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CanSIA's Submission to the Review of the Endangered Species Act

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Table of Contents

Table of Contents	1
1. Introduction	2
2. CanSIA’s Interest in the Endangered Species Act	3
3. Increasing Transparency and Better Defining the Species at Risk Review Process.....	4
4. Streamlining and Coordination with Related Approvals’ Processes.....	6
5. Conclusions	7

1. Introduction

On January 18, 2019 the Ministry of Environment, Conservation and Parks announced its review of the Endangered Species Act. The Ministry posted a discussion paper on the Environmental Registry for consultation and public feedback with the goals for the province to achieve positive outcomes for species at risk while reducing burden and increasing efficiencies for businesses.

The Canadian Solar Industries Association (CanSIA) is a national trade association that represents the solar energy industry in Ontario and throughout Canada. CanSIA's vision is for solar electricity to be a mainstream energy source and an integral part of Canada's diversified electricity mix. CanSIA is targeting the solar energy industry to be sustainable, with no direct subsidies, and operating in a supportive and stable policy and regulatory environment.

CanSIA, through its industry led Advancing Solar Technology Regulations in Ontario (ASTRO) working group, has developed a series of recommendations which identify the key red tape issues and regulatory barriers that have contributed to higher solar industry soft costs and have restricted private equity from entering the market. By addressing these issues per CanSIA's recommendations, the Ontario Government can help to make solar more affordable and accessible leading to lower hydro bills for Ontarians.

To explain, Ontario families, farmers, and small businesses can lower their electricity bills by reducing the amount of electricity they purchase from their local distribution company (LDC) by consuming their own self-generated solar electricity through an arrangement called net metering. In simple terms, net metering is a billing mechanism that allows home owners (or business owners) who install a solar system to generate and consume their own energy while providing them with a credit for the generated energy they don't consume, which is added back to the grid. Customers are only billed for their net electricity use, meaning if they generate more electricity than they use in a month, they can receive a credit to apply against next month's bill. Ultimately, this provides customers with another option to help reduce their hydro bill and make customers more energy efficient.

CanSIA would like to work collaboratively with the Ontario Government to create a more robust and streamlined regulatory framework for the solar industry that will reduce red tape and unlock the power of private equity, without financial subsidies, and then pass these savings onto consumers in the form of lower hydro bills.

2. CanSIA's Interest in the Endangered Species Act

The Government of Ontario's Made-in-Ontario Environment Plan is expected to help drive significant investment in Canada's clean technology sector. The plan will support and maintain Ontario's renewable energy cost-competitiveness and create jobs in the skilled trades. Solar energy is a core part of this plan - encouraging businesses across Ontario to invest in clean technology to stay competitive and reduce their emissions and energy bills. The Ontario government's proposal to undertake a review of the Endangered Species Act is expected to reduce barriers to solar development in Ontario by cutting the red tape that prevents efficient economic development, while affording protection to sensitive habitat and species at risk in the province. The Canadian Solar Industry Association (CanSIA) would like to provide the following insights and suggestions to this process informed by members' experience in navigating the approvals process under the Endangered Species Act (the "Act").

The main objective of the review is to improve protections for Species At Risk ("SAR"), consider modern and innovative approaches to achieve positive outcomes for SAR, as well as to look for ways to streamline approvals and provide clarity to support economic development. This is especially important for ground mounted solar development in Ontario, as these types of projects are currently required to comply with the Act prior to implementation. With the wind down of the Ontario Feed in Tariff program and the evolution of solar development in Ontario under the customer based net metering regime, ground mounted solar development will now be driven to offset the electricity demands from a co-located electricity customer. These customers, where ground mounted solar is more appropriate than rooftop solar, may be small farms, agricultural operations, institutional, commercial or industrial properties, or even smaller scale rural residential electricity consumers wishing to reduce their electrical demands and manage their bills. Such customer based solar projects would benefit from process clarity of appropriate approvals under the Act.

The government posted discussion paper identifies the following as the desired outcomes of any proposed changes to the Endangered Species Act which are to:

- Ensure species assessments are based on up-to-date science
- Address multiple objectives for ecosystem management through stewardship and protection activities
- Increase efficiencies in service delivery for authorization clients
- Streamline processes and provide clarity for those who need to implement the Act
- Maintain an effective government oversight role

CanSIA will focus its feedback and recommendations and limit its comments to areas where members have reported their experiences in navigating approvals under the Act in an effort to support government in reaching its multiple objectives.

3. Increasing Transparency and Better Defining the Species at Risk Review Process

The discussion paper included the following:

“Since coming into effect, the Act has been criticized for being ineffective in its aim to protect and recover species at risk, for being unclear, administratively burdensome, time-consuming and costly for applicants, and for creating barriers to economic development.”

CanSIA members generally do not have expertise in biological science and typically search for qualified professionals to assist them in advancing projects to approval stage. For a ground mounted solar project in Ontario, the first step a property owner or proponent would undertake is to understand what species may be present or are likely to be present on or near the proposed facility location. This task involves engaging the qualified biologist to undertake a detailed desktop review of literature and documentation related to Areas of Natural and Scientific Interest (ANSI), Environmentally Sensitive Areas, and Species at Risk (SAR), information from the Ministry of Natural Resources and Forestry (MNRF), online information from the Natural Heritage Information Centre (NHIC), and data from non-government agencies such as Bird Studies Canada. The qualified biologist must then conduct habitat assessments of the proposed facility location to evaluate the likelihood of causing harm to potential SAR. The cost of conducting this assessment, for a 500-kilowatt (kW ac) or smaller ground mounted solar project, could range from \$1,500 to \$12,000 per project. This wide range of potential costs speaks to the lack of clarity around requirements, lack of a standard procedure, additional financial burden placed on the developer to simply start the SAR process, and the administrative burden placed on the property owner trying to navigate this unclear process and decide whether it is a viable proposition to install solar panels to reduce their electricity consumption.

Feedback from CanSIA members suggests that the process could be facilitated with a pre-consultation meeting with Ministry of Natural Resources and Forestry (MNRF) staff, similar to the type of pre-consultation meeting that municipalities offer regarding a proponent seeking information on planning approvals for a proposed development. Such a pre-consultation could offer a check-list approach offering general rules and requirements describing the SAR process requirements, red flags and key planning considerations in siting a ground mounted solar facility. This pre-consultation meeting would assist project proponents in their subsequent discussions with biologists in understanding the key considerations and process requirements in navigating approvals under the Act.

CanSIA recommends that MNRF staff offer a pre-consultation meeting to proponents describing the SAR process requirements, red flags and key planning considerations in siting a ground mounted solar facility.

The second step is to evaluate which SAR may be negatively impacted by the solar development, based on the habitat assessment, and potentially conduct species specific surveys during the active windows for those species to understand further if the SAR are present or are likely to be present. Depending on the types of SAR identified and the survey protocol requirements, this may cost the solar developer an additional \$15,000 to \$40,000 per project and take up to one year due to required surveying during the species' active windows, which generally span anywhere from April through August, depending on the SAR that may be present. For example, some snake species survey protocols require that the surveys be undertaken over the span of 2 years. Not only does this present a financial burden, the timelines in project development have the potential to be prohibitive to pursuing the solar development.

Further steps in the SAR process may include mitigation strategies, such as implementation outside of active windows. Where negative impacts cannot be avoided by mitigation strategies, the solar developer may be required to offset their impact through an Overall Benefit Permit by maintaining an additional area, typically of larger size and up to a 15:1 ratio and implement species specific habitat installations in the new area. This habitat offset must be monitored (by a qualified biologist) and annual reports prepared for a period of approximately 5 years to understand the effectiveness of the new habitat. Members have reported that this additional cost to the solar proponent is estimated to range from \$30,000 to \$100,000 and in some cases more. These costs and related delays are a barrier to investment in ground mounted solar development in Ontario.

The outcomes of each stage of the assessment process do not provide a clear indication whether a project is likely to be approved or denied, and if approved, what the range of mitigation strategies and costs may end up costing the proponent. Greater process certainty for proponents navigating either the Renewable Energy Approval (REA) or Environmental Activity and Sector Registry (EASR) process would assist in learning early on in the process whether their proposed solar project is viable or not.

4. Streamlining and Coordination with Related Approvals' Processes

Many CanSIA members have had extremely positive experiences navigating environmental approvals for small ground mounted solar projects that are less than or equal to 500 kW ac under the environmental Activity and Sector Registry ("EASR") approvals process. The EASR for small ground mounted solar facilities was implemented to allow smaller projects having a smaller project footprint to mitigate environmental impact while efficiently allowing projects to gain environmental approvals. While some refinements are always possible, this self-registration process allows potential proponents to clearly and quickly evaluate their sites to assess eligibility and to quickly determine whether their proposed site satisfies all the requirements of the EASR.

The clarity of eligibility criteria and the specificity of the EASR process makes this type of regulatory environmental approval very easy for a property owner or solar proponents to determine eligibility, to navigate the regulatory requirements and to ensure compliance. The EASR includes requirements for ensuring compliance with obligations from a number of different government ministries and agencies. CanSIA would endorse including the Species at Risk protections as part of the EASR approvals where the specific criteria, such as the absence or presence of certain SAR habitats, defined setback requirements, and seasonal activity restrictions would need to be followed and are clearly laid out. The process would still be expected to include stringent requirements for qualified professionals to evaluate sites and provide expert opinions on the proposed activity's impact on habitats and species to ensure ongoing habitat protection. CanSIA members would be pleased to work with government to further discuss and elaborate on the specifics of integration of the Act's requirements and evaluation and protection requirements into the EASR process.

CanSIA would endorse incorporating the Species at Risk protections as part of the EASR approvals where the specific eligibility criteria would need to be followed and are clearly laid out.

5. Conclusions

CanSIA is pleased to offer these comments in an attempt to ensure ongoing stringent protections for species at risk and their habitats, while streamlining the process and providing greater clarity earlier on for property owners or proponents of potential ground mounted solar projects. Solar energy offers the opportunity to empower customers to reduce their electricity consumption and manage their electricity costs into the future through a load displacement or net metering configuration. CanSIA members would be very pleased to continue to work with the government to further refine and implement these recommendations and support the governments objectives in increasing the efficiency of the SAR process.