



Environmental Services

August 16, 2008

Mr. Stephen Maude  
Senior Policy Advisor  
Ministry of the Environment  
Integrated Environmental Planning Division  
Land and Water Policy Branch  
135 St. Clair Avenue West, Floor 6  
Toronto ON, M4V 1P5

Dear Mr. Maude:

Subject: Bill 99 - *The Proposed Lake Simcoe Protection Act, 2008*.  
EBR Registry number 010-3753  
Comment deadline August 16, 2008

Thank you for the opportunity to comment on Bill 99 - *The Proposed Lake Simcoe Protection Act, 2008*, under EBR posting number 010-3753.

**York Region Context:**

York Region is one of Canada's fastest growing municipalities with a current population of approximately 984,000. The provincial population forecast contained in the Growth Plan for the Greater Golden Horseshoe (A Plan under the *Places to Grow Act, 2005*) identifies York Region as having a population of 1.5 million persons by the year 2031. At least part of this population will be located in the Lake Simcoe Basin in existing urban areas, Towns and Villages and White-belt lands in Georgina, King, Whitchurch-Stouffville and East Gwillimbury.

Approximately 69% of York Region is also within the Provincial Greenbelt (GB) and the Oak Ridges Moraine Conservation Plan (ORMCP). These areas are therefore effectively excluded from accommodating additional growth.

Lake Simcoe has been the subject of concern and remedial efforts since the 1970's. Through the Lake Simcoe Environmental Management Strategy (LSEMS) partnership and the Region's support of the Lake Simcoe Region Conservation Authority, York Region has been a leader in efforts to improve water quality in the Lake. Regional staff have participated on the LSEMS Steering and Technical Committees and more recently on the Lake Simcoe Working Group to advise on the future of the Lake Simcoe initiatives.

In addition, York Region currently owns and operates 5 of the 15 sewage treatment facilities in the Lake Simcoe Basin listed in Ontario Regulation 60/08. York Region is committed to the use of enhanced technologies and practices in sewage treatment technology that serve to protect the

environment, as can be seen in the current Environmental Assessments for both the Keswick and Sutton Water Pollution Control Plant expansions.

### **Involvement in the Current Provincial Initiative on Lake Simcoe**

We have previously commented on the Interim Regulation (Ontario Regulation 60/08): EBR Registry Number **010-2246**; and the Policy Proposal Discussion Paper - Protecting Lake Simcoe: Creating Ontario's Strategy for Action- EBR Registry Number **010-2974**.

We recognize that Bill 99 is enabling legislation for the more detailed Lake Simcoe Protection Plan. Meaningful consideration of the two can really only be made when both are available, and it is our understanding that the government plans to release a draft of the Lake Simcoe Protection Plan before final passage of Bill 99. However there are sections of the proposed Bill that raise issues for the Region and its area municipalities at this time. We therefore reserve the right to comment on subsequent versions of Bill 99 - *the Proposed Lake Simcoe Protection Act, 2008* when the draft Lake Simcoe Protection Plan is available for review.

The Region's comments on Bill 99 are divided into two main areas, General Observations, and Specific Comments and recommendations for changes to wording or direction.

### **General Observations**

#### **Need to Clarify Roles and Responsibilities specifically in the Act**

The Region recognizes that there is a need to better integrate objectives to improve the Lake with land use and infrastructure planning and development, but these efforts must avoid duplicative administration and implementation.

As currently proposed we are of the opinion that Bill 99 and the envisioned Plan will duplicate the roles and responsibility of the LSRCA and the Georgian Bay Lake Simcoe Source Protection Committee to a very large extent. If this is in fact the intent of the drafters, then this is unnecessary.

The LSRCA has effectively served as the lead agency for Lake Simcoe based programs for the past 17 years through the LSEMS work and other Authority activities. The Region of York supports the Conservation Authority as the most appropriate agency to lead implementation, research, stewardship, education and community involvement in this revitalised effort to improve Lake quality. The Region requests that the Act and subsequent Plan and regulations clarify that it is the LSRCA that leads this effort. Such clarification would require changes to Section 3 and subsequent sections of Bill 99 which currently identify the Lieutenant Governor in Council as the authority responsible for establishing the Lake Simcoe Protection Plan with changes that would permit the Plan to be developed by the LSRCA in consultation with others

Further, sections of the Act identify significant responsibilities and requirements for both monitoring and for enforcement. However, there is no indication whether this is intended to be a Provincial, a LSRCA or a Regional/municipal responsibility. If the intention is that these

responsibilities be downloaded to the Conservation Authority or municipal governments (both Regional and lower tier), then there are likely to be financial and resourcing issues that must be addressed through the Plan's financial arrangements.

Finally, portions of the Lake Simcoe Protection Act appear to duplicate deliverables required for the Technical Assessment Report under the Clean Water Act, currently undertaken by the South Georgian Bay Lake Simcoe Source Protection Committee. In particular, requirements in the Act related to water quantity and budget, groundwater recharge/discharge areas, and threats assessment seem to overlap with significant work already completed or underway by the Source Protection Committee. The Region stresses that it is important to leverage areas where significant progress has already been made in an effort to avoid costly duplication of resources and effort.

#### **Process and Timing of the preparation and approval of the Act and Plan:**

For initiatives to be effective and accepted there must be comprehensive consultation and rational discussion prior to approval. The Region is concerned that the timelines apparently established by the Province for this initiative do not allow the opportunity for meaningful discussion with stakeholders and may result in plans and targets that are difficult, if not impossible, to implement. We recognize that until there is an opportunity to review the proposed Lake Simcoe Protection Plan, the implications cannot be adequately assessed, but the apparent timelines being followed (second reading of the Bill and draft of the Protection Plan by October, and finalization of both by year-end) poses some difficulty for all stakeholders.

If the Province is interested in meaningful discussion and an implementable Plan, we recommend that further consultation on the Bill and Plan takes place throughout the fall of 2008 and the winter of 2009 with approval of the Plan in the spring of 2009 at the earliest.

#### **Comments on Specific Sections**

##### **Section 6:**

##### **Need to define range and scope of “designated policies” and change “have regard to” to “shall be consistent with”**

Under proposed Section 6, decisions under the *Planning Act* and the *Condominium Act* must conform to “designated policies” and “have regard to” other policies set out in the Plan. Further, this section:

- Prohibits municipal public works and improvements that conflict with “designated policies”
- Requires comments, submissions or advice provided by a public body in relation to specified decisions or matters conform to “designated policies” in the Plan and “have regard” to others
- Requires that ongoing “prescribed instruments” such as an approval for sewage works issued under the Ontario Water Resources Act (in place or applied for before the Plan took effect), conform to the “designated policy”.

There is no indication in the Bill at present what the range and scope of “designated policies” might be. This should be further articulated in the Bill. Further, Section 6 introduces the “have regard to” standard for compliance with other policies in the Plan. The use of the “have regard to” standard proved problematic in matters of compliance in the *Planning Act* and was removed through Bill 51 in favour of the “shall be consistent with (policy statements)” standard. We recommend that the Province consider this same change to Bill 99.

**Lake Simcoe Plan (and the Act) should recognize growth already approved and future growth required by the Places to Grow Plan**

Section 6 also establishes that in the case of a conflict over the provisions of the Greenbelt Plan, Oak Ridges Moraine Conservation Plan and Growth Plan for the Greater Golden Horseshoe 2006, the provision that provides the greatest protection to the ecological health of the watershed prevails.

In previous comments on the Discussion paper, we recommended that the Lake Simcoe Plan (and the Act) should recognize the Places to Grow Plan and acknowledge both the requirements of Places to Grow and the need to provide adequate waste water servicing for the approved population and employment forecasts in the Lake Simcoe Basin.

We reiterate that the Lake Simcoe Protection Act and Plan must acknowledge already approved and future growth in the watershed, consistent with existing Official Plans and the Places to Grow Plan. All municipalities in York Region are bound by the requirements of Places to Grow Plan, including the population and employment forecasts. Growth management studies, leading to official plans and amendments at the upper and local level (in accordance with the Provincial forecasts and Plans) are well advanced in order to accommodate the forecasted growth. In York Region, some of this population and employment growth will occur in the Lake Simcoe watershed in the white-belt in East Gwillimbury and in existing approved settlement areas in Georgina, East Gwillimbury, King, Newmarket, Aurora and Whitchurch-Stouffville.

Adequate wastewater treatment for the development of complete communities in northern York Region (Oak Ridges, East Gwillimbury, Newmarket, Aurora, and potentially Whitchurch-Stouffville) will require the development of the Upper York Servicing System. The Individual Environmental Assessment (IEA) for this servicing scheme is already underway and the Lake Simcoe Protection Act and Plan should acknowledge this work so that the Lake Simcoe Protection Plan is not used as a means of frustrating the intent of the IEA or the Growth Plan.

Potential directions of the Lake Simcoe Protection Plan have already impacted York Region. In Georgina, for example, the Phosphorus limit for the Sutton and Keswick Water Pollution Control Plants (WPCP)'s in the Interim Regulation (O.Reg. 60/08), while sufficient to accommodate growth to the to the end of March 2009, are not sufficient to allow the build-out of these communities as set out in existing approved Secondary Plans and as required under Places to Grow (i.e. complete/balanced communities).

In addition, recent discussions with the MOE, on the Sutton WPCP Environmental Assessment, indicate that the interim limits themselves may ultimately be lowered for the long term in

accordance with the Lake Simcoe Protection Plan. To lower the limits permanently would have very serious social, financial, and environmental consequences to the Region and our residents by:

- preventing the connection of approximately 300 existing homes in Sutton on private septic systems to municipal services
- not acknowledging the significant financial resources already invested in plant expansions and associated infrastructure
- affecting the Region's and area municipalities' ability to comply with provisions in the Places to Grow Act and Plan

In this regard, the importance of the final decision of WPCP phosphorus loadings cannot be understated, and the Province (MOE, MMAH and MPIR) must enter immediately into meaningful dialogue with the Region and affected area municipalities to ensure the final WPCP phosphorus effluent targets are appropriate.

#### **Section 7 -**

##### **Timing of Official Plan Conformity**

Section 7 anticipates that that official plan conformity would be achieved no later than the first 5-year Official Plan review following proclamation. While this provision is similar to the Greenbelt conformity methodology, it fails to recognize the number and extent of growth management exercises and new official plans currently underway to meet the Growth Plan provisions.

York Region and its area municipalities are well advanced in terms of this work, but this clause, when coupled with Section 6, requiring compliance with "designated policies", may require municipal work to be held in abeyance until completion of a Lake Simcoe Protection Plan conformity exercise or changed substantially once a compliance exercise is finished. These actions could have significant financial and timing implications to Regional and local municipalities in terms of Growth Plan requirements.

This issue, as well as applicability of the new Act and Plan to ongoing Planning and Condominium applications could be addressed by adequate transition provisions in the Act, not just through Regulation as is currently contemplated. We recommend the Province recognize the Growth Plan and ongoing growth management work and include comprehensive transition provisions in the Act to acknowledge growth management exercises currently underway.

##### **Official Plan may not be more restrictive than "specified" matters in the Lake Simcoe Plan:**

Section 7 (2) prohibits official plans from being more restrictive than "specified" matters in the Lake Simcoe Plan. Without the ability to review the "specified" portions of the Lake Simcoe Plan, it is difficult to understand why this clause would be included, particularly when the identified objectives of the entire exercise is improvement in Lake Simcoe watershed. We recommend that unless the Province is willing to give specific examples of how this clause would work, that it be deleted from this version of Bill 99.

## **Sections 9 and 10**

### **Minister of the Environment can require amendments to existing prescribed instruments, including sewage works under the Ontario Water Resources Act.**

York Region currently owns and operates 5 of the 15 sewage treatment facilities in the Lake Simcoe Basin recognized in Ontario Regulation 60/08. The total phosphorus loading from all facilities in the Lake Simcoe Basin was approximately 5.93 tonnes in 2006. Of this loading, York Region's contribution amounted to approximately 0.66 tonnes or 11% of the total contribution from sewage treatment facilities.

In so far as York Region is concerned, we are working diligently to provide the highest practicable level of sewage treatment in our plants discharging into the Lake Simcoe basin, and will support Ministry efforts to establish a high standard of treatment for all facilities within the Lake Simcoe basin.

However, the Region is approaching a level of diminishing returns on investment in the area of sewage treatment and further Ministry requirements placed on our existing approvals may be impractical and difficult to achieve, if not impossible. We hope that prior to the application of this clause, significant dialogue would take place with the bodies responsible for the approvals.

We feel very strongly that the Act and/or Plan must recognize achievable targets and require a broader variety of solutions rather than just controlling phosphorus inputs from wastewater treatment facilities, which account for a low percentage of the total phosphorus input to the Lake. High impact, lower cost solutions could include managing and or treating the Polder Wetlands discharge, investing in agricultural and rural land improvements and dealing with atmospheric deposition, where possible, with the use of phosphorous locking agents (such as the one undergoing testing by LSRCA in the Newmarket area), assisting municipal urban storm water retrofits in all jurisdictions and proceeding with water quality trading programs. In this last regard we note Section 30 of the proposed Act proposes amendments to Section 75 of the Ontario Water Resources Act to permit this by Regulation. This should be implemented as soon as possible and York Region would be pleased to discuss opportunities for pilot projects in our municipalities.

## **Section 27**

### **Regulations may be passed to deal with a range of issues including Transition Provisions.**

Section 27 indicates the range of Regulations that the Lieutenant Governor may pass, including requiring municipal council to pass by-laws governing trees or site alterations. Also included in this list are Regulations relating to transition matters.

We recommend that the Act, not just Regulations, contain comprehensive transition provisions that deal not only with *Planning Act* and *Condominium Act* applications, but also applications under the Ontario Water Resources Act and Environmental Assessment Act and requirements under the Places to Grow Act.

Thank you for the opportunity to comment on Bill 99 - *The Proposed Lake Simcoe Protection Act, 2008*. We look forward to reviewing subsequent versions of the Proposed Act when the draft Lake Simcoe Protection Plan can also be reviewed. We reserve the right to make further comments at that time on both the Proposed Act and the Draft Plan.

Due the timing of Committee and Council meetings at the Region, staff will take a report requesting Council endorsement of these comments in October and will advise you of the outcome following the Council meeting on October 23, 2008.

Should you have any questions, please contact:

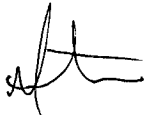
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Sincerely,



for Erin Mahoney,  
Commissioner of Environmental Services

MM/BJ/bj

Copy to: B. Tuckey, Commissioner of Planning and Development Services  
Area municipalities in York Region  
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