

Human Dimensions of Ecosystem Based Planning Using The Environmental Bill of Rights (EBR) To Change Perspectives on Ecosystem Planning

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Abstract

Careful observers recognize that the present approach to land use planning and environmental protection is not protecting ecosystems. We need a planning system that recognizes the social and economic benefits that accrue to human society from ecosystem processes and limits development to a pattern where ecosystem structure and function can be maintained. Ecosystem health needs to be maintained across a mosaic of land uses which vary from intensive human uses, through land of less intensive disturbance, to those areas set aside for minimal human cultural impact. Part of the problem is inherent within the organization and structure of government ministries whose decisions affect the land. These institutions function without strong coordinating mechanisms and with parochial attitudes that do not encompass the necessary ecosystem perspective. Part of the solution is to begin to actively influence and shape these government decisions according to a more ecological paradigm by using the tools that exist in Ontario's unique Environmental Bill of Rights legislation. This paper presents an explanation of how those tools can be used by professional associations as well as the public to begin to change approaches to land use in Ontario.

Introduction

The organizers of this meeting have asked us to focus on the human dimensions of ecosystem-based planning. Our presentation will:

- Identify some obstacles to the adoption of ecosystem-based planning that the Environmental Commissioner of Ontario has observed
- Describe the commitments made by Ontario ministries (especially the Ministry of the Environment (MOE) and the Ministry of Natural Resources (MNR)) with regard to ecosystem planning
- Briefly summarize Environmental Commissioner of Ontario's (ECO) recent observations on how ministries are fulfilling those commitments
- Describe the role of the *Environmental Bill of Rights (EBR)* and the public in promoting ecosystem planning

It has become clear to many that Ontario's present approach to land-use planning is not protective of ecosystems. Most people participating in this forum today could quickly sketch out a vision of what ought to be happening. We should:

- View the landscape from an ecosystem perspective
- Protect both the structure and the functions of ecosystems
- Recognize the cumulative impacts of our activities
- Recognize natural limits
- Set aside protected lands

Especially in southern Ontario, the need to set aside protected lands is great. Southern Ontario is rich in special ecozones; the northern edge of Carolinian forest, the Niagara Escarpment, the Great Lakes shorelines, just to name a few. But of course only fragments of these ecosystems remain in a highly developed, disrupted landscape. In southern Ontario the need is especially great for nodes that protect critical habitat and refugia for sensitive species.

The International Biodiversity Convention calls for 12% of the landscape representing the range of ecological diversity to be set aside for protection. Canada and Ontario are both signatories. The 12% goal has been more or less accomplished in the Crown Lands of Northern Ontario, but has no status in the management of privately held lands in the southern part of the province.

The ECO is watching with interest some of the good work happening on land acquisition in southern Ontario, but clearly it won't be possible to purchase outright a protected areas network for this part of the province. A more enlightened approach to land-use planning for privately owned lands will have to be a big part of the solution.

Barriers to Ecosystem-based planning

There are a host of barriers, especially in southern Ontario, preventing us from getting to the vision of ecosystem-based planning, but today we would like to sketch out just a few that seem important to us and relevant to the theme we've been asked to speak on.

Problem 1: historical failure to recognize the heterogeneity of the landscape

Our land division system is a historical artifact, adopted from England. When the land was parcelled out to European colonists, township plans were applied to the land in geometric patterns with very little regard to features like lakes, swamps, soils, hills or drainage patterns. The geophysical and biological fabric of the landscape was ignored. A single continuous ecosystem overnight became an assemblage of adjacent properties and separate entities.

Problem 2: the ecosystem has no status in law

Certain landscape features such as rivers, streams and lakes do have some status and a measure of protection under riparian law and other laws. Wildlife is also protected to some extent by the Crown as a common good. But trees, soil and groundwater are essentially part of individual property rights, and the ecosystem

overall has no status in law. The *Environmental Bill of Rights (EBR)* is the only provincial legislation that recognizes “the ecosystem” as such.

Problem 3: ecosystem-based planning is not readily visualized

The concept of ecosystem-based planning is complex, and it can be a challenge to visualize what success looks like. Government decision-makers need simple targets to strive for. The general public also is unsure of the concept. Fortunately, certain surrogate concepts can be invoked, such as watershed-based planning, to help paint a picture of the desired planning scale.

Problem 4: the structure of the provincial government

A number of provincial ministries either have an active role or ought to have a role in ecosystem-based planning. The Ministries of Environment(MOE), Natural Resources(MNR), Municipal Affairs and Housing(MMAH), Agriculture, Food and Rural Affairs(OMAFRA) and Transportation(MTO) are all involved to some degree. However, their mandates are fragmented and often in conflict, and there is no integrating framework or broader perspective to foster ecosystem-based planning. There is also not enough monitoring of the health of key ecosystem structures and functions.

In the day-to-day work of the Environmental Commissioner of Ontario, we see these problems of the provincial government structure all the time. Our Annual Report for the year 1999/2000 (published in October 2000) illustrated a number of examples. Our review of groundwater management found that management of this resource is shared by MOE, MNR, OMAFRA and MMAH. These ministries have been developing a strategy for years, but a comprehensive strategy is still not in place. Our review also noted inadequate monitoring of groundwater quantity and quality, and that MOE issues Permits To Take Water without having a good handle on quantities of water available. The conflicts and potential conflicts between sister ministries on groundwater issues are all the more complicated because OMAFRA oversees the *Drainage Act* while MNR is the lead ministry on drought management and MMAH administers the *Planning Act*.

Our 1999/2000 Annual Report (Miller, 2000) also identified a number of structural problems with the ecosystem monitoring programs being carried out by Ontario ministries. The ECO found that ecosystem monitoring tends to be focussed on species important to “clients” and on economically important species. The knowledge base is sporadic, and available only for limited areas of the province. The data is increasingly being collected by partner organizations and volunteer groups and is then fed into MNR data bases. Our research also found that in general, southern Ontario ecosystems (especially woodlands) are not well monitored.

The ECO’s 1999/2000 Annual Report also reviewed the Natural Heritage Reference Manual produced by MNR as a land use planning guide for municipalities. The ECO found that while the manual is comprehensive, well-written and has the

potential to protect natural heritage, its use by municipalities is optional. There are no incentives for municipalities to use this approach and there is inadequate monitoring to see if natural heritage is actually being protected.

How can the Environmental Bill of Rights Help?

So the barriers to ecosystem-based planning are considerable; they include historical, legal and conceptual barriers, and also structural barriers within government. But we want to ask you today to consider using the *EBR* to break down some of those barriers - particularly the problems with the structure of government.

We can't suggest that the *EBR* is a cure-all. It can't reverse the way we divided up land 150 years ago. But it can be a tool for the public to use to nudge along incremental improvements. And it has already established a baseline commitment to ecosystem planning in at least two Ministries.

To understand the *EBR*, it's useful to start with the Purposes of this *Act*, as they are laid out in Part I of the legislation (Ontario Ministry of the Environment, 2001):

The Purposes of this Act are,

- (a) to protect, conserve and where reasonable, restore the integrity of the environment by the means provided in this Act;
- (b) to provide sustainability of the environment by the means provided in this Act: and
- (c) to protect the right to a healthful environment by the means provided in this Act.

The purposes include the following:

- Protection and conservation of biological, ecological and genetic diversity
- Protection and conservation of natural resources, including plant life, animal life and ecological systems
- Identification, protection and conservation of ecologically sensitive areas or processes

These are nice words, but what makes them happen on the ground? The answer lies with the Ministry Statements of Environmental Values. Under the *EBR*, each Ministry has established a Statement of Environmental Values which is to guide the Ministry's day-to-day decision-making. In their Statements of Environmental Values, all Ministries have used some variation of wordings to show that they "recognize" or "adopt" or "commit to integrating" the Purposes of the *EBR* with other aspects of their mandate.

This is quite a significant step; keep in mind that these Purposes apply not just to parks, but right across the province, and right across the activities of 13 provincial

Ministries. The job of the ECO and the public is to hold the Ministries to their words, day by day, and year by year.

MNR and MOE have been especially clear about their commitment to ecosystem planning. For example, MNR's Statement of Environmental Values (Environmental Registry, 2002) says that its first objective is:

“to ensure the long-term health of ecosystems by protecting and conserving our valuable soil, aquatic resources, forest and wildlife resources as well as their biological foundations.”

Similarly, MOE (Environmental Registry, 2002) says:

the “ministry will adopt an ecosystem approach to environmental protection and resource management.”

Again, these are commitments the ministries have made that apply province-wide: not just in parks and protected areas.

Do the ministries always follow through on these lofty ideals? No, not always. They need encouragement and reminders, and that is a job not just for the Environmental Commissioner, but for the Ontario public. The term “Ontario public” definitely includes its academic community and its professional organizations.

You may be able to provide compelling evidence of environmental damage. Or perhaps you may have a modest tinkering in mind - an idea that's easily put in place and that the ministries might be grateful to adopt. Or just possibly you may have that blindingly clear vision of what ecosystem-based planning really looks like on the ground - that flash of insight to convince the decision-makers and inspire the public. In all such cases, you have the option of using the *EBR* to convey your thoughts to the ministries. There are several mechanisms for doing this, and I'll just mention two: the public can comment on proposals that ministries have posted on the Environmental Registry; and the public can submit applications for review; for example, to request a new policy

These mechanisms are ways to place specific issues squarely before the Environmental Commissioner. Keep in mind that the ECO reviews environmental issues relating to 13 ministries, and we often struggle to give fair attention to a very wide range of topics. If, for example, the public has strong concerns relating to air quality issues and drinking water standards, then that is what the ECO will hear about, and will report on. So we need to hear about your issues as well.

There is no guarantee that the Ministry will agree with your comments or your request, but at a minimum the ECO will need to review how the ministry dealt with your request. There is at least a good chance that the issue will be discussed in the

Commissioner's annual report. Our reports are more and more widely read with each successive year. If your suggestions are good and clear, there is also a chance that they will spark a broader debate, and capture the imagination of a minister.

In closing, we want to reiterate what we consider to be a practical approach to encourage ecosystem-based planning.

- Recognize the barriers to ecosystem-based planning in Ontario
- Recognize that ministries have made significant commitments to ecosystem planning through the *EBR*
- Remind the ministries of those commitments
- Use your rights under the *EBR* to help guide ministries towards better ecosystem management

Thank you for the opportunity to contribute.

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