BILD
BUILDING A GREATER GTA
Building Industry and Land Development Association

March 16th 2009

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Ministry of the Environment
Environmental Programs Division
Lake Simcoe Project Team
55 St. Clair Avenue West
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Dear. Ms. Unikel,

Re: Proposed Lake Simcoe Protection Plan
Environmental Bill of Rights (EBR) Registry Number: 010-4636

The Building Industry and Land Development Association (BILD) is pleased to provide industry comments with respect to the proposed ***Lake Simcoe Protection Plan***, EBR Registry Number: 010-4636, posted by the Ministry of the Environment on January 13th 2009.

BILD continues to support the Ministry's vision to enhance and maintain the well-being of the Lake Simcoe watershed. BLID also continues to support the provincial government's efforts to raise the profile of Lake Simcoe, identifying it as a significant natural resource worthy of protection and rehabilitation. BILD members and staff have invested significant resources to assist the Lake Simcoe Environmental Management Strategy (LSEMS) partners with their program to protect and continue the rehabilitation of the Lake Simcoe watershed ecosystem and improve associated recreational opportunities by: restoring a self-sustaining coldwater fishery, improving water quality, reducing phosphorus loads to Lake Simcoe and protecting natural heritage features and functions.

BILD has provided industry comments through a number of provincial consultations including: submission to *Protecting Lake Simcoe: Creating Ontario's Strategy for Action EBR Registry Number: 010-2974 (May 2, 2008)*; presenting to the Legislative Standing Committee on General Government *Re: Bill 99 – Lake Simcoe Protection Act (November 17, 2008);* BILD membership and industry participation on the Lake Simcoe Stakeholder Advisory Committee established by the provincial government in 2008 and through formal and informal public information sessions and workshop organized by the Ministry of the Environment.

BILD looks forward to participating in future committees and consultations, as we work together to provide credible information and solutions to enhance and maintain the well-being of the Lake Simcoe watershed.

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About BILD

In October 2006, BILD was formed through the merger of the Urban Development Institute/Ontario and the Greater Toronto Home Builders' Association. BILD has more than 1,400 members that serve as the voice of the building, land development, and professional renovation industry in the Greater Toronto Area and beyond. BILD is a proud affiliate of the Ontario and the Canadian Home Builders' Association.

BILD is a credible source of industry data and commentary on potential policy changes that impact the building and development industry. The Lake Simcoe watershed has been of key importance to the association, as the watershed has prompted numerous policy documents in an effort to raise the standards, most recently the proposed ***Lake Simcoe Protection Plan***.

Regulatory Context

The proposed ***Lake Simcoe Protection Plan*** is authorized under the ***Lake Simcoe Protection Act***, which received Royal Assent on December 10, 2008. The Act and Plan have been informed by various policy documents.

Provincial legislation and policies that govern land use in the watershed include:

- *Oak Ridges Moraine Conservation Act, 2001*, Ministry of Municipal Affairs and Housing;
- *Oak Ridges Moraine Conservation Plan*, Ministry of Municipal Affairs and Housing;
- *Sustainable Water and Sewage Systems Act, 2002*, Ministry of the Environment;
- *Nutrient Management Act, 2002;*
- *Planning Act* amendments (i.e., Bill 26, the *Strong Communities (Planning Amendment) Act, 2004* and Bill 51, the *Planning and Conservation Land Statute Law Amendment Act, 2006*);
- Provincial Policy Statement, 2005, Ministry of Municipal Affairs and Housing;
- *Ontario Heritage Act* amendments (i.e., Bill 60, the *Ontario Heritage Amendment Act, 2005)*, Ministry of Culture;
- *Greenbelt Act, 2005*, Ministry of Municipal Affairs and Housing;
- Greenbelt Plan, 2005, Ministry of Municipal Affairs and Housing;
- *Places to Grow Act, 2005*, Ministry of Public Infrastructure Renewal;
- *Places to Grow, Growth Plan for the Greater Golden Horseshoe, 2006*, Ministry of Public Infrastructure Renewal;
- *Endangered Species Act, 2007*, Ministry of Natural Resources;
- *Clean Water Act, 2006*, Ministry of the Environment;
- *South Georgian Bay Lake Simcoe Source Protection Plan*, Black-Severn Watershed, Lake Simcoe Region Conservation Authority, Nottawasaga Valley Conservation Authority, and, Severn Sound Environmental Association (scheduled to be in effect as of 2012).

Local plans and policies that inform land use decisions in the watershed include:

- *The County of Simcoe Growth Management Study: Assessment of Water Supply and Wastewater Treatment Facilities, August 2007,* Ainsley & Associates Ltd.;

- *Intergovernmental Action Plan for Simcoe, Barrie and Orillia* Dillon Consulting Ltd. (includes numerous technical background reports);
- *Ontario Regulation 170/06 Lake Simcoe Region Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses*, Ministry of Natural Resources;
- *Simcoe Area Growth Plan*, County of Simcoe;
- *Official Plan*, County of Simcoe;
- *Planning for Tomorrow*, York Region;
- *Growing Durham, Growth Plan Implementation Study*, Durham Region;
- Regional Official Plan Approval Process, Durham Region;
- *Liveable Peel*, Peel Region;
- Official Plan review/amendment, Peel Region;
- Growth Plan conformity exercise, Peel Region (currently scheduled to be finalized in June 2009).
- *Official Plan,* Town of Innisfil;
- *Official Plan,* City of Barrie;
- *Official Plan,* Oro-Medonte;
- *Official Plan,* Town of Brandford West Gwillimbury.

Recent technical studies that inform land use decisions in the watershed include:

- *Watershed Report Card 2008: A report on the health of the Lake Simcoe watershed*, Lake Simcoe Region Conservation Authority;
- Assimilative Capacity Studies for the Lake Simcoe Watershed and Nottawasaga River, Lake Simcoe Region Conservation Authority and Nottawasaga Conservation Authority;
- Natural Heritage System for the Lake Simcoe Watershed, Lake Simcoe Region Conservation Authority;
- Lake Simcoe Basin Wide Report, March 2008, Lake Simcoe Environmental Management Strategy;
- Benthic Macro-invertebrate Sampling and Analysis of Lake Simcoe: Final Report, March 2006, Stantec Consulting Ltd.;
- Lake Simcoe Hydrodynamic and Water Quality Model, May 2006, W. F. Baird & Associates Coastal Engineers Ltd. and Gartner Lee Ltd.;
- Assimilative Capacity Studies: CANWET Modeling Project Lake Simcoe and Nottawasaga River Basins: Final Report, February 22, 2006, updated April 2006, Greenland International Consulting Ltd.

The above lists represent recent changes to the legislative and policy framework and ongoing technical studies that govern and inform land use decisions within the Lake Simcoe watershed. The lists are not intended to be an exhaustive list of the tools available to approval authorities within the watershed. Instead, the list is intended to identify the transformation of the land use planning system that has occurred over the last several years in an effort to address issues that have been identified by the public and stakeholders across the province and the watershed.

BILD recommends that the provincial government continue to communicate and educate the public and stakeholders of the complexity and rigor in the current provincial and local land use regulatory framework that governs land use decisions in the watershed, making specific reference to the time lag that is inherent between legislative and policy changes and the tangible

results of those changes being visible on the ground.

Premier's Announcements – Lake Simcoe Protection Act

On July 6, 2007 at the Lake Simcoe Summit the Premier announced the government's intention to develop and institute a *Lake Simcoe Protection Act.*

Along with announcing the government's legislative intention, the Premier also confirmed government support for the Lake Simcoe Environmental Management Strategy (LSEMS) Working Group's recommendation to create a governance structure for the management of Lake Simcoe.[1]

In responding to questions from local media, the Premier clarified for local reports that the proposed Act would not apply to development projects that are already making their way through local governments, respecting the long held principle that land use planning legislation and regulation should be applied on a '*go-forward*' basis.[2] As the Premier stated, *that has been in the works for four or five years now…our proposal is to address new development.*[3]

Minister of the Environment – Introduction to the Lake Simcoe Protection Act

In the Minster's legislative introduction of the *Lake Simcoe Protection Act* on September 22, 2008, the Minister highlighted and recognized the success of the LSEMS when he stated, *with hard work and commitment by many – phosphorus levels have been reduced from more than 100-tonnes per year down to 67-tonnes, and the water quality has seen some level of improvement.* The Minster went on to say, *but there's still much more work to be done.*

BILD agrees with the Minister, there is more work that needs to be done and the LSEMS collaborative structure provides a valuable and successful model for future work in the watershed.

Contents

The intent of this document is to highlight the subsections of the ***Lake Simcoe Protection Plan*** (the Plan) that are of concern for BILD and make recommendations for potential improvement to the Plan.

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[1] *Office of the Premier, News Release: McGuinty Government Commits to Protection Lake Simcoe. July 6 2007.*
[2] *Opinion section, Barrie Examiner (On), Lake plan very fishy, July 10, 2007.*
[3] *Minnoch, Michelle, The King Township Sentinel, Lake Simcoe Act will not affect approved developments. August 1, 2007.*

Chronological Review: 1. Introduction

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Appendix A: *The Lake Simcoe Phosphorus Loading Targets: A Review of the Scientific Rationale, Prepared by AECOM Canada Ltd. March 13, 2009.*

Appendix B: *Lake Simcoe Stakeholder Advisory Committee – Schedule of Meetings/Meeting Minutes. June 17, 2008 – September 8, 2008.*

1. Introduction

General Authority

Clearly defined boundaries are essential to properly interpret and implement the Lake Simcoe Protection Plan. The well defined boundaries of the *Lake Simcoe Watershed* map is identified as the jurisdiction of the Plan[4], however the Act does enable the Plan to expand its authority beyond the defined watershed area;

> *The Act also allows policies in relation to research and monitoring to apply to areas outside of the watershed for the purpose of determining whether activities in those areas directly affect the ecological health of the Lake Simcoe watershed.*[5]

BILD recommends that all geographical areas that are affected by this Plan should be clearly depicted on a boundary map. In the event that the Plan exercises its legislative authority to go beyond the *Lake Simcoe watershed* boundary; scientific justification should be required and communicated to the all of the stakeholders.

[4] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 4.*
[5] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 9.*

Legal Effect of the Plan Under Lake Simcoe Protection Act, 2008.

In this section of the Plan the differences between *Designated Policies (DP), Policies governing Monitoring by Public Bodies (M)* and *Policies in Relation to Strategic Actions (SA)* are highlighted.[6] BILD appreciates this explanation and would like to ensure that the Ministry will continue to communicate these differences to municipalities and government authourities/agencies in the future, so that policies without legal effect are not implemented with legal effect.

Transition

On July 6, 2007, the Premier clarified that the Lake Simcoe Protection Act and Plan, if passed, would not be retroactively applied to existing approvals. As the Premier indicated, it would be unreasonable and unfair to applicants and municipalities to be required to revisit existing approvals, given the significant investment of time and financial resources in the application approvals process.

BILD recommends that the province include language that supports the comments made by the Premier on July 6, 2007, so as to provide clarity and consistency in the application of the Plan.

Clarity in the transition section of the Plan is critical for the building and development industry. Clarification is required in the following paragraph;

> *Generally, the Plan would 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.*
> ***For certain applications**, matters or proceedings that were commenced before the Plan comes into effect, the regulations may require that **some or all** of the applicable designed policies be applied to the proposal.*[7]

BILD recommends improving the language in the Plan - by avoiding the use of ambiguous terms such as, *for certain applications*, and *some or all*.[8] Terminology such as this will lead to misinterpretations and will ultimately result in significant delays in the planning and approvals process.

Transition policies 6.29 and *6.30* provide the general policy framework for applications in *existing settlement areas.* BILD interprets this to mean that the current structure for planning and development approvals will be maintained.

Further details regarding *transition* are contained within the Ministry's supplementary news releases. According to the Ministry of the Environment's release, *Taking the Next Steps to Protect Lake Simcoe, going forward the plan would not be applied to existing developments or development proposals that have already obtained significant development approvals.*[9] The Ministry backgrounder for the *Draft Lake Simcoe Plan* goes on to state, *plan policies would not be applied to development proposals that have*

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[6] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 8, 9.*

[7] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 9.*

[8] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 9.*

[9] *Ministry of the Environment, Taking the Next Steps to Protect Lake Simcoe, January 13, 2009.*

already obtained their significant development approvals, for example, decisions made by the Ontario Municipal Board.[10] **BILD recommends** the final *transition* section of the Plan reflect the language and intent of these statements.

The final component of the *transition* section is the forthcoming *interim regulation*. BILD is concerned the *interim regulation* that will be released with the final version of Plan will not be open for public review and comment. **BILD recommends** that the draft of this regulation be released to the public, thereby ensuring a transparent and open process.

2. Aquatic Life

Policies

This section of the Plan states;

> *3.4 – SA Beginning in 2010, the MNR in collaboration with the MOE, DFO, LSRCA and First Nations and Métis communities will establish baseline mapping of aquatic habitats in the Lake Simcoe and its tributaries. The MNR will regularly review and update this information and include where feasible shoreline and in-water developments including in-water structures, tributary barriers, channelizations and hardened shorelines.*[11]

BILD has identified this as duplication of existing work conducted by the Lake Simcoe Region Conservation Authority (LSRCA). BILD requests that prior to any additional studies being commissioned that the province review the catalogue of existing LSRCA studies and reports. Underutilizing the LSRCA's 50 years of research, practical knowledge and leadership in the restoration and protection of the environmental health and quality of Lake Simcoe and its watershed would be a waste of limited provincial financial resources.

Minister of the Environment John Gerretsen confirmed utilizing the work of the LSCRA in the Legislative Assembly of Ontario on December 6, 2007 by stating, *we will build on the science and work that's already been done by many individuals, including the province, the Lake Simcoe Region Conservation Authority, municipalities and communities*.[12]

3. Water Quality

Context

In our comprehensive review of the Plan, BILD commissioned AECOM Canada Ltd. to prepare a report entitled, *The Lake Simcoe Phosphorus Loading Target: a review of the scientific rationale* (the AECOM report). The purpose of the AECOM report was to review the water quality section and the background technical papers that attributed to the Plan's targets (the AECOM report can be found in Appendix A).

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[10] *Ministry of the Environment, Backgrounder - Draft Lake Simcoe Protection Plan, January 13, 2009.*
[11] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 17.*
[12] *Minister John Gerretsen, Legislative Assembly of Ontario, Ontario Hansard, December 6, 2007.*

The primary target of water quality states, *phosphorus loadings would need to be reduced to a level of approximately 44-tonnes per year to achieve the proposed dissolved oxygen target of 7 milligrams per litre (mg/L).*[13] The AECOM report's findings conclude that the Province has used sound scientific calculations and the best available science for determining the objective of 7mg/L.[14] **BILD recommends** that the Province include specific references to the provincial background studies that have informed the target.

In achieving the noted target, the Plan clearly states it as a *long-term goal.*[15] The AECOM report found that the original estimates for the natural phosphorus loads were underestimated; making the target a challenge to achieve.[16] Based on this conclusion, BILD supports the Provinces stated intention to set the target as an ambitious *long-term goal*. Furthermore, should a specific date be applied to achieving this ambitious goal, the Province should be required to provide additional documentation and scientific rationalization to justify the date.

BILD strongly agrees with the following statement in the Plan;

> *To achieve ambitious reductions in phosphorus loadings, there would need to be* ***reduced loadings from all sources that contribute*** *to excess phosphorus throughout the watershed.*[17]

This commitment made in the Plan is consistent with the Minister of the Environment John Gerretsen's statement in the Legislative Assembly of Ontario on December 6, 2007 when he stated, *we are taking action now to* ***address phosphorus from all sources*** *that enter into the Lake*.[18]

However, the findings of the AECOM report conclude, *the LSPP is not balanced in addressing phosphorus loadings as determined by the phosphorus budgets, as loadings from sewage treatment plants and developments are thoroughly addressed, while no or little regulations are provided for addressing private urban, rural and shoreline sources as well as agricultural sources.*[19] BILD is concerned that new development will carry the weight of the phosphorus reduction targets to the Lake.

The AECOM report also indicates, *given that the current septic load estimate is 6% of the total, compared to 7% for sewage treatment plants, this source (septic loading) certainly deserves more detailed attention.*[20] **BILD recommends** that all contributors of phosphorus loading incur their proportional share of responsibility if we are to be successful and enhance and maintain the well-being of the Lake Simcoe watershed,

The *Lake Simcoe Phosphorus Sources* pie chart in the plan identifies present urban settlement areas (i.e. Newmarket, Aurora and Barrie) as major phosphorus contributors to the Lake.[21] However, the Plan does not commit present urban settlement areas to take on their

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[13] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 23.*
[14] *Koster, Dorte, The Lake Simcoe Phosphorus Loading Target: a review of the scientific rationale, AECOM Canada Ltd. March 11, 2009. Executive Summary, page (i).*
[15] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 24.*
[16] *Koster, Dorte, The Lake Simcoe Phosphorus Loading Target: a review of the scientific rationale, AECOM Canada Ltd. March 11, 2009. Page 3-4.*
[17] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 23.*
[18] *Minister John Gerretsen, Legislative Assembly of Ontario, Ontario Hansard, December 6, 2007.*
[19] *Koster, Dorte, The Lake Simcoe Phosphorus Loading Target: a review of the scientific rationale, AECOM Canada Ltd. March 11, 2009. Executive Summary, page (i).*
[20] *Koster, Dorte, The Lake Simcoe Phosphorus Loading Target: a review of the scientific rationale, AECOM Canada Ltd. March 11, 2009. Executive Summary, page 10.*
[21] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 22.*

proportional share of responsibility of phosphorus loading in the Lake. BILD views this as a significant weakness to the Plan.

BILD supports Minister John Gerretsen statement, *we're going to invest in research and provide supporting information on reduced phosphorus discharged from urban and agricultural as well as other sources. This investment will also help promote awareness of what people can do around their homes and workplaces to reduce their phosphorus footprint on Lake Simcoe.*

The draft Plan does not provide a list of what people can do around their homes and workplaces to reduce their phosphorus footprint on the Lake. In order to achieve the Minister's stated objective - the AECOM report recommends immediate actions that can be taken by individual homes owners to reduce their phosphorus contributions. The list of recommendations includes:

Urban:

- ***(i) Reduce or eliminate lawn fertilizers***
- ***(ii) Leave clippings on the lawn to help fertilize***
- ***(iii) Wash vehicles on lawn or off property***
- ***(iv) Remove animal wastes***
- ***(v) Respect stormwater drains from toxins and nutrients (only rain down the drain)***
- ***(vi) Reduce impervious areas***

Agriculture:

- ***(vii) Consider best management for non agricultural rural home owners in areas adjacent to streams as with shoreline properties***

Shoreline Properties:

- ***(viii) Maintain septic systems, reduce phosphates entering the system***
- ***(ix) No fertilizers on lawns***
- ***(x) Reduce lawn sizes***
- ***(xi) Maintain riparian buffers to reduce runoff***
- ***(xii) Discourage geese***

Atmospheric Deposition:

- ***(xiii) Encourage or require smaller farm fields and hedgerows to reduce wind erosion, and no till techniques to reduce soil disturbance***

Recreation:

- ***(xiv) Pass legislation to outlaw gray water disposal***
- ***(xv) Require holding tanks to gray water in all boats over a certain size***[22]

BILD recommends these additional measures be included in the forthcoming *phosphorus reduction strategy.* BILD supports the development of a *phosphorus reduction strategy* and would request that this strategy be subject to public review and comment, prior to the final Plan's release. It is also vital that the objectives set out in the strategy are reasonable and achievable.

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[22] *Koster, Dorte, The Lake Simcoe Phosphorus Loading Target: a review of the scientific rationale, AECOM Canada Ltd. March 11, 2009. Executive Summary, page 11.*

It has been suggested during consultation that the final *phosphorus reduction strategy* divide the Lake into three sub areas: Cook's Bay, Kempenfelt Bay and the main Lake. Each sub area would potentially be given its own phosphorus reduction target, which could represent an overall average of 7 mg/litre of dissolved oxygen. BILD encourages the Province to investigate this option to determine if the underlying science supports this management approach.

Stormwater Management (SWM)

BILD recognizes the need to continually improve the engineering designs and operational characteristics of stormwater management facilities and we believe that this is captured in current structure of the Ministry of the Environment's *Stormwater Management Planning and Design Manual, 2003* (the manual). However, the manual and the Plan do not share consistent language and this could confuse the implementation of the Plan and will significantly slow down the process and increase capital infrastructure and maintenance costs. Therefore, **BILD requests** a clear understanding of the design criteria and objectives in the Plan.

BILD recommends that the Plan be consistent with the *Environmental Design Criteria* found in chapter 3 of the manual.[23] The Ministry confirmed that the guidelines and processes in this manual are applicable to the Plan and that they should be followed. As such, any other vague references in the Plan should be removed.

Enhanced stormwater management facilities are now a requirement of all new development in the watershed. In addition, new stormwater strategies and technologies, are emerging (i.e. permeable pavement, bioretention swales, etc.) that could further reduce the impact of urban stormwater on the Lake and watershed, particularly through the redevelopment of urban areas that do not currently include stormwater control facilities and where, due to land constraints, traditional stormwater treatment facilities are unfeasible.

BILD submits that the tremendous voluntary uptake of *'green'* development and building practices by the development and building industry across Ontario demonstrates the industry's leadership and commitment to sustainable development.

Unfortunately, BILD members report that they are increasingly encountering regulatory and process barriers to *'green'* development and building, particularly with respect to stormwater management. BILD supports increasing the awareness and acceptance of *'green'* initiatives by staff, including the development of pilot projects (as appropriate), that should be monitored and published for others to benefit from. This, in turn, will inform and enhance best management practices, which will need to adapt to new technology and methods to enhance the environment.

Section *4.5* (c) of the Plan explains that there will be *consideration of potential impacts of climate change on the effectiveness of the works.*[24] The Ministry has no guidelines related to climate change in the manual. This wording has been used by the Ministry in the past and has often resulted in significant confusion by both the engineering consultants and the Ministry since there is no acceptable science or criteria that can be utilized to inform this concern.

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[23] *Ontario Ministry of the Environment 2003: Stormwater Management Planning and Design Manual, page 8.*
[24] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 26.*

Similarly, section *4.7* (b) states direction to *encourage the implementation of innovative stormwater management measures.*[25] **BILD is concerned** that this statement permits municipalities and government agencies to go beyond the current guidelines and impose design standards that are limitless.

As the Ministry is aware, sub watersheds within the Lake Simcoe drainage basin that are experiencing problems attributable to urban stormwater runoff *are mostly those where urban areas were built up before stormwater controls were required*.[26] As a result of MOE's interim regulation served to regularize what was becoming common practice for stormwater management facilities in the watershed.

Section *4.6* of Plan encourages municipalities to implement a stormwater retrofit prior to the completion of a stormwater management master plan.[27] **BILD recommends** that this provision be removed, as it is inconsistent with the Premier's July 6th 2007 comments (as quoted on page 7 of this submission). It would be unreasonable for the ministry or municipalities to require developers to retrofit existing SWM designs.

Section *4.8* of the Plan suggests that each new development must now provide an evaluation of anticipated change in phosphorous loadings between pre and post development scenarios.[28] **BILD recommends** that the final Plan clearly state the adjudicator of these sections.

Section *4.11* of the Plan requires monitoring of each new priority stormwater management works.[29] BILD suggests that unless the SWM solution involves something truly unique, a monitoring program of several enhanced level SWM solutions should be sufficient since they will be similar in nature, as opposed to monitoring each and every one of the installations.

4. Shorelines & Natural Heritage Policies

Policies: Lake Simcoe Shoreline

With reference to policy;

> *6.2-DP the minimum vegetation protection zone in a shoreline built-up area is 30 metres from the Lake Simcoe shoreline* ***or larger if determined appropriate*** *by an evaluation required by policy 6.3-DP the vegetation protection zone associated with the remaining Lake Simcoe shoreline, outside of existing settlement areas, 100 metres from the Lake Simcoe Shoreline.*[30]

The minimum generic 30-metre setback proposed in the Plan may undermining opportunities to implement progressive SWM technologies that would have serve to enhance and maintain the well-being of the Lake Simcoe watershed. Essentially, a blanket setback requirement does not guarantee an improvement to Lake Simcoe. **BILD recommends** that the minimum 30-

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[25] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 26.*
[26] *Watershed Report Card 2008: A report on the health of the Lake Simcoe watershed*, Lake Simcoe Region Conservation Authority, April 25, 2008.
[27] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 26.*
[28] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 27.*
[29] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 27.*
[30] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 43.*

metre setback be required only for instances where a builder/developer cannot prove to mitigate impacts within the buffer zone by utilizing SWM technologies.

Additionally, the plan does not provide a clear set of regulations surrounding built-up areas along the shoreline (i.e. Belle Ewart and Sandy Cove, Innisfil), which are outside the designated settlement boundary. These built-up areas may have the capacity to support additional density and are captured in the Municipal and Regional Plans. **BILD requests** clarification surrounding this issue.

Furthermore, a listed objective of the Plan is to - *promote environmentally sustainable land and water uses, activity and development practices.*[31] As such, consideration to new developments, which may be proposed in or outside of current proposed settlement boundaries, should be given if these developments facilitate new, advanced, creative and effective methods of sustainable land, water and energy uses and serve to enhance and maintain the well-being of the Lake Simcoe watershed.

The minutes of the stakeholder advisory committee allude to a missing policy or requirement for septic inspections and compliance for residents within 100m of the shoreline area.[32] **BILD recommends** that the final Plan commit to reducing phosphorus contributions from nearby septic systems though a mandatory inspection and replacement program.

Policies: Applying to Both Lake Simcoe and Streams

Policy 6.11-DP as it relates to *intermittent streams*, is concerning for the building and development industry. A literal interpretation of this policy appears to capture simple farm swales or even roadside ditches. Therefore, **BILD recommends** that *policy 6.11-DP* should only be applied to *permanent streams*.

Policies: Key Natural Heritage and Key Hydrological Features

Policy 6.20 DP states that development and site alteration in *key natural heritage features* and *key hydrologic features* is prohibited outside of existing settlement areas/Oak Ridges Moraine/Greenbelt areas with some exceptions noted.[33] Clear definitions of both *key natural heritage features* and *key hydrologic features* are required.

We request that the list of exceptions allowing site alterations in these features include the ability to lower/relocate intermittent streams (to accommodate practical servicing solutions on adjacent lands or efficient community designs) where net environmental benefits can be demonstrated through aquatic/riparian enhancements to fisheries and stream health. Many streams are highly altered from past practices (ditched with little to no riparian cover) and offer opportunities for enhancement that can benefit both the environment and future development.

Due to typically little topographic definition between intermittent streams and adjacent tableland, the ability to lower and/or relocate these streams may form an important part of site development. A grade difference between streams and tablelands is essential to provide an outlet to storm sewers that will service future development. Without the ability to lower/alter

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[31] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 6.*
[32] *Ontario Ministry of the Environment, Minutes of the Lake Simcoe Advisory Committee, page 25.*
[33] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 46.*

streams, the only way to create this difference in grade is through the importation of fill that can have significant design, implementation and economic implications.

As such, the currently proposed prohibition of stream alterations to accommodate practical servicing approaches and/or accommodate community design objectives has the potential to place a substantial servicing, design and economic burden to development in future growth areas through requirements to import significant quantities of fill. Flexibility to address the ability and benefits of lowering and/or stream relocation is requested to address site specific servicing conditions through the development process; an approach that could benefit both the environment and development.

5. Implementation

Financing Strategy

In the *financial strategy* section, the only clear financial commitment from the Ministry is a $20 million figure – which is interpreted as a one-time contribution to the implementation.[34] This funding is subdivided into three areas of interest, but the Plan does not explain the breakdown of the contributions to a given policy/program or objective. **BILD recommends** that more detail is provided, showing a comprehensive breakdown of this $20 million commitment and its allocation.

Funding for implementation is as follows;

> *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 long 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 a phosphorus reduction strategy.*

Key details of the *financial strategy* to support the Plan have not been disclosed. BILD is concerned that the long-term financial responsibilities to support this Plan will be downloaded onto the municipalities. It would be unreasonable for the Province to burden the limited municipal tax base with the full financial responsibility of the Plans future costs.

It has been suggested during the public consultation on both the Lake Simcoe Protection Act and Plan that a special development levy or charge could be applied to new developments to support the necessary retrofit to existing communities.[35] BILD would like to remind the government that the *1997 Development Charges Act* clearly states development charges can only be generated from new growth and attributed from existing communities. The application of a special development charge against new development is simply legislatively impermissible.

The financial burden to enhance and maintain the well-being of the Lake Simcoe watershed should be shared by all the communities participating and with the province accepting financial leadership for this Plan.

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[34] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 73.*
[35] *Ontario Ministry of the Environment, Minutes of the Lake Simcoe Advisory Committee, page 22.*

6. Commitment to Studies, Policies and Programs

In various sections of the Plan, it states *clarifications will be forthcoming*, this can be found in the sections concerning; *transition, definitions, criteria in subsequent regulations (such as the interim regulation and the financial strategy) and technical papers*. BILD requests immediate direction on how these forthcoming clarifications will affect adopted policies. Fundamentally, it would be unacceptable for development approvals to be delayed while "clarification(s)" is/are being determined.

Ministry has made a large commitment to new *policies*, as they are found in every chapter of the Plan. This is an ambitious objective that references general start and completion dates. **BILD recommends** that the Province release a schedule/matrix of studies and programs and its associated funding. In some cases, these policies will also trigger programs that will require annual financial support, and to this point the province has yet to confirm the necessary funding commitments to start or operate these programs over the long-term.

As noted in the previous section, the Ministry does identify a $20-million commitment to the Plan – which is interpreted as a one-time contribution to the implementation of the Plan. Funding that is further subdivided into three areas of interest, but the Plan does not explain the breakdown of the contributions to a given policy/program or objective.[36] **BILD recommends** that the forthcoming *financial strategy* provided detailed explanations for the Province's commitment.

As previously stated, BILD is concerned that the Plan contains a duplication of work previously conducted by the LSRCA. BILD would request that the Ministry ensure any work previously conducted by LSRCA or any other government authority/agency be considered before new studies are produced. Recently, the Federal government awarded funding for 12 projects under LSRCA supervision; in some cases this work would contribute to the policies of the Plan. **BILD requests** that the Province release an on-going approved projects list that will contribute to the designated policies of this Plan. Furthermore, it is unclear how establishing another Lake Simcoe watershed focused organization will discourage duplication and overlap. This concern speaks to the need to integrate existing mandates and structures serving the watershed.

The LSEMS Working Group and Steering Committee Report – *Towards a New Governance Model for Lake Simcoe* - recognized that effective governance and implementation is better accomplished through a bottom-up versus a top-down approach. The principles of bottom-up governance, local accountability, implementation and partnerships need to be incorporated if we are to be successful in creating a plan will serve to enhance and maintain the well-being of the Lake Simcoe watershed.

[36] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 73.*

7. Closing Remarks

BILD continues to support the Ministry's vision to enhance and maintain the well-being of the Lake Simcoe watershed.

In keeping with the Premier's comments on July 6th 2007, BILD supports respecting the long held principle that land use planning legislation and regulation should be applied on a "go-forward" basis.

It is important to provide some historical context about the ongoing work in the Lake Simcoe watershed. BILD appreciates that Minister Gerretsen highlighted the success of the LSEMS program to reduce phosphorous in Lake Simcoe from 100-tonnes to 67-tonnes in his introductory remarks on the Lake Simcoe Protection Plan. The reduction in phosphorus is an example of how the current process, working through a locally accountable, transparent and cooperative governance structure can have measurable success in the Lake.

Further recognition of the success of the LSEMS program was provided by Environmental Commissioner of Ontario Gord Miller at the Lake Simcoe Environmental Management Strategy Conference held in Barrie on October 20, 2005. Highlighting recent Ministry of the Environment studies that reported an improved water quality in Lake Simcoe over a period of very strong economic growth and increased development, the Commissioner stated, *you have decoupled economic growth from environmental deterioration*.

The Commissioner's comments speak to the how the development application approvals process facilitates the continued rehabilitation of Lake Simcoe and the watershed through significant private sector investment through detailed study of the natural environment (both land and water and the interrelationships between the two); the rehabilitation of degraded lands and watercourses, which in turn improves/restores ecological functions and creates/improves habitat; the conveyance of land from private to public ownership for schools, recreational uses, and natural heritage protection; the expansion and upgrading/retrofitting of necessary infrastructure (i.e., stormwater management and sewage treatment facilities); research and development of innovative strategies and technologies (i.e. low impact development); and pilot projects to test innovative strategies and technologies.

Substantial investments in research made by the government and the private sector have resulted in the development and implementation of innovative strategies and technologies that have dramatically reduced the impact of new development on the landscape. As a result of Ontario's rigorous regulatory framework governing land use, this much-reduced impact is offset by the private sector investments that are made as a result of the new development, to the benefit of the existing communities and to assist provincial and municipal efforts by enhancing the well-being of the Lake Simcoe watershed.

BILD supports the Ministry of the Environment's view that the Plan should be read in conjunction with relevant provincial policies, plans and Acts, including the *Provincial Policy Statement, 2005, the Greenbelt Plan, the Growth Plan for the Greater Golden Horseshoe, the Oak Ridges Moraine Conservation Plan, the Clean Water Act, 2006, the Ontario Water Resources Act, the Environmental Protection Plan Act, the Public Lands Act,* and *the Planning Act*. These plans and Acts

apply to all or part of the Lake Simcoe watershed and provide specific policies on certain matters.[37] BILD recommends that the Ministry proactively communicate this stated approach to all commenting and approval agencies in the watershed.

BILD believes that all communities involved in the Plan must take on their proportional responsibility to reduce the phosphorous sources into the Lake and that opportunities to enhance and maintain the well-being of the Lake Simcoe Watershed must be explored and taken advantage of.

The Building Industry and Land Development Association would like to thank the Province for the opportunity to comment on this Plan. If you have any questions or concerns please contact the undersigned.

Sincerely,

Joe Vaccaro, Vice President, Policy and Government Relations
Building Industry and Land Development Association

[37] *Ontario Ministry of the Environment 2009: Draft Lake Simcoe Protection Plan, EBR Registry Number 010-4636, page 7.*