



PARLIAMENT | PARLEMENT
CANADA

October 4, 2022

The Honourable Omar Alghabra
Minister of Transport
House of Commons
Ottawa, ON K1A 0A6

Dear Honourable Minister,

As we have previously discussed, a number of applications have been made to the Navigation Protection Program (NPP) seeking permission to infill sections of Halifax Harbour, most notably in the Northwest Arm and in Dartmouth Cove. The proposed infilling activities are to happen on privately owned “water lots” which are submerged properties that were granted to property owners along the shoreline before Confederation.

These applications are still under consideration by Transport Canada officials at the NPP and have received a considerable amount of feedback from the public, which has been almost universally opposed to the proposed infilling projects.

What we and many others have maintained throughout this process is that the unusual nature of these pre-Confederation “water lots” has created a regulatory gap, with no order of government having clear jurisdiction. The relevant federal legislation, i.e. the *Navigable Waters Act* and the *Fisheries Act* only allow the federal government to consider potential impacts to both commercial and recreational navigation, and potential impacts on fish and fish habitat, respectively; the provincial *Coastal Protection Act* applies only to the foreshore (the area between

the low-tide and high-tide marks); and the Halifax Regional Municipality's (HRM) by-laws do not apply to submerged land.

A potential solution to this problem was raised during the Impact Assessment Agency of Canada's (IAAC) recent engagement process that was held earlier this year. It was suggested that, given the local and unusual nature of the water-lots as well as HRM's role and interest in regulating land-use, HRM could exercise concurrent jurisdiction over the water lots and implement a regulatory framework. However, despite significant public feedback, the Municipality is reluctant to proceed down that path, lest they overstep their jurisdictional ambit.

From HRM's perspective, they are seeking explicit assurance that they would not be encroaching on federal jurisdiction should they decide to introduce a municipal by-law regulating water-lot use/infilling.

We understand that the federal government is not in a position to offer the assurances HRM is seeking, given that the constitutionality of a law may be challenged by duly interested persons, independently of any assurance from the federal government.

Nevertheless, it appears that HRM is in the best position to regulate the use of water-lots. If the federal government cannot offer assurances regarding jurisdiction, it should still play as constructive a role as possible. We know that Transport Canada officials have met with HRM on this topic before, and given the importance of this issue to the local community, we would ask that you instruct them to continue in full cooperation with HRM, should they proceed with a by-law regulating water-lot use, to offer as much legal guidance as possible regarding jurisdictional issues.

This could take the form of a working-group composed of TC Legal Services lawyers and HRM Legal Services lawyers tasked with crafting a legal framework under which HRM could regulate water-lot use. Concretely, I'm asking that you or TC legal services, write a letter offering this cooperation.

The urgency of this matter has been underscored by Hurricane Fiona: as extreme weather events become more common as a result of climate change, infilling along the shores of Halifax Harbour, especially in semi-enclosed bodies of water such as the Northwest Arm and Dartmouth Cove, could increase the risk of damage from storm surges.

We believe that this path outlined above offers the best opportunity to close the current regulatory gap that allows the pre-confederation water-lots to be used as infill sites with only narrow considerations for navigation and fish habitat. A broader consideration of the environmental impacts as well as the public good is necessary, and the federal government should be as accommodating and constructive as possible in the effort to accomplish this.

Should you have any questions whatsoever, please do not hesitate to contact us directly.

Sincerely,



Andy Fillmore
M.P. Halifax



Darren Fisher
M.P. Dartmouth – Cole Harbour



Hon. Stan Kutcher
Senator (Nova Scotia)



Hon. Mary Coyle
Senator (Nova Scotia)

Cc: Halifax Regional Council