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Rural Burlington Greenbelt Coalition (RBGC) Submission

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re: Bill C-43 Division 2 Aeronautics Act Amendment

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November 18, 2014

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**To: the Standing Committee on Finance (FINA)  
the Senate Committee on Transport and Communications**

Dear Chair and Committee Members,

This is a formal submission on behalf of the Rural Burlington Greenbelt Coalition (RBGC) with regards to the proposed amendments to the Aeronautics Act. The RBGC supports the amendments as proposed in Bill C-43, Part 4, Division 2.

**Background:**

The Burlington Airpark is located in the protected countryside of Ontario's Greenbelt just east of the Niagara Escarpment, at the base of Mount Nemo. Century farms, rural residences, protected watercourses and land rich in agricultural heritage surround it.

In July 2007, Mr. Vince Rossi purchased the Burlington Airpark from the Kovachik family who had founded and operated it since 1962. In its 45 year history the Airpark had been quiet and primarily recreational and much of the property was leased to local farmers who continued to farm the pristine land to the west of the main runway and around a regionally significant woodlot.

Almost immediately after its purchase, the new Airpark owner sought a municipal variance in order to store approximately 8000 auto-auction cars on Airpark property. Neighbours fought the parking lot application and won but were forced to organize again in November 2008 when the new owner proposed a 65m high cell-phone tower next to residences on Appleby Line. The community's advocacy efforts prevailed again and the cell phone tower application was withdrawn.

In September 2008, the new owner began accepting fill at the Burlington Airpark. By February 2009, approximately 50,000 cubic meters of fill had been imported and dumped on the farmland and the regionally significant woodlot had been destroyed. Neighbours began seeing negative effects on their property e.g. runoff and siltation.

The City of Burlington, Region of Halton and even the Province of Ontario were all advised that they had no authority on Airpark property due to the Jurisdictional Immunity provided by the *Federal Aeronautics Act*. As a result, the fill operation continued unregulated and unabated for five more years.

In February 2013, the Airpark owner sought another variance, this time to purchase additional prime agricultural land, designated Greenbelt Protected Countryside and to extend the Airpark's main runway to 4700 ft. — 700 feet longer than runways found at Buttonville or Toronto Island Airports. As of the

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writing of this document, the Airpark owner is again in negotiations to purchase this farmland (88 acres).

It was during this variance process that the landfill situation became apparent to the rural community and local environmental groups in Burlington and the Rural Burlington Greenbelt Coalition (RBGC) was born.

By July of 2013, conservative estimates put the amount of fill dumped on Airpark property at 500,000 cubic meters, the equivalent of 200 Olympic-sized swimming pools, and an environmental review of the few soil reports that were available found petroleum hydrocarbons, heavy metals and carcinogens like benzopyrene in concentrations high enough to refer to the Airpark as “an unlicensed waste disposal facility on the basis that it has accepted contaminated soil”<sup>1</sup>. The reports from this review also noted that there was no assurance that this data represented the worst-case soils placed at the site.

The Airpark owner continued to refuse to cooperate with any level of government to permit testing of the soil that had been dumped. Further, by 2013, adjacent homes and farmlands had been severely impacted by the flooding and siltation caused by the now enormous differences in grade (nearly 2 stories high in some cases) at their property lines and a complete lack of storm-water management.

The RBGC, — consisting of Protecting Escarpment Rural Lands (PERL), Burlington Green, Milton Green, Coalition on the Niagara Escarpment (CONE), Citizens Opposed to Paving the Escarpment (COPE), the Lowville Area Residents Association (LARA) and the Rural Burlington Residents Association (RBRA) —was successful in advocating for the municipal enforcement of Burlington’s Site Alteration Bylaw, Regional well-water testing and illegal road-entrance closures, Conservation Halton enforcement of watercourse protections, and MOE oversight of perimeter groundwater testing. The Airpark fought these charges, claiming the City and other agencies had no jurisdiction or authority to enforce the law. In his decision Justice Murray of the Ontario Superior Court said:

There is little doubt that the runway construction must comply with the federal specifications relating to slopes, surfaces of runways, runway shoulders and the slopes and strength of runway shoulders. However, requiring Airpark to use clean fill regulated by the municipality for the benefit of other residents in the municipality will not be permanently reflected in the structure of the finished product in the sense meant by Justice Beetz. The by-law is not an attempt by the municipality to regulate slopes or surfaces of runways, runway shoulders or the slopes and strength of runway shoulders. While regulating the quality of fill may have an impact on the manner of carrying out a decision to build airport facilities in accordance with federal specifications, such regulations will not have any direct

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<sup>1</sup> <http://cms.burlington.ca/AssetFactory.aspx?vid=30351> <http://cms.burlington.ca/AssetFactory.aspx?did=28122>

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effect upon the operational qualities or suitability of the finished product which will be used for purposes of aeronautics.<sup>2</sup>

On June 11<sup>th</sup>, 2014 the Ontario Court of Appeal upheld Justice Murray's decision and ruled that the City of Burlington's fill by-law did not intrude on the core of the Aeronautics Act, and therefore DID apply on Airpark property. This ruling also gives Provincial environmental enforcement the green light to commence testing on the affected land.

The RBGC continues to advocate for testing of the 500,000 cubic meters of potentially-contaminated fill, and for remediation of the damage to neighbouring properties and farmland.

We are not in support of any further Airpark expansion onto Greenbelt Protected Countryside, and adjacent to the Niagara Escarpment (a UNESCO World Biosphere Reserve) and we are in support of both the prohibitive controls and consultative process proposed in the amendment to the Aeronautics Act.

### **Comments on the Aeronautics Act as it pertains to the Burlington Airpark:**

The ambiguity and lack of planning and/or regulation surrounding private unregistered and registered Aerodromes in the Aeronautics Act, has cost the City of Burlington hundreds of thousands of dollars in legal fees and has caused enormous environmental and social damage in its rural area.

Currently, the Aeronautics Act grants the same sweeping permissive powers to private Aerodrome operators that it does to certified commercial Airports; giving them the same protections and autonomy, but almost none of the regulations - in other words, all of the powers but none of the responsibilities.

Further the regulatory loopholes created by the permissive "hands off" approach of the Act towards unregistered and registered aerodromes has led to at least 5 private airparks operating massive, lucrative, and mostly unregulated fill operations in Ontario alone.

While the City of Burlington is now in the process of enforcing site alteration controls on Burlington Airpark property, the Aeronautics Act provided enormous protections for this private business as it unilaterally disregarded all of the careful provincial, regional and municipal planning and controls that have been developed to protect the character and environment of a critically important rural and agricultural area.

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<sup>2</sup> Burlington Airpark v. City of Burlington, 2013 ONSC 6990

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The damage that has been done to our rural community over the previous 5 years has gained National media attention, but an expanded Airpark in this pristine and protected landscape would be devastating. As an expanded but still unregistered aerodrome, a Buttonville-sized Burlington Airpark would avoid any of the regulations required of a commercial Airport - from hours of operation to wildlife management to proper environmental controls for de-icing and plane washing. This amounts to nothing more than one type of private business being granted Federal permission to opt out of the regulations that all other businesses must comply with.

COPA, the Canadian Owners and Pilots Association, has fought to preserve the core of the Aeronautics Act, repeating that "the question of whether and where to locate aerodromes falls within the protected core of aeronautics and Federal power" and yet, the act currently provides no Federal plan for "where" or power for "whether" these uncertified aerodromes can exist. The act states that an aerodrome seeking certification must seek municipal approval, but that merely incentivizes remaining uncertified (the Burlington Airpark dropped its certification); and certification can only be deemed necessary by the Minister if an area is "built up" (undefined) leaving important rural and environmentally sensitive areas out of the equation.

COPA advocates that "the Federal Government and only the Federal Government have the jurisdiction to control aeronautics, including the power to determine whether and where to establish aerodromes, and how such power is exercised". If this is true, then there can be no possible objection to balancing the permissive controls of the Federal Act with the reasoned prohibitive controls proposed in the amendment.

For further details on the RBGC and its history of advocacy surrounding the Burlington Airpark's fill operation, including photos, media coverage and video, please visit [www.saverurlburl.org](http://www.saverurlburl.org).

Sincerely,  
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