

LA13 –Town of Huntington – Department of Planning and Environment

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

BROADWATER ENERGY LLC
BROADWATER PIPELINE LLC

Docket Nos. CP06-54-000
CP06-55-000
CP06-56-000

**STATEMENT
BY
MARGO MYLES, AICP
SENIOR ENVIRONMENTAL ANALYST AND
COORDINATOR OF OPEN SPACE CONSERVATION
DEPARTMENT OF PLANNING AND ENVIRONMENT
TOWN OF HUNTINGTON**

Qualifications and Background

I am a Senior Environmental Analyst for the Town of Huntington. My educational background includes a B.A. in Environmental Studies and Anthropology from SUNY Binghamton. I was qualified by the American Institute of Certified Planners in 1994. I have been a member of the Planning Department staff for 18 years. Before that I worked with the New York State Department of Environmental Control for 2 years and The Nature Conservancy for 7 years. Last year I served as Interim Director of Planning and Environment. I also am the Coordinator of Open Space Conservation for the Town. I have prepared and analyzed environmental reviews for the boards of the Town of Huntington for over 20 years. I participated in reviews of two prior natural gas pipeline projects in the Town of Huntington – the Iroquois Gas Transmission Project and its subsequent Eastchester Extension.

Discussion

The DEIS inadequately discusses the impacts of the Broadwater proposal upon the Town of Huntington. In particular, it does not discuss the fact that—although the connection of the Broadwater Pipeline to the Iroquois Pipeline appears to be planned for the Long Island Sound just east of the Huntington border with Smithtown—the existing Iroquois Pipeline to which Broadwater’s would connect makes landfall within the Town of Huntington. The first Iroquois Pipeline that crosses the Long Island Sound from Connecticut extends seven miles south through Northport, East Northport and Commack (all in Huntington) from its landfall. The follow-up or second Iroquois Gas Eastchester Pipeline, that is active and will be used to transport Broadwater gas to New York City, connects to the first Iroquois Pipeline in Town of Huntington waters. There appears to be potential for expansion of the Eastchester Pipeline to accommodate the supply from the Broadwater LNG barge also to make landfall in the Town of Huntington. The DEIS should address the potential cumulative, homeland security and environmental justice impacts of these gas pipeline projects converging in and on the Town of Huntington.

The pipelines will impact the Town of Huntington’s planning of a Veterans Community Center on Town land that is an outparcel in the larger holding of the KeySpan/Northport power plant. In order to construct this Community Center, KeySpan donated 4.1 acres of land to the Town of Huntington on the KeySpan/Northport property. As the attached aerial and survey indicate, KeySpan maintained an easement that separates this donated property from another 4-acre property held by the Huntington Board of Trustees known as Soundview Beach. As indicated in the contract of sale, (a page from which is attached), KeySpan reserved the right to use this easement area for future utility purposes, such as to construct and install a possible underground gas facility.

LA13-1 As discussed in Section 4.3.1 of the final EIS, neither Broadwater nor IGTS has indicated that improvements to the IGTS or Eastchester pipelines are contemplated. Broadwater specifically designed its Project so that onshore infrastructure modifications would not be necessary. Any future improvements proposed on the system would be evaluated through a separate NEPA document.

LA13-1

LA13 –Town of Huntington – Department of Planning and Environment

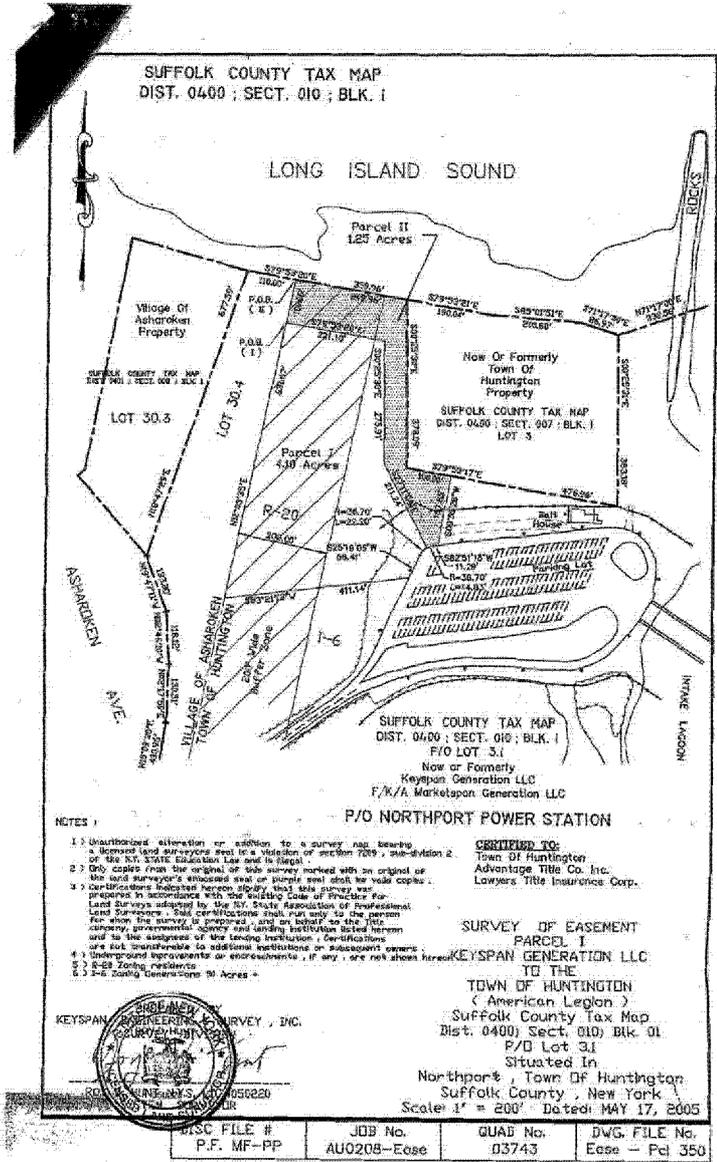
LA13-1

The existing Iroquois Pipeline makes landfall to the east, but in the same general area as the easement, at or near the most easterly canal within the KeySpan/Northport facility west of Kirshbaum Park, as marked on the attached aerial photograph. It is possible that a future expansion of the Iroquois/Eastchester Pipeline could make landfall in the area of the easement parcel. There could be impacts on the recently-designed state significant coastal fish and wildlife habitat in this area, as well as on the planned Veterans Community Center and ongoing community recreational uses (boating, fishing, soccer field) at the Soundview boat ramp area were another pipeline to make landfall.

In the past, particularly in November 2003, venting of the existing Iroquois Pipeline caused pervasive "rotten egg" odors from improper dispersal of Mercaptan and raised considerable community concern from residents of the Town of Huntington. The U.S. Department of Transportation, which oversees public health and environmental protection concerns related to gas transport by pipelines, was engaged, at the request of local elected officials, to review the incident.

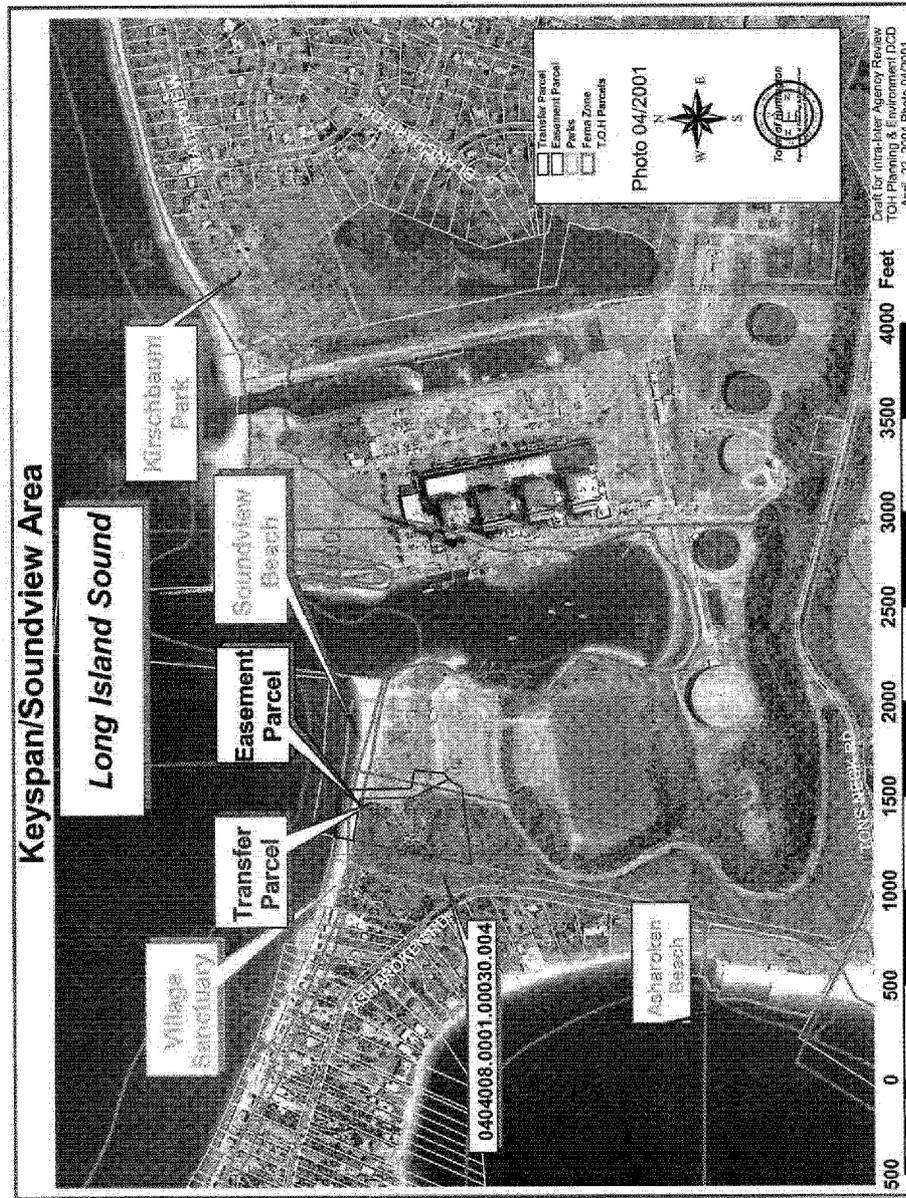
The DEIS should identify any future gas distribution network that might be planned for this area in the Town of Huntington, the impacts thereof and how those impacts will be mitigated.

Dated: January 23, 2007



Local Government Agencies and Municipalities Comments

N-365



LA13 –Town of Huntington – Department of Planning and Environment

CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT

NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION.

This contract form does not provide for what happens in the event of fire or other casualty loss or condemnation before the title closing. Unless different provision is made in the contract, Section 5-1311 of the General Obligations Law will apply. One part of that law make a Purchaser responsible for fire and casualty loss upon taking possession of the Premises before the title closing.

CONTRACT OF SALE

CONTRACT OF SALE made as of May 19, 2005 BETWEEN

KeySpan Generation LLC f/k/a MarketSpan Generation LLC
Address: 175 East Old Country Road, Hicksville, New York 11801

SSN/Federal ID#: 11-3435693 hereinafter called "Seller"

and

Town of Huntington
Address: 100 Main Street, Huntington, New York 11743

SSN/Federal ID# hereinafter called "Purchaser".

The parties hereby agree as follows:

1. Premises: Seller shall sell and convey and Purchaser shall purchase the property together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page marked "Schedule A" as Parcel 1 annexed hereto and made a part hereof and also known as:

- Property Address: 4.1 acres along the border of the Village of Asharoken and the Town of Huntington, Northport, New York
- Tax Map Designation: District: 0400, Section 10, Block 1, P/O 3.1

Together with Seller's ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of charge of grade of any street or highway. Seller shall deliver at no additional cost to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

2. Personal Property: This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to, plumbing, heating, lighting and cooling fixtures, bathroom and kitchen cabinets, mantels, door mirrors, switch plates and door hardware, venetian blinds, window treatments, mail box, TV aerials, weather vane, flagpole, pumps, chubbery, fencing, outdoor statuary, tool shed, dishwasher, washing machine, clothes dryer, garbage disposal unit, range, oven, refrigerator, freezer, air conditioning equipment and installations, wall to wall carpeting and built-ins not excluded below (strike out inapplicable items) if and as same may exist on the premises. Binder recites and shall control as to applicable items. Excluded from this sale are furniture and household furnishings and

This contract constitutes the sale of vacant land.

limited to a tax map apportionment, subdivision, land division or lot line change, so that Seller is no longer shown as the owner of record or required to pay taxes on the Premises. Purchaser shall notify Seller of such efforts undertaken by Purchaser, and shall notify seller of the new tax map designation. Purchaser shall defend, indemnify and hold Seller harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Purchaser's duties hereunder. This condition shall survive the closing of title and delivery of the deed.

(g) Purchaser shall grant to Seller a permanent, and perpetual easement, right, and privilege for Seller to place temporarily dredge spoils on the existing property owned by Purchaser lying and being in Suffolk County Tax Map Number 0400-007.00-01.00-003.000, more particularly described as set forth in "Schedule A." This condition shall survive the closing of title and delivery of the deed.

(h) Purchaser shall grant to Seller an exclusive, permanent, and perpetual easement, right, and privilege for ingress and egress and to construct, install, reconstruct, relocate, operate, repair, maintain and, at its pleasure, remove underground gas, electric, and communication system facilities and appurtenances within a one hundred foot (100') wide easement area under the eastern side of existing property owned by Purchaser lying and being in Suffolk County Tax Map Number 0400-007.00-01.00-003.000, more particularly described as set forth in "Schedule A" as "Easement Area." This condition shall survive the closing of title and delivery of the deed.

(i) As additional consideration for this transaction, in the event the Spagnoli Road Energy Center is to be constructed, Purchaser shall allow, expedite, and assist Seller or any related entity of Seller, with any required hook-up to Purchaser's storm water recharge basin at Suffolk County Tax Map 0400-266-01-8.2. This condition shall survive the closing of title and the delivery of the deed.

(j) In the event that Purchaser fails to meet its obligation set forth in paragraphs (h) above, the Premises automatically reverts back to Seller. This condition shall survive the closing of title and delivery of the deed.

40. INDEMNIFICATION / ENVIRONMENTAL LIABILITY

(a) Purchaser shall indemnify and hold harmless Seller and its directors, trustees, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, and representatives from and against all losses, penalties, liabilities, damages, liens, claims, demands, causes of action, costs, proceedings, suits, judgments, encumbrances or expenses of whatever form or nature, including reasonable attorneys' fees and other costs of legal defense and of investigating any proceeding commenced or threatened, whether direct or indirect, as a result of, arising out of or in any way connected with Purchaser's and / or the American Legion's activities, ownership / use of the Premises, and activities at the Hall, whenever made or incurred. Seller shall have the right to demand that Purchaser undertake to defend any and all suits and to investigate and

LA14 – Harry Acker – Town of Huntington

UNITED STATES OF AMERICA
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BROADWATER ENERGY LLC
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**STATEMENT
BY
HARRY ACKER
TOWN OF HUNTINGTON
DIRECTOR OF MARINE SERVICES**

I am the Director of Marine Services of the Town of Huntington and was appointed to this position as of January 9, 2007. Prior to that time, I held the position of Deputy Director Maritime Services from 1993 to 2007. I also was Bay Constable from 1974 to 1985 and Harbor Master from 1985 to 1986. My 33 years in these maritime positions have provided me with broad knowledge of the Long Island Sound and the harbors in the Huntington vicinity. I work closely with recreational and commercial boaters, fishermen and lobstermen.

The DEIS fails to account for several impacts the Broadwater Energy facility likely will have on the Town of Huntington and its waterways. In particular, I reviewed the U.S. Coast Guard Report which is incorporated within the DEIS.

As also is discussed in the statement by Margo Myles, the Iroquois Pipeline comes through Huntington Town waters and makes landfall in the Town of Huntington. Personnel from my division, as part of the Town's spill response team, currently inspect the line and assist KeySpan when the line is vented. An additional Iroquois line or additional gas flowing through that line will increase the burden on the Town and, in particular, my department.

LA14-1 Section 2.4.2 of the final EIS has been updated to clarify that, according to Broadwater and IGTS, operation of the proposed Broadwater pipeline would not affect the volume or frequency of natural gas vented from the existing valve station in Huntington, New York. As discussed in Section 4.3.1 of the final EIS, IGTS has not proposed any improvements to the IGTS or Eastchester pipelines beyond the proposed IGTS tie-in to the Broadwater pipeline addressed in this EIS. If improvements are proposed in the future, FERC would evaluate those impacts and alternatives through a separate or supplemental NEPA document.

LA14-1

LA14 – Harry Acker – Town of Huntington

LA14-2 [Furthermore, the Iroquois line has caused odor problems within the Town of Huntington in the past, in particular in November 2003. The impact of increased gas flowing through the Iroquois Pipeline and a possible expansion of the Iroquois Pipeline to the Town are not discussed in the DEIS.

LA14-3 [Block Island, Montauk, the Connecticut River and Mystic Connecticut are all popular vacation spots for Huntington boaters. The LNG facility and the security zones will impede access to these areas. A popular fishing area for Huntington boaters is the Race, an area which will be closed for security purposes when carriers come through the area.

LA14-4 [Moreover, the waters typically fished by Huntington baymen and lobstermen will realize an influx of baymen and lobstermen displaced from the waters they are currently using in the Race and in waters off Southold and Riverhead.

Finally, in prior emergencies such as the September 11th attacks and the crash of Flight 800, all Federal, State and County resources were deployed to the emergency scene, leaving the Huntington Harbor Master as the only marine law enforcement and rescue unit available anywhere in the area. For example, on September 11th and the days thereafter, our office was directed to provide security for the KeySpan plant as well as the Mobile Oil facility, since the Coast Guard and all County services available responded to New York City. In emergencies, the Eatons Neck Coast Guard Station in Northport deploys its personnel to the emergency areas and Huntington is left to its own devices.

In conclusion, the Coast Guard Report and DEIS do not adequately address these potential impacts.

Dated: January 23, 2007

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LA14-2 Please see our response to comment LA14-1.

LA14-3 We have assessed the impacts of LNG carrier transport and have found, as presented in Sections 3.5.5.1 and 3.7.1.4 of the final EIS, that disruptions to recreational and commercial marine traffic would be minor, localized, and temporary during LNG carrier transit. As noted in those sections, most recreational boating takes place within about 3.5 miles of the shoreline and therefore would not be affected by the proposed Project, except for some recreational boating at and in the vicinity of the Race. As proposed by the Coast Guard, the moving safety and security zone of each LNG carrier would cover an area of approximately 2,040 acres (3.2 square miles), and only one carrier would be present inside the pilot stations at any one time. In addition, no more than one carrier per day would be transiting the area, and only the moving safety and security zone around each carrier would be an exclusion zone, not the entire transit path that extends in front of and behind the proposed safety and security zone of an LNG carrier. The amount of time for the LNG carrier and its associated safety and security zone to pass any single point would be about 15 minutes. Only vessels in the path of the LNG carriers and their safety and security zones would be affected.

Most recreational boaters and recreational fishing vessels traveling to or from Block Island, Montauk, the Connecticut River, and Mystic would likely not encounter an LNG carrier; and those that do would have the opportunity to avoid the carrier and its safety and security zone by slightly altering their routes or speeds or by waiting about 15 minutes for the safety and security zone to pass.

As indicated in Sections 3.5.5.1 and 3.7.1.4 of the final EIS, the Race would not be closed when an LNG carrier passes through; in fact, recreational boaters could transit the Race while a carrier is present by using the area between the limits of the Race and the edge of the carrier's safety and security zone. In addition, as stated in Section 3.7.1.4 of the final EIS, there are alternative routes that are available to recreational vessels to enter or exit eastern Long Island Sound in lieu of using the Race. As noted in Section 3.5.5.1 of the final EIS, there could be temporary disruption of some recreational fishing during the 25 to 35 minutes required for a carrier and its safety and security zone to pass through the 2.3-mile-long area considered the Race. A fishing vessel in the path of the oncoming carrier and its safety and security zone would need to move out of the path and fish in another location or wait until the carrier passes and return to its previous location. LNG carriers would transit the Race no more than once per day for the life of the Project; and therefore, the impact would not be significant.

Local Government Agencies and Municipalities Comments

LA14 – Harry Acker – Town of Huntington

LA14-4 Impacts to commercial fishing are addressed in Section 3.7.1.4 of the final EIS, which has been updated to include impacts to commercial fishing in the eastern portion of the Sound. As noted in that section, interruptions to lobster fishing would be localized and temporary during carrier transit, including in the Race. We do not anticipate a significant displacement of lobstermen from the waters they are currently using due to implementation of the proposed Project.

LA15 – Donal F. Landers, Jr. – East Lyme Harbor Management/Shellfish Commission

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TOWN OF EAST LYME
 EAST LYME HARBOR MANAGEMENT/SHELLFISH COMMISSION
 P.O. Box 519
 Niantic, CT 06357

Chairman
 Donald F. Landers Jr.

Treasurer
 Steven Dinsmore

Secretary
 Marvin Schutt

January 6, 2007

Honorable Magalie R. Salas, Secretary
 Federal Energy Regulatory Commission
 885 First Street NE, Room 1A
 Washington, DC 20426

RE: Draft Environmental Impact Statement
 Reference Docket No. CP06-54-000 and CP06-55-000
 Gas 3, PJ 11.3

Dear Ms. Salas:

We are writing in response to the Federal Energy Regulatory Commission's (FERC) November 27, 2006 issuance of the Draft Environmental Impact Statement (DEIS) for the proposed Broadwater LNG Project. The East Lyme Harbor Management/Shellfish Commission was established by Town Ordinance in 1987, and is authorized to carry out all of the powers and duties granted to harbor management commissions by the Connecticut Harbor Management Act of 1984. Our area of jurisdiction includes the navigable water areas in the Town of East Lyme located in eastern Long Island Sound, CT. As you know, following the Notice of Application on February, 17, 2006, a number of coastal Connecticut communities, including the Town of East Lyme, adopted resolutions opposing the Broadwater Project because of the potential safety, environmental, and economic consequences of the proposed LNG facility. Our Commission¹ also found the subject proposal fundamentally inconsistent with the Goals, Objectives, Policies and Water Use Plans and Management Guidelines contained in the East Lyme Harbor Management Plan (1991). We respectfully record our continued opposition to the Broadwater floating storage regasification unit (FSRU) and offer the following comments on the DEIS.

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 COMMUNICATIONS SECTION

LA15-1

General: The DEIS is incomplete in a number of areas. Unfounded conclusions on the environmental impacts of construction and operation of the FSRU were drawn from limited, simplistic survey data and nonexistent statistical analysis. There is an extensive amount of relevant and current biological information on the aquatic resources of Long Island Sound (LIS), yet the authors choose to rely on outdated reference material in preparing the DEIS. These deficiencies were also noted by a panel of internationally recognized experts on LIS geology, ecology and fisheries at a recent hearing of the CT LNG Task Force. The Coast Guard safety report identifies specific mitigation measures that need to be implemented for the project to be suitable for use by LNG carriers in Rhode Island Sound, Block Island Sound, and LIS. Furthermore, the safety report found that additional measures are necessary to responsibly manage risks to navigation safety or maritime security associated with LNG marine traffic. However, the DEIS is silent as to who, how, and where these mitigation measures will be

LA15-2

¹ Comment letter on Notice of Application (Broadwater Energy CP06-54-000) from East Lyme Harbor Management Shellfish Commission to Magalie R. Salas, Secretary (FERC) dated March 15, 2006 (FERC-Generated PDF 20060417-0315).

LA15-1 The final EIS has been updated to present the most current information available from resource agencies and the literature on the environmental setting of Long Island Sound, with an emphasis on the aquatic resources.

LA15-2 The recommended mitigation measures that would be the responsibility of Broadwater are listed in Section 8.4.1 of the WSR (Appendix C of the final EIS), and the recommended mitigation measures that would be the responsibility of the Coast Guard are listed in Section 8.4.2 of the WSR. FERC expects that these mitigation measures would be required if the Broadwater Project is authorized. Section 3.7.1.4 of the final EIS has been revised to more clearly describe FERC's approach to this issue.

The EIS does not suggest that local municipalities would be solely responsible for emergency response planning and actions. As described in Section 3.10.6 of the final EIS, if the Project receives initial authorization to proceed, Broadwater would work with federal, state, and local agencies to develop an Emergency Response Plan for the Project. The Emergency Response Plan would include a Cost-Sharing Plan to provide funding for agency participation in emergency response actions. FERC must approve the Emergency Response Plan prior to final approval to begin construction. If the needed resources are not available or capable of providing the required responses and properly funded, FERC would not authorize the Project to proceed.

Local Government Agencies and Municipalities Comments

LA15 – Donal F. Landers, Jr. – East Lyme Harbor Management/Shellfish Commission

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EAST LYME HARBOR MANAGEMENT/SHELLFISH COMMISSION

- LA15-2 [implemented. The DEIS suggests that local municipalities in the areas nearby the FSRU and transiting LNG carriers will be responsible for ensuring that their emergency response plans and staff are capable of responding to catastrophic events involving LNG. A number of alternatives to the Broadwater Project were assessed in the DEIS; however, recent actions in the Northeast U.S. and Canada should be further explored by the FERC before siting the FSRU in LIS, an estuary of national significance.
- LA15-3 [
- LA15-4 [**Environmental:** Construction of the FSRU will have significant deleterious effects on the existing natural resources of LIS. The DEIS fails to assess the direct impacts of the yoke mooring system (YMS) and drilling/plowing 25 miles of connector pipelines on benthic habitats of LIS, which support rich and diverse populations of fish and shellfish. The DEIS presents no credible evidence that shellfish, shellfish habitat and overall water quality will not be damaged by both disturbed sediment and materials used in the construction of the YMS and lubrication for drilling that will be released into the water and ultimately settle on the surrounding seafloor. Recently, for a second time, the CT DEP denied a Water Quality Certificate to install a similar sub-seafloor pipeline between CT and NY because natural soils and sediment that create a habitat for commercially valuable oysters and clams, as well as other aquatic life, would be permanently altered. The CT DEP concluded that the proposed Islander East pipeline project was "inconsistent" with the state's Water Quality Standards. Furthermore, the CT DEP said state and federal law directs the agency to enforce these standards to safeguard existing uses of the Sound and the levels of water quality necessary to protect those uses. It is puzzling that the subject DEIS draws different conclusions for constructing a project with similar consequences located just 11 miles from the CT shore in NY waters of LIS.
- LA15-5 [Operation of the FSRU will also impact the water quality and existing aquatic resources of LIS as stated in the DEIS, "a minimum of 30 years". The effects of increased seawater temperature in LIS are well documented in the scientific literature. The DEIS indicates that the FSRU could use up to 8.2 million gallons of seawater per day for ballast maintenance and machinery cooling. Water discharges from the FSRU would be on average nearly 4°F warmer than surrounding conditions and potentially effect growth and development of planktonic life-stages of important fish and shellfish. Some marine organisms such as lobsters are very sensitive to temperature elevations and a one-degree rise in average water temperatures can have profound effects on this commercially important fishery. The DEIS ignores the vast amount of scientific information collected on the lobster population since the 1999 western LIS die-off and dramatic decline in abundance. The DEIS indicates that no significant impacts to essential fish habitat (EFH) resources would occur during construction and operation of the FSRU. However, the resource agency responsible for EFH (National Marine Fisheries Service -NMFS) has not completed their assessment of the project. There is little discussion in the DEIS on the impacts of more invasive non-native species being carried into the Sound in ballast water and on the hulls of LNG vessels coming from natural gas-rich nations in Africa, Asia and the Caribbean. The massive size of the FSRU and LNG carriers will increase the potential for collisions with federally threatened or endangered species (including marine mammals) that occasionally transit LIS during seasonal migrations. LIS is a major flyway for migratory birds; the DEIS fails to address the potential impacts of bird-collisions with the FSRU, parts of which stand nearly 300 feet above the surface water. Other environmental impacts associated with operation of the FSRU include impaired air quality from emissions of re-vaporization machinery, elevated noise impacts to humans and aquatic biota from the FSRU turbines and fire protection systems, discharge of biocides used to control growth of fouling organisms, and the potential for oil leaks or chemical spills associated with operating a large industrial facility on the water. The DEIS
- LA15-6 [
- LA15-7 [
- LA15-8 [
- LA15-9 [

- LA15-3 In Section 4.3.2 of the final EIS, we provide updated information on recently approved projects in the northeastern United States and Canada, and consider the projects as potential alternatives to the proposed Broadwater Project.
- LA15-4 Section 3.3.1 of the final EIS provides a detailed discussion of the direct impacts on benthic organisms and habitats (including shellfish) from installation of the proposed YMS and the 21.7-mile pipeline. Impacts to water quality are discussed in Section 3.2.3 of the final EIS. The YMS piles would be installed using pile-driving methods. Thus, no drilling lubricants would be used.
- LA15-5 Section 3.11.1.1 of the final EIS discusses the Islander East Pipeline Project. The Islander East Project would consist of a much longer pipeline that would cross onshore, nearshore, and offshore habitats. The Broadwater pipeline would be located only in offshore habitat and would affect approximately 2,500 fewer acres of seafloor than the Islander East pipeline. On October 5, 2006, the U.S. Second Circuit Court of Appeals ruled that the State of Connecticut did not sufficiently support its decision to deny a water quality certificate to the Islander East Pipeline Company. On August 15, 2007, a U.S. District Judge remanded the U.S. Commerce Department's decision to overrule the State of Connecticut's denial of coastal zone consistency. In addition, the Islander East Project would impact nearshore oyster areas. The proposed Broadwater Project would be limited to the offshore areas of Long Island Sound.
- LA15-6 The commenter misrepresents the FSRU discharges, which would be at approximately ambient temperature. In addition, LNG carriers would not be discharging ballast water into Long Island Sound because they would be arriving laden with cargo. A detailed description of the actual impacts of water intakes and discharges for the FSRU and LNG carriers are provided in Sections 3.2.3, 3.3.1, and 3.3.2 of the final EIS. The EFH assessment provided in Appendix J of the final EIS incorporates all of the information received from NMFS regarding EFH prior to completing the final EIS.

Local Government Agencies and Municipalities Comments

LA15 – Donal F. Landers, Jr. – East Lyme Harbor Management/Shellfish Commission

- LA15-7 Section 3.4 of the final EIS discusses potential impacts to federally listed marine mammals and birds, and includes the recommended mitigation measures for minimizing those impacts identified by FWS and NMFS – Protected Resources Division. In a letter dated June 8, 2007, FWS concurred with FERC's determination that collisions with the proposed FSRU would not be likely to adversely affect federally listed avian species (see Section 3.3.5 of the final EIS).
- LA15-8 The extent and magnitude of each of these potential impacts are discussed throughout Section 3.0 of the final EIS, including measures to avoid and minimize potential impacts.
- LA15-9 Section 3.2.2.1 of the final EIS includes our recommendation to the Commission that Broadwater prepare an SPCC plan and provide the estimated volumes associated with a worst-case spill scenario, an appropriate evaluation of the associated potential impacts to water resources and marine life, and appropriate mitigation measures to minimize the likelihood of a spill. These issues are addressed in Sections 3.2.3.1 and 3.10.2.4 of the final EIS.

Local Government Agencies and Municipalities Comments

LA15 – Donal F. Landers, Jr. – East Lyme Harbor Management/Shellfish Commission

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EAST LYME HARBOR MANAGEMENT/SHELLFISH COMMISSION

has dismissed these potential environmental impacts as being negligible or insignificant.

Safety and Recreation: The Broadwater Project would permanently alter recreational use of Long Island Sound. The waterways suitability report (WSR) prepared by the Coast Guard outlines measures necessary to ensure safe, secure passage of LNG vessel traffic and operation of the FSRU. The WSR assessed the potential risk associated with the project in terms of risk-threat, risk-vulnerability, and risk consequence. The WSR concludes that, at present, there are no known credible threats against the FSRU and associated LNG carriers; however, periodic risk assessments must be conducted to ensure the safety of the project. The events of 9/11 have clearly demonstrated our nation's vulnerability to terrorism; the consequences of a terrorist attack on the FSRU or an LNG carrier transiting the Sound are unimaginable. Provided enough funding exists, USCG staff will accompany LNG carriers transiting through LIS to the FSRU and establish an off-limit boundary around the vessel, much the same way the Coast Guard currently accompanies vessels traveling to and from the submarine base in New London, CT. The off-limit or exclusion-zone around the LNG carriers would extend 2 miles ahead, 1 mile behind and 1/2 mile aside the vessel while traveling to the FSRU; no recreational, commercial or military traffic would be allowed inside the exclusion-zone. In addition, a permanent exclusion-zone measuring 1.5 square miles would be established around the FSRU eliminating recreational and commercial boating activity in this area for the life of the project (a minimum of 30 years). With the exception of submarines occasionally traveling the short distance from "the Race" (the narrow channel 7 miles from East Lyme at the Sound's eastern end) to the submarine base in New London, this restriction in navigable waters of LIS is unprecedented. The many recreational and commercial fishermen who frequent "the Race" would be temporarily shut out each time an LNG tanker sails into the Sound. The DEIS is silent regarding this impact to the many users of public trust waters. The WSR also recommends that additional measures are necessary to responsibly manage the safety and security risks associated with the proposed project. The DEIS indicates that "Broadwater would develop and implement an emergency response plan that includes local municipalities and jurisdictions to meet the requirements of the FERC, the Coast Guard and other federal agencies". However, the DEIS provides no insight as to the magnitude of additional resources needed by local municipalities to meet these requirements and accomplish the security and safety recommendations found in the Coast Guard report.

Alternatives: The DEIS assessed a number of alternatives to meet the projected energy needs of New York City, Long Island and Connecticut. Renewable energy projects in both States such as wind and tidal power in combination with conservation measures may reduce our growing demand for additional sources of energy. Recent actions by former Gov. Mitt Romney (MA) to approve two LNG facilities (Neptune and Northeast Gateway Projects) in Massachusetts offshore waters will boost natural gas supplies in New England by more than 20%. The ongoing expansions of existing LNG facilities in Chesapeake Bay, Gulf of Mexico, and Canadian Maritimes will further improve domestic supplies of natural gas. The growth in the existing supply of natural gas combined with more than a dozen new proposals for LNG import terminals in northeastern North America obviates the need for siting a FSRU in the Sound. Expanding the capacity of existing major pipeline networks in our area (e.g., Algonquin, Texas Eastern, and Maritimes & Northeast) and constructing new pipelines in appropriate areas of LIS and the Atlantic Ocean would allow these new sources of natural gas to reach markets on Long Island and in New York City. FERC must reexamine the alternative needs assessment section of the DEIS, particularly the efficacy of the Broadwater Project in light of these new developments in

- LA15-10 We do not agree with the commentor's statement that the safety and security zones proposed for the FSRU and the LNG carriers represent an unprecedented restriction in the navigable waters of Long Island Sound. As stated in Section 2.3.2 of the WSR (Appendix C of the final EIS), there are several safety and security zones within Long Island Sound.
- LA15-11 The impacts to recreational and commercial fishermen who use the Race are described in Sections 3.5.5.1 and 3.7.1.4 of the final EIS. As stated in those sections, the Race would not be closed when a carrier passes through, and some recreational boaters could transit the Race while a carrier is present by using the area between the limits of the Race and the edge of the carrier's safety and security zone. Issues related to the Public Trust Doctrine are addressed in Section 3.5.7.4 of the final EIS.
- LA15-12 The commentor has correctly noted that Broadwater would be required to prepare an Emergency Response Plan. As described in Section 3.10.6 of the final EIS, the Emergency Response Plan would identify the resources needed to implement the plan. FERC must approve the plan prior to final approval to begin construction. If the needed resources are not available and properly funded, FERC would not authorize the Project to proceed.
- LA15-13 Section 4.3.2 of the final EIS has been updated to include the most recent information available on existing and proposed LNG terminal projects in New England and northeastern Canada. This information presents quantified environmental impacts for each alternative project, and compares them to the impacts for the proposed Broadwater Project. This updated review confirms that these alternative projects could not satisfy projected natural gas needs for Connecticut, Long Island, and New York City with less environmental impact than the proposed Broadwater Project.

LA15-10
LA15-11
LA15-12
LA15-13

Local Government Agencies and Municipalities Comments

LA15 – Donal F. Landers, Jr. – East Lyme Harbor Management/Shellfish Commission

Unofficial FERC-Generated PDF of 20070131-0072 Received by FERC OSEC 01/22/2007 in Docket# CP06-54-00



EAST LYME HARBOR MANAGEMENT/SHELLFISH COMMISSION

- LA15-13 ↑ the Northeast U.S. gas and energy markets. A more regional policy is needed to determine the number and siting of LNG terminals thereby minimizing environmental impacts and eliminating the potential risks associated with a LNG catastrophe in the U.S.
- LA15-14 [In conclusion, the DEIS fails to adequately assess a number of direct and indirect environmental impacts associated with construction and operation of the Broadwater Project. The safety analysis is based on flawed assumptions and modeling that would place an untried design in a body of water of national significance, closely surrounded by tens of millions of people. A more in depth analysis of alternatives would find that the Broadwater Project is speculative, unnecessary, and inconsistent with the public's interest. Finally, we understand that FERC staff will be working closely with a number of Federal and State agencies (USCG, EPA, USACOF, NYDEC, and NMFS) to review the public comments of the DEIS and to address additional information requests. We also hope that the regulatory agencies from Connecticut are included in this final stage of consultation to identify all the issues required for a complete and comprehensive Final Environmental Impact Statement (FEIS). Long Island Sound is a precious national resource enjoyed by millions of U.S. citizens every year. The Broadwater Project represents an expansion of industrial uses on the Sound. Apart from the environmental, safety, and recreational concerns, carving off any piece of the Sound sets a dangerous precedent and represents the first time waters of Long Island Sound are proposed to be given to a corporation. We appreciate the opportunity to comment on this important matter and look forward to reviewing the FEIS when it is issued.
- LA15-15 [
- LA15-16 [
- LA15-17 [

Sincerely,

Donald F. Landers, Jr.
Chairman

- cc: Governor M. Jodi Rell
 Captain Peter Boynton (COIP Long Island Sound, USCG)
 Andrea Stillman (State Senator)
 Ed Jutila (State Representative)
 Senator Len Fasano (Chair, Long Island Sound LNG Taskforce)
 Gina McCarthy (Commissioner, CT DEP)
 Richard Blumenthal (Attorney General)
 Beth Hogan (East Lyme Board of Selectmen)

- LA15-14 We are not aware of what "flawed assumptions" the commentor has referred to. The analysis conducted for the proposed Project (reported in Section 3.10.3 of the final EIS and Section 1.4 of the WSR [Appendix C of the final EIS]) reflects the best available methods, conservative assumptions that err on the side of public safety, and the most protective results. The Sandia Report (Sandia 2004) is the most recent and definitive reference on the subject of LNG spills to water and presents an analysis of many of the other studies previously completed. The GAO Report (GAO 2007) presented a survey of experts who work in areas related to LNG risk, hazards, and consequence modeling. The report determined that the primary hazard to the public would be heat from a fire. A total of 11 of 15 experts were of the opinion that current methods used for estimating LNG fire heat hazard distances (that is, the methods used by FERC and the Coast Guard) are "about right" or too conservative.
- LA15-15 The purpose and need for providing additional energy supplies to the region are described in Section 1.0 of the final EIS. In Section 4.0 of the final EIS, we have compared the proposed Broadwater Project to a wide variety of alternatives, in accordance with NEPA.
- LA15-16 We consulted with CTDEP during preparation of the draft EIS and have responded to comments from that agency in the final EIS.
- LA15-17 As described in Section 3.5.2.2 of the final EIS, Broadwater would be required to obtain an easement for use of the seabed associated with the proposed Project. Broadwater would pay an easement fee and would use the easement only for the life of the Project. Further, as described in Section 3.5.7.4 of the final EIS, many other commercial and industrial uses of the Sound have been approved by the responsible agencies, including eight power cables, three fiber optic cables, two natural gas pipelines, three active dredge disposal sites, two oil transfer platforms, many ferry services, extensive commercial shipping, and commercial vessel lightering.

Local Government Agencies and Municipalities Comments

LA16 – Norwalk Harbor Management Commission

Unofficial FERC-Generated PDF of 20070126-0090 Received by FERC OSEC 01/18/2007 in Docket#: CP06-54-00

ORIGINAL



HARBOR MANAGEMENT COMMISSION

January 16, 2007

Ms. Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street
Room 1A
Washington, D.C. 20426

FILED
OFFICE OF THE
SECRETARY
2007 JAN 24 P 3:43
FEDERAL ENERGY
REGULATORY COMMISSION

Reference: Docket No. CP06-54-000 and CP06-55-000

Dear Ms. Salas:

The Norwalk Harbor Management Commission has reviewed the Draft Environmental Impact Statement (Draft EIS) issued by the Federal Energy Regulatory Commission (FERC) concerning the proposal by Broadwater Energy LLC to build an offshore Liquefied Natural Gas (LNG) terminal in Long Island Sound.

The Commission discussed this matter during its meeting of December 20, 2006 and moved unanimously to transmit its concerns and comments on the proposal to FERC and the U.S. Army Corps of Engineers (USACE) which has issued Public Notice Number 2006-00265-L6 concerning the proposal.

The Commission is concerned about the potential direct impacts of the proposed LNG terminal on navigation conditions and environmental quality in Long Island Sound and the resulting secondary effects of the terminal and its use on Connecticut ports and harbors, including Norwalk Harbor.

Norwalk Harbor is a major center of recreational boating, commercial shellfishing, and other water-dependent activities in western Long Island Sound. The Harbor is the home port of thousands of recreational vessels that use and enjoy the Sound. In addition, the City of Norwalk expends considerable resources to encourage maritime tourism and to provide facilities for visiting boaters. The Harbor is a major attraction for visiting boaters who travel to Norwalk from Connecticut and New York harbors throughout the Sound. These resident and visiting boaters generate significant economic benefits for the City. The viability of all these boating activities and the enjoyment of those who participate in them are influenced by the quality of environmental and navigation conditions in Long Island Sound.

POST OFFICE BOX 5125 • 125 EAST AVENUE • NORWALK, CT 06856-5125 • TELEPHONE 203-954-7780

Local Government Agencies and Municipalities Comments

N-377

BW030854

LA16 – Norwalk Harbor Management Commission

Ms. Magalie Salas

2

January 16, 2007

Norwalk Harbor is also Norwalk's most important natural resource; its tidal wetlands, intertidal flats, beaches, shellfish beds, fish and wildlife, and other resources, including the Norwalk Islands with part of the Stewart B. McKinney National Wildlife Refuge, provide irreplaceable ecological functions and values as well as recreational opportunities. The Harbor's environmental quality is an important determinant of the City's quality of life and is influenced by the environmental quality of Long Island Sound.

LA16-1

The Commission believes that a fair and proper review of the proposed LNG terminal would include a thorough evaluation of the potential impacts of the terminal on Connecticut's ports and harbors. No such evaluation, however, appears to be included in either the Draft EIS or the USACE Public Notice.

LA16-2

To properly evaluate the potential impacts on Connecticut's ports and harbors, it is the Commission's opinion that the proposed LNG terminal must be evaluated for consistency with the State of Connecticut's Federally approved Coastal Management Program before either FERC or the USACE may issue any final decision on the proposal. That evaluation should be conducted by the Connecticut Department of Environmental Protection in accordance with the requirements of the Federal Coastal Zone Management Act. In this regard, the Commission strongly agrees with and supports the position of the Board of Directors of the Connecticut Harbor Management Association as stated in the January 12, 2007 letter to you from John T. Pinto, Ph.D. A copy of that letter is enclosed.

Further, the Commission urges Connecticut's Congressional delegation consisting of Senators Dodd and Lieberman and Representatives Courtney, DeLauro, Larson, Murphy, and Shays to ensure that the provisions and spirit of the Coastal Zone Management Act are properly applied to determine 1) the potential impacts of the Broadwater proposal on the coastal area of Connecticut and 2) the consistency of the proposal with Connecticut's Federally approved Coastal Management Program.

Thank you for your attention to our comments. If you have any questions or require any additional information, please contact me at (203) 847-0352 or anmobilia@sbcglobal.net.

Sincerely,



Anthony Mobilia

AM/gs

Enclosure

cc:

Mayor of Norwalk Richard Moccia
 U.S. Senator Christopher Dodd
 U.S. Senator Joseph Lieberman
 U.S. Representative Joseph Courtney
 U.S. Representative Rosa DeLauro
 U.S. Representative John B. Larson

U.S. Representative Christopher Murphy
 U.S. Representative Christopher Shays
 Attorney General Richard Blumenthal
 Comm. of Environmental Protection Gina McCarthy
 U.S. Army Corps of Engineers
 Broadwater Energy, LLC

LA16-1

Section 3.7.1.4 of the final EIS presents an assessment of the impacts of the FSRU and LNG carriers on marine transportation and addresses potential impacts to ports. Section 3.5.5.1 of the final EIS addresses the impacts of the FSRU, the LNG carriers, and the proposed safety and security zones on recreation. As stated in those sections, the proposed location of the FSRU and the proposed safety and security zone around the YMS and FSRU are not areas of heavy commercial or recreational traffic. The FSRU and its proposed safety and security zone would have a minor impact on commercial and recreational vessels that would last for the life of the Project and would have at most a negligible effect on vessel transits to or from Connecticut ports.

Each LNG carrier would have a proposed moving safety and security zone that would cover an area of approximately 2,040 acres (3.2 square miles), and only one carrier would be present inside the pilot stations at any one time. The entire transit path of an LNG carrier would not be an exclusion zone. As described in both the draft and final EISs and in the Coast Guard WSR (Appendix C of the final EIS), the amount of time for the LNG carrier and its proposed safety and security zone to pass any single point would be about 15 minutes (the length of the proposed safety and security zone from front to back would be about 3.7 miles), and the only exclusion area moving along the LNG carrier path would be the 2,040 acre (3.2 square mile) area around the single LNG carrier. All other portions of the carrier route, both in front of and behind the carrier's proposed safety and security zone, would be available for use. As a result, the vast majority of commercial and recreational vessels heading to or from the ports of Connecticut would not encounter an LNG carrier, and there would be, at most, a negligible impact on vessel traffic to or from the ports.

LA16-2

The Coast Guard is responsible for ensuring compliance with the CZMA as it relates to the Coast Guard's establishment of the safety and security zones for LNG marine traffic affecting Connecticut state waters.

Local Government Agencies and Municipalities Comments



Town of Brookhaven
Long Island

Brian X. Foley, Supervisor

January 11, 2007

Magalie R. Salas, Secretary

Federal Energy Regulatory Commission
Public Reference Room
888 First Street, N.E., Room 2A
Washington, DC 20426

Dear Secretary Salas:

The enclosed comments were presented at the FERC Public Comment Hearing held on Thursday, January 11, 2007, at Shoreham-Wading River Middle School Auditorium.

This statement strongly asserts the Town of Brookhaven's opposition to the Broadwater LNG proposal.

I appreciate your consideration and ask that these comments be presented to all the FERC Board members.

Sincerely,

Brian X. Foley
Supervisor

Office of the Supervisor
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Town of Brookhaven
Long Island

Brian X. Foley, Supervisor

SUPERVISOR BRIAN FOLEY
COMMENTS ON DEIS ON THE PROPOSED
BROADWATER LNG PROPOSAL

I am the Supervisor of the Town of Brookhaven.

The Town of Brookhaven has a larger population than many large American cities, including Miami and Atlanta, with a population of almost ½ million and 325 square miles and 153 miles of coastline.

The FRSU is to be located just to the east of the Town.

The DEIS on this ill conceived proposal has been reviewed by the Town. While there has been inadequate time for a thorough review, [and our counsel is submitting a motion to that effect] the following are some of the more glaring defects:

1. The DEIS contains an inadequate assessment of safety and security. The United States Coast Guard stated it best in its October 2006 Broadwater report:

"The Coast Guard... does not have the resources required to implement the measures which [are] necessary to manage effectively the potential risks of navigation safety and maritime security."

The Coast Guard went on to note:

"Local law enforcement agencies could potentially assist with some of the ...measures for managing potential risk. [We] recognize that local government does not have the necessary personnel, training or equipment."

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LA17 – Town of Brookhaven

LA17-1 The bottom line is that the citizens and taxpayers of the Town of Brookhaven would be strapped with the burden of caring for and paying for the security this facility demands. It will be the firefighters and EMT's from Brookhaven who will be burdened with responding to emergencies...potential catastrophic events as well as the worker out in the Sound who needs an appendectomy or suffers an injury. The citizens of Brookhaven should not be saddled with either the monetary or the human cost of this for-profit corporate venture.

LA17-2 2. The DEIS fails to account for the enactment by Congress and the President of the Long Island Sound Stewardship Act of 2006 which declares the Sound a "national treasure of great cultural, environmental and ecological importance". The Broadwater project thwarts the very goals of the Stewardship Act which include the preservation of the Sound for open space, public access and recreational use.

LA17-3 3. The document fails completely to address the Public Trust Doctrine recognized by the United States Supreme Court since 1892. No matter how Broadwater seeks to cloud the issues, the project involves not only the massive FRSU, but, also, the security zones around the facility and the carriers supplying the massive barge. The security zones will CLOSE almost 1,800 acres of the Sound to the public and commercial fishing for a period of 30 years— 950 acres will be CLOSED permanently for the FRSU and security zone. The remaining acreage will be CLOSED 4 to 6 times a week to create security zones for the carriers supplying the barge.

MTL/D529025v1/A0047073/C0113150 2

LA17-1 At this time there is no requirement for the Town of Brookhaven to be responsible for any security or emergency response actions associated with the proposed Project. If the Project receives initial authorization to proceed, prior to initiation of construction Broadwater would work with federal, state, and local agencies (including municipalities) to develop a Facility Security Plan (as outlined in 33 CFR 101-105) and an Emergency Response Plan (as described in Section 3.10.6 of the final EIS) for the Project. The Emergency Response Plan would include funding provisions for agency participation in emergency response and security actions. If the funding agreements cannot be developed to the satisfaction of the participating agencies and Broadwater, and if the needed resources are not available, FERC would not authorize construction of the Project.

LA17-2 Section 3.5.7.2 of the final EIS addresses the relationship between the Long Island Sound Stewardship Act of 2006 and the proposed Project.

LA17-3 Section 3.5.7.4 of the final EIS addresses issues associated with the Public Trust Doctrine. Sections 3.5 and 3.7.1.4 address the potential impacts of the proposed safety and security zones on public use.

LA18 – East Hampton Town Board

UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

BROADWATER ENERGY LLC

Docket Nos. CP06-54-000

BROADWATER PIPELINE LLC

CP06-55-000

CP06-56-000

**COMMENTS
 BY
 THE EAST HAMPTON TOWN BOARD
 ON THE BROADWATER DEIS**

The Broadwater DEIS fails adequately to consider the impacts of the project upon the Town of East Hampton, its resources and the maritime way-of-life we sought to preserve when we recently enacted our Comprehensive Plan. The DEIS also fails to consider fully Broadwater's inconsistency with the New York State Coastal Management Plan ("CMP").

The Town Comprehensive Plan is Ignored

The Town Board of the Town of East Hampton (the "Board"), in conformity with New York State Town Law, adopted its Comprehensive Plan (the "Comprehensive Plan") in May 2005. In short, the Broadwater proposal would compromise, indeed, defeat, several of the goals identified in the Comprehensive Plan. This fact is ignored in the DEIS.

The Comprehensive Plan was developed by the Board over the course of several years and included expert consultation and numerous visioning sessions with all the diverse sectors of the Town's population. The final document sets forth the residents' vision for their future and in that regard, includes the following:

The Town treasures and is committed to sustaining [its] rich array of natural and cultural resources, *authentic sense of place, rural character and the people who make it unique.*

LA18-1

LA18-1

Broadwater submitted a coastal consistency certification to NYSDOS and to FERC that contains Broadwater's analysis of the Project's consistency with New York State coastal policies, including applicable policies of the Long Island Sound CMP and the applicable local land management plans. NYSDOS is responsible for determining whether the Project is consistent with those policies. It is our understanding that NYSDOS will file its determination with FERC after the final EIS has been issued.

Section 3.5.7 of the final EIS has been revised to address East Hampton's Comprehensive Plan.

N-382

Local Government Agencies and Municipalities Comments

LA18 – East Hampton Town Board

...

A diverse population should continue to have opportunities to engage in a *variety of livelihoods* ranging from traditional agricultural and *fishing*, to clean technology and the arts.

...

The seasonal economy of second homeowners and visitors, based largely on the pristine natural and rich cultural resources, helps support a *vibrant, diverse, year-round community* and should be encouraged to continue.

...

The goals of the Comprehensive Plan include protecting the Town's rural character:

Goal One: Maintain and restore, where necessary, East Hampton's rural and semi-rural character and the *unique qualities of each of East Hampton's historic communities*.

Most significantly, the Comprehensive Plan highlights the fact that Montauk is New York State's largest commercial fishing port. The Town has a goal to maintain the character of that harbor as an important community asset.

Goal Six: Encourage and retain traditional local resources based on fishing and agricultural industries... Montauk is the largest commercial fishing port in New York in terms of landed value and number of vessels.

(Comprehensive Plan, page 36)

The Montauk dock area is the largest area of support facilities for the East Hampton commercial fishing industry. In 1999, 30 million pounds of fin and shellfish were landed in East Hampton, with an estimated value of \$34 million. The Montauk dock area also is a tourist destination and a major recreational fishing area which includes restaurants, shops and motels. Over 100,000 anglers come to East Hampton annually and over 100 charter, party and guided boats operate out of East Hampton's ports, contributing, by estimate, in excess of \$350 million to the local economy. (Horne Rose LLC Report 2003). The Comprehensive Plan seeks to revitalize and maintain the

LA18 – East Hampton Town Board

Montauk Dock area and to retain Montauk Harbor as a fishing village which attracts summer tourists, while providing for the needs of its summer workers and year-round residents.

(Comprehensive Plan, p. 184)

LA18-2

With Broadwater, the LNG carriers would enter the Sound through the area between Montauk Point and Block Island. Trawl fishing from Montauk is conducted in the area identical to the course earmarked for the LNG carriers. As set forth in the attached statement by the Town's Commercial Fishing Division, this is a crucial fishing area used consistently from April through December on average of 15 days per month by the trawling industry. The closure of this area for a portion of the day is likely to eliminate the profitability of trawling for that entire day. Six LNG carrier trips per week will result in a loss of nearly 50% of the fishing time in these very valuable grounds used by Montauk trawlers.

LA18-3

The lobster industry will be impacted the most severely. Lobster traps are stationary gear. Lobstermen leave their gear in one spot for an entire year. It is impossible to move the traps out of the way of an LNG carrier and the security zone the Coast Guard must impose. The most productive lobstering grounds are at the Race at the entrance to Long Island Sound, a very narrow passage where lobster traps area concentrated. The lobstermen will be forced to leave the area during each and every carrier trip through the Race. This area imposes a strict time schedule for fishing due to the strong tides there. Lobstermen can only work about four hours a day in the area. Given the short four hour work day, each day an LNG carrier traverses the area, lobstermen will be unable to retrieve their pots for that entire day. Because of natural impediments and an unknown schedule of the LNG carriers, lobstermen are likely to lose all of their fishing time. When one considers the Race provides at least 90% of a lobsterman's income, this is a significant impact.

LA18-2

The Montauk Pilot Station-Montauk Channel route is an alternative route for LNG carrier transit as stated in Section 3.7.1.3 of the final EIS. This would not be the primary route for carriers, and it would not be used on a regular basis. As stated in Section 3.7.1.3, the "Point Judith Pilot Station is considered the primary pilot boarding station, with Montauk Point Pilot Station considered an alternate. Vessel draft and weather conditions limit the use of the Montauk Point Pilot Station: vessels with a draft in excess of 38 feet may not be piloted through Montauk Channel; and pilots using Montauk Channel may not pilot a vessel if weather conditions, sea state, or vessel traffic 'pose a threat to the safety of any person, vessel, prudent navigation, or safety of the environment."

Section 3.7.1.3 of the EIS and Tables 2-1 and 2-5 of the WSR (Appendix C of the final EIS) make it clear that large commercial vessels would not be new to Long Island Sound: tankers, cargo ships, and large passenger vessels commonly transit Long Island Sound and pose a disruption to the Montauk trawl operations. The statement that six LNG carrier transits per week could disrupt trawl fishing 50 percent of the time is not correct since most LNG carriers would not use Montauk Channel and therefore would not be present six times per week. In addition, transit of an LNG carrier and the proposed moving safety and security zone around the carrier at about 12 knots would result in the entire safety and security zone passing a point in about 15 minutes. Trawlers could adjust their routes while a carrier is in the area.

The overall result is that LNG carrier use of the Montauk Channel would cause a temporary and localized impact on trawling in the area during carrier transit. Further, if authorized, it is expected that Coast Guard would require Broadwater to schedule LNG carrier transits to minimize impact to other waterway users, to the extent practical, as recommended by the Coast Guard in Section 8.4 of the WSR (Appendix C of the final EIS). Use of Montauk Channel by LNG carriers would be consistent with current use, and the Coast Guard considers the risks associated with LNG carriers to be manageable with implementation of its proposed mitigation measures in Section 8.4 of the WSR. We expect that these mitigation measures would be required if the Broadwater Project is authorized. Section 3.7.1.4 of the

LA18-3

As described in Section 3.7.1.4 of the final EIS, an LNG carrier and its proposed moving safety and security zone would pass through the 2.3-mile length of the Race in 25 to 35 minutes, depending on the speed of the carrier.

LA18-3 (Continued)

The entire safety and security zone would pass a single point within about 15 minutes. As a result, lobster fishermen who are actively working pots may be required to temporarily move from their fishing positions, dependent on the exact location of the carrier and its proposed safety and security zone. This would result in a temporary and localized delay during carrier transit. In addition, if authorized, it is expected that Coast Guard would require Broadwater to schedule LNG carrier transits to minimize impact to other waterway users, to the extent practical, as recommended by the Coast Guard in Section 8.4 of the WSR (Appendix C of the final EIS). We expect that this and the other mitigation measures presented in Section 8.4 of the WSR would be required if the Broadwater Project is authorized. Section 3.7.1.4 of the final EIS has been revised to more clearly describe FERC's approach to this issue.

LA18 – East Hampton Town Board

LA18-4 [Thus, as the DEIS tacitly admits, the transit of LNG carriers through the fishing grounds near Montauk will cause significant impacts to the commercial fishing and lobster industry and, therefore, the existing character of East Hampton.

LA18-5 [The DEIS callously suggests that the lobstermen and trawlermen will receive monetary compensation for their losses. This cavalier suggestion of an ineffective mitigation measure fails because it overlooks the resulting:

- loss of our maritime way of life,
- the consequential impact to the East Hampton economy,
- most significantly, the loss of this aquaculture area is inconsistent with the New York State Coastal Management Program, a hurdle the application must, but cannot, overcome in order to receive FERC approval.

The New York State Coastal Management Plan

LA18-6 [The New York State Coastal Management Program (“Coastal Management Plan” or “CMP”) sets forth policies adopted by the State which promote the beneficial use of coastal resources, prevent their impairment or deal with major activities which substantially affect numerous resources. Any proposal inconsistent with the CMP must be rejected, as a matter of law. The Broadwater application is entirely inconsistent with the CMP and must fail.

The policies violated by this application are as follows:

- Policy 2: Facilitate water dependent uses;
- Policy 4: Strengthen the economic base of small harbor areas;
- Policy 5: Encourage development in areas where there are essential services;
- Policies 9 and 19 -22: Expand public access and water related recreation;
- Policy 10: Expand the State’s commercial fishing industry; and
- Policy 27: Siting of energy facilities so as not to impair coastal resources.

LA18-4 As noted in responses to comments LA 18-2 and LA 18-3, implementation of the proposed Project would not result in significant impacts to commercial fishing, including the lobster industry. In addition, as noted in response to comment LA 18-2, Montauk Channel would be an alternate route for the carriers, with the majority of the carriers using the Point Judith Pilot Station and the Block Island Sound route. As a result, most commercial fishing vessels and equipment in the Montauk area would not typically be affected by the transit of LNG carriers and their associated safety and security zones.

LA18-5 As noted in responses to comments LA 18-2, LA 18-3, and LA 18-4, implementation of the proposed Project would not result in significant impacts to commercial fishing, including the lobster industry. Therefore the Project would not result in the loss of a maritime way of life or measurably affect the East Hampton economy. We have addressed the issue of compliance with the New York State CMP in response to comment LA 18-1.

LA18-6 Please see our response to comment LA 18-1.

POLICY 2

FACILITATE THE SITING OF WATER-DEPENDENT USES

Policy 2 provides that State agencies must avoid "...approving non-water dependent uses when such uses would preempt the reasonably foreseeable development of water-dependent uses". A water-dependent use is defined as an "activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of water". (NYS DOS website, nyswaterfronts.com/waterfront_working_ports).

Water-dependent uses, according to the New York State Department of State include, "shipping" facilities, marinas, mooring areas, yacht clubs, boatyards, commercial and recreational fishing operations, facilities for shipping petroleum products and aggregates and various support facilities for water-borne commerce and recreation". (NYS DOS website, nyswaterfronts.com/waterfront_working_ports).

A liquefied natural gas storage facility does not necessarily need to be located in water and, therefore, is not a water-dependent use. As set forth in the attached statement from the Town of East Hampton Commercial Fisheries Advisory Committee, water-dependent commercial fishing uses in the area of the proposed LNG facility and the security zone will be impacted severely. Fishing cannot be pre-empted by an LNG facility. Broadwater cannot be found consistent with the CMP.

LA18-7

LA18-7 Impacts to commercial fishing due to the proposed safety and security zone around the FSRU are addressed in Section 3.7.1.4 of the final EIS. As described in that section, commercial fishing would not be severely affected.

POLICY 4

STRENGTHEN THE ECONOMIC BASE OF SMALL HARBOR AREAS BY ENCOURAGING THE DEVELOPMENT AND ENHANCEMENT OF THOSE TRADITIONAL USES AND ACTIVITIES WHICH HAVE PROVIDED SUCH AREAS WITH THEIR UNIQUE MARITIME IDENTIFY

Montauk Harbor is the very sort of small harbor the Coastal Management Plan seeks to protect. The LNG facility and the security zones will be in direct conflict with five of the seven

LA18 – East Hampton Town Board

guidelines for determining consistency set forth under Policy 4, which is designed to protect these harbor resources.

- 1. The Broadwater project will conflict with the priority that should be given to these traditional and desired water-dependent uses.
- 2. Broadwater will not enhance, but, rather, will detract from and adversely impact the existing traditional fishing and boating uses.
- 3. Broadwater will be out of character with the harbor at Montauk in terms of its scale, intensity of use and architectural style.
- 4. Broadwater is likely to cause a deterioration of Montauk Harbor because of its deleterious affect on the fishing, lobster and boating industries.
- 5. Broadwater will adversely affect the existing economic base of East Hampton and, in particular, that of Montauk, because the Montauk Harbor is dependent upon commercial fishing.

POLICY 5

ENCOURAGE THE LOCATION OF DEVELOPMENT IN AREAS WHERE PUBLIC SERVICES AND FACILITIES ESSENTIAL TO SUCH DEVELOPMENT ARE ADEQUATE

The Coast Guard's Water Suitability Report for the proposed Broadwater Liquefied Natural Gas facility released by the USCG on September 21, 2006 admits that the USCG has neither the assets nor the manpower to provide adequate safety and security for the Broadwater Project. The accompanying statement by the East Hampton Harbormaster details the fact that the Town does not have anywhere near the adequate resources to provide the safety and security services essential to this proposal. Policy 5 is violated.

LA18-8 Impacts of the proposed Project on recreational fishing and boating are addressed in Section 3.5.5.1 of the final EIS, and the impacts on commercial fishing are addressed in Section 3.7.1.4. As noted in those sections, the impacts would be minor and temporary when they did occur but would periodically continue for the life of the Project.

LA18-9 LNG carriers transiting to and from the FSRU would be no closer than about 12 miles from Montauk Harbor, with no more than one transit per day. The carriers would appear similar to other commercial shipping vessels and would represent an increase in commercial shipping traffic of about 1 percent. The FSRU would not be visible from Montauk Harbor.

LA18-10 Please see our response to comment LA18-8.

LA18-11 As noted in response to comment LA18-4 and in Section 3.7.1.4 of the final EIS, implementation of the proposed Project would result in minor impacts to commercial fishing, which would not result in a measurable impact on the existing economic bases of East Hampton or Montauk.

LA18-12 Please see our response above to the Harbormaster's letter in comment LA8-1. Please refer to our response to comment LA18-1 regarding consistency with the East Hampton Comprehensive Plan.

LA18 – East Hampton Town Board

POLICY 9

EXPAND RECREATIONAL USES OF FISH AND WILDLIFE RESOURCES IN COASTAL AREAS BY INCREASING ACCESS TO EXISTING RESOURCES

LA18-13 [As set forth in the accompanying statements, the Broadwater Project certainly will impede existing and future utilization of recreational fish and wildlife resources. The Race and trawling areas off Montauk will become unavailable.

POLICY 10

FURTHER DEVELOP COMMERCIAL FINFISH, SHELLFISH AND CRUSTACEAN RESOURCES BY...EXPANDING AQUACULTURE FACILITIES

LA18-14 [Again, as set forth in the accompanying statements, commercial fishing areas will become unavailable or extremely limited in their availability.

POLICY 19

PROTECT, MAINTAIN AND INCREASE THE LEVEL AND TYPES OF ACCESS TO PUBLIC WATER RELATED RECREATION RESOURCES AND FACILITIES

LA18-15 [Broadwater will prohibit access in violation not only of Policy 19, but, also, of the inviolate Public Trust doctrine which it embodies.

Pursuant to the Public Trust Doctrine, New York State holds underwater lands and its navigable waters in its sovereign capacity as trustee for the beneficial use and enjoyment of the public. In *Illinois Central Railway Co. v. Illinois*, 146 U.S. 387 (1892), the Supreme Court explained the public trust doctrine to prohibit easements such as the one Broadwater seeks from the New York State Office of General Services. In *Illinois*, the Illinois legislature claimed to have transferred rights to a one-thousand-acre portion of the bed of Lake Michigan adjacent to Chicago to the Illinois Central Railroad Company. *Id.* at 452. The Supreme Court ruled that the transfer was a “gross perversion of the trust over the property under which it was held” by the State of Illinois. *Id.* at 455. The Supreme

LA18-13 As addressed in Section 3.7.1.4, the LNG carriers and their proposed moving safety and security zones would have a temporary and localized impact on commercial fishing during carrier transit. The safety and security zone of each LNG carrier would have a safety and security zone that would cover an area that would be approximately 0.2 percent of the total area of Long Island Sound, and only one carrier would be present inside the pilot stations at any one time. The time required for an LNG carrier and its associated safety and security zone to pass any single point would be about 15 minutes (the length of the safety and security zone from front to back would be about 3.7 miles). All other portions of the carrier route would be available for use. In addition, as stated in Section 3.7.1.3 of the final EIS, Montauk Channel would be an alternate route that would not be regularly used.

LA18-14 Please see our response to comment LA18-13.

LA18-15 Please see our response to comment LA18-1. Section 3.5.7.4 of the final EIS addresses environmental issues associated with the Public Trust Doctrine. However, legal issues related to public trust lands are not a component of our environmental review process and therefore have not been addressed in the final EIS.

LA18 – East Hampton Town Board

Court explained that under the public trust doctrine, the State holds underwater lands in trust for the public so that the public “may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, *freed from the obstruction or interference of private parties.*” *Id.* at 452 (emphasis added). Broadwater’s application violates the canons of the public trust doctrine set forth long ago by the Supreme Court and adopted by the highest court of New York. In *Coxe v. State of New York*, 144 N.Y. 396 (1895), a physical obstruction of the public’s access to navigable waters was found to violate the public trust doctrine. In *Coxe*, the State Legislature purported to transfer the State’s title to all of the submerged lands adjacent to Staten Island and Long Island. The Court of Appeals rejected that transfer as being “absolutely void”, stating that “so far as the statutes [conveying the land] attempted to confer titles to such a vast domain which the state held of the benefit of the public, they are absolutely void...” *Id.* at 405. The *Coxe* court articulated the test for a public trust doctrine violation. It held that, “title which the state holds and the power of disposition is an incident and part of its sovereignty that cannot be surrendered, alienated, or delegated, *except for some public purpose, or some reasonable use which can be fairly be said to be for the public benefit.*” *Id.* at 406 (emphasis added). The *Coxe* court further noted that the public trust doctrine is so broad that it would also prohibit transfers that are “for the public benefit” if they “might seriously interfere with the navigation upon the waters...” *Id.* at 408. If Broadwater is permitted to go forth with their Project, like the voided transfer in *Coxe*, it would “seriously interfere with the navigation upon the waters”, depriving the public of the use and enjoyment of thousands of acres of the surface of Long Island Sound. As stated in *Cox v. City of New York*, 26 Misc. 177 (1898), “[t]he right of navigation is a public right, belonging not to towns, villages or cities as corporations, but, rather, to all citizens in severalty.” *Id.* at 178. The Broadwater Project attempts to side-step the long established and consistently held principles of the Public Trust Doctrine. A for-profit venture cannot be granted

LA18 – East Hampton Town Board

permanent and exclusive access and management of a significant portion of the unique public treasure of the Long Island Sound.

POLICY 21

WATER-DEPENDENT AND WATER-ENHANCED RECREATION WILL BE ENCOURAGED AND FACILITATED AND WILL BE GIVEN PRIORITY OVER NON-WATER-RELATED USES ALONG THE COAST

Once again, an LNG facility is not necessarily a water-dependent use, while boating and fishing are. Access to the waters of the Long Island Sound for boating and fishing purposes must be given priority over the FRSU.

POLICY 27

DECISIONS ON THE SITING OF MAJOR ENERGY FACILITIES IN THE COASTAL AREA WILL BE BASED ON PUBLIC ENERGY NEEDS, COMPATIBILITY OF SUCH FACILITIES WITH THE ENVIRONMENT AND THE FACILITIES' NEED FOR A SHORE-FRONT LOCATION

As set forth above, the Broadwater facility is incompatible with the East Hampton

LA18-16

environment, particularly its maritime character. Furthermore, LNG facilities do not need to be located in shore-front locations. Thus, Broadwater is inconsistent with yet another coastal management policy of the State of New York.

LA18-16 Please see our response to comment LA18-1.

CONCLUSION

In summary, the Broadwater facility is inconsistent with the New York State coastal policies and must be rejected as a matter of law. The DEIS inadequately addresses these issues and the environmental impact of the Broadwater project's inconsistency with the State Coastal Management Policies.

LA18-17

LA18-17 Please see our response to comment LA18-1.

Dated: January 23, 2007

Respectfully,

William McGintee, Supervisor
Debra Brodie Foster, Councilperson
Pete Hammerle, Councilperson
Brad Loewen, Councilperson
Pat Mansir, Councilperson

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Broadwater Energy LLC)	Docket Nos. CP06-54-000
Broadwater Pipeline LLC)	CP06-55-000
)	CP06-56-000

Comments of the
Towns of Riverhead and Southold in Response to the
Draft Environmental Impact Statement, and the
Requests for Comments by FERC, the Corps of Engineers, the
New York State Department of State, and Supplemental comments for the
New York State Office of General Services

The Towns of Riverhead and Southold, New York submit these comments in opposition to approval of the proposed Broadwater Project by the Federal Energy Regulatory Commission ("FERC"), or by any other involved agency, including the Corps of Engineers ("COE"), the United States Coast Guard ("USCG"), the New York State Department of State ("DOS"), the New York State Office of General Services ("OGS"), and the New York State Department of Environmental Conservation ("DEC"). Copies of these comments are being submitted to FERC and to the above involved agencies in response to public notices of applications for various approvals and actions needed if the Project is to go forward.¹

Riverhead and Southold also support and join in the comments of Suffolk County.

¹ The public Notices are: FERC's Notice of Intent dated December 15, 2006 in the above captioned dockets; the COE's Public Notice Number 2006-00265-L6 issued November 24, 2006; DOS's Public Notice F-2006-0345 published in the New York State Environmental Notice Bulletin on December 6, 2006; OGS on October 20, 2006 served Riverhead with Notices of Petitions by Broadwater Energy and Broadwater Pipeline for easements in underwater lands, to which Riverhead timely objected, and which these comments supplement and amplify.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

Summary

Riverhead and Southold, collectively called the "Towns," oppose the Broadwater Project. In these comments, which supplement its prior comments to FERC and Riverhead's Objections to OGS, the Towns submit-

- LA19-1 1. The Draft Environmental Impact Statement ("DEIS") is inadequate, self-serving, and devoid of critical analysis. These deficiencies are most evident in the DEIS's discussion of alternatives to Broadwater. While Broadwater claims that its Project is essential to meet the natural gas supply needs of the New York-Connecticut-Long Island region, there are in fact many excellent alternative supply options, including other offshore LNG terminals, and new and upgraded pipelines from the Gulf Coast and Canada. Some of these alternatives have already been approved and are under construction. Others are likely to be approved and built in the near future. (DEIS § 4.2 and 4.3). Long Island's, New York City's and Connecticut's supply of natural gas will not go unfulfilled simply because Broadwater is not approved. Some of Broadwater's many valid alternatives are described in the DEIS. Many suppliers seek to share in the region's competitive market for natural gas. The DEIS in fact shows that an offshore LNG terminal 13 miles South of Long Island and 20 miles East of New Jersey in the Atlantic Ocean is far superior to Broadwater (DEIS § 4.3.2). The DEIS-writers' rejection of this alternative is unsupported, arbitrary and capricious.
- LA19-2
- LA19-3 2. Broadwater may not lawfully occupy New York State-owned lands beneath Long Island Sound for the project. OGS has not been granted authority by the State Legislature to grant Broadwater's requested easements for the Project's mooring and floating storage unit in the middle of Long Island Sound. Moreover, granting the requested easements, either by OGS or by special legislative enactment, would violate the public trust doctrine.

- LA19-1 Section 4.0 of the final EIS evaluates a wide variety of alternatives to the proposed Broadwater Project. The alternatives analysis compares quantitative impacts and concludes that the alternative projects, singly or in concert, could not satisfy the projected natural gas and other energy demands of the New York City, Long Island, and Connecticut markets with less environmental impact than the Broadwater Project. These alternatives include energy conservation, renewable energy sources (including wind and tidal power), and other existing and proposed LNG terminal and pipeline projects.
- LA19-2 Section 4.3.2 of the final EIS has been updated to include the most recent information available on other proposed LNG terminal projects, including the Safe Harbor Energy Project.
- LA19-3 Because the Project would benefit the public by helping to meet the energy needs of the region with minimal impacts, we consider the Project could be determined to be consistent with the objectives of the Public Trust Doctrine as described in Section 3.5.7.4. However, legal issues related to public trust lands are not a component of our environmental review process and therefore are not included in the final EIS.

LA19 – Towns of Riverhead and Southold

260701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

3. FERC may not incorporate any part of the Project's mooring or floating storage unit within the terms of a Natural Gas Act ("NGA") § 7 certificate of public convenience and necessity for the Project, because the mooring and floating storage unit are components of an LNG terminal, as defined by § 3 of the NGA, and such components are not subject to the jurisdiction of the Commission under § 7. Therefore Broadwater may not "take" the requested underwater easements for the mooring or floating storage unit by eminent domain under NGA § 7(h). Nor may OGS deem the mooring and LNG terminal to be a "pipeline" or an "appurtenant structure" of a pipeline for purposes of § 3(2) of the Public Lands Law on the ground that they are pipeline "appurtenances" incorporated within the terms of an NGA § 7 certificate. They may not be so incorporated under the NGA.

LA19-4 [

4. Broadwater is inconsistent with the Coastal Zone Management Plan for Long Island Sound ("LIS CMP") and the Town of Southold Local Waterfront Revitalization Plan ("LWRP") because-

LA19-5 [

- a) It industrializes Long Island Sound in violation of LIS CMP Policy #1.
- b) It denies public access to areas held in public trust in violation of LIS CMP Policy #9.
- c) It unduly interferes with commercial and recreational fishing, navigation and recreational uses in violation of LIS CMP Policy #10 and Southold LWRP Policy # 9.
- d) The Project can not be safely sited or operated, in violation of LIS CMP # 13.

LA19-6 [

5. The Towns of Riverhead and Southold do not have resources to provide fire or police protection for the Broadwater Project. Measures to safely and responsibly manage Project operation and security have not been identified, according to the Coast Guard.

6. The Broadwater Project is not in the public interest.

LA19-4 NYSDOS is responsible for determining whether the Project is consistent with New York's coastal policies. It is our understanding that NYSDOS will file its determination with FERC after the final EIS has been issued.

LA19-5 Please see our response to comment LA19-4. In addition, we find no support for the claim that authorization of the proposed Project could serve as a precedent for further industrialization of the waters of Long Island Sound (see Section 3.5.2.2 of the final EIS). Section 3.5.7.4 of the final EIS addresses issues associated with the Public Trust Doctrine. Sections 3.5 and 3.7.1.4 address the potential impacts of the proposed safety and security zones on public use.

LA19-6 As stated in Section 3.10.6 of the EIS, Broadwater would be required to prepare 6.2.3.2 of the WSR, Section 311 of the Energy Policy Act of 2005 requires that a "cost sharing plan" be included in an the Emergency Response Plan that would identify the resources required to respond to emergencies. The plan would include funding provisions for agency participation in emergency response and security actions. If the funding agreements cannot be developed to the satisfaction of the participating agencies and Broadwater, and if the needed resources are not available, FERC would not authorize construction of the Project.

LA19 – Towns of Riverhead and Southold

200701195612 Received EERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

I. The DEIS is Arbitrary, Self-Serving, and Fails to Take a Hard Look at Superior Alternatives

The DEIS is self-serving, arbitrary, and fails to seriously consider superior alternatives.

The DEIS discusses LNG system alternatives (at § 4.3.2), and pipeline system alternatives (at § 4.3.1). The DEIS assesses 20 existing and proposed LNG terminal projects on the East Coast between Maryland and Nova Scotia, and summarily rejects each of them, asserting that:

“With the exception of the planned Safe Harbor Energy Project, all of the LNG terminals identified as potential LNG system alternatives are located far from the markets proposed to be served by the [Broadwater] Project ... and would require expansion of existing LNG storage and receiving facilities as well as construction of new pipeline, compressor stations, and other aboveground features. The Safe Harbor Energy Project would be located close to the markets targeted by the proposed Project. However, construction of the Safe Harbor Energy Project would result in a permanent impact to a large area of the sea floor of the Atlantic Ocean, could affect established commercial shipping lanes offshore Long Island, and would require construction of a pipeline through sensitive nearshore and offshore environments. The adverse environmental impacts associated with construction of the safe Harbor Energy Project would be substantially greater than those associated with the proposed Project.” (DEIS § 4.3.2 at p. 4-15, emphasis added).

LA19-7

The Towns submit the DEIS’s summary rejection of these alternatives, without factual analysis or evidentiary support, is arbitrary, self-serving and indicative of bias and failure to seriously evaluate alternatives that would meet the Project’s objectives, be feasible and be superior from the standpoints of safety, security, and environmental protection.

LA19-7 Please see our response to comment LA19-1.

LA19-8

The DEIS writers dismiss Safe Harbor because of asserted interference with commercial shipping, and the unsupported statement that the adverse environmental impacts of constructing Safe Harbor’s pipeline would be “substantially greater” than constructing Broadwater. The actual facts point in the opposite direction. Safe Harbor would be a deep water port, located 13.5 mile south of Long Beach Long Island and 19.5 miles east of Sandy Hook, NJ. It would supply two times more gas to the New York-New Jersey–Long Island market than Broadwater, and

LA19-8 Please see our responses to comments LA19-1 and LA19-2

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

LA19-9 [would be located south of the Nantucket-Ambrose shipping lanes, in federal waters, beyond the three-mile coastal zones of New York and New Jersey.² It would be a floating recovery unit (FRU) that attaches to a moored LNG tanker, transfers LNG from the tanker, vaporizes it, and sends the regasified methane to the send-out pipeline.³ Thus, Safe Harbor would serve the same purpose as Broadwater, but be better because it would be nearer the New York City market, and would deliver twice the amount of product.

LA19-10 [In light of the above facts, the Broadwater DEIS-writers’ objections to Safe Harbor, as an alternative to Broadwater, are seen to be totally biased and self-serving. There is no support for the claim that Safe Harbor would cause “significantly greater” environmental harm. The DEIS writers simply wish that was the case. Moreover, the Broadwater DEIS writers failed to consider

LA19-11 [the Coast Guard’s reservations about letting LNG tankers navigate the through the Race, far into the crowded and relatively shallow waters of Long Island Sound, as compared to open-ocean transfer at Safe Harbor. The DEIS writers failed to consider that Safe Harbor would be well offshore. They failed to consider that Safe Harbor, unlike Broadwater, would not negatively

LA19-12 [impact the coastal management plan for Long Island Sound or the Southold LWRP, would not require occupation of New York public trust underwater lands, and would not impair local fishing and boating on Long Island Sound. Broadwater, on the other hand, has all of these

LA19-13 [glaring defects, which the DEIS simply dismisses. For these and other reasons, the DEIS is inadequate, and should be rejected.

LA19-9 Please see our response to comment LA19-2.

LA19-10 Please see our response to comment LA19-2.

LA19-11 As presented in Section 8.4 of the WSR (Appendix C of the final EIS), the Coast Guard preliminarily determined that the risks associated with the FSRU and LNG carriers could be managed with implementation of its recommended mitigation measures. That determination includes operation of the carriers in the Race and in Long Island Sound. The Coast Guard’s findings, as reported in the WSR, are included in the EIS (Appendix C).

LA19-12 Please see our response to comment LA19-2.

LA19-13 The final EIS has been revised to provide up-to-date information on the alternatives reviewed and other information relevant to our assessment. The final EIS has been prepared in compliance with the requirements of NEPA and the guidelines and regulations of the CEQ.

² Go to www.safeharborenergy.com .

³ Id. Also see DEIS at p. 4-21, fn 2.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

II. OGS Lacks Legislative Authority to Grant Easements of State-Owned Lands for the Project

Riverhead objected to Broadwater's notices of intent to petition OGS for easements of underwater state-owned lands for the Project in mid-November.⁴ Thereafter Broadwater's two-part Petition to OGS became available, Attachment A being a Petition by Broadwater Energy, and Attachment B being a Petition by Broadwater Pipeline.⁵ The Petition reveals that in addition to a 30 ft. wide easement for 21.7 miles of underwater pipeline, Broadwater seeks grants of two concentric circular easements, the center of each of which would be at the pivot of the Yoke Mooring System ("YMS"). The Petition requests that the inner concentric circle easement, having a 330 ft. radius, be granted to Broadwater Pipeline; it further requests that the outer doughnut-shaped concentric circle easement, having a radius of 1380 ft., excepting the area of the inner circle and the 30 ft. wide strip requested by Broadwater Pipeline, be granted to Broadwater Energy. These proposals are shown on the drawings titled "Map 5 of 6" and "Map 6 of 6" at the end of Attachments A and B of the Public versions of Broadwater's Petition.

Based on filings in OGS and FERC, it appears that Broadwater seeks easements over a total of 216 acres of underwater lands, of which 79 acres would be pipeline right-of-way,⁶ and 137 acres would be for the Floating Storage and Regasification Unit ("FSRU") and YMS. The 137 acre easements would be circular in shape, the center 8 acres of which would be Broadwater Pipeline's and the outer 129 acres of which would be Broadwater Energy's. Broadwater Energy

⁴ Riverhead's Objections, dated November 13 and November 15, 2006, were posted on FERC's Broadwater site on November 21, 2006 (Accession No. 20061121-5004). Southold was never served with a notice that Broadwater intended to apply for easements on underwater state-owned lands under the Public Lands Law.

⁵ Posted on FERC's Dockets on December 1, 2006 as Accession No. 20061204-0101 (Public), and Accession No. 20061234-0102 (CEI). For reasons unknown, OGS procedure is that parties in interest, such as Riverhead, must file formal objections to Petitions for grants of underwater lands before they are shown copies of the actual Petitions.

⁶ DEIS, table 2.2-1.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

would not physically occupy its underwater lands, but it would permanently deny use of these lands and the waters above them by fishermen, boaters, commercial shippers, and the public at large. The Coast Guard in fact recommends that a much larger circular security zone with a radius of 3,630 feet be established around the YMS/FSRU structures, meaning that the public would actually be denied use of 950 acres of Long Island Sound, even though Broadwater has applied for circular easements of only 137 acres of underwater lands (plus the linear pipeline easement).⁷ The Towns submit that granting the requested 137 acres to the two Broadwater entities would exceed OGS's powers under the Public Lands Law, would violate the State's duty as sovereign to hold these land in trust for the People of New York State, and would be unreasonable.

Broadwater Pipeline's requested inner circle easement is intended to be used not only for the pipeline, but also, and most importantly, as the site at which to fasten the YMS to the seabed. The YMS would occupy a 0.30 acre area at the center of the circle.⁸ Broadwater Pipeline's Petition for the easement in fact admits that the purpose of the easement would be:

"For a mooring tower and subsea connecting pipeline associated with construction and operation of a marine liquefied natural gas terminal or a floating storage and regasification unit (FSRU) ... Please see the attached Figure 5 ... for more information"⁹ (Petition to OGS at ¶ 2).

⁷ See Coast Guard Waterway Suitability Report ("WSR") at p. 161.

⁸ DEIS § 2.1.2, and table 2.2-1.

⁹ Figure 5 is designated CEII. The Public version of the table of contents of Attachment A refers to "Figure 5 - Point of separation between Broadwater Energy LLC and Broadwater Pipeline LLC." Riverhead's counsel, by letter dated December 14, 2006, to FERC's CEII/FOIA officer, requested that these figures be released from CEII status and be made public, because the "point of separation between Broadwater Energy, LLC and Broadwater Pipeline LLC" is not CEII as defined at 18 CFR § 388.13. Counsel was advised by telephone on January 9, 2007 that the request was denied. Riverhead protests and hereby moves that the Commission and OGS make Figures 2 and 5 of Broadwater's OGS Petition public.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

Thus, Broadwater Pipeline not only proposes to use its inner circular easement for the linear pipeline, but also as the site of the YMS, a mooring structure intended to anchor the FSRU to the bottom of Long Island Sound.

A. The Public Lands Law

Supplementing Riverhead's Objections to OGS, the Towns submit that OGS may not grant the requested circular easements to either Broadwater Energy or Broadwater Pipeline. As noted in Riverhead's November 13 and 15, 2006 Objections, OGS is authorized by § 75 of the Public Lands Law (PBL) to grant easements for placement of "structures" or "moorings" on or over state-owned underwater lands in Long Island Sound only to the owners of adjacent uplands. (PBL § 75(7) (a) and (b)). The YMS and FSRU are "structures," and the YMS is a "mooring," as Broadwater's many filings in FERC and elsewhere openly explain. Since neither Broadwater Energy nor Broadwater Pipeline owns adjacent lands, § 75 of the PBL does not authorize grants of the requested easements for placement of either the YMS or the FSRU.

Even if Broadwater owned adjacent lands, OGS would need to determine that the grants were in the public interest, consistent with the public trust and Long Island Sound coastal zone management plan, and minimize adverse environmental impacts to the maximum practicable extent pursuant to SEQRA. OGS has made no such findings.

Apparently recognizing that PBL §75 on its face does not authorize OGS to grant the circular easements, Broadwater requests that the easements be granted pursuant to § 3(2) of the PBL, not § 75. Granting the easements pursuant to § 3(2), if available, would arguably avoid § 75's restriction that easements for moorings and structures may only be granted to owners of adjoining lands. Section 3(2) is a general power to OGS by which it may grant easements in State-owned underwater lands. However, § 3(2), at best, could only authorize OGS to grant a

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

linear easement for the proposed pipeline. Section 3(2) would allow a grant of easements for “pipelines” on the ground that the more restricted power granted by § 75 is inapplicable to “pipelines” because “pipelines” are expressly excluded from the term “structure” by § 75(b).¹⁰

Parts 270 and 271 OGS’s Rules and Regulations confirm the above distinction between “pipelines” and other “structures,” including “moorings.” Under Part 270, easements for “moorings” and “structures” can only be granted to owners of adjacent uplands. The definition of “mooring” at § 270-2.1(11) of OGS’s regulations plainly encompasses Broadwater’s YMS. Section 270-2.1(11) states: “Mooring” means a float, buoy, chain, cable, rope, pile, spar, dolphin or any other device or combination of devices which is anchored or fixed in State-owned lands underwater, to which a boat/vessel may be made fast.” The FSRU and the tanker ships that would offload LNG to it are clearly “vessels” that would be “made fast” to the YMS, which is a “mooring” within the meaning and intent of § 75 of the PBL and Rule 270-2.1(11). Section 270-2.1(23) defines “structure” as “anything constructed, anchored, suspended, placed in, on or above State-owned lands underwater or any object constructed, erected, anchored, suspended or placed on those lands other than cables, conduits, pipelines and hydroelectric facilities.” The FSRU and YMS are plainly “structures” under this definition.¹¹

Easements for “pipelines,” on the other hand, are excluded from Part 270, and are made subject to Part 271.¹² The exclusion, set out at § 270-3.1, applies to:

“easements for cables, conduits, pipelines and hydroelectric power which shall be subject to the provisions of section 3(2) of the Public Lands Law and Part 271....”

As to “pipelines, Section 271-1.1 provides that applications for-

¹⁰ See Riverhead’s Objections to OGS dated November 13 and 15, 2006.

¹¹ See DPLS § 3.7.1.1. YMS is a “mooring tower”. The FSRU is an offshore “structure.”

¹² See § 270-3-1.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

“a grant of an easement for cables, conduits, pipelines and hydroelectric power and appurtenant structures pursuant to subdivision 2 of section 3 ... shall be made to [OGS etc]” (emphasis added).

Broadwater may argue that the proposed YMS and FSRU are “appurtenant structures” of the pipeline, and therefore are eligible for grant of an easement under PBL § 3(2). The Towns submit that any such interpretation bends the Public Lands Law and Part 271 beyond the breaking point and would be unreasonable on its face. An entire LNG terminal can not be deemed to be a mere “appurtenant structure.” Any such interpretation far exceeds the plain meaning of PBL § 3(2) and § 271-1.1. The Legislature had no such intent or contemplation.

In addition, as shown below, the NGA does not permit FERC to incorporate any part of the YMS or FSRU within the terms of a certificate of public convenience and necessity under NGA §7. A facility that is not incorporated within the terms of a § 7 certificate most certainly can not be a mere “appurtenance” to a pipeline under § 271-1.1 of OGS’s rules, and therefore cannot be granted an easement under PBL § 3(2).

Moreover both parts 270 and 271 require evidence of compliance with applicable environmental review and public interest requirements, such as SEQRA and COE permits.¹³ These requirements have not been satisfied.

The Towns therefore submit that OGS has not been given the legislative authority to grant the requested circular easements to Broadwater for either the YMS or for the FSRU. Moreover, it appears that legislation amending the PBL to allow granting the requested petitions would run afoul of the public trust doctrine.

¹³ See § 270-4.6 and § 271-1.2.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

B. The Public Trust Doctrine

New York State, upon independence from the King of England, became sovereign. As sovereign, New York holds the absolute right to all of its navigable waters and the soils under them for its own use, subject only to the Constitution of the United States. See *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261 (1997) at 283, citing *Martin v. Lessee of Waddell*, 16 Pet. 367, 482 (1842). Navigable waters and the lands beneath them "implicate uniquely sovereign interests," derived from the English common law. *Idaho, supra* at 284. The sovereign may grant property interests in underwater lands, although such interests, *jus privatum*, whether held by the State or by an individual or corporate grantee, are held subject to the public right, *jus publicum*, of navigation and fishing. *Shively v. Bowlby*, 152 U.S. 1, 13 (1894). New York, as sovereign owner, can use or dispose of its underwater lands, but only to the extent that it does not substantially impair the public's right to use such waters, and subject to the power of Congress under the Commerce Clause of the Constitution. *Shively v. Bowlby, supra; Illinois Central Railroad v. State of Illinois*, 146 U.S. 387 (1892) at 435.

LA19-14

The issue in *Illinois Central*, a leading authority on the public trust doctrine, was whether the Illinois Legislature was competent to transfer ownership of the submerged lands in Chicago Harbor to the Illinois Central Railroad. The Court held that the legislature, in making such a grant, exceeded its duty as trustee of the people of the Illinois. The State's:

"title is held in trust for the people of the state, that they may enjoy the navigation of the waters, carry commerce over them, and have the liberty of fishing therein, freed from the obstruction or interference of private parties. The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks, and piers therein, for which purpose the state may grant parcels of the submerged lands; ... [Such] grants do not substantially impair the public interest in the land and waters remaining. ... [and are] a valid exercise of legislative power consistent ... with the trust to the public upon which such lands are held by the state. But that is a very different doctrine from the one which would sanction the abdication of the general

LA19-14 Please refer to our response to comment LA19-3.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

control of the state over lands under the navigable waters of an entire harbor or bay, or of a sea or a lake. Such abdication is not consistent with the exercise of that trust which requires the government of the state to preserve such waters for the use of the public.” *Illinois Central, supra*, 146 U.S. at 452. (emphasis added).

Legislative breach of the public trust in state-owned underwater lands, as chronicled in *Illinois Central*, was echoed in the subsequent New York case of *Coxe v. State*, 144 N. Y. 396 (1895), where the New York State Court of Appeals struck down legislation granting “all... wet or overflowed lands and tidal marshes on or adjacent to Staten Island and Long Island [except within the City of Brooklyn] to The Marsh-Land Company, a private corporation. No public purpose was indicated in the grant, and the Court was loath to “establish the principle that the legislature is competent to convey to a private corporation, for private purposes, the land under all the tide waters within the jurisdiction of the state.” *Coxe*, 144 N.Y. at 402. The Court of Appeals, noting first that the limit of the Legislature’s power to convey underwater lands generally requires case-by-case analysis, held:

“The question is governed in [New York] by the rules of common law, modified in some respects by statute, and adapted by the courts to such changes of conditions as exist here.... The title of the state to the seacoast and the shores of tidal rivers is different from fee simple which an individual holds to an estate in lands. It is not proprietary, but a sovereign right; and it has been frequently been said that that a trust is engrafted upon this title for the benefit of the public, of which the state is powerless to divest itself. [citations omitted].” *Coxe v State* 144 N.Y. at 405-406.

In *Coxe*, the Court of Appeals added:

“The title which the state holds, and the power of disposition, is an incident and part of its sovereignty that cannot be surrendered, alienated, or delegated, except for some public purpose, or some reasonable use which can fairly be said to be for the public benefit.” *Coxe, supra* 144 N.Y. at 406.

The principle in *Coxe* is that the Legislature must act reasonably and in the public interest in granting underwater lands, because the State’s title is infused with a public trust. It is objectionable to abdicate state control over waters which are to be preserved as navigable by

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

turning them over wholly to the dominion of a private corporation, *Long Sault Development Co. v. Kennedy*, 212 N.Y. 1 (1914) at 10.

As the *Coxe* Court noted, the public trust doctrine in New York is governed by the common law as modified by statute. Statutory modifications have evolved since *Coxe*, manifested at the present time in significant measure by Articles 2 and 6 of the PBL, particularly PBL §§ 3 and 75, pursuant to which OGS administers grants for use of the State's underwater lands. Under § 75, a grant of underwater lands can be made only to the upland riparian owner, must be consistent with the public interest, and be water dependent. See *Lupo v. Board of Assessors of the Town of Huron*, 10 Misc. 3 473 (Sup. Ct. Wayne Co., 2005). PBL § 75's limitation that grants for structures and moorings can be made only to upland owners reflects the common law, under which riparian owners are entitled to have access to waters adjacent to their lands as an incident of ownership.¹⁴ Consistent with the common law, as noted above, the Legislature has extended administrative power to OGS to grant easements to upland riparians for lands for structures or moorings in adjoining underwater lands.¹⁵ But it has not extended OGS's power to grant such easements to grantees who are not riparians -- except for cables, conduits and "pipelines."¹⁶ Therefore, OGS may not grant the requested circular easements to Broadwater to the extent that they would be used for a "mooring" and a "structure," and not for a "pipeline."

Whether the Legislature itself could lawfully grant easements to Broadwater for the FSRU and YMS is problematic. Broadwater is not a upland riparian; navigation, fishing and recreational use would be denied to the public over a major part of Long Island Sound in

¹⁴ In the event the State extinguishes a riparian's access to the adjacent waterway, the riparian owner is entitled to just compensation for the loss. See *Langdon v. Mayor of the City of New York*, 93 N.Y. 129 (1883).

¹⁵ Authority to enhance regulation of riparian uses in the interest of protecting the public's interest in underwater lands is reflected in the 1992 amendments to the PBL, Laws 1992, Ch. 781 and related Memorandum of the State Executive Department (See Laws of New York, 1992, West).

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

violation of the public trust. Indeed, granting the circular easements to Broadwater would be to deny public use of not merely 137 acres of underwater lands, but over 950 acres of Long Island Sound; in addition to public access would be denied to the “moving security zones” around the supply tankers as they may at least three LNG deliveries to the FSRU each week. Granting the requested easements to Broadwater would severely encroach on the public’s right to unencumbered use of Long Island Sound, clearly in violation of the public trust.

III. Even if FERC approved the Project, Broadwater could not lawfully “take” underwater lands by eminent domain; FERC may not incorporate LNG Terminal Facilities in the § 7 Certificate

Broadwater Energy’s application to FERC seeks authorization pursuant to NGA § 3 to site, construct and operate an LNG “receiving terminal and associated facilities in Long Island Sound...” (Broadwater Energy’s Application, Docket No. CP06-54 at p. 1, filed January 30, 2006). Broadwater Pipeline’s concurrent FERC applications in Docket CP06-55 and CP06-56 seek issuance of a certificate under NGA § 7(c) and Part 157 Subpart A and for a blanket certificate under Subpart F of the Commission’s regulations to construct and operate a “pipeline lateral (and related facilities, including a tower to support the initial portion of the pipeline) to transport regasified LNG” to the interconnect with Iroquois Gas Transmission System (“IGTS”). (Id.). Accordingly, Broadwater Pipeline’s application asks FERC to include the YMS within the terms of a NGA § 7 certificate and blanket authorization (See Broadwater Pipeline’s Application, Docket CP06-55 at pp. 3-4). If these facilities were incorporated within a § 7 certificate, Broadwater Pipeline would, arguably, gain the right to condemn the State’s underwater lands for the site of the YMS and (potentially) for all or part of the FSRU. This is because NGA § 7(h)

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

provides that: "When any holder of a certificate of public convenience and necessity cannot acquire [the right-of way for a pipeline, it may acquire it by eminent domain]"¹⁶. On the other hand, facilities authorized under NGA § 3 do not enjoy condemnation power.¹⁷ Moreover, because the YMS and FSRU can not be incorporated into the § 7 certificate, OGS can not deem the YMS and FSRU as mere "appurtenant structures" or facilities entitled to grant of an easement under PBL § 3(2).

The Towns protest and object to incorporation by FERC of any part of the FSRU or YMS in a § 7 certificate for Broadwater.

A. EPACT's definition of LNG terminal

The FSRU and YMS are clearly parts of an "LNG terminal" as that term is defined by NGA as amended by the Energy Policy Act of 2005¹⁸ ("EPACT"). In EPACT, Congress amended the NGA to provide expressly that it applies to the import and export of natural gas in foreign commerce. EPACT § 311(a) adding to NGA § 1(b), 15 USCA § 717(b).

Congress also added a definition of "LNG terminal" to NGA § 2 (15 USCA § 717a) as follows:

"(1) 'LNG terminal' includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported into the United States from a foreign country . . . but does not include:

"(A) waterborne vessels used to deliver natural gas to or from any such facility; or

"(B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 7." (emphasis added).

¹⁶ NGA § 7(h), 15 USCA § 717f (h).

¹⁷ See Weaver's Cove Energy, LLC, Order Granting Authority Under Section 3 of the Natural Gas Act and Issuing Certificate, FERC Docket CP04-36-000, et al., 112 FERC ¶ 61,070, July 15, 2005 at fn. 26.

¹⁸ Pub. L. 109-58. See Title III, Subtitle B, § 311, *et seq.*

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

B. The FSRU Ends and the Pipeline Begins at the Seabed Floor, Where Regasified LNG Exits the Leg of the YMS

Thus, the term “LNG terminal” includes all facilities that receive, unload, store, transport, and gasify and process imported natural gas, except that a “pipeline or storage facility subject to the jurisdiction of the Commission under § 7” is excluded from the definition.¹⁹ The Towns submit that the “LNG terminal” proposed by Broadwater, therefore, consists of all of the FSRU and all of the YMS, excluding the 30 inch pipeline. The Towns further submit that the “pipeline,” as that term is used in the above definition, begins at the point where the regasified and processed LNG exits the leg of the YMS on the seabed. All facilities upstream of that point are plainly used to “receive, unload, store, transport, gasify and process” imported LNG. As such they are “LNG terminal” “facilities” that are subject to FERC’s exclusive jurisdiction under NGA § 3 as amended by EPACT § 3(c) (2).²⁰ LNG terminal facilities may be authorized under NGA § 3, but they are not “subject to the jurisdiction of the Commission under § 7,” and therefore can not lawfully be certificated under NGA § 7 in order to allow the certificate holder to condemn underwater land for an LNG terminal, or to deem such facilities as “appurtenant” to a pipeline under PBL § 3(2).

Based on the public drawings labeled Maps 5 of 6 and 6 of 6 in its OGS Petition, Broadwater appears to claim that Broadwater Pipeline’s easement ends and Broadwater Energy’s easement begins at a distance of 330 feet from the pivot of the YMS. Figures 5 and 2

¹⁹ The term “storage facility” as used in the exclusion refers to an underground natural gas storage facility that is subject to a § 7(c) certificate. See *Columbia Gas Transmission Corp. v. Exclusive Gas Storage Basement*, 776 F.2d 123 (6th Cir. 1985); *Transcontinental Gas Pipe Line Corp. v. 118 Acres of Land*, 745 F. Supp. 366, D. Ct. (E. D. La. 1990). The plain meaning of EPACT shows that the term “storage facility” as used in the exclusion is something other than an “LNG terminal,” which receives and stores liquid natural gas, processes it into a gaseous phase, odorizes it and then processes it to suitable temperature and pressure for delivery to a pipeline network.

²⁰ EPACT §3(c) (2) adds NGA §3(c) (1) that provides “The Commission shall have exclusive authority to approve or deny an application for [an] LNG terminal”.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

respectively of Broadwater’s Petition to OGS at Attachments A and B, also depict a “point of separation between Broadwater Energy and Broadwater Pipeline”.²¹

The Towns submit that for purposes of the NGA and FERC’s deliberation in connection with authorization of the LNG terminal, the point where the Broadwater LNG terminal ends, and the Broadwater pipeline begins, is defined by NGA § 11, and is properly defined to be the point where the regasified LNG exits from the leg of the YMS and enters the 30 inch pipeline on the seabed. This point is shown graphically on Figure 2-1-7 of FERC’s November 17 DEIS, showing the YMS Mooring System below the water. This simulation shows that the 30 inch diameter pipeline connects with the YMS at a point labeled “30 inch diameter riser.”²² The DEIS notes at § 2.3.1.3 (p. 2-25) that the YMS is a factory-made terminal component that will be delivered to the site for installation. DEIS further notes at ¶ 2.1.2.1 (p 2-15) that the YMS’s “...steel jacket would consist of a four legged tubular structure fixed to piles installed in the seabed. Each leg would be approximately 6.9 feet in diameter. Four piles would be installed in a square of approximately 115 feet to a side. A pipeline riser would be installed in one leg of the jacket to connect the jumpers ...to the seabed pipeline.” (emphasis added). The DEIS further explains that LNG is processed in the FSRU and YMS. It states that the send-out gas is odorized, and transferred between the FSRU and the YMS through the jumpers. The two jumpers are each 54.5 feet long, 16 inches in diameter, composed of 2.2 inch thick strip-wound stainless steel with rubberized textile plies. ¶2.1.2.5. The jumpers are connected to the gas swivel on the turntable, allowing the jumpers to swivel with the weathervaning FSRU. From the

LA19-15

LA19-15 As reflected in Section 2.4.1 of the final EIS, conversion of LNG into natural gas, addition of odorant, and other natural gas processing would take place on the FSRU. No natural gas processing would occur within the YMS.

²¹ These figures are CEII. See footnote 9, *supra*.

²² Actually, the gas does not “rise,” it flows down and away from the YMS.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket#: CP06-54-000, ET AL.

gas swivel, gas is transferred through a conduit within one of the YMS's legs, and delivered to the pipeline.

The Towns submit that all of the YMS is a part of the LNG terminal, as that term is defined by NGA § 2(11), because the YMS anchors the FSRU and “processes” and “transports” the regasified LNG via jumpers, to a gas swivel on the YMS, and then to a shop-built conduit within a structural leg of the mooring, which then connects to the “pipeline”, which begins at the seabed.²³ This seabed point of beginning of the “pipeline” is designated by Broadwater as mile point 0.0, at a depth of 94 feet.²⁴ The YMS would be “installed prior to send-out pipeline hookup,”²⁵ again evidencing that the pipeline starts where the LNG terminal ends, which is the point where the send-out pipeline hooks up to the YMS.

It would be error for FERC to include any part of the FSRU or YMS within the terms of a NGA § 7 certificate for the project, because the FSRU and YMS as defined in NGA § 2(11) are truly components of the “LNG terminal”, and therefore are subject to the Commission’s jurisdiction exclusively under NGA § 3; therefore they are “not subject to the jurisdiction of the Commission under section 7,” and may not be authorized by § 7 of the NGA by being added to the terms of a § 7 (c) certificate for the Broadwater Project.

²³ DEIS § 2.1.2.1, § 2.1.2.5, § 2.3.1.3.

²⁴ DEIS Table 2.1-1.

²⁵ DEIS § 2.3.1.3.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

IV Broadwater is Inconsistent with Coastal Policies

The common law principle that the State holds its underwater lands in trust for the public, *jus publicum*, is supplemented not only by New York's Public Lands Law, but also by the Department of State's Coastal Zone Management ("CZM") program. Intertwined with the CZM program, intended in part to administer the State's public trust responsibilities, are issues of waterways suitability, safety and security, raised principally by the Coast Guard's Waterways Suitability Report ("WSR").

A. Broadwater is inconsistent with the LIS CMP and the Southold LWRP

Broadwater submitted a revised Coastal Consistency Certification in October 2006, asserting that its Project is consistent with the Long Island Sound ("LIS") Coastal Management Plan ("CMP"). The New York State Department of State's Division of Coastal Resources ("DOS") commenced review in November 2006, and as of December expressed certain "concerns" in a public letter to NY OGS regarding Broadwater's application for easements of underwater lands.²⁶ DOS writes that its concerns are:

1. Whether a semi-permanent industrial facility in the middle of LIS could impair the character of the Sound and of its traditional coastal communities, contrary to LIS CMP Policy #1.
2. Whether Broadwater will limit public access to a portion of the LIS area currently held in public trust, in contravention of LIS CMP Policy # 9
3. Whether Broadwater could displace, adversely impact or interfere with water-dependent commercial and recreational fisheries, navigation, and general recreational uses in contravention of LIS CMP Policy # 10.

²⁶ See letter from Jeffrey Zappieri, DOS's Supervisor of Consistency Review to Alan Bauder of OGS's Bureau of Land Management, dated December 20, 2006.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

LA19-16 [Riverhead and Southold submit that each of DOS's concerns is fully justified, and
LA19-17 [requires that DOS object to Broadwater's Coastal Consistency Determination. In addition, the
Towns submit that Broadwater is inconsistent with LIS CMP Policy #13 because Broadwater can
not be safely operated, according to the Coast Guard's WSR.

LA19-16 Please see our response to comment LA19-4.

LA19-17 Please see our response to comment LA19-11.

Industrialization - DOS's first concern reflects the Town's apprehension that building a floating LNG terminal offshore in the Sound sets that stage for more offshore industrial development, including competing LNG terminals, wind farms, and potentially even offshore drilling. These sorts of development are all inconsistent with LIS CMP #1. Broadwater's Supplemental Coastal Consistency Certification (pp 12-13) asserts that "proliferation of LNG or other industrial facilities" in the Sound is "unlikely," and that apprehensions over "rampant industrialization" are "unfounded." On the other hand, such concerns are well founded, but their realization has to date been prevented by adherence to the rule that underwater land grants for industrial structures can only be made to adjoining upland riparian owners. This is the important distinction between Broadwater in mid-Sound and existing terminals in Long Island Sound such as the oil docks at Northville and Northport which Broadwater's Consistency Certification (at pp 12-13, pp) invalidly claims to be comparable to Broadwater. The Broadwater Project, if allowed, would open up Long Island Sound to a Pandora's Box of new offshore industrial usages that have been prohibited at common law and by State statute since New York became a sovereign State.

Public Trust- DOS's second concern reflects the Towns' point, discussed above, that Broadwater, if built, would deny public access to some 950 acres of LIS in the vicinity of the YMS/FSRU in addition to denying public use of areas to be used for moving security zones around the arriving and departing tankers. Such denial of public access clearly violates the public

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

trust and is inconsistent with LIS CMP Policy # 9. Broadwater suggests that this policy is “outweighed” by the Project’s “overarching public benefit.”²⁷ However, the Project’s asserted “need” is not a basis for an inconsistent project to be justified. As discussed at the outset of these comments. There are many alternatives to Broadwater. There is only one Long Island Sound.

Recreational and Commercial Access – DOS’s third concern correctly observes that denial of commercial, recreational, and fishing access to a large portion of LIS and is inconsistent with LIS CMP Policy # 10. The areas proposed to be taken over by Broadwater are used by thousands of commercial and recreational boaters and fishermen. Policy 10 mandates protection of these uses. Similarly, Broadwater is inconsistent with Southold’s LWRP Policy # 9, because public access and recreational use of the waters between Orient Point and Fisher’s Island will routinely be denied to fishermen (commercial and recreational) and commercial shipping and recreational boaters due to the restriction posed by the floating security zones that will be required for the LNG tankers entering and leaving Long Island Sound. Southold includes all of the North Fork east of Riverhead, and includes Fisher’s Island. Southold’s LWRP covers this entire area, including all of the Race. See boundary map of Southold LWRP.²⁸ The Comments of Southold Lobsterman Tony DuMaula filed January 18, 2007 describe the severe impacts that Broadwater would have on lobster fishing in Eastern Long Island Sound.

Safety and security – The Towns further submit that Broadwater is inconsistent with the LIS CMP because it is unsafe, and therefore inconsistent with LIS CMP Policy # 13. Policy # 13, relating to Energy Facilities, states in relevant part that “Liquefied Natural Gas facilities must be safely sited and operated.” (Policy # 13.4). The Coast Guard’s WSR has concluded that “additional measures are necessary to responsibly manage the safety and security risks associated

²⁷ See Broadwater’s Supplement to the April 2006 NYS Coastal Consistency Certification, October 2006 at p. 45.

²⁸ Go to <http://southoldtown.northfork.net/Planning/LWRP-2004/06A-Section%20I-Boundary+Maps.pdf> .

LA19-18

LA19-18

Potential impacts to recreational and commercial fishermen, recreational boaters, and marine shippers, including in the area of the Race, are addressed in Sections 3.5.5.1, 3.5.5.2, 3.6.8, and 3.7.1.4 of the EIS. As noted in those sections, there would be no more than one LNG carrier passing through the Race per day and there would be only minor delays for some vessels if they were transiting the Race at the same time that a carrier and its proposed safety and security zone was passing through. However, there would be room in the Race for some vessels while an LNG carrier is present with its safety and security zone as well as alternative routes to enter or exit Long Island Sound for some vessels.

As presented in our response to comment IN13-2 (Mr. DeMaula’s comment letter as submitted by his attorney) and as described in Sections 3.6.8 and 3.7.1.4 of the EIS, the proposed Project would have a minor impact, at most, on lobster fishing in eastern Long Island Sound.

Please refer to our response to comment LA19-4 regarding consistency with Southold’s LWRP policies and our response to comment LA19-6 regarding safety and security concerns.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

with the proposed project". WSR § 8.3. In addition, the WSR states that the Coast Guard Sector Long Island Sound currently does not have the resources required to implement the measures that have been identified as being necessary to effectively manage the potential risk to navigation safety and maritime security associated with the Broadwater Energy proposal. WSR § 7.2. Thus, the record shows that additional measures are needed for safe siting and operation of Broadwater, and that the Coast Guard lacks the resources to implement any such measures.

LA19-19

Accordingly, Broadwater's proposal is presently inconsistent with Policy 13 of the LIS CMP. Unless and until appropriate additional measures are identified, and can be implemented with sufficient human and physical resources, the Broadwater proposal will remain inconsistent with Policy # 13.

B. Use of local resources

LA19-20

The WSR at § 7.4 suggests that State or local law enforcement agencies could potentially assist with implementing some of the measures deemed necessary by the Coast Guard to bolster safety and security to acceptable levels. However, the Towns have neither the physical or financial resources to guard the Broadwater Project, to escort incoming and out going tanker ships, or to respond to fire or police emergencies as they may arise on the LNG terminal. The Supervisors of both Riverhead and Southold each emphasized at FERC's public hearing on January 11, 2007 that they lack the fire and police resources for Broadwater. As Riverhead Supervisor Cardinale said: "Local Government shouldn't be asked to provide security service which it isn't equipped to provide, and taxpayers shouldn't be asked to foot the bill." Southold Supervisor Russell said: "The Race is a heavily traveled, popular fishing area. Who is going to pay for the [LNG Tanker] escort services in light of the fact that the US Coast Guard has serious reservations about [Broadwater's] plans to deal with navigation safety and security risks? Who

LA19-19 Please refer to our response to comment LA19-4 regarding consistency with the Long Island Sound CMP and our response to comment LA19-6 regarding safety and security measures. In addition, as described in Section 8.4 of the WSR (Appendix D of the EIS), if FERC authorizes the proposed Broadwater Project, the Coast Guard would prepare a proposal to obtain additional personnel and equipment to implement its safety and security recommendations.

LA19-20 Please refer to our response to comment LA19-6.

LA19 – Towns of Riverhead and Southold

200701195012 Received FERC OSEC 01/19/2007 10:00:00 AM Docket# CP06-54-000, ET AL.

is going to pay for the additional marine firefighting staff and equipment, and the additional local law enforcement officers needed to respond to a catastrophic event ...?

Conclusion

The Towns of Riverhead and Southold, having considered Broadwater's applications and DEIS, conclude that gas supply to Long Island and the metropolitan area can be safely and plentifully met by alternatives superior to Broadwater, and that the Broadwater Project poses unacceptable safety, security and environmental risks, and is not in the public interest.

Respectfully submitted,

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