

Campaign Lake Simcoe

Draft Recommendations on the Draft Lake Simcoe Protection Plan

February 3, 2009

Executive Summary

Public consultations concerning the Lake Simcoe Protection Plan, 2009 have begun. We have less than 50 days to change the Plan to ensure the words of Premier Dalton McGuinty, describing a world where natural shorelines are maintained and development is ecologically sound, and where meeting future generations' needs is the imperative of policy makers.

The Plan is very good with respect to targets for natural cover restoration and protection, and excellent at limiting phosphorus and managing the Lake as a watershed instead of planning unit. The adaptive management approach and the precautionary principle, which both guide the implementation of the Plan, should ensure that corrections can be made if our targets fall short of restoring the ecological health of the watershed. Yet there remain significant deficiencies that must be addressed.

Of greatest concern to those around the Lake is the potential for developers to ignore the environmental protection provisions of the Lake Simcoe Protection Act and Plan.

Campaign Lake Simcoe's recommendation regarding exemptions for development projects¹ was explicit:

Large scale developments and marina resorts such as Big Bay Point must be consistent with the Act, and we must not allow grandfathering of projects lacking final permits or regulatory approvals. Existing marinas must be better regulated and restrictions placed on the development of new marinas and boat launches. New significant shoreline alterations must be prohibited.

Virtually every public interest deputation before the Act's Legislative Committee was consistent on these points: Make the Act and Plan effective to December 6, 2007 (the date the interim phosphorus regulation 60/08 was introduced); The Act should apply to cottagers and developers equally – no special favours for developers!

There now rests a huge onus on stakeholders around the Lake and staff at the Ministry of the Environment to safeguard an important principal in our democracy: we do not exempt anyone from complying with environmental law, no matter what Planning Act approvals are in place, or who you know.

¹ Campaign Lake Simcoe. 2008. *What it Takes to Save Lake Simcoe: A Citizen Response to "Protecting Lake Simcoe: Creating Ontario's Strategy for Action" Discussion Paper.*

Our other primary concerns include:

1. “Settlement areas” will be expanded or created

If settlement areas developed through “Places to Grow”, expected to be in Simcoe County’s municipal Official Plans by March 2009, are included in the definition of *existing settlement areas*, as we expect they will be, then the impervious (paved) surface area will undoubtedly increase markedly on the west side of the lake. We do not believe the lake can withstand impervious surfaces that cover more than 15% of the watershed, a level the watershed has already reached.

2. “Resorts” and “Marinas” fly under the radar

Settlements disguised as “resort developments” are slipping through loopholes in the Provincial Policy Statement and *Places to Grow*. This “yacht sized loophole” has not been closed by the Lake Simcoe Protection Plan. The risk is that resorts can adhere to a murky set of rules because the term “resort” is not closely defined. Large scale development in shoreline and near-shore areas is simply bad for this stressed lake. A Plan to protect a lake that mentions “marinas” once in passing and can’t even estimate the number of boats on the congested lake is clearly deficient. Cottage country all over Ontario should take note; these omissions threaten quiet waterways, wildlife, ways of life, and traditions, everywhere.

3. “Enforcement” is conspicuously absent

A critical failing in the management of the Lake Simcoe Watershed is that existing environmental regulations are not consistently enforced. The word “enforcement” does not even appear in the Plan despite being a major focus of concern for public interest groups commenting on the Plan. For example, to reach the 40% “high quality natural cover” target, tree-cutting bylaws must be mandatory, and enforced.

4. Lack of plan for reaching natural cover target

There is little in the Act or Plan that explicitly outlines protection strategy for reaching the 40% natural cover target for the watershed. 40% natural cover needs to be achieved in each subwatershed, and to get there, protecting woodlands and wetlands needs to be mandatory.

5. The dissolved oxygen level target needs to be timed properly

The new dissolved oxygen level target (7 mg/L) per year is a big improvement; it requires a massive reduction in phosphorus loads to reach this goal. But a key condition is missing: the new dissolved oxygen target needs to be reached by September 15th every year in order for this level of oxygen to help the cold water fish during the winter.

Draft Recommendations on the Draft Lake Simcoe Protection Plan:

To assist the public prepare for these consultations, Campaign Lake Simcoe is pleased to present its preliminary list of recommendations for improving the Lake Simcoe Protection Plan, 2009. We wish to thank Jon Johnson in particular for his contribution so far.

In the coming weeks, we will forward a DRAFT Campaign Lake Simcoe Submission to the Government of Ontario, under the Environmental Bill of Rights, highlighting needed improvements to the Plan. We will be seeking your comments and endorsement of these recommendations.

Chapter 1: Introduction

Legal Effect of the Plan

- Campaign Lake Simcoe and numerous deputants to the province insisted either that the Act and Plan come into effect on December 6, 2007, the date that the interim regulation on phosphorus loads from Sewage Treatment Plants came into effect, or that all projects lacking final approvals must be subject to the Act and Plan.
- While municipal Official Plans are brought into conformity, municipalities must make every effort to apply environmental policies conforming with the Plan to approvals and permits under their jurisdiction.
- The Lake Simcoe Coordinating Committee should oversee the speed of municipal adoption of prescribed instruments, and if it determines that a time lag is causing undue harm or a rush on development applications for example, they should recommend a more aggressive timeline.

Transition (aka “Grandfathering”)

- All outstanding permits required by any development must comply with the Act and Plan.
- Any developments with planning approvals and outstanding environmental approvals, must obtain environmental approvals that comply with the Act and Plan.

Chapter 3: Aquatic Life

- The dissolved oxygen level target (7 mg/L) must be reached by September 15th each year, before the winter lake turnover.
- In the short term, more money should be directed at addressing problem we know exist in the short term, such as controlling the spread of invasive species, restoration of shorelines, protection of natural cover, stormwater management, and addressing knowledge gaps, with less money being directed at long term research projects.

Chapter 4: Water Quality

- Phosphorus loading targets must be developed for three lake basins and the subwatersheds.
- The phosphorus reduction strategy should say explicitly that no one sector's contribution may be allowed to increase beyond their current yearly load.
- The total (aggregate) load from sewage treatment plants must not exceed the current load.
- Policy # 4.25 c. should also include an assessment of household sources of phosphorus.

Sewage Treatment

- Set impervious (paved) surface limits of 10% - 15% in each subwatershed (Science Advisory Committee (SciAc) recommendation #13)². Policy # 4.4 provides a loophole for paving more of the watershed if more sewage does not also mean more phosphorus from Sewage Treatment Plants.

Stormwater Management

- Funding the creation of new stormwater management facilities and retrofits must be prioritized, and not rely on a 1/3 contribution of cash-strapped municipalities to trigger federal or provincial funding.
- Improvement in development standards to incorporate alternative community design and stormwater management techniques should be mandated across the watershed. (Policy # 4.7 c.)

Subsurface sewage treatment

- When septic systems are replaced, they should be moved away from the shoreline, and may increase in size to accommodate all existing water uses in the dwelling, regardless of the size of the previous septic system. (Policy #4.16 b.)
- Improvements in development standards to incorporate alternative sewage treatment technologies should be coordinated across the watershed, be as innovative as possible, include greywater technology, and be on an accelerated timeline. (Policy # 4.15)
- Enforcement and penalties must accompany the further development of Policy # 4.14 (mandatory septic system inspections).
- If homeowners have not replaced a failing septic system within a year of receiving inspection results, we suggest occupancy is prohibited and fines are set at \$15,000 for noncompliance.
- The Lake Simcoe Coordinating Committee must establish enforcement guidelines for the implementation of Policy # 4.14, septic inspections.

² Lake Simcoe Science Advisory Committee. July, 2008. *Lake Simcoe and its Watershed: Report to the Minister of the Environment.*

Atmospheric Sources of Phosphorus Pollution

Construction Activity

- Remediation activities and standards to reduce dust need to be implemented immediately. (Policy # 4.21)
- The Ministry of the Environment in consultation with stakeholders should quickly develop a model by-law for municipalities to adopt for site plan agreements and conditions of subdivision approvals. Suggestions for enforcement should accompany this policy. (Policy # 4.21)

Mineral Aggregate Resources

- Require a new approach with Ontario's aggregate industry, following the Environment Commissioner of Ontario's recommendations and proposed Green Gravel Standard.
- No new mineral aggregate operations in Natural Heritage Features. (Policy # 6.37 – 6.38)
- No new mineral aggregate operations permitted until the study to identify atmospheric sources of phosphorus is complete. (Policy # 4.17)
- Enforce “zero tolerance” for the removal of any wetlands.

Chapter 5: Water Quantity

- When creating water budgets, certain uses, such as sod farming or water intensive agricultural practices, should be required to modify their practices to reduce water consumption. (Policy # 5.1)
- Existing recreational facilities such as golf clubs should be required to implement water saving technologies. (Policy # 5.6 and 7.15)

Chapter 6: Shorelines and Natural Heritage

- Exposing cottagers and residents to restrictions while massive exceptions are made for developers is not fair. Apply policies even-handedly.
- Establish interim regulations to prevent major losses of forested areas and shoreline vegetation while mapping is completed.
- Assessments of development applications in nearshore areas, within 250 meters of the lake, must be undertaken with an eye to maintaining continuous natural heritage corridors.
- “Public agencies are encouraged to actively re-naturalize public areas adjacent to shorelines and streams to a minimum of 30 metres where practical and feasible.” (Policy # 6.13) This policy has changed for the worse with “where practical and feasible”. This needs to be stronger. Public areas must be re-naturalized along shorelines. Our public places need to be exemplary.
- A regulation restricting fertilizer use for non agricultural lands should be implemented immediately. (Policy # 6.17)

- Ephemeral watercourses should be protected with the minimum 30 meter vegetation protection zone.
- It is unclear if “settlement areas” are permitted to expand into “natural shoreline areas”. They must not be permitted to do so.
- We are highly supportive of the proposed shoreline policies and landowners being encouraged to re-naturalize their shorelines, with the addition of the above suggestions.
- To accommodate renovations where a significantly larger dwelling is proposed, a minimum pervious surface target of 40%, including 40% natural cover, not just necessarily woodlands and wetlands, should be set for each property.
- The province must develop uniform regulations to limit the height, width, length, square footage and placement of new boathouses so as to minimize the amount of natural shoreline displaced and destroyed by the boathouse. After the boathouse is built the areas surrounding the boathouse must be re-naturalized. (Policy # 6.8)

Key Natural Heritage and Key Hydrologic Features

- Wetlands must be protected, no matter where they are found. (Policy # 6.17 d.)
- The Lake Simcoe Science Committee must keep a careful eye on the Natural Heritage evaluations required to build beyond the minimum vegetation protection zone to see if the standards are applied fairly, or if rules need to be strengthened to achieve the objective of the natural heritage policies. (Policy # 6.22 – 6.23)
- Recommendations pertaining to the proximity of forest patches and forest type representation should also be followed. Additional criteria and thresholds in *Suggested Conservation Guidelines for the Identification of Significant Woodlands in Southern Ontario*³ pertaining to minimum patch size should be adopted.
- “Within two years of the date the Plan comes into effect, the MNR in collaboration with First Nations and Métis communities, will identify and map areas of *high quality* natural cover that are 25 hectares or greater” (Policy # 6.43) should include the direction, **for the purposes of permanent protection.**
- A 30 meter vegetation protection zone is placed around key Natural Heritage Features. A minimum 300m buffer around natural areas to is necessary to “minimize edge effects on sensitive interior forest species.” (SciAc Recommendation # 35) (Policy # 6. 21)
- While the identification of priority areas is delineated for restoration and protection (Policy # 6.42), an interim regulation needs to protect natural cover and linkages and shoreline vegetation.

³ Ontario Nature. 2004. *Suggested Conservation Guidelines for the Identification of Significant Woodlands in Southern Ontario.*

- A minimum 40% high quality natural cover target (on page 42) must be reached in each subwatershed.
- Significant habitat of species of special concern needs to be included in the definition of key natural heritage features. (Policy # 6.18)

Settlement Areas

- It is imperative that settlement area expansions follow the provincial government’s Places to Grow density targets, minimize sprawl, and increase the use of pervious materials in construction.
- Limits should be placed on the creation of new impervious surfaces outside existing or planned urban settlement and growth areas.
- Development must not exceed the 15% threshold for impervious surfaces.
- Wetlands should be protected in settlement areas (Policy # 6.29 & 6.5)

Existing Uses

- Policy # 6.40 change to “all *existing uses* lawfully used for such purposes on the day before the Lake Simcoe Protection **Act** comes into force are permitted,” so that there is not a rush on getting “lawful” status just before the Plan comes into effect.
- Re. site alteration or development in relations to existing uses, there is too much ambiguity around the exception “unless there is no alternative”. This exception should be eliminated. (Policy 6.40 c.)

Tree Cutting Bylaws

- The tree cutting bylaw template ultimately developed should be set out in a regulation that requires municipalities to apply it. (Policy # 6.41)

Chapter 7: Other Threats

Invasive Species

- The mobile boat wash should be part of immediate education programs, as Campaign Lake Simcoe suggested in Stakeholders Advisory Committee. (Policy 7.8)
- The eradication of invasive species should not rely on voluntary stewardship and education. The Ministry of Natural resources (MNR) needs to tie invasive species control to summer work programs, college internship opportunities, and similarly accountable audiences.

Climate Change

- In order to ensure an adequate buffer for the impacts of climate change, all of the recommendations of the Lake Simcoe Science Advisory Committee should be followed, in particular those that relate to the protection of forests and wetlands.

Recreational Activities

- The carrying capacity study could be done by the Lake Simcoe Region Conservation Authority, (LSRCA) but the interpretation of results, and recommending direction should be done in collaboration with the Stewardship and Coordination Committees and in consultation with other watershed leaders outside Lake Simcoe.
- Instead of encouraging best practices for recreational facilities in Policy # 7.15, this policy should aim at developing a regulation within two years that deals comprehensively with the operation of recreational facilities in the Lake Simcoe watershed, including marinas, and deals with enforcement of this regulation.

Subwatershed Evaluations

- We recommend that the indicators which the LSRCA is now tracking on a subwatershed basis continue to be tracked on a subwatershed basis. They should include at least the following: Forest cover, Forest interior, Streamside vegetation, Phosphorus concentration, Hardened surfaces, Stormwater. (Policy # 8.1)

Stewardship Education and Outreach

- Increased focus on householder education needs to be a part of the stewardship and outreach program.

Agriculture

- Establish interim plans for reducing air borne phosphorus pollution originating from agricultural sources while further studies on air borne phosphorus pollution are completed. The use of shelter belts, cover crops, and other wind erosion practices can be used more widely now.
- Target highly polluting activities such as sod farming immediately.

Financing Strategy

- The Province should take the lead on coordinating funding because many of the cost-recovery and user-pays plans would be better implemented at the municipal level at one time if possible.
- All tools that rely on increased development to generate revenue for water quality or habitat improvement/ securement should be addressed with great caution and should be subject to ecosystem carrying capacity constraints.