



March 6, 2009

Liz Unikel
Senior Policy Coordinator, Lake Simcoe Project Team
Ministry of the Environment
7th Floor, 55 St. Clair Avenue West
Toronto, Ontario M4V 2Y7

RE: Protection of Lake Simcoe (EBR #010-4636)

Dear Ms. Unikel,

Thank you for the opportunity to comment on the draft Lake Simcoe Protection Plan (EBR #010-4636) and in this way to participate in the completion of a long-term strategy for protecting the health of Lake Simcoe.

Conservation Ontario represents the common interests of Ontario's 36 Conservation Authorities. Conservation Authorities are local, watershed management agencies that deliver services and programs that protect and manage water and other natural resources in partnership with government, landowners and other organizations. As part of the Conservation Authorities' mandate, they ensure that Ontario's rivers, lakes and streams are properly safeguarded, managed and restored. In addition to serving the public and Ontario landowners, Conservation Authorities also provide advice to all levels of government on the responsible management of water.

The attached positioning has been compiled by Conservation Ontario staff with some reference to comments provided by the Lake Simcoe Region Conservation Authority (LSRCA). Conservation Ontario's comments are not intended to limit your review and consideration of the specific and extensive comments provided by LSRCA.

Conservation Ontario commends the Ontario Government's efforts at legislating a watershed plan and reiterate that Conservation Authorities are in full agreement that the best way to protect and restore the ecological health of the Lake Simcoe watershed is through the implementation of an integrated watershed management plan. Given that the implementation of watershed plans is not legislated and the science and plans are therefore only advisory to local decision-making, Conservation Ontario supports the concept of a provincially mandated watershed plan for the protection of Lake Simcoe and the ultimate approval of such a Plan by the province. There are many aspects to the Plan that, as they are further developed under the implementation of the policies, will provide tools that will be beneficial for watershed management by Conservation Authorities across the province.

In general, all the chapters should contain targets that are SMART (specific, measurable, achievable, realistic and time-bound). The LSRCA provides extensive comments in this regard and Conservation Ontario supports that the SMART targets will lead to better accountability and reporting on progress.

In general, to implement the Plan effectively and to meet the targets, new provincial policies and/or guidelines are required for such things as:

- Stormwater management master plans (4.5 S.A.) and addressing climate change;
- Sediment and erosion control guidelines which address minimum removal of vegetation (4.21 D.P.);
- Subwatershed planning (8.1 S.A); and,
- Water conservation and efficiency plans (5.3 – 5.6; NOTE: following finalization of the Ontario Strategy; see our specific comments).

Additionally, the Stormwater Management Planning & Design Manual (2003) requires updates to address more sustainable development (i.e. water sensitive urban design principles or low impact development) (4.7 D.P.).

This Plan is an opportunity to demonstrate the value of a provincial water strategy that comprehensively addresses water management on a watershed basis. Related to this, it is recommended that additional context be provided on the linkages between the Lake Simcoe Protection Plan and watershed management activities already occurring through other mechanisms. While the objectives of the plan (listed on page 5-6) indicate that the plan will build on protections that are provided by provincial plans, it would be useful to include a conceptual diagram that provides a high-level outline of how the Lake Simcoe watershed is being protected through other pieces of legislation and how the Lake Simcoe Protection Plan will be addressing gaps not covered through these existing mechanisms.

Specific comments are provided in our submission that suggest additional references to existing water management mechanisms/initiatives. In addition, a table [like that found in the Oak Ridges Moraine Conservation Plan (ORMCP) (p.58)] would be useful as an appendix. The table should indicate the legislation which is applicable to the Lake Simcoe Watershed with a description of the level of regulatory approval (e.g. federal, provincial, local); the agency responsible (e.g. Ministry of Natural Resources, Ministry of Environment, Ministry of Municipal Affairs and Housing, Department of Fisheries and Oceans, Conservation Authorities); the legislation (e.g. *Fisheries Act, Lakes and Rivers Improvement Act, Aggregate Resources Act, Ontario Water Resources Act, Environmental Protection Act, Oak Ridges Moraine Conservation Act and Plan, Municipal Act, Conservation Authorities Act, Greenbelt Act and Plan, Places to Grow Act and the Growth Plan, Environmental Assessment Act*) and a description of the approval required under the various pieces of legislation.

Chapter One - Ecological Health of Lake Simcoe and its Watershed Objectives of the Plan (p.5&6)

Conservation Ontario appreciates the recognition provided under the Objectives to the *Conservation Authorities Act (CA Act)* and the fact that it provides protections for the Lake Simcoe watershed which need to be built upon. As enabled under Sections 20 and 21 of the *CA Act* and supported by the Province and its member municipalities, LSRCA is a watershed management agency that has developed substantial capacity for the coordination and leadership of watershed plans and programs.

Overall, Conservation Ontario encourages the province to support and acknowledge the significant past, present and future role of LSRCA in leading watershed management activities and programs within the Lake Simcoe Protection Plan including subwatershed evaluations, science and monitoring, and stewardship, and should build upon them so as to ensure efficient delivery on behalf of Ontario and watershed taxpayers.

Priorities for the Plan (p.7)

It is recommended that “**managing sustainable growth**” be identified as a priority of the Plan. The Plan should drive innovations in environmentally friendly or sustainable development that meets the environmental targets for Lake Simcoe [NOTE: as per specific comments, Policy 4.25 b) is problematic in this regard].

Legal Effect of the Plan and Transition (pp.8-9)

It is noted that, as a prescribed instrument, the Section 28 permits under the *CA Act* must conform with the applicable designated policies of the plan. The applicable designated policies are noted in the Schedule (p.81). It is of significant concern that some of the designated policies may be more permissive than what would be permitted under Section 28 permits. It appears that the discrepancy may be due to the fact that the designated policies are focused on considering the natural heritage implications of a development or site alteration while the Section 28 permit regulates development (as defined in the *CA Act*) to ensure that a proposal does not affect, for example, the control of flooding, erosion, or dynamic beaches. To illustrate the concern, the designated policy 6.4 indicates that structures may be permitted within the 30 m shoreline vegetative protection zone given certain circumstances. The concern arises that if it is also in a hazardous area that a permit for the structure should be denied under Section 28 but it is our understanding that issuance of a Section 28 permit must conform to the designated policy. This issue needs to be clarified and may be as simple as specifying that a Section 28 permit may be more restrictive than the provisions in the Plan for matters impacting public safety with regard to the control of flooding, erosion, and dynamic beaches. Conservation Ontario requests further discussions with the Ministry of Environment, Ministry of Natural Resources and the LSRCA.

As per comments under Chapter Four (Water Quality): the Permit to Take Water under the *Ontario Water Resources Act* should be a prescribed instrument under the Plan.

Chapter Two: Building On Past Actions

As per the Principle of “Shared Responsibility”, collaboration amongst the watershed stakeholders will be key to success. LSRCA has noted those policies throughout the document for which they would like to be specifically referenced or removed; these requests should be met.

In general stronger acknowledgement of the accomplishments of Lake Simcoe Environmental Management Strategy through its various stages should be included in Chapter 2. It is important to acknowledge contributions of LSRCA and Nottawasaga Valley Conservation Authority (where applicable) in the description of Past Actions in the Plan and LSRCA has identified in their comments several areas where reference to the LSRCA has been omitted including, for example: Assimilative Capacity Study (p.11), and the Landowner Environmental Assistance Program (LEAP) (p.12). Additionally, an explicit section highlighting the LSRCA and its programs is notably absent (p.12) and should be remedied with the detailed comments provided by LSRCA.

Chapter Four – Water Quality

Context (p.21)

It is recommended that a sentence be added to the context section of this chapter addressing the activities being completed through the *Clean Water Act, 2006* similar to the sentence included in the Water Quantity section. The following wording is recommended “*Source protection planning through MOE’s Clean Water Act, 2006 will continue to play an important role in managing drinking water quality in the Lake Simcoe watershed.*”

Policies (p.25)

The water quality section does not include linkages to source protection planning activities that will be occurring over the next few years. Beginning in 2010 interim risk management activities will be initiated to address significant drinking water threats and by 2012 source protection plans will be in place. There is concern that the review timeframe for the Lake Simcoe Protection Plan is too long to ensure the incorporation of these new activities and minimize potential over-lap in activities. It is recommended that wording be included in the document to identify that where there is a conflict between activities that the provision that provides the greatest protection to water quality prevails.

Policy 4.25 b) (p.30) regarding the Growth Plan for the Greater Golden Horseshoe could result in environmental degradation of Lake Simcoe. In fact, this policy statement may contradict subsection 25 of the *Lake Simcoe Protection Act* as it suggests that phosphorous targets would be set so as to accommodate implementation of the Growth Plan. It should be clarified that growth would only proceed if environmental targets for Lake Simcoe and its watershed are being achieved and maintained. This would be consistent with subsection 25 of the LSPA which states:

If there is a conflict between a provision of this Act and a provision of another Act with respect to a matter that affects or has the potential to affect the ecological health of the Lake Simcoe watershed, the provision that provides the greatest protection to the ecological health of the Lake Simcoe watershed prevails.

Chapter Five – Water Quantity

Context (p.33)

It is recommended that the context section of this chapter also reference the role of the Ministry of Natural Resources Low Water Response (OLWR) Program in water quantity management. The OLWR program establishes a response plan to minimize the effects of low water conditions on a watershed basis.

Policies (p.34)

It is recommended that the Permit to Take Water (PTTW) be included as a prescribed instrument in the Lake Simcoe Protection Plan. The PTTW program is the Ministry of the Environment’s primary water quantity management tool and therefore it seems an obvious instrument to facilitate the implementation of designated policies within the Lake Simcoe Protection Plan (e.g. 5.6 D.P.) and even better, the establishment of designated policies that can be enforced. Conservation Ontario shares the concern of the LSRCAs that without Designated Policies for Water Quantity, other than for recreation, water takings will be largely uncontrolled and the setting of targets cannot be enforced. Conservation Ontario is also aware through its participation on the Great Lakes Annex Advisory Panel that MOE is focused on using the *Ontario Water Resources Act* and the PTTW program as a key mechanism for implementing the Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement. Given the PTTW program proposed role in this other water quantity management activity, it also seems appropriate in the context of the Lake Simcoe Protection Plan.

Similar to the water quality section, the water quantity section does not include linkages to source protection planning activities that will be occurring over the next few years. Beginning in 2010 interim risk management activities will be initiated to address significant drinking water threats and by 2012 source protection plans will be in place. There is concern that the review timeframe for the Lake Simcoe Protection Plan is too long to ensure the incorporation of these new activities and minimize potential over-lap in activities. It is recommended that wording be included in the document identify that where there is a conflict between activities that the provision that provides the greatest protection to water quantity prevails.

5.1 (pg. 35) - Based on the comment above, it is recommended that policy 5.1 b) could be changed to a designated policy if PTTW were included as a prescribed instrument in the Lake Simcoe Plan. It is recommended that 5.1 b) could be elaborated on to allow for the Directors to include specific conditions within a PTTW related to instream flow targets.

5.2 (pg 35) – It is recommended that in order for Tier 2 water budgets to be completed Provincial funding and guidance would need to be provided in a timely manner. This would ensure achievement of the 2 year timeline identified in the Plan.

5.3 to 5.6 – Water Conservation and Efficiency (pg. 35-36) – Conservation Ontario is a member of the Great Lakes Annex Advisory Committee which is providing input to the Province on the development of an Ontario Water Conservation and Efficiency Strategy as part of the implementation requirements of the Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement. Conservation Ontario is concerned that no reference is made in the Lake Simcoe Protection Plan with regard to the Ministry of Environment’s development of this Strategy. Conservation Ontario is aware that the Province will be releasing a proposed Water Conservation and Efficiency strategy on the Environmental Bill of Rights Registry shortly and that the final product should be available within the next couple of years. Given this timeframe, it seems preemptive to include specific water conservation and efficiency plan requirements in the Lake Simcoe Plan without having the Provincial strategy in place. Key concerns include:

- The potential for duplication of effect especially given we are unsure of the minimum requirements of this new Provincial strategy.
- Uncertainty around the focus of the Provincial strategy – current discussions with the Annex Advisory Committee have suggested that water conservation and efficiency plans be required for all water users. It appears that the Lake Simcoe Plan currently focuses specifically on major recreational users.

5.3 – Additional clarification is needed on why the Lake Simcoe Protection Plan would only require a water conservation and efficiency plan for seven municipalities within the Lake Simcoe watershed. It appears that these municipalities were chosen because future growth may be limited by the availability of drinking water supplies. If the Lake Simcoe Protection Plan is focused on environmental protection than it seems appropriate that all municipalities should create a minimum water conservation and efficiency plan to ensure water supply is protected for all water uses, including ecosystems. Again linkages to the Ontario Water Conservation and Efficiency Strategy must be made given that one of the approved Great Lakes basin-water conservation goal’s is to “*protect and restore the hydrologic and ecosystem integrity of the Basin.*”

5.5 & 5.6 – Through the Annex Advisory Panel, stakeholder input has been that all sectors, including commercial, industrial and major recreational use, should be required to complete water conservation and efficiency plans. Discussions through the Panel have been that the PTTW Program could be used as an instrument for implementation. Again, a linkage to the Ontario

Water Conservation and Efficiency Strategy is required in the Lake Simcoe Plan to ensure consistency.

Chapter Six: Shorelines and Natural Heritage

Context (p.39)

There are significant aspects of the Plan, and specifically of the recommended policies in Chapter 6 that relate to wetlands. It is critical the definition of Wetlands under the LSPP is consistent with that provided in the *CA Act* [subsection 28(25)] and LSRCA's Ontario Regulation 179/06 – which regulates the alteration to wetlands in their watershed jurisdiction.

On page 41 of the LSPP, the *CA Act* permits are not limited by the glossary terms 'development' or 'site alterations'. This sentence could cause misrepresentation of the extent of the regulatory authority for the LSRCA. Unlike the definition for "development" used in the Plan, the *CA Act* regulatory authority does extend to works or activities under the *Drainage Act*. Specifically, "development" is defined under the *CA Act* as:

- (a) the construction, reconstruction, erection or placing of a building or structure of any kind,*
- (b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,*
- (c) site grading, or*
- (d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere*

There has been significant natural heritage work completed by the LSRCA including detailed Ecological Land Classification (ELC), natural heritage land use mapping, and the development of the Lake Simcoe Natural Heritage System (2007). This work provides for the first basin wide strategy to protect natural heritage features which is also built on the foundation of the Provincial Policy Statement (PPS) to ensure integration with provincial policy. Municipalities have supported this system both financially and in terms of supporting its content and significant consultation and support from many stakeholders has been achieved. Given the need for funding in many areas of the plan, Conservation Ontario strongly recommends that this work be used in the Lake Simcoe Protection Plan and that duplication of effort and expense not occur.

Policies (p.43)

As indicated previously [see comments under Legal Effect of the Plan and Transition (pp.8-9)] there are numerous designated policies in this section that are more permissive than what might be allowed under Section 28 of the *CA Act*. Currently, the designated policies reflect *Planning Act* requirements, which do not fully address the regulatory authority of Section 28 of the *CA Act* as explained above. Conservation Ontario strongly supports the intent of the Plan with regard to protection of natural heritage and this may best be achieved by ensuring that all Plan policies, and especially the designated policies, are not more permissive than Section 28 regulations under the *CA Act*. Again, this needs to be clarified as the Section 28 regulations are recommended as a "prescribed instrument" under the Plan and would be required to "conform" to the designated policies. 6.15 SA speaks to not "duplicating" existing regulations that apply to the shorelines such as the *CA Act*. Considering the concerns expressed above, perhaps this should indicate as well that the proposed shoreline regulations are not intended to "restrict" the intent of the Section 28 regulations.

Chapter Seven: Other Threats and Activities

Conservation Ontario supports the consideration of invasive species and climate change in the Lake Simcoe Protection Plan; these are issues shared across the Great Lakes basin. The climate change adaptation strategy (7.11 S.A.) is a very important exercise. The Ministry of Natural Resources has funded a climate change workshop (tentatively scheduled April 8 & 9, 2009) to examine the natural hazards issues for Great Lakes shoreline with regard to Section 28 regulations and the Provincial Policy Statement (PPS). This workshop should be of interest to Lake Simcoe as well.

Chapter Eight: Implementation

Subwatershed Evaluations

Conservation Ontario strongly supports the lead provided to LSRCA for subwatershed evaluations (8.3 S.A.) and that the results are linked to amendments to the Plan (8.4 S.A.) which is consistent with the principle (p.6) of taking an Adaptive Management Approach. Given the provincial status that this Plan is provided through the *Lake Simcoe Protection Act*, provincial guidelines as proposed in 8.1 S.A. are necessary and significant input should be expected from LSRCA and Conservation Ontario. With regard to 8.1 S.A. a) it is noted that extensive work has been undertaken over the past 25 years by LSRCA to define sub-lake and subwatersheds of the Lake Simcoe watershed and that these definitions should be utilized.

Stewardship, Education & Outreach

Conservation Ontario commends the province for acknowledging the importance of taking a watershed approach to stewardship planning, implementation and evaluation. Conservation Authorities across the province have had over 50 years of experience collaborating with landowners and communities to improve watershed health. Successful watershed stewardship initiatives result from effective and long term coordination with sufficient resources to support on site technical and financial assistance required by landowners and communities to undertake action to enhance and maintain watershed health.

Lake Simcoe Region Conservation Authority has almost 30 years of experience collaborating and delivering stewardship projects with landowners within the rural and agricultural as well as urban communities. LSRCA has completed over 950 projects with the LEAP Program being developed in partnership with local Ontario Federation of Agriculture chapters and continues to support on-farm projects linking projects to the support of the Environmental Farm Plan and associated cost-share program provided through Ontario Soil and Crop Improvement Association and in consultation with the Ministry of Agriculture, Food and Rural Affairs. While financial support to assist landowners in implementation of actions is important, the technical support provided by LSRCA to landowners is critical to ensuring quality projects leading to environmental benefits in the watershed. Financial support from the province for these services should be enhanced.

With its history and expertise in subwatershed planning, implementation and monitoring and reporting, LSRCA should be a key lead with the province in identifying and implementing as well as reporting on priority stewardship projects and initiatives in collaboration with the community. The important role and technical expertise of LSRCA in contributing to the success of the new Lake Simcoe Alliance will be critical. Further clarification of LSRCA role in this regard is supported as is further work to identify priority actions for urban and non-farm rural landowners, as well as agricultural producers. Similarly, existing initiatives should be enhanced, with reduction in duplication of existing and future efforts within the watershed.

Conservation Ontario welcomes the continued opportunity to monitor various delivery models that may be piloted within Lake Simcoe, for a structured educational and incentive-based stewardship program for rural and urban (non-farm) landowners in the watershed. It will be

important to transfer what is learned from these approaches to watershed stewardship initiatives across the province.

Among many of the examples of successful, existing initiatives include the establishment of the LSRCA Watershed Excellence Showcase, a series of demonstration sites to demonstrate Beneficial Management Practices for a wide range of Stewardship projects. This program could be expanded and enhanced through support from the province. In addition, the LSRCA should participate in the review of the agri-environmental stewardship programs and co-lead the promotion and evaluation of Best Management Practices supporting Agricultural stewardship activities.

Conservation Ontario also supports LSRCA role in leading the Best Management Practices Study to reduce phosphorus loading with provincial funding. The historical role of LSRCA in scientific monitoring and research in the watershed supports this. In addition Conservation Ontario supports ongoing work towards valuation of natural capital and research on Ecological Goods and Services within the Lake Simcoe Watershed.

Overall, there is no direct mention of formal education in the Plan, beyond stewardship outreach. The policies will be more effective if the people of the watershed are better educated with an understanding of the consequences of their past and current actions, and their required contributions and responsibilities to solve the problem for the future. The Plan should include a commitment to formal environmental education programming as part of Implementation and LSRCA's long-established environmental education program should be supported and built upon.

Research, Monitoring and Reporting

There is good discussion on this important area of implementation, however, little of it is translated into specific policies in the Plan. Commitments around design and implementation of a monitoring framework and a report from the Ministry of Environment on the extent to which the objectives of the Plan are being achieved (p.69) should be expressed as policies to ensure that progress is tracked.

Coordination, Public Engagement and Aboriginal Community Engagement

A comprehensive and strategic communications plan should be developed to address the information needs of all target audience groups, as well as the promotional needs of the partners; and further that this plan include specific deliverables and accountabilities by year so they can be monitored and adequately financed.

Financing Strategy

It is agreed that the weight of the plan should not rest as the financial responsibility for any one agency. Unfortunately, often budget decisions are made based upon a review of "legally, what am I required to do". It is noted that some of the policies are strategic actions and do not have legal effect however, to implement the Plan effectively funding is required for such things as:

- A Provincial/Municipal Stormwater Management Assistance Program for completion of urban stormwater retrofit projects (4.6 S.A.) and for maintenance of stormwater facilities (4.10 DP)
- Stormwater management master plans and projects (4.5 S.A.)
- Research and testing of new and innovative stormwater management measures (4.7 D.P.)
- Development of subwatershed plans (8.1 – 8.4 S.A.) including subwatershed phosphorous loading targets (4.25 S.A.), subwatershed in-stream flow targets (5.1 S.A.), and Tier 2 water budgets for all subwatersheds (5.2 S.A.)

- A Provincial incentive program to complete Municipal Water Conservation & Efficiency Plans (5.3 – 5.6; NOTE: following finalization of the Ontario Strategy; see our specific comments)
- Delineation of regulated areas under O.R. 179/06 in areas outside of the LSRCA’s jurisdiction (6.45 S.A.)
- A Provincial program to address invasive species (7.1 S.A.)
- A Provincial stewardship programs that supports technical services and related tools and communications materials in addition to the implementation of projects (Chapter 8: Implementation – Stewardship)
- A Provincial environmental education program, supporting curriculum and place-based programs (Chapter 8: Implementation – Public Engagement)
- A Communications Plan and associated efforts (Chapter 8: Implementation – Public Engagement)

The Plan indicates in this section that funding will be based on funding those priority actions that are most critical to achieving the targets and objectives set out in the Plan. In order to ensure that funding is used in accordance with this objective it is important to first prioritize the actions required. The priority actions then need to be assigned target time lines and funding requirements can then be defined by year of planned implementation.

Additionally, a process should be established for the various parties that are identified and/or expected to fund the implementation of the Plan to dialogue and negotiate a reasonable cost allocation plan.

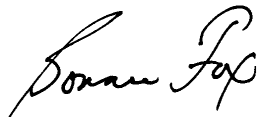
Plan Amendments

The Lake Simcoe Protection Plan calls for a Plan review to take place at least every ten years. Given the dynamic environment in which we live and the principle of an Adaptive Management Approach, it is recommended that the Plan be reviewed at least every five years.

On page 74, the distinction between Lieutenant Governor in Council approval and Minister of the Environment approval for amendments to designated policies needs to be clarified as both descriptions reference “new policies or other new content”. It is supported that all proposed amendments should be posted on the Environmental Bill of Rights.

Once again, thank you for the opportunity to provide comments on the proposed Lake Simcoe Protection Plan. If you have any questions regarding the above comments please contact myself at (905) 895-0716 ext. 223.

Sincerely,



Bonnie Fox
Policy and Planning Specialist

c.c. Environmental Commissioner of Ontario
All Conservation Authorities’ General Managers/CAOs