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August 1, 2008

## VIA HAND DELIVERY

The Honorable Carlos M. Gutierrez  
Secretary of Commerce  
Herbert C. Hoover Building  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Response of Broadwater Energy LLC and Broadwater Pipeline LLC to New York State Department of State's Motion to Supplement the Decision Record and Cross-Motion to Supplement the Decision Record

Dear Secretary Gutierrez:

This letter represents the response of Broadwater Energy LLC and Broadwater Pipeline LLC (collectively, "Broadwater") to the New York State Department of State's ("NYSDOS") motion to supplement the decision record ("Motion to Supplement").<sup>1</sup> Broadwater also cross-moves to supplement the decision record with Supplemental Document V, which is attached to this letter as Exhibit A.

NYSDOS moves to supplement the decision record with twelve documents that are not included in the consolidated record. With the partial exception of Document 10 (discussed below), Broadwater has no objection to the inclusion of NYSDOS's proposed documents in the decision record. However, NYSDOS's motion contains several misstatements and mischaracterizations that compel a response to correct the record.

In its July 11 and July 23 responses to Broadwater's earlier motion to supplement the decision record, NYSDOS argued that Broadwater's Supplemental Documents should be

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<sup>1</sup> NYSDOS's motion to supplement the decision record is undated, but Broadwater received a copy of NYSDOS's motion papers on Monday, July 28, 2008 (three days after the papers were filed with the Secretary). In addition, the pages of NYSDOS's motion are not numbered. NYSDOS has submitted at least three sets of papers in this proceeding without numbered pages. Broadwater respectfully requests that the Secretary cause NYSDOS to include page numbers on its future submissions.

rejected because the Secretary had not “specifically requested” such materials.<sup>2</sup> NYSDOS now moves to supplement the record without any specific request from the Secretary. As previously stated by Broadwater, the Secretary may accept “clarifying information submitted by a party” without regard to whether the Secretary affirmatively requested the materials in question so long as those supplemental materials clarify information in the consolidated record; and the Secretary has broad authority to determine the content of the decision record. See 15 C.F.R. §§ 930.127(e)(1), 930.130(a)(2)(ii)(B).

**Document 1: NYSDOS Consistency Decision (April 10, 2008)**

Broadwater included at least two separate versions of NYSDOS’s April 10, 2008 Consistency Decision (“Objection”) in the appendix submitted with Broadwater’s Initial Brief, including the corrected version officially submitted to the Federal Energy Regulatory Commission by NYSDOS on April 11, 2008 (BW33829-33892). It is unclear why NYSDOS believes that the decision record must be supplemented with yet another copy of the Objection. Although Document 1 appears superfluous, Broadwater has no objection to its inclusion in the decision record.

**Document 2: Letter of Recommendation from Daniel A. Ronan, Captain of the Port Sector Long Island Sound, United States Coast Guard to Mr. James A. Thompson, Jr. (June 25, 2008)**

Broadwater has no objection to the inclusion of this document in the decision record.

**Document 3: United States Coast Guard Record of Decision (June 27, 2008)**

Broadwater has no objection to the inclusion of this document in the decision record. However, Broadwater notes that this document is primarily comprised of a list of 609 other documents that Captain Ronan relied upon in drafting the Letter of Recommendation (Document 2).

**Document 4: Long Island Coastal Management Program Approval Letters, including the approval letter from John King, Acting Chief of federal Office of Ocean and Coastal Resource Management (“OCRM”) to George Stafford, Director of NYSDOS’s Division of Coastal Resources (dated February 20, 2002), the Public Notice of OCRM’s concurrence with the routine program change, and a copy of the Long Island Sound Coastal Management Program (“LISCMP”)**

Broadwater has no objection to the inclusion of this document in the decision record. In its motion papers, however, NYSDOS incorrectly states that “Broadwater has raised some

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<sup>2</sup> See, e.g., July 23, 2008 letter from NYSDOS General Counsel Sue Watson to Secretary of Commerce Carlos M. Gutierrez, at 2.

concerns about whether the LISCMP was properly approved by OCRM.”<sup>3</sup> Although NYSDOS cites to page 36 of Broadwater’s Initial Brief in support of this statement, Broadwater does not make such an argument on page 36 or anywhere else in its Initial Brief. Broadwater argues on page 36 of its Initial Brief that NYSDOS’s Objection violates 15 C.F.R. Part 930 because the Objection does not contain a statement that the two alternatives proposed therein could be conducted in a manner consistent with the policies of the LISCMP (the coastal management program upon which the Objection is based). Instead, the Objection states only that NYSDOS’s proposed alternatives could be conducted in a manner consistent with the New York State Coastal Management Program (“NYSCMP”). Broadwater has never argued that the LISCMP was not properly approved by OCRM. In fact, on page 5 of its Initial Brief, Broadwater quotes the February 20, 2002 letter from Mr. King to Mr. Stafford in which OCRM approved “the 13 policies ‘set forth in 19 NYCRR Part 600.6 as enforceable policies of the [LISCMP].” The only argument raised in Broadwater’s Initial Brief with respect to NOAA’s approval relates to “Volume 2,” a 498-page NYSDOS guidance document published in 1996.<sup>4</sup> Although NYSDOS’s Objection is based on Volume 2, *that document* (as opposed to the LISCMP) was not approved by OCRM.

**Document 5: Three letters from John J. Ferguson, Project Review Coordinator, New York State Department of Environmental Conservation, to Murray Sondergard, Broadwater Energy, LLC (dated December 21, 2007; February 8, 2008; and June 11, 2008)**

Broadwater has no objection to the inclusion of this document in the decision record. The three letters comprising Document 5 are Notices of Incomplete Application (“NOIAs”) forwarded to Broadwater from the New York State Department of Environmental Conservation (“NYSDEC”). Broadwater and NYSDEC are involved in a continuing process to resolve the issues addressed in the NOIAs, and the NOIAs cannot be regarded as containing any final conclusions by NYSDEC with respect to the coastal effects of the Broadwater Project.

In addition, NYSDOS’s motion contains the following misstatement:

In its initial brief, Broadwater alleges that all agencies, except NYSDOS, forecast that the Project will have “limited” coastal effects.<sup>5</sup>

This is a serious mischaracterization of Broadwater’s Initial Brief, which actually reads:

While NYSDOS’s Objection concedes that delivering additional supplies of natural gas to Broadwater’s target markets is an “important objective,”

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<sup>3</sup> NYSDOS’s Motion to Supplement, at 2.

<sup>4</sup> Broadwater’s Initial Brief, at 5-6.

<sup>5</sup> NYSDOS’s Motion to Supplement, at 3 (citing Broadwater’s Initial Brief at 13).

NYSDOS stands as the lone government agency concluding that these important benefits to the national interest are outweighed by the Project's limited coastal effects.<sup>6</sup>

The three NOIAs that NYSDOS moves to introduce do not evidence any consideration of the benefits of the Broadwater Project to the national interest.

**Document 6: OCRM Approval of List of Activities Outside the State Subject to NYSDOS's Interstate Consistency Review, as a Routine Program Change**

Broadwater has no objection to the inclusion of this document in the decision record, although the document itself is irrelevant to the Broadwater Project. Document 6 relates to New York's review of federal permit/license activities pursuant to 15 C.F.R. Part 930, Subpart I (Consistency of Federal Activities Having Interstate Coastal Effects). Broadwater submitted its complete application to the FERC on January 30, 2006. The routine program changes noticed in Document 6 did not become effective until NOAA approved them on March 28, 2006. As a result, the routine program changes discussed in Document 6 are inapplicable to the Broadwater Project. 15 C.F.R. § 930.154(e).

**Document 7: Advanced Energy Initiative, White House National Economic Council (February 2006)**

Broadwater has no objection to the inclusion of this document in the decision record.

**Document 8: Senate Committee on Commerce, Coastal Zone Management Act Amendments of 1975, S. Rep. No. 277, 94<sup>th</sup> Congress, 1<sup>st</sup> Session 24 (1975), Reprinted in Legislative History of the Coastal Zone Management Act of 1972 (1976)**

NYSDOS "requests that the Secretary take judicial or official notice of the legislative history" presented in Document 8. A party requesting that judicial notice be taken of a document must provide copies of that document to the presiding officer and the opposing party. See, e.g., Love v. The Mail on Sunday, 489 F. Supp. 2d 1100, 1105 (C.D. Cal 2007); In re Davis, 312 B.R. 681, 690 (D. Nev. 2004). Here, NYSDOS has failed to include with its motion a copy of the document that it wishes judicial notice to be taken of. Broadwater asked for copies of the documents from NYSDOS after receiving the instant motion, but was advised by NYSDOS that the document would not be forthcoming. While Broadwater has no objection to the eventual inclusion of the legislative history described in Document 8 in the decision record, the documents constituting the legislative history must first be provided to the Secretary and Broadwater if the documents are to be judicially noticed.

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<sup>6</sup> Broadwater's Initial Brief, at 13 (internal footnotes omitted).

**Document 9:** Transcript: FERC Chairman Joseph T. Kelliher with Mark Haines and Erin Burnett, CNBC's "Squawk on the Street," available at: <http://www.ferc.gov/about/com-mem/kelliher/cnbc0609.pdf> (June 9, 2008)

Broadwater has no objection to the inclusion of this document in the decision record. However, in opposing Broadwater's earlier motion to supplement the decision record, NYSDOS argued, incorrectly, that "most clarifying information accepted into the decision record are official reports such as the Coast Guard's LOR, the official filings by the parties, official changes in project designs, comment letters from federal agencies and earlier studies relied upon by federal or state agencies in making their decisions."<sup>7</sup> By proposing to supplement the decision record with a transcript of a television interview given by a single FERC commissioner (as opposed to a document from a quorum of commissioners), NYSDOS appears to have abandoned its earlier erroneous definition of "clarifying information."

**Document 10:** Letter from David Kennedy, Director OCRM, to Ruth E. Ehinger, New Jersey Department of Environmental Protection Coastal Program Manager (October 4, 2006)

In its Initial Brief, Broadwater argued that NYSDOS's Objection improperly ignored language in LISCMP Policy Standard 13.4 providing that liquefied natural gas facilities in Long Island Sound "must be safely sited and operated."<sup>8</sup> 19 NYCRR § 600.6(m)(4)(iii). NYSDOS now belatedly maintains that the Objection ignored the otherwise relevant language in Policy Standard 13.4 because NYSDOS "presumed that this Policy Standard, though listed in the LISCMP, is not legally enforceable" because of preemption by the federal Energy Policy Act of 2005.<sup>9</sup> NYSDOS's preemption argument is a *post hoc* rationalization. In reality, it is more likely that NYSDOS ignored the text of LISCMP Policy Standard 13.4 in the Objection because 13.4 directly contradicts NYSDOS's argument that LNG facilities are inconsistent with the community character of Long Island Sound.

Unlike its description of every other proposed supplemental document, NYSDOS's description of Document 10 does not state Ruth E. Ehinger's title. Ms. Ehinger is the Manager of Coastal Programs for the New Jersey Department of Environmental Protection, and Mr. Kennedy's October 6, 2006 letter relates to the New Jersey Coastal Management Program, not the LISCMP that forms the basis of NYSDOS's Objection. Thus, Document 10's relevance to this matter is, at best, questionable.

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<sup>7</sup> July 23, 2008 letter from NYSDOS General Counsel Sue Watson to Secretary of Commerce Carlos M. Gutierrez, at 2.

<sup>8</sup> Broadwater's Initial Brief, at 36-37.

<sup>9</sup> NYSDOS's Motion to Supplement, at 4.

Moreover, the offending provisions of the New Jersey Coastal Management Program at issue in Mr. Kennedy's letter expressly *discourage* LNG facilities. While, under this logic, certain provisions of Policy Standard 13.4 *may* be subject to federal preemption (for instance, 19 NYCRR § 600.6(m)(4)(i) states the “[r]egional petroleum reserve facilities are inappropriate in the Long Island Sound coastal area”), the section of Policy Standard 13.4 relevant to the Broadwater Facility implies that LNG facilities in Long Island Sound are appropriate, so long as they are “safely sited and operated.” 19 NYCRR § 600.6(m)(4)(iii). And NYSDOS has not proffered any document from OCRM questioning the enforceability of *any* portion of LISCMP Policy Standard 13.4.

The foregoing notwithstanding, Broadwater will not object to the inclusion of Document 10 in the decision record provided that Broadwater is permitted to submit its own Supplemental Document V (attached hereto as Exhibit A) as rebuttal evidence to NYSDOS's preemption argument. Supplemental Document V, entitled “Summary of Applicable Coastal Policies for Broadwater,” was distributed by NYSDOS personnel to Broadwater at a technical data meeting that took place on June 13, 2007. NYSDOS staff distributed this document to inform Broadwater which “applicable” sections of the LISCMP the Project was potentially inconsistent with (in the opinion of NYSDOS staff). Policy Standard 13.4 is listed on page 3 of this document. Supplemental Document V demonstrates that as late as June 2007 (eight months after OCRM forwarded Document 10 to the New Jersey Department of Environmental Protection) NYSDOS regarded Policy Standard 13.4 as fully enforceable (and not subject to federal preemption).

To the extent NYSDOS's proposed Document 10 is admitted into the decision record, Broadwater's proposed Supplemental Document V should also be admitted because it provides clarifying information on the veracity and merit of NYSDOS's preemption argument.

**Document 11: North American LNG Import Terminals – Potential, FERC's Office of Energy Projects (June 19, 2008)**

Broadwater has no objection to the inclusion of this document in the decision record.

**Document 12: Battelle Report of July 25, 2008 Analyzing Broadwater's Proposed Supplemental Information**

NYSDOS moves to supplement the decision record with a July 25, 2008 report prepared by its consultant, Battelle Memorial Institute (“July 2008 Battelle Report”), in direct response to Broadwater's earlier motion to supplement the record.

Broadwater originally moved to supplement the decision record because NYSDOS never proposed its two specific Atlantic Ocean alternatives (“Alternatives”) to Broadwater prior to

issuance of the Objection on April 10, 2008. As stated in Broadwater's July 7, 2008 Motion to Supplement the Decision Record:

To the best of Broadwater's knowledge, although NYSDOS was a cooperating agency under the National Environmental Policy Act in the creation of FERC's Final Environmental Impact Statement ("FEIS") for the Broadwater Project, NYSDOS did not submit FSRU alternatives to FERC during that process at the specific locations of Alternative 1 or Alternative 2. Nor did NYSDOS ever submit Alternative 1 and Alternative 2 to Broadwater prior to including them in the Objection (and even then, with a lack of specificity). While the general concept of an FSRU in the Atlantic Ocean was mentioned in a 2007 metocean analysis commissioned by NYSDOS, the specific locations of Alternatives 1 or 2 were not provided to Broadwater.<sup>10</sup>

NYSDOS responded to Broadwater's motion in a July 11, 2008 letter ("NYSDOS's July 11 Letter"), in which NYSDOS repeatedly and erroneously asserted that the two specific Atlantic Ocean Alternatives proposed in the Objection were previously proposed to Broadwater in an April 2007 report prepared by Battelle ("April 2007 Battelle Report"). NYSDOS's July 11 Letter in opposition to Broadwater's Motion to Supplement contained the following misstatements:

- "...Broadwater's submissions were recently prepared to directly respond to two alternatives raised in the NYSDOS decision, despite having had *specific information* on the NYSDOS alternatives as early as April 2007."<sup>11</sup>
- "Broadwater seeks to justify its inclusion of three new studies [] by representing that it has never seen the two alternatives prior to NYSDOS's April 10, 2008 consistency objection. As will be shown, nothing could be further from the truth."<sup>12</sup>
- "Broadwater has exhaustively analyzed *these specific alternatives*."<sup>13</sup>
- "Both the draft environmental impact statement and the final environmental impact statement for the Broadwater project contain analyses of the two Atlantic Ocean alternatives identified in the DOS Objection letter."<sup>14</sup>

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<sup>10</sup> Broadwater's July 7, 2008 Motion to Supplement the Decision Record, at 2-3.

<sup>11</sup> NYSDOS's July 11 Letter, at 1 (emphasis supplied).

<sup>12</sup> Id. at 3.

<sup>13</sup> Id. (emphasis supplied).

- “The [April 2007 Battelle Report] analyzes, *with specificity*, the ocean conditions of the alternative Atlantic sites and concludes that the alternatives are feasible locations for Broadwater’s project.”<sup>15</sup>

On July 18, 2008, Broadwater submitted a reply to NYSDOS’s July 11 Letter that established beyond any doubt that the April 2007 Battelle Report *did not* propose or analyze an FSRU at the location of either of the Alternatives proposed in the Objection. Instead, the April 2007 Battelle Report only confirmed what Broadwater had argued all along: while the general concept of an FSRU in the Atlantic Ocean was discussed by the parties, the specific locations of Alternatives 1 or 2 were not provided to Broadwater prior to the April 10, 2008 Objection. Faced with this incontrovertible fact, NYSDOS submitted a sur-reply to Broadwater’s motion on July 23, 2008 in which NYSDOS recanted its prior misstatements regarding the April 2007 Battelle Report’s analysis of “these specific alternatives” by conceding:

The two alternatives identified in NYSDOS’s April 10, 2008 Objection are within *the general vicinity* that Broadwater and NYSDOS have been mapping and discussing for more than one year.<sup>16</sup>

Thus, NYSDOS has now confirmed the factual basis for Broadwater’s original motion to supplement – *i.e.*, prior to issuance of the Objection, NYSDOS never proposed an FSRU at the specific locations of Alternatives 1 and 2. As a result of NYSDOS’s failure to propose its Alternatives to Broadwater prior to issuance of the Objection (or, as the parties previously agreed, to “fully share technical data related to the Atlantic Ocean alternatives”<sup>17</sup>), the consolidated record is compromised in its analysis of those Alternatives (thus Broadwater’s motion to supplement).

Despite admitting that the two specific Alternatives proposed in the Objection had never been submitted to Broadwater prior to issuance of the Objection, NYSDOS continues to argue that it should be granted a lengthy extension of time to file its principal brief, the right to supplement the record with yet another Battelle report, *and* the right to submit an additional 25-page sur-reply to address “the veracity and relevancy of [Broadwater’s] supplemental documents.”<sup>18</sup> Given that it was NYSDOS’s conduct that necessitated Broadwater’s motion to supplement in the first place, NYSDOS’s requests are neither reasonable nor justified.

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<sup>14</sup> Id.

<sup>15</sup> Id. at 4 (emphasis supplied).

<sup>16</sup> July 23, 2008 letter from NYSDOS General Counsel Sue Watson to Secretary of Commerce Carlos M. Gutierrez, at 1 (emphasis supplied).

<sup>17</sup> NYSDOS’s July 11 Letter, at 4.

<sup>18</sup> NYSDOS’s Motion to Supplement, at 5.

While Broadwater will consent to a reasonable extension of 15 days for NYSDOS to file its principal brief (to August 22, 2008) and a reasonable 15-page increase in page length for that brief (to a total length of 65 pages), these additional days and pages should be more than sufficient for NYSDOS to address Broadwater's Supplemental Documents. Moreover, Broadwater respectfully requests that it be afforded an identical number of additional pages in its reply brief to address NYSDOS's twelve additional supplemental documents.

Accordingly, Broadwater has no objection to the inclusion of the July 2008 Battelle Report (Document 12) in the decision record, but Broadwater opposes and respectfully requests that the Secretary prohibit NYSDOS from attempting to supplement the decision record with still further studies. Together with NYSDOS's July 11 and July 18 letters, the July 2008 Battelle Report (Document 12), and NYSDOS's principal brief, NYSDOS will submit four separate documents addressing the "veracity and relevancy" of Broadwater's Supplemental Documents. There is no need for NYSDOS to supplement the record at some future date with yet another Battelle report.

Nor is there any logical justification for permitting NYSDOS to file a 25-page sur-reply. Under basic axioms of jurisprudence, the right of final reply belongs to Broadwater as the party bearing the burden of proof. And NYSDOS cannot explain why it requires this extraordinary sur-reply *and* an additional 45 days to file its principal brief.

Based on the foregoing, Broadwater respectfully requests that the Secretary accept Supplemental Document V (attached hereto as Exhibit A) into the decision record in this matter. Broadwater also respectfully requests that the Secretary deny NYSDOS's motion for a 45-day extension to file its principal brief. Finally, Broadwater respectfully requests that the Secretary deny NYSDOS's motion for leave to file a 25-page sur-reply brief.

Very truly yours,



Robert J. Alessi

Attachment

cc: New York Secretary of State Lorraine Cortés-Vázquez  
Susan L. Watson, Esq.  
Joel La Bissonniere, Esq.  
Ted Beuttler, Esq.

Exhibit A:

Supplemental Document V

## *Summary of Applicable Coastal Policies for Broadwater*

### **Long Island Sound Coastal Policies**

*Policy 1* Foster a pattern of development in the Long Island Sound coastal area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development.

- 1.1 Concentrate development and redevelopment in or adjacent to traditional waterfront communities.
- 1.2 Ensure that development or uses take appropriate advantage of their coastal location.
- 1.3 Protect stable residential areas
- 1.4 Maintain and enhance natural areas, recreation, open space, and agricultural lands.
- 1.5 Minimize adverse impacts of new development and redevelopment.

*Policy 2* Preserve historic resources of the Long Island Sound coastal area.

- 2.1 Maximize preservation and retention of historic resources.
- 2.2 Protect and preserve archaeological resources.
- 2.3 Protect and enhance resources that are significant to the coastal culture of the Long Island Sound.

*Policy 3* Enhance visual quality and protect scenic resources throughout Long Island Sound.

- 3.1 Protect and improve visual quality throughout the coastal area.
- 3.2 Protect aesthetic values associated with recognized areas of high scenic quality.

*Policy 5* Protect and improve water quality and supply in the Long Island Sound coastal area.

- 5.1 Prohibit direct or indirect discharges which would cause or contribute to contravention of water quality standards.
- 5.2 Manage land use activities and use best management practices to minimize nonpoint pollution of coastal waters.
- 5.3 Protect and enhance the quality of coastal waters.
- 5.4 Limit the potential for adverse impacts of watershed development on water quality and quantity.

*Policy 6* Protect and restore the quality and function of the Long Island Sound ecosystem.

- 6.1 Protect and restore ecological quality throughout Long Island Sound.
- 6.2 Protect and restore Significant Coastal Fish and Wildlife Habitats.

- 6.4 Protect vulnerable fish, wildlife, and plant species, and rare ecological communities.
- 6.5 Protect natural resources and associated values in identified regionally important natural areas.

*Policy 7* Protect and improve air quality in the Long Island Sound coastal area.

- 7.1 Control or abate existing and prevent new air pollution.
- 7.3 Limit sources of atmospheric deposition of pollutants to the Sound, particularly from nitrogen sources.

*Policy 8* Minimize environmental degradation in the Long Island Sound coastal area from solid waste and hazardous substances and wastes.

- 8.1 Manage solid waste to protect public health and control pollution.
- 8.2 Manage hazardous wastes to protect public health and control pollution.
- 8.3 Protect the environment from degradation due to toxic pollutants and substances hazardous to the environment and public health.
- 8.4 Prevent and remediate discharge of petroleum products.

*Policy 9* Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the Long Island Sound coastal area.

- 9.1 Promote appropriate and adequate physical public access and recreation throughout the coastal area.
- 9.3 Preserve the public interest in and use of lands and waters held in public trust by the state, New York City, and towns in Nassau and Suffolk counties.
- 9.4 Assure public access to public trust lands and navigable waters.

*Policy 10* Protect Long Island Sound's water-dependent uses and promote siting of new water-dependent uses in suitable locations.

- 10.1 Protect existing water-dependent uses.
- 10.2 Promote maritime centers as the most suitable locations for water-dependent uses.
- 10.3 Allow for development of new water-dependent uses outside of maritime centers.
- 10.4 Improve the economic viability of water-dependent uses by allowing for non-water-dependent accessory and multiple uses, particularly water-enhanced and maritime support services.
- 10.5 Minimize adverse impacts of new and expanding water-dependent uses, provide for their safe operation, and maintain regionally important uses.
- 10.6 Provide sufficient infrastructure for water-dependent uses.
- 10.7 Promote efficient harbor operation.

*Policy 11* Promote sustainable use of living marine resources in Long Island Sound.

- 11.1 Ensure the long-term maintenance and health of living marine resources.

- 11.2 Provide for commercial and recreational use of the Sound's finfish, shellfish, crustaceans, and marine plants.
- 11.3 Maintain and strengthen a stable commercial fishing fleet in Long Island Sound. Protect and strengthen commercial fishing harvest operations, facilities, and waterfront infrastructure to support a stable commercial fishing industry.
- 11.4 Promote recreational use of marine resources.

*Policy 13* Promote appropriate use and development of energy and mineral resources.

- 13.4 Minimize adverse impacts from fuel storage facilities.

**NY State Policies** - These policies are applicable for those east end towns such as East Hampton whose coastal resources may be impaired by LNG traffic.

- *Policy 4* Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity.
- *Policy 7* Significant coastal fish and wildlife habitats will be protected, preserved, and where practical, restored so as to maintain their viability as habitats.
- *Policy 8* Protect fish and wildlife resources in the coastal area from the introduction of hazardous wastes and other pollutants which bioaccumulate in the food chain or which cause significant sublethal or lethal effect on those resources.
- *Policy 9* Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources.
- *Policy 18* To safeguard the vital economic, social and environmental interests of the state and its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the state has established to protect valuable coastal resource areas.
- *Policy 36* Activities related to the shipment and storage of petroleum and other hazardous materials will be conducted in a manner that will prevent or at least minimize spills into coastal waters; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur.

#### ***LWRP Policies***

**Town of Southold** (LNG carriers will pass in proximity to fishing areas possibly used by Town of Greenport recreational and commercial fishermen)

- *Policy 9* Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the Town of Southold
- *Policy 10* Protect the Town of Southold's water-dependent uses and promote siting of new water-dependent uses in suitable locations.

- *Policy 11* Promote sustainable use of living marine resources in the Town of Southold.

**Town of Smithtown** (proposed pipeline passes through Town of Smithtown waters)

- *Policy 7* Significant coastal fish and wildlife habitats will be protected, preserved, and where practical, restored so as to maintain their viability as habitats.
- *Policy 18* To safeguard the vital economic, social and environmental interests of the state and its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the state has established to protect valuable coastal resource areas.
- *Policy 27* Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location.
- *Policy 35* Dredging and dredge spoil disposal in coastal waters will be undertaken in a manner that meets existing state dredging permit requirements, and protects significant fish and wildlife habitats, scenic resources, natural protective features, important agricultural lands, and wetlands.

**Town of Greenport LWRP** (Onshore facilities are proposed for Greenport and LNG carriers will pass in proximity to fishing areas possibly used by Town of Greenport recreational and commercial fishermen)

- *Policy 1* Restore, revitalize and redevelop deteriorated and underutilized waterfront areas for commercial and industrial, cultural, recreational and other compatible uses.
- *Policy 1a* Revitalize greenport's waterfront area by redeveloping deteriorated/underutilized properties and buildings for appropriate commercial and recreational uses.
- *Policy 2* Facilitate the siting of water-dependent facilities on or adjacent to coastal waters.
- *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 identity
- *Policy 5* Encourage the location of development in areas where public services and facilities essential to such development are adequate, except when such development has special functional requirements or other characteristics which necessitates its location in other coastal areas.
- *Policy 9* Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources. Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them.
- *Policy 18* To safeguard the vital economic, social and environmental interest of the state and its citizens, proposed major actions in the coastal area must give

- full consideration to those interests, and to the safeguards which the state has established to protect valuable coastal resource areas.
- *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, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development.
- *Policy 27* Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location
- *Policy 36* Activities related to the shipment and storage of petroleum and other hazardous materials will be conducted in a manner that will prevent or at least minimize spills into coastal waters; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur

**Port Jefferson Harbor Management Plan**

- *Objective 1* Enhance the commercial waterfront area of lower Port Jefferson harbor
- *Objective 2* Improve operating conditions for water dependent recreational, commercial and industrial uses.
- *Objective 3* Ensure public and vessel safety, and improve conditions for navigation for all harbor uses
- *Objective 4* Protect and enhance environmental conditions

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response of Broadwater Energy LLC and Broadwater Pipeline LLC to New York State Department of State's Motion to Supplement the Decision Record and Cross-Motion to Supplement the Decision Record was served this 1st day of August 2008, by first-class mail unless otherwise indicated, on the following persons at the addresses listed below.

Joel La Bissonniere  
Assistant General Counsel for Ocean Services  
1305 East West Highway  
Room 6111 SSMC4  
Silver Spring, MD 20910  
(By Hand)

Hon. Lorraine Cortes-Vazquez  
Secretary of State  
State of New York Department of State  
99 Washington Avenue  
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Susan Watson  
General Counsel  
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