APPENDIX C

Correspondence Related to the Project

New Jersey Turnpike Authority

ADMINISTRATION BUILDING P.O. BOX 1121 NEW BRUNSWICK, NEW JERSEY 08903
TELEPHONE (732) 247-0900

RICHARD J. CODEY
ACTING GOVERNOR

JOSEPH SIMUNOVICH, *Chairman*
JOSEPH (J.P.) MIELE, *Vice Chairman*
JOHN HIBBS, *Treasurer*
LUIS FERNANDEZ, *Commissioner*
HAROLD L. HODES, *Commissioner*
DAVID G. EVANS, *Commissioner*
HARRY LARRISON Jr., *Commissioner*
JOHN LETTIERE, *Commissioner*
MICHAEL LAPOLLA, *Executive Director*

VIA FEDERAL EXPRESS

February 4, 2005

Mr. Gary Kasoff, United States Coast Guard
Bridge Program Manager
One South Street
Battery Park Building
New York, NY 10004-5073

RE: NEW JERSEY TURNPIKE AUTHORITY
TREMLEY POINT CONNECTOR ROAD PROJECT – OPS 2052
REQUEST FOR JOINT PERMIT PROCESSING MEETING

Dear Mr. Kasoff:

The New Jersey Turnpike Authority (NJTA) requests a Joint Permit Processing Meeting (JPPM) with the United States Coast Guard (USCG), Army Corps of Engineers (ACOE), United States Environmental Protection Agency (USEPA), National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS). This request pertains to the proposed development of the Tremley Point Connector Road Project with an associated bridge over the Rahway River between the Borough of Carteret, Middlesex County and the City of Linden, Union County, New Jersey. In this regard we are providing a synopsis of the project, which you and Mr. Ernest Feemster of your department have previously received, to each of the JPPM agency attendees.

It is requested that a pre-application meeting be scheduled at your earliest convenience so that we may discuss the proposed work activity and determine the specific application requirements and agency coordination for the project. It would be appreciated if this meeting could be scheduled no later than Friday, March 4, 2005.

Please be advised that Mr. Gregory S. Oross of Edwards and Kelcey will be contacting you in the next few weeks to schedule this meeting. If you wish to contact him in the meantime he can be reached at 973-267-8830 ext. 1264. Thank you for your consideration.

Very truly yours,

Richard Brundage

Richard M. Brundage, P.E.
Project Engineer

Enclosure
RMB/ks

cc: Richard J. Raczynski, P.E., NJTA (w/enclosure)
Robert J. Grimm, P.E., NJTA (w/enclosure)
J. Lawrence Williams, P.E., NJTA (w/enclosure)
John M. Keller, P.E., NJTA, (w/enclosure)
Congressman Robert Menendez, (w/enclosure)
Dan Montella, USEPA (w/enclosure)
Stan Gorski, NMFS (w/enclosure)
Clifford Day, USFWS (w/enclosure)
Michael Vissichelli, Section Chief, ACOE (w/enclosure)
Richard Tomer, Chief, ACOE (w/enclosure)
William McLaughlin,NJDEP,LURP (w/enclosure)
Ernest Feemster, USCG
John Bolan, P.E., PS&S, LLC
Ingro Desvousges, PS&S, LLC
Frank Lopatosky, P.E., EK
Neal Toglia, P.E., EK
Greg Oross, P.E., EK
File, (w/enclosure)

New Jersey Turnpike Authority

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JOHN LETTIERE, *Commissioner*
MICHAEL LAPOLLA, *Executive Director*

March 18, 2005

Mr. Gary Kassof
U.S. Coast Guard
Commander (obr) First Coast Guard District
One South Street – Battery Building
New York, New York 10004-5073

RE: New Jersey Turnpike Authority
Tremley Point Connector Road
Borough of Carteret, Middlesex County and
City of Linden, Union County, New Jersey
Lead Agency Determination

REC
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Paulus Sok

Dear Mr. Kassof:

The New Jersey Turnpike Authority (Authority) would like to thank the U.S. Coast Guard (USCG) for conducting the March 2, 2005 NEPA Inter-Agency Consultation Meeting for the Tremley Point Connector Road (TPCR) project. The TPCR will traverse a total of 1.2 miles, originating at Industrial Road in the Borough of Carteret, Middlesex County, crossing the Rahway River with a new bridge and terminating at Tremley Point Road in the City of Linden, Union County. The Authority is the project sponsor for the TPCR project.

As presented at the Consultation Meeting, seven alternative TPCR alignments, in addition to alternative designs for a new interchange (12A), have been evaluated. All of the alternative alignments share a purpose and need of providing the appropriate access necessary to redevelop up to 200 acres of brownfield areas located on Tremley Point. The project purpose and need is also consistent with "Smart Growth" legislation and the planning policy of brownfield redevelopment described in the *New Jersey State Development and Redevelopment Plan*.

Currently, there are several refined petroleum bulk storage and recycling facilities operating on Tremley Point and their only access to major roadways, such as Route 1&9 and the Turnpike, is to travel through a residential section of Linden on Wood Avenue. As such, the existing vehicular traffic, primarily trucks that are based on Tremley Point, cause unacceptable noise and air quality impacts to the residential areas situated along Wood Avenue. Therefore, the City of Linden has been unable to implement the redevelopment of the brownfields at Tremley Point due to the additional traffic that would be generated and its subsequent adverse impact upon the existing residential areas.

In addition to the redevelopment of brownfield areas, the proposed TPCR will encourage a significant volume of truck traffic to abandon the use of Tremley Point Road/Wood Avenue and instead utilize the TPCR to access the Turnpike via Interchange 12.

As stated at our meeting, the TPCR will require both a Section 9 bridge permit from the USCG and a Section 10/404 permit from the U.S. Army Corps of Engineers (USACE). Thus, the USACE and USCG both have regulatory jurisdiction for the project. A lead agency for the NEPA process needs to be determined. It would be appreciated if a decision is made and we are informed by March 31, 2005.

Also, during the Consultation Meeting, it was discussed that the Authority is proposing several geotechnical borings in the Rahway River for an evaluation of the existing geological conditions in the river for the design of the proposed bridge. The NJDEP is currently reviewing a Waterfront Development Permit application for the proposed geotechnical boring program. The Authority was requested to contact the USCG for the federal requirements for conducting a safe and efficient geotechnical boring program in the river. It is anticipated that there will not be any permanent mooring of vessels in the river in order to conduct the boring program; nor will the vessel taking the samples pose a hindrance to navigation by other vessels on the river. As discussed with Mr. Ernest Feemster of your office, E&K, the Authority's Consultant for the project, has contacted Mr. Jeff Yunker, USCG, Waterways Management Coordinator, to discuss the project. If necessary, please provide any additional USCG requirements for these borings.

The Authority and its Consultants are poised to move ahead with the NEPA process for the TPCR and look forward to working with the federal and state agencies in bringing this important public project to fruition. If you have any questions concerning this correspondence, please do not hesitate to contact the undersigned or Mr. Frank Lopatosky, P.E., Edwards & Kelcey, at 973-267-8830, Ext. 1277.

Sincerely,

Richard Brundage

Richard Brundage, P.E.
Project Engineer

RMB/ks

cc: R. Raczynski, P.E., NJTA
R. Grimm, P.E., NJTA
J. L. Williams, P.E., NJTA
J. M. Keller, P.E., NJTA
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I. Desvousges, PS&S
M. Vissichelli, USACE
S. Ettinger, USACE
File

United States Department of the Interior

FISH AND WILDLIFE SERVICE

In Reply Refer to:

PL-NY-05/147

New Jersey Field Office
Ecological Services
927 North Main Street, Building D
Pleasantville, New Jersey 08232
Tel: 609/646 9310
Fax: 609/646 0352
http://njfieldoffice.fws.gov

MAY 1 3 2005

Gary Kassof, Bridge Program Manager
First Coast Guard District, United States Coast Guard
One South Street, Battery Building
New York, New York 10004

Dear Mr. Kassof:

This provides the preliminary comments of the U.S. Fish and Wildlife Service (Service) regarding the proposed Tremley Point Connector Road to be located in Carteret Borough, Middlesex County and Linden City, Union County, New Jersey. The project is proposed by the New Jersey Turnpike Authority (NJTPA). The Service attended a March 2, 2005 pre-application meeting and an April 4, 2005 site visit. The Service has also reviewed a Project Summary Document dated January 25, 2005.

The currently preferred alternative is an approximately 1.2-mile road connecting Industrial Road in Carteret near Interchange 12 of the New Jersey Turnpike with Tremley Point Road in Linden. The preferred alignment is primarily through wetlands, and would be constructed on a combination of retaining walled (fill) and viaduct (elevated) structures. The project would include a new bridge, approximately 35 feet high, over the lower Rahway River. The preferred alternative would impact approximately 8.1 acres of wetlands through a combination of shading and fill; the acreages of shading versus fill impacts are not yet available.

The Tremley Point project would require authorization from the U.S. Coast Guard (USCG) pursuant to Section 9 of the Rivers and Harbors Act of 1899 (30 Stat. 1151, as amended; 33 U.S.C. 403 *et seq.*) and/or the General Bridge Act of 1946 (P.L. 79-601, Title V. 60 Stat. 847). The project would also require authorization from the U.S. Army Corps of Engineers, New York District (Corps) via Department of the Army permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) (CWA) and Section 10 of the Rivers and Harbors Act of 1899. As of the April 4 site visit, the USCG and the Corps had not yet determined the lead federal agency for the project.

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Paulus Sokolowski & Sartor

AUTHORITY

This response is provided pursuant to the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*); the National Environmental Policy Act of 1969 as amended (83 Stat. 852, as amended; 42 U.S.C. 4321 *et seq.*) (NEPA); the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA); the Migratory Bird Treaty Act of 1918 (40 Stat. 755, as amended; 16 U.S.C. 703-712); and is consistent with the intent of the Service's Mitigation Policy (Federal Register, Vo. 46, No. 15, Jan. 23, 1981). These comments are provided as preliminary input and do not preclude separate review and comments on future permit applications and/or NEPA documents, pursuant to above-mentioned authorities.

FEDERALLY LISTED SPECIES

Except for an occasional transient bald eagle (*Haliaeetus leucocephalus*), no other federally listed or proposed endangered or threatened flora or fauna under Service jurisdiction are known to occur within the vicinity of the proposed project site. Therefore, no further consultation pursuant to Section 7 of the ESA is required by the Service. If additional information on federally listed species becomes available, or if project plans change, this determination may be reconsidered.

OTHER SPECIES OF CONCERN

The New Jersey Department of Environmental Protection's (NJDEP) Landscape Project maps show that wetlands to be crossed by the proposed road provide foraging habitat for colonial-nesting waterbirds including the State-listed (threatened) black-crowned night-heron (*Nycticorax nycticorax*) and yellow-crowned night-heron (*Nyctanassa violaceus*) (Niles *et al.*, 2001). The Service recommends that any forthcoming environmental documents for this project include the views and recommendations of the New Jersey Endangered and Nongame Species Program regarding impacts to these species.

Dr. Larry Niles
Endangered and Nongame Species Program
Division of Fish and Wildlife
P.O. Box 400
Trenton, New Jersey 08625
(609) 292-9400

OTHER FISH AND WILDLIFE RESOURCES

The wetlands to be crossed by the proposed road are dominated by common reed (*Phragmites australis*) and largely impacted by historic and ongoing industrial uses in the immediate vicinity. These wetlands likely contain elevated levels of environmental contaminants, based on preliminary information provided by project sponsors and the NJDEP (Shah, pers. comm., 2005), as well as the presence of a municipal landfill, a deed-restricted contaminated site, and surrounding industrial land uses. Despite these impairments, the Service does not concur with

statements in the Project Summary Document that "areas to be disturbed have limited habitat value, due to prevalence of common reed and urbanized environment."

The wetlands to be crossed are part of a larger wetland complex bounded by Tremley Point Road to the north, the New Jersey Turnpike to the west, Industrial Road to the south, and the Arthur Kill to the east (the "Carteret Arch" of the Rahway River). Although much of this area has been converted to industrial use, over 350 acres of wetlands remain, representing one of the largest remaining areas of wetlands and open space in the highly urbanized Arthur Kill watershed.

Phragmites marshes are known to provide nesting and foraging habitat for numerous native bird species, including red-winged blackbirds (*Agelaius phoeniceus*), State-listed species such as night-herons, State species of concern such as little blue heron (*Egretta caerulea*), and declining species such as marsh wren (*Cistothorus palustris*) (Kane, 2001; Parsons, 2003; Ludwig *et al.*, 2003). Among the 53 species of birds known to breed in the vicinity of the project site are red-winged blackbird, marsh wren, swamp sparrow (*Melospiza georgiana*), green heron (*Butorides striatus*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*) (State species of concern), spotted sandpiper (*Actitis macularia*) (State species of concern), and wood thrush (*Hylocichla mustelina*) (Service species of conservation concern; U.S. Fish and Wildlife Service, 2002) (Walsh *et al.*, 1999).

Within New Jersey's urban northeast, large wetlands also provide essential stopover habitat for birds during migration. Habitats used during migration may be equally important to breeding and wintering grounds to the survival of a species. Migrating birds following "programmed" pathways must be able to satisfy energy requirements, avoid predators, and minimize environmental stress during stopovers (U.S. Fish and Wildlife Service, 1997). New Jersey's latitude, geography, and habitats make it a critical State for bird migration (Dunne, 1989; New Jersey Audubon Society, 2004). The Hudson River and the urban core of the New York City metropolitan area provide important migration corridors and stopover habitat for Neotropical migrant landbirds (U.S. Fish and Wildlife Service, 1997). A large number of migratory birds are funneled through the New York urban core by the orientation of the coastline and other geographic features of the area, and these birds are further concentrated in the small amounts of remaining open space. The region's rivers concentrate migrants, especially during fall migration when birds get pushed to the shorelines by strong northwesterly winds. Woodlands and wetlands along these rivers are critical to migrants (Dunne, 1989; New Jersey Audubon Society, 2004). Even isolated pockets of habitat along major river corridors provide essential stopover habitats, serving as "urban oases" for energetically-stressed migrants. Protection of remaining open space and restoration of additional areas is a priority in the urban core (Dunne, 1989; U.S. Fish and Wildlife Service, 1997; Maryland Partners in Flight, 1998; Rosenberg *et al.*, 1999; New Jersey Audubon Society, 2004).

In addition to providing habitats for birds and other wildlife, *Phragmites*-dominated marshes provide high rates of sediment stabilization and accretion. This characteristic of *Phragmites* can reduce the value of a wetland for wildlife (*i.e.*, by reducing the wetland character of the system, reducing microtopography, limiting access of aquatic organisms to the marsh surface, and limiting trophic transfers to higher levels and adjacent open waters). However, in contaminated wetlands, the sediment-binding properties of *Phragmites* provide a service to fish and wildlife by

reducing mobility of and exposure to environmental contaminants (Ludwig *et al.*, 2003; Chambers *et al.*, 1999; Osgood *et al.*, 2003).

ENVIRONMENTAL DOCUMENTATION

New Jersey Executive Order 215

The NJTPA has prepared a Preliminary Draft Environmental Impact Statement (PDEIS) pursuant to New Jersey Executive Order 215. The PDEIS has not yet been published or made available for agency or public review. The Service suggests making the State EIS available for public comment, either alone or combined with NEPA documentation (discussed below). Public and agency review should occur prior to application for federal and State permits, to allow for input into the selection of alternative routes and designs.

National Environmental Policy Act

Criteria for Preparation of an Environmental Impact Statement

Regarding NEPA requirements, the Project Summary Document contains the following statement: "In general, the need for the preparation of an [Environmental Impact Statement] EIS is the result of a project resulting in more than one significant impact." The Project Summary Document goes on to suggest that the project will adversely impact only wetlands, with no adverse impacts to 12 other aspects of the human environment, including wildlife.

There is no reference to "more than one significant impact" as a condition of EIS preparation in the NEPA statute or the Council on Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR Parts 1500-1508). Rather, CEQ regulations cite the significance (*i.e.*, intensity or severity, as per Part 1508.27) of impacts as the determining factor in EIS preparation (Part 1501.4).

Further, the Service does not concur with the NJTPA's "No Adverse Impact" determination for wildlife. The project would impact approximately 8 acres of wetlands that provide habitat for wildlife, including State-listed species and migratory birds. The proposed roadway would also further fragment the larger, already impacted Carteret Arch wetland complex. The proposed wetland disturbance may also increase exposure of wildlife to environmental contaminants.

Mitigated Finding of No Significant Impact

The NJTPA proposes to prepare an Environmental Assessment (EA) pursuant to NEPA, with the desired outcome of issuing a Mitigated Finding of No Significant Impact (FONSI). The CEQ addressed Mitigated FONSIs in their Memorandum to Agencies (46 Federal Register 18026, March 16, 1981). The Memorandum states:

Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. . . . In some instances, where the proposal itself so integrates mitigation from

the beginning that it is impossible to define the proposal without including the mitigation, the agency may then rely on the mitigation measures in determining that the overall effects would not be significant. . . . Similarly, scoping may result in a redefinition of the entire project, as a result of mitigation proposals. . . . One example of this would be where the size and location of a proposed industrial park are changed to avoid affecting a nearby wetland area.

The Service does not concur that the Tremley Point Connector Road, as currently proposed, fits this description of projects eligible for a Mitigated FONSI.

The CEQ Memorandum also states:

. . . As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. . . . If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identifies certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal, and the potential mitigation, for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision. . . .

The proposed project appears to fit this description of projects for which an EIS should be prepared.

Appropriate Level of NEPA Documentation

Based upon the above CEQ guidance and the nature and extent of anticipated impacts to wetlands and wildlife, the Service suggests that an EIS is the appropriate level of documentation required pursuant to NEPA. Further, as discussed below, redevelopment of up to 200 acres of brownfields in Linden with warehouses and other industrial facilities will take place only if the proposed road is constructed. Therefore, all environmental impacts of the proposed redevelopment (*e.g.*, air and water pollution, traffic, any additional wetland impacts) must be considered in the NEPA documentation for the Tremley Point Connector Road. Preparation of an EIS pursuant to NEPA is appropriate, particularly given the need to evaluate impacts from redevelopment.

Cumulative Impacts

The EIS prepared for this project must include an assessment of cumulative impacts (40 CFR 1508.25[c]). The Service recommends specifically addressing past, ongoing, and reasonably foreseeable impacts to wetlands and wildlife within the Carteret Arch wetlands complex, including fill, ditching, and contamination.

PURPOSE AND NEED

The purpose of the proposed connector road is to provide Linden City and Union County access to the New Jersey Turnpike from the extensive areas of brownfields (up to 200 acres) north of Tremley Point Road that are proposed for redevelopment. These brownfields are known as the "Tremley Point – DuPont ISP" site, one of 17 sites under active consideration for redevelopment through the Acting Governor's Portfields Initiative to promote warehousing and distribution centers within New Jersey's portion of the Port District (New Jersey Economic Development Authority and Port Authority of New York and New Jersey, 2005). According to the Project Summary Document, Linden cannot approve redevelopment of these brownfield areas unless the additional truck traffic that would be generated is diverted away from downtown Linden. Currently, trucks travel through a residential area of Linden along Wood Avenue en route between the industrial facilities along Tremley Point Road to the east, and Routes 1&9 and the New Jersey Turnpike to the west.

Project sponsors have stated that diverting existing truck traffic from Wood Avenue is the primary project purpose, and subsequent brownfield redevelopment is a secondary purpose. However, at the April 4 site visit, NJDEP staff indicated that some Wood Avenue residents are opposed to the Tremley Point Connector Road. The Service recommends that the EIS include a summary of comments from these residents that explains clearly the reasons for their opposition. The EIS should also clarify if diversion of existing truck traffic from Wood Avenue is itself sufficient justification to build the road (*i.e.*, if road construction would proceed without the proposed brownfield redevelopment), including any cost-benefit comparisons the NJTPA has prepared for the connector road with and without the economic benefits of brownfield redevelopment.

ALTERNATIVES

The NJTPA has evaluated seven alternative routes for the proposed road, as well as construction of a new interchange on the New Jersey Turnpike at Tremley Point Road ("Truck Only Interchange 12A"). The Service notes the efforts of the NJTPA to examine a wide range of alternative routes. However, at the meeting and site visit, the Service and other resource agencies recommended evaluation of additional alternatives that would utilize existing uplands in the Carteret Arch, specifically the Slayton Redevelopment Area (the former Carteret Landfill) or the Cytec Industries (formerly American Cyanimid) property.

Truck Only Interchange 12A

The Project Summary Document cites traffic operation problems as reasons why a new Turnpike interchange at Tremley Point Road was rejected as an alternative to the proposed project. These traffic problems were identified in a 2001 document entitled *Alternatives Study, Proposed Interchange 12A Truck Only Interchange.* This document should be summarized in the EIS and the complete document made available for the public review period.

The Project Summary Document indicates that 4 to 12 acres of wetlands would be impacted by a new Interchange 12A, depending on design alternatives. Maps of various interchange alternatives should be included in the EIS, along with side-by-side comparisons of wetland impacts, costs, and traffic concerns.

Alternative Routes Considered by NJTPA

Of the seven alternative routes, only Alternative 1 would result in substantial reductions in wetland impacts. Compared to the preferred alternative, Alternative 1 would impact 0.4 acre of wetlands (versus 8.1 acres) and would cost approximately $108.9 million (versus $50 million). Besides cost, project sponsors also cite concerns that Alternative 1 would increase traffic impacts to a residential area along Roosevelt Avenue in Carteret. Given the substantial difference in wetland impacts, the Service does not view cost alone as sufficient justification to eliminate Alternative 1 from further consideration. In addition, the Service cannot ascertain from maps or the site visit how the referenced residential areas in Carteret would be impacted by increased traffic.

Project sponsors, however, have cited other factors that, with documentation, would render Alternative 1 infeasible: (1) the USCG Captain of the Port may reject the routing of Alternative 1 over or through petroleum storage facilities (Kinder Morgan and Citgo) due to homeland security concerns; and (2) the Federal Highways Administration (FHWA) and/or State authorities may reject the routing of Alternative 1 over or through flammable materials storage areas due to safety concerns. The Service recommends that the EIS contain statements from the Captain of the Port, as well as the FHWA and/or State authorities, demonstrating that Alternative 1 is not feasible.

Wetland impacts would be somewhat reduced by using Alternative 5 (7.5 acres) compared to the preferred alternative. In addition, Alternative 5 would cause substantially less fragmentation of wetlands north of the Rahway River, which consist of a relatively intact, 130-acre area along Marshes Creek. Therefore, the Service recommends presenting a detailed evaluation of Alternative 5 in the EIS.

Alternative Routes Not Considered by NJTPA

Slayton Redevelopment Area

At the March 2 meeting and April 4 site visit, project sponsors indicated that routing the proposed road through uplands on the Slayton Redevelopment Area was not considered for the following reasons: (1) the roadway would cause economic impacts to warehouse facilities proposed for construction upon closure of the Carteret Landfill; (2) the high elevation of the site and its proximity to Industrial Road preclude placing the road over the site (*i.e.*, at existing grade), as trucks could not traverse the steep incline that would be required; (3) excavation and disposal of sufficient landfill material to place the road through the site (*i.e.*, below existing grade) would be prohibitively expensive; and (4) use of these uplands would not substantially reduce overall wetland impacts, as additional impacts would be incurred north of the Rahway River compared to the preferred alternative.

The Service does not view economic impacts to proposed warehouses justification to exclude this alternative through the Slayton Redevelopment Area from further consideration. However, the other three reasons noted above appear to provide justification to drop the Slayton Redevelopment Area from further study. The EIS should include full documentation in support of these reasons, specifically engineering and traffic data for an at-grade design, excavation and disposal costs of a below-grade design, and the net change in wetland impacts that would result from use of the Slayton site.

Cytec Industries Property

Project sponsors have cited several reasons why the proposed Tremley Point Connector Road cannot be relocated to take advantage of existing uplands on the Cytec Industries property. However, as explained below, construction on the Cytec property may be feasible, based on a proposal to construct warehouse facilities on the site, and according to information provided by the NJDEP Site Remediation Program (SRP). Since evidence exists that development may be possible on this site, the Service recommends that project sponsors fully consider the Cytec property alternative, and present a detailed evaluation in the EIS.

The Cytec Industries property contains six former impoundments that were used as waste lagoons from pigment and dye manufacture. Most of the impoundments were capped by 2002 and the SRP issued a notice of No Further Action at that time, along with a deed restriction (KCSL # NJD986603439). Before any construction can occur on top of the caps, documentation must be provided to the SRP that proposed activities would not disturb the contaminated material through breaching the cap, inducing leaching through compression, or any other means (Shah, pers. comm., 2005). Alternatively, construction that may disturb contaminated materials may proceed if the SRP approves a plan for preventing spread of contaminated material, including appropriate engineering controls (Hoch, pers. comm., 2005).

At least one of the lagoons (impoundment #6) was not required to be capped, based on lower levels of contamination and the presence of standing water (Shah, pers. comm., 2005). The deed restriction applies to both capped and uncapped lagoons. The NJDEP's Land Use Regulation Program (LURP) previously issued a Letter of Interpretation (LOI) stating that the uncapped lagoon(s) are not classified State Open Waters, and are therefore not subject to regulation under the New Jersey Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 *et seq.*) (FWPA). The LURP is now considering whether to extend that LOI, now expired, or reclassify the uncapped lagoon(s) as open water (Jones, pers. comm., 2005).

Project sponsors have stated that avoiding the Cytec Industries property is a goal of the Tremley Point Connector Road project for the following reasons: (1) deed restrictions imposed by the SRP due to contaminants; (2) potential for increasing the mobility of contaminated materials (*e.g.*, puncturing a cap through pile driving for the roadway); and (3) engineering constraints due to the presence of soft, jelly-like materials in the lagoons under the caps.

As noted above, the Service is aware of a proposal to construct warehouses on the Cytec Industries property. A company known as Titan Developments has received preliminary approval from the Carteret Borough Planning Board for a project called iPort 12, which would

involve construction of approximately 2.5 million square feet of warehouse space (Neibert, pers. comm., 2005). The iPort 12 project is identified as one of the 17 sites under active consideration for redevelopment in the Acting Governor's Portfields Initiative (New Jersey Economic Development Authority and Port Authority of New York and New Jersey, 2005). Ongoing construction at the Slayton Redevelopment Area represents Phase 1 of the iPort 12 project, with about 1 million square feet. Phase 2 of the iPort 12 project would involve constructing the remaining 1.5 million square feet of warehousing on the Cytec Industries property (Neibert, pers. comm., 2005). The SRP is aware of the proposed iPort 12 Phase 2, and has requested that project proponents for the warehouses provide the necessary documentation that contaminated materials would not be disturbed (Shah, pers. comm., 2005). As currently proposed, Phase 2 would likely involve fill of the uncapped lagoon(s), and possibly additional wetland fill on the Cytec site.

The iPort 12 Phase 2 proposal suggests that construction on the Cytec property may be possible. According to the SRP, no provision of the deed restriction would necessarily prohibit construction of a road or a warehouse facility over the Cytec lagoons, provided the construction plans and any controls for contaminated materials are approved by the SRP. In fact, roads are often constructed on top of caps (Hoch, pers. comm., 2005).

The Service notes that preventing the spread of contaminated materials in the Cytec impoundments is essential to protect human health and natural resources. However, the Service recommends that the NJTPA investigate use of existing uplands on the Cytec property, and determine if the Tremley Point Connector Road can be designed and constructed in a manner that would be compatible with provisions of the deed restriction. Such an alignment would reduce wetland impacts south of the Rahway River, and could nearly eliminate wetland impacts north of the river. In comparison, the currently preferred alignment would substantially fragment wetlands north of the river (*i.e.*, the roughly 130-acre area along Marshes Creek that is relatively free of encroachment from industrial use). The Service suggests that NJTPA coordinate with Titan Developments, Cytec Industries, Carteret Borough, and the SRP to determine if the Tremley Point Connector Road can be integrated with the planned warehouse facility to avoid disturbance of contaminated materials and substantially reduce wetland impacts.

The Service recommends that the EIS contain a summary of land use history on the Cytec Industries property, recent remedial activities, and the provisions of the deed restriction. The deed restriction, any Remedial Action Work Plan, and any other relevant documents from SRP should be made available during the public comment period. The EIS should also include full evaluation of the potential to relocate the roadway to utilize uplands on the Cytec property.

Alternative Designs

Conceptual plans show that approximately one-third to one-half of the proposed roadway would be constructed on elevated viaduct structures. The remainder of the road would be constructed on wetland fill within retaining walls. The Service recognizes that a retaining wall design reduces the amount of wetland fill compared with a traditional embankment. However, fill placement, especially for a linear road project, will substantially fragment the Carteret Arch wetland complex by preventing the movement of benthic organisms and smaller wildlife species,

and impacting the hydrology of the area. Regardless of the route eventually selected, the Service strongly recommends that all portions the proposed roadway crossing wetlands or water bodies be constructed on an elevated viaduct structure.

ENVIRONMENTAL CONTAMINANTS

Construction of the Tremley Point Connector Road may increase the exposure of fish and wildlife to environmental contaminants by disturbing contaminated sediments. The Service recommends testing sediments along the project route to determine the levels of contamination. The SRP developed a site-specific list of contaminants of concern in the course of remediating the Cytec property; this list should be obtained and used as the basis for screening the sediments along the project route (Shah, pers. comm., 2005). The sampling plan should be provided to federal and State permitting and resource agencies, as well as the SRP, prior to the start of testing. All monitoring results and a full evaluation report (in draft) should also be submitted to all permitting and resource agencies and the SRP for review. Testing results should be summarized in the EIS, and made available in full during the public review period.

Pile driving and other work conducted in open waters may resuspend contaminated sediments. The Service recommends that the EIS include analysis of the duration and extent to which any pile driving or other activities in wetlands and open waters will resuspend contaminated sediments, as well as the effects to fish and wildlife that would result from these activities. The Service recommends that the design and construction of the project include all available mitigative measures and best management practices to minimize resuspension of sediments.

Temporary disturbance of wetlands in the project area, including placement of timber mats, may increase bioavailability of contaminants at and near the marsh surface. Therefore, the Service recommends that project sponsors return all areas of temporary disturbance to their original elevations, removing surface material as necessary to place at least 1 foot of clean fill material as a cap to contain contaminated sediments. (Removal of less than 1 foot of native sediment may be possible due to subsidence and compaction from construction equipment.) The Service recommends monitoring contaminant levels in the vicinity of the temporary impacts for at least 3 to 5 years; contaminants testing would not necessarily need to occur every year over the monitoring period. These measures to minimize the release of contaminants during construction in wetlands should be documented in the EIS.

WATER QUALITY

At the March 2 meeting, project sponsors presented the proposed stormwater management system for the Tremley Point Connector Road. The project would utilize detention basins located under the bridge, along with Vortechnic type chambers. The Service supports managing stormwater in accordance with State regulations. However, stormwater treatment facilities should not be located in wetlands. The Service understands that project plans have already been revised to relocate the basins and chambers to upland areas.

COMPENSATORY MITIGATION

Shading Versus Fill

If the project design eliminates placement of fill material, the Service may support compensatory mitigation from shading impacts at a somewhat lower ratio than the standard 3:1 ratio for mitigating impacts from fill. The Service would support the use of an appropriate wetland functional assessment to help determine an appropriate ratio for shading impacts.

Location of Mitigation

Given the acreage in question, the Service strongly recommends that compensatory mitigation for any unavoidable wetland impacts take place on-site (*i.e.*, within the Carteret Arch wetland complex), or at least within the Arthur Kill Watershed Management Area. The Service would not support purchase of credits from the Marsh Resources, Inc. mitigation bank due to the size of the impacts and the distance to the bank.

Contaminated Wetlands

Project sponsors have indicated that much of the wetland area potentially available for mitigation along the project route is located on top of contaminated waste lagoon storage areas. The Service concurs that wetlands located on or between the Cytec impoundments (included in the NJDEP deed restricted property) are unsuitable as mitigation sites. If additional waste lagoons are present outside the Cytec property, these should be mapped and described in the EIS. The Service concurs that mitigation should not occur on top of any such lagoons.

The SRP's investigation of the Cytec property indicated that the adjacent wetlands were not impacted by material contained in the lagoons; therefore, these wetlands were not included in the remedial activities for the Cytec impoundments. However, wetlands both north and south of the Rahway River may be impacted by contaminants from other sources, such as the Carteret Landfill (Slayton Redevelopment Area) and numerous, surrounding industrial facilities (Shah, pers. comm., 2005). Although wetlands along the project route may currently be unsuitable for enhancement due to contaminants, these areas should not be summarily rejected as mitigation sites given the priority of conducting mitigation near the area of impact. Instead, the Service suggests contaminants testing to determine: (1) if any sufficiently uncontaminated areas exist that could serve as a mitigation site(s); and (2) if any contaminated areas can be remediated to levels protective of fish and wildlife, and then enhanced as compensatory mitigation.

Specifically, the Service recommends that the contaminants testing recommended above (under "Environmental Contaminants") include all significant wetland parcels in the Carteret Arch that are not directly associated with waste lagoons, particularly those wetlands located north of the Rahway River (along Marshes Creek), to determine the potential for mitigation in these areas. Results and a (draft) evaluation report should be provided to the above-referenced agencies, summarized in the EIS, and made available in full during the public comment period. The EIS should also provide an estimated cost for remediating these wetlands prior to a potential enhancement project, to determine the feasibility of this mitigation option.

The Service recommends that the NJTPA investigate the New Jersey Economic Development Authority (NJEDA) as a source of funding for any remediation that would need to precede wetland enhancement in the Carteret Arch wetland complex. The Acting Governor's Portfields Initiative indicates that financial assistance for remediation may be available to facilitate redevelopment of the 17 identified Portfields sites (New Jersey Economic Development Authority and Port Authority of New York and New Jersey, 2005). If remediated to levels protective of fish and wildlife, wetlands in the Carteret Arch complex would be available for compensatory mitigation from the Tremley Point Connector Road project, as well as for any unavoidable wetland fills from the proposed iPort 12 project (closure of the Carteret Landfill alone will require fill of approximately 6 acres before Phase 1 can proceed (Jones, pers. comm., 2005); Phase 2 may entail further wetland impacts on the Cytec property). By partially or fully funding any necessary remediation of the Carteret Arch wetland complex, the NJEDA would facilitate redevelopment of two Portfields Initiative sites (iPort 12 and the Tremley Point – DuPont ISP, which requires the Tremley Point Connector Road to proceed) by enabling developers to perform the required compensatory mitigation on or near the site of unavoidable wetland impacts from these projects. Other mitigation sites of sufficient size may not be available within the Arthur Kill Watershed Management Area.

CONCLUSION AND SUMMARY OF RECOMMENDATIONS

The Service offers the following recommendations to minimize impacts to fish and wildlife resources from the proposed Tremley Point Connector Road project:

- Document the views and recommendations of the New Jersey Endangered and Nongame Species Program regarding impacts to foraging habitat for State-listed species.

- Provide the New Jersey Executive Order 215 EIS for public comment prior to application for federal and State permits.

- Prepare an EIS for the subject project pursuant to NEPA, including evaluation of impacts from proposed brownfield redevelopment in Linden (Tremley Point-DuPont ISP site), and cumulative effects to wetlands and wildlife within the Carteret Arch wetland complex.

- Include in the EIS information regarding the Interchange 12A alternatives and associated wetland impacts.

- Include in the EIS statements from the USCG Captain of the Port, and from the FHWA and/or State authorities, demonstrating that Alternative 1 is not feasible.

- Include in the EIS a full evaluation of Alternative 5.

- Include in the EIS engineering and traffic data for an at-grade design, excavation and disposal costs of a below-grade design, and the net change in wetland impacts that would result from relocating the road to uplands on the Slayton Redevelopment Area.

- Determine if the Tremley Point Connector Road can be designed and constructed on the Cytec property in ways compatible with the provisions of the NJDEP deed restriction, and provide documentation in the EIS.

- Include in the EIS a summary of land use history on the Cytec Industries property, recent remedial activities, and the provisions of the deed restriction; make the deed restriction, any Remedial Action Work Plan, and any other relevant documents from SRP available during the public comment period.

- Regardless of the route eventually selected, construct all portions the proposed roadway crossing wetlands or water bodies on an elevated viaduct structure.

- Test sediments along the project route using the SRP's site-specific list of contaminants of concern, and provide documentation to the reviewing agencies and in the EIS.

- Describe in the EIS the likely duration and extent of sediment resuspension, likely effects to fish and wildlife, and measures to minimize this impact.

- Include in the EIS a preliminary plan for restoring and monitoring all wetland areas temporarily impacted during construction, including placement of clean fill throughout the area of disturbance as a cap to contain contaminated sediments.

- Design stormwater treatment facilities in accordance with NJDEP regulations and locate all facilities in uplands.

- Investigate use of an appropriate wetland functional assessment method to help determine an appropriate compensatory mitigation ratio for shading impacts.

- Locate compensatory mitigation within the Arthur Kill Watershed Management Area, preferably within the Carteret Arch wetland complex if sufficiently uncontaminated sites can be found and/or if contaminated wetlands can be remediated prior to enhancement.

- Determine if the NJEDA will fully or partially fund any remediation that would need to precede compensatory mitigation in the Carteret Arch wetland complex.

The Service appreciates the efforts of the NJTPA, the USCG, and the Corps to evaluate a wide range of alternatives, and to consider agency input early in project planning. We look forward to working cooperatively with NJTPA and the regulatory agencies to minimize impacts to fish and wildlife resources from the proposed Tremley Point Connector Road. Please contact Wendy Walsh of my staff at (609) 646-9310, extension 48 if you have any questions regarding the above Service comments.

Sincerely,

Clifford G. Day
Supervisor

REFERENCES

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Personal Communication

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U.S. Department of Homeland Security
United States Coast Guard

Commander
First Coast Guard District

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16591
RAHWAY RIVER/NJ

May 16, 2005

Mr. Ingro Desvousges, Associate
Paulus, Sokolowski and Sartor, LLC
P.O. Box 4039
Warren, NJ 07059

Dear Mr. Desvousges:

We have completed review of the Preliminary Draft EIS for the New Jersey Turnpike Tremley Point Connector Road Project forwarded with your letter of April 4, 2005. This document was prepared pursuant to New Jersey's E.O. 215. We recognize that this document was prepared in May 2003, but we offer these general comments. Ultimately as this project proceeds, a federal environmental document will be required.

a. For our purposes, a federal environmental assessment (or EIS) would have to be objective, and would not reach conclusions based on partial information before the opportunity for public review and comment.

b. Since the improvements to Interchange 12 have already considered and incorporated expected traffic from the connector road in a report, further clarification of that work being independent with independent utility may be required.

c. Mitigation for wetlands taking must be determined and use of a wetlands mitigation bank must be verified.

d. It would seem reasonable to include access to and from the Brownfield development sites along with access to and from Interchange 12 from Tremley Point as project purpose.

e. Would not state that Alternative 6 was chosen as the preferred alternative but rather that it is the preferred alternative. (Page 2-2)

f. At this stage in the project, we can not definitively conclude that an environmental assessment rather than a federal EIS will be the required document. (Page 2-7)

g. We note that cars will comprise a sizeable portion of traffic on the connector road (Table 4-1) and discussion on this interaction with trucks would be helpful.

h. Issuance of a bridge permit for the connector road's crossing of the Rahway River would be under the authority of the General Bridge Act of 1946 and not Section 9. (Page 7-18)

i. Would hesitate to make the last statement on page 7-18 at this point in the process.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

Copy:

1) Corps of Engineers, New York District
2) USEPA, Region II
3) USF&WS
4) NMFS

New Jersey Turnpike Authority

ADMINISTRATION BUILDING P.O. BOX 1121 NEW BRUNSWICK, NEW JERSEY 08903
TELEPHONE (732) 442-8600

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HAROLD L. HODES, *Commissioner*
DAVID G. EVANS, *Commissioner*
JOHN LETTIERE, *Commissioner*
MICHAEL LAPOLLA, *Executive Director*

July 8, 2005

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Mr. Gary Kassof
First Coast Guard District
United States Coast Guard
One South Street – Battery Building
New York, New York 10004-5073

RECEIVED
JUL 1 3 2005
Paulus Sokolowski & Sartor

RE: Letter of Intent to File a Bridge Permit Application
New Jersey Turnpike Authority
OPS No. 2052 – Tremley Point Connector Road Project
City of Linden, Union County and
Borough of Carteret, Middlesex County, New Jersey

Dear Mr. Kassof:

The New Jersey Turnpike Authority (NJTA) is herein submitting a Letter of Intent to file a Bridge Permit Application in accordance with the General Bridge Act of 1946 for the proposed Tremley Point Connector Road (Connector Road) project. The Connector Road project will require authorization from the U.S. Coast Guard (USCG) as it consists of the construction of a new, predominantly structurally elevated roadway that originates at Industrial Road in the Borough of Carteret, Middlesex County, traverses the Rahway River and terminates at Tremley Point Road in the City of Linden, Union County. The Rahway River will be crossed with a new bridge. The project will also impact wetlands regulated under Section 404 of the Clean Water Act. The Connector Road will extend approximately 1.2 miles from beginning to end.

As previously presented at the March 2, 2005 interagency meeting, seven alternative alignments have been evaluated for the Connector Road project itself, as well as several alternative alignments for the development of a new Interchange 12A. In addition, during the April 4, 2005 site visit State and Federal agency representatives requested that the NJTA consider several other alignments for the Connector Road project. The NJTA is currently evaluating these other alignments.

The primary benefit from the Connector Road project will be the realization of the redevelopment of up to 200 acres of brownfield areas at Tremley Point into commercial/warehouse facilities. All of the alternatives share a common secondary goal of addressing existing and future traffic, primarily trucks, that originate on Tremley Point. Without the Connector Road, vehicles would travel through a residential section of Linden on Wood Avenue as their sole means of reaching major roadways, such as Route 1&9.

Environmental and engineering analyses of the Connector Road are currently being prepared and will be included in a NEPA Environmental Assessment (EA) to be submitted to the USCG. The proposed scope of the EA will cover the following topics: wetland resources; alternative designs and alignments; historic

and archaeological resources; environmental constraints; resource contamination; navigation; demographics; threatened and endangered species; hydrological features; man-made resources; air quality; noise; traffic; vegetation; wetlands mitigation; and cultural features.

Based upon your e-mail of June 2, 2005 to Paulus Sokolowski and Sartor, it is our understanding that the USCG will be the lead agency for the NEPA review. It is requested that you provide the NJTA with a letter confirming that the USCG is indeed going to be the lead agency for the NEPA review. As we have discussed previously, with the proposed preparation of an EA that will provide clear and concise mitigation plans for potential adverse impacts, especially to wetlands, a *"Mitigated FONSI"* can be the result of the Federal Agency review of the EA. A Mitigated FONSI would determine that the project could have potentially significant effects, but that with the appropriate wetlands mitigation that is tangible and specific, those effects will be reduced to less-than-significant levels. A combination of wetlands creation, wetlands enhancement and wetlands preservation is currently envisioned to compensate for the unavoidable impacts to wetlands resources that are in the footprint of the project, thereby further minimizing any net adverse impacts. To address agency and public concerns of public involvement in the decision making process for a Mitigated FONSI determination, it is suggested that the USCG, USACE and NJDEP make the EA available for a 30-day public comment period and conduct a joint USCG/USACE/NJDEP Public Hearing to gather comments prior to making the final decision.

At this time we would like to make arrangements to meet with you to discuss the Federal NEPA EA procedures that will apply to the Connector Road project and the environmental documentation that is needed to support your review of this project. A copy of the March 2003 Preliminary Environmental Document that was prepared in accordance with the NJDEP E.O. 215 requirements was provided for your review and we understand that you may have comments on this preliminary document.

We look forward to working with your agency on this important project. If you have any questions, please do not hesitate to contact me or Richard Brundage, P.E., Project Engineer, of my staff at 732-442-8600, Ext. 2265.

Sincerely,

Richard J. Raczynski, P.E.
Chief Engineer

RJR/RMB/ks

cc: E. Feemster, USCG
R. Fischer, P.E., NJTA
R. Grimm, P.E., NJTA
J. Withers, P.E., NJTA
J. Keller, P.E., NJTA
R. Brundage, P.E., NJTA
R. Cubberley, NJDEP
N. Toglia, P.E., E&K
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File

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July 8, 2005

RECEIVED
JUL 13 2005
Paulus Sokolowski & Sartor

By Facsimile and Express Mail

Ms. Judy Burton
NJ Department of Environmental Protection
Land Use Regulation Program
P.O. Box 439
501 East State Street
Station Plaza 5, 2nd Floor
Trenton, NJ 08625-0439

Re: N.J. Turnpike Authority; Tremley Point Connector Road
Permit File No. 0000-05-0007.1

Dear Ms. Burton:

Please accept these comments on behalf of the Tremley Point Alliance, NY/NJ Baykeeper, Rahway River Association, Arthur Kill Coalition, New Jersey Sierra Club, North Jersey Environmental Justice Alliance, New Jersey Audubon Society, GreenFaith, Edison Wetlands Association, Elizabeth River/Arthur Kill Watershed Association, Healthy Neighborhoods Healthy Homes Coalition, Diesel Committee of the NJ Environmental Justice Alliance, and the New Jersey Public Interest Research Group ("NJPIRG") regarding the application by the New Jersey Turnpike Authority ("Authority") for a Waterfront Development/Statewide General No. 12 permit ("GP 12"), to conduct geotechnical borings in freshwater wetlands and the Rahway River. These written comments are being submitted in accordance with the NJ DEP Public Notice requesting all comments by July 12, 2005.

We are extremely troubled by the Authority's application for this GP 12 permit and the overall impacts associated with the Authority's proposed project to build a Tremley Point Connector road. As evidenced by the comments set forth below, the New Jersey Department of Environmental Protection ("NJ DEP") should deny the Authority's application for a GP 12 permit (i) for failure to evaluate the potential adverse impacts, (ii) for failure to comply with the state and federal laws, and (iii) for lack of public notice and input. We strongly urge NJ DEP to deny this GP-12 permit application and establish a transparent public process to allow for proper evaluation, public input, and scrutiny on the significant and substantive issues raised herein.

Potential Impacts of the Authority's Proposed Road

The Authority's request for a GP 12 permit is part of its larger proposed plans to build a 1.2 mile road connecting Industrial Road in Carteret and Tremley Point Road in Linden, NJ. This GP 12 permit must be considered within the context of the larger proposed project. To do otherwise would be to improperly segment the project and its

potential impacts. The proposed project would severely impact the air quality in this region, the lower Rahway River watershed and the surrounding 350 acres of wetlands which provide a natural habitat for several species. Nevertheless, the Authority's Multi-Permit Application for the GP-12 permit did not include an environmental assessment ("EA") or an environmental impact statement ("EIS").

This area in northern New Jersey suffers from disproportionate levels of commercial truck traffic and the operation of several major industrial facilities which all contribute to the area's poor air quality. The towns of Linden and Carteret are also within an area that sees heavy traffic due to its proximity to the Newark International Airport, the Elizabeth Port and the major roadways of the New Jersey Turnpike, between Exit 12 and Exit 13, and Routes 1 & 9. All of this traffic puts Union County third in New Jersey for air pollution volume. The area is also in non-attainment for ozone and fine particulate matter. Union County had the highest recorded level of PM 2.5 in the state, at 15.7 ug/m3, which exceeds the PM 2.5 annual National Ambient Air Quality standard.[1]

In fact, the United States Environmental Protection Agency ("EPA") just recently announced a joint effort with the NJ DEP to reduce the impacts associated with air pollution from existing sources including truck traffic from Exit 13. According to Acting EPA Regional Administrator Kathleen Callahan, "Air emissions in the vicinity of Exit 13 can pose health risks and contribute to air pollution and environmental degradation. EPA will continue to keep a watchful eye on these emissions to ensure that the health and safety of the people of Linden and Elizabeth are protected."[2] The air quality targeted by this joint effort is in the same area, and certainly the exact same air shed, as the proposed Turnpike connector. Thus, any attempt by the Authority to increase truck traffic pollution in this area would directly conflict with NJ DEP's project, with the EPA, to decrease air pollution.

In addition, the proposed Tremley Point Connector Road that the Authority and their consultants are focusing on is a valuable wetland area. The project would impact the habitat for numerous native species and migratory birds.[3] Specifically, the NJ Audubon Society documented the lower Rahway River as a foraging area for nine heron species and is an important foraging area for the "harbor herons".[4] The proposed road would bisect the 114 acre marsh surrounding Marshes Creek, which is one of the largest contiguous areas of salt marsh remaining along the Arthur Kill. The site has been identified by the bi-state Harbor Estuary Program (HEP) as a Priority Acquisition Site (site code AK6). Due to its large size; its use by migratory and breeding fish; its importance as foraging habitat for colonial waterbirds; and its heavy use by three state-threatened species, including the yellow-crowned night heron, black-crowned night heron, and northern harrier, the site is exemplary.

In the application to conduct borings the Authority and their consultants, Paulus, Sokolowski, and Sartor, state that none of the wetlands on this site are on the EPA's list of priority wetlands.[5] Contrary to the Authority's application, NJ DEP has designated the site "a wetland of exceptional resource value" based the use of the site by threatened and endangered species, as certified in its Natural Heritage Database. The US FWS also

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[1] See EPA press release at: http://www.epa.gov/Region2/news/2004/04186.htm
[2] See EPA press release at: http://www.epa.gov/region2/news/2005/05074.htm; dated June 30, 2005.
[3] See Fish and Wildlife Service letter from Clifford G. Day to Gary Kassof, 1st Coast Guard District, dated May 13, 2005, at 3.
[4] see Tidal Wetlands at the Mouth of the Rahway River, NY/NJ Harbor Estuary Program, Spring 2005 edition.
[5] Authority Multi-permit Application at 3.

considers it critical wildlife habitat not only in the "Carteret Arch" of the Rahway River, but also within the context of the larger NY-NJ Harbor Estuary because of the already mentioned values, as well as its role as stopover habitat for shorebirds and other migratory birds and as habitat for species of concern, such as little blue herons and marsh wrens. We disagree with the applicant's assessment that this site does not contain threatened and endangered species and offer the NJ DEP's Natural Heritage Database and the US FWS May 13 letter as evidence to refute this claim.[6]

This portion of the Rahway River contains some of the best and last opportunities left in this heavily abused area to preserve functioning ecosystems. In addition to the value of these wetlands to fish and wildlife, these marshes also provide services to the public including clean water, recreational opportunities and natural aesthetics. The apparent preferred alternative for the Tremley Point Connector road would result in the filling and shading of at least 8.1 acres of highly ecologically significant marshland. We are opposed to this proposed project to destroy and severely impact some of the last remaining natural habitat in the region.

Given the facts and recent efforts to clean up and preserve the area, the NJ DEP should not grant any permits that would hinder its joint efforts with the EPA to reduce air pollution or adversely impact the sensitive natural habitats, of the lower Rahway River.

There is No Federal Agency or Permitting Application Requiring Geotechnical Borings

The request for this GP 12 permit was filed on February 16, 2005 and according to the NJ DEP Public Notice, the Authority seeks this permit to conduct 29 geotechnical borings "to provide necessary data to support an environmental assessment required by Federal Permitting."[7] However, according to a recent letter by the US Fish and Wildlife Service ("FWS"), as late as May 13, 2005, a federal agency had not been designated as lead agency for federal review or permitting purposes.[8] Authorization by several federal agencies and statutes is required before any such project by the Authority may go forward. It is unclear why the Authority would request such testing, without a specific request from a federal agency or at a minimum in coordination with a federal agency. The Authority's request for geotechnical borings should be denied because the application is premature and is not predicated on any actual coordinated effort with a federal agency or at the behest of a federal agency for such data.

The Authority Has Not Complied With State and Federal Requirements

Freshwater Wetlands Protection Act

The Authority has not properly complied with its obligations under state and federal law. Pursuant to Freshwater Wetlands Protection Act a General Permit can only be granted for activities relating to a specific project, defined as the "use and configuration of all buildings, pavements, roadways, storage areas and structures and all associated activities." 7:7A-4.3 (b)(1). According to the NJ DEP's public notice and the Authority's statements, there is no final project, there is no draft environmental assessment or

[6] Authority Multi-permit Application at 6.
[7] Public Notice, DEP Bulletin, July 15, 2005, http://www.nj.gov/dep/bulletin/bu2005_0615.pdf
[8] Fish and Wildlife Service letter from Clifford G. Day to Gary Kassof, 1st Coast Guard District, dated May 13, 2005.

environmental impact statement, and there is no final alternatives analysis. If there is no final "project", there should be no need for a permit.

N.J.A.C. 7:7A-4.3 (b)(3) states that "the activities shall not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species." As discussed above, this area is a documented and suitable habitat for several species, including the black-crowned night heron and the yellow-crowned night heron.[9] Although the Authority's application merely dismisses this fact, the NJ DEP has an obligation to comply with the law and ensure that this habitat is not jeopardized.

NJ Executive Order 215

For a project of this magnitude the Authority must complete an EIS before finalizing any applications or obtaining any permits. As mentioned earlier, the Authority has not completed an EA or an EIS under New Jersey's Executive Order 215. The publicly available documents reveal that there was an attempt at an environmental assessment in 2003. However, the data is outdated and the review of possible alternatives is severely flawed. The EIS must take into account new data regarding the wetlands and the endangered and threatened species in the area, and the impacts of increased truck traffic and fine particulate matter (especially given that NJ is in non-attainment for PM 2.5). The EIS must also analyze the cumulative impacts of all transportation plans and brownfield redevelopment plans slated for the area (one of the prime reasons for the project).[10] Since, the Tremley Point Connector road is part of a larger redevelopment initiative for the area, which will result in much larger cumulative losses of wetlands as well as huge increases in truck and auto traffic volume (estimated at almost 10,000 trips per day) in Carteret and Linden, those associated impacts must also be analyzed.

National Environmental Policy Act

An EIS must also be conducted by the lead federal agency.[11] The National Environmental Policy Act ("NEPA") requires that the federal agency consider and review all possible alternatives and take a hard look at all potential impacts associated with the proposed project. NEPA exists to ensure that agencies taking actions with potential adverse environmental impacts consider environmental concerns in their decision making process.[12] Under NEPA, agencies are statutorily required to take a "hard look" at the environmental consequences of their proposed actions. [13]

The federal lead agency on this project must also complete the EA/EIS before making any "irreversible and irretrievable commitments of resources" to the proposed project, so the EIS can usefully inform the decision-making process.[14] Under the present circumstances and size of this project, this requires, at a minimum, completion of the EIS before any resources and money are expended for the geotechnical borings, testing or any other work on this project.

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[9] See NJ DEP Preliminary Analysis at 3; see also Threatened and Endangered Species Review by Larry Torok, dated May 10, 2005 at 1.
[10] FWS May 13 letter at 12.
[11] The Coast Guard was named lead federal agency only after the filing of this application, after the FWS May 13 letter, and after the public notice was issued.
[12] See Friends of the Astor, Inc. v. City of Reading, 1998 U.S. Dist. Lexis 14935, *15 (E.D. Pa. 1998).
[13] 42 U.S.C. §4332 (2000
[14] See 42 U.S.C. § 4332(2)(C)(5); 40 C.F.R. §§ 1501.2, 1502.1.

The Clean Water Act

The Authority's failure to properly conduct an alternatives analysis is in violation of the regulations that implement §404 of the Clean Water Act.[15] The Authority and their consultants state that the 29 borings are required in order to complete designs for 3 of 7 existing alternatives for the connector road. However, the only reference in the application to any alternatives analysis is a claim that "during a pre-application meeting a total of seven alternative alignments were discussed."[16](emphasis added). The application also includes figures and maps all showing the location of the proposed borings and the proposed connector road. All of the figures and maps show only one alignment for the Tremley Point Connector road; none of the maps show any alternatives.[17] In addition, all of the 29 borings are proposed along the exact alignment of the one alternative. It appears that the Authority has already decided the alignment of the road, even though it has not complied with the state and federal laws, and has not solicited input from the public or made their plans available for review. This is not acceptable.

Public Participation

The NJ DEP and the Authority have not properly involved the public in the decision-making processes for this proposed project. The Authority held a general public meeting in Carteret on May 1, 2003. Over two (2) years later, the NJ DEP held a public hearing on the geotechnical borings application. At the time of the public hearing in Linden on June 21, 2005, the public was not given any documents relating to an EIS or an alternatives analysis.

This type of piecemeal process merely segments the entire project and leaves the public out of the process. Pursuant to NJ Executive Order 215, and as indicated by the US FWS, the Authority must complete an EIS and provide the EIS for "public comment prior to [any] application for federal and state permits."[18] Accordingly, the Authority's entire proposed project needs to be analyzed in a comprehensive EIS and reviewed by the permitting agencies and the public simultaneously, not in phases.

On June 15, 2005, the Tremley Point Alliance's environmental justice petition was granted. This petition specifically requires public involvement in decision-making processes, including making documents publicly available and soliciting public participation throughout the planning and review stages.[19] Here, the public did not have access to some of the documents until the day before the public hearing. In addition, the public has not seen a statement of necessity, nor the alternatives to the proposed project. Public involvement, input, participation and transparency in the decision-making processes must take place.

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[15] See 40 C.F.R. §230.10
[16] Authority Multi-Permit Application at 1.
[17] See Application Figures 2, 3, 4, 5, 6, 7, 8 and 9.
[18] FWS May 13 letter at 12.
[19] NJ Executive Order No. 96.

Conclusion

For all of the reasons outlined above we strongly request that the NJ DEP deny the Authority's application for a GP-12 permit. In addition, we strongly urge the NJ DEP to continue to work with EPA and other constituencies including other state and federal agencies, non-profits, and the residents of Carteret and Linden in their efforts to preserve the marshes of the lower Rahway River and to reduce air pollution from industrial emissions and traffic in the region.

Submitted by

Lisa F. Garcia
Rutgers Environmental Law Clinic on behalf of:

Tremley Point Alliance	NY/NJ Baykeeper
Rahway River Association	New Jersey Sierra Club
Arthur Kill Coalition	North New Jersey Environmental Justice Alliance
New Jersey Audubon Society	Elizabeth River/Arthur Kill Watershed Association
GreenFaith	Healthy Neighborhoods Healthy Homes Coalition
Edison Wetlands Association	New Jersey Public Interest Research Group
Diesel Committee of the NJ Environmental Justice Alliance	

cc: Commissioner Bradley Campbell, NJDEP
Gary Sondermeyer, NJDEP
Robert Cubberly, NJDEP
Chris Jones, NJDEP
Gary Kassof, U.S. Coast Guard
Kathleen Calahan, US EPA
Robert Montgomerie, US EPA
Richard Tomer, USACE
Clifford Day, US FWS
Wendy Walsh, US FWS
Steve Dilts, NJ TPA
Ingro Desvousges, Paulus, Sokolowski & Sartor, LLC

U.S. Department of Homeland Security
United States Coast Guard

Commander
First Coast Guard District

One South Street
Battery Park Building
New York, NY 10004-1466
Staff Symbol: obr
Phone: (212) 668-7165
Fax: (212) 668-7967

cc: ESM
STB
DG

16591
RAHWAY RIVER/NJ

August 11, 2005

Mr. Richard J. Raczynski, P.E.
Chief Engineer
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, NJ 08903

Dear Mr. Raczynski:

This responds to your letter of July 8, 2005 concerning a proposed Tremley Point Connector Road project from Industrial Road in the Borough of Carteret to Tremley Point Road in Linden, New Jersey.

We met with the U.S. Army Corp of Engineers on June 1, 2005 and it was decided that the Coast Guard would be the lead federal agency for NEPA review of this project. The Coast Guard's principal regulatory involvement is that we must issue a bridge permit for the crossing of the Rahway River under the General Bridge Act of 1946. This can not occur prior to your completion of an acceptable environmental document.

A Mitigated FONSI, as suggested by your letter, appears reasonable at this stage of the project. Such a document would be elevated to an Environmental Impact Statement (EIS) should significant adverse impacts of the project come to our attention later in the process. As lead agency, we will ensure that the environmental assessment (EA) is circulated and that an appropriate public review process including public hearing if necessary is conducted. All applicable agencies will certainly be included in review and development of the Final EA and in our process in general. Additionally, the Corps of Engineers has indicated that they must process a permit action for wetland impacts of the project.

We agree that a meeting to discuss preparation of the EA and various other aspects of our permit process would be beneficial at this time. Based upon recent communication between Ernie Feemster, Coast Guard Project Manger and your consultant, PS & S , week of September 12th is being considered. Please contact Ernie Feemster, project manager, at (212) 668-7994 to arrange such a meeting.

If you have any questions or concerns in the interim please do not hesitate to contact this office.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

RECEIVED
AUG 17 2005
PAULUS, SOKOLOWSKI and SARTOR

Copy:

1) USACOE
2) NMFS
3) USF&WS
4) USEPA
5) NJDEP
6) Paulus Sokolowski and Sartor

United States Department of the Interior

FISH AND WILDLIFE SERVICE

In Reply Refer to:
PL-NY-05/282

New Jersey Field Office
Ecological Services
927 North Main Street, Building D
Pleasantville, New Jersey 08232
Tel: 609/646 9310
Fax: 609/646 0352
http://njfieldoffice.fws.gov

AUG 1 8 2005

Richard L. Tomer, Chief
Regulatory Branch, New York District
U.S. Army Corps of Engineers
New York, New York 10278-0090
Attention: Sophie Ettinger

Dear Mr. Tomer:

The U.S. Fish and Wildlife Service (Service) has reviewed the July 25, 2005 Pre-Construction Notification (PCN) # 2004-00812-J1 regarding a request from Titan PDC Carteret Urban Renewal, LLC (applicant or Titan) to the U.S. Army Corps of Engineers, New York District (Corps) for Department of the Army (DA) authorization to fill 5.78 acres of wetlands and 1.53 acres of open waters in Carteret Borough, Middlesex County, New Jersey.

The applicant requests DA authorization for these activities under Nationwide Permit (NWP) # 38, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*). The purpose of the proposed activities is to close and cap the Carteret, Cranbrook, and Middlesex Landfills in accordance with plans[1] approved by the New Jersey Department of Environmental Protection's (NJDEP) Site Remediation Program (SRP), and to subsequently redevelop the site as a warehouse/distribution center known as iPort 12. The iPort 12 center would include approximately 29 acres of warehousing plus associated parking, stormwater, and other facilities. An additional 0.12 acre of aquatic resources would be disturbed for roadway crossings under NWP # 7, and an additional 0.07 acre for installation of three stormwater outfalls under NWP # 14. A total of 0.94 acre of open waters and 1.55 acres of wetlands would be created by the applicant in order to relocate portions of Ralphs and Cross Creeks, and in the course of relocating an area of landfill material.

The Service conducted a site visit on April 4, 2005 in the course of pre-application review of an adjacent project, the New Jersey Turnpike Authority's (NJTPA) proposed Tremley Point Connector Road. Our review has been coordinated with the National Marine Fisheries Service (NMFS).

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[1] Revised Remedial Action Workplan (April 25, 2003) and Landfill Closure, Major Disruption, and Post-Closure Care Plan (November 1, 2004).

AUTHORITY

This response is provided pursuant to the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*), as well as the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA), the Migratory Bird Treaty Act of 1918 (40 Stat. 755, as amended; 16 U.S.C. 703-712), and consistent with the intent of the Service's Mitigation Policy (Federal Register, Vo. 46, No. 15, Jan. 23, 1981). These comments do not preclude separate review and comments by the Service pursuant to the National Environmental Policy Act of 1969 as amended (83 Stat. 852; 42 U.S.C. 4321 *et seq.*) (NEPA).

FISH AND WILDILFE RESOURCES

Federally Listed Species

Except for an occasional transient bald eagle (*Haliaeetus leucocephalus*), no other federally listed or proposed endangered or threatened flora or fauna under Service jurisdiction are known to occur within the vicinity of the proposed project site. Therefore, no further consultation pursuant to Section 7 of the ESA is required by the Service. If additional information on federally listed species becomes available, or if project plans change, this determination may be reconsidered.

The Service provides the above determination with respect to federally listed or proposed threatened or endangered flora and fauna under Service jurisdiction only. Principal responsibility for threatened and endangered marine species is vested with the NMFS. Therefore, the NMFS must be contacted to fulfill consultation requirements pursuant to Section 7(a)(2) of the ESA:

National Marine Fisheries Service
Habitat and Protected Resources Division
Sandy Hook Laboratory
Highlands, New Jersey 07732
(732) 872-3023

State-Listed Species

Materials submitted to the Service in support of the subject PCN indicate that the proposed project site provides habitat for the State-listed (threatened) black-crowned night-heron (*Nycticorax nycticorax*) and yellow-crowned night-heron (*Nyctanassa violaceus*).

Other Wildlife Resources

The northern part of the 67 acres of uplands to be impacted consists of an old field cover type. Although dominated by non-native species, this open space provides important habitats for resident and migrating birds. Approximately 10 acres of these uplands are classified by the NJDEP as providing habitat for the above-mentioned State-listed species. Of the wetlands to be filled, 4.41 acres consist of valuable *Spartina*-dominated estuarine emergent marsh, according to

supporting materials provided by the applicant. Tidal waters to be impacted, including Ralphs and Cross Creeks provide habitats for anadromous and resident fish, and the project site contains designated Essential Fish Habitat.[1]

Uplands, wetlands, and waters in the project area are part of a larger wetland complex bounded by Tremley Point Road to the north, the New Jersey Turnpike to the west, Industrial Road to the south, and the Arthur Kill to the east (the "Carteret Arch" of the Rahway River). Although much of this area has been converted to industrial use, over 350 acres of wetlands remain, representing one of the largest remaining areas of wetlands and open space in the highly urbanized Arthur Kill watershed.

Within New Jersey's urban northeast, large wetlands provide essential stopover habitat for birds during migration. Habitats used during migration may be equally important to breeding and wintering grounds to the survival of a species. Migrating birds following "programmed" pathways must be able to satisfy energy requirements, avoid predators, and minimize environmental stress during stopovers (U.S. Fish and Wildlife Service, 1997). New Jersey's latitude, geography, and habitats make it a critical State for bird migration (Dunne, 1989; New Jersey Audubon Society, 2004). The Hudson River and the urban core of the New York City metropolitan area provide important migration corridors and stopover habitat for Neotropical migrant landbirds (U.S. Fish and Wildlife Service, 1997). A large number of migratory birds are funneled through the New York urban core by the orientation of the coastline and other geographic features of the area, and these birds are further concentrated in the small amounts of remaining open space. The region's rivers concentrate migrants, especially during fall migration when birds get pushed to the shorelines by strong northwesterly winds. Woodlands and wetlands along these rivers are critical to migrants (Dunne, 1989; New Jersey Audubon Society, 2004). Even isolated pockets of habitat along major river corridors provide essential stopover sites, serving as "urban oases" for energetically-stressed migrants. Protection of remaining open space and restoration of additional areas is a priority in the urban core (Dunne, 1989; U.S. Fish and Wildlife Service, 1997; Maryland Partners in Flight, 1998; Rosenberg *et al.*, 1999; New Jersey Audubon Society, 2004).

The Service designated the lower Rahway River and associated wetlands and tidal creeks as part of the Arthur Kill Significant Habitat Complex of the New York Bight Watershed (U.S. Fish and Wildlife Service, 1997). The area has been targeted for acquisition and restoration by the Harbor Estuary Program (HEP) and by the Corps' Hudson-Raritan Estuary (HRE) Environmental Restoration Study. Based on these recognitions and the area's importance to resident and migrant birds and fish, the Carteret Arch wetland complex constitutes an Aquatic Resource of National Importance.[2]

---

[1] Essential Fish Habitat. Identified by Congress as "those waters and substrate necessary to fish for spawing, breeding, feeding, or growth to maturity," pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801-1883; P.L. 94-265).

[2] Aquatic Resource of National Importance. Pursuant to Part IV Paragraph 3(a) of the CWA Section 404(q) Memorandum of Agreement between the Department of the Interior and the Department of the Army, dated December 21, 1992. As this term has been used in permit elevation decision documents, Aquatic Resources of National Importance are special aquatic resources that typically provide important, complex functions that benefit plant and wildlife species and their habitats.

ENVIRONMENTAL REVIEW

Although eligible for DA authorization under NWP #38, the proposed project involves a substantial acreage of filling of Aquatic Resources of National Importance, including 4.41 acres of high-quality salt marsh. The project also involves the partial fill and relocation of two tidal waterways that provide Essential Fish Habitat. Based on the nature, size, and location of these impacts, the proposed project would have more than minimal individual and cumulative net adverse effects on the environment. Therefore, the Service recommends that the Corps exercise discretionary authority (pursuant to 33 CFR 330.1(d), 330.4(e), and 330.5) and instruct the applicant to apply for an individual DA permit.

The proposed construction of over 30 acres of warehouse facilities is dependant on capping of the subject landfills, *i.e.*, warehouse development will not take place but for the requested DA authorization. Therefore, in complying with NEPA, the Corps must consider the individual and cumulative impacts (40 CFR 1508.25) of the proposed warehouse facilities on the human environment, including impacts to surface water quality, air quality, traffic, and noise. The Service recommends that the Corps prepare an appropriate NEPA document (Environmental Assessment and/or Environmental Impact Statement) and make this document available for public and agency review in accordance with federal regulations. The NEPA documentation must address other planned developments within the Carteret Arch wetland complex, including Titan's proposed "Phase 2" warehouse project and the NJTPA's proposed Tremley Point Connector Road (see enclosed Service comment letter dated May 13, 2005).

PURPOSE, NEED, AND ALTERNATIVES

The Service concurs that closure and capping of the subject landfills are necessary to isolate environmental contaminants. The Service recognizes that the proposed aquatic resource impacts represent a decrease over those previously authorized for landfill closure by DA permit # 96-10430-J1, issued June 4, 1997 (now expired). The applicant has subsequently worked with the NJDEP's SRP to develop closure plans that have reduced impacts to wetlands and open waters. The Service concurs that the current closure plans include design elements, particularly the use of amended dredge material for the cap, that avoid and minimize aquatic resource impacts.

EVALUATION OF A COMPLETE PROJECT

Supporting materials provided by the applicant indicate that one of the road crossings included in the subject PCN is proposed in order to provide access to Titan's planned Phase 2 warehouse site (currently owned by Cytec Industries, Inc.). The applicant's proposed compensatory mitigation plan involves wetland and upland enhancements on parts of the Phase 2 property. The information provided indicates that the proposed landfill capping and warehouse development do not constitute a full and independent project. Therefore, the planned Phase 2 warehouse development must be considered in the Corps' current public interest review. Upon receipt of an application for an individual permit, the Service recommends that the Corps issue a Public Notice describing both Phases of warehouse development and associated aquatic resource impacts.

RELOCATION OF TIDAL CHANNELS AND LANDFILL MATERIAL

The project description in the PCN includes creation of wetlands and open waters in the course of relocating sections of Ralphs and Cross Creeks, and an area of landfill material. The Service recommends that the Corps require the applicant to submit, for review and approval of the Corps and federal and State resource agencies, a wetland and open water creation plan prior to any filling of wetlands or open waters. The plan should include analysis of the size and anticipated hydrologic function of the relocated tidal creeks relative to the existing creeks, proposed grading and planting details (featuring only native species), and a proposal for monitoring and reporting for at least 5 years following construction of the wetlands and open waters.

COMPENSATORY MITIGATION

The Service has reviewed a compensatory mitigation plan described in a June 1, 2005 letter from EcolSciences, Inc. (the applicant's contractor) to the Corps, as well as the compensatory mitigation requirements contained in a State permit for the project issued by the NJDEP's Land Use Regulation Program (LURP) on May 23, 2005. These documents describe 11 to 14.5 acres of wetland mitigation, and 10 acres of upland mitigation, on portions of the adjacent property owned by Cytec Industries (which is also the site of Titan's planned Phase 2 warehousing). The applicant would provide a financial assurance (*e.g.* bond or letter of credit). If mitigation on the Cytec property proves infeasible, these funds would be applied towards purchase of credits at an approved mitigation bank, or contributed to the NDEP or an approved land trust or other entity.

The Service strongly supports the LURP's requirement to compensate for loss of upland (old field) areas that currently provide habitat for State-listed species. The Service also strongly recommends that the applicant be required to provide compensatory wetland and upland mitigation within the Carteret Arch wetland complex (*i.e.*, east of the New Jersey Turnpike between Industrial and Tremley Point Roads).

The Service objects, however, to several aspects of the proposed mitigation plan:

- The proposed mitigation site is not currently owned or controlled by the applicant.

- The proposed mitigation site is on top of a deed-restricted, capped waste storage lagoon (NJDEP Known Contaminated Site # NJD986603439). In our letter to the U.S. Coast Guard dated May 13, 2005 (copy enclosed), the Service concurred with the NJTPA that capped lagoons are inappropriate sites for wetland mitigation.

- The proposed project site contains uplands that the Service has recommended as an alternative location for the NJTPA's proposed Tremley Point Connector Road. The NJTPA's currently preferred alternative for the road would result in substantial wetland fill, shading, and fragmentation. The Service strongly recommends relocating the proposed roadway to available uplands, such as the Cytec property (see our enclosed May 13, 2005 letter).

- As a member of the Meadowlands Interagency Mitigation Advisory Committee (MIMAC), the Service would oppose purchase of credits for the subject project from the Marsh Resources, Inc. mitigation bank, the only bank currently approved for impacts in the Arthur Kill watershed, based on the size and nature of the impacts, distance to the bank, and opportunities for mitigation within the immediate vicinity (*i.e.*, the Carteret Arch wetland complex).

- Conditions of the State permit would allow for a monetary contribution to the NJDEP or another approved entity if the applicant does not commence an approved mitigation project by June 1, 2007. Such contribution is not consistent with the October 2000 *Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.*

- Conditions of the State permit allow for submission of mitigation plans prior to commencing "vertical construction of the warehouse component of the authorized project." As mitigation plans may be submitted after landfill capping and associated wetland fill, the State permit would allow for a temporal loss of wetland functions and values.

- The proposed mitigation plan provides insufficient information regarding grading, planting, monitoring, and reporting.

The Service recommends that the Corps require the applicant to submit a revised compensatory mitigation plan for review and approval by the Corps and federal and State resource agencies prior to any filling of wetlands or open waters. At a minimum, the plan should include the following elements:

- Preservation of all wetlands and open waters that will remain on Titan's property following completion of the proposed project elements (as described in the subject PCN) via perpetual deed restriction.

- Locations of the proposed on-site "habitat enclaves," and planting and monitoring plans for these areas and all portions of the project site to be revegetated (*i.e.* side slopes) (featuring only native species).

- Documentation that the applicant has acquired title or controlling interest in one or more suitable mitigation sites within the Carteret Arch wetland complex, and will execute a perpetual deed restriction on such site(s) following approval of the revised mitigation plan but prior to any filling of wetlands or open waters.

- Information regarding environmental contaminants on the proposed mitigation site(s), including the results of any sampling or analysis conducted to date by the SRP and, if applicable, a statement from the SRP regarding the compatibility of proposed mitigation activities with any engineering or other site controls for previously remediated sites (*e.g.*, lagoon caps). If available information shows elevated levels of environmental contaminants, or is insufficient to determine contaminant levels, a contaminant sampling plan should be included for approval by the Corps, resource agencies, and the SRP. If environmental

contaminants are present at levels that would pose a risk to fish and wildlife resources, a remedial plan should be developed and carried out prior to any wetland enhancement, restoration, or creation. If remediation is needed, the remedial plan and schedule should be approved by the Corps, resource agencies, and the SPR prior to any filling of wetlands or open waters.

- Details regarding the proposed mitigation project size (providing an in-kind mitigation ratio of at least 3:1 for emergent marsh and tidal waters to be filled); site grading and planting details (featuring only native species); a monitoring and reporting proposal for at least 5 years following construction of the mitigation project; and specifications for corrective actions that will be taken if wetland characteristics fail to develop as planned.

- A schedule for constructing the mitigation project. If remediation of the mitigation site is not needed, the mitigation project must be carried out prior to or concurrent with any filling of wetlands or open waters, in accordance with federal regulations and policies. If remediation of the mitigation site is needed, the mitigation project should be carried out within 1 year of the completion of the approved remedial activities.

- Documentation that the proposed mitigation site has been coordinated with the NJTPA to avoid conflicts with the proposed Tremley Point Connector Road, and an area-wide conceptual mitigation plan showing how the proposed mitigation project will complement the anticipated mitigation requirements stemming from the proposed Tremley Point Connector Road and Titan's proposed Phase 2 warehouse development (see the following discussion of area planning).

AREA PLANNING

As discussed above, the Carteret Arch wetland complex provides highly valuable habitats for fish and wildlife in the predominantly urbanized Arthur Kill watershed. The area is designated by the Service as a regionally significant habitat complex (U.S. Fish and Wildlife Service, 1997), and has been targeted for acquisition and restoration by the HEP and by the Corps' HRE Environmental Restoration Study. The Service recognizes the State's current emphasis on redevelopment of brownfields such as the Carteret Landfill and the Cytec property with port-related facilities such as warehousing. However, careful planning is required to ensure that development of the iPort project and the Tremley Point Connector Road (which would facilitate development of additional, off-site warehousing) are coordinated to avoid disturbing previously remediated sites, to avoid and minimize adverse impacts to aquatic resources, and to utilize compensatory mitigation for maximum environmental benefits within the Carteret Arch Aquatic Resource of National Importance. To this end, the HEP's Habitat Working Group is planning to address proposed developments in the Carteret Arch wetland complex during its August 31, 2005 meeting. The HEP will be inviting key representatives from various applicants, regulatory agencies, and resource agencies to discuss proposed projects. Coordinated planning would improve consistency, minimize environmental impacts of planned development, and streamline the regulatory process and environmental documentation required of the applicants. The Service encourages the Corps to attend, and to require Titan to participate in area planning.

CONCLUSION

The Service recommends that the Corps exercise discretionary authority and require the applicant to submit: (1) an application for an individual permit; (2) an appropriate NEPA document addressing individual and cumulative impacts within the Carteret Arch wetland complex; (3) information regarding onsite creation of wetlands and open waters (including tidal creek relocation); and (4) a revised compensatory mitigation plan as described above.

The Service recommends that any DA authorization require the applicant to obtain Corps and resource agency approval of a detailed tidal creek relocation plan and a revised compensatory mitigation plan prior to any filling of wetlands or open waters, in order to verify that the proposed activities will not result in substantial and unacceptable impacts to Aquatic Resources of National Importance.

Please contact Wendy Walsh of my staff at (609) 646-9310, extension 48 if you have any questions regarding the above Service comments. We look forward to seeing you at the upcoming HEP Habitat Working Group meeting to discuss the subject project and related activities impacting the Carteret Arch wetland complex.

Sincerely,

Clifford G. Day
Supervisor

Enclosure

REFERENCES

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Maryland Partners in Flight. 1998. Land management guidelines for the benefits of land birds in Maryland. Chesapeake Bay Critical Area Commission, Annapolis, Maryland. http://www.mdbirds.org/mdpif/lmg.html. Accessed August 17, 2004.

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Steve Dilts
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, NJ 08903

RECEIVED
AUG 18 2005

15 August 2005

Dear Mr. Dilts,

We want to thank you for the opportunity to meet with you and John Kellor on August 1, 2005 to discuss Baykeeper's issues and concerns regarding the proposed Tremley Point Connector road. We have always believed that it is in the best interest of all the stakeholders to exchange dialogue on any large project early in the process and we thank you for taking this appropriate step.

To reiterate, Baykeeper has been for the last fifteen years – and continues to be – opposed to development projects that further deplete or degrade already rare and endangered natural resources in the Hudson – Raritan (NY/NJ Harbor) Estuary. The natural areas surrounding the Lower Rahway River and Arthur Kill have been exploited for much too long and the cumulative impact to any remaining marshes and open space is untenable. The proposed connector road and associated iPort 12 and Tremley Point development projects, as they stand, will further damage the natural resources of the area if they proceed as planned. We would like to see the Turnpike Authority address the following issues and concerns in a thorough alternatives analysis:

1. Provide alternatives for meeting traffic demands in the Tremley Point area that avoid negative environmental impacts. Some of these alternatives are the "no build" scenario, the use of existing infrastructure/developed areas, including existing interchanges, and the development of rail systems into and out of Tremley Point.

2. Address air quality issues associated with any increases in vehicular traffic in the Carteret to Elizabeth corridor. This includes potentially limiting the area to trucks that meet strict emissions standards or prohibiting trucks on certain roadways.

3. The nature of the proposed project and the projected environmental damages warrant a full federal Environmental Impact Statement that includes a complete alternatives analysis, including alternatives previously rejected during any internal reviews of alternatives, as well as a comprehensive cumulative impacts assessment that includes environmental effects from the road and all associated development projects.

4. Documents related to the project must be made available to the public in a timely manner in order to allow them to be informed participants in decisions regarding the project.

Wetlands, waterways, and clean air are part of the public trust. Avoiding negative impacts to these public concerns should be a central mandate of the Turnpike Authority, which is a public agency.

Thank you for the opportunity to discuss these issues with you and we look forward to continuing this discussion when we meet with the NJDEP. The offer stands to join us on our boat to get a waterside view of the Tremley Point area and its wetlands and wildlife. We know you would find it to be an eye-opening experience.

Sincerely,

Andrew J. Willner
Executive Director and Baykeeper

cc: Commissioner Bradley Campbell, NJDEP
Gary Sondermeyer, Chief of Staff, NJDEP
Gary Kassof, U.S. Coast Guard
Richard Tomer, Army Corps of Engineers
Tim Kubiak, U.S. Fish and Wildlife Service
Karen Greene, NOAA

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6 September 2005

RECEIVED
SEP 13 2005

Richard Tomer, Chief
Regulatory Branch
New York District
U.S. Army Corps of Engineers
New York, NY 10278-0900

Re: Carteret/Cranbrook/Middlebrook Landfill Closure and Remediation Project (Pre-Construction Notification No. 2004-00812-J)

Dear Mr. Tomer:

Please accept the following comments on Pre-Construction Notification No. 2004-00812-J dated July 25, 2005 on behalf of NY/NJ Baykeeper ("Baykeeper"). Baykeeper is a conservation and advocacy organization that has been working to protect, preserve and restore the Hudson-Raritan Estuary since 1990.

The notice describes an application by Titan PDC Urban Renewal, LLC for a Nationwide Permit #38 to fill 5.78 acres of intertidal wetlands and 1.53 acres to close and remediate the Carteret/Cranbrook/Middlebrook Landfill (the "project") adjacent to the Rahway River in Carteret, Middlesex County. Baykeeper is extremely concerned with several aspects of this project and we feel strongly that the permit should not be granted for the project as it stands.

Given the history of environmental exploitation in the area surrounding the Lower Rahway River, as well as the precious nature of these rare resources, measures must be taken to prevent further losses. While the remediation of the landfill will result in a positive benefit to the ecosystem and we support this aspect of the project, the environmental damage habitat loss and air pollution associated with the project and the large-scale warehouse redevelopment undermines these benefits.

As discussed in further detail below, our major issues and concerns include: i) the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) before any further federal permits are issued; ii) the need for an analysis of the cumulative environmental impacts of this project, including the entire *iPort12* development and associated proposed Tremley Point Connector Road; iii) a presentation of complete and viable mitigation plans within the Carteret Arch wetlands, including alternatives to the Cytec site; iv) valid justification for extending the *iPort12* warehouse redevelopment project outside of the existing industrial footprint of the landfill and thereby filling highly valuable wetlands and waterbodies; v) the need for air pollution abatement measures to control emissions from trucks; and vii) outside expert

Carter H. Strickland, Jr., Esq.
Acting Director

Susan J. Kraham, Esq.
Staff Attorney

Lisa F. Garcia, Esq.
Staff Attorney

review to ensure the capping and containment at the landfill will not be compromised by the construction activities or the proposed heavy warehouse structures.

Potential Impacts of Proposed Project

The Nationwide Permit is being granted to a private developer, Titan PDC Carteret Urban Renewal L.L.C. (c/o Panattoni Development Co.) to cap the Carteret landfills and prevent contaminated leachate from entering the surrounding marshes and the Rahway River. In addition to capping and remediation of the landfills, the site will also be prepared for building 1,300,000 ft^2 of warehouse facilities on top of the landfills. This includes lowering the grade of the landfill as well as other large-scale, expensive undertakings. The project will result in the filling of 5.78 acres of wetlands (mainly *Spartina*-dominated marshes), the filling of 1.53 acres of State Open Water, and the re-routing of two marsh creeks to accommodate the warehouses and associated parking, etc. The wetlands to be impacted are listed by both the EPA's Harbor Estuary Program (HEP) and the Army Corps of Engineers' Hudson-Raritan Estuary Environmental Restoration Study (HRE) as priority acquisition/restoration sites. They are also considered Essential Fish Habitat and an Aquatic Resource of National Importance. The Fish and Wildlife Service includes the site in its Significant Habitat Complexes of the New York Bight Watershed, and it is on NJDEP's Landscape Map as a wetland of exceptional value because it is heavily used by endangered black-crowned and yellow-crowned night herons. In addition, the warehouse facility will bring with it a huge increase in the amount of truck traffic in the vicinity of the Lower Rahway River, which will result in lower air quality. Furthermore, it is not clear that the capping planned for the landfill will be able to support the large warehouses without compromising the containment system.

Despite these major concerns, state and federal permits are being issued and public funds are being allocated without fully examining this project's impacts, including the cumulative impacts of the inter-related proposed projects in the immediate area.

Non-compliance with State and Federal Law

This project is only one portion of a larger redevelopment plan for this Lower Rahway River area, namely the *iPort12* development and associated Tremley Point Connector Road project. Due to the nature of on-site contaminants, the scale of wetland/open water losses, the use of the site by endangered species, the elevated status of the site among federal and state resource agencies, and the fact that this project is just one component of a larger project, it is shocking that a comprehensive EIS has not been required by state and federal permitting agencies. Baykeeper requests that all state and federal law be complied with and the following matters be addressed or completed prior to any decision regarding the project's permits:

- **An EIS must be conducted pursuant to NEPA.** Under NEPA, it is well settled that individual parts of related actions must be addressed comprehensively in a single EIS. Indeed, if an agency were allowed to address each part of an overall

project separately, the agency would never consider the cumulative environmental effect of the sum of the project parts. NEPA prohibits this type of "segmentation." The EIS must address project alternatives that do not impact wetlands, water bodies, and other habitats; cumulative environmental impacts for the entire *iPort12* and Tremley Point Connector Road projects, including cumulative air quality impacts due to increased vehicle trips generated by the development; and wetlands and habitat mitigation alternatives within the Carteret Arch wetlands. This EIS must be provided for public review prior to issuing permits.

Some examples of cumulative impacts include the possible 8.1 acres of wetlands that would be lost for the proposed Tremley Point Connector road, the 7.13 acres lost to the Carteret Landfill development, and the as yet unknown losses associated with proposed developments at Cytec/*iPort 12* Phase 2 site, ISP/GAF and DuPont redevelopment sites in Linden. Also, it is projected that these combined developments would result in approximately 10,000 vehicle trips (25% truck trips) per day in the Carteret/Linden area.

- **The Army Corps of Engineers should require an individual permit for this project due to the large environmental impacts associated with it.**

- **A valid justification for filling wetlands must be provided pursuant to the Clean Water Act.** 5.78 acres of intertidal emergent (estuarine) wetlands and 1.53 acres of state open waters (a 1,400 foot section of Cross Creek and an 800 foot section of Rolph's Creek will be created and relocated) will be disturbed (i.e., filled) for the landfill closure capping (which includes site preparation for the warehouses). This is in violation of Section 404 of the Clean Water Act. The wetland/open water fill is occurring outside the existing footprint of the landfill thereby increasing the industrial area coverage while decreasing the natural habitat that existed while the landfill was in operation. It is unclear how much of the wetlands and state open waters impacts are the result of the landfill closure or the warehouse redevelopment project. This must be clarified. Private economic concern is not valid justification for destruction of wetlands, waterbodies, and waterways, which are public resources.

- **Preparation and presentation of the full mitigation plans within the Carteret Arch wetlands must be completed.**
  The developers have not committed to a fully-realized mitigation plan for the wetland losses. While we recognize and appreciate NJDEP's priority to mitigate for the wetland impacts within the Lower Rahway River watershed, we are extremely concerned that the proposed mitigation merely "kicks the can down the road." The mitigation first requires creating/restoring wetlands at the Phase 2 site of the *iPort12* development, presently owned by Cytec. The applicant does not yet have approval for this project, nor do they even have title to the property. Because this mitigation project is contingent on Phase 2 of the warehouse developments, there is the possibility that if the project does not go through then

the mitigation plan may be sent out of the immediate vicinity of the wetland losses. There is also the concern that development on the Phase 2 site will discourage extensive mitigation activities, much like what happened on the landfill site.

Conducting wetland mitigation in this region is difficult but not impossible and the possibility of contributing to an off-site mitigation banks is not acceptable to conservationists concerned with the Lower Rahway River area. There needs to come a time when developers understand that it is much easier to design their projects without impacting natural resources, rather than mitigating for impacts.

Additional Concerns

- **A Greenfields component should be included in the Brownfields development.**
  Approximately 10 acres of naturally vegetated upland habitats, providing important foraging, roosting, and nesting habitat for birds including the endangered Black-crowned and Yellow-crowned night herons, are being removed from the upland portions of the site. Again, this results in a net loss of open space/habitat where it is most needed. As part of the conditions for the NJDEP Waterfront Development Permit, the developers have agreed to provide experimental plantings along terraced portions of the site and have them monitored for several years. A design and maintenance plan should be submitted for the landscaping and it should be reviewed by qualified restoration ecologists to decide what will best enhance the value of the plantings for use as habitat. Many species of tree and shrub are of little value to wildlife. There must be a guarantee that a diversity of native plant species will be used and planted in high enough density to provide adequate coverage. Herbicides and insecticides should not be used on the site.

- **Mitigation of emissions from increased truck traffic must take place.**
  The future development planned for this site and the surrounding area will bring with it a major increase in truck traffic, which will result in increased diesel emissions in the vicinity of the Lower Rahway River. Because this area is already in non-attainment for ozone and fine particulates due to emissions from operations at several industrial facilities and a disproportionate level of truck traffic and it is being targeted by EPA and NJDEP in a project aimed at decreasing air pollution, the number of trucks at the sites in the future should be limited. Additionally, trucks entering the area should comply with strict fuel-efficiency standards and pollution abatement technologies. Consideration should be given to prohibiting trucks on certain residential streets.

- **Outside review of engineering and environmental documents stating that the warehouse structure will support warehouse facilities without compromising containment ability must take place.**

Conclusion

The Army Corps of Engineers should deny the application for a Nationwide Permit #38 for the Carteret/Cranbrook/Middlebrook Landfill closing and remediation project until the environmental issues and related matters outlined above are fully addressed.

Sincerely,

Lisa Garcia (RE)

Lisa Garcia
Rutgers Environmental Law Clinic

On behalf of:

Andrew J. Willner
Executive Director and Baykeeper

CC: Sophie Ettinger, ACOE
Gary Kassof, UCG
Cliff Dey, USFWS
Judith Burton, NJ DEP

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RECEIVED
OCT 18 2005

5 October 2005

Gary Kassof
Bridge Program Manager
First Coast Guard District
One South Street
Battery Park Building
New York, NY 10004-1486

Re: letter dated August 11, 2005 to NJ Turnpike Authority referring to Tremley Point Connector Road NEPA analysis

Dear Mr. Kassof,

We are greatly concerned about the content of a letter from you to the NJ Turnpike Authority (dated August 11, 2005) in which you refer to a possible mitigated FONSI for the Tremley Point Connector Road federal permit applications. It is a clear violation of NEPA and extremely premature to consider the possibility of a mitigated FONSI for a project without taking a hard-look at all potential impacts. Your letter seems to suggest that the Coast Guard may overlook the obvious environmental impacts posed by this project, specifically the obvious significant impacts to wetlands.

The environmental documentation contained in the NJ Turnpike Authority's Draft Environmental Impact Statement (DEIS) prepared pursuant to New Jersey Executive Order 215 (dated May 2003) is grossly inadequate environmental documentation for a project of this scale and with this many potentially adverse environmental impacts. Because we foresee the contents of the DEIS being presented to the U.S. Coast Guard as an attempt to avoid a comprehensive Environmental Assessment under NEPA, we wish to inform you beforehand that this will not be acceptable.

We urge you to conduct a comprehensive Environmental Impact Statement as part of your NEPA analysis that i) presents all possible alternatives for road alignment and design in a transparent manner; ii) provides a thorough assessment of environmental and health impacts; iii) contains a cumulative impacts analysis including the associated warehouse projects and developments in Carteret and Linden; and, iv) provides a well-supported and balanced presentation of the purpose and need for this project.

The EIS should contain:

1. All alternatives to the design and alignment of the Connector Road, including alternatives that were discarded internally by the Turnpike Authority. In addition, there should be a thoroughly documented and transparent feasibility analysis for each alternative.

2. Environmental impacts resulting from the Connector Road as well as cumulative environmental impacts from associated development projects in the Lower Rahway River watershed must be documented in the NEPA analysis. This includes wetland losses and fuel emissions from developments such as *iPort12* in Carteret and Tremley Point in Linden. Environmental impacts to be fully addressed include, but are not limited to, those affecting wetlands, open water, and upland habitats, fish and wildlife, contaminated sediments, water quality and air quality.

3. A well-supported description of the purpose and need for the Connector Road. Additionally, all aspects of the public benefits and impacts should be described in order to fully weigh the actual need for this project.

Please revisit the attached letter dated July 8, 2005 that we co-authored with the Rutgers Environmental Law Clinic for an overview of the ecological resources on the lower Rahway River that would be impacted by this project and should be included in the NEPA analysis.

Thank you for your attention to this matter. We are hopeful that the Coast Guard will reconsider the Mitigated FONSI discussion and we look forward to working with your agency as you move forward with your NEPA analysis. If you would like to discuss these issues further please contact us.

Sincerely,

Deborah A. Mans
Policy Director

Kristi MacDonald-Beyers
Conservation & Policy Associate

CC: Commissioner Bradley Campbell, NJDEP
Lisa Jackson, Asst. Commissioner, NJDEP
Janine MacGregor, NJDEP
Steve Dilts, NJTPA

U.S. Department of Homeland Security
United States Coast Guard

Commander
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16591/
RAHWAY RIVER/NJ

December 8, 2005

Ms. Deborah A. Mans &
Ms. Kristi MacDonald-Beyer
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Dear Ms. Mans and Ms MacDonald-Beyer:

The following responds to your letter of October 5, 2005 (received October 18, 2005) regarding the proposed Tremley Point Connector Road project between Linden and Carteret, New Jersey.

The Coast Guard, as the lead federal agency under NEPA, is responsible for environmental compliance, and also must issue a bridge permit for the project, if warranted. We participated in a pre-application meeting and a site visit in the Spring of this year along with various federal expertise agencies and New Jersey DEP, and continue to coordinate on this matter.

We met with the New Jersey Turnpike Authority and their agents (the applicant) on September 15, 2005 and reviewed and approved the outline for their preparation of an environmental assessment (EA) that ultimately must be approved by our office. We intend to circulate the EA for review to the cities of Linden and Carteret, to federal and New Jersey state expertise agencies, and to local organizations with special expertise/interest such as your organization. Since the EA has not been prepared, approved by us, and circulated, it would be premature at this time to comment on environmental concerns of your organization and those of others. We will, however, provide the applicant a copy of your letter and attachment for consideration in preparation of the EA. Keep in mind that the preparation and circulation of an EA at this point does not preclude the eventuality of a full environmental impact statement process should the results of the EA process deem one necessary. The applicant has been advised of this possibility.

The applicant is required to conduct two public hearings (one in each connecting city) and New Jersey DEP and the Corps of Engineers must issue permits, so opportunity will exist for considerable public input and participation on this matter. Let me assure you that this project will be advanced completely within the guidelines of NEPA and that the public will play a major role in decisions made relative to the project.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

Copy:
1) NJTPK Auth. w/Baykeeper ltr of October 5, 2005 & attach.
2) PS&S w/Baykeeper ltr of October 5, 2005 & attach.

RECEIVED
DEC 14 2005
Paulus Sokolowski & Sartor

City of Linden

Union County, New Jersey
ENGINEERING DEPARTMENT
CITY HALL, 301 N. WOOD AVENUE
LINDEN, NEW JERSEY 07036
Telephone: (908) 474-8470
Fax: (908) 486-0725 E-Mail: engineering@linden-nj.org

JOHN A. ZIEMIAN
CITY ENGINEER

GEORGE R. VIRCIK
PRINCIPAL ENGINEER

JOSEPH C. CHROBAK
ASSISTANT ENGINEER

March 13, 2006

New Jersey Turnpike Authority
P.O. Box 5050
Woodbridge, New Jersey 07095-5050

ATTENTION: Richard M. Brundage, Project Engineer

Dear Mr. Brundage:

RE: CARTERET/LINDEN CONNECTOR ROAD

We have reviewed the traffic models that were presented at the meeting of January 31, 2006.

This is to advise you that we agree with the methodology. The traffic counts are consistent with our projections.

Very truly yours,

JOHN A. ZIEMIAN
CITY ENGINEER
JAZ:ls

cc: R. Bunk, Council President
Engineering Committee
Kamal Saleh, U.C. Department of Economic Development

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DEPARTMENT OF ECONOMIC DEVELOPMENT
Alfred J. Faella, Acting Director

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Deputy County Manager/ Director of Administrative Services

ROBERT E. BARRY, ESQ.
County Counsel

NICOLE L. TEDESCHI
Clerk of the Board

March 15, 2006

Mr. Richard M. Brundage, Project Engineer
New Jersey Turnpike Authority
PO Box 1121
New Brunswick, NJ 08903

Re: Tremley Point Connector Road

Dear Mr. Brundage:

Re: OPS 2052
E&K.

While there are a few technical items that need to be further clarified requiring a separate letter which will be sent to you soon, this does not prohibit our acceptance of the modeling methodology presented by your office regarding this Connector Road project.

Based our review of the material presented to the County at the meeting held at the NJ Turnpike Authority Headquarters Office on January 30, 2006 and subsequent information provided by your consultant, Edwards & Kelcey, Inc., we accept the general methodology as outlined at said meeting and further described in the material provided.

We look forward to working with you and your consultant on clarifying the minor technical items and to further advance this valuable regional project.

If you should have any questions, please contact Steve Merman, Director, Division of Planning & Community Development at (908) 527-4205.

Sincerely,

Alfred J. Faella
Acting Director

Cc: Steven H. Merman, Esq., Director, Division of Planning & CD
Jeffrey Sias, County Engineer

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August 17, 2006

Gary Kassof
Bridge Program Manager
First Coast Guard District
One South Street
Battery Park Building
New York, NY 10004-1486

Re: Tremley Point Connector Road Project (Between Linden and Carteret, New Jersey)

Dear Mr. Kassof,

Thank you for your response to Baykeeper's FOIA request, along with the attached solicited documents. After reviewing the documents, we are concerned with the Coast Guard and Army Corps of Engineer's apparent predilection to allow the project to move forward despite the unknown scope of development. It is still unclear to us how the Coast Guard was willing to determine that an Environmental Assessment ("EA") would be the proper process to require of the applicant over an Environmental Impact Statement ("EIS").

The Coast Guard, via letter correspondence and phone conversations, has stressed to us that a decision to upgrade the project to an EIS would be considered should significant impacts within the meaning of the National Environmental Policy Act ("NEPA") be revealed during the EA process. However, without knowing the scope of the project, how does the Coast Guard know that "about eight acres of wetlands would be impacted," or that an EA was appropriate?[1] This determination would have been more reasonable had the Coast Guard required the applicant to evaluate the scope of the development, determining whether the development has independent utility from the connector road, prior to its decision to allow the project to proceed with an EA.

[1] Coast Guard Memorandum titled "MEETING OF 1 JUNE 2005 WITH CORPS OF ENGINEERS TO DETERMINE A LEAD FEDERAL AGENCY FOR THE TREMLEY POINT CONNECTOR ROAD," page 1.

Additionally, the applicant has requested that the project be processed as an EA and a Finding of No Significant Impact ("FONSI").[2] We would like to know exactly how impacting eight acres of wetlands could be considered insignificant. Besides the existing limitation on environmental resources in this state, wetlands play a crucial role in the New York Harbor Estuary; even those impacted by brownfield sites. The proposed project would cut across one of the largest contiguous marshes on the lower Rahway River and the Arthur Kill Estuary. If the purpose of the proposed project is to "facilitate development of the brown field areas in the vicinity," Baykeeper can suggest many useful alternatives to the Tremley Point Connector Road that are a more direct connector to the industrial/commercial redevelopment planned for Tremley point.[3] This alternative, that the Turnpike Authority reviewed internally but failed to incorporate, would preserve wetlands while providing more direct truck access (avoiding the problem of truck traffic through residential neighborhoods). Without due consideration of this alternative to wetlands filling, the proposal should be rejected out of hand because the applicant failed to do a sufficient alternatives analysis.

Has the project applicant determined whether the connector road has independent utility or not? Nothing should be determined at the federal level without addressing this crucial question, even considering that the impact to wetlands is significant independent of the project's utility. It is problematic that the Coast Guard, knowing of the potential impacts to wetlands, believes that this project can fall under a mitigated FONSI, especially considering NEPA's requirement that the lead federal agency take a "hard-look" at all potential impacts.[4] Consideration of a FONSI at this stage is premature.

We are troubled by the Coast Guard's reliance on the project's consultants regarding the potential environmental affects of the project.[5] In regards to the comments submitted by the New Jersey Department of Environmental Protection Environmental Justice Division, the Coast Guard seemed to be satisfied by the consultants' advice that "there were no minority or low income components located in the Tremley Point neighborhood."[6] The project consultants are hardly as authoritative as the state, especially the division of the state that is responsible for this specialized subject (i.e., environmental justice issues.) Disregarding authoritative state material on the mere basis of consultant recommendations would bare the marks of arbitrary action.

Baykeeper respectfully requests a meeting with the Coast Guard to discuss this issue further. We would be happy to supply you with our recently released position paper on "Brownfields to Greenfields," which may help formulate other ideas for use of the brownfield sites. I look forward to your response.

---

[2] *Id.*
[3] Coast Guard Memorandum titled "Meeting of 15 September Concerning the Proposed Tremley Point Connector," page 1.
[4] *Id.* Page 2.
[5] *Id.*
[6] *Id.*

Sincerely,

Betsy McDonald

Betsy McDonald, J.D.
Policy Associate

cc: Richard Webster, Esq., Rutgers Environmental Law Clinic
Richard Brundage, P.E., New Jersey Turnpike Authority
Ingro Desvousges, PS&S, LLC
Commissioner Lisa Jackson, NJDEP
Mark Mauriello, Acting Assistant Commissioner, Land Use Management, NJDEP
Judy Burton, Land Use Regulation, NJDEP
Irene Kropp, Assistant Commissioner, Site Remediation, NJDEP

U.S. Department of Homeland Security

United States Coast Guard

Commander
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16591/RAHWAY
RIVER/NJ
September 15, 2006

Ms. Betsy McDonald, J.D.
Policy Associate
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Dear Ms. McDonald:

This responds to your letter of August 17, 2006 concerning the proposed Tremley Point Connector Road Project over the Rahway River between Linden and Carteret, New Jersey.

Once the environmental assessment is disseminated, we will evaluate any other suggested alternatives to the proposed connector roadway to determine their effectiveness in meeting the project's purpose and need, and goals. All federal, state and local expertise agencies and the public will have the opportunity to comment on the accuracy and validity of any issues contained in the environmental assessment. Impact and significance of wetland will be included as a necessary area of concern.

We do not feel it necessary to meet with your organization at this point as we do not have a completed application for this project as yet, and the environmental assessment has not been completed.

Your concerns and comments on this matter are noted and appreciated; however, you can be assured that the environmental process will respond to all your concerns.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

Copy:
1) NJTPK Authority w/Baykeeper ltr dtd August 17, 2006
2) Paulus, Sokolowski and Sartor w/Baykeeper ltr dtd August 17, 2006
3) Edwards and Kelcey w/Baykeeper ltr dtd August 17, 2006

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Paulus Sokolowski & Sartor

U.S. Department of Homeland Security

United States Coast Guard

Commander
First Coast Guard District

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16591/RAHWAY
RIV/NJ
October 20, 2006

Mr. Mark N. Mauriello, Director
Land Use Regulation Program
New Jersey Dept. of Environmental Protection
P.O. Box 439
Trenton, NJ 08625-0439

Subj: Proposed Tremley Point Connector Road Project Over the Rahway River Between Linden and Carteret, New Jersey

Dear Mr. Mauriello:

During a discussion with the New Jersey Turnpike Authority and their consultants regarding development of the preliminary environmental assessment for subject action, we expressed reservations about "up-front mitigation" being proposed. Such mitigation would not sufficiently reduce wetland impacts (6.4 acres) so that impacts would be reduced to an insignificant level. As a result, we can not proceed with plans to issue a (mitigated) FONSI for the project as currently proposed.

The Turnpike Authority offered to investigate amendment of their preferred alignment and to take other actions in order to reduce wetland impacts to a level they perceive as being insignificant. As the Coast Guard does not have jurisdiction over wetlands, we require the expertise of applicable agencies to determine the revised project's significance/nonsignificance relative to wetlands, and also to ensure that wetland concerns are adequately addressed early in the process.

We have tentatively scheduled a meeting in our office on October 27, 2006 with an alternate date of October 30, both at 10:00 a.m., wherein the revised proposal will be presented by the Turnpike Authority. We will be asking you to rule on the suitability of the revised project in meeting the level of nonsignificance for wetlands. If the revised project cannot meet the level of nonsignificance, we will be seeking your suggestions to achieve nonsignificance and your comment on additional or alternate means suggested by others. If another person from your agency is selected to attend this meeting, he or she should be able to make major definitive decisions that will be binding upon this project as it moves forward. If desired, you may participate in this meeting via teleconference in view of the long commute to this office. Representatives of the USEPA and Army Corps of Engineers are also being asked to attend this meeting.

Please contact Ernie Feemster of this office at (212) 668-7994 to confirm availability of your attendance on October 27, 2006, desire to participate via teleconference or if you desire to

choose the alternate date or an alternate time. Your prompt response on this matter would be appreciated.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

U.S. Department of Homeland Security

United States Coast Guard

Commander
First Coast Guard District

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RECEIVED
OCT 25 2006
Paulus Sokolowski & Sartor

16591/RAHWAY
RIV/NJ
October 20, 2006

Mr. Richard L. Tomer
Chief, Regulatory Branch
U.S. Army Corps of Engineers, NY District
Jacob K. Javits Federal Building
New York, NY 10278-0090

Subj: Proposed Tremley Point Connector Road Project Over the Rahway River Between Linden and Carteret, New Jersey

Dear Mr. Tomer:

During a discussion with the New Jersey Turnpike Authority and their consultants regarding development of the preliminary environmental assessment for subject action, we expressed reservations about "up-front mitigation" being proposed. Such mitigation would not sufficiently reduce wetland impacts (6.4 acres) so that impacts would be reduced to an insignificant level. As a result, we can not proceed with plans to issue a (mitigated) FONSI for the project as currently proposed.

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Please contact Ernie Feemster of this office at (212) 668-7994 to confirm availability of your attendance on October 27, 2006, or if you desire to choose the alternate date or an alternate time.

Your prompt response on this matter would be appreciated.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

U.S. Department of Homeland Security

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16591/RAHWAY
RIV/NJ
October 20, 2006

Ms. Grace Musumeci, Chief
Environmental Review Section
U.S. Environmental Protection Agency, Region 2
Strategic Planning and Multi-Media Programs Branch
290 Broadway
New York, NY 10007-1866

Subj: Proposed Tremley Point Connector Road Project Over the Rahway River Between Linden and Carteret, New Jersey

Dear Ms. Musumeci:

During a discussion with the New Jersey Turnpike Authority and their consultants regarding development of the preliminary environmental assessment for subject action, we expressed reservations about "up-front mitigation" being proposed. Such mitigation would not sufficiently reduce wetland impacts (6.4 acres) so that impacts would be reduced to an insignificant level. As a result, we can not proceed with plans to issue a (mitigated) FONSI for the project as currently proposed.

The Turnpike Authority offered to investigate amendment of their preferred alignment and to take other actions in order to reduce wetland impacts to a level they perceive as being insignificant. As the Coast Guard does not have jurisdiction over wetlands, we require the expertise of applicable agencies to determine the revised project's significance/nonsignificance relative to wetlands, and also to ensure that wetland concerns are adequately addressed early in the process.

We have tentatively scheduled a meeting in our office on October 27, 2006 with an alternate date of October 30, both at 10:00 a.m., wherein the revised proposal will be presented by the Turnpike Authority. We will be asking you to rule on the suitability of the revised project in meeting the level of nonsignificance for wetlands. If the revised project cannot meet the level of nonsignificance, we will be seeking your suggestions to achieve nonsignificance and your comment on additional or alternate means suggested by others. If another person from your agency is selected to attend this meeting, he or she should be able to make major definitive decisions that will be binding upon this project as it moves forward. Representatives of the Army Corps of Engineers and New Jersey DEP are also being asked to attend this meeting.

Please contact Ernie Feemster of this office at (212) 668-7994 to confirm availability of your attendance on October 27, 2006, or if you desire to choose the alternate date or an alternate time.

Your prompt response on this matter would be appreciated.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

One Newark Center, 17th floor, Newark, NJ 07102
(973) 639-8400 • fax (973) 639-1953 • www.njtpa.org

Daniel P. Sullivan, Chairman
Joel S. Weiner, Executive Director

RECEIVED
NOV 13 2006

November 8, 2006

Mr. Gary Kassof
First Coast Guard District
United States Coast Guard
One South Street – Battery Building
New York, New York 10004-5073

Dear Mr. Kassof:

This letter is to convey the support of the North Jersey Transportation Planning Authority for a connector road to Tremley Point from the NJ Turnpike Authority Exit 12 in Carteret.

The importance of a connector to the redevelopment of the Tremley Point area has long been recognized by the NJTPA and is reflected in key agency planning documents. A study jointly conducted in 1999 by the NJTPA and the New Jersey Institute of Technology found that reclaiming brownfield industrial sites (such as the Tremley Point area) for freight related purposes represents a promising economic development strategy for the state that will, at the same, time relieve development pressures in environmentally sensitive areas and reduce the distance that trucks travel to other more distant warehousing and distribution centers.

Tremley Point, immediately adjacent to the New Jersey Turnpike, which could be served by a new Turnpike connector road, was identified as a prime prospect for achieving these objectives. A later study, the Freight System Performance Assessment, highlighted the regional importance of a planned upgrade of NJ Turnpike Exit 12 with a connector to Tremley Point.

This is reflected in the NJTPA's federally required Regional Transportation Plan, adopted in fall 2005. On page 79, the plan identifies the NJ Turnpike Interchange 12/Tremley Point initiative as one of five "Key future NJTPA Emphasis Areas," and the appendix includes proposed Turnpike Interchange 12 improvements under the Regional Capital Investment Strategy category of road expansion.

It should also be noted that the NJTPA is currently funding a subregional freight study being conducted by Union County whose primary feature is the planned development of warehousing and freight related businesses in the Linden area. A major aspect of this study is meeting the established need for improved access through the connection to the reconstructed Turnpike interchange.

Thus the NJTPA has demonstrated through its own planning work and that of its member agencies that a planned Turnpike connector to Tremley Point is a priority for regional investment.

Sincerely

Joel S. Weiner
Executive Director, NJTPA

C: Hon. Daniel Sullivan, Union County Freeholder & Chairman, NJTPA
Hon. Peter Palmer, Chairman: NJTPA Freight Initiatives Committee
Mark Stout, NJDOT Assistant Commissioner: Planning & Development
Liza Betz, Union County Planning
Kamal Saleh, Union County Planning
Steven Merman, Union County Planning Director
Mary K. Murphy, NJ Turnpike

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

November 13, 2006

Mr. Gary Kassof
First Coast Guard District
U.S. Coast Guard
One South Street-Battery Building
New York, N.Y. 10004-5073

Dear Mr. Kassoff,

The New Jersey Economic Development Authority (Authority) supports the Tremley Point Connector Road proposed for construction by the New Jersey Turnpike Authority. This project will bring substantial economic benefits to the area and to the State. The Connector Road will directly support investment , employment and local revenues opportunities associated with the Authority's Portfields Initiative. Briefly, the Portfields Initiative seeks to bring contaminated ("brownfields") and other underutilized properties in the Port District of New Jersey back into productive use as locations for facilities which will support Port, airport and rail freight commerce operations.

The Portfields Initiative directly supports Governor Corzine's Economic Growth Strategy for New Jersey. International trade and strategic economic growth development require vibrant port operations. This requires adequate landside facilities. By advancing the more productive use of brownfields and other underutilized sites in and around New Jersey's Port District, the Portfields effort will support the Governor's priority for expanding the global competitiveness of New Jersey's businesses. One of the greatest challenges in meeting the requirements of a growing Port is to ensure that it has the modern, effective road system it needs to move goods. The Tremley Point Connector Road will help New Jersey meet that challenge.

As part of the Portfields Initiative, the Authority has identified some twenty properties in and around the Port Newark/Port Elizabeth area which have redevelopment potential for port commerce-related uses. Modern and well-maintained infrastructure is required to advance these sites to their full redevelopment potential. Roads that create and enhance access between these sites and the regional highway system serving the Port is one of the most critical infrastructure requirements for maintaining and growing competitive freight movement and logistics operations in New Jersey.

The Tremley Point Connector Road will provide sorely needed road improvements to serve existing and proposed logistics operations in this area of the Port District. Notably, it will benefit the redevelopment of two of the larger Portfields properties the Authority has identified. The redevelopment of these two properties could bring up to six (6) million square feet of new warehouse and distribution facilities to the area. This will help stimulate hundreds of jobs and help add tens of millions of dollars of private investment to the local tax base. Additional redevelopment opportunities on other underutilized property in City of Linden and Borough of Carteret also will be encouraged through construction of the Connector Road.

MAILING ADDRESS | PO BOX 990 | TRENTON, NJ 08625-0990
36 WEST STATE STREET | TRENTON, NJ 08625 | 609.292.1800 | e-mail: njeda@njeda.com | www.njeda.com

The Tremley Point Connector Road will generate other benefits as well. Its connection to Interchange 12 of the New Jersey Turnpike will provide a welcomed new corridor for moving goods more efficiently from the Port to warehouse and distribution facilities and then on to their ultimate destinations. As a result, it is anticipated that truck traffic will be reduced on local roads less suited for freight movement and that air quality will improve to the extent that truck traffic and related congestion on local roads is reduced through the construction of this road.

The Connector Road's link to the New Jersey Turnpike for logistics companies offers a "smart growth" alternative to unneccesary sprawling of warehouse and distribution facilities on "greenfields" at outlying suburban or rural locations elsewhere in the State. New Jersey must encourage the productive re-use of underutilized properties at more close-in , urban locations. The proposed Tremley Point Connector Road clearly is one such opportunity to do this.

In conclusion, many significant economic, fiscal, land use and other benefits would result from the proposed construction of the Tremley Point Connector Road. The New Jersey Economic Development Authority endorses this project for the vital, necessary support it will bring to the Authority's Portfields Initiative and for the support it will provide in advancing the State's "global competitiveness" as called for in Governor Corzine's Strategic Economic Growth Strategy for New Jersey.

Sincerely,

Caren S. Franzini, CEO

CSF/MC/clb
c: Michael Lapolla, Executive Director, NJTA
Carl VanHorn, NJEDA Chair
Commissioner Lisa Jackson

U.S. Department of Homeland Security
United States Coast Guard

Commander
First Coast Guard District

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Phone: (212) 668-7165
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16591
RAHWAY RIVER/NJ
November 14, 2006

Mr. Joel S. Weiner
Executive Director
North Jersey Transportation Planning Authority
One Newark Center, 17th Floor
Newark, NJ 07102

Dear Mr. Weiner:

Thank your for your letter of November 8, 2006 regarding the New Jersey Turnpike Authority's proposal to construct the Tremley Point Connector Project. At this relatively early stage in our process, a final alignment has not been confirmed. Additionally, the Coast Guard has not approved a final environmental document for the project. To the extent practicable, we will include consideration of your comments into planning for the project. We will also include your agency on our mailing list for this project.

We appreciate your comments on this proposal and look forward to your continued participation as the project evolves.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

Copy: 1) NJ Turnpike Auth. w/Mr. Weiner ltr dtd November 8, 2006
2) Paulus, Sokolowski and Sartor w/Mr. Weiner ltr dtd November 8, 2006

NEW JERSEY SENATE

NICHOLAS P. SCUTARI
SENATOR, DISTRICT 22
1514 E. SAINT GEORGES AVENUE
LINDEN, NJ 07036
TEL: (908) 587-0404
FAX: (908) 587-9312

COMMITTEES
COMMERCE - VICE CHAIRMAN
STATE GOVERNMENT - VICE CHAIRMAN
JUDICIARY - MEMBER

November 21, 2006

Mr. Gary Kassoff, Bridge Program Manager
First Coast Guard District
U.S. Coast Guard
One South Street – Battery Building
New York, NY 10004

Dear Mr. Kassoff:

I respectfully request your expeditious consideration of the proposed Tremley Point Connector Road (TPCR) project.

As you know, New Jersey has seen significant increases in commercial traffic as a result of robust domestic and international trade. The New Jersey Turnpike Authority (NJTA) is working diligently to improve opportunities for these goods to be transported quickly and efficiently by making improvements to our state's extensive roadway system. Yet it is critical that New Jersey residents – especially those that live in economically distressed areas – have access to the prosperity that comes with increased trade activity. Tremley Point on the southeastern tip of Union County is one of these areas.

That is why NJTA is sponsoring the TPCR, a proposed 1.2 mile roadway/bridge that would traverse the Rahway River, connecting Tremley Point in the City of Linden in Union County to the Borough of Carteret in Middlesex County. In close proximity to the Port Authority of New York and New Jersey as well as New Jersey's Turnpike's Interchange 12, the construction of TPCR would enable easy access to the vacant, underutilized areas in Tremley Point for local officials to develop the area for trade activity, bringing with it jobs and opportunities for New Jersey residents. Such an endeavor is keeping in line with the state's master plan for the area as well as New Jersey's Smart Growth Initiative in which locations with some existing infrastructure are given priority for economic development – especially brownfield sites, lands long overdue for redevelopment. In addition, the connector road will relieve congestion on the already overburdened local and state roads, helping clear neighborhoods of unnecessary traffic.

Because of the significant attention that policymakers are giving to this project as well as the pressing need for economic opportunity in this area of northern New Jersey, I ask for your diligence in reviewing NJTA's materials swiftly and comprehensively. Thank you for your attention to this matter.

Sincerely,

Nicholas P. Scutari
Senator, 22nd District

NPS/mb

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NOV 28 2006

U.S. Department of Homeland Security
United States Coast Guard

Commander
First Coast Guard District

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16591/
RAHWAY RIVER/NJ
December 8, 2006

The Honorable Nicholas P. Scutari
New Jersey Senate
1514 E. Saint Georges Avenue
Linden, NJ 07036

Dear Mr. Scutari:

This responds to your letter of November 21, 2006, which requested our expeditious consideration of the proposed Tremley Point Connector Road (TPCR) project. The Coast Guard, as the lead federal agency under the National Environmental Policy Act, must issue a bridge permit as the project is to cross over the Rahway River, a navigable waterway of the United States.

We recently met with the New Jersey Turnpike Authority, the U.S. Environmental Protection Agency and the New Jersey Department of Environmental Protection to finalize parameters for the environmental document required for the project. We also conferred with the U.S. Army Corps of Engineers on this matter. Subsequent to these actions, the Coast Guard forwarded comments to the Turnpike Authority on a draft environmental assessment they submitted to us. Based on these actions, we expect to receive a revised environmental assessment from the Turnpike Authority in the near future.

The Coast Guard has been working with the New Jersey Turnpike Authority and their consultants on this project as well as with federal and state environmental agencies in evolution of this action. We also recognize the importance of this project to the state of New Jersey and to the surrounding area, and will prioritize this project accordingly.

Thank you for your interest in this matter. We will keep you apprised of developments as the project moves forward and welcome your input to our permit process. If you require anything further, please contact me at (212) 668-7021.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

Copy To:
1) NJ Turnpike Authority. w/State Senator Scutari ltr dtd November 21, 2006
2) U.S.E.P.A. w/State Senator Scutari ltr dtd November 21, 2006
3) NJDEP. w/State Senator Scutari ltr dtd November 21, 2006
4) U.S.A.C.O.E.w/State Senator Scutari ltr dtd November 21, 2006

U.S. Department of Homeland Security
United States Coast Guard

Commander
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16591/RAHWAY
RIV/NJ
December 11, 2006

Mr. Richard L. Tomer
Chief, Regulatory Branch
U.S. Army Corps of Engineers, NY District
Jacob K. Javits Federal Building
New York, NY 10278-0090

Subj: Proposed Tremley Point Connector Road Project Over the Rahway River Between Linden and Carteret, New Jersey

Dear Mr. Tomer:

This letter serves to confirm our decision to continue with preparation of an environmental assessment for subject project, which will potentially allow for use of a mitigated FONSI for the proposed action. This decision was made at our meeting of November 15, 2006 with representatives of the U.S.E.P.A. and the New Jersey DEP. The Corps of Engineers as the federal regulatory agency with significant oversight relative to wetland impacts, could have greatly assisted our process had you attended.

We are at the stage in the project where major commitments relative to "up-front" mitigation must be made, such as: 1) negotiations for acquisition of properties 2) finalization of a wetland mitigation site(s) 3) preparation of an environmental document 4) selection of a preferred alternative 5) determination of connections to adjacent roadways, and other such issues. The Coast Guard certainly would prefer that decisions in areas of your jurisdiction are made by you and that such decisions occur early in the process before commitments are made by the applicant. We also would rather sit down and discuss issues and concerns of mutual interest in a formal manner.

We have requested the New Jersey Turnpike Authority and their agents to provide you renderings of two new, environmentally preferred alignment alternatives for the project and other materials related to proposed "up-front" mitigation for wetlands impacts of the project. If you have any concerns after review of the materials, please feel free to contact our office.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

Copy: 1) U.S.E.P.A
2) NJDEP
3) NJTPK Authority
4) Paulus, Sokolowski and Sartor
5) Edwards & Kelcey

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DEC 15 2006
Sokolowski & Sartor

U.S. Department of Homeland Security
United States Coast Guard

Commander
First Coast Guard District

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16591/RAHWAY
RIV/NJ
December 11, 2006

Ms. Caren S. Franzini, CEO
New Jersey Economic Development Auth.
P.O. Box 990
Trenton, NJ 08625-0990

Dear Ms. Franzini:

This acknowledges receipt of your letter of November 13, 2006 in support of the proposed Tremley Point Connector Road project for which the Coast Guard is the lead federal agency. We must issue a bridge permit for the project as it would cross over the Rahway River.

Currently, we are working with the New Jersey Turnpike Authority in preparing an environmental assessment for the project and will ensure that the prospective benefits of the project, as related in your letter, are included where applicable.

We look forward to your participation in our process and will include your organization on our mailing list for this project. If you have questions or concerns, please feel free to contact me at (212) 668-7021.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

Copy: 1) NJTPK Auth w/NJEDA ltr dtd November 13, 2006
2) Paulus, Sokolowski and Sartor w/NJEDA ltr dtd November 13, 2006

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Paulus Sokolowski & Sartor

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RECEIVED
DEC 20 2006

December 15, 2006

Gary Kassof
Bridge Program Manager
First Coast Guard District
One South Street
Battery Park Building
New York, NY 10004-5073

Re: Tremley Point Connector Road Project (Between Linden and Carteret, New Jersey)

Dear Mr. Kassof,

This letter is in response to your September 15, 2006 letter regarding the above mentioned project. While we appreciate your correspondence, there are still many questions that remain unanswered for us.

The Coast Guard's unwillingness to meet with us prior to the issuance of the Environmental Assessment ("EA") is unsettling, considering your statement that "[we] can be assured that the environmental process will respond to all [our] concerns." If your intention is to address the concerns of all stakeholders for this project, then a meeting with Baykeeper would allow us to address our concerns more extensively with you. It would be beneficial to meet during the EA process, rather than to wait and address any concerns after-the-fact. This would only create more work for the project proponents.

Despite the reluctance, Baykeeper believes such a meeting is necessary. Meeting with the Coast Guard is perhaps not as crucial as meeting with the manager in charge of the EA. However, the Coast Guard's attendance at such a meeting might help facilitate the EA process more effectively nonetheless.

Should you choose not to meet with us, we would appreciate a response to the following unanswered questions:

1. Impact to wetlands:

- Without knowing the scope of the project, how does the Coast Guard know that "about eight acres of wetlands would be impacted," or that an EA was appropriate?[1] This determination would have been more reasonable had the Coast Guard required the applicant to determine the scope of the development, determining whether the development has independent utility from the connector road, prior to its decision to allow the project to proceed with an EA.

- The applicant has requested that the project be processed as an EA and a Finding of No Significant Impact ("FONSI").[2] We would like to know how impacting 8 acres of wetlands could be considered insignificant? The Coast Guard must examine the "'direct, indirect and cumulative impacts on all Federal interests within the purview of the NEPA statute.'"[3] Such impacts must be considered before a FONSI can be issued.

- It is problematic that the Coast Guard, knowing of the potential impacts to wetlands, believes that this project can fall under a mitigated FONSI, especially considering NEPA's requirement that the lead federal agency take a "hard-look" at all potential impacts.[4] Consideration of a FONSI at this stage is premature.

2. Independent Utility:

- Has the project applicant determined whether the connector road has independent utility or not? Nothing should be determined at the federal level without addressing this crucial question, even considering that the impact to wetlands is significant independent of the project's utility. It is unclear how the Coast Guard could have taken a position regarding the connector road without knowing whether there is independent utility. The mere fact that the Coast Guard decided to allow proponents to proceed with an EA without knowing the independent utility is itself indicative of arbitrary and capricious decision making.

  "[T]he concept of 'independent utility' should not be manipulated to avoid significance or 'troublesome' environmental issues, in order to expedite the permitting process."[5] If the connector road has no independent utility, then it cannot be assessed separately. Without independence, the connector road must come within the scope of the

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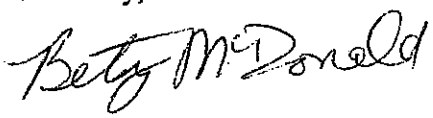
[1] Coast Guard Memorandum titled "MEETING OF 1 JUNE 2005 WITH CORPS OF ENGINEERS TO DETERMINE A LEAD FEDERAL AGENCY FOR THE TREMLEY POINT CONNECTOR ROAD," page 1.
[2] *Id.*
[3] *Florida Wildlife Federation v. United States Army Corps of Engineers, 401 F.Supp.2d 1298, 1323.*
[4] *Id.* Page 2.
[5] *Id. at 1315.*

current project. The scope of the EA must include all aspects of the project to address independence.

Additionally, the Coast Guard cannot rely solely on the project proponent's representations of independent utility. "Representations by the applicant alone…cannot be sufficient to establish a project's independent utility, without independent evaluation by the agency based on record evidence."[6] The Coast Guard must autonomously determine whether the connector road is a stand alone project. Otherwise, the project could ultimately be a road that leads to no where if the Turnpike Authority is not on board.

I look forward to your response.

Sincerely,



Betsy McDonald, J.D.
Policy Associate

cc: Richard Webster, Esq., Rutgers Environmental Law Clinic

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[6] *Id. at 1323.*

U.S. Department of Homeland Security
United States Coast Guard

Commander
First Coast Guard District

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16591/RAHWAY
RIVER/NJ
January 3, 2007

Ms. Betsy McDonald, J.D.
Policy Associate
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Dear Ms. McDonald:

Thank you for your letter of December 15, 2006 regarding the proposed Tremley Point Connector Road Project over the Rahway River between Linden and Carteret, New Jersey.

The Coast Guard has met with the New Jersey Turnpike Authority and their agents on the proposed project on several occasions. We have, also, met with federal expertise agencies and the New Jersey Department of Environmental Protection. Based on these actions and others, we have decided that an environmental assessment (EA) would be appropriate at this time. As we related to you previously, an EA can lead to either a Finding of No Significant Impact (FONSI), or to an Environmental Impact Statement, depending on the merits of the proposal.

Your organization has made your concerns known to us in previous letters and as we have done previously, we will forward a copy of your letter to the Turnpike Authority for their consideration in drafting of the EA. We have already reviewed a preliminary draft of an EA prepared by the Turnpike Authority and have returned comments to the Authority. They have advised of modifications to the previous alignments and addition of other information, so the EA is by no means complete. We reiterate that, without knowing the Turnpike's preferred alignment (proposal) and with no completed environmental document or application, a meeting with your organization is not deemed warranted at this time. We also stress that we have no vested interest in the success or failure of this project and do not find it appropriate to discuss validity of the EA at this point, especially before we even know what the final applicant proposal will be.

The Turnpike Authority is free to meet with you if they so desire. However, decisions regarding the environmental process are the lead agency's to make.

We appreciate your comments and will certainly consider them in our evaluation of this proposal.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

RECEIVED
JAN 0 9 2007
Paulus Sokolowski & Sartor

Copy:
1) NJTPK Authority w/Baykeeper ltr of December 15, 2006
2) Paulus, Sokolowski and Sartor w/Baykeeper ltr of December 15, 2006
3) NJDEP w/Baykeeper ltr of December 15, 2006

NJ COMMERCE
Business & Prosperity for the New Century

NEW JERSEY COMMERCE, ECONOMIC GROWTH & TOURISM COMMISSION
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609-777-0885; (FAX) 609-777-4097

JON S. CORZINE
Governor - Chair

VIRGINIA S. BAUER
Chief Executive Officer/Secretary

RECEIVED
JAN 31 2007

January 19, 2007

Mr. Gary Kassoff, Bridge Program Manager
U.S. Coast Guard
First Coast Guard District
One South Street, Battery Bldg.
New York, New York

Dear Mr. Kassoff:

Recently, the New Jersey Commerce, Economic Growth & Tourism Commission met with International Specialty Products (ISP), of Wayne, NJ. At that meeting we received a complete overview and update of their Tremely Point (Linden) project.

Since 1998, ISP has worked diligently on this 143-acre site both in site remediation and to restore it to productive use. Their plan, as you may know, is to redevelop a Brownfield site into a 2.5 to 3.0 million square foot state-of-the-art warehouse distribution center. This project is in line with Governor Corzine's Strategic Plan as well as our Portfields Initiative. It will create between 600 to 700 jobs during the construction phase and approximately 2,500 permanent jobs upon completion.

ISP has been in discussions with NJ Commerce and the Office of Economic Growth, the City of Linden, Union County, the Port Authority of New York and New Jersey, the NJTPA, the NJDOT, the NJDEP, and the NJEDA. It is the expectation of ISP that the Environmental Assessment report submitted by the NJTPA, to the Coast Guard, will be considered sufficient to gain the US Coast Guard's approval. I recommend to you and your group to help expedite this project. This project is a "win-win" scenario both for Linden and the State of New Jersey.

If you have any questions, please do not hesitate to contact me at 609-292-2445.

Sincerely,

Virginia S. Bauer

Virginia S. Bauer
Secretary/Chief Executive Off icier

c: Lisa Jackson, Commissioner, NJDEP
Kris Kolluri, Commissioner, NJDOT
M Mangin, NJ Commerce

ROBERT MENENDEZ
NEW JERSEY

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET
ENERGY AND NATURAL RESOURCES

United States Senate

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208 WHITE HORSE PIKE
SUITE 18-19
BARRINGTON, NJ 08007
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February 1, 2007

RECEIVED
FEB 05 2007

Mr. Gary Kassoff
Bridge Program Manager
First Coast Guard District
U.S. Coast Guard
One South Street
Battery Building
New York, NY 10004

Dear Mr. Kassoff:

I am writing to request your immediate and utmost consideration of the proposed Tremley Point Connector Road (TPCR) project in New Jersey. This project is essential to economic progress in a crucial part of the State, and I strongly support its completion.

New Jersey has experienced significant increases in commercial highway traffic, as a result of recent robust economic development. These conditions necessitate making improvements in the State's extensive highway network, both to alleviate traffic congestion and to open up underutilized sites and areas to increased commercial activity.

I believe that Tremley Point, in the City of Linden, offers an exceptional opportunity for this type of economic expansion; for this reason, I strongly support the New Jersey Turnpike Authority's proposal to build the TPCR. This important project consists of a proposed 1.2 mile roadway and bridge over the Rahway River, connecting Tremley Point, in Union County, to the Borough of Carteret in Middlesex County. This site is extremely promising because of its ideal location: it is in close proximity to the Ports of Newark and Elizabeth, Newark Liberty International Airport, and Interchange 12 of the New Jersey Turnpike.

The construction of the TPCR would enable easy access to many vacant and underutilized areas in Tremley Point, stimulating development and creating jobs in the process. This endeavor is consistent with the State's master plan for the area, as well as New Jersey's Smart Growth Initiative, in which locations with some existing infrastructure are given priority for economic development. Tremley Point presents opportunities for the redevelopment of brownfield sites, and other lands long overdue for redevelopment. Furthermore, the connector road will relieve congestion on the already overburdened local and state roads, helping to relieve neighborhoods of increasingly high traffic volumes.

The TPCR offers tremendous promise for economic growth in an area that is ripe for such an opportunity. I ask for your diligence in reviewing the materials for this project. Thank you for your attention to this matter.

Sincerely,

Robert Menendez
United States Senator

cc: Lisa Jackson, Commissioner, NJ Department of Environmental Protection
Adam Zellner, Deputy Commissioner, NJ Department of Environmental Protection
Michael Lapolla, Executive Director, NJ Turnpike Authority
Mary K. Murphy, Deputy Executive Director, NJ Turnpike Authority

U.S. Department of Homeland Security

United States Coast Guard

Commander
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Fax: (212) 668-7967

16591/RAHWAY RIV/NJ

RECEIVED

FEB 2 0 2007

Paulus Sokolowski & Sartor

February 14, 2007

The Honorable Robert Menendez
United States Senator
One Gateway Center, 11th Floor
Newark, NJ 07102

Dear Senator Menendez:

This responds to your letter of February 1, 2007 concerning the proposed Tremley Point Connector Road (TPCR) project between Linden and Carteret, New Jersey. The Coast Guard, as the lead federal agency under the National Environmental Policy Act (NEPA), must consider the environmental impacts of the undertaking as well as consider the issuance of a bridge permit as the project would cross over the Rahway River, a navigable waterway of the United States.

We acknowledge your interest and support for this project and are aware of the importance of the project in responding to increased traffic in the area and in redevelopment of underutilized brown field areas. Employment and economic benefits of redevelopment will certainly be included in our project analysis and decision-making.

We have coordinated closely with the New Jersey Turnpike Authority and their consultants as well as with applicable environmental agencies that have oversight over such projects. We are working closely with the Turnpike Authority in development of an environmental assessment for the project and assure you that our efforts will be commensurate with the level of importance of this project to the public interest.

We will ensure that you are included on any mailing for this project and apprised of any major developments which might occur.

Thank you for your letter and information on this matter. If you or your staff requires further information or desire clarification on this matter, feel free to contact me at 212-668-7021.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

U.S. Department of Homeland Security
United States Coast Guard

Commander
First Coast Guard District

One South Street
Battery Park Building
New York, NY 10004-1466
Staff Symbol: dpb
Phone: (212) 668-7165
Fax: (212) 668-7967

16591/
RAHWAY RIVER/NJ

February 14, 2007

Ms. Virginia S. Bauer
Secretary/Chief Executive Officer
New Jersey Commerce
Economic Growth & Tourism Commission
P.O. Box 820
Trenton, NJ 08625-0820

Dear Ms. Bauer:

This responds to your letter of January 19, 2007 concerning the proposed Tremley Point Connector Road Project between Linden and Carteret, New Jersey.

The Coast Guard is the lead federal agency under the National Environmental Policy Act (NEPA) and must consider the environmental impacts of the undertaking as well as the issuance of a bridge permit for this project as it is to cross over the Rahway River. We have been working closely with the New Jersey Turnpike Authority and their consultants on this project and presently are in the process of review of a draft environmental assessment. We have also coordinated with various federal environmental agencies and the New Jersey Department of Environmental Protection on project planning with a goal to minimize any adverse impacts resulting from the project completion.

The Coast Guard is aware of the benefit of the project to the local area and to the State of New Jersey. As a result, we will prioritize this project accordingly, and work diligently toward completion of the permit action.

Thank you for your interest and comments on this matter. We will include your agency on our mailing list for this action. If you require any further assistance, please contact me at the number above.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

Copy: 1) NJ Turnpike Authority w/NJ Commerce ltr dtd January 19, 2007
2) [redacted]
3) Edwards and Kelcey. w/NJ Commerce ltr dtd January 19, 2007

U.S. Department of Homeland Security
United States Coast Guard

Commander
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16591/1.25R/Rahway River/NJ

RECEIVED
AUG 1 8 2008
Paulus Sokolowski & Sartor

Mr. John C. Staples
Assistant Supervisor
U.S. Fish and Wildlife Service
927 North Main Street, Building D
Pleasantville, New Jersey 08232

Re: Tremley Point Connector Road

Dear Mr. Staples,

Thank you for your comments on the draft Environmental Assessment concerning the subject bridge project. Your comments regarding alternative analysis and cumulative impacts for Alternative 1 specifically requested "explanation of the impacts of Alternative 1...and verification by the USCG...of potential security issues of Alternative 1."[1]

The United States Coast Guard (USCG) investigated Alternative 1 to make a determination of the viability of this alternative, and the security issues, if any, that Alternative 1 presented to the Port of New York. Upon visiting with representatives of facilities in the project vicinity and touring the proposed alignment for Alternative 1, several security, logistical and practical problems became evident.

First, the information being relied upon to make the determination of existing facility infrastructure was out of date. The involved facilities have developed their properties significantly since the aerial photography that was used in the EA was taken. This new development includes active pipelines, active rail trackage and a new rail terminal. The new terminal was completed less than a year ago, at significant cost to the involved facilities and their tenants. The proposed footprint of Alternative 1 is crossed by up to six new lines of active rail which interface with the main commercial rail lines in New Jersey and also the shipping infrastructure for port commerce.

Second, wetlands within the facilities were not previously accounted for in the Alternative 1 analysis. A more accurate accounting of the wetlands impacts will be published in the new EA. Once the previously unaccounted wetland impacts are calculated into the analysis, wetlands impacts for Alternative 1 will increase and narrow the gap between this alternative's total wetland impact and Alternative 10.

Finally, and most pertinent to the port as a whole are the overwhelming security issues involved with construction of a public road through the middle of two active facilities. Facility security inspectors for the United States Coast Guard, Sector New York, expressed grave concern with

[1] See Letter from John C. Staples, Assistant Supervisor, United States Department of the Interior, Fish and Wildlife Service to Gary Kassof, Bridge Program Manager, United States Coast Guard, dated December 12, 2007.

the possible threats the facilities would have to plan for should Alternative 1 be chosen. The goal of the USCG in their facility security programs is prevention.

In light of that goal, and with the information gathered during the site visit, the USCG has concluded that the risks posed by Alternative 1 are sufficiently high so as to outweigh benefits to wetlands that may be gained. Therefore, we are proceeding with the final preparation of the EA where alternative 1 will be presented as a less viable alternative for the Tremley Point Connector Road project than previously presented. Please keep in mind that the USCG has a duty to protect information regarding specific threats or vulnerabilities of facilities. This letter is purposely vague as to the details of the involved entities in order to preserve the integrity of present security at those facilities.

Sincerely,

Gary Kassof
Bridge Program Manager
First Coast Guard District
By direction of the District Commander

Cc: Mr. Ingro Desvousges, Paulus, Sokolowski & Sartor
Mr. Frank Lopatosky, Jacobs Edwards and Kelcey