ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

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July 6, 2006 ***"ENDANGERED LANDOWNERS"***

Ministry of Natural Resources
Species at Risk Legislative Review
Box 7000, 300 Water Street
4th Floor, North Tower
Peterborough, Ontario, K9J 8M5

To Whom it May Concern: **Re: EBR Registry Number: AB06E6001**
By Fax to (705) 755-1788 July 6, 2006 and:
Registered Surface Mail with Enclosure July 6, 2006

The Ontario Property and Environmental Rights Alliance (OPERA) is a provincial coalition of landowner organizations launched in 1994 with a mandate "to protect, and entrench in law, the rights and responsibilities of private landowners against arbitrary restrictions and decisions of government". We have reviewed the Discussion Paper regarding "strengthening" Ontario's *Species at* Risk legislation as proposed by the Ministry of Natural Resources (MNR) and now comment as follows:

Preamble:

Between 1998 and 2002 OPERA actively participated in the evolution of the federal Species at Risk Act (SARA/ Bill C-5). During those four years representatives of our coalition attended various conferences, participated in several workshops, filed numerous submissions and exchanged a good deal of correspondence with the then-current federal Environment Minister. At his request we also submitted a detailed Brief regarding landowner compensation to his appointed consultant. A Senate Committee on Energy, Environment and Natural Resources invited OPERA and several Alberta landowner organizations to provide oral and written comments in all aspects of Bill C-5 and subsequently appended to its endorsement of that legislation the 4 guideline principles noted below:

1. Fair market value would be a starting point for the measure of compensation.
2. Monetary compensation may not always be the most appropriate form of compensation and other forms may be available.
3. No artificial limits should be placed on compensation because *the legislation could cause a major disruption in a person's livelihood and reduce their net worth* (italics added).
4. The government must set out details of *what tasks will satisfy due diligence and ensure that time and costs are fully compensated* (italics added).

The MNR now alleges that current provincial species at risk legislation needs "strengthening", and we understand such refurbishing will match (and in some instances exceed) the related federal statute. But nowhere in a telescoped 60 day consultation period that expires July 7th or a complex 20 page Discussion Paper is there any reference of these Senate codicils.

Nor, for that matter, is there any mention of compensation as such for private landowners whose assets and livelihood are at permanent risk if and when these proposals ascend to legislative status. The consultation process is likewise silent on such important topics as dispute resolution, appeal options and a list of the organizations invited to attend a "stakeholder" consultation meeting convened a month *before* the official consultation period was announced on an Internet posting. It is further compromised, then, by an implicit presumption that all Ontarians interested in, or affected by, this government initiative are equipped with a computer, an Internet connection and enough cyberspace experience to retrieve government web pages dedicated to the issue. Reality, as MNR is no doubt aware, offers a different scenario. To wit.

Statutes that purport to benefit species at risk impact a lot of land and water that is relatively isolated, usually rural and often privately owned. Whether or not engaged in the business of farming, most owners/lessees of such freehold are naturalists by conviction and practice, not by exhortation and coercion. But many of them, unlike Non-Government Organizations (NGOs) that MNR is pleased to recognize as "stakeholders" and accept as partners, don't own a computer or an Internet connection. Consequently, they are far removed from the electronic "loop" where government decrees that encroach on their lives and property almost exclusively reside. Such proscriptions are, in any case, often articulated in bureaucratic syntax that would confuse a university English professor and frustrate most non-government lawyers. This helps foster apathy or, at best, only marginal comprehension among rural landowners and urban residents alike.

It is therefore abundantly clear that proposed changes in Ontario species legislation will directly impact hundreds if not thousands of uniformed citizens with the largest stake but, at the same time, the least understanding and the smallest participation in that crucial undertaking. Whether such an obvious imbalance is being acknowledged, denied or deliberately exploited by MNR staff anxious to "modernize" species at risk laws with minimal delay and interference is an open question.

From these general observations we turn now to each of the nine legislative proposals listed in the Discussion Paper. In that regard, constraints of time and space encourage brevity and unequivocal language. Hence the following responses do not comment in depth or fully recite Discussion Paper reference text. They are, however, presented in the original sequence of numbered sections and/or paragraphs in that document.

Specific Responses:

Proposal 1:

Aboriginal and "stakeholder" (read bureaucratic and NGO) representation in an assessment Committee without equal representation of private landowners directly affected by the decisions of that body is patently unfair and inherently counter-productive.

Proposal 2 - (Option 1):

The Minister (read senior MNR staff) should **not** be empowered to revise the species list in any way without public consultation in advance.

Proposal 2 – Option 2:

OPERA agrees a Species at Risk List in Ontario should be established and maintained by an appointed Committee **provided** affected landowners are equally represented in that forum.

Proposal 3:

Private landowners affected by an emergency species listing **must** be advised of that development by media advertisement and direct mail, not by Environmental Registry web page posting alone.

Proposal 4 – Stage 1 - Option 1:

We see no justification for including "extirpated" listings since that term describes species known to be locally extinct but thriving elsewhere and we reiterate that regulatory proposal notices **must** appear as print media advertisements as well as Environmental Registry web page postings.

Proposal 4 – Stage 1 - Option2:

Listing of "extirpated" species serves no useful purpose and the Minister alone (read MNR senior staff) should **not** be authorized to "exercise discretion in unique circumstances with undesirable impacts" no matter how or where or by whom that imprecisely defined rationale is applied.

Proposal 4 – Stage 2

Future definition of "significant habitat" introduced "upon regulation" invites bureaucratic interpretation of these imprecise terms long after public attention is focused elsewhere and we accordingly **oppose** inclusion of legislative license for validation of so-called "emergency orders".

Proposal 5:

We do **not** agree that the Minister (read senior MNR staff) should be authorized by legislation to issue so-called emergency orders without prior knowledge and approval of the Committee nor do we accept without question or demonstration that "federal recovery strategies are problematic".

Proposal 6:

Legislation **must** include assurance that affected Ontarians will be notified of recovery strategies and any changes therein by Internet web page posting supplemented by print media advertising.

Proposal 7:

Transparent and accountable government is **not** reflected in Environmental Registry web page postings alone since many citizen-observers are not Internet-connected and, of those that are, a certain percentage represent powerful NGOs already singing from the MNR hymn book.

Proposal 8:

The Minister (read senior MNR staff) should **not** be authorized to "enter into agreements and issue instruments" (or revoke them) without Committee overview and public disclosure by means other than recourse to the cumbersome and expensive Freedom of Information process.

Notes on Enforcement and Penalties:

1. *We deplore and totally reject the suggestion that removing the word "wilful" has become the new standard for deterrent legislation or the hallmark of enlightened prosecution and we presume MNR legal experts would also advocate removing "premeditated" when assessing degree of guilt and punishment in a murder trial.*

2. *If "strengthened" provincial species at risk legislation to replace an allegedly "outdated" statute" is, in fact, a thinly disguised MNR attempt to award itself criminal law powers in regulatory enforcement, all citizens of this province will soon realize that Big Brother government dictates invoked not by persuasion but by deception are very dangerous, have no credibility and deserve no co-operation.*

3. *OPERA would actively and publicly support all legally constituted opposition to those sections of any provincial land use legislation or regulation based on the police state tactics and language expressed in Paragraph 9 of this Discussion Paper.*

Proposal 9:

We most vehemently do **not** agree that prosecutors should be relieved of proving intent by removal of "wilful" from the particulars of an alleged offence. We totally **reject** the bizarre notion that a presumption of guilt subtly achieved by such flagrant manipulation somehow translates as "modern" legislation. We categorically **oppose** any suggestion that the mandate and appointment of enforcement "authorities" and officers with search, seizure and arrest capability should be left, without extensive public overview, to any government agency espousing such toxic views.

Appendix 1:

Private landowners in Ontario will be interested, and perhaps appalled, to know that no less than 19 different statutes, 13 provincial, 5 federal and 1 combination federal/provincial/territorial, now relate to species protection. That any of those enactments, alone and/or in combination, could potentially inhibit use, title, mortgage worth and market value of their freehold. That their co-operation, voluntary or enforced, in an otherwise commendable effort to safeguard species at risk might soon be invoked in legislation distinguished by some of the most flagrant departures from due process and natural justice known to Western society since World War II.

Related OPERA Concerns:

1. We can find no reference in the Discussion Paper to landowner rights, an appeal process, capital compensation or a factual cost/benefit analysis.

2. Alleged aboriginal connection to land implies that the rights of current owners and/or occupants are of no consequence.

3. Respect for nature is not the exclusive preserve, or even a current priority, of aboriginal people.

4. Proposed species at risk enforcement provisions with threats of criminal prosecution will, if legislated, simply encourage the "shoot, shovel and shut up" alternative.

5. Imprecise and vaguely misleading rhetoric ignores a number of worrisome issues already left unresolved in SARA discussions with federal officials.

6. Claimed necessity for legislative up-dating is implicitly suspect unless consequential broadening of MNR/ConOnt power in rural land use planning is explained.

Conclusion:

We regret this Discussion Paper follows usual government practice in that proposed legislation is submitted for public debate, largely orchestrated in advance, but its critical implementation and enforcement Regulations are deferred to an unspecified future date when public interest and attention will have long since faded away. We find equally troubling a recent attempt by the Federation of Ontario Naturalists, a supposedly independent MNR partner in the Natural Heritage Information Centre land database, to foment supposedly voluntary write-in support for MNR "modernization" of species at risk legislation. That manipulation aside, we respectfully suggest any regulatory scheme with an inherent, perhaps unintentional, potential for harassment and criminalization of law abiding citizens will, like the infamous Canadian firearm registry, waste a good deal of taxpayer money and achieve few meaningful results other than growing public distrust of government and all its works.

Finally, structural and technical flaws embedded in the Questionnaire of which this Discussion Paper is a related part prompt special attention. In our view, that document challenges experienced computer operators, scorns amateur users and, for both groups, creates a sustained atmosphere of frustration and contained fury. The Questionnaire is anything but user-friendly and, given the haste in which MNR proposes to change species at risk legislation, one suspects that defining characteristic may not be accidental. Some obvious problems:

1. No clear, sequenced explanation is displayed as to document use and features.
2. No warning interrupted completion permanently bars access to rest of on-line version.
3. No prescribed method to save blank print version in a Word folder for later typing.
4. No way to type responses into print version while on screen for saving to Word folder.
5. No way to print on-line version with complete boxed comment before transmitting
6. No outline of Adobe "secondary" key strokes required for blank copy of print version.

We agree that user errors or lapses might explain some of the above problems. That possibility aside, other respondents suggest this Questionnaire may be structured in the best traditions of consensus "management" as routinely employed by professional pollsters.

In that scenario alternatives ostensibly reasonable and appropriate are crafted to garner predictable answers for a published outcome claimed to be accurate within described parameters. Government agencies have been known to achieve similar results by assigning an in-house "facilitator" to record audience suggestions on wall posters for subsequent reduction to an orchestrated minimum and a "free vote" on the least controversial options remaining. Some years ago an independent essay critically examined this process and a copy of same can be provided on request.

Many of OPERA's extensive files covering Bill C-5, the federal statute of similar intent and complexity, can be opened to MNR review on request. For interest and information, we attach to this long submission a recent publication of the Canadian Real Estate Association that addresses some of the issues that have occupied the voluntary time and attention of our network coalition for the past 12 years.

On behalf of OPERA supporting organizations and their constituents, we thank the Ontario government for this opportunity to express coalition views regarding proposed modification of existing species at risk legislation in Ontario. We advise an on-line version of a Questionnaire that reflects those views was, after hours of trial and error, completed and automatically transmitted (we hope) to both MNR and the EBR Registry on July 3rd. Meanwhile, these Discussion Paper comments have been faxed without CREA enclosure to (705) 755-1788 on July 5th with the original being forwarded verbatim by registered surface mail to MNR and the EBR Registry on July 6th.

Yours truly

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

Encl:

c.c. OPERA Member Organizations
Municipal and Media Contacts
SARA Analysis File