

“RESPONSE TO STATE MANAGEMENT (EBR 011-2841)”

from

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

Attention:

Cass Goulet, Species at Risk Biologist, Ministry of Natural Resources, Peterborough, Ontario.

Preamble:

The Ontario Property and Environmental Rights Alliance (OPERA) is a coalition of commercial associations, community groups and private citizens launched in 1994 with a mandate “to protect, and entrench in law, landowner rights and responsibilities”. In that context we believe the EBR Registry is an ineffective vehicle for public consultation of land use issues.

It wrongly assumes every potential respondent is aware of the process, owns a computer, maintains an Internet connection and has sufficient time, inclination and expertise to identify and search for specific EBR postings among hundreds of provincial government web sites. Such documents, when located, are often a tribute to government “spin” doctors rather than constructive proposals supported by not only claimed necessity and alleged benefit but a list of possibly negative consequences as well.

Moreover, any responses from owners/lessees of land who’ve ever heard of EBR postings are unlikely to balance the professional input of those government-subsidized lobbyists who influence, if not control, Ontario land use legislation. In any case, EBR responses in and of themselves lend credence to the “core” statute involved, a sub-conscious endorsement not always in accord with the best interests of local communities and taxpayers.

Comment:

Stripped of its quasi-legal rhetoric, EBR Registry Proposal 011-2841 outlines government “management” of private property by means of what amounts to development permits. If accepted and implemented, it would require a landowner whose project might impact wildlife habitat to first seek MNR “guidance”. Evidently, requesting this assistance would be mandatory, not voluntary, and would entail completion of a so-called Gathering Form to “submit the necessary information to the Ministry to assess whether the activity will contravene subsection 9(1) and/or 10(1) of the ESA”. Presumably this “form” would trigger an appropriate (read arbitrary) user charge not yet published.

Hence applicants whose income depends, for example, on cultivating land and harvesting crops need to be conversant with ESA 2007 prohibitions and be able to properly identify habitat of species said to be endangered of which there are now several hundred and counting. The Proposal implies government intention to explain and clarify those basic parameters for landowners whose holdings encompass designated habitat. Be that as it may, if activities on private land mentioned above are to proceed in or near wildlife habitat, proponents would first have to apply for exemption from specific ESA constraints and file the requisite Gathering Form on which a Ministerial decision would be based. Any distinction between the intent of an ESA Gathering Form and a Greenbelt, Niagara Escarpment or Oak Ridges Moraine development permit ranges from miniscule to non-existent.

“to protect, and entrench in law, landowner rights and responsibilities”

Serious controversy is already developing around protection of Bobolink habitat, a tall-grass bird claimed endangered despite strong, impartial evidence to the contrary. We understand a proposed MNR order to that end would prohibit cutting hay before July 1 although, owing to weather patterns and market volatility, farmers often cut hay on several occasions over an entire summer. Might MNR hay inspectors and/or their appointed proxies face determined opposition from Ontario's agricultural community on that single ESA issue? Absolutely!

Prognosis:

In regulating productive use of private property EBR Proposal 011-2841 awards a management role to MNR, a sprawling central government bureaucracy whose enforcement of ESA 2007 is, we're told, contracted to Ontario's 36 district Conservation Authorities (CAs). As MNR agents some or all of these will no doubt soon be "guiding" proponents and distributing Gathering Forms. Since CA services are invoiced to municipal councils, not to the MNR, it would seem ESA management charges will eventually be billed to local (read mostly rural) landowners rather than provincial taxpayers at large. This is, of course, another example of Queen's Park eagerness to create province-wide regulations while downloading their massive but unspecified compliance costs to local municipalities and their long-suffering ratepayers.

This Proposal doesn't provide details of penalties arising from its violation, doesn't mention its connection, if any, to MNR's "proposed" Strategy for Preventing and Managing Human-Wildlife Conflicts, doesn't include a cost-benefit analysis and doesn't provide the number, identity or qualifications of its authors. And it certainly doesn't dispel a growing suspicion that landowners, particularly rural landowners, are expected to become unpaid custodians of whatever part of their land is now or later designated wildlife habitat, thanks to central government mandarins and/or their favorite consultant-lobbyists none of whom have ploughed a field or harvested a crop since Pontius was a pilot.

OPERA respectfully suggests EBR Registry Proposal 011-2841 should be withdrawn forthwith pending review and correction of its many deficiencies followed by a public hearing to ascertain how and by whom and at what expense, direct or indirect, ESA 2007 was first composed.

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

