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

Dear Ms. Unikel:

Re: Lake Simcoe Protection Plan, Environmental Registry No. 010-4636

I am writing on behalf of the Canadian Institute for Environmental Law and Policy (CIELAP) to provide comments on the proposed Lake Simcoe Protection Plan, Environmental Registry No. 010-4636. CIELAP was founded in 1970, with the mission to provide leadership in the research and development of environmental law and policy that promotes the public interest and sustainability. CIELAP has been involved for many years in research and policy development related to both land use planning and the protection of Ontario's water resources.

CIELAP welcomes the proposed Lake Simcoe Protection Plan and its potential to protect and restore the ecological health of the Lake Simcoe watershed ecosystem, and commends the Ministry of the Environment (MOE) for the Plan's strong provisions in relation to phosphorus limits and natural cover restoration and protection. CIELAP also notes the inclusion of pharmaceuticals in the list of chemicals of emerging concern that may need to be reduced under the Plan. However, CIELAP does have the following recommendations on how to further strengthen the Plan.

Transition

The proposed Plan notes that the *Lake Simcoe Protection Act, 2008* provides authority for a regulation addressing transitional matters that will set out how the applicable designated policies in the Plan affect applications, matters or proceedings that were commenced prior to the Plan coming into effect but not yet disposed of. The proposed Plan notes that it would generally apply to applications, matters or proceedings under the Planning Act and Condominium Act, 1998 or in relation to a prescribed instrument commenced after the date the Plan comes into effect. It adds that, for certain applications, matters or proceedings that were commenced before the Plan comes into effect, the regulation may require that some or all of the applicable designated policies be applied to the proposal. The regulation would select such matters based on a number of criteria, including the location, scope, scale, type of development or the timing the proposal commenced.

Advancing the Environmental Agenda

CIELAP is concerned that development applications that have been approved or are being processed prior to the passing of the plan, but have not yet commenced construction, will be subject to the requirements of the Plan. This is a concern because it is clear from recent past experience that grandfathering clauses can have damaging effects on the effectiveness of provincial policies aimed at reducing the impact of development patterns that are undesirable from an ecological standpoint.

Ongoing development issues surrounding the Oak Ridges Moraine Conservation Plan (ORMCP) suggest that the inclusion of a transition or grandfathering clause that allows approved developments to continue may be significant enough to threaten the goals of the policy itself, especially if there is a sufficient number of such developments. In some cases, developers with interest in the area covered by the ORMCP are still pursuing approvals for projects that were in the approval pipeline prior to the approval of the plan in 2002. A spokesperson for the Ministry of Municipal Affairs and Housing has noted that the province does not keep records of the number of development proposals on the Oak Ridges Moraine or track their status. This presents significant difficulties in assessing the cumulative impacts of grandfathered developments on the ecology of the Oak Ridges Moraine, as grandfathered development proposals include water intensive undertakings such as golf courses and large subdivisions.

Similarly, the more recent Greenbelt Plan maintained the precedent of grandfathering developments applications (and their proposed land use) that were in place prior to the introduction of the Plan in 2005. Furthermore, grandfathered development proposals dating back to the passing of the Niagara Escarpment Plan long before both the Greenbelt and Oak Ridges Moraine Plans are still being disputed.

Recommendations:

Considering the current state of the Lake Simcoe watershed and previous studies that suggest the extent of approved growth in the area would exceed its assimilative capacity, the inclusion of a transition clause allowing any developments to continue without being subject to the Lake Simcoe Protection Plan should be discouraged.

The language in the Plan stating that “the regulation may require that some or all of the applicable designated policies be applied to the proposal” is commendable, but should be strengthened to ensure that the above-mentioned problems with developments under previous provincial plans are not repeated.

Water Conservation and Efficiency

The Lake Simcoe Protection Plan contains a number of provisions relating to water conservation and efficiency, including the following:

5.3-SA Within five years of the date the Plan comes into effect, the municipalities of Barrie, Orillia, New Tecumseth, Bradford West Gwillimbury, Innisfil, Oro Medonte, and Ramara will prepare a water conservation and efficiency plan that has regard to the recommended standards

and practices for the municipal sector including those recommended by the Ontario Water Works Association.

5.5-SA The MOE will work with other water use sectors, such as other commercial and industrial sectors, in the Lake Simcoe watershed to encourage the development and implementation of water conservation and efficient use practices for their sector.

While specific targets are provided for water quality in the Plan, none are given in the following chapter on water quantity. Specific targets for water conservation and efficiency plans required under section 5.3 should be adopted in the final version of the Plan.

The following are the current baselines for water conservation in the communities identified in the Plan:

- Barrie has already had some successes with water conservation programs initiated in the mid and late 1990s and currently has some measures, such as an appliance rebate program and lawn watering restrictions, but no specific conservation targets have been established
- Orillia has a water conservation and efficiency strategy, though not much detail is available, but no specific conservation targets have been established
- Bradford West Gwillimbury has an efficiency program that includes some outdoor water use restrictions, as well as a Water Supply Master Plan, but neither set specific targets or percentages of demand to be met through conservation and efficiency measures
- Water conservation and efficiency strategies in New Tecumseth, Innisfil, Oro Medonte, and Ramara in the areas specified under the Draft Plan could not be found

As one of Ontario's fastest growing areas in 2009, water conservation and efficiency should be a central part of municipal planning in Simcoe County and this should be strongly reflected and encouraged in the Plan. The inclusion of a requirement that selected municipalities develop water conservation and efficiency strategies in the Draft Plan is a significant step, however this section of the Plan needs specific and measurable conservation and efficiency targets in order to have a positive effect on the Lake Simcoe Watershed in years to come. Under the current wording of the Plan, the conservation and efficiency requirements are too vague to reasonably expect they can be implemented in a meaningful way.

Other municipalities within Ontario's Greater Golden Horseshoe region have made significant progress in developing aggressive water conservation and efficiency strategies in recent years when presented with growth related challenges, and these should be used as a model for how communities in Simcoe County should proceed with this requirement of the Plan. For example, Guelph, one of the largest Canadian cities relying solely on groundwater, recently faced challenges resulting from its designation as an "urban growth center" under Ontario's Growth Plan for the Greater Golden Horseshoe. Guelph was assigned a population target of 195,000, but planners determined this level of growth would exceed the assimilative capacity of the Speed River (the city's primary receiving water) and were able to negotiate a lower growth target on these grounds.

Consultants for Places to Grow realized the water and wastewater limitations in Guelph and the surrounding region and suggested a shared regional pipeline system to Lake Erie would likely have to be considered as a long term solution. However, Guelph has chosen to make conservation the primary focus of its strategies to date. In 1999, Guelph launched a Water Conservation and Efficiency Strategy and daily water use declined even as the population grew steadily in the following years. Pilot programs from the 1999 strategy included a toilet replacement program (saving 450m³ per day), an ICI

efficiency program including capacity buybacks, fixture replacements, and process reductions (saving 300m³ per day), system leak detection and repairs (saving 1,100 m³ per day) and an outside water use reduction program (saving 800 m³ per day). Guelph was also one of the first Canadian cities to create a bylaw preventing unnecessary water use. Water consumption in Guelph is currently at its lowest levels since 1998.

Guelph has set a 20% conservation target for 2025 and options ranging from further toilet upgrades to rain barrels and xeriscaping are currently being screened to achieve this goal. Guelph is aiming to position itself as a water conservation leader among comparable Canadian cities and also to rank closer to OECD countries abroad that typically have lower per capita water use rates. Guelph's recent conservation and efficiency strategy provides a good example to use as a benchmark due to the city's size, location and what has been achieved previously in terms of meeting the water demands of new growth through conservation, as well as their proposed targets for the future.

At the international level, water stressed states and provinces are implementing or have recently implemented conservation and efficiency strategies based on concrete conservation and efficiency targets. For example, the state of New South Wales Water Conservation Strategy places requirements on major water providers to implement programs that will reduce per capita demand by 35% by 2011 (compared to a 1991 baseline figure). In Western Australia, a goal to reduce per capita water use from the current unrestricted level of 180 kilolitres a person per year to 155 kilolitres a person per year by 2012 has been established under current policy. Victoria (Australia) is pursuing a similar target of reducing demand to 155 litres per capita per day. Western Australia and Victoria have also incorporated a target of recycling 20% of their wastewater by 2012. Singapore, now increasingly being viewed as a world leader in water conservation, is aiming to reduce its per capita demand to 155 litres per day by 2012 and is currently on track to meet this target.

Another provision relating to water conservation and efficiency states as follows:

5.2-SA Within two years of the date the Plan comes into effect, the LSRCA, with input from municipalities, will complete Tier 2 water budgets for all stressed subwatersheds (as identified in the Tier 1 water budget) that do not have drinking water systems.

The water budgets may be used to inform:

- municipal water conservation and efficiency plans, including those prepared under Policy 5.4 and municipal decisions concerning growth and development;
- water-taking strategies prepared under Policy 5.1 and decisions made by the Director concerning Permits To Take Water; or
- policies that would be included in future amendments to the Plan.

Making use of conservation and efficiency targets that are based on local and international best practices would avoid the need to wait to develop targets based on forthcoming Tier 2 water budgets and speed up the implementation process. Tier 2 budgets should still proceed, but conservation and efficiency requirements should be equal for all municipalities identified in the Plan regardless of their outcome. Tier 2 water budgets could however be used to identify areas in which a municipality may need to go above and beyond the established WCE standards to accommodate specific needs of a stressed subwatershed, for example.

Section 6.20-DP (e) of the Plan states that: "For those areas outside of existing settlement areas and outside of the Greenbelt Plan area and Oak Ridges Moraine Conservation Plan area, development and site alteration is prohibited within a key natural heritage feature, a key hydrologic feature and within a

vegetation protection zone referred to in policy 6.21, except in relation to infrastructure and utilities, but only if the need for the project has been demonstrated and there is no reasonable alternative.” The language relating to “reasonable alternatives” considered when determining the need for new infrastructure projects should incorporate the idea of deferring infrastructure needs through finding “new water” in conservation and efficiency programs. Capital upgrades for both water supply and wastewater treatment have been deferred in Guelph as a result of the city’s conservation and efficiency initiatives.

Recommendations:

Strategic Actions 5.3 and 5.5 should be upgraded to “Designated Policies” to reflect the necessity of conservation and efficiency in the Lake Simcoe watershed. Five-year Official Plan reviews for affected municipalities must conform with ‘designated policies’ in the Plan and upgrading conservation and efficiency planning to this level would be excellent opportunity to ‘hard wire’ conservation and efficiency into high growth municipalities.

The language of 5.3-SA should be changed from “have regard to” to “must be consistent with” the recommended standards and practices of the OWWA, as well as being comparable to both local and international best practices in water conservation and efficiency.

Water Conservation and Efficiency (WCE) plans should conform to local and international standards and best practices and should at minimum propose a 15% conservation goal.

The implementation timeline should be reduced from five years, or phased targets should be introduced (eg. an interim goal at 2.5 years).

Additional funding and capacity should be provided to the more rural municipalities that fall under the jurisdiction of the plan to ensure they can properly implement WCE strategies.

Funding should be provided to hire water efficiency specific staff (noting the success of this approach in Guelph) to oversee the development and implementation of conservation and efficiency plans and work with external agencies throughout the process (see also comments under funding below).

The Lake Simcoe Region Conservation Authority has noted a willingness to participate in overseeing the conservation and efficiency planning process for municipalities in their comments on the Draft Plan: The LSRCA could assist the municipalities listed who are required to undertake water conservation plans, given our past role in assisting municipalities (York and Durham). Either this approach, or funding of local environmental groups to provide input into the conservation and efficiency planning process should be strongly considered.

MOE needs to include specific measures within WCE planning requirements for municipalities (e.g. social marketing).

Given the assimilative capacity issues associated with development in the Lake Simcoe region and projections on future growth, a wastewater recycling target should also be considered as a requirement for municipalities and especially for new residential and commercial developments.

Another provision under Water Quantity relates to the expansion of recreational uses:

5.6-DP An application to establish or expand a major recreational use shall be accompanied by a recreation water use plan that demonstrates:

- a. water use for maintenance or snow-making or both are kept to a minimum;
- b. grassed, watered and manicured areas are limited to sports fields surfaces, golf fairways, tees and greens, and landscaped areas around buildings and structures; grass mixtures that require minimal watering and upkeep will be used for sports fields and golf fairways where applicable;
- c. crossings of intermittent and permanent streams are kept to a minimum;
- d. water-conserving technologies (such as low-flow toilets and shower heads) are used in clubhouses and restaurants where applicable;
- e. water-conserving technologies (such as timed irrigation systems designed to reduce evaporation losses, and recycling of water from under greens) are used in the irrigation and watering of sports field surfaces, golf fairways, tees and greens, and landscaped areas around buildings and structures where applicable;
- f. other water conservation technologies (such as rainwater harvesting or reuse of stormwater) will be used to reduce water use; and
- g. stormwater treatment facilities are used to capture and treat runoff from areas with impervious surfaces.

Recommendation:

In 5.6-DP, measures (e) and (d) should be rephrased to prescribe mandatory use of water conserving technologies, as opposed to using them where applicable. Existing recreational facilities should be encouraged to conduct retrofits for water efficient technologies.

The Plan proposes the following indicators to monitor progress in achieving the water quantity-related objectives of the Plan, the following are indicators of environmental health relating to water quantity:

- maintenance of stream flow and specific base flow targets (as identified in the instream flow studies and implemented through the water-taking strategy).
- effective water conservation and efficiency plans (e.g., as measured through reductions in peak water demand, reduced water use per capita).

Recommendation:

Again, there needs to be a specific target provided in the form of either a percentage reduction and/or a per capita reduction as well as meaningful short and long term goals.

Financing Strategy

The financing strategy proposed in the Plan states:

Early estimates indicate that the cost of implementing the Plan could be in the range of \$100 million and \$135 million in operating (for the first 10 years, 2009-2019). *Infrastructure* costs,

which could be staggered over a longer period, include an estimated \$120 million for stormwater management and up to \$105 million for sewage treatment plant upgrades (with requirements for higher treatment levels to accommodate expected population growth). *Infrastructure* estimates will be refined by the province over the next year in consultation with local municipalities, and others, while developing the phosphorus reduction strategy....

Recognizing that these costs may be substantial, the Ministry of Energy and Infrastructure is developing a water investment and affordability strategy to help municipalities achieve full-cost recovery, build financial and organizational capacities, and address affordability issues. The province is currently working with the federal government to identify priority projects that may be implemented with Building Canada Plan funding. There may be an opportunity to encourage projects focused on protecting Lake Simcoe.

Recommendation

Tie infrastructure costs to conservation planning/conservation achievements. Many agree that conservation is the most cost effective means of finding new water for municipalities. Given that the Plan discusses costs/funding for infrastructure needs stemming from projected growth, it should also include conditions which encourage conservation and efficiency as a means of deferring or even eliminating some these infrastructure costs. New development will increase demand for wastewater and stormwater treatment, but will also present an opportunity to make use of new advancements in areas such as on site wastewater recycling. Municipalities should also be required to demonstrate they are making continual progress on their conservation and efficiency planning in order to be eligible for assistance with infrastructure costs that may become available as a result of this plan.

Aggregates

The proposed Plan contains a number of policies relating to aggregates. For example, one policy under the proposed shoreline regulation states:

- 6.17-SA The proposed regulation under policy 6.15 is anticipated to be consistent with the following:
- d. prohibit the filling or draining of existing wetlands except as related to mineral aggregate operations or existing settlement areas where the regulation would only apply to those wetlands of provincial significance, and in relation to existing agricultural operations (e.g. Holland Marsh)

Provincial planning policies in Ontario have tended to priorities aggregate extraction over environmental protection. The Environmental Commissioner of Ontario recommended in his 2006/2007 annual report that the provincial government reconcile its conflicting priorities between aggregate extraction and environmental protection.

Recommendation:

MOE should use the Lake Simcoe Protection Plan as an opportunity to implement this recommendation and try to balance the need aggregate extraction with greater environmental protection.

Thank you for the opportunity to comment on the proposed Lake Simcoe Protection Plan. Please contact me or Maureen Carter-Whitney, CIELAP's Research Director, if you wish to discuss any of these comments further.

Yours sincerely,

A handwritten signature in black ink that reads "Anne Mitchell". The signature is written in a cursive style with a large initial "A".

Anne Mitchell
Executive Director

Cc: Hon. John Gerretsen, Minister of the Environment
Gord Miller, Environmental Commissioner of Ontario