

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

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“FROM MANIPULATED START TO PRE- ORCHESTRATED FINISH”

PROPOSED ESA 2007 HABITAT REGULATIONS CONFIRMED MAY 25, 2009

Expanded Draft of EBR 010-6490 Submission Filed June 4, 2009

Following comments are submitted by the Ontario Property and Environmental Rights Alliance (OPERA), a coalition of trade associations and community groups organized in 1994 to monitor government legislation that affects use and value of privately owned land.

OPERA supports the principle of species protection but opposes the process by which ESA 2007 was initiated by professional lobbyists, rubber-stamped by a biased committee and hurriedly ratified at Queen's Park. After a year of public appeals for more transparency, proposed habitat regulations for only 9 allegedly endangered species, announced just 6 weeks prior to their scheduled June 30 enactment, were unveiled at an information seminar hurriedly convened on May 25 in down-town Toronto. Attendees were there advised comment regarding these proposals should be electronically forwarded within the next two weeks. But whether all property owners affected by these regulations have a computer, an Internet connection and sufficient time and expertise to find, by June 15, the appropriate EBR site is an open question.

Other troubling issues emerged from the discussions on May 25. Some examples:

- There will be no further public meetings anywhere in Ontario re: habitat regulations
- Protection of some species affects vast, but imprecisely measured, tracts of land
- Actual maps of protected habitat are presently available for only 2 areas in Ontario
- No written definition of what “protection” means in each of the 9 species categories
- Species habitat trumps farm/forestry operations, power corridors, municipal drains, etc.
- No monitoring program to track landowner impacts arising from habitat regulations
- No mention of regulatory enforcement or provisional penalties for alleged violators
- Peripheral reference to “stewardship” programs but none to capital compensation

Habitat regulations as proposed bring new meaning to “strict liability” and “due diligence” while denying to accused offenders the right of appeal and the right of compensation for government-induced capital losses. In contrast to those glaring deficiencies, the following codicils recorded by Canada's Senate during passage of the federal Species at Risk Act are instructive.

- 1. Fair market value would be a starting point for the measure of compensation*
- 2. 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.*
- 3. The government must set out details of what tasks will satisfy due diligence and ensure that time and costs are fully compensated.*

Rather than table proposed regulations for legislative approval on June 30, 2009, we respectfully ask the Ministry of Natural Resources to defer that presentation until the next sitting of the Ontario legislature and, in the interim, to undertake a more frequent and much broader public engagement of ESA regulatory and enforcement measures.

OPERA believes habitat protection measures submitted in future for public discussion and provincial ratification should, in all cases, include an outline Preamble that provides basic information such as:

1. Information Bulletins are located in rural papers, real estate brokerages, municipal offices
2. Confirmation of habitat designations are enclosed with annual property tax assessments
3. Unequivocal confirmation that private landowners/lessees are primary stakeholders
4. Species protected lands are registered in the NHIC database and in municipal tax rolls
5. Regulations include ESA enforcement provisions including range of prescribed penalties
6. Availability and location of maps showing all Ontario areas regulated for each species
7. “Stewardship” help is available but not capital compensation for production and equity losses
8. Reasons why habitat regulations do not reduce mortgage worth and market value of private land

In the United States, enforcement of ill-conceived protection measures have spawned resentment, non-compliance and, sad to relate, covert advice to “shoot, shovel and shut up”. Clearly, endangered species, affected landowners and society at large are not well served in that climate of confrontation.

Still, in terms of regulatory excess, it’s hard to find any difference between American and Ontario versions of endangered species legislation. Meanwhile, recent research by the George Morris Centre at Guelph estimates wildlife damage to crops and livestock costs Ontario farmers \$41 million a year.

For Ontario enforcers of ESA habitat regulations, these 2 facts are mutually significant and should not be viewed in isolation.

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