that loss can be attributed to the plans or activities of the PHAI. Increased mortgage refinancing costs and expenses incurred as a result of delayed sales, which arise from the projects, are also compensated. In the 10 years during which the PVP Program has operated, all but one claim for compensation have been for loss on the sale of residential properties.

The PVP Program does not compensate sellers if a loss on sale were to occur because of the presence of historic low-level radioactive waste on a property. This is because the federal-municipal agreement (Legal Agreement) specifically addresses potential value loss arising only from the plans or activities of the projects to remediate and manage the wastes for the long term.

The Program encompasses an area of approximately 90 km<sup>2</sup>, referred to as the PVP Zone. Shown in Figure 1, this zone comprises a total of approximately 5,800 properties that could potentially be affected by the projects. The PVP Program will remain in effect for the duration of the Initiative, retroactive to October 6, 2000 and up until two years after the completion of the long-term waste management facilities. During this post construction period, the real estate market will be monitored to confirm that any diminished values that materialize recover from effects of the projects. Therefore, with the construction and cleanup phase scheduled to begin within the next year and extend for approximately ten years, the PVP Program is expected to be in place for more than 20 years.

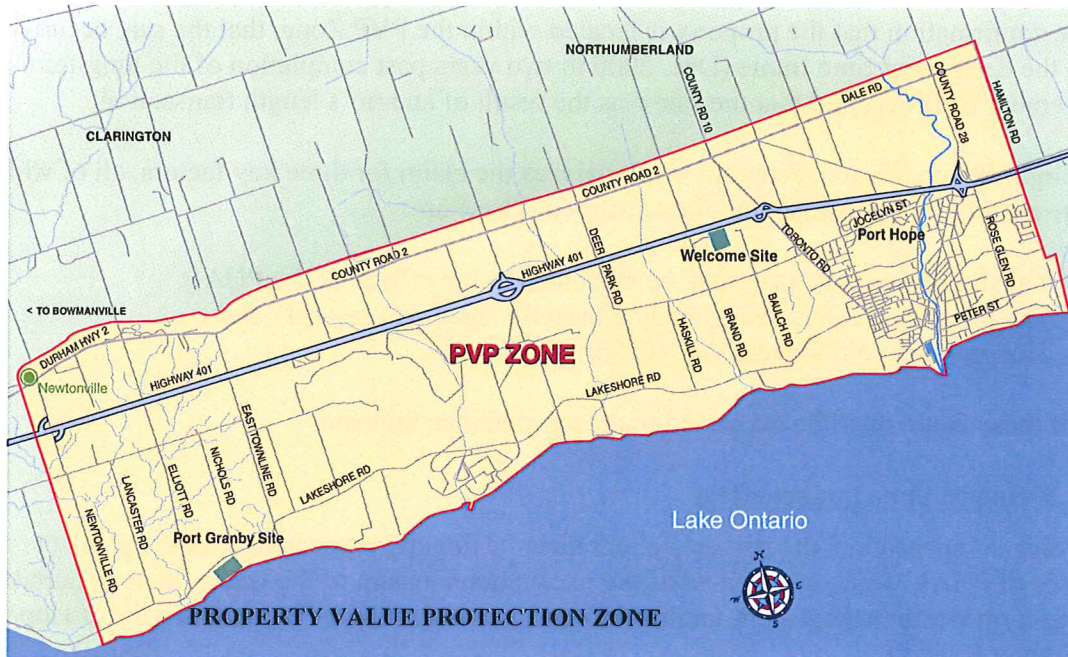


Figure 1: Geographic area within the municipalities of Port Hope and Clarington that comprises the Property Value Protection Zone

### 3. ESTABLISHING THE PROGRAM

The Treasury Board of Canada provided initial guidelines for the PVP Program's design, which were subsequently formalized through Section 8 of the PHAI Legal Agreement. The agreement sets out specific requirements for the Program by defining three main components: a claim process, an appeals process and the appointment of independent, citizen Compensation Officers to adjudicate appeals. Procedures were established with the objective of ensuring fairness and consistency in the determination of claims for compensation. An independent consultant was engaged to develop operational details, staffing requirements and estimate initial costs.

A small staff with expertise in property valuation, financial analysis and stakeholder communications launched the Program. The citizen Compensation Officers – local individuals with a history of civic involvement and legal or real estate experience – were nominated by the two municipalities and appointed by the Government of Canada to hear appeals and to maintain an arm's length relationship from the day-to-day operations of the Program.

#### 3.1 The claim process

The compensation process is engaged when an owner believes s/he has experienced a loss on the sale or rental of a property that can be attributed to the plans or activities of the Port Hope Area Initiative. When a claim for loss of value on sale is submitted, the PVP Program first screens the claim to ensure certain fundamental eligibility criteria have been met. These eligibility criteria

include confirmation that the property is located within the PVP Zone, that the sale occurred within the designated time frame (Dec. 2000 to two years past completion of the long-term waste management facilities) and that the sale was the result of an arm's length transaction.

With eligibility confirmed, Program staff analyzes the claim for three key factors, all of which must be present for compensation to be awarded. These are:

1. The diminished sale price can be attributed to the effects of the PHAI;
2. The property has been adequately exposed to the open market; and
3. The property sold for less than its fair market value.

Each of these factors will be explained in greater detail as follows:

1. Demonstrating project effect

To receive compensation, the real estate loss must be directly associated with the plans or activities of PHAI, which are defined as the excavation/cleanup of the waste, its transportation to the long-term waste management facility and/or the construction of the facilities (Port Hope or Port Granby Project).

The first 10 years of the PVP Program have occurred during the *pre-construction* Phase 1 and Phase 1A periods. During these phases each project has undergone an environmental assessment (through the *Canadian Environmental Assessment Act*), detailed designs have been completed and regulatory approvals have been sought.

However, with the exception of a trial remediation for the Port Hope Project in the fall of 2010 and the construction of the dedicated access route into the site of the Port Hope Project long-term waste management facility in summer 2011, there has been **no visible evidence** of the projects during the initial years of the PVP Program. No excavation or movement of the waste or construction of the long-term waste management facilities has occurred.

This has placed an increased responsibility on the PHAI Management Office to communicate potential impacts of the projects in order to assure full disclosure to buyers, sellers and real estate agents.

The PVP Program deems properties that lie within a "zone of influence" that is described in the Environmental Assessment (EA) Study reports<sup>2</sup> for each of the projects as having the potential to be affected by the projects, thereby causing a possible diminution in sale price upon the disclosure of this information.

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<sup>2</sup> The Environmental Assessment Study Report, Port Hope Long-Term Low-Level Radioactive Waste Management Project (Rev. 1d1, January 2006) and the Environmental Assessment Study Report, Port Granby Long-Term Low-Level Radioactive Waste Management Project (Rev. 1, July 2007), along with their supporting documents, describe predicted effects of the projects.

The EAs make highly conservative predictions for potential nuisance effects, such as increased noise, dust or traffic, within zones established for each, specific remediation activity. When a claim is received, PVP staff measures the distance between the property and the source of the potential effects (in some cases an urban Port Hope property may be situated near multiple remediation sites) and confirms the existence of a potential project effect based on these measurable criteria. It is in this manner, during this pre-construction period when no *actual* impacts of the projects are being felt, that the PVP Program may confirm that the marketing and ultimate sale price of a property were affected by the plans of the PHAI.

The Port Hope Project offers several examples of potentially affected neighbourhoods. As shown in Figure 2, these locations include lands surrounding 18 large-scale remediation sites, the site of the long-term waste management facility and properties adjacent to three designated, project transportation routes, along which approximately 80,000 to 90,000 trucks transporting low-level radioactive waste will travel over the life of the Project. The PHAI Management Office actively discloses this information through a map made available at its public information office, on its website ([www.phai.ca](http://www.phai.ca)), and by distribution to real estate offices, which also provide the map to prospective buyers and sellers. PVP Program staff also provides information for posting on the real estate boards' internal websites and gives presentations to real estate professionals and other stakeholder groups to increase understanding of where project activity will occur.

Based on this general awareness, the PVP Program recognizes a causal link – during the current, pre-construction phase – between a buyer's knowledge of the plans of the Port Hope Area Initiative and the potential for that buyer to be unwilling to pay full, fair market value for a potentially affected property.



Figure 2: Map of large-scale low-level radioactive waste and historic industrial waste remediation sites in the Municipality of Port Hope

2. Assuring adequate market exposure:

Communicating how the PVP Program works, especially to buyers, sellers and the real estate sector, is an important function of the PVP Program. Through discussions and publicly available information, the PVP Program actively advises sellers and their real estate agents of the need to demonstrate that the property was adequately exposed to the open market prior to its sale.

The Program is funded by the Government of Canada through a grant appropriation, and its operations are subject to audit. The PHAI Management Office must be able to demonstrate accountability for the responsible use of federal taxpayers' dollars in the awarding of each PVP Program claim. This is achieved, in part, by requiring the claimant to show that best efforts were made to secure the highest possible price for the property. To satisfy this requirement, the seller must publicly expose the property by listing it on the Canadian Real Estate Association's Multiple Listing Service for a *minimum* of the average days on market for the month of listing for the subject municipality. (This statistic is published by each local real estate board.) Property owners and their Realtors are warned against accepting a low offer early in the listing, as this could jeopardize their ability to make a successful PVP claim.

3. Determining unaffected fair market value

At the heart of the PVP Program lies the assurance that property owners who experience a loss in value arising directly from the projects will receive *unaffected* fair market value on the sale (or rental) of their property. In other words, the PVP Program commits to put sellers affected by the projects on an even playing field with unaffected sellers. Simply stated, unaffected fair market value represents the value of the property as if the PHAI did not exist.

When a claim for compensation for loss on sale is received, the PVP Program engages an independent appraiser, certified by the Appraisal Institute of Canada, to conduct a comparative sales analysis of recent sales of similar properties in areas *unaffected* by the projects. In the Municipality of Port Hope, where broad market effects have not been detected, the appraiser would sample comparables in neighbourhoods away from large-scale remediation sites, project transportation routes and the site of the future, long-term waste management facility. In Southeast Clarington, sales of comparable properties away from the area of the existing and future Port Granby Project waste management facilities would be sampled.

Determining the unaffected fair market value of the property permits the PVP Program to determine if, in fact, the seller realized a loss on sale. The appraiser's selection and use of current, comparable sales also enables the Program to exclude other external market factors for which the Program does not compensate. For example, the PVP Program does not compensate a seller for an unrealistic expectation of what the property is worth. Similarly, the PVP Program does not compensate sellers for poor market conditions that may prevail within the broader marketplace (for example, the 2008-2009 recession). To ensure that current market conditions are factored into the evaluation, the PVP Program considers an appraisal older than three months to be not fully representative of current market conditions (stale) unless time adjustments are considered.

Thus, through this analytical process, the PVP Program satisfies its three primary criteria to establish loss of value on sale based on the following:

- ✓ Project effect has been determined;
- ✓ Adequate market exposure is confirmed; and
- ✓ Loss is established if the property sold for less than the unaffected fair market value, as appraised.

To determine the amount of compensation to be paid to the claimant for loss of value on sale, the PVP Program subtracts the difference between the selling price and the current, unaffected fair market value, as appraised. The entire decision-making process takes about 40 days, and a cheque is usually delivered to the claimant within 15 days of closing of the sale, provided that the claimant accepts compensation offered, signs a release and provides a certified copy of the new transfer/deed.

### **3.2 Facilitating the sale of impacted properties**

The Legal Agreement foresaw the PVP Program process starting at the point at which a property was sold. The sale would then be analyzed as described above. What the initial program designers failed to anticipate was that the first and clearest sign that a property might be experiencing a project effect would be difficulty encountered by an owner to realize a sale.

PVP Program staff recognized this problem early into the start of the Program when properties that were listed for sale in very close proximity to major cleanup sites lingered on the market with little to no buyer interest being shown. These sellers could not avail themselves of the PVP Program compensation process because they could not effect a sale.

To address this problem and assist owners of directly impacted properties, the PVP Program instituted a service called pre-sale appraisals. Instead of waiting for the property to sell to engage the independent certified appraisal, as the normal claim process requires, the Program provides the appraisal to the owner, on request, *prior* to sale. The intent is to assist the seller to ensure the property is being competitively marketed at a realistic price. This eliminates uncompetitive, over pricing as a possible contributing factor in the marketing difficulties.

Pre-sale appraisals, the full cost of which is borne by the PHAI Management Office, are not available to all sellers. In order to qualify for a pre-sale appraisal, a number of criteria must be met. First, the property must be directly affected by its proximity to future project activities, as illustrated in Figure 2. Second, the property must have been listed for an overly long period, which the PVP Program defines as one-and-a-half times the average days on market statistic prevailing during the original month of listing. Third, the owner must show s/he has tried to actively market the property by reducing the price at least once during the listing, and, finally, the owner must commit to lower the list price to the unaffected fair market value, if the current list price is revealed to be higher than the appraised value.

Because properties which receive pre-sale appraisals are those directly impacted, the price may have to be reduced several times after the pre-sale appraisal before the property sells. Pre-sale

appraisals give owners the confidence to do this, as they realize, ahead of time, that they have met the requirements of the PVP Program and will receive compensation once the property sells (as long as all eligibility criteria, such as an arm's length transaction, are satisfied). In other words, the conditions imposed in order to qualify for a pre-sale appraisal assure a project effect has been acknowledged and the market exposure requirements have been fulfilled. Working co-operatively with staff of the PVP Program, owners and their real estate agent are able to make gradual reductions in the list price over a period of time until an offer is realized. The seller understands that PVP compensation will equal the difference between the eventual selling price and the appraised value.

The PVP Program has worked closely with over 20 owners and their agents to achieve sales of impacted properties through the pre-sale appraisal process. In every case where the owner has lowered the list price to meet the appraised value, as promised, the property has sold and compensation has been awarded. Pre-sale appraisals have become an effective instrument in the Program's tool kit to assist owners of impacted properties to realize a sale and receive compensation.

#### **4. MONITORING THE MARKET**

The PVP Program conducts ongoing monitoring of the local and area real estate markets. The Program analyzes a variety of indicators of real estate health such as sales activity, average selling price, sales turn-over time and sales-to-listing price ratio. To enhance this knowledge, in Spring 2011, the PHAI Management Office engaged independent expertise to conduct an in-depth analysis of the Port Hope real estate market over the past 10 years, comparing it to neighbouring markets. It is intended that this information will be updated regularly.

The PVP Program's research, to date, has not identified a quantifiable, generalized market effect in the case of either the Port Hope or the Port Granby projects. In the western portion of the PVP Zone, where the Port Granby Project is located, it is anticipated that only those properties within a small, rural area situated in the immediate vicinity of the existing and future waste management facilities are likely to ever exhibit project-related property devaluation. Although a small number of claims have been paid in this site-specific Port Granby Project area, other properties have sold in this same geographic area with no demonstrated project effects, in spite of full disclosure.

The urban area of the Municipality of Port Hope poses greater challenges with respect to monitoring the market for site-specific vs. broader, project effects. The PVP Program uses the adjacent community of Cobourg, six kilometres to the east, against which to compare these indicators. Cobourg serves as a good "control zone" for monitoring the Port Hope market, as Cobourg is a socio-economically similar community without the presence of historic, low-level radioactive waste.

#### **5. THE APPEAL PROCESS**

The ability of claimants to appeal a PVP decision with which they disagree was established by the Legal Agreement, which prescribed a two-stage process comprising mediation and, if necessary, arbitration. The appeal process was meant to offer claimants a non-adversarial avenue to appeal a PVP Program decision that would be faster and less costly than applying to a

court of law. Further, the use of citizen Compensation Officers to adjudicate appeals was meant to inject both independence and a sense of community values into the process, as it was anticipated that the municipalities would nominate respected individuals with a history of community service, who would bring a unique, local perspective to the review of disputed claims.

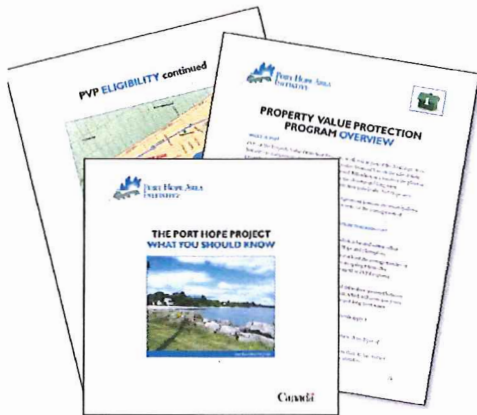
Three Port Hope Compensation Officers were appointed when the PVP Program was launched in 2001, and this was later expanded to include two officers from the Municipality of Clarington for the Port Granby Project. By 2009 March 31 – within the first eight years – the PVP Program had processed 17 claims and received only three appeals, all of which were finalized at the first, mediation, stage. Two of these appeals resulted in the claimant being awarded additional compensation and one did not.

Yet, in spite of its minimal usage, the appeal process did not prove to be *non adversarial*, as had been expected. Claimants who either had not been awarded compensation for loss on sale or who had received a lower award than they thought they deserved entered into the appeal process prepared for a confrontation. Ultimately, with the concurrence of the municipalities, the appeal process was modified to incorporate independent, certified mediators at the first stage. As the projects move forward into the next phase when construction, remediation and transportation of waste will occur, an increased number of claims and, likely appeals, are anticipated. It is expected that professional mediators, trained in alternative dispute resolution techniques to defuse emotion and identify common interests among the parties, will increase the goodwill in which the appeal process is meant to function. To further improve the process and in keeping with the Legal Agreement, the PHAI Management Office is in the process of developing a training program for the Compensation Officers to act as arbitrators in the second and final stage of the PVP Program appeal process.

## **6. COMMUNICATING WITH STAKEHOLDERS**

Increasing awareness of the PVP Program and communicating its requirements to potential claimants are the Program's primary communications objectives. Key stakeholders include all owners within the PVP Zone and professionals working in the real estate sector.

The Program's emphasis on clear, user-friendly and accessible information has been a fundamental part of its development. Since the Program's inception, it has included dedicated communications staff that is available to meet with members of public on a walk-in basis. Additionally, a series of six, plain-language fact sheets describes the Program's purpose, eligibility requirements, steps involved in making a claim, special tools for assisting clients with difficult sales and the appeal process. In the past year, a more detailed program overview has been created to satisfy a growing interest by stakeholders who want more detailed information about the Program. All public information is available in print at the Project Information Exchange, through distribution to real estate and developers' sales offices and electronically on the Initiative's website. *Frequently Asked Questions* and program descriptions are provided to the area real estate boards for posting on their own internal intranets.



**Figure 3: PVP fact sheets and brochure**

From the earliest days, the PVP Program has acknowledged the key role of the real estate community to disseminate information about the projects and the PVP Program. Within months of the Program's start-up, PVP staff involved a small group of local Realtors in an ad-hoc committee to provide input on the development of an information brochure called *Have you ever heard of the Port Hope Area Initiative?* The goal of this stakeholder engagement was to facilitate full disclosure about the projects when properties are bought and sold. The success of this initiative was dramatic, as Realtors embraced the brochure's use, broadened their disclosure practices and made the once, frequent stories of homebuyers moving into the area without knowledge of the waste

or the cleanup almost a thing of the past. Today, ten years and 50,000 brochures later, the PHAI Management Office has taken disclosure to the next level through the recent launch of a new brochure called *What You Should Know*. Recognizing the Initiative's transition to the next phase, which will involve excavation and trucking of the waste to the respective long-term waste management facilities, this new brochure provides future buyers and others with a greater level of detail about what to expect during the implementation phase of the projects.

PVP Program staff communicates the Program to buyers, sellers and real estate agents at the PHAI's Project Information Exchange (open weekdays), through presentations to community groups and through participation in trade shows and community fairs. The demand on staff to speak with visitors to the Information Exchange is increasing as the PHAI shifts from the planning phase to implementation.

Finally, to help ensure real estate professionals remain abreast of the projects and PVP Program, staff provides regular updates to the real estate community in the form of Lunch and Learns, which were held in 2005, 2007 and 2009. This educational outreach was elevated to a fully accredited course in 2011 March, offered by the Northumberland Hills Association of Realtors. Approximately 100 real estate agents, along with appraisers and mortgage lenders, participated in a half-day seminar on the Port Hope Project and PVP Program led by the Port Hope Area Management Office. Realtors were able to credit the course toward fulfillment of their ongoing, licence requirements.

## **7. CLOSE TO A DECADE OF CLAIM EXPERIENCE**

No one could have predicted with any degree of certainty what community reaction would be when this one-of-a-kind program was initiated on 2001 October 1. Looking back, the limited claim activity experienced during the first seven years – which ranged from one to a maximum of four claims per year (as shown in Figure 4) – is not entirely surprising. With no excavation or transportation of waste yet underway, and with a buoyant national, regional and local real estate market from 2001 until mid 2008, sellers felt little need to seek out assistance from the PVP Program.

In these first seven years, the Program had received only 14 claims of which eight were accepted, six were denied, and a total of approximately \$145,000 in compensation, all for loss of value on sale, had been approved.

Suddenly, in the Fall of 2008, world-wide confidence in the real estate market fell sharply. The mortgage collapse in the United States and accompanying global economic recession resulted in a dramatic downturn in markets everywhere, Port Hope being no exception. This created special challenges for the PVP Program. During late 2008 and early 2009, housing prices fell at a rate of between 0.5 and 1 per cent per month, caused by factors entirely unrelated to the Port Hope Area Initiative.

Although regional and local market activity showed signs of recovery by Spring 2009, it appeared that the buoyant market forces that may have contributed to the limited use of the PVP Program could be over. At the same time, other pressures were being exerted on the Program.

In the Fall of 2007, 2008, 2009 and 2010, and again in early 2011, negative coverage about the nuclear industry and Port Hope's low-level radioactive waste situation was carried by major print, on-line and other media outlets across Canada. Although sensational and highly inaccurate, these reports raised fears about the health effects of the waste.

In the wake of each media event, local real estate agents reported showings had been cancelled, some offers had collapsed, and interest in the local market by external (Toronto area) buyers was lower than normal. These buyers would have read or heard the media reports without regard to the truth.

During this period, Cameco – Port Hope's largest employer and a nuclear-related industry – experienced an environmental problem, which resulted in layoffs and additional media coverage.

Generally, market effects have been short-lived, and sales have recovered within one or two months of the negative media coverage. However, as the graph in Figure 3 shows, the combined influences of a slowed general economy/market and these recurring media events have exerted pressure on the PVP Program, resulting in an increase in the number of claims received. The number of claims received in fiscal year 2010/2011 was almost triple that of any previous year. As of fiscal year end, 2011 March 31, the PVP Program had processed 39 claims and approved compensation to 27 claimants totaling \$1.4 million for loss in value on sale. In the first quarter of the current fiscal year, seven claims were received.

These experiences have come at an interesting time for the PVP Program: poised on the threshold of the construction and cleanup phase – when increased claim activity has always been anticipated – and with a decade of experience to review, the PVP Program offers many lessons. This earlier-than-expected surge in claim activity and appeals provides an opportunity – prior to the real test of Phase 2 – to analyze the Program's strengths and its weaknesses.

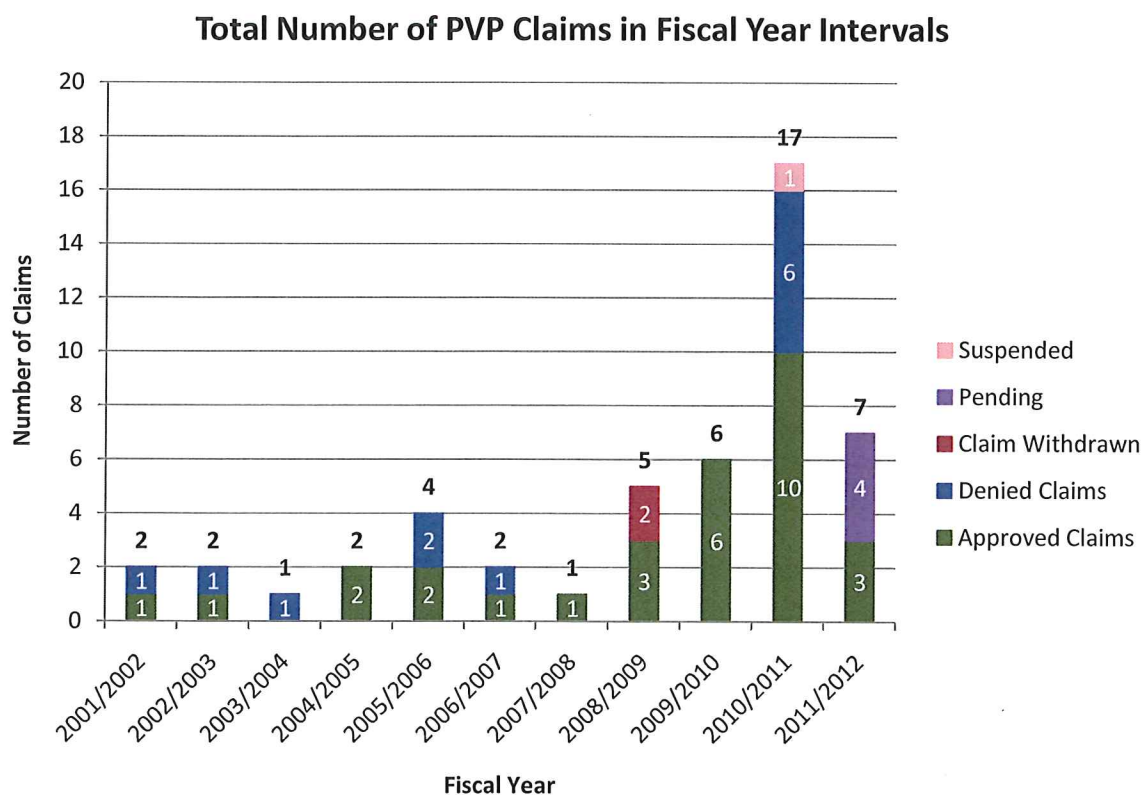


Figure 4: PVP Program claim activity by fiscal year: 2001/2002 to 2011 June 30 (end of first quarter)

## 8. CONCLUSION

As an integral element of the Legal Agreement, which launched the PHAI, the PVP Program provides buyers and sellers with assurance that if their property is affected by the plans or activities of the Port Hope or Port Granby projects, their value will be protected.

Since its inception, the PVP Program has evolved significantly. Modifications have been made and tools added to address the challenges faced by sellers of impacted properties. All of these adaptations have resulted in a more effective, transparent and accountable process.

In its first 10 years of operation, the PVP Program has fulfilled its mandate. Through the approval of 27 claims for compensation (as of March 2011) for loss of value at the time of sale, the Program has protected impacted owners against demonstrated, project-related, real estate loss. By assuring buyers, today, that their investment in their property will be protected in the future –if they sell when construction and cleanup are underway – the PVP Program strengthens support for the PHAI.