

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

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“TRANSPARENCY AT LAST”

August 9, 2013

Ministry of Natural Resources
Species at Risk, Protection Section
P.O. Box 7000, 300 Water Street
Peterborough, Ontario, K9J 3M5

Attention: Mr. Jason Travers

Re: Your July 25/13 Information E-Mail

Dear Mr. Travers:

Thanks for subject e-mail with three related attachments. As previously expressed, we welcome and much appreciate your efforts to provide clear and unequivocal answers to specific queries, a notable improvement over the ambiguity and excessive rhetoric often associated with MNR correspondence.

Based on your concise overview, it's now our understanding MNR earlier this year forwarded explanatory letters to 4000 selected landowners, contacted selected municipalities and placed advertisements in 30 selected newspapers. All this to advise citizens and local officials of designated habitat for 6 wildlife species believed to be endangered within Ontario geographic areas where those species are said to reside. Presumably, a similar process will mark habitat confirmation for future endangered groupings assembled from a list of some 441(and counting) individual wildlife species.

We comment on that process as follows.

1. **MNR Landowner Letter:** An articulate appeal for shared citizen-government attention to wildlife protection which avoids any mention of legislated penalties that can be imposed for alleged landowner non-compliance in what is held out to be a benign partnership. Moreover, absent an appropriate disclaimer, this communication, answered or not, may constitute “notice of intent” which could be later cited as grounds for property access without written owner consent. ESA 2007 is an enforceable regulatory device, not a free will co-operative, and it should be openly identified as such.
2. **MNR Municipal Letter:** A strong argument for community-provincial collaboration in species protection that fails, however, to confirm ESA 2007 implementation/enforcement has been entrusted to district Conservation Authorities, a process by which consequential costs far beyond usual CA municipal assessments are down loaded from the provincial government to local municipalities and hence to their already over-taxed local constituents.
3. **MNR Media Advertisement:** Like interconnected initiatives summarized above, the thrust of this promotional message is to emphasize a need for public input concerning regulations defined as “proposed” without estimating costs of their enforcement or modification, much less revealing the anticipated date on which they will no longer be “proposals” but rather entrenched regulatory parameters complete with hardball enforcement provisions already in force.

These initial efforts to introduce some measure of MNR transparency into the complexities of ESA 2007 are acknowledged and appreciated. Regrettably, to some extent they appear to have been compromised by government “spin” doctors reluctant to disclose anything more than positive aspects of species at risk legislation. In that context, various reviews of the above noted documentation give rise to the following reservations:

- **Private Property Registration:** Designated wildlife habitat is so identified in municipal tax records, whether or not the affected landowner is aware of or has acknowledged what amounts to a provincial lien on his or her property. Upon its future sale the owner-seller is legally obligated to disclose this encumbrance on title thus affecting property mortgage worth and market value.
- **Private Property Access:** Ontario’s 36 district Conservation Authorities, the assigned endangered species watch dog, is an MNR sub-agency skilled in persuading rural landowners to sign easement and other title agreements that thereafter legitimize government access to targeted property at any time and for any reason. Such agreements, often seen as a key component of species “partnerships”, neatly circumvent citizen rights protocols that require each private property access request to be filed in advance and in writing as well as Charter of Rights and Freedoms clauses that forbid unannounced and/or warrantless invasion of private property by anyone including provincial agents.
- **Private Property or Public Resource:** In Ontario under ESA 2007, private citizens who own land, particularly rural land, are expected to recognize, protect and preserve a long list of resident and/or migrating wildlife and their respective habitats with draconian penalties for non-compliance but no meaningful compensation. Stripped of government rhetoric and special interest lobbying, this is nothing less than “partial taking” of private property for public benefit or, as more succinctly described, extortion by statute. In Europe as well as in other Western jurisdictions, if the state deems private land or a parcel thereof essential for heritage/ecological protection or public use and enjoyment, negotiated easements are listed on title in exchange for a negotiated lump sum payment or annual royalty to current and future owners of the affected property. In short, if government covets private land for public benefit, let the public pay for it!

We repeat thanks for prompt and forthright responses to OPERA species at risk queries as well as acknowledgement of MNR efforts to enlist citizen and community support for ESA 2007 legislation. Still, until the public perception fades that the statute is a mailed fist thinly disguised in a velvet glove, we will continue to critique its origin, purpose, structure, implementation and enforcement

Yours truly

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

c.c. OPERA Members and Supporters
Leanne Jennings, MNR Species at Risk Biologist
ESA 2007 Distribution File