



April 1, 2010

Laura Blease
Senior Policy Advisor, Land and Water Policy Branch
Ministry of the Environment
135 St. Clair Avenue West
Toronto, ON M4V 1P5

RE: Lake Simcoe Shoreline Protection Discussion Paper (EBR #010-9107)

Dear Ms. Blease,

Thank you for the opportunity to provide comments regarding the Lake Simcoe Shoreline Protection Discussion Paper posted by the Ministry of the Environment (MOE) on the Environmental Registry (EBR #010-9107). The following comments are submitted for your consideration based upon a review of the discussion paper by staff from Conservation Ontario, Lake Simcoe Region Conservation Authority (LSRCA), Credit Valley Conservation and Kawartha Conservation. Conservation Ontario's comments are not intended to limit your review and consideration of the specific comments provided by LSRCA.

Concerns Regarding Apparent Duplication

The Province is cautioned against creating confusion around the regulated responsibilities assigned under the *Conservation Authorities Act* Section 28 regulations and those that may be imposed under a new Lake Simcoe shoreline protection regulation, and is strongly encouraged to ensure that no duplication results. The discussion paper indicates that duplication will be avoided, existing regulatory frameworks will be built upon and gaps will be filled (p.7), but the lack of clarity found within the paper puts these points into question. For example, according to the discussion paper (p.8), the regulation will apply to all areas regulated under Section 28 of the *Conservation Authorities Act* (CAA) as well as "all areas within a stream" and "all areas within a wetland", however, all areas within streams and wetlands are regulated under the CAA. The comments that follow are based on the premise that duplication will indeed be avoided, for example, the Province will be seeking the prohibition of activities that may be permissible under the CAA.

As indicated above, it is unclear in the discussion paper as to what the gaps are in the CAA that the new regulation is seeking to fill. Granted, the CAA regulations are "permissive", i.e. the legislation is drafted that development/alteration/interference is prohibited in regulated areas but permission may be granted by a Conservation Authority as long as certain factors are not affected (e.g. flooding). Presumably, the gap being addressed is to remove the permissiveness in the Lake Simcoe watershed and to identify strict prohibitions (e.g. interference with wetlands) in the Lake Simcoe shoreline protection regulation.

For example, interference with wetlands is an activity that is already regulated by Conservation Authorities, so unless the new regulation would seek to prohibit all interference, duplication may be created between the new regulation and LSRCA's Section 28 regulation (O.Reg 179/06). The discussion paper is unclear as to the extent and intent of regulating interference with wetlands. The interpretation of interference that is used by Conservation Authorities is as follows:

"any anthropogenic act or instance which hinders, disrupts, degrades or impedes in any way the natural features or hydrologic and ecologic functions of a wetland or watercourse." (DRAFT, MNR/CO Section 28 Regulations Committee, March 2008).

Should MOE proceed with regulating interference, it is recommended that the gap being addressed is clearly identified. Given that “interference” is not defined in the CAA or regulations, or in any approved provincial guidelines, this gap analysis should engage all Conservation Authorities. Additionally, it is noted that regulating vegetation removal in wetlands (p. 7) may present some level of duplication given that a number of Conservation Authorities have obtained convictions for vegetation removal as interference with a wetland under Section 28 of the CAA.

Applicability of a Regulatory Approach

While the need for further protections along the shorelines of Lake Simcoe and its tributaries and the need to focus on promotion of an ecologically healthy shoreline are admirable objectives, it is questionable whether a regulatory approach is the best tool. In fact, the recent rhetoric and profiling of issues concerning CA mandates and roles in planning and regulations by stakeholder groups, for cases that relate to potential public safety and property damage from flooding hazards calls into question how vegetation removal, buffer creation and fertilizer applications by individual landowners and developers would be perceived.

The appropriateness and feasibility of implementation and enforcement of several specific activities such as the removal/pruning and establishment of vegetation and application of fertilizer needs to be carefully considered. It is suggested that the promotion of sound stewardship practices by property owners through education and grant incentive programs would generate more effective results in gaining an ecologically healthy shoreline, than through regulatory impositions. It is noted that municipal bylaws (e.g. tree cutting by-laws) do provide possible existing mechanisms.

It is strongly recommended that if a provincial regulation is made then all major contributors to the degradation of Lake Simcoe must be subject to it if desired outcomes are to be achieved.

CA Section 28 Permits As Prescribed Instruments

It is understood that O.Reg 179/06 would be a prescribed instrument of a new shoreline protection regulation. The discussion paper does not provide details on how the permits issued by LSRCA under O.Reg 179/06 would be used to administer the new shoreline protection regulation. It is acknowledged that CA Section 28 regulations are permissive regulations; if the Province intends for the new shoreline protection regulation under the *Lake Simcoe Protection Act* to be more prohibitive, then the Province will have to carefully coordinate the regulation with permits issued under O.Reg 179/06.

In order to monitor and report on compliance with the Lake Simcoe Shoreline Protection regulation, separate from that of other regulatory tools such as LSRCA's Section 28 regulation, it will require a mechanism through which its performance can be monitored and reported upon. Performance monitoring dictates the need for a paper trail. If the regulation will not be implemented through a dedicated instrument (i.e. if separate permits will not be issued from those issued under O.Reg 179/06), it is strongly recommended that a great deal of consideration be given to how permits issued through prescribed instruments will track the information necessary to audit compliance with the Lake Simcoe shoreline protection regulation.

Resources Required for Implementation

If LSRCA will be issuing authorizations under a Lake Simcoe shoreline protection regulation on behalf of the Province, appropriate funding and other resourcing will be required. In addition, a continuum of other tools (education, outreach, mapping, etc.) will be necessary to support administration of the regulation. The Province must be prepared to provide these tools and all necessary resources to agencies that will be delegated responsibilities under the regulation.

Additional Specific Comments Regarding the Discussion Paper

- P.7, re. “*I. Shoreline Areas: a) Removal and establishment of vegetation*”: The types and quantities of vegetation to be regulated needs to be clarified under shoreline areas, e.g. planting a tree or some shrubs may be unreasonable to regulate and impractical to enforce.

- P.10, re. “*Shoreline erosion control...must establish a vegetated riparian area to the extent feasible (policy 6.9)*”: Ambiguity should be reduced as much as possible from the provisions of the regulation in order to facilitate implementation; phrases such as “to the extent possible” should be replaced by clear direction.
- P.13, top box, re. “*Generally prohibit removal of natural vegetation in existing naturally vegetated areas within shoreline buffer areas and shoreline natural areas*”, last bullet, re. “*no net loss of naturally vegetated areas*”: The approach for a “*no net loss of naturally vegetated areas*” requires a great deal of further consideration and clarification. The type and location of compensated vegetation must be outlined. For example, it is unclear whether the vegetation must be compensated by stem count, quality for quality, whether habitat considerations must be made, or whether the compensated area must be located within the same zone (e.g. the littoral zone, within the same wetland area, etc.). It is recommended that this approach be supported by a qualified professional, who must be involved in the development of compensation plans required for a no net loss approach.
- P.15, re. fertilizer use: It is suggested that fertilizer use would be prohibited within 5m of a shoreline. From 5-30m, phosphorus-free fertilizer would only be permitted. While these are positive measures, its enforceability may prove difficult to administer and presumably this would be done through prescribed municipal by-laws. The 5m distance prescribed should be substantiated in science and, other prescriptions around fertilizer application should be included (e.g. practices such as not applying fertilizer directly before or after a major storm event).
- P.15 re. septic systems: It is noted that CA regulated areas do not always encompass 100 m from all shorelines. Making the 100m setback for septic systems applicable law for the issuance of a building permit in the Lake Simcoe watershed makes sense. However, it is unclear who and what will be used to confirm that this Lake Simcoe Shoreline Protection regulatory requirement is met. Most importantly, direction will need to be given for handling those instances where 100 m is not available for a septic setback. Establishment of mandatory on-site sewage system re-inspections under the Building Code is also supported because septic systems can be a source of water pollution regardless of the setback distance if it is in a state of disrepair.
- P.18, re. stop-work orders: Conservation Ontario has requested that the Ministry of Natural Resources amend the CAA to include the ability to issue stop-work orders in all regulated areas and supports that such a tool is extremely beneficial in a regulatory framework.

Once again, thank you for the opportunity to provide comments on the review of the Lake Simcoe Shoreline Protection Discussion Paper (EBR #010-9107). If you have any questions regarding the above comments please contact myself at (905) 895-0716 ext. 231 or Natasha Leahy at ext. 228.

Sincerely,



Don Pearson
General Manager

c.c. CA GMs/CAOs
CO/MNR Section 28 Regulations Committee