

SUBMISSION FROM  
LAKE ONTARIO WATERKEEPER

IN THE MATTER OF:  
The Proposed Billy Bishop Toronto City Airport Expansion

SUBMITTED TO:  
Toronto City Council  
Executive Committee

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December 5, 2013

## **EXECUTIVE SUMMARY**

Lake Ontario Waterkeeper is concerned that the current Billy Bishop Toronto City Airport expansion proposal is inconsistent with the needs and values of Torontonians and of municipal, provincial, and federal government policies.

Waterkeeper is also concerned that the decision-making process surrounding the proposed airport expansion has, to date, been marred by a lack of information, absence of independent scrutiny, and no impartial assessment of the airport's compatibility with Toronto's waterfront revitalization.

Waterkeeper submits that the City of Toronto's approval for the proposed airport expansion should be postponed until all federal and provincial regulatory approvals processes have been completed. Only if the airport expansion can be proved to promote a healthy, viable waterfront community via a science-based, independent, and fulsome decision-making process should it be considered.

## **INTRODUCTION**

Lake Ontario Waterkeeper ("Waterkeeper") is a non-political registered charity dedicated to working in the public interest by advocating for and protecting people's right to safely swim, drink, and fish the Lake Ontario watershed. As a grassroots environmental organization, we empower people in order to stop pollution, protect human health, and restore habitat. We work in an interdisciplinary way, using legal and scientific expertise, as well as the arts and digital media to achieve our goals. We also provide several research and education tools and resources to others working for swimmable, drinkable, fishable water.

Since Waterkeeper was founded in 2001, we have contributed to over 100 formal decision-making processes before provincial and federal boards and tribunals as well as all levels of court including the Supreme Court of Canada. We have had extensive experience facilitating expert research, providing recommendations on terms and conditions of project approvals, and evaluating the risks of various projects to watersheds and community values. Waterkeeper has also published over 400 articles about various issues affecting the swimmability, drinkability, and fishability of our water in Lake Ontario and elsewhere.

Waterkeeper's programs and achievements place us in a unique position to contribute to the discussion of the development of Toronto's waterfront. While we focus our attention on the health of Lake Ontario's watershed and beyond, our organization is based in Toronto and our office was located right on the waterfront for many years. We have been engaged with Toronto and its waterfront communities for over a decade.

Aside from our strong relationships with recreational users of Toronto's harbour and waterfront, we know the ecology and ecosystems of the area. Since 2001, we have patrolled 1,000 kilometres of Lake Ontario's northern shoreline for pollution and habitat loss. We have secured \$1.4 billion in commitments to clean up polluted sites, and have saved 1.6 billion fish in the area so far. Further, we continue to monitor and comment on many developments in our watershed, attempting to ensure that proper legal decision-making processes are followed.

Waterkeeper has always recognized that environmental laws, policies, and procedures exist to ensure development protects the environmental infrastructure that supports our communities - particularly clean water. It is imperative that all project proposals, including the current Billy Bishop Toronto City Airport expansion proposal, adhere to the requirements of Canadian environmental law. It is only through more formal legal processes that we can have an open, transparent, and fair decision about this proposal. Further, the procedures afforded by the relevant laws will better ensure any decision is ultimately made in the public interest.

Torontonians want and value a swimmable, drinkable, fishable waterfront. Decision-makers in all levels of government have increasingly recognized this in recent years. You see it in development, revitalization, increased fishing and recreational access, and restoration initiatives.

Waterkeeper is concerned about the process by which the Toronto Airport expansion is proceeding. There has been a troubling lack of interest in public concerns and little opportunity for adequate consultation or scrutiny. As a result, the proposal is dividing - not uniting - a community. This type of debate is not healthy and it does not fulfill Torontonians' need for a vibrant waterfront.

**Waterkeeper recommends that the City of Toronto defer its decision to approve the airport expansion. Without environmental assessment, permits, proof that environmental harm will not occur, and adequate public consultation, the City's**

**permission is premature. The consequences of making a rushed decision are significant and potentially irreversible harm to public resources; those consequences outweigh any perceived private benefits of the project.**

## **BACKGROUND**

In the late 1990s, the Toronto Harbour Commission (as it then was) proposed to build a bridge connecting the Toronto mainland to the Toronto City Airport. This proposed project triggered the application of the *Canadian Environmental Assessment Act (CEAA)*, and thus required a federal Environmental Assessment (EA). The Toronto Harbour Commission was the proponent advocating for the bridge, and Transportation Canada was the Responsible Authority, charged with overseeing the EA.

The EA was completed in 1999, but the bridge was not constructed. Four years later, in 2003, it was proposed again. By this time, there had been two significant changes along the waterfront: 1) a new wetland had been constructed south of Spadina and Queen's Quay, marking the first stages of a strong waterfront revitalization initiative, and 2) the Toronto Harbour Commission had become the new Toronto Port Authority (TPA). The re-proposed project in 2003 underwent a screening EA; it failed to adequately consider these recent developments, instead drawing heavily on the 1999 EA. This meant that by 2003, evaluations of public need for the airport and the the significance of local ecosystems were already outdated.

In 2003, Waterkeeper petitioned the Commissioner of the Environment and Sustainable Development to address several concerns we had with the project and its approval processes<sup>1</sup>. We submitted this petition to ensure that all the decision-making processes, all the checks and balances afforded by law, would be correctly applied to assessments of the 'fixed link' proposal.

In addition to our petition, we had extensive correspondence with the TPA about the proposal. Our major concerns with the project at that time included the following:

1. Despite the significant presence of migratory birds in the area, no baseline data of bird populations or assessments of potential adverse effects on these

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<sup>1</sup> Lake Ontario Waterkeeper, "Fixed Link Bridge to City Centre Airport, Toronto Islands" Petition No. 81, *Office of the Auditor General of Canada* (14 July 2003), online: Office of the Auditor General of Canada <<http://www.oag-bvg.gc.ca>>.

- populations was included in the 2003 draft EA.
2. The 2003 draft EA failed to adequately consider potential impacts of increased flight scheduling, and resulting air traffic on water quality, wildlife habitat, and migratory birds.
  3. Potential adverse impacts on water quality were prematurely dismissed by the 2003 draft EA because of the asserted poor water quality in the area and impacts on water quality in the area were considered 'unavoidable and unmitigatable'.
  4. Fish and fish habitat were inadequately assessed due to an admitted lack of information about fish and habitat in the area. Further, the 2003 draft EA failed to take into account the development of the new Spadina wetland, which had not been present in the 1999 EA.
  5. General impacts on wildlife were inadequately assessed as the 2003 draft EA asserted the area was not highly valued wildlife habitat, despite the fact that the consultants' reports prepared for the TPA noted the significance of the area for migratory songbirds, hawks, owls, and various species of waterfowl<sup>2</sup>.

Back in 2003, Waterkeeper was deeply concerned over the inadequacy of the EA and the greater decision-making processes<sup>3</sup>. We noted then that important legal requirements and safeguards for fair and proper decision-making were being ignored. Further, we realized that such shallow decision-making processes would fail to provide the swimmable, drinkable, fishable waterfront Torontonians wanted and deserved.

These past concerns are worth revisiting, because we have the same concerns about the current airport expansion proposal. Waterkeeper is *still* concerned by the lack of information about Toronto's waterfront ecology to inform this process. We are troubled that there is no assessment of the effects of airport operations on the water quality in the area or its effects on local fish and bird life. And ultimately, we are disappointed that these important issues continue to be put on the back burner, a decade later.

These continuing concerns are compounded by the fact that there is no EA for the current airport expansion at all. Thus, we are currently without any of the legal safeguards to ensure decisions about the current airport expansion proposal are made properly.

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<sup>2</sup> Krystyn Tully, "Fixed Link Environmental Assessment is Incomplete" Submission to the Toronto Port Authority, Lake Ontario Waterkeeper (June 6 2003), online: Lake Ontario Waterkeeper <<http://www.waterkeeper.ca>>.

<sup>3</sup> Letter from Krystyn Tully (15 September 2003), online: Lake Ontario Waterkeeper <<http://www.waterkeeper.ca>>.

So what does the current airport expansion approval process entail? Not much. Porter Airlines (“Porter”), backed by the TPA, is asking the Toronto City Council for permission to amend the Tripartite Agreement (the “Agreement”) which governs permissible uses for the Toronto City Airport. This Agreement is between the City of Toronto, the TPA, and the Federal government, each of whom own or lease the land on which the airport is situated.

Currently, the Agreement limits the kinds of growth that may be pursued on airport lands. Setting out the conditions to which all three signatory parties must adhere, the Agreement warns, “operations should to the greatest extent possible not be incompatible with the Lessor’s stated environmental concerns with respect to jet-powered aircraft and aircraft noise”<sup>4</sup>. Porter and the TPA seek to remove this condition, effectively removing significant environmental safeguards from the agreement. If the Agreement is amended, Porter plans to fly larger jets in and out of the airport. Bringing these larger machines will also require an extension of the airport runway by 400m, or 38700m<sup>2</sup> (the size of 7 football fields).

The noise issue is only one of many concerns that the airport expansion raises. This is essentially a major development project on highly prized public lands - the parties of the Tripartite Agreement are public entities. However, the project approval process and application to amend the Agreement are being treated as a simple matter of private contract among business and property owners. This approach is not appropriate, given the waterfront’s importance to Toronto.

Since the late 1990s, Toronto’s waterfront has changed more than many imagined it could. Recent developments in the area include:

- The condo boom in the central waterfront/downtown has brought thousands of new residents to the area;
- Extensive revitalization initiatives along the west and east waterfront areas has changed previously industrial areas into residential and business areas;
- Substantial and increasingly successful habitat restoration and fish restocking initiatives throughout the Toronto waterfront area are improving water quality and natural habitat;
- An increasing amount of green space, recreational space, and public access along the waterfront is improving local environmental quality and attracting even

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<sup>4</sup> Tripartite Agreement, 1983, cl (p) at 3, online: <<http://www.torontoport.com>>.

more visitors to the area.

These new improvements are strengthening the bond Torontonians have with the Lake Ontario shoreline. Thus, it is imperative that we ensure this harbour is protected for everyone.

Both the idea and the process by which the proposed changes for the Toronto Airport have unfolded illustrate how out of touch the TPA and Porter is with Torontonians and Ontarians. Neither Porter nor the TPA have demonstrated any interest whatsoever in understanding the community's concerns. They have failed to consider adapting the project to reflect other community priorities, or to ensuring there is an adequate environmental assessment to prove the project will be beneficial to the area. Members of the public have still not been provided with a copy of the TPA's Master Plan for the airport, nor have we been provided with any access to the final consultants' reports assessing various impacts the airport might have on the city. This behaviour promotes an adversarial and disrespectful, "all or nothing" approach to waterfront development that is bad for the city and its citizens.

Considering all the people-friendly developments along the water's edge, Porter's latest proposals are an anomaly. When we have so much going for our waterfront at the moment, and things look like they could only improve, this airport expansion can only be seen as a step backwards. Given these high stakes, we must ensure there is a sufficiently open, transparent, evidence-based, and fair decision-making process to ensure any ultimate decision is made wisely.

## **COMMENTARY**

Any final determination concerning the future of the Toronto City Airport must be made with the future in mind. One commonly-asserted argument in favour of the airport is "convenience". No one contests that the airport's proximity to the downtown core make it convenient for travellers flying in and out of the city. But convenience should not be the sole barometer of public policy.

When convenience was the primary aim of development and policy in the past, problems resulted that cost the city millions of dollars and significant lost opportunity.

For example, ravines became dumping grounds for household, municipal, and industrial waste for no reason other than convenience. After realizing that waste such as PCBs,

low-level radioactive material, and other hazardous materials pose a significant threat to human and wildlife, governments today (including Toronto) are spending over a billion dollars to remediate them.

The Don River was channelized in the early 20th Century to satisfy squabbling rail interests. The “conveniently” altered river became a major flooding hazard, virtually incapable of supporting life, and so polluted that it poses a risk to human health risk. The City is now in the midst of a multi-year revitalization process to reduce flood risks and improve water quality near the river mouth.

Built in the 1950s, the Gardiner Expressway was seen as a convenient way to move traffic in and out of Toronto. Today, it is being dismantled in some areas, remains crumbling in others, and has been widely recognized as the reason for the marked decline of the once popular Sunnyside Beach and park.

The tragic story of “convenience” planning plays out the same way all over the Great Lakes. By contrast, some projects were designed with a long-term perspective in mind. The R.C. Harris Water Treatment Plant built in the 1930s is still a showcase in the 21st Century. It provides nearly half of the city’s drinking water, even though it was designed for a city nearly  $\frac{1}{3}$  the size. The lower deck on the Prince Edward (Bloor) Viaduct, considered an extravagance in 1913, ended up saving the city millions of dollars when it constructed the Bloor subway line in the 1960s. Planned well, infrastructure and development projects improve quality of life for future residents and create more - not fewer - opportunities for residents and businesses.

It is critical that any decision about the airport expansion be made with adequate foresight. It is important for decision-makers to consider Torontonians’ core needs and values and determine whether a larger airport would meet or undermine those needs. As we argue in this submission, Toronto residents, as well as municipal, provincial, and federal governments have identified a swimmable, drinkable, and fishable waterfront as a priority. Waterkeeper respectfully submits that the currently proposed airport expansion is inconsistent with this vision for the waterfront.

## **PART 1:**

### **1. Expanding the airport would be a step backwards for Toronto and Ontario’s progress towards swimmable, drinkable, fishable Lake Ontario**



This is an exciting time to be in Toronto. The city is poised to be a world leader in sustainable and environmentally responsible development which will benefit local residents and attract more visitors. However, this important opportunity largely depends on how effectively we nurture a swimmable, drinkable, and fishable waterfront.

There are four main ways the airport expansion is inconsistent with this opportunity:

1. The current airport expansion is inconsistent with the beginnings of a recent ecological resurgence in Lake Ontario along Toronto's waterfront,
2. The airport expansion may jeopardize local places of ecological significance that should be better protected,
3. The airport expansion is incompatible with recent waterfront revitalization projects and newly emerging waterfront communities,
4. The airport expansion is inconsistent with increasing recreational use of the waterfront for boating, swimming, and fishing.

We will now address each in turn.

### **1.1. The Airport Expansion is inconsistent with the recent and significant ecological resurgence along Toronto's waterfront.**

Over the last several years, the federal and Ontario governments have been attempting to address Great Lakes water quality and quantity issues. These efforts are exemplified by the recent renewal of the international *Great Lakes Water Quality Agreement (GLWQA)* and its Toronto Region 'Remedial Action Plan' (RAP), as well as the *Great Lakes Protection Act* and accompanying *Great Lakes Strategy*. The result of initiatives like these strengthens governments' commitment to focusing on improving and restoring the Great Lakes and their ecosystems.

The United States and Canada work together through the International Joint Commission (IJC) to protect and promote the health of the Great Lakes basin. The Commission seeks to achieve these goals by; creating agreements to regulate water quality, conducting and publishing reports, and setting up various Boards and programs to address more specific concerns<sup>5</sup>.

An important tool with which the Commission addresses water quality issues in Lake

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<sup>5</sup> International Joint Commission, *Role of the IJC*, online: The International Joint Commission (IJC) <<http://www.ijc.org>>.

Ontario is through the *GLWQA*. The *GLWQA* identifies shared US-Canada priorities and coordinates actions by both countries to “restore the chemical, physical, and biological integrity of the Great Lakes”<sup>6</sup>. They also “develop programs, technologies, and other measures necessary to better understand the Great Lakes Ecosystem, and to restore and protect water quality and ecosystem health”<sup>7</sup>.

The *GLWQA* was recently renewed in 2012, and has generally been responsible for several successes<sup>8</sup>. Its provisions state that regions with particularly significant stresses on water quality and important habitat in the Great Lakes must be protected and restored. Under the *Agreement*, Canada had to identify certain ‘Areas of Concern’ with impaired water quality and habitat, and then design and implement ‘Remedial Action Plans’ (RAPs) to promote and restore the health of these areas.

The Toronto area was classified as an Area of Concern in 1987. Since then, a RAP has been designed and is currently being implemented. In 2010, the provincial and federal governments published a report of the status of beneficial use impairments in the region. This report noted, due to extensive remediation efforts, the classification of the Toronto region’s classification as an Area of Concern is expected to be removed in 2020<sup>9</sup>. This means by 2020, the ecosystem will be in a place to heal itself, provided the Toronto Region refrains from polluting the area any more than it is currently doing<sup>10</sup>.

An important part of the Toronto region’s RAP involved addressing fish and wildlife impairments. The RAP included several wetland recreation projects, as well as various fish barrier mitigation projects to encourage greater biodiversity in the region. Forty hectares of coastal wetlands were recreated over the past ten years as part of the related Toronto Waterfront Aquatic Habitat Restoration Strategy alone. A Terrestrial Natural Heritage System Strategy was developed that included watershed-based fisheries management plans and habitat improvement plans<sup>11</sup>, including a 7.7 hectare recreated coastal marsh in Tommy Thompson Park<sup>12</sup>.

Thus, we are at an important crossroads in our management of Toronto’s aquatic

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<sup>6</sup> Environment Canada, *What is the Great Lakes Water Quality Agreement?* online: Environment Canada <<http://www.ec.gc.ca>>.

<sup>7</sup> *Ibid.*

<sup>8</sup> Environment Canada, *Great Lakes Success Stories* online: Environment Canada <<http://www.ec.gc.ca>>.

<sup>9</sup> Environment Canada and Ontario Ministry of Environment, “Toronto Region Area of Concern Status of Beneficial Use Impairments”, online: Environment Canada <<http://www.ec.gc.ca>> at 2.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, at 5.

<sup>12</sup> *Ibid.*, at 6.

ecosystems. We are required by international law through our commitments under the *GLWQA* to be responsible stewards of the fragile ecosystems around Toronto's waterfront. We also have a resulting legal obligation to ensure that we don't permit any unnecessary threat or harm to these newly remediated areas. These must be kept in mind when considering the airport expansion.

In addition to our commitments at the international level, the Ontario government is also strengthening its commitment to a swimmable, drinkable, fishable Lake Ontario. The provincial government is currently considering a Bill to pass the newly drafted *Great Lakes Protection Act (GLPA)*<sup>13</sup>. The Bill has passed second reading in the legislature and is currently being considered by the Standing Committee on Regulations and Private Bills<sup>14</sup>.

The *Act* recognizes that Ontarians benefit from being located on the "largest freshwater ecosystem on earth", and that the Great Lakes are a "critical resource for all Ontarians". The preamble of the *Act* notes, "all Ontarians have a stake in the ecological health of the Great Lakes-St. Lawrence River Basin" and that, "the Government of Ontario seeks to involve individuals and communities in its protection and restoration". Thus, under the *GLPA*, local communities would be responsible for protecting their part of the Great Lakes in order to ensure the larger interconnected lake systems are restored.

This *Act* is accompanied by a *Great Lakes Strategy* that reaffirms the importance of healthy Great Lakes to the communities in their watersheds. The strategy asserts,

The Great Lakes are vitally important to Ontario families. They provide us with drinking water, quality of life, and prosperity. We need to keep the Great Lakes healthy now, and for our children, grandchildren, and future generations. We need Great Lakes that are drinkable, swimmable and fishable<sup>15</sup>.

This assertion also reinforces the duty to act locally in order to realize this vision.

One of the three threats to Lake water quality identified in the *Strategy* was urban growth that is 'not properly managed', due to the fact that it can lead to the loss of

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<sup>13</sup> Bill C-6 *Great Lakes Quality Agreement Act* 2nd Sess, 40th Leg, Ontario, 2013 (found online at: <<http://www.ontla.on.ca>>).

<sup>14</sup> See the oral submissions made to the Standing Committee by Lake Ontario Waterkeeper President Mark Mattson online at: <<http://www.waterkeeper.ca>>.

<sup>15</sup> Ontario Ministry of Environment, *Ontario Great Lakes Strategy*, 2012, online: <<http://www.ene.gov.on.ca>> at 1. See also: Waterkeeper's comments on the Strategy online at <<http://www.waterkeeper.ca>>.

important Great Lakes habitats<sup>16</sup>. Thus, the provincial government recognizes that local regions must pursue environmentally responsible development if we are to restore our lakes. The goals and identified threats to Lake Ontario contained in the *GLPA* and accompanying *Strategy* should be kept in mind when considering the airport expansion.

### **Recommendation**

The *GLWQA* and the proposed *GLPA* legally recognize the duty of local communities to do their part to ensure our Great Lakes are protected and restored. Toronto is compelled to keep these values in mind, when approving projects such as the current proposed airport expansion. If the project does not promote responsible stewardship and protect local ecosystems, then it must not be approved.

### **1.2. The Airport expansion threatens promotion and protection of nearby ‘ecologically significant’ areas.**

The land and water immediately around the airport are important natural spaces. A report prepared by independent environmental assessors for Toronto City Planning, identified over one hundred Environmentally Significant Areas (ESAs) in the Greater Toronto Area, several of which were immediately adjacent to the current airport lands. The report noted,

Despite the fact that the City of Toronto is the largest urban area in the Province, this study confirmed that areas of unique and high quality habitats continue to persist within its urban boundaries. A total of 2735 ha or 4% of the total land area of the City of Toronto (66,750) meets the Official Plan ESA criteria<sup>17</sup>.

The areas identified as ESAs in this report were considered “the most significant and most ecologically sensitive natural heritage features and functions within the City of Toronto”. The report further explained, “these sites contribute disproportionately to biodiversity in the City because they capture areas that support a wide range of unusual ecological conditions, as well as a high diversity of common species and habitat types”<sup>18</sup>. All identified sites provided important habitat for plant, reptile, amphibian, and bird

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<sup>16</sup> Ontario Ministry of Environment, *Ontario Great Lakes Strategy* , 2012, online: <<http://www.ene.gov.on.ca>> at 6.

<sup>17</sup> “Environmentally Significant Areas (ESAs) in the City of Toronto” (June 2012) online: City of Toronto <<http://www1.toronto.ca>> at v.

<sup>18</sup> *Ibid.*

species<sup>19</sup>. The study identified hundreds of rare or ‘significant’ plant, bird, amphibian, and reptile species in the areas<sup>20</sup>.

Once the criteria for an ESA are met, and the municipality recognizes the area identified as an ESA, certain restrictions on development apply to the area. Any permissible development activities in an ESA are “limited to those which are compatible with the preservation of the natural features”<sup>21</sup>. The report further explains,

“Sites that meet the established ESA criteria should be protected from development, site disturbance, encroachment and inappropriate uses to ensure that the natural features and functions for which they have been identified continue to persist and flourish for the long term”<sup>22</sup>.

It is important to note that a disproportionate number of the ESAs identified in the Greater Toronto Area were connected to the waterfront: twenty seven of the one hundred and three identified ESAs were along Lake Ontario’s shoreline. Further, eleven of these ESAs were located around the Toronto City Airport in the Toronto Islands, the Port Lands, and the Leslie Street Spit. Hanlan’s Beach and Hanlan’s Beach Extension as well as Muggs Island ESAs directly border the airport lands<sup>23</sup>.

Further, the six ESAs identified on the Toronto Islands, including Hanlan’s Beach and Muggs Island, also qualified as Areas of Natural and Scientific Interest (ANSI) according to Ontario Ministry of Natural Resources (MNR). ANSI areas are defined by the MNR as “areas of land and water that represent significant geological (earth science) and biological (life science) features”. The Ministry “identifies ANSIs that are ‘provincially significant’ by surveying regions and evaluating sites to decide which have the highest value for conservation, scientific study and education”<sup>24</sup>.

According to the Preliminary Review Report on Coastal Processes and Environments prepared by CH2M HILL for the City of Toronto this past summer, the proposed Toronto City airport runway expansion (measured at 168m at each end) would constitute 38, 700m<sup>2</sup>. As we know now the extension on either end of the existing runway will be at

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<sup>19</sup> *Ibid* at 53.

<sup>20</sup> *Ibid.* at v. Note: there was no inclusion of fish or fish habitat in this assessment.

<sup>21</sup> *Ibid.* at iii.

<sup>22</sup> *Ibid.* at 53.

<sup>23</sup> *Ibid.* at 75.

<sup>24</sup> Ministry of Natural Resources, *Areas of Natural and Scientific Interest* online: Ministry of Natural Resources <<http://www.mnr.gov.on.ca>>.

least 200m. Thus, the area covered by this extension will be greater than 39, 000 m<sup>2</sup><sup>25</sup>. This area is larger than 7 football fields.

A runway extension of this magnitude will require extensive infilling of the lake on both of its ends. Some of the runway may also be extended along the surface of the water, supported by pillars extending into the lake bed<sup>26</sup>. Regardless of which parts of the runway will be built on infill or which will be built on pillars, the extension will destroy significant amounts of surrounding habitat. Infilling will remove habitat immediately, and the pillars will destroy habitat more gradually as the strip they support will block sun from the area, killing the vegetation on which local ecosystems depend.

Additional land and habitat around the airport will be destroyed during construction of the airstrip extension. According to the CH2M HILL report, the fact that surrounding lakebed features extensive amounts of silt and clay over the underlying bedrock may mean that impacts on local ecosystems will be more serious. The report explains that silt and clay are ‘easily mobilized by construction activity’, meaning construction of the runway extension into underlying bedrock will displace significant amounts of the silt and clay sediment above<sup>27</sup>. The report also notes that over time, the “dynamic dune environments” of Hanlan’s Beach will be significantly impacted as half of the area of the beach will collect a large amount of this disturbed silt and clay<sup>28</sup>.

The report warned, Hanlan’s Point Beach has been an area of intensive beach restoration efforts which are starting to prove successful<sup>29</sup>. It was also alive to the fact that the coastal marshes on the Toronto Islands are considered a “significant eco-district” by the Ontario Ministry of Natural Resources<sup>30</sup>.

### **Recommendation:**

The fact that the airport is located in such ecologically significant areas, and will certainly impact them through construction and operation of the expanded airport, must be considered when determining whether to approve the currently proposed airport expansion. If the airport expansion does not protect these significant areas, it must not be permitted.

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<sup>25</sup> CH2M HILL Canada Limited, “Revised Review Report: Porter Airlines Runway Extension Proposal Review” online: <<http://www1.toronto.ca/>> at 1-2.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.* at 2-7.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, at 3-11.

<sup>30</sup> *Ibid.* at 2-1.

### **1.3. The airport expansion is incompatible with waterfront revitalization and the needs and values of new communities emerging along the water**

Toronto is currently experiencing an urban development boom, and much of this is occurring by the waterfront. The TPA recognizes that the urban environment around the airport is changing quickly. They note, in a correspondence with the City of Toronto from this year, that hundreds of new condominium developments have been built by the central waterfront since 2006. This building boom has already brought an influx of 15, 000 new residents to the area. A further 14, 000 residential units, with approximately 22, 000 new residents are pending development approval<sup>31</sup>.

In addition to this condominium boom along the waterfront, the City of Toronto, in partnership with the provincial and federal governments is revitalizing large areas along the eastern shores of the city's waterfront. This initiative is called the Toronto Waterfront Renewal and it is a "multi-million dollar long-term plan for environmental improvements, economic activity, and overall enhancement of quality of life"<sup>32</sup>.

The Toronto Waterfront Renewal plan identifies its "key element" is to show "leadership in showcasing sustainable communities, as outlined in Waterfront Toronto's Commitment to social responsibility and sustainability"<sup>33</sup>. The plan explains,

Already, Toronto's new waterfront offers the quiet joy of strolling along wetlands, picturesque boardwalks and promenades and the excitement of dragon boat races, public concerts, festivals and marketplaces. In addition to vibrant new public squares and a network of beautiful parks and natural heritage areas, Toronto waterfront renewal represents a tremendous economic development opportunity in the areas of employment, assessment revenues, new construction, tourism, cultural and commercial development<sup>34</sup>.

There are 3 areas that are being revitalized under this plan: the West Don Lands, East Bayfront, and the Port Lands. Combined, all these areas comprise 1, 020 acres of waterfront property.

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<sup>31</sup> Letter from Geoffrey Wilson (7 November 2013) online: <<http://www1.toronto.ca/>> at 3.

<sup>32</sup> Waterfront Renewal, online: City of Toronto <<http://www1.toronto.ca/>>.

<sup>33</sup> Waterfront Renewal, "Benefits of Toronto Waterfront Renewal", online: <<http://www1.toronto.ca/>>.

<sup>34</sup> *Ibid.*

The West Don Lands Revitalization Plan revolves around creating more green space by the water and involves a large public park that will connect the city to the Don River and the lake. The Port Lands Acceleration Initiative attempts to act as a gateway for Torontonians to experience the waterfront and beautiful views of the lake and City from Port Lands shores<sup>35</sup>. The East Bayfront Plan identified this area as an important space that could encourage Toronto's city centre to "establish a positive and meaningful relationship with its waterfront". This plan also seeks to ensure "the full extent of the 1.5 kilometres of water's edge must become a clear vibrant public destination..."<sup>36</sup>. It is worth noting that these areas are directly in the airport's eastern flight path.

In addition to these three initiatives, the Ontario Place is also converting its eastern edge into a public park<sup>37</sup>. The park design includes improvements and additions to the Waterfront Trail, a beautiful trail that provides a scenic path that stretches along Lake Erie, Lake Ontario and the St Lawrence River. This trail seeks to connect people to the Great Lakes and celebrate local nature and culture<sup>38</sup>. It is worth noting that this proposed park is immediately facing the Toronto City airport's western runway.

All of these initiatives evidence the value Torontonians and the Ontario and federal governments prescribe to meaningful connection with the waterfront. With increasing numbers of people living closer to the water, as well as more public infrastructure and urban planning encouraging more people to spend more time by the water, we must ensure the environment is healthy and welcoming.

Toronto's position on Lake Ontario's shore is one of the city's greatest assets. The recent developments noted above indicate government, business, and the public are alive to this reality. The city is primed to be a world leader in sustainable development, with enormous potential to successfully integrate creative urban design and responsible ecological management<sup>39</sup>.

In its pivotal role in enhancing the economic, social, cultural, and recreational life of the Greater Toronto region, Toronto's waterfront renewal is creating a blueprint for growing focused, sustainable and inspiring cities in Canada. It is a demonstration of brownfields legislation in action, a showcase of innovative

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<sup>35</sup> Port Lands Acceleration Initiative, online: <<http://www.portlandsconsultation.ca/>>.

<sup>36</sup> East Bayfront Precinct Plan, online: <<http://www1.toronto.ca/>>.

<sup>37</sup> Ministry of Tourism, Culture, and Sport, News Release, (12 November 2013) online: Ministry of Tourism, Culture, and Sport <<http://news.ontario.ca/>>.

<sup>38</sup> Waterfront Trail, online: <<http://www.waterfronttrail.org/>>.

<sup>39</sup> Krystyn Tully, "Does Toronto Airport Plan Hijack Obama, Wynne Vision for Great Lakes?" *Waterkeeper.ca Weekly* (10 April 2013) online: Lake Ontario Waterkeeper <<http://www.waterkeeper.ca/>>.



approaches and technologies and one of Toronto's greatest opportunities to enhance and celebrate civic pride<sup>40</sup>.

**Recommendation:**

Healthy communities require a healthy environment. And as residential use of the land around the waterfront grows, so will its recreational use. With this context in mind, it is especially important to continue to work towards a swimmable, drinkable, fishable waterfront. If the airport expansion is found to be inconsistent with this goal, it must not be approved.

**1.4. The airport expansion is inconsistent with growing recreational use of our waterfront for boating, swimming and fishing**

Boating

Many people enjoy time spent out on the water kayaking, canoeing, or on larger vessels. There is already a substantial community of recreational boaters who use the harbour, and this community will only grow.

Toronto is home to many moorings and anchorages along the waterfront as well as several large marinas, each with hundreds of berths. The city has several vibrant yacht and sailing clubs. And each summer, hundreds of recreational kayakers and canoeists enjoy the lake waters around Toronto. Toronto's inner Harbour already experiences significant use and not insignificant boater traffic.

Swimming

Stretching from Keele Street to Victoria Park Avenue, the Toronto Waterfront has eleven popular beaches, two are on the Harbourfront, four are on the Toronto Islands, and one is in the Port Lands.

Each summer hundreds of thousands of Torontonians and visitors explore our beaches and host events on their shores. Thousands use Waterkeeper's Swim Guide each summer to check conditions at 5,000 beaches in Canada and the USA<sup>41</sup>. Hanlan's

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<sup>40</sup> *Supra* note 33.

<sup>41</sup> Swimguide, online: <[www.swimguide.ca](http://www.swimguide.ca)>.

Beach, adjacent to the island airport, is in the top ten most popular beaches in all of Swim Guide.

The Toronto Islands offer the city's best beach water quality. The clean water and alluring surroundings attract people all summer long. Public swimming races are often hosted on the Islands<sup>42</sup>, and there is an open water swimming and triathlon group, which organizes weekly swims in Lake Ontario and regular competitions and events around Toronto<sup>43</sup>.

This past May, the Globe and Mail asked the Canadian public to vote for the 10 best beaches in Canada. The resulting list of 10 included two Toronto beaches<sup>44</sup>. Thus, Toronto's beaches have a national reputation. Like the city's boating community, the number of swimmers in Toronto's waterfront will only grow.

### Fishing

The numbers of people fishing from Toronto's waterfront are similarly growing, leading some to believe the city is experiencing a fishing renaissance<sup>45</sup>. The Ontario Ministry of Natural Resources encourages urban fishing in Toronto, noting the Toronto Islands and Tommy Thompson Park are great fishing destinations<sup>46</sup>. There are also several active recreational angling clubs in the city and online fishing forums dedicated to fishing in Toronto's harbour. The Ministry also organizes regular 'urban fishing festivals' at the Toronto Islands during the summer months in which people can fish on specific days without having to obtain a licence to do so.

Fishing in the Toronto Harbour is increasingly popular with members of the public as they are able to catch several prized species of fish including northern pike<sup>47</sup>. Ministry of Natural Resources' studies show that panfish, yellow perch, largemouth bass, and

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<sup>42</sup> Toronto Island Lake Swim, online: <[www.torontoislandlakeswim.com](http://www.torontoislandlakeswim.com)>.

<sup>43</sup> Lake Ontario Swim Team, online: <[www.lostswimming.com](http://www.lostswimming.com)>.

<sup>44</sup> "Canada's Top 10 Beaches" *The Globe and Mail* (28 May 2013) online: <<http://www.theglobeandmail.com>>.

<sup>45</sup> Alex Ballingall, "Local Anglers Cast Lines at Toronto's Urban Fishing Holes", *The Toronto Star* (18 July 2013), online: <<http://www.thestar.com>>. And Marcus Gee, "Toronto's Clean Little Secret", *The Globe and Mail* (24 August 2013), online: <<http://www.theglobeandmail.com>>.

<sup>46</sup> Ontario Ministry of Natural Resources, *Urban Fishing Sites in the Toronto Area*, online: Ontario Ministry of Natural Resources <<http://www.mnr.gov.on.ca>>.

<sup>47</sup> Marcus Gee, "Toronto's Clean Little Secret", *The Globe and Mail* (24 August 2013), online: <<http://www.theglobeandmail.com>>.

smallmouth bass are more plentiful in the Harbour than previously thought<sup>48</sup>. The CH2M HILL environmental report references a 2007 Ministry of Natural Resources study in which approximately 35 distinct species of fish were present at and in the vicinity of the Toronto Islands. These included several types of Minnow, Shiner, Trout, and Bass<sup>49</sup>.

Currently, there are several active programs seeking to bring indigenous Species at Risk such as the Atlantic Salmon and American Eel back to Lake Ontario<sup>50</sup>. CH2M HILL's report also noted 3 aquatic Species at Risk "have the potential to inhabit part of the runway extension: American Eel, Silver Lamprey, and Eastern Pondmussel<sup>51</sup>.

For several years, there has been an active American Eel Recovery Strategy for the province. The strategy notes the importance of these eels to the biodiversity of Lake Ontario and notes remediation efforts will likely take several eel generations to achieve. The document recommends eleven ways to re-establish the species. Of special note are; 1) to restore access to habitat for the American Eel, 2) to restore, protect, and enhance actual Eel habitat, and 3) to "maintain strong Ontario participation and leadership" in Eel restoration efforts<sup>52</sup>.

Waterkeeper has received several reports from members of the public who have caught mature American Eel off of the Toronto Islands. Further, we have been in contact with the Toronto Region Conservation Authority and the Ontario Ministry of Natural Resources, both of whom recognize there are appreciable populations of American Eel in Toronto's Inner Harbour. This should be kept in mind when considering the airport expansion.

More and more people are discovering what the lake has to offer, and realizing that they can directly benefit from the health of the waters. The Toronto Star explains, "the return of big fish to the Toronto waterfront is part of a bigger, often overlooked story: the rebound of the city's natural environment"<sup>53</sup>.

Toronto's City Council has shown it is aware of the benefits of fishing along Toronto's

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<sup>48</sup> Toronto Region Conservation Authority and Ontario Ministry of Natural Resources, "Urban Fishing Plan" (public presentation) delivered at Urban Fishing Plan Public Meeting (29 October 2013).

<sup>49</sup> *Supra* note 25 at 2-1.

<sup>50</sup> See: Bring Back the Salmon online: <<http://www.bringbackthesalmon.ca>>. and Ministry of Natural Resources, *Restoration of Atlantic Salmon to Lake Ontario*, online <<http://www.mnr.gov.on.ca>>.

<sup>51</sup> *Supra* note 25 at 2-1.

<sup>52</sup> Ontario Ministry of Natural Resources, *Ontario Recovery Strategy: The American Eel*, online: Ontario Ministry of Natural Resources <<http://www.mnr.gov.on.ca>>.

<sup>53</sup> *Supra* note 47.

shores. Over the spring and summer of 2012, Council considered the “Gone Fishin’ ” motion in which they sought to take immediate steps to “celebrate and encourage shoreline fishing on the central waterfront”. Part of the plan contained in this motion involved permitting more fishing locations along the shore, as well as constructing a pier specifically for fishing in the central waterfront<sup>54</sup>. The motion recognized recreational fishing in the Harbour as “an activity enjoyed by thousands of Torontonians every year”, and noted that fishing along the waterfront was a right enjoyed by the Toronto public, and one that was to be protected and strengthened<sup>55</sup>.

Toronto’s fishing renaissance will be further encouraged by Regional Conservation Authorities from Burlington to Durham, who are currently drafting a new Recreational Fishing Plan for the region. This Plan will cover 200 kilometres of Lake Ontario’s north shore and is being designed in conjunction with the provincial government.

The Plan’s vision is that “present and future societies value not only healthy fish communities and habitats, but also the recreational value of fishing”<sup>56</sup>. Its mission includes more promotion of the recreational fishery through increased programming around fish in the harbour, family events, and kids’ camps. The Plan ultimately seeks to increase more public access to the Lake, and promote and facilitate recreational fishing in local communities in the Greater Toronto Area.

Thus, this is an exciting time for Toronto’s recreational fishery. Ecosystems are beginning to strengthen enough to be responsibly fished, and restocking efforts for Species at Risk, such as the American Eel are proving to be potentially fruitful. It is important that we not lose this momentum, and manage these new resources respectfully.

### **Recommendation:**

As recreational use of the harbour and waterfront areas increases, and as the current fishing renaissance is still fragile, the airport expansion must not be approved if it will impede restoration of fish biodiversity and habitat, or dissuade boating, swimming, and recreational fishing from happening in the harbour.

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<sup>54</sup> Motion MM 22.11 “Gone Fishin’ ”, (12 June and 11-13 July 2012) Toronto City Hall, online: <http://app.toronto.ca>.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Supra* note 48.

## **PART 2:**

### **2. The current approval process for this project is inadequate and sufficient as it fails to notify the public, and lacks important legal oversight**

As mentioned in the background section of this submission, Porter and the TPA are requesting that City Council approve changes to the Tripartite Agreement that governs permissible activity on the airport lands. Specifically, they are asking that they be permitted to fly jets in and out of the airport. Porter notes that if they receive approval to operate jets from the airport, they will have to increase the length of the airport's runway 200m, over 39, 000m<sup>2</sup>, into the lake.

As our submission has illustrated above, there is considerable cause to believe that the airport expansion, if approved, will not be consistent with Torontonians and the municipal, provincial, federal governments' vision for a swimmable, drinkable, and fishable Lake Ontario.

As we have explained,

- The *GLWQA* and the proposed *GLPA* legally recognize the duty of local communities to do their part to ensure our Great Lakes are protected and restored. Toronto is compelled to keep these values in mind, when approving projects such as the current proposed airport expansion. If projects do not promote responsible stewardship and protect local ecosystems, they must not be approved.
- The fact that the airport is located in such ecologically significant areas, and will certainly impact them, must be considered when determining whether to approve the currently proposed airport expansion. If the airport expansion does not protect these significant areas, it must not be permitted.
- Healthy communities require a healthy environment. And as residential use of the land around the waterfront grows, so will its recreational use. With this context in mind, it is especially important to continue to work towards a swimmable, drinkable, fishable waterfront. If the airport expansion is found to be inconsistent with this goal, it must not be approved.
- As recreational use of the harbour and waterfront areas increases, and as the current fishing renaissance is still fragile, the airport expansion must not be approved if it will impede restoration of fish biodiversity and habitat, or dissuade boating, swimming, and recreational fishing from happening in the harbour.

In addition to the substantive concerns listed above, Waterkeeper also has three procedural concerns. Any ultimate decision made in the face of these procedural concerns will necessarily lack validity and legality. We submit there are three overarching reasons for why the current approval process to determine whether to approve changes to the Tripartite Agreement is inadequate:

1. There is not enough information about the project available for any public comment process to be meaningful. Nor is there enough information on which City Council can currently make a reasonably informed or evidence-based decision on the project.
2. Any decision-making process must be open, transparent, fair, and accountable, not merely political. The best way to ensure this, is for the project proposal to undergo an Environmental Assessment (EA) under the *Canadian Environmental Assessment Act*. However, there is no EA of equivalent process planned for the airport expansion project proposal at all.
3. Before any decisions are made about the project proposal, any requisite environmental permits must first be obtained.

The persistence of all these factors will undermine the legitimacy of any hasty decision. In order to prevent this from happening, and to ensure a responsible and forward-thinking decision is rendered, we must have more information about this project made available, we must have an EA, and requisite permits must be applied for. Any final determination concerning the airport expansion must be postponed until these concerns are adequately addressed.

**2.1. There is not yet enough information available for there to have been any meaningful public participation, or informed and evidence-based final decision to be made concerning the proposed airport expansion.**

At the time this submission is being drafted, the public does not have access to the Toronto Port Authority's master plan for the City Airport expansion. Further, the public currently was only provided with access to completed consultants' reports on November 28, leaving little time for review<sup>57</sup>.

For any opportunity for public input to be meaningful, the public must be provided with accurate and up-to date information. Members of the public have the right to be fully informed of the project in order to comment on it and help ensure it is approved in the

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<sup>57</sup> *Supra* note 25 at 2-2. The final environmental consultants' report still notes a need for more research and study of the area.

public interest.

The short timeline for such a large project to be approved or denied is unprecedented. The project was initially proposed in April of this year and is scheduled to be decided this month. Recently, a report from the Deputy City Manager noted that any decision this December concerning the airport expansion would be “premature”<sup>58</sup>. The report cited, insufficient data, a lack of any clear direction or plan for the expansion, and the lack of proponent responses to recent concerns that have arisen, as reasons for why any ultimate decision on the expansion should be postponed. The report recommended further study, consultations, and stakeholder discussion be conducted and that an update report be provided to City Council detailing progress on these initiatives in March 2015.

## **2.2. The Airport expansion approval must be an open, transparent, fair, and accountable, not just a political, process**

As mentioned in the ‘background’ section of our submissions, there has not been an Environmental Assessment (EA) of this airport since the late 1990s. As we have also illustrated in our submission above, the urban and natural environment around the airport has changed dramatically since then. Furthermore, the legal climate for development in natural spaces in the Great Lakes watershed and in the Toronto region has changed in recent years, with the Toronto region’s RAP under the *GLWQA* and the proposed *GLPA* and *Strategy*.

Following legal processes now can avoid political headaches later. Several pieces of legislation exist to facilitate difficult decision making processes, ensuring they happen in as fair and transparent a way as possible. The *Canadian Environmental Assessment Act (CEAA)*, specifically, exists to help decision-makers weigh important economic and environmental considerations when determining whether to approve a given project. The more strictly one adheres to this law, the more carefully considered, and thus

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<sup>58</sup> Christopher Hume, “Toronto Deputy Mayor Norm Kelly Missteps on Island Airport” *The Toronto Star* (29 November 2013), online: <<http://www.thestar.com>>. And Kaleigh Rogers, “Call to Delay Island Airport Divides City Councillors” *The Globe and Mail* (28 November 2013), online: <<http://www.theglobeandmail.com>>. , “Request to Ammend the Tripartite Agreement for Billy Bishop Toronto Airport - Report from the Deputy City Manager, Cluster B” (21 November 2013), online: <<http://app.toronto.ca>>.

better, an ultimate decision will be.

Specific benefits afforded by conducting an EA under the *CEAA* include a mechanism to consider whether there is an actual need for the proposed project in the first place. This EA process also allows decision-makers to determine whether there could be any alternatives to the project that could adequately address any identified need for the proposed project. These two considerations are particularly important to keep in mind when considering this airport, as they have been ignored for over a decade.

Other benefits afforded by the *CEAA* EA process include legally mandated consideration potential adverse impacts of a proposed project on aspects of the natural environment such as; fish and fish habitat, aquatic Species at Risk, and migratory birds<sup>59</sup>. EAs conducted under the *CEAA* must:

- identify possible environmental effects of operations of projects as well as any possible malfunctions of operations,
- assess the significance of these identified risks,
- include consideration of comments made by the public,
- take into account technically and economically feasible mitigation measures designed to limit adverse environmental impacts of a project,
- consider the requirements for a follow-up plan that will in turn manage future adverse environmental impacts,
- take into account the underlying purpose of a project, and
- alternate means for conducting the proposed project<sup>60</sup>.

The currently proposed airport expansion should trigger an EA under the *CEAA*. The legislative scheme for this *Act* changed dramatically in the last federal budget bill. The result being that projects must now be included on a prescribed list of designated activities in order to merit an EA. Construction or operation of an airport is on the list of designated physical activities covered by the *Act*<sup>61</sup>. Canadian Port Authorities are not exempt from conducting EAs under this federal legislation<sup>62</sup>. Nor would the project qualify for exclusion from the designated activities list, since construction and operation of the airport will occur within 30m of a body of water<sup>63</sup>.

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<sup>59</sup> *Canadian Environmental Assessment Act*, RSC 2012, c-19 s 5.

<sup>60</sup> *Ibid.*, s 19.

<sup>61</sup> Canada SOR/2012-147, s 26.

<sup>62</sup> Canada SOR/99-318.

<sup>63</sup> Canada SOR/2007-108, s58.



Waterkeeper respectfully submits the proposed airport expansion project should be submitted to the CEA Agency to determine whether an EA is required. Upon Receiving this project application, the Agency then has 45 days to determine whether an EA is required. There are also 20 days designated specifically for public comments on the issue of whether an EA is required.

### **2.3. Before any decisions are made about the project proposal, requisite environmental permits must first be obtained.**

The above two procedural concerns inform this third concern. Both the request for more time and information as well as the request for legal oversight of the decision-making process also apply to environmental permits. More time is required to assess whether there are additional legal requirements to obtain these permits, and any decision about this project must be postponed until this matter is resolved.

A series of Canadian laws regulate the types of development that may happen in our natural spaces. An important way these laws regulate development is through various permit structures.

Certain actions, such as destroying habitat, or impacting the water quality of certain areas, is generally prohibited, unless you are granted explicit permission from the relevant Ministry to do so. The process for granting permission to perform these otherwise prohibited activities involves a process of weighing how destructive the activity is to natural environments with how important the project is. As such, these legal processes are significant mechanisms by which the health and integrity of local ecosystems can be responsibly managed in light. Thus, it is important that more time is given to assess whether such permit requirements apply to the proposed airport expansion.

#### Navigation and Marine Exclusion Zones

The *Navigable Waters Protection Act (NWPA)* still governs Lake Ontario and the Toronto Harbour as “navigable waters”<sup>64</sup>. It prohibits construction projects from being performed in these waters without permission. Transport Canada administers the *Act* through the

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<sup>64</sup> The extensive changes to this *Act* approved in the 2012 federal budget will only come into force in April 2014. Transport Canada, “Navigable Waters Protection Program - Overview”, online: Transport Canada <<http://www.tc.gc.ca>>.

Navigable Waters Protection Program and any construction approvals must come from the Minister of Transport.

The airport expansion project would likely require *NWPA* approval because it would classify as a “work” requiring approval under the *Act*<sup>65</sup>. Thus, the project should be submitted to the Navigable Waters Protection Program to determine whether a permit is necessary.

If a decision is postponed until after the changes to the *NWPA* come into force, the new *Navigation Protection Act (NPA)* will govern the harbour. A permit for the project under this new legislation will still likely be required if there were to be any changes to the placement of any buoys marking the Marine Exclusion Zones (MEZs). MEZs are zones around the end of each runway area in which all marine vessels and other marine activity is prohibited. These zones are meant to ensure no flight paths are obstructed, and protect recreational water users from getting too close to the flight path of planes.

From the current project description of the airport expansion, it is unclear whether the MEZs around the airport will have to increase in size or not. If they will increase in size, this will impact navigation in the harbour, especially on the western gap. This change in the navigability of the Toronto Harbour would also likely trigger application of the new *NPA*, and a permit under the *Act* will still be required.

### Fish and Fish Habitat

The newly amended *Fisheries Act* came into force this November. Under this piece of legislation, serious harm to fish that are part of a commercial, recreational or Aboriginal fishery is prohibited<sup>66</sup>. If a proposed project’s construction or operation would impact a fishery in this way, a permit from the Minister of Fisheries and Oceans would be required.

The *Act* defines “serious harm” as, “death of fish or any permanent alteration to, or destruction of, fish habitat”<sup>67</sup>. As the expansion of the airport runways into the lake, as well as the impact the western runway expansion will have on Hanlan’s Beach will

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<sup>65</sup> *Navigable Waters Protection Act*, RSC 1985, c N-22, s 10.

<sup>66</sup> Department of Fisheries and Oceans Canada, *Fisheries Protection Program*, online: Department of Fisheries and Oceans Canada <<http://www.dfo-mpo.gc.ca>>.

<sup>67</sup> Department of Fisheries and Oceans Canada, *Changes to the Fisheries Act*, online: Department of Fisheries and Oceans Canada <<http://www.dfo-mpo.gc.ca>>.

necessarily cause permanent harm to surrounding fish habitat, this requirement of the *Act* will likely be met by the proposed project.

Further, as explained above in this submission, recreational fishing in the Toronto Harbour is quite extensive and actively promoted by the provincial and municipal governments. Thus, the area may qualify as a recreational fishery, also triggering the application of the *Fisheries Act* to the proposed airport expansion project.

### Species at Risk

The Species at Risk Act makes it illegal for any person or corporation to harm or harass a Species at Risk or damage or destroy its habitat, unless they have explicit approval (i.e. a permit) from the Ministry of Natural Resources to do so<sup>68</sup>.

More research is needed into the habitat of listed Species at Risk, such as the American Eel mentioned above, that are present in and around the Toronto Harbour, as their presence and required habitat may require a *SARA* permit for the proposed expansion project.

### Migratory Birds

According to the *Migratory Birds Regulations*, airports require a permit to kill migratory birds that may pose a danger to aircraft operating from the airport<sup>69</sup>. Given the large numbers of migratory birds around the Toronto City airport, there should be permits for the airport to engage in any activity that injures or kills any migratory birds in the area.

## **REQUEST**

Waterkeeper recommends that the City of Toronto defer its decision to approve the airport expansion. Without environmental assessment, permits, proof that environmental harm will not occur, and adequate public consultation, the City's permission is premature.

Furthermore, the consequences of making a rushed decision are significant and

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<sup>68</sup> *Species at Risk Act*, RSC 2002, c29, s 73.

<sup>69</sup> Canada CRC c1035, s 28.

potentially irreversible harm to public resources; those consequences outweigh any perceived private benefits of the project.