

## EXECUTIVE SUMMARY

Lake Ontario Waterkeeper (“Waterkeeper”) is a registered charity dedicated to the protection and restoration of Lake Ontario. Waterkeeper is a staunch supporter of clean energy initiatives, including wind power. We also have a keen interest in the rare and precious natural habitat of the Wolfe Island region, given its significance within the watershed and globally.

Recently, Waterkeeper received a letter from the Director of the Environmental Assessment and Approvals Branch, Ontario Ministry of the Environment. This letter, dated March 27, 2008, informed Waterkeeper that a decision has been made that an individual environmental assessment is not warranted for the Wolfe Island Wind Project.

**Waterkeeper is writing to the Minister of the Environment, pursuant to the *Guide to EA Requirements for Electricity Projects*, to request that the Minister vary the Director’s decision to allow for mediation.**

Waterkeeper submits this request in light of several factual inaccuracies and omissions contained in the Director’s decision. It appears as though the Ministry of the Environment has been misinformed or misled in a number of areas. As a result, the Director’s decision fails to consider a number of highly relevant factors; it is Waterkeeper’s position that these factors, when properly considered, demonstrate how mediation will better fulfill the purposes of the environmental review, satisfy public concerns, and better protect precious habitat.

Waterkeeper describes these factors in greater detail below. We would also like to highlight the fact that **all of the concerns raised during the environmental assessment process could be successfully addressed through the mediation process**, allowing the wind project to proceed while at the same time ensuring the protection of environmentally sensitive, rare areas.

## BACKGROUND

Wolfe Island is one of the most precious natural areas on the Great Lakes. It sits at the end of Lake Ontario and the beginning of the St. Lawrence River. It faces Canada to the north and the United States to the south. Wolfe Island's unique location makes it an important area for migratory birds. It is also home to some of the last naturally productive fish habitat on Lake Ontario. The recent *State of the Great Lakes: 2007* report notes that **Lake Ontario has the worst coastal wetland health on the Great Lakes**. The incredible loss of habitat elsewhere on the lakes makes Wolfe Island especially vital to the future health of these shared waterways.

In 2002, Canadian Renewable Energy Corporation ("CREC") initiated a process to construct approximately ten 1.8 MW wind turbines on two or three plots of land on Wolfe Island. In 2005, the wind project was expanded tenfold to 197.8 MW, with eighty-six 2.3 MW towers situated on parcels of land covering most of western Wolfe Island. In spring 2007, the number of towers located in the northwest corner of the Island nearly doubled, increasing from 17 to 32.

While there is almost universal support for wind power within the community, the specific locations of a small number of the turbines have fueled significant controversy. A number of residents and volunteer organizations, including Waterkeeper, presented expert opinion on the "siting" issue over the last year. Collectively, we have offered alternative solutions and offered to attend mediation with the proponent in order to allow the wind power project to proceed while still protecting critical habitat.

A provincial environmental review of the wind power project is approaching completion. Waterkeeper, along with nearly 100 others, expressed concerns about the project design. Nearly 30 submitters asked the Ministry of the Environment to conduct an independent environmental assessment, rather than the minimal self-assessment conducted by Canadian Renewable Energy Corporation with the assistance of Stantec Consulting. A federal environmental assessment is in its early stages.

On March 27, 2008, the Director of the Environmental Assessment and Approvals Branch, Ontario Ministry of the Environment wrote that a decision has been made that an individual environmental assessment is not warranted for the Wolfe Island Wind Project. Waterkeeper suggests that the Director's decision was based on incomplete and at times inaccurate information. Fortunately, the Minister of the Environment has an opportunity at this time to vary the Director's decision and allow mediation to proceed.

## BASIS FOR REQUEST

### 1. The Director failed to consider a number of issues required in the *Guide to EA Requirements for Electricity Projects*

#### 1.1 The Director failed to consider expert opinion regarding environmental impacts

At various times during the environmental review process, Waterkeeper and other members of the community provided expert reports to the Ministry of the Environment.

Examples of these experts and their recommendations include:

- William Evans, an **ornithologist** specializing in the study of nocturnal bird migration, proposed possibilities for improving this project by alleviating bird and habitat destruction. He suggested that strategies such as a “staggered building schedule” should be implemented, the proponents should prepare for a “worst case scenario for raptors and grassland birds and present mitigation measures” accordingly, and mitigation measures that have proven to be effective elsewhere should be adopted.
- Dr. Barrie Gilbert a **Senior Scientist** (retired) from Utah State shared many of William Evans’ concerns regarding the lack of substance in studies provided by Stantec. He recommended that the “most effective mitigation for the collision impacts of wind power on bird and bats is siting such facilities at locations with low or average low-altitude migration densities of these species.”
- Barbara Frei, a **Masters in Science** candidate at McGill University suggested that various “mitigation steps may reduce the negative effects proposed such as careful placement of turbines away from ‘optimal’ grassland habitat.”

These expert opinions formed, in part, the basis for many of the “bump-up” requests. Yet, the Director’s decision did not acknowledge the expert opinions or attempt to factor in their recommendations for improving the wind project design and protecting precious habitat.

#### 1.2 The Director failed to consider well-documented and significant public concern

There is widespread and well-documented public concern regarding the Wolfe Island Wind Project. When Waterkeeper visited the Ministry of the Environment office to review the Project file, we found letters of concern from 94 individuals. The Ministry of the Environment decision letter reports that there were “numerous” requests for a bump-up to

an individual environmental assessment. Furthermore, the controversial project has been the subject of media attention both locally and nationally.

The Director recognized that there is public concern, but failed to actually consider the substance and the extent of that concern in her decision. The Director dismissed bird mortality concerns, suggesting that CREC's adaptive management plan will address such events; this assertion is, unfortunately, incorrect (see below, 2.3). The Director also suggested that CREC is committed to, "continued and transparent communication with the public." Respectfully, Waterkeeper suggests that CREC has continually failed to address public concerns or maintain effective communications with many members of the community; this failure is part of the reason for growing public concern and the urgency behind this appeal. Should the project proceed to a mediation process, Waterkeeper is confident that most concerns can be easily addressed and would be satisfied that the Ministry of the Environment had taken reasonable steps towards protecting precious habitat.

### **1.3 The Director failed to question the proponent's unwillingness to attempt dispute resolution ("mediation")**

Waterkeeper requested meetings with the proponent as recently as March 4, 2008, to attempt to resolve outstanding public concerns; CREC declined mediation. According to the *Guide to EA Requirements for Electricity Projects*, the Director shall consider the proponent's public consultation program and attempts at alternative dispute resolution (B. 4.1.1). Not only did the Director fail to consider this matter, she cited the proponent's *unwillingness* to respond to public concerns as a reason *not* to proceed with mediation: "CREC has indicated that it would not be a willing participant in a mediation process, a key element of successful mediation."

Waterkeeper respectfully submits that the proponent should not benefit from its refusal to attempt dispute resolution, particularly when the public is so willing to collaborate and when the project is so clearly intended to be an environmentally friendly initiative.

### **1.4 The Director failed to consider the public benefits of subjecting the project to an individual environmental assessment**

Nowhere in the decision letter of March 27, 2008 does the Director consider the public benefits of subjecting the project to an individual environmental assessment. In light of the technical advice provided by the community and the significant public concern, such benefits would include the following:

- improved project design,
- protection of environmentally rare and precious habitat,
- improved relations within the community, and
- creation of a model that could be applied to other wind power development projects.

Of course, other parties may be able to add additional public benefits to this list.

## 2. The Director appeared to be misinformed when considering a number of issues required in the *Guide to EA Requirements for Electricity Projects*

### 2.1 The Director incorrectly concluded that CREC's siting methodology balanced environmental, technical and economic considerations

CREC's siting methodology was not based on a balance of environmental, technical, and economic considerations. Below are a few examples that demonstrate technical and economic considerations trump environmental considerations:

- Environmental considerations never factored into the selection of Wolfe Island. The wind project was expanded to its current size of 197.8 MW in response to the Ontario Power Authority RFP2; the location was chosen based on Canadian Hydro Developers Inc.'s (now "CREC") technical competency and financial resources. This basic criteria for selection was described by a spokesperson for the company in testimony before the Ontario Energy Board, September 24, 2007.
- The number of towers in the environmentally sensitive northwest corner portion of Wolfe Island actually **increased** following explicit concerns voiced by Environment Canada. (See below, 2.2)
- If the Ontario Power Authority were to issue its RFP today, Wolfe Island would be excluded from consideration as a viable wind power location because of its designation as Important Bird Area. In March 2006, the Ontario Power Authority released "Analysis of Future Wind Farm Development in Ontario," which clarifies the methodology used to locate wind farms in Ontario. This document, prepared by Helimax Energy Inc. identifies the Important Bird Area designation as a constraint which eliminates an area from further consideration.
- Discussions with CREC have confirmed that the location and density of towers is based primarily on the company's ability to option land and enter into agreements with the private landowners.

- CREC is unwilling to shut down individual turbines, even in the event of significant unanticipated adverse effects to birds or bats. (See below, 2.3)

## **2.2 The Director incorrectly stated that no agencies have expressed concerns with the turbine sites on this project**

To our knowledge, the proponent received comments from a number of agencies expressing concerns with the turbine sites. Some of these comments include the following:

- “The wind farms under construction for development on Wolfe Island are, to our knowledge, the first ones proposed in an important raptor wintering area in eastern North America.” (Environment Canada, March 9, 2005)
- “Proponents whose projects fall into this category may be encouraged or even required to seek alternative locations if significant adverse effects on birds are anticipated.” (Environment Canada, August 3, 2006).
- “We continue to be concerned about the possible negative impacts on grassland birds that inhabit areas where turbines will be located, and on wetland birds that inhabit areas adjacent to turbine locations. We also have continuing concerns about the possible negative impacts ... on wintering raptors due to direct mortality ...” (Environment Canada, September 21, 2007)
- “NRCan is aware of the reservations that Environment Canada (EC), the Ministry of Natural Resources (MNR) as well as several members of the community have expressed regarding setbacks of turbines from natural habitats ... We understand the proponent does not intend to modify the siting of the turbines ... Though monitoring is an effective and expected tool to evaluate impacts *it is not considered mitigation.*” NRCan goes on to suggest that federal funding for the project will be contingent on a siting agreement. (Natural Resources Canada, November 9, 2007)

Please note that Environment Canada’s and the Ministry of Natural Resources’ comments were not included in the Project file located at the Ministry of the Environment office. Waterkeeper received copies of early Environment Canada comments from the agency directly. The Ministry of Natural Resources’ comments have not been released to the public, to our knowledge.

### **2.3 The Director incorrectly stated that CREC will adapt its activities to protect birds, including operational controls such as turbine shutdown**

In her decision of March 27, 2008, the Director stated the following:

I understand that, based on monitoring results, the plan provides opportunities for CREC to adapt its management activities in response to significant unanticipated bird mortality events and disturbances, ranging from increasing survey frequency and reporting to *operational controls such as turbine shutdown. (emphasis added)*

This statement provides part of the rationale for Director's decision. Unfortunately, the proponent has stated numerous times that it will *not* shutdown turbines in the event of bird mortalities. In a January 28, 2008 letter to the Kingston Field Naturalists, a Senior Project Manager with Stantec Consulting wrote the following:

CREC is advancing strategies that could be implemented during the initial operation of the project should significant unanticipated adverse effects to birds or bats be encountered during post-construction monitoring. *While these measures will not include shutdown of individual turbines, they will include other mitigation measures. (emphasis added)*

In a July 24, 2007 letter to Fisheries and Oceans Canada, a CREC Natural Resources Coordinator suggested that turbine shutdown was “non-viable management strategy”. The document identified as “Adaptive Management Strategies” states that, “it is not economically viable for CREC to considering feathering blades (e.g., reduced production) or shutting down turbines during seasonal time periods or select weather conditions,” (Attachment A, p. 5). The identical sentence appears in the Adaptive Management Plan addressed to Environment Canada and dated January 4, 2008. A memo entitled “Request to Elevate Binder - Wolfe Island Wind Project” found in the Ministry of the Environment project file also confirms that mitigation measures will *not* include shutdown of individual turbines (p. 5).

### **2.4 Waterkeeper's concerns were misstated and/or missing from project documents**

A document located in the Ministry of the Environment project file labelled “Attachment #2: MOE-EAAB RTE Decision Criteria and How These Have Been Met”, contains a summary of CREC's attempts to address public concerns. Waterkeeper has two objections to this document. First, it contains no reference whatsoever to Waterkeeper's concerns and no evidence that the proponent made any effort to resolve our concerns. Second, the number

of letters of concern was understated significantly; Waterkeeper counted 94 letters of concern in the file not 34. (See section entitled, “Public Consultation Program and Attempts at Dispute Resolution”).

In Stantec’s summary of stakeholder comments, the following statements are made:

Mediation is a means to resolve well defined issues in certain circumstances. In our submission these matters are not good candidates for mediation having regard for the following considerations:

- The root issues between the parties have to do with the fundamental question of whether the project should be permitted to proceed on Wolfe Island. This is not a matter that can be resolved by mediation and requires a decision.
- Lake Ontario Waterkeeper has not identified discrete issues that are capable of mediation ...
- The remaining issues or concerns are matters where the parties have agreed to disagree despite CREC’s best efforts ...
- Candidly, we do not discern in the Lake Ontario Waterkeepers (sic) RTE a desire to find, through mediation, way to have the project succeed, so much as a desire to stop or delay the project ...

These statements are patently false and prejudicial. Waterkeeper is not fundamentally opposed to the project, as evidenced by our written submissions. Lake Ontario Waterkeeper has identified discrete issues; again, we have limited our concerns to those associated with siting. Waterkeeper has never “agreed to disagree” with CREC; we have repeatedly tried to engage the company in mediation in an effort to resolve our concerns and protect important habitat. Finally, the assertion that Waterkeeper wishes to stop or delay the project is not based on fact and serves only to prejudice the reader.

Waterkeeper was not aware until after the Director’s decision was made that our position had been so flagrantly misstated. Such misrepresentations create the appearance of bias and cast a shadow over the decision-making process. Waterkeeper is hopeful that the Minister of the Environment will now have an opportunity to respond to our organization’s actual submissions and recommendations, rather than those paraphrased or re-stated by the project proponent.

Please see Appendix A for a transcript of Waterkeeper's January 2, 2008 meeting with CREC. As is evidenced by these notes, Waterkeeper expressed a clear desire to reach an agreement with CREC; it was the company that failed to provide an opportunity for our experts to meet.

### **3. The environmental concerns involve rare and precious habitat but are easily mitigable**

As described in numerous submissions, the Wolfe Island Wind Project is located in an environmentally significant area. Locally, the area provides valuable fish and bird habitat which contribute to the character of the community as well as its economy. In the context of Lake Ontario and the Great Lakes, Wolfe Island is also home to some of the last naturally productive fish habitat on Lake Ontario. The recent *State of the Great Lakes: 2007* report notes that Lake Ontario has the worst coastal wetland health on the Great Lakes. The incredible loss of habitat elsewhere on the lakes makes Wolfe Island especially vital to the future health of these shared waterways. In the context of the global environment, many of the Island's grassland areas provide "globally significant habitat". Wolfe Island maintains an Important Bird Area designation. The Ministry of the Environment recognizes that Species at Risk are present.

At every stage of the environmental assessment process, Waterkeeper has suggested that environmental concerns could be mitigated following an independent assessment and/or via mediation. Expert reports commissioned by the community confirm that modest adjustments to the siting of windmills on the Island will protect bird and fish habitat.

In order to assist the Minister and the proponent, Waterkeeper has attached a list of the discrete issues we would seek to address through mediation (Appendix B).

### **4. Mediation will not prejudice the proponent**

Referring the project to mediation at this time will not unfairly prejudice the proponent. While the provincial environmental assessment process is drawing to a close, Waterkeeper notes that the federal environmental assessment process is still in its early stages. Given the statutory requirements regarding notice and comment under the federal EA process, and the likelihood that federal agencies may still require amendments to the project, there is plenty of time to continue working with members of the public to improve its design.

## REQUEST

In light of the above commentary, Lake Ontario Waterkeeper respectfully requests that the Minister vary the Director's decision. Specifically, Waterkeeper requests that the Minister refer the matter to a mediation process in order to address public concerns and protect precious habitat.

In the alternative, the Minister may choose to address the issues listed in Appendix B and attach additional terms and conditions to the Wolfe Island Wind Project approval.

## APPENDIX B: ISSUES FOR MEDIATION

Below is a list of the issues Waterkeeper hopes to resolve through an independent environmental assessment and/or mediation process. These matters require the support of both CREC and the Province of Ontario.

1. CREC should publicly review the siting of towers in the most environmentally sensitive areas (i.e., the northwest and southeast corners of the project). Specifically, towers in these sensitive areas should be reduced in density and concentrated in the centre of the study area, per the recommendations of B. Frei.
2. CREC should measure setback distances from the blade tips, not the turbines, per Environment Canada, Ducks Unlimited and the Kingston Field Naturalists.
3. The Province of Ontario should require as a condition of the approval of the project that CREC complete and receive approval for its post-construction monitoring program. A draft of this program should be released to the public and refined through the consultation process.
4. CREC should postpone construction of turbines near woodlots over 10 ha in size, pending the completion of additional point counts per the request of MNR (see letter from EC dated March 3, 08).
5. CREC should grant independent experts access to monitoring data during post-construction operation.
6. CREC should include meaningful mitigation measures in its adaptive management plan, including turbine shutdown and blade feathering.
7. The Province of Ontario should grant formal status to the Community Liason Group, with recourse to binding arbitration in the event an issue is not resolved.
8. In the interim, no construction or site alteration should take place in these two areas of significant grassland habitat, from mid May - July.