

WAITING FOR ANSWERS

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

Unit A, 135 Church Street, North, Mount Forest, Ontario, N0G 2L2
Phone: 519-369-2308 / Fax: 519-323-0289 / e-mail: opera@bmts.com / Web Page: www.bmts.com/~opera/

December 19, 2005

Mr. Rob Messervey, Manager, Water Resources Section
Ministry of Natural Resources
5th Floor, Robinson Place South Tower
300 Water Street, P.O. Box 7000
Peterborough, ON., K9J 8M5 (By Registered Express Post)

Dear Mr. Messervey: **Re: Section 28 Conservation Authorities Act**

You may recall the Ontario Property and Environmental Rights Alliance (OPERA) was an invited witness at a 1998 meeting of the Ontario Legislature's Standing Committee on the Administration of Justice. On that occasion our organization provided input into draft amendments to the Conservation Authorities Act then being legislated under the Red Tape Reduction Act.

Subsequently we were asked to attend an MNR meeting in Toronto to review and offer comments on the proposed "generic regulation" being drafted by MNR staff under Sections 28(6) of the revised Act for the Lieutenant Governor in Council. The result was Ontario Regulation 97/04 with an effective date of May 1, 2004. This Regulation, as you expressed, set out what Ontario Conservation Authorities might do, or not do, in developing a new regulatory framework to replace the "Fill, Construction and Alteration to a Waterway" presently in place for each Authority, with the purpose of keeping development from being sited in "hazardous" areas, thus defined.

It has come to our attention that the Internet site of several Conservation Authorities have been featuring descriptions and explanations of their efforts to each draft a "Generic Regulation" under 97/04 for approval of the Minister of Natural Resources under Section 28 (1). Many of these proposals identify the "wetlands" referenced in Section 28 (1) (b) and (c) and defined in Section 28 (25) of the Act and set out in Sections 3(b), 5, and 6 of Ontario Regulation 97/04, not as those defined in the Conservation Authorities Act but rather as those found in a Municipality's Official Plan as provided by MNR under the Planning Act and mandated for inclusion in Official Plans under the terms of the Provincial Policy Statement.

The Conservation Authorities in question are evidently persuaded that "wetlands" identified in a municipal Official Plan will meet the definition of a "wetland" in the Conservation Authority Act as a matter of course.

"to protect, and entrench in law, landowner rights and responsibilities"

(2)

OPERA's view is that such an approach will not be in compliance with Section 28 of the Conservation Authorities Act and is contrary to the intent and purpose of both the Act and Ontario Regulation 97/04.

Further, such Authorities are insisting that the 120 metre "adjacent land" buffer zone identified in municipal Official Plans may be construed as "other areas", the term found in Section 28 (5) for the purposes of Section 28(1) (c). With respect, Mr. Messervey, OPERA believes both these assumptions may be unlawful and fail to address the explicit requirements of Section 28.

In summary, OPERA contends this extravagant approach by some Conservation Authorities is clearly in contravention of the Act. The "wetlands" identified in the schedule of an Official Plan do not meet the different definition of a "wetland" as set out in Section 28 (25) and, further, "other areas" is not synonymous with "adjacent land", the "buffer zones" as referenced in a Municipality's Official Plan.

Please confirm at the earliest possible date that this use of Official Plan "wetlands" in drafting "generic regulations" fails to meet the requirements of Section 28 (5), (7) and (25) and that all Conservation Authorities as well as members of the Peer Review Committee be advised on an urgent basis that the submission of draft regulations of this sort are not likely to merit approval by the Minister.

Yours truly

R.A. (Bob) Fowler, Secretary
Ontario Property and Environmental Rights Alliance