"JUNE/08 COUNT-DOWN TO REGULATIONS"

March 27, 2007

BRIEFING NOTES:

MNR/Landowners March 27/08 Conference Call re: ESA 2007:

For MNR:

Karen Bellamy
Regis Cornale
Mark Rondeau
Jason Travers

For Landowners:

Peter Jefferies – Ontario Federation of Agriculture (OFA)
Bob Fowler – Ontario Property and Environmental Rights Alliance (OPERA)
Andrew Graham – Ontario Soil Crop Association (OSCA)
Ian Sinclair – Peel Halton Landowners Association (PHLA)

1. Introductions, Agenda, Discussion Format – Karen Bellamy, MNR

Today's forum aims to review and improve, direct landowner participation in definition/management of species habitat and formation/application of ESA 2007 regulations. Rather than invoking a pre-fixed agenda, the conference format contemplates general discussion and frank exchange of views and suggestions relevant to those two topics. The proceedings will not be tape-recorded but MNR will provide to all participants a written synopsis of opinions and comments expressed.

2. Nine-point commentary for discussion as conference dialogue evolved – Ian Sinclair, PHLA

3. Opening statement and issues raised as conference dialogue evolved – Bob Fowler, OPERA

OPERA appreciates this opportunity to explore issues surrounding species habitat and ESA 2007 regulations. On behalf of all owners and lessees of private land across Ontario, we hope such discussions will produce meaningful and lasting improvement in Queen's Park respect for individual freedoms, private enterprise, the rule of law and the validity of natural justice. However, like many other landowner groups, we harbour serious reservations as to so-called "public" consultations where professional lobbyists disguised as environmental missionaries dictate how and where and when and by whom private land will be used in this province. In that context, we fervently ask and now await clear evidence that at least some recommendations tabled in todays discussions will actually appear somewhere in the habitat/regulation sections of ESA 2007.

Costs:
OPERA fully supports the principle of species protection but vehemently opposes the process by which ESA 2007 was unilaterally introduced, immediately rubber-stamped by a biased committee, quickly ratified at Queen's Park & now implemented in great haste. During this entire process, we note the following Senate codicils recorded during passage of the federal SARA were totally ignored .

"Fair market value would be a starting point for the measure of compensation"
"No artificial limits should be placed on compensation because this legislation could cause a major disruption in a person's livelihood and reduce their net worth"
"The government must set out details of what tasks will satisfy due diligence & ensure that time & costs are fully compensated"

MNR, not applicant landowners/lessees, should be fully responsible for all costs of required ESA 2007 permits, agreements, exemptions, etc. &, in the interests of transparency & accountability, these costs should be precisely articulated in ESA 2007 Regulations, a deficiency noted in Section 50 – Clause 1 in Bill 184.

Communication:
Current MNR/Landowner communication is clearly inadequate, ineffectual & counter- productive. EBR postings are not available to hundreds of landowners/lessees who don't have or don't regularly plug into an Internet connection. Among other venues, Information Bulletins printed in simple language & geared to specific landowner concerns should regularly appear in small-town newspapers, in farm magazines, in municipal tax assessment notices, in real estate newsletters & local offices.

Semantics:
"Stakeholder" does not properly describe the owner or lessee of land whose life & property are directly affected by ESA 2007. Titled landowners/lessees are primary stakeholders & all other groups without a propriety or financial interest are secondary stakeholders – these linguistic distinctions should be made in all habitat/regulations documentation. Similarly, by dictionary definition "steward" subtly reduces the role & identity of landowners/lessees to managers of somebody else's property. This vaguely noble demotion promises public acclaim, lots of plaques & a few dollars hush money under so-called Stewardship Programs, miniscule rewards that don't begin to cover the unjust financial burdens involved. Habitat/regulations should at least identify landowners as landowners & Stewardship Programs as Landowner Programs.

Registration:
By MNR "identification" later elevated to provincially dictated Official Plan "designation", municipal tax records often include, unknown to many affected landowners , a variety of land use inhibitions such as ANSI, Wetlands, Conservation, Endangered Spaces, etc. These arbitrary labels directly influence future mortgage worth & market value of affected lands. If new species at risk legislation will, in practice, add yet another covert "designation" on private property, the purpose, legality and details of what amount to a unpublished government lien should be very clearly set out in a special Information Bulletin.

Enforcement:
An explanatory MNR Information Bulletin to all landowners should include details of ESA 2007 enforcement provisions under Section 51 – Clause 7 originally listed in Bill 184.

If ESA 2007 will NOT be enforced under government criminal law powers as MNR Minister Cansfield has advised, its Regulations must clearly say so – if such is not the case, the Regulations must be equally specific. Similarly, landowners must be told in advance whether ESA 2007 legal proceedings will recognize not only a "strict liability" prosecution but also a "mens rea" defence.

Bill 69, a Ministry of Labour initiative legislated about 2 years ago, authorizes all government inspectors to report alleged infractions of any provincial statute they may encounter or suspect while visiting private property for any reason &, further, to regularly exchange such information with their peers in other provincial agencies. This Bill even presumes to instruct provincial courts regarding prosecution evidence and sentencing parameters. Landowners are entitled to know in advance whether MNR intends to administer ESA 2007 habitat/regulations under this ominous piece of Orwellian excess.

ESA 2007 Regulations should clearly indicate whether enforcement of ESA 2007 would be applied as stand-alone legislation or, alternatively, in combination with similar federal statutes so as to produce the maximum number of charges under the maximum number of statutes, regulations and penalties for a single offence.

General Comments:

For some years the Natural Heritage Information Centre operated by MNR in partnership with The Nature Conservancy at Peterborough has catalogued private land on which species at risk allegedly reside. The total Ontario acreage on that database at Dec.31/07, information gathered & recorded at public expense, should be reported to Ontario taxpayers, particularly landowners/lessees whose freehold is included there.

Bill 184 lists a total of 181 species alleged to be either threatened with extinction, extirpated, endangered, threatened or of special concern. Landowners/lessees should be immediately advised if this list includes all or just some species that ESA 2007 purports to protect & whether it is cross-indexed to the NHIC database.

We're told the MNR will be the official ESA 2007 administrator. Meanwhile, The Clean Water Act is supervised by the MOE; The Niagara Escarpment Act by the NE Commission under the MNR; The Oak Ridges Moraine Act by the Oak Ridges Foundation; The Greenbelt Act by the Greenbelt Foundation; The Conservation Act by 36 provincial Conservation Authorities. In this minefield of statutes, regulations & attendant layers of bureaucracy, landowners/lessees perceive themselves to be harassed, harried & hung out to dry. Surely ALL land use proscriptions should be administered by a SINGLE Ontario government agency.

Since land ownership rights are not protected in Ontario legislation, some kind of assurance or disclaimer to calm legitimate landowner/lessee fears of government land seizure by regulation without compensation should appear in ESA 2007 Regulations. An example:

Nothing in these Regulations shall deny, limit, revise or in any way mitigate against the common law right of Ontario citizens to own & enjoy private property. Moreover, it is not the design or intention of these Regulations to inhibit use, title, mortgage worth or market value of all or any part of privately owned real estate without public hearings of necessity in advance or, where indicated, a legal expropriation process with just & timely compensation as may then be independently established

During hearings at the last Niagara Escarpment Plan Review, both MNR and Niagara Escarpment Commission staff recorded little or no interest in, much less a direct connection with, the Convention for Biological Diversity, an international treaty signed in 1992 by Canada although not by many other nations. At those hearings OPERA publicly asserted this treaty, the origin of Biosphere Reserve and Wild lands designations since applied to vast tracts of Ontario topography, was part of Agenda 21, a United Nations invention designed to pave the way to global governance without prior consent of the governed. That treaty also obliges signatory nations to legislate a U.N. model of species protection. We note with some alarm that ESA 2007 now openly quotes the Convention for Biological Diversity but, not surprisingly, doesn't mention United Nations dilution of Canadian sovereignty. In these circumstances, many owners of private land in Ontario today might sympathize with an observation from a Swiss philosopher of the last century.

"Government, in dealing with its own people, not only steals & wastes their property & plays a brutal & witless game with their natural rights, but regularly gambles with their very lives"