UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

December 2, 2008

Kenneth L. Wainstein
Assistant to the President for Homeland Security and Counterterrorism
Homeland Security Council
Eisenhower Executive Office Building
Washington, D.C. 20502

Dear Mr. Wainstein:

I am writing to request the Homeland Security Council's comments on an administrative appeal pending before the Secretary of Commerce pursuant to the Coastal Zone Management Act (CZMA).[1] The Department of Commerce's regulations afford interested federal agencies the opportunity to comment on the national security interests of the activities which are the subject of such appeals. *See* 15 C.F.R. § 930.122.

The appeal at issue is brought by Broadwater Energy LLC and Broadwater Pipeline LLC (collectively, Broadwater). Broadwater appeals the State of New York's objection to its proposal to construct and operate a floating liquefied natural gas (LNG) terminal in Long Island Sound along with an associated pipeline that would transport natural gas from the terminal to an interstate pipeline grid serving the Northeastern United States. This project would affect the natural resources or land and water uses of New York's coastal zone.[2] New York's objection to the project precludes federal agencies from granting licenses or permits required by the project, unless the objection is overridden by the Secretary. *See* 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.64.

In this appeal, Broadwater has requested that the Secretary override New York's consistency objection. One of the grounds provided by the CZMA for the Secretary to override a state's objection is if the proposed activity is necessary in the interest of national security. 16 U.S.C. § 1456(c)(3)(A). To reach this conclusion, the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity in question is not permitted to go forward as proposed. *See* 15 C.F.R. § 930.122. The Secretary's review of national security issues is aided by information submitted by interested federal agencies. While not binding, these views are given considerable weight by the Secretary. *Id.*

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[1] *See* section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 *et seq.* The Department of Commerce's implementing regulations for CZMA appeals are found at 15 C.F.R. Part 930, Subpart H.

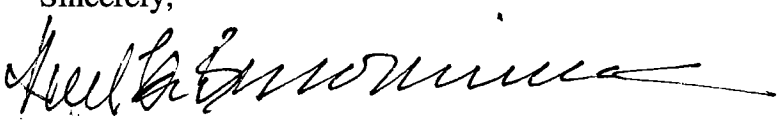
[2] For additional background on Broadwater's proposed project, please refer to the appeal records, which may be reviewed at NOAA's Office of General Counsel for Ocean Services, located at the address below. The parties' notices of appeal and briefs, as well as the decision record, are available via the Internet at *http://www.ogc.doc.gov/czma.htm.*

The Homeland Security Council has been identified as a federal agency with a potential interest in Broadwater's administrative appeal. Consequently, I am requesting any views the Homeland Security Council may wish to provide on the national security implications of Broadwater's proposed project. In particular, I am seeking any information you would like to provide on whether a national defense or other national security interest would be significantly impaired if the project is not permitted to go forward as proposed.[3]

In order for this appeal to be decided in a timely fashion, I respectfully request that the Homeland Security Council's views be submitted no later than **January 2, 2009**. Please forward any comments to: Jamon Bollock, Attorney-Advisor, Office of General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, SSMC IV, Suite 6111, Silver Spring, Maryland 20910.

Should your staff have questions concerning this letter, please contact Mr. Bollock at (301) 713-7392 or by e-mail at jamon.bollock@noaa.gov.

Sincerely,



Joel La Bissonniere
Assistant General Counsel
for Ocean Services

[3] Broadwater filed its administrative appeal on June 6, 2008, regarding its proposed LNG terminal and associated pipeline. To the extent your agency has comments on the terminal or pipeline component of this project, please feel free to provide them in lieu of, or in addition to, comments on the project in its entirety.