LAND USE COUNCIL

"advocating social, economic and environmental balance in government legislation affecting land"

August 18, 2009

The Honorable Donna Cansfield, MPP, Minister
Ministry of Natural Resources
Room 6630, Whitney Block
99 Wellesley Street, West
Toronto, Ontario, M7A 1W3 by Registered Mail

Minister:

We acknowledge, with thanks, your July 22 letter regarding our June 12th appeal to delay legislative approval of proposed species habitat regulations pending wider public consultation,

First officially mentioned in June, 2008, details of these regulations were not unveiled until May 15, 2009 and then only on an Internet site announcing they would be submitted for government ratification by June 30, 2009 and requesting interim comment by June 15. To this foreshortened schedule was added one hastily convened "stakeholder" meeting on May 25 in down-town Toronto. There serious reservations were expressed by many of the 60 attending delegates about thrust and direction of the regulations, the announcement that no further public meetings on the subject would be convened, the urban site chosen to introduce land use constraints directly impacting rural citizens and the inadequately advertised process by which these directives were being fast-tracked into legislation.

Having no information to the contrary, we presume the regulations in question have been approved, our appeal notwithstanding. If so, we ask to be advised whether such approval included any recommended habitat protocols recorded on any EBR Registry web site or in any public forum since 2007.

As advised in our June 12 letter, an Internet report never challenged by your Ministry confirms that ESA 2007 was drafted in 2005 by a cartel of five professional lobbyists eighteen months before it was released on an EBR site as an MNR "discussion paper". Promptly endorsed by a partisan Review Panel, the proposed Act was then tabled at two invitation-only workshops in the spring of 2008 as conducted by paid consultants skilled at posting consensus where little, if any, existed. These were followed by a telephone conference call during which MNR officials advised a 9-point ESA addendum ratified by the attending participants would certainly earn Ministerial comment, a pledge then and since seemingly discredited by loud silence. That addendum addressed long-standing landowner issues and outlined their fair and sensible resolution. Even at this late date it deserves acknowledgement if not resurrection.

We note MNR is said to be proud of its Endangered Species Act. But assurances that its staff "spent a year consulting with a broad range of stakeholders" appear to under-state the foregoing sequence of events. Or, alternatively, perhaps refers only to extensive private time spent with the special interest groups that initiated ESA 2007. Meanwhile, in an MNR written list of 20 recommendations arising from the three group discussions of which we are aware, a strong focus emerges on chronic lack of balanced, effective and timely landowner consultation and communication by that Ministry.

In approving statutes that directly impact private property, the Ontario government invariably references its prior consultation with a "broad range of stakeholders". Thus, by unspecified number and generic definition, are Non-Government Organizations, many operating under charitable tax exempt status, invited in advance to sway political decisions leading to economic sanctions on land they don't own.

The 5th Edition of the Canadian Law Dictionary describes "stakeholder" as ***" a third party chosen by two or more persons to keep in deposit property or money the right or possession of which is in dispute and to deliver the property or money to the one who establishes the right to it".*** The right of land in Ontario was indisputably established by contract with the British Crown over a hundred years ago and no third party has since been "chosen" or is in any way authorized to hold it "in deposit". The term "stakeholder" does not therefore properly describe professional intervener groups who participate at government invitation in discussions that affect use and value of privately owned land.

Indeed, there are, or should be, two classes of participants in such discussions. The primary one holds legal title to his or her land, pays property taxes, is often burdened with a substantial mortgage and, in many instances, relies on that land for a livelihood. The other has no contractual patent, financial investment or proprietary interest whatever in lands targeted for government controls. That secondary participants are able to induce those controls on private land is now a matter of record. That they are routinely favored with consultative preference, financial support and committee appointments from Ontario government agencies to the detriment of primary participants are a wide spread perception if not a matter of fact.

With respect, Minister Cansfield, we contend MNR should introduce and maintain in all land use protocols, consultations and legislation a clear distinction between these two classes of interested participants. Folks who own and cultivate land are "landowners' by name and function and should be identified as such. Those who help manipulate use and value of other people's property, all the while citing the otherwise commendable goal of environmental protection, are Non-Government Organizations by title and influential lobbyists by profession and should be identified as one or the other or both.

Municipal governments and an increasingly anxious public are understandably concerned about the Orwellian pressures inherent in implementation and enforcement of ESA 2007. Some examples: Blending that legislation, which denies right of appeal and right of compensation for production and equity losses arising from provincial policy, with other government statutes; branding vast tracts of private property as wildlife habitat; obligating landowners to recognize allegedly endangered species of plants, animals, and birds in order to protect the lives and habitat of such species as a no-charge public service and without any specific definition of what actually constitutes "protection".

These stresses are compounded by the prospect of million dollar fines with concurrent penitentiary sentences for violators charged under the "strict liability" provision of the ESA. In legal terms this translates as "guilty until proven innocent", a complete negation of the reverse principle, the very cornerstone of English common law. In the ESA that interpretation is supposedly relieved by the faint hope of a "due diligence" defense. But that option may require the accused to retain, at his or her expense, whatever courtroom counsel is considered necessary and whatever number of witnesses is deemed adequate to prove an alleged ESA infraction was either unintentional or non-existent. While defendant cost of a due diligence defense is likely to far exceed the resources of many landowners, we can be sure public funding of appointed MNR prosecutors would never be similarly constrained.

As previously advised, the Land Use Council (LUC) is a “coalition of coalitions” mandated to investigate and publish positive and negative consequences of government statutes affecting use and value of privately owned land. Current research includes, but is not limited to, risk insurance against production and equity losses attributable to not only acts of God but acts of government as well. To that end, the results of ongoing enquiries regarding insurability of losses arising from implementation and enforcement of ESA 2007 will be of interest to landowners across Ontario.

Some months ago we asked Premier McGuinty to direct prepared land use queries of general interest to the appropriate Queen’s Park agency for departmental attention. We appreciate his co-operation in routing the first three of these to a provincial Cabinet Minister who recently provided us with a detailed reply. In the event subsequent LUC queries filed with Premier McGuinty are forwarded to the Ministry of Natural Resources we trust a response to same will be forthcoming at your earliest convenience. We can think of no better way to encourage and record useful dialogue between the Ontario government and its land-owning constituents.

Thanks for your time and patience in reviewing these remarks. An acknowledgement is requested and will be appreciated..

Yours truly

Bruce Pearse, Chair
Land Use Council
16190 Highways 7 & 12
Sunderland, Ontario, L0C 1H0
Phone: 705-357-3054 / Fax: 705-357-3963