

2.1.4 Responses to Comments from Local Agencies and Municipalities

Letter Number	Commentor
LA-01	Farrell Fritz for Suffolk County
LA-02	Suffolk County Legislature
LA-03	Suffolk County Department of Fire, Rescue & Emergency Services
LA-04	Long Island Farm Bureau
LA-05	New York City Energy Policy Task Force (Gil C. Quiniones)
LA-06	Towns of Brookhaven, Huntington, and East Hampton
LA-07	Town of Brookhaven Town Board \
LA-08	Town of East Hampton (Edward Michels, Chief Harbormaster)
LA-09	Town of East Hampton (Bill Taylor, Waterways Management Supervison)
LA-10	East Hampton Town Commercial Fisheries Advisory Committee
LA-11	Town of Oyster Bay (Cashin Spinelli & Ferretti, LLC)
LA-12	Town of Huntington Town Board
LA-13	Town of Huntington
LA-14	Town of Huntington (Harry Acker, Director of Marine Services)
LA-15	Town of East Lyme (Donald F. Landers, Jr.)
LA-16	Norwalk Harbor Management Commission (Anthony Mobilia)
LA-17	Town of Brookhaven (Brian Foley)
LA-18	East Hampton Town Board
LA-19	Towns of Riverhead and Southold
LA-20	Suffolk County
LA-21	Towns of Riverhead and Southold
LA-22	Suffolk County
LA-23	Town of Riverhead
LA-24	Town of Brookhaven
LA-25	East Hampton Fisheries Committee

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1320 Reckson Plaza
Uniondale, New York 11556-1320
Telephone 516.227.0700
Fax 516.227.0777
www.farrellfritz.com

ORIGINAL

Charlotte Biblow
Partner

Direct Dial 516.227.0686
Direct Fax 516.336.2266
cbiblow@farrellfritz.com

Our File No.
19301-100

January 22, 2007

Via Federal Express

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

FILED
OFFICE OF THE
SECRETARY
2007 JUN 23 A 11: 21
FEDERAL ENERGY
REGULATORY COMMISSION

Re: **Broadwater Energy – LNG Project**
FERC Docket Nos.: CP06-54-000
CP06-55-000
CP06-56-000

Dear Secretary Salas:

This firm represents the County of Suffolk, New York, ("Suffolk County") an intervener party in the above-referenced proceedings. Enclosed are the original and two copies of Suffolk County's comments and objections to the November 2006 Draft Environmental Impact Statement ("DEIS") concerning the Broadwater project. Suffolk County's submission is comprised of its Comments, Affidavits of Vito A. Minei and Joseph F. Williams and Exhibits annexed thereto. Suffolk County objects to the Broadwater project for the reasons stated in its submission and respectfully requests that FERC consider these reasons and deny Broadwater's applications. Please file this submission in the FERC dockets for this matter. As set forth in the FERC DEIS Notice, we labeled one of the copies "Attention Gas 3, PJ-11.3".

Thank you.

Very truly yours,

Charlotte Biblow

cc: All counsel on FERC's service list (w/enclosure)

FFDOC511725699-01

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**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**BROADWATER ENERGY LLC
BROADWATER PIPELINE LLC
BROADWATER PIPELINE LLC**

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

**UNITED STATES ARMY CORPS OF ENGINEERS
NEW YORK DISTRICT**

**APPLICANT: BROADWATER ENERGY LLC
PUBLIC NOTICE NUMBER 2006-00265-L6**

**STATE OF NEW YORK DEPARTMENT OF STATE
CONSISTENCY REVIEW UNIT
DIVISION OF COASTAL RESOURCES**

**APPLICATION OF BROADWATER ENERGY LLC
AND BROADWATER PIPELINE LLC
NYSDOS PUBLIC NOTICE F-2006-0345**

FILED
OFFICE OF THE
SECRETARY
JAN 23 11:20
FEDERAL ENERGY REGULATORY COMMISSION

THE COUNTY OF SUFFOLK, NEW YORK'S COMMENTS TO:

- (1) THE NOVEMBER 2006 DRAFT ENVIRONMENTAL IMPACT STATEMENT ISSUED BY THE FEDERAL ENERGY REGULATORY COMMISSION;***
- (2) THE NOVEMBER 24, 2006 PUBLIC NOTICE ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS; and***
- (3) THE DECEMBER 6, 2006 PUBLIC NOTICE OF THE NEW YORK STATE DEPARTMENT OF STATE.***

Pursuant to the rules of the Federal Energy Regulatory Commission ("FERC"), the United States Army Corps of Engineers (the "USACE") and the New York State Department of State (the "NYSDOS"), the County of Suffolk, New York ("Suffolk County"), by its attorneys, Farrell Fritz, P.C., hereby submits these comments and objections to the above-referenced applications of Broadwater Energy, LLC and Broadwater Pipeline, LLC (collectively

"Broadwater"). In addition to these comments, Suffolk County is submitting the affidavits of Vito A. Minei, P.E., the Director of the Division of Environmental Quality ("DEQ") for the Suffolk County Department of Health Services ("SCDHS") and Joseph F. Williams Commissioner of the Suffolk County Department of Fire, Rescue & Emergency Services ("SCFRES") in further support of Suffolk County's opposition to the Broadwater project.

Broadwater seeks permission to construct a floating liquefied natural gas ("LNG") facility which it wants to permanently moor in the middle of Long Island Sound. The proposed facility consists of a massive floating storage and regasification unit ("FSRU") that it proposes to tether to a yoke mooring system ("YMS"). Broadwater also wants to construct a 22-mile pipeline from the YMS to an existing pipeline operated by Iroquois Pipeline. The FSRU is a floating factory wherein LNG is proposed to be stored and regasified and discharged into the pipeline. The LNG is proposed to be delivered to the FSRU by large tankers. Broadwater expects that these supply vessels will make deliveries every 2 to 3 days. All of these structures and vessel traffic are proposed to be constructed and/or operated within the territorial and jurisdictional limits of Suffolk County.

Suffolk County has long opposed the Broadwater project and has stated the bases for its objections in many documents previously filed with FERC and other relevant regulatory agencies. Suffolk County's opposition is founded upon both legal and technical grounds. Suffolk County has significant concerns about the serious negative environmental, health, economic and safety impacts of the proposed project. Suffolk County's concerns are widely shared by its 1.5 million residents, as well as by residents of surrounding communities, including those residing in Nassau County and the State of Connecticut as evidenced by the thousands of

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comments already submitted to FERC by these residents, including many local, state and federal elected officials, in opposition to the proposed project.

LA1-1 [The Broadwater project will have catastrophic and negative effects on the use and safety of Long Island Sound. In particular, the surface of Long Island Sound will be impacted, in terms of: (i) the size and breadth of the proposed facility; (ii) the ability of the FSRU to pivot in various directions; (iii) the significant reduction in useable area of Long Island Sound on an almost daily basis; and (iv) the additional prohibition of access to vast areas of Long Island Sound during the transit of the LNG tankers through the Long Island Sound on their way to and from the FSRU and during the transfer of product at the FSRU. Broadwater has stated that will take approximately 12 to 18 hours per shipment to unload the LNG and these vessels will be entering Long Island Sound 2 to 3 times a week. Under such circumstances, especially since most, if not all, of the LNG to be unloaded at Broadwater's FSRU is not destined for use on Long Island, Broadwater cannot demonstrate that the proposed project promotes the public interests or does not substantially impair the public interest and public trust use of the waters of the surface of Long Island Sound. Simply put, the Broadwater project is NOT in the public interest and in fact violates long-standing doctrines establishing the rights of the public in this area of Long Island Sound, and creates intolerable dangers to the public health and safety.

Grounds for Objections

I. Broadwater Violates Suffolk County Law

The waters of Long Island Sound are within the jurisdiction of Suffolk County pursuant to the Laws of 1881, Chapter 695. This statute provides in, pertinent part, that: "the jurisdiction of the legally constituted offices of Queens and Suffolk Counties and of their respective towns of said counties bordering on Long Island Sound is hereby extended over the waters of said Sound

LA1-1 The commentator's statement lacks a basis for the assessment. As described throughout Section 3.0 of the final EIS, the proposed Project would result in minor environmental impacts, including impacts on current users of the Sound. In addition, as stated in Section 8.4 of the WSR (Appendix C of the final EIS), the Coast Guard made the preliminary determination that the risk associated with operation of the FSRU and LNG carriers would be manageable with implementation of its recommended mitigation measures.

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to the Connecticut State line.” Thus, it is beyond dispute that the waters involved in the Broadwater project are within the jurisdiction of Suffolk County.

New York State Navigation Law §§ 1 and 2(4) establishes Suffolk County’s jurisdiction to protect the waters of Long Island Sound by exempting from the definition of “navigable waters of the state” all tidewaters bordering on and lying within the boundaries of Nassau and Suffolk Counties. Suffolk County has consistently maintained jurisdiction and regulation of all tidewaters bordering on and lying within its boundaries.

LA1-2

Suffolk County has banned this type of use in all of its waters when the Suffolk County Legislature adopted Resolution No. 821 of 2006. This local law prohibits the construction and operation of an LNG FSRU in all of the waters of Long Island Sound under the jurisdiction and control of Suffolk County. A copy of this law is attached as Exhibit “A.” Since the Broadwater project is banned by Suffolk County Law, FERC, USACE and NYSDOS cannot lawfully issue the permits, approvals or consistency determinations that Broadwater needs for its prohibited project.

2. Broadwater Violates The Public Trust Doctrine

Pursuant to the public trust doctrine, the State holds lands under navigable waters in its sovereign capacity as trustee for the beneficial use and enjoyment of the public. The State’s power to transfer lands under navigable waters is sharply limited. Over a century ago, the United States Supreme Court explained the public trust doctrine and how it prohibits the kind of approvals, permits and easements such as the ones being sought by Broadwater in this matter. In *Illinois Central Railway Co. v. Illinois*, 146 U.S. 387 (1892), the Illinois legislature purported to transfer rights to the Illinois Central Railroad Company for a one-thousand-acre portion of the bed of Lake Michigan adjacent to Chicago. *Id.* at 452. The Supreme Court ruled that the

LA1-2

FERC has authority to authorize LNG import facilities under Section 3 of the NGA. In Sections 311 and 313 of the EPAct of 2005, Congress ratified this authority; designated FERC as the “exclusive authority to approve or deny applications for the siting, expansion, or operation” of LNG terminals onshore or in state waters; and directed FERC to coordinate with other agencies and establish a schedule that ensures “expeditious completion of the proceeding.”

purported transfer was “a gross perversion of the trust over the property under which it was held” by the State of Illinois. *Id.* at 455.

In *Illinois Central*, the Supreme Court emphasized that the public trust doctrine is derived from the overriding need to preserve the public’s free and unobstructed use of navigable waters. The Court explained that “[t]he doctrine is founded upon the necessity of preserving to the public *the use of navigable waters from private interruption and encroachment . . .*” *Id.* at 436. (Emphasis added.) The Court also 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.)

The New York State Court of Appeals also has a long history of utilizing the public trust doctrine to prohibit the kind of approvals, permits and easements being sought by Broadwater. 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. *Coxe* involved the State Legislature’s purporting to transfer the State’s title to all of the submerged lands adjacent to Staten Island and Long Island, an area extending over four counties. *Id.* at 401. 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 for benefit of the public, they were 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 said to be for the public benefit.*” *Id.* at 406. (Emphasis

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Id. at 10. (Emphasis added.) According to *Long Sauli*, not only is it impermissible for the State to permit private parties to construct obstacles to navigation, the State is *powerless* to even make a conveyance that would permit a private corporation to control navigation to the exclusion of the State or the public.

The Appellate Division, Second Department, in 1989 reaffirmed the *Coxe* principles and explained that deprivation of public access to surface waters for fishing and navigation violates the public trust doctrine. *Smith v. State of New York*, 153 A.D.2d 737, 737 (2d Dep't 1989). In *Smith*, the East Island Association claimed that it held title to the underwater land and waters around East Island in Glen Cove pursuant to an 1888 land patent. It sought to prohibit the general public from using the waters and beaches around East Island. Members of the public who had been excluded from using the water and beaches sought an injunction against the East Island Association to prevent it from excluding the public based on the public trust doctrine. The appellate court noted that excluding the public from an area they have lawfully enjoyed for over 100 years would constitute an impermissible impairment of the public interest. *Id.* at 739. After invoking the Supreme Court's *Illinois Central* decision and the Court of Appeals' *Coxe* decision, the appellate court found that the public benefit will be lost if the East Island Association can exclude the public from this area used for over a century for fishing and other recreational activities. *Id.* at 740.

In a recent opinion, the highest ranking lawyer in New York State government, the New York State Attorney General, acknowledged that transfers of underwater lands that are "injurious to the public's use of the waters" violate the public trust doctrine. The Attorney General, relying upon *Coxe*, stated that "the public owner of lands used for navigation does not hold the lands in a proprietary capacity" and that "a trust is engrafted upon this title for the benefit of the public of

which the [public owner] is powerless to divest itself." The Attorney General further stated that "underwater lands must be for a use that either benefits the public or at least is not injurious to the public's use of the waters." See 2005 Op. Att'y Gen. 11, 2002 WL 870807, at *2. Broadwater's proposed project runs afoul of this policy as it will make tremendous areas of Long Island Sound entirely inaccessible to every other user of Long Island Sound except Broadwater, a single private corporation.¹

The public trust doctrine cases make it clear that *the size of the transfer matters* to the analysis. In *Illinois Central*, the voided conveyance involved 1,000 acres. *Illinois Central*, 146 U.S. at 433-34. Similarly, in *Coxe*, the Legislature attempted to convey underwater land adjacent to the shoreline in four counties. *Coxe*, 144 N.Y. at 401-02. There, the Court indicated that the "extensive character" was a factor in its analysis. *Id.* at 401.

LA1-3 [The Broadwater project violates the public trust doctrine. As in *Illinois Central*, where the Supreme Court was troubled by a state's conveyance that gave a private company the power to manage and control the Chicago harbor, Broadwater's project requires that large portions of Long Island Sound be turned over to it for its permanent and exclusive control. Based on the USCG's Waterway Suitability Report, issued September 21, 2006, Broadwater's FSRU will be surrounded by a circular security exclusion zone with a radius of 1,210 yards.² **Broadwater will therefore permanently deprive the public access to 950 acres of the surface of the Long Island Sound.**³ Further, the LNG tankers used to supply LNG to the FSRU will have moving

LA1-3 Section 3.5.7.4 of the final EIS addresses the public trust issue relative to the proposed Broadwater Project.

¹ For other cases addressing deprivation of public access to navigable waters, see *Trustees of the Fresholders and Commonalty of the Town of Brookhaven v. Smith*, 188 N.Y. 74, 77 (1906) (explaining that at common law any "obstruction [of] the public right of navigation, or the *ius publicum*, could be abated as a nuisance"); *People of the State of New York v. New York & Staten Island Ferry Co.*, 68 N.Y. 71, 76 (1876) (explaining that if the grant in that case "assumed to interfere with [the public right of access to navigable waters], or to confer a right to impede or obstruct navigation, or to make an exclusive appropriation of the use of navigable waters, the grant was void.")

² USCG Waterways Suitability Report at § 4.6.1.5, p. 130.
³ This was calculated as follows. The area of the circular exclusion zone is 3.14 x 1,210 yards x 1,210 yards, which equals, 4,579,274 square yards. As one acre equals 4,840 square yards, 4,579,274 square yards equals 949.85 acres.

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security zones around them that are 1,550 yards wide and 5,000 yards long (plus the length of the carrier itself).⁴ These moving security zones will prohibit public access to 1,722 acres of the surface of Long Island Sound⁵ at least four to six times a week.

This means that an area of 950 acres of Long Island Sound will comprise the safety exclusion zone surrounding the FSRU, an area almost identical in size to the prohibited transfer in *Illinois Central*. In addition, moving security zones around the LNG carriers will deprive the public of access to an additional moving 1,722 acres of Long Island Sound each time the LNG tankers traverse Long Island Sound.⁶ Denying public access to such enormous portions of Long Island Sound, especially in this area, is the quintessential public trust doctrine violation.

LA1-4

To further exacerbate the severity of the violation of the public trust doctrine, Broadwater’s proposed project is set at the center of critical commercial shipping routes to and from New York City, portions of Connecticut, Long Island and Westchester. It will permanently deprive the public of access to this area. Figure 2-6 of the USCG Waterways Suitability Report depicts long-established commercial traffic routes abutting the proposed location of the FSRU. See Waterways Suitability Report at 31 and 33. That figure unequivocally demonstrates that the FSRU will obstruct these traffic lanes. Moreover, that figure grossly under-represents the extent to which the FSRU will actually interfere with Long Island Sound vessels. Figure 2-6 only tracks a few thousand vessels with on-board AIS Tracking Systems. The figure does not take into account the other 180,000 registered vessels in Connecticut, the 80,000 registered vessels in New York and the 43,000 registered vessels in Rhode Island, all of which use Long Island Sound, but do not have on-board AIS Tracking Systems.

LA1-4 Please see our response to comment LA1-3.

⁴ Waterways Suitability Report at § 4.6.1.4., pp. 128-30.
⁵ This was calculated as follows. The area of the rectangular tanker exclusion zone is 5377.43 yards long x 1,550 yards wide or 8,335,016.5 square yards. As one acre equals 4,840 square yards, 8,335,016.5 square yards equals 1,722.11 acres.
⁶ USCG Waterways Suitability Report at § 3.1.4.1, p. 56.

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LA1-5 Further, with respect to the LNG tankers moving security zones, the USCG admits that the "vessel traffic routing scheme" it will have to impose around the tankers will "have an undue impact on recreational vessel operators," especially in The Race.⁷ This interference violates the doctrines of *Long Sault, Coxe, Smith and Illinois Central*.

LA1-6 In addition, the storage unit is to be refilled by frequent shipments of LNG that are made via large tanker ships. Broadwater states that these refill shipments will occur every two days and will take 12 to 18 hours to unload. As part of Broadwater's proposed safety precautions, each LNG delivery requires a virtual shut down of Long Island Sound. Thus, out of every 48 hours, 18 will be required to unload and the Long Island Sound will be shut down for these periods. Each shipment will be met by armed ships (which the USCG does not have) that will escort the tankers to the floating storage unit. During these frequent deliveries, other recreational and commercial uses of Long Island Sound will be stopped. In other words, the Sound will be virtually closed for 18 out of every 48 hours or 37% of the time. This is in addition to the exclusion zone required around the FSRU and YMS, which will be off-limits 100% of the time. The continuous disruption posed by these shipments will have significant and severe economic, recreational and safety impacts.

LA1-7 In summary, Broadwater violates the public trust doctrine because it eliminates "public access" to a 950-acre area of Long Island Sound in perpetuity, and to a 1,722-acre moving area of the Long Island Sound every time one of the supply vessels navigates to or from the FSRU. Broadwater expects two or three shipments per week, meaning that the 1,722-acre moving exclusion zone will impact the public's use of Long Island Sound 4 to 6 times a week for extended periods of time during the transport vessels entering and leaving Long Island Sound.

⁷ *Id.* at § 4.6.1.5, p. 130-31.

LA1-5 The quotes provided in the comment are not in the context presented in Section 4.6.1.6 of the WSR (Appendix C of the final EIS). The "vessel traffic routing scheme" referred to was one that was recommended by the Harbor Safety Working Group during the Coast Guard's waterways assessment. As stated in Section 4.6.1.6 the WSR, "Although the potential benefits of vessel traffic routing measures were recognized, there was also concern that such measures could have an undue impact on recreational vessel operators." This potential impact was stated as a concern, not as the result of an evaluation of potential impacts. Further, the comment states that the Coast Guard "will have to impose" the vessel traffic scheme "around the tankers." Again, this is an inaccurate statement. The Coast Guard did not adopt a vessel traffic routing scheme for Long Island Sound but determined that a safety and security zone around each LNG carrier would be the most effective means of managing the potential risks of LNG carrier transits, as described in Section 5.5.5 of the WSR. FERC then assessed the potential impacts associated with transits of the LNG carriers and the proposed moving safety and security zones around them, as reported throughout the final EIS. Impacts to recreational vessels are addressed in Section 3.5.5.1 of the final EIS.

As noted in Section 8 of the WSR, the Coast Guard would further evaluate vessel traffic routing measures by conducting "... a Port Access Route Study (PARS) as required by 33 U.S.C. § 1223(c) to evaluate the recommendation in Section 4.6.1.6 of this Report to establish vessel traffic routing measures on Block Island Sound and Long Island Sound."

LA1-6 The commentor does not accurately represent the Broadwater proposal or the findings of the draft EIS. Specifically:

1. It is not true that “each LNG delivery requires a virtual shutdown of Long Island Sound”;
2. Long Island Sound would not be shut down 18 hours out of every 48 hours while LNG is unloaded at the FSRU;
3. It is not true that during LNG deliveries “other recreational and commercial uses of Long Island Sound will be stopped”; and
4. It is not true that the Sound would be “virtually closed for 18 out of every 48 hours or 37% of the time.”

The LNG carriers would be integrated into the normal marine traffic of Long Island Sound. Transit by carriers could result in some localized and temporary delays for some vessels wishing to cross the path of an LNG carrier and its proposed safety and security zone, or the transits may require that some vessels move out of the path of the oncoming carrier (see Sections 3.5.5.1 and 3.7.1.4 of the final EIS for details). Except for avoiding the proposed moving safety and security zones around the LNG carriers and the proposed fixed safety and security zone around the FSRU, commercial, recreational, and other marine vessel traffic would be able to continue as normal throughout the remainder of the Sound while the LNG carriers are in transit.

Long Island Sound covers an area of approximately 1,320 square miles (Section 2 of the WSR [Appendix C of the final EIS]); the proposed moving safety and security zone around each LNG carrier would cover an area of approximately 2,040 acres (3.2 square miles; final EIS Table 3.5.1-1), or about 0.2 percent of the Sound at any one time; and the proposed fixed safety and security zone around the FSRU would cover an area of about 950 acres (1.5-square miles; Table 3.5.1-1 of the final EIS), or about 0.1 percent of the Sound. When an LNG carrier is in transit in Long Island Sound, either to or from the FSRU, only about 0.3 percent of the total area of the Sound would be excluded from use by the safety and security zones proposed for the Project. Consequently, LNG delivery by LNG carriers would not result in significant and severe economic, recreational, or safety impacts.

LA1-7 Section 3.5.7.4 of the final EIS addresses the public trust issue relative to the proposed Broadwater Project.

Given this pervasive and continuous impact on navigable waters, Broadwater must be rejected. It is the wrong use in the wrong place at the wrong time.

3. Broadwater Violates Long-Standing Federal, State and County Policies Aimed At Improving The Long Island Sound Environment.

Suffolk County is very concerned about the proposed project's adverse impacts on a unique natural resource, the Long Island Sound. That body of water is a federally designated estuary of significance for which there has been a Comprehensive Conservation and Management Plan ("CCMP") developed and being implemented by federal, state and local government officials. In addition, the Long Island Coastal Zone Management Plan, along with a whole host of other Coastal Zone Revitalization Plans, including local waterfront revitalization zones, were implemented precisely to preserve open space, encourage recreational uses, minimize adverse development and non-water dependent development, preserve historical resources, enhance scenic resources, minimize loss of life and natural resources, manage navigational channels, improve and protect water quality by prohibiting discharges, limit development of public trust lands, protect the health of marine resources, and minimize adverse impacts from fuel storage facilities. These noble and laudable policies are all threatened by the proposed project.

LA1-8

More recently, via enactment of the Long Island Sound Stewardship Act of 2006 (the "LISS Act"), which was signed into law by President Bush on October 16, 2006, the federal government reiterated its commitment to preserving the Long Island Sound. The LISS Act declares that Long Island Sound is a "national treasure of great cultural, environmental, and ecological importance." LISS Act § 2(a)(1). The LISS Act further declares that Long Island Sound-dependent activities "contribute more than \$5,000,000,000 each year to the regional economy." LISS Act § 2(a)(3). The Act warns that "the portion of the shoreline of the Long

LA1-8

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. Section 3.5.7.1 of the final EIS lists the coastal policies but does not present an opinion regarding consistency because 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.

Island Sound that is accessible to the general public . . . is not adequate” and that “large parcels of open space already in public ownership are strained by the effort to balance the demand for recreation with the needs of sensitive natural resources.” LISS Act §§ 2(a)(4), 2(a)(6).

The LISS Act’s principal goal is to preserve Long Island Sound for “ecological, educational, open space, public access, or recreational” use. LISS Act § 2(b). To do so, the LISS Act establishes the “Long Island Sound Stewardship Initiative,” LISS Act § 2(b), which includes: (i) designating certain areas of Long Island Sound as “stewardship sites,” (ii) developing management plans that addresses threats to “stewardship sites”, and (iii) protecting and enhancing “stewardship sites.” LISS Act § 6(a)(1). Plainly put, the LISS Act requires the identification and preservation of desirable parcels of property adjacent to Long Island Sound that may serve important ecological, educational, open space, public access, or recreational uses of Long Island Sound. LISS Act § 9(b)(2)(a). All of this, of course, is to make Long Island Sound more accessible to and useable by the public. It is not intended to carve out huge chunks of Long Island Sound for private profit-making use or to exclude the public from vast areas of this treasured body of water.

LA1-9

Broadwater is entirely inconsistent with the federal policy, embodied in the LISS Act, of preserving and improving public access to Long Island Sound. The permanent mooring of the FSRU containing millions of gallons of toxic and flammable liquid natural gas in the center of Long Island Sound conflicts with this federally-declared purpose. In addition, the exclusion zones discussed above prohibit public access to large areas of Long Island Sound. In short, the Broadwater project violates the letter and spirit of this new federal statute.

As admitted in the DEIS, Broadwater has both short-term and long-term impacts to Long Island Sound, during all phases of the project - construction, operation, dismantling and removal.

LA1-9 Section 3.5.7 of the final EIS has been revised to address the proposed Project in consideration of the Long Island Sound Stewardship Act.

LA1-10 [These admitted impacts include, among other things, the following concerns: (1) significant sediment disturbances; (2) extensive interference with marine species, some of which are classified as threatened or endangered under federal and state law; (3) extensive disturbances of essential fish habitat, including impacts to several significant fisheries with both commercial and recreational import to residents of Suffolk and the surrounding communities; (4) water quality impacts both during construction and operation, including discharges of process water, ballast, and sewage; (5) thermal discharges; and (6) air emissions.

LA1-11 [In addition, the construction and operation of the facility involves frequent tanker shipments that will interfere with important fisheries located in the Long Island Sound. For example, the Long Island Sound lobster industry is just beginning to recover from a catastrophic decrease in population, believed in part to be caused by low oxygen levels in Long Island Sound. The Broadwater project includes construction of the tethering mechanism and installation of 22 miles of pipeline and will involve extensive dredging and disturbance of the seabed, precisely in

LA1-12 [the environment in which lobsters, clams and other sea-life reside and reproduce. The proponent admits these activities will cause hypoxic conditions, a condition which is fatal to these vital fisheries. It is also fatal to other marine resources found in the Long Island Sound.

Moreover, the project involves construction of a 22-mile pipeline connecting the Broadwater floating facility to the Iroquois Pipeline. That pipeline will be installed into the seabed extending the zone of adverse impacts well beyond the floating storage unit locale well into Long Island Sound. Significantly, hardly any information is provided by Broadwater about ancillary on-shore structures that are necessary to service the off-shore components.

As noted in the accompanying affidavit of Vito A. Minei, the Broadwater proposal presents many adverse environmental effects which cannot be mitigated. As noted by Mr.

LA1-10 While the EIS describes minor impacts to these specific resources, it does not conclude that there would be significant sediment disturbance; extensive interference with marine species, including federally listed species; extensive impacts to EFH; or significant impacts to the important commercial or recreational fisheries of Long Island Sound.

LA1-11 We have addressed these issues in Sections 3.3.2.2, 3.7.1.4, and 3.6.8.1 of the final EIS. As described in those sections, the Project would not result in a significant impact to commercial fisheries, including the lobster fishery.

LA1-12 The commentor's assertion that the proponent states that pipeline construction activities would exacerbate hypoxic conditions is incorrect. Hypoxia and the factors that influence it are discussed in Section 3.2.1.3 of the final EIS. Hypoxic conditions are largely restricted to the warmer summer months and primarily to the western basin of Long Island Sound. In addition, hypoxia is largely driven by nutrient loading. Pipeline construction would disturb potentially anoxic sediments, but any disturbance would occur during the winter months when the waters of the Long Island Sound are well oxygenated. Thus, pipeline installation would not be expected to affect the extent or magnitude of hypoxia.

Minei, it has taken 20 years and the expenditure of tens of millions of taxpayer funds to enhance and restore the Long Island Sound. Since 1985, more than \$54 Million has been spent on the Long Island Sound Study. In addition, since 2001, almost \$20 Million in federal funds have been spent by New York and Connecticut under the federal Long Island Sound Restoration Act. Also, in excess of \$200 Million has been allocated under the State Environmental Bond Act to enhance and preserve Long Island Sound. All of this funding, along with other monies, was and continues to be used to improve the ecosystem of the Long Island Sound and to protect and enhance its surface waters, shorelines and underwater lands. None of this effort is appropriately evaluated in the DEIS, nor are the devastating impacts that Broadwater will have on the Long Island Sound ecosystem properly evaluated.

LA1-13

As documented in Mr. Minei's affidavit, the DEIS failed to properly analyze the following environmental concerns in particular and the cumulative impacts thereof, especially over the extensive lifetime of this proposal :

- The cryogenic system Broadwater proposes to use to keep the LNG in a liquefied state will use chlorofluorocarbon-based compounds and other ozone-depleting substances as refrigerants. The quantity of refrigerants contained in the system will be considerable. Any leaks of these coolants into the ambient air will adversely impact air quality.

LA1-14

- On-board machinery, such as pumps and compressors, require petroleum-based lubricants for operation. The quantities of lubricants slated to be stored and used on the FSRU, YMS and on-shore facilities are massive and trigger requirements under Article 12 of the Suffolk County Sanitary Code. Yet, the DEIS is silent about these requirements. It also fails to discuss the impacts of such storage and discharge of these hazardous chemicals into the Long Island Sound and the fact that such use is banned under Suffolk County law.

LA1-15

LA1-13 Section 3.0 of the final EIS has been revised to provide additional information on the restoration efforts for Long Island Sound. The final EIS describes the existing environmental conditions of the Sound relevant to the proposed Project, including the conditions that have resulted from the restoration efforts, and evaluates the potential for impacts to those conditions. Impacts to the relevant areas of the ecosystems of the Sound are addressed in Sections 3.2, 3.3, and 3.4 of the final EIS; and impacts to public access are presented in Sections 3.5.5.1 and 3.7.1.4.

LA1-14 As explained in Section 2.1.1.3 of the final EIS, no mechanical means of refrigeration would be required because LNG is refrigerated (liquefied) at the sending site and transported in thermally insulated LNG carrier cargo tanks. Chlorofluorocarbons, or CFCs, typically are used as coolants in mechanically powered refrigeration systems. These compounds would not be used to maintain the temperature of the LNG.

LA1-15 The EIS addresses the potential environmental impacts associated with the proposed Project in accordance with the requirements of NEPA and the federal and state actions that would take place if the Project is authorized for construction and operation as mandated by the EAct of 2005. As addressed in Section 1.3.1 of the final EIS, these federal and state actions do not include county and local permits or approvals. Because the FSRU is a transportation-related facility, the federal EPA SPCC Rule (40 CFR Section 112) does not apply. However, the final EIS includes a recommendation that Broadwater prepare an SPCC plan (Sections 3.2.2.1 and 3.2.2.2 of the final EIS), that would be equivalent to the EPA plan for spill prevention. This plan would identify the design of storage facilities for lubricants (both offshore and onshore), handling procedures, spill response procedures, and many other details of the use and handling of these materials. Broadwater would also be required to prepare an Emergency Response Plan as described in Section 3.10.6 of the final EIS. This plan would provide the details needed to safely and effectively respond to emergencies. FERC must approve the plans prior to authorizing initiation of construction. We anticipate that Suffolk County would be involved in developing these plans; therefore, the concerns of the county would be addressed.

- LA1-16
 - Impurities such as longer-chained or branched aliphatic compounds are expected to accumulate in regasifier equipment on the FSRU. These impurities would be required to be purged and disposed of into the Long Island Sound. The DEIS fails to acknowledge the adverse impacts that these impurities will have on the water and marine life that inhabit Long Island Sound.
- LA1-17
 - Large quantities of chlorinated solvents are likely to be used for degreasing on-board machinery. The storage and discharge of such hazardous materials are covered by Article 12, yet the DEIS does not include any evaluation of these environmental issues.
- LA1-18
 - Fuel storage (most likely diesel fuel) for small auxiliary engines or on-board cranes, forklifts and derricks are not adequately addressed in the DEIS.
- LA1-19
 - Bilge water that may accumulate in storage tanks or piping may be contaminated and would have to be treated prior to disposal overboard. The contaminants and the treatment chemicals are of concern to Suffolk County and their impacts are not adequately addressed in the DEIS.
- LA1-20
 - Marine water intake screens for cooling water on both the FSRU and supply vessels will use antifouling chemicals to keep intake screens free of marine growth such as mussels, algae and aquatic plants. Chemicals, such as bleach, will then be discharged into the Long Island Sound, causing significant adverse impacts on the water quality and marine life. Once again, the DEIS fails to adequately address these issues.
- LA1-21
 - Broadwater proposes to discharge certain cooling water at elevated temperatures, likely to be as much as four degrees higher than the waters of Long Island Sound. Even a modest increase in water temperature of less than one degree can cause depletion of oxygen levels and

- LA1-16 As discussed in Section 3.2.3.2 of the final EIS, all wastewater generated onboard the FSRU that could not be treated to comply with NYSDEC SPDES standards, would be containerized and shipped to shore for appropriate disposal at an approved facility. Hazardous materials would be required for some operational activities on the proposed FSRU. These materials would be managed in accordance with regulatory requirements to prevent discharge to the Sound.
- LA1-17 There is no request by Broadwater to discharge chlorinated solvents into Long Island Sound. Accidental releases are managed through an SPCC plan. As described in response to comment LA1-15, we anticipate that the concerns of the county regarding the use of chlorinated solvents on the FSRU would be addressed in the SPCC plan and Emergency Response Plan that must be reviewed and approved by FERC prior to authorizing the initiation of construction.
- LA1-18 As described in response to comment LA1-15, we anticipate that the concerns of the county regarding fuel storage would be addressed in the SPCC plan and Emergency Response Plan that must be reviewed and approved by FERC prior to authorizing the initiation of construction.
- LA1-19 Section 3.2.3.2 of the final EIS discusses the containment, collection, and treatment of wastewater. All bilge water that may be contaminated would be collected and stored in the bilge holding tank until it could be treated (either onboard or onshore).
- LA1-20 As discussed in Section 3.2.3.2 of the final EIS, the intake screens for the FSRU would be manually cleaned. Thus, no chemicals related to the cleaning of intake screens would be discharged to Long Island Sound.
- LA1-21 The commentor's basis is unclear for asserting that a 1-degree change in water temperature could cause a massive fish kill, because the ambient water temperatures of Long Island Sound are highly variable. All discharges would be subject to New York State water quality regulations and Project-specific SPDES requirements designed to protect the environment. As discussed in Section 3.2.3.2 of the final EIS, operation of the proposed FSRU would not alter ambient water temperatures. Broadwater estimates that the engine-cooling discharge water from a steam-powered LNG carrier would approximate ambient temperature conditions (within 1°F) within 75 feet of the point of discharge. Because all discharges would be conducted in accordance with Project-specific SPDES requirements, impacts to marine resources (including lobster) are not expected. **Local Agencies and Municipalities Comments**

LA1 – Farrell Fritz, P.C.

- LA1-21 massive fish kills in Long Island Sound. A four-degree hike in temperature will have significant detrimental environmental impacts to Long Island Sound. This is virtually ignored in the DEIS.
 - Depending on the angle of tanker approach and exit, the proposal would result in the interruption of all boat traffic in and around Block Island, Montauk Point, Point Judith, The Race and all points in Long Island Sound west to Wading River up to 312 days annually.
 - Massive disruption of the Cross Sound Ferry Service from Orient to New London, and ferry service from Montauk and Point Judith to Block Island will occur because of the exclusion zones. The DEIS labels these interruption as "minor" without any basis for doing so.
 - Long Island Sound, including parts of the FSRU mooring areas and vessel routes, has been designated as Essential Fish Habitats for 19 fish species, which would be impacted by entrainment during water intake in the FSRU and supply vessels. The DEIS fails to address these issues.
 - The FSRU will take on 5.5 to 8.2 million gallons per day ("mgd") of water from Long Island Sound, which will be treated with biocide and discharged back into the Sound. The LNG supply vessels will each have average water intakes of 22.7 mgd. The impact of such a large mass of biocide on marine life in the Long Island Sound is not adequately evaluated in the DEIS.
 - LNG supply vessels are likely to carry ballast water obtained from foreign locations and may well introduce invasive and harmful species into Long Island Sound or Block Island Sound. This is not adequately assessed in the DEIS.
 - As mentioned above, Article 12 of the Suffolk County Sanitary Code has jurisdiction over many aspects of the operation of the FSRU and supply vessels, in particular to the storage, handling and discharge of hazardous chemicals. The DEIS has failed to consider any provisions

- LA1-22 As indicated in response to comment LA1-6, although transit by carriers could result in localized and temporary delays for some vessels, the vast majority of marine vessel traffic using the waterways associated with the Project would not be affected.
- LA1-23 In response to the concerns expressed by Cross Sound Ferry, the assessment of impacts to ferry operations has been revised in Section 3.7.1.4 of the final EIS.
- LA1-24 Potential impacts to EFH are described in detail in Section 3.3.3.1 of the final EIS and in the EFH assessment in Appendix J.
- LA1-25 Section 3.2.3.2 of the final EIS provides an updated discussion of the potential impacts of water discharges. The associated discharges would be required to satisfy New York's water quality standards for SA waters and Project-specific SPDES permit requirements would reduce potential impacts to water resources.
- LA1-26 As described in Section 3.2.3.2 of the final EIS, LNG carriers would not be expected to discharge ballast water into Long Island Sound.
- LA1-27 Please see our response to comment LA1-15.

LA1-27 ↑ of Suffolk County's Code and is, thus, an incomplete and inadequate assessment of the environmental impacts of the proposed action.

- If approved, Broadwater will permanently take 950 acres of Long Island Sound surrounding the FSRU and bar the public from ever using the area. The USCG requires this exclusion zone to be enforced by armed boats and personnel. Further, the USCG requires that the LNG tankers used to supply the FSRU have moving security exclusion zones around them at all times of 1,722 acres, also enforced with armed gunboats and personnel. Mr. Minei's staff

LA1-28 [created a pictorial representation of the moving exclusion zone, which demonstrates that Broadwater will cause significant disruptions to other users of the Long Island Sound. See Exhibit B attached to Mr. Minei's affidavit. See also paragraph 15 of Mr. Minei's affidavit.

- Broadwater and the DEIS based their assessment on the assumption that the supply tankers will be traveling at the rate of ten knots. This assumption as to speed fails to take into account the erratic tides often found in Long Island Sound, the violent winds and the confluence of the waters of Block Island Sound and Long Island Sound, and the treacherous nature of The

LA1-29 [Race, a heavily used area of the Sound. Long-term displacement of commercial and recreational fisherman from The Race, one of the most productive striped bass fisheries in the northeast, will be commonplace if Broadwater is built.

It must be noted that in its January 18, 2007 filing with FERC, the United States Department of the Interior ("USDOl"), voiced its concerns about Broadwater's adverse impacts. The USDOl criticized the DEIS because it lacked critical data and failed to fully evaluate the

LA1-30 ↓ project's environmental impacts. The USDOl noted that Broadwater will: (1) adversely affect migrating and foraging piping plovers and terns (which are federally-listed endangered species);

LA1-28 Vessels wishing to cross the path of the proposed safety and security zone around an LNG carrier may need to wait about 15 minutes for the zone to pass or could slightly alter their routes to pass farther in front or behind the zone. The entire route would not be considered an exclusion zone, only the proposed safety and security zone around each LNG carrier (2,040 acres [3.2square miles]), and the LNG carriers would be integrated into the normal marine traffic of Long Island Sound. The impacts to commercial marine vessels due to LNG carrier transits are addressed in Section 3.7.1.4 of the final EIS, and the impacts to recreational boating and fishing are addressed in Section 3.5.5.1 of the final EIS.

LA1-29 If an LNG carrier passes through the Race while fishing vessels are present, the interruption would be temporary at most when it did occur. As described in Section 3.7.1.4 of the final EIS and Section 4.6.1.4 of the WSR (Appendix C of the final EIS), an LNG carrier and its proposed safety and security zone would not take up the entire channel of the Race, and some vessels would be able to remain in place in the Race and outside of the proposed safety and security zone. Temporary interruptions of vessels using the Race may occur periodically for the life of the Project, but the displacement would not be long term. 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).

Given the size of a typical LNG carrier, carriers would be able to maintain a 12- to 15-knot speed through a wide range of wind and sea conditions. However, if conditions arise that might significantly affect the speed or maneuverability of a carrier, permission to enter the Sound may not be granted. Further, the 15-minute transit time referred to in both the WSR and the final EIS for the proposed moving safety and security zone of a carrier to pass a point is based on a speed of 12 knots, not 10 knots. However, if a vessel was engaged in fishing operations in the deepest portions of the Race, it may be impacted for approximately 40 to 60 minutes. This longer time takes into consideration retrieving gear, getting underway, and returning to the location where the boat was before the LNG carrier and its proposed safety and security zone approached.

LA1-30 (2) impact fish and wildlife resources due to entrainment, impingement and the use of biocide chemicals; and (3) impact large areas of the seabed.⁸

LA1-31 The DEIS fails to adequately assess the events mentioned above and does not address the cumulative impacts of these events. This failure requires denial of the applications.

4. **Broadwater Violates The Safety and Security of the Residents of Suffolk County.**

There is considerable public opposition to the Broadwater Project primarily focusing on the inherent safety risks of the proposal. This is not tried and true technology. Rather, it is experimental, i.e., if approved, it will be the first floating FSRU ever built in the world. None exists today. In effect, Broadwater wants to make Long Island Sound a laboratory for a very risky and unproven experiment.

Safety is of paramount importance to Suffolk County. Safety is also of concern in FERC proceedings. In the *Weaver's Cove LNG* proceeding, FERC stated the following. "The primary consideration before us is whether the proposed Weaver's Cove facilities can be constructed and operated safely."⁹ Thus, not only must FERC be assured that Broadwater can be constructed and operated in a safe manner but Suffolk County and its residents and the State of New York must also be assured that all safety issues associated with the proposed project are sufficiently identified and assessed before any approvals or easements can be granted.

Broadwater has yet to provide any answer to Suffolk County's concerns about first responders from local communities not having the training, equipment and resources necessary to handle Broadwater-related emergencies. The fact that Broadwater intends to provide safety training to its on-board personnel fails to acknowledge that these on-board personnel may be

⁸ See January 18, 2007 Letter from USDO to FERC, with accession # 200701185049.
⁹ Order Granting Authority Under Section 3 of the Natural Gas Act and Issuing Certificate in *Weaver's Cove Energy, LLC et al* Docket No. CP04-36-000 (Issued July 15, 2005), 112 FERC ¶ 61,070. at p 12 ¶ 32.

LA1-30 The commentator misrepresents the contents of the January 18, 2007 U.S. Department of the Interior (USDO) letter, especially in regard to potential impacts to federally listed birds. More importantly, FWS subsequently concurred with our findings that the proposed Project would not be likely to adversely affect federally listed birds as described in Section 3.4 of the final EIS.

LA1-31 As described above, the commentator has misrepresented the contents and conclusions of the EIS. Cumulative impacts are discussed in Section 3.11 of the final EIS, explicitly including impacts on water quality, biological resources, visual resources, air quality, and marine transportation.

LA1-32

disabled by the emergency and that local rescue and fire squads must respond to such emergencies. Because it has failed to establish that its facility can be constructed and operated safely, and has yet to even prepare an Emergency Response Plan, it cannot be approved.

As noted in the accompanying affidavit of Commissioner Joseph F. Williams, SCFRES coordinates the response of the local fire departments located in Suffolk County. SCFRES also works with the Suffolk County Police Department to coordinate responses to 911 calls. SCFRES is also responsible for developing and implementing the County's Mutual Aid Plan, which was developed to respond to emergencies of all kinds. A copy of the current Mutual Aid Plan is attached as Exhibit B to Mr. Williams' affidavit.

No fire department located in Suffolk County has the equipment that would permit it to fight a fire on the FSRU or on the LNG supply vessels. Indeed, the vast majority of these fire departments lack boats. At best, a few fire departments may have 30-foot or 35-foot Boston Whalers, but none of these boats could be used to fight a water-based fire as they lack water-pumping ability to fight a fire of this type. The only fire boats that may have such water pumping abilities that are located near Long Island Sound are certain pumper boats owned by the New York City Fire Department. However, those boats generally do not pump more than 10,000 gallons per minute and are located more than 60 miles away from the proposed location of the FRSU.

Currently, if there is a marine-based fire in Long Island Sound, the USCG responds. It must be stressed that the USCG, in its Water Suitability Report, admitted in this proceeding that it lack sufficient boats and personnel to protect Broadwater. Thus, it is impossible for that agency to adequately respond to an emergency of any kind on the FSRU.

LA1-32

As stated in the final EIS (Sections 2.1.1.1, 2.3.1.1, 3.10.2.1, and 3.10.2.2), federal regulations, industry standards, and classification society rules would govern the safe design, construction, and operation of the FSRU. The Coast Guard has evaluated the safety and security aspects of operation of the FSRU (and the LNG carriers). As reported in the WSR (Appendix C of the final EIS), the Coast Guard had preliminary determined that, with implementation of the mitigation measures it has recommended, operation of the Project would be manageable.

As noted above in our response to comment LA1-15, FERC would review Broadwater's Emergency Response Plan and would not authorize initiation of construction until approving the plan. The plan would address the potential need for first responders to assist in an emergency onboard the FSRU and would be developed by the Coast Guard, Broadwater, and the agencies and municipalities that would provide responders. Therefore, the review and initial approval of the Project, if warranted, does not need to be delayed at this time.

LA1 – Farrell Fritz, P.C.

Further, having shown that Broadwater, FERC, the USCG and the DEIS have not answered several questions about responding to emergencies at the FSRU or its supply tankers, local fire districts are unable to be the first responders because they lack the training and equipment to fight a water-based fire on the FSRU or supply vessels. Private firms also lack the needed equipment and training. Since none of the local first responders are capable of a rapid response to the marine-based structures, who will provide the fire and rescue services? Who will ferry the injured victims of the shore?

LA1-33

There are also concerns, not addressed in the DEIS, about other types of chemicals used on the FSRU and supply vessels. For example, the FSRU will store and use diesel fuel, sodium hypochlorite and ammonia among other highly regulated toxic chemicals. Although SCFRES has the legal obligation to coordinate the hazardous materials response for any discharges of these chemical, it does not have the equipment or training to do so on a water-based facility. In addition, even if fire boats used on Long Island Sound could get to the FSRU, they do not typically have the equipment necessary to address hazardous chemical spills. Once again, it is the USCG that typically responds to such releases, yet they admit they lack the resources to do so. Who will contain the spill of these materials?

LA1-34

We are also concerned about responding to fires and other emergencies at the on-shore facilities associated with Broadwater. Little information is provided about these appurtenant structures. However, the only way SCFRES and other first responders can respond is to have emergency response plans that are well-established and based upon known facts about what is stored at facilities. Here, because of the lack of information, no first responder would know what is stored or done at these on-shore operations.

LA1-35

LA1-33 Broadwater would also be required to prepare an Emergency Response Plan as described in Section 3.10.6 of the final EIS. FERC must approve the Emergency Response Plan prior to any final approval to begin construction.

LA1-34 As noted above in our response to comment LA1-33, FERC would review Broadwater’s Emergency Response Plan and would not authorize initiation of construction until approving the plan. As a result, prior to construction, relevant aspects of the emergency response needs for Project safety would be addressed by FERC and the Coast Guard, including the concerns raised by Suffolk County in this comment. The Coast Guard identified the resources that it needs to manage the Project in the WSR (Appendix C of the final EIS). The Project would not be allowed to operate if the necessary resources are not in place. Additionally, as part of its Facility Response Plan, Broadwater would be required to either have the necessary personnel, training, and equipment needed to respond to a spill or identify which oil spill response organization had been contracted to provide that support.

LA1-35 The onshore support for the Project would be housed in existing buildings and therefore generally would be subject to the same firefighting needs as the existing or past tenants. Information on stored materials required for firefighters would be included in the Emergency Response Plan and the SPCC plan (see our response to comment LA1-15), both of which would be developed in concert with the appropriate federal, state, and local agencies and would be filed with FERC for review and approval prior to initiation of construction. These plans would provide information on what would be stored at the onshore support facilities, who would be responsible for response to emergency situations, what initial response actions and notifications would occur in the event of an emergency, and other information important to first responders. Additionally, as part of its Facility Response Plan, Broadwater would be required to either have the necessary personnel, training, and equipment needed to respond to a spill or identify which oil spill response organization had been contracted to provide that support.

LA1-36

Furthermore, much of the Broadwater project will be located underwater, including parts of the FSRU, the YMS and the entire 22-mile pipeline. There have been no studies done and no evidence presented about leaks occurring underwater. Rather, all that is presented is speculation, which is wholly insufficient to support any type of emergency planning or response. In particular, given the extreme cold at which LNG is to be stored, there is no information about how to address a below-water hull failure and rapid release of a cryogenic liquid into Long Island Sound. Furthermore, there may well be conflicting fire fighting techniques that come into play as a natural gas fire is not fought the same way that a fire associated with the other chemicals on the FSRU are handled.

Overall, Suffolk County has the gravest concerns about the ability of any local first responder or private companies to respond to any emergency at the FSRU.

Suffolk County's concerns are buttressed by a report, issued in February 2006, by the New York State Office of Homeland Security entitled "Focus Report: Maritime Terrorist Threat." This report discusses safety and security concerns associated with facilities such as Broadwater's LNG proposal, among other maritime concerns. The report notes that there are serious security issues raised by foreign-flagged vessels loading LNG in poorly secured overseas ports and the lack of appropriate vetting processes to ensure that employees on LNG tankers are properly trained about safety and emergency procedures. The report also notes that little information is known about multiple system failures occurring simultaneously on the FSRU and tankers and notes that the available data is limited to assessing each system separately. The report also discusses the catastrophic consequences of an LNG tanker accident closing The Race in Long Island Sound, an issue that Broadwater sloughs off. Such an accident will significantly impact and impair other commercial and recreational users of Long Island Sound who use The

LA1-37

LA1-36

Section 3.10.3 of the final EIS has been expanded to include information on underwater releases of LNG. In addition, the Emergency Response Plan (described in Section 3.10.6 of the final EIS) would address all appropriate emergency response scenarios, including responses to underwater releases of LNG.

LA1-37

Terrorist threats to LNG carriers would be mitigated by the establishment of the proposed moving safety and security zone around each carrier, Coast Guard escorts, tug escorts, Coast Guard vessel arrival procedures, and other Coast Guard practices. The Emergency Response Plan (Section 3.10.6 of the final EIS) would also serve as a tool to provide a coordinated response to emergencies. The Emergency Response Plan would address the issue of a potential blockage of the Race due to an LNG carrier accident and responses such as rerouting marine traffic, removing the LNG carrier from the Race, and other key actions.

We do not anticipate that a closure of the Race would be long term; therefore, any such closure would not have as catastrophic an effect as suggested by Suffolk County. For example, the physical interference of marine traffic due to a fire from the accidental release of LNG would be short term, with the fire expected to burn out in about 1 to 2 hours. Even considering the time required to remove a disabled carrier from the Race, it is not likely that the Race would be shut down for a long period. In addition, many vessels that are not deep draft could use alternate routes to reach their destinations during any temporary closure of all or part of the Race due to an accident.

Information on what procedures Navy vessels would follow if the Race were closed for any period of time is considered classified and cannot be included in the EIS.

LA1-37 ↑
Race to enter and exit the Sound. Broadwater has provided no analysis of the impact on such LNG supply disruptions on its own FSRU operations. Broadwater's analysis also fails to provide any information on the impact on national security if The Race is blocked, which prevents United States Navy vessels from entering or exiting Long Island Sound.

Suffolk County's position is also buttressed by the USCG Water Suitability Report, which identifies major safety risks of the Broadwater Project. As noted above, the USCG evaluated the intensity of use of Long Island Sound by a few thousand vessels with AIS Tracking Systems in Block Island Sound and The Race, all in an area which must be traversed several times a week by the vessels supplying the FSRU. When non-AIS Tracking Systems vessels are included in the analysis, there are over 300,000 vessels using Long Island Sound. Because of this, the USCG notes in its Water Suitability Report that special precautions are necessary to protect the vessels carrying the LNG, as well as the FSRU facility.

The USCG also recognized safety concerns in Long Island Sound. The USCG notes that:

[t]he proposed frequency of LNG shipments to the terminal would be 2-3 times per week, on average. The total duration for operations from transit beginning at the Point Judith Pilot Station, discharging cargo, and ending with disembarking the pilot at Point Judith is expected to take approximately 40 hours per LNG carrier. At a transit speed ranging between 12 and 15 knots, from Point Judith Pilot Boarding Station to the proposed location of the FSRU, a distance of approximately 69.1 miles, transit would take between approximately 5 to 6 hours. The remainder of the time would be spent berthing, deberthing and conducting cargo operations, approximately 25 to 30 hours.¹⁰

The USCG further notes that because of the dangerous nature of the LNG cargo, the vessel carrying the LNG will be required to be met in the area of Point Judith, Rhode Island and escorted to and then through The Race, and then to the proposed LNG facility by armed gun boats carrying armed personnel. During this transit, the moving safety exclusion zones required

¹⁰ *Id.* at p. 56.

by the USCG will interfere with other users of Long Island Sound. As noted above, each LNG tanker must have exclusion zones of 4,000 yard buffer zone in front of the vessel, a 2,000 yard buffer zone at the stern of the vessel and 750 yards on each side of the ship.¹¹ Once the LNG tankers are attached to the FSRU, they will remain there for 12 to 18 hours under armed guards in the USCG-mandated FSRU exclusion zone.¹²

LA1-38

The USCG also acknowledges that adverse weather conditions, particularly in an area east of The Race and the Block Island Sound, are of grave concern because the wind speeds in those areas average about 15 miles per hour throughout the year, and the conditions are very similar to the conditions on the high seas. The Race is a deep navigable portion of the Sound generally thought to be only 1.4 miles wide and runs between Race Rock and Valiant Rock in the area of Block Island Sound.¹³ The USCG further notes that “there are always strong rips and swirls in the wake of all broken ground in The Race, except for about one-half hour at slack water. The rips are exceptionally heavy during heavy weather, and especially when a strong wind opposes the current or the current sets through against a heavy sea.”¹⁴ Under such circumstances, the 15 knot transit speed through The Race asserted by Broadwater is certainly not a realistic estimate of transit times through The Race, a fact acknowledged by the USCG.

In the winter months, the USCG notes that there is an added safety problem of ice flow and intense fog.¹⁵ All of this activity is occurring while other heavy commercial traffic is also attempting to transit the 1.4 mile wide Race and ferries are plying between Orient Point and New London, and the military is using its nuclear submarine base in Groton. Into this calculus, one

¹¹ *Id.* at p. 130.
¹² *Id.*
¹³ *Id.* at p. 77-78.
¹⁴ *Id.* at p. 78.
¹⁵ *Id.* at p. 79.

LA1-38

We are not aware of the Coast Guard stating that adverse weather conditions in the area east of the Race and in Block Island Sound “are of grave concern” as suggested by Suffolk County. The LNG carriers would likely experience more severe wind and weather conditions while crossing the Atlantic, and the normal sea and weather conditions of the Block Island Sound area would not be expected to adversely affect LNG carrier transit. Given the size of a typical LNG carrier, carriers would be able to maintain a 12- to 15-knot speed through a wide range of wind and sea conditions. However, if conditions arise that might significantly affect the speed or maneuverability of a carrier, permission to enter Block Island Sound or Long Island Sound may not be granted.

must add the fact that the USCG readily admits that it does not have the personnel or equipment to properly secure the safety of the FSRU and the LNG tankers.

The USCG also notes that Broadwater was a particular safety challenge due to the FSRU's location in a "thoroughfare used by a wide variety of waterway users."¹⁶ The USCG further admitted that the LNG vapor cloud from a collision in Long Island Sound could cross over Fisher's Island, Plum Island, and portions of the North Fork of Long Island before dispersing.¹⁷

Critically, analyzing the resources required to adequately and properly provide for security and safety of the Broadwater Project, the USCG states:

Based on current levels of mission activity, 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. Obtaining the required resources would require either curtailing current activities within the Sector, reassigning resources from outside of the Sector, or for the Coast Guard to seek additional resources through the budget process...

In addition to the resources identified in Section 7.2, additional Coast Guard resources may be required to implement the vessel traffic management recommendations that were identified in Sections 4.6.1.6 and 4.6.1.7 as well as some of the maritime security measures identified in Section 5.5 of the SSI portion of this Report. The resources required to implement these measures cannot be identified insofar as additional analysis is required to establish specific operational capabilities. Resource requirements would be identified after the operational capabilities are established. **State or local law enforcement agencies could potentially assist with implementing some of the measures identified for managing potential risks to maritime security associated with the proposed Broadwater Energy project. With the appropriate legal agreement (i.e. Memorandum of Understanding), State law enforcement personnel could enforce Coast Guard safety or security zones either around the**

¹⁶ *Id.* at p. 104.

¹⁷ *Id.* at 111.

FSRU or the transiting LNG carrier. This assumes the state law enforcement agency has the appropriately trained and outfitted personnel in addition to small boats capable of operating in the most probable worst case sea condition of Long Island Sound. Currently the agencies that could potentially provide such assistance do not have the necessary personnel, training, or equipment.¹⁸ (Emphasis added.)

The above is a candid admission by the USCG that it does not have the resources to provide any safety and security for the FSRU and the LNG tankers.

Broadwater also identifies significant safety issues in its filings with FERC. Some of these are described below.

History of Marine Accidents Involving LNG

Broadwater admits that at least 20 marine accidents involving LNG facilities and tankers have occurred worldwide. See Broadwater Resource Report Nos. 10 and 11. Broadwater further admits that eight of these incidents involved spillage of LNG. *Id.* It also admits that LNG carrier groundings and collisions have occurred, including one with a submarine surfacing beneath an LNG carrier. *Id.* Groton, Connecticut, located on Long Island Sound near The Race and the proposed route for the LNG tankers, is home to a United States Navy nuclear submarine base.

Flammable Vapor Release

LA1-39 [Broadwater admits that an LNG spill may occur and if the material does not ignite into a fireball, a large LNG vapor cloud will be dispersed over a wide area of Long Island Sound. *Id.*

Fracture of Tanks from Exposure to LNG

LA1-40 [Broadwater admits that the failure of two or more LNG cargo tanks due to exposure to ultra-cold LNG would increase the extent of the fireball or vapor cloud by twenty to thirty percent. *Id.*

¹⁸ *Id.* at p. 156-157.

LA1-39 The Suffolk County comment regarding a vapor cloud cites a report prepared by Broadwater. FERC and the Coast Guard analyzed this issue and presented information regarding the area of potential impact due to dispersion of an ignitable vapor cloud and the basis for cloud formation in Section 3.10.4.3 of the final EIS and in Section 1.4.3 of the WSR (Appendix C of the final EIS). Although the formation of a vapor cloud is theoretically possible, it is unlikely to occur since a release of the magnitude required to form a large cloud would require either (1) a major release of LNG due to an accident or intentional rupture of the hull, which would be accompanied by an ignition source that would ignite the vaporized LNG and prevent formation of a vapor cloud; or (2) an intentional or unintentional release of LNG (such as opening an LNG transfer valve on a carrier that is not berthed at the FSRU) that results in a large volume of LNG being released without an ignition source. Further, the distance presented for vapor cloud travel is not a radius from the spill; the stated distance of vapor travel would extend in only one direction - downwind of the spill.

LA1-40 As stated in the Sandia Report, and as supported by 12 of 16 experts surveyed in the GAO Report (GAO 2007), the expert consensus is that an increase of 20 to 30 percent in hazard distance for heat hazard from an LNG pool fire would occur due to a multiple tank failure scenario. The assumption used for determining vapor cloud Hazard Zone 3 for the Broadwater consequence analysis presented in Section 1.4 of the WSR (Appendix C of the final EIS) and Section 3.10.4.3 of the final EIS includes simultaneous release from three tanks without gas ignition.

Remoteness of Site is not a Panacea

Broadwater admits that the remoteness of the site does not eliminate safety risks to the public. Broadwater's Resource Reports note that: "[a]ccidents could occur on the FSRU, on transiting or berthed LNG carriers, or during the performance of facility support operations. Despite the facility's remote location, such accidents could impact the public, facility personnel, or the facility itself." *Id.* at 11-13.

Sloshing of LNG Damaging Membrane Containment System

Broadwater admits that "forces produced by wave action acting on the FSRU in its marine environment could cause sloshing of LNG in the cargo tanks on the FSRU, potentially damaging the membrane containment system." *Id.* at 11-19.

Yoke Mooring Never Attempted for an FSRU

Broadwater admits that a "yoke mooring system has not been used in conjunction with an FSRU application . . ." *Id.* at 11-27. Broadwater is admittedly using untested technology.

Simulations Show LNG Vessel Berthing May be Unsafe

Broadwater conducted a study in which it simulated an LNG vessel's berthing with the FSRU. Broadwater admits that "four of the 25 simulations resulted in less than acceptable safety margins." *Id.* at 11-46. That means that berthing operations were unsafe more than fifteen percent of the time. Assuming there are only two LNG offloads per week (a conservative estimate), that means that there will be approximately 16 unsafe offloads per year.

Broadwater's Inability to Comply With State Safety Statutes and Regulations

The New York State Department of Public Service ("NYSDPS") has been designated as the State's liaison with Broadwater for purposes of "consulting with FERC on all siting and safety matters regarding Broadwater's applications." NYSDPS Safety Advisory Report, dated

LA1-41 February 28, 2006 at 2-3. The NYSDPS identified many New York statutes with which Broadwater cannot comply. For example, “[s]ince the structure is floating on water, the exiting system of the facility could never terminate at a public way. Therefore, the exiting system cannot meet the requirements of the Building Code.” *Id.* at Appendix B at 1. Similarly, although Broadwater proposes to “dump[] [spilled] LNG to the port side of the FSRU . . . [t]his does not meet the intent of isolation” required by the State Fire Code. *Id.* at Appendix C at 1. Other state-law safety violations are identified throughout that report. *See, Id.* at Appendix A-D.

5. **Broadwater Is Inconsistent With And Violates The New York State Coastal Zone Management Policies.**

LA1-42 Broadwater cannot be authorized by FERC, the NYSDOS, the USACE and all other governmental agencies from which it requires approval because the proposed project is wholly inconsistent with and violates New York State’s Coastal Zone Management Program (the “CZM”) including the Long Island Sound Coastal Management Plan (“LISCMP”), which is administered by the NYSDOS. This fundamental defect is fatal to Broadwater’s applications.

In its revised Coastal Consistency Certification in October 2006, Broadwater baldly asserts that its proposal is consistent with the LISCMP. However, even a cursory review of that submission demonstrates that Broadwater’s assertion is unfounded. In commenting upon Broadwater’s requests for easements submitted to the New York State Office of General Services (“NYSOGS”) in the fall of 2006, the Division of Coastal Resources of the NYSDOS notes its concern that Broadwater is inconsistent with several policies in the CZM.¹⁹ These concerns include the following: (1) whether the proposal to permanently anchor an industrial facility in the middle of Long Island Sound will impair the character of the Sound and its coastal communities, in violation of LISCMP Policy # 1; (2) whether Broadwater will limit public

¹⁹ See letter from Jeffrey Zappieri, NYSDOS’s Supervisor of Consistency Review to Alan Bauder, of NYSOGS’s Bureau of Land Management, dated December 20, 2006, a copy of which is attached hereto as Exhibit “B”.

LA1-41 Section 3.10.2.1 of the final EIS presents the codes and standards applicable to the Project. In the design review of the FSRU, FERC and the Coast Guard would consider the design requirements noted by the New York State Department of Public Services in its Safety Advisory Report (included in Appendix E of the final EIS). The overall design of the FSRU has been taken into account relative to environmental impacts. Further design details are not anticipated to change the original assessment of environmental impact, and consideration of detailed design issues is beyond the scope of a NEPA EIS.

LA1-42 Please see our response to comment LA1-8.

LA1 – Farrell Fritz, P.C.

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access to portions of the Long Island Sound that are held in public trust, in violation of LISCMP Policy # 9; and (3) whether Broadwater will displace, adversely impact or interfere with water-dependent commercial and recreational fisheries, navigation, and general recreational uses, a violation of LISCMP Policy # 10.

LA1-43

Suffolk County concurs with these concerns. Broadwater will violate these policies as well as other policies contained in the LISCMP. As a result, Broadwater can never be approved.

LA1-43 Please see response to comment LA1-8. (JW)

Policy # 1 – Broadwater Violates This Policy Because It Will Cause Industrialization of Long Island Sound.

LA1-44 We have addressed compliance with coastal zone management policies (presented in comments on pages 28 through 32 of Letter LA1) in response to comment LA1-8.

Policy # 1 seeks to foster coastal development that enhances community character, preserve open space and minimize adverse impacts. Broadwater runs counter to each of these goals. While it is true that the Long Island Sound is used for commercial and recreational purposes every day, Broadwater's proposal is different from these long-established uses. These uses do not involve the permanent exclusion of other Long Island Sound users from vast stretches of the Sound as would occur if Broadwater was built. Broadwater proposes to permanently anchor a floating LNG factory smack in the middle of the commercial shipping lanes of the Long Island Sound. Surrounding this factory would be a 950-acre exclusion zone that no other user of the Sound would be allowed to use or transit through ever. In addition, floating moving exclusion zones of 1,722 acres would surround each supply vessel as it transits through Long Island Sound that would be off-limits for other users of the Sound. These exclusion zones will be highly disruptive to other users of Long Island Sound.

LA1-44

Allowing extensive exclusion zones and granting exclusive use of vast areas of Long Island Sound to private companies sets a precedent for additional offshore industrial development of the Sound. Is the Sound to be home for a series of off-shore factories that intrude on other users of Long Island Sound, and which interfere with and pollute the sensitive

ecosystem of this protected estuary? Such industrialization of Long Island Sound is anathema to LISCMZ Policy # 1.

Broadwater gives short shrift to the concern that its proposal would result in industrialization of the Sound, claiming that these concerns are “unfounded.”²⁰ However, Broadwater’s self-serving conclusory opinion is without basis and ignores the fact that strict adherence to the principles of LISCMZ Policy # 1 has in fact prevented industrialization of the Sound. Moreover, Broadwater’s contention that its proposal is no different than existing terminals located in Long Island Sound, such as the oil docks at Northville and Northport, is absurd. None of these facilities are located in mid-Sound in the middle of shipping lanes, none require the vast exclusion zones that are mandated for Broadwater by the USCG, and none are factories that convert LNG to its gaseous state.

Policy # 9 - Broadwater Violates This Policy Because It Conflicts With The Public Trust Doctrine.

Policy # 9 strives to preserve public access to and recreational uses of Long Island Sound. Policy # 9 will be violated by the Broadwater project. It will entail the permanent anchoring of a regasification factory in the middle of Long Island Sound. The FRSU and YMS will be surrounded by a 950-acre exclusion zone that will exist for the life of the facility. Its supply vessels will *lop off* another 1,722 floating acres from public use each time one of the vessels transits through Long Island Sound. There are expected to be upwards of 312 transits per year, each taking 12 to 18 hours complete, i.e., enter the Sound, transit through the Sound to the FRSU, unload the LNG and leave the Sound. Such denial of public access and interference with the public use of Long Island Sound is wholly inconsistent with Policy # 9.

²⁰ See Broadwater’s Supplemental Coastal Consistency Certification, at pp. 12-13.

LA1-44

LA1-44

Policy # 10 - Broadwater Violates This Policy Because It Will Interfere With Recreational and Commercial Uses of Long Island Sound.

Policy # 10 seeks to protect Long Island Sound water-dependent uses. Broadwater violates Policy # 10. Long Island Sound is home to 8 million people who reside by its shorelines. It is home to over 300,000 recreational boats and several thousand commercial vessels. Five billion dollars of the region's economy is Long Island Sound-based. Broadwater will interfere with this vital resource. There are thousands of commercial and recreational fishing vessels that use the Sound. They will be permanently excluded from vast areas of the Sound, including some of the most heavily used fishing areas of the Sound. Broadwater will interfere with cross-Sound transportation. These interferences are not transitory, rather, they will be pervasive and constant. There can be no doubt that Broadwater is wholly inconsistent with and violates Policy # 10.

In addition, to the LISCMP Policies identified by the NYSDOS, discussed above, Broadwater violates the following LISCMP Policies.

Policy # 3 - Broadwater Violates This Policy Because It Will Be Visually Intrusive.

Policy # 3 seeks to protect and improve the visual qualities throughout the coastal area. Broadwater's massive structures will tower over the water surface. The large supply tankers will also adversely impact visual vistas. Broadwater's contention that its location 9 miles off-shore somehow ameliorates its visual impacts ignores the sheer size of its proposed structures and the fact that visual observations of its off-shore factory will not be limited to land-based viewing.

Policy # 5 - Broadwater Violates This Policy Because It Impairs Water Quality.

Policy # 5 seeks to protect and improve the water quality of Long Island Sound. Broadwater violates this policy by its continuous discharges of heated water and biocide-containing water into the estuary. Broadwater also will discharge a whole host of chemicals used

to operate the machinery on the FSRU. The supply tankers will discharge similar pollutants. These activities will impair, not improve, the water quality of Long Island Sound.

Policy # 6 – Broadwater Violates This Policy Because It Will Impair Long Island Sound's Ecosystem.

Policy # 6 seeks to protect and restore the fragile ecosystem located in Long Island Sound. Broadwater threatens this ecosystem by its continuous thermal and chemical discharges, and by its permanent and floating exclusion zones, which remove critical fishing habitats from public use. The ballast requirements that will drain water from Long Island Sound will cause impingement and destruction of marine life. Broadwater's actions are wholly inconsistent with this Policy.

Policy # 7 - Broadwater Violates This Policy Because It Will Adversely Affect Air Quality.

Policy # 7 seeks to enhance the air quality of Long Island Sound. Broadwater threatens the air quality. Massive quantities of ozone-depleting refrigerants will be used on the FSRU and the supply tankers. Discharges of such chemicals through equipment failure, negligence or deliberate acts will adversely impact Long Island Sound. Moreover, Long Island Sound is located in a non-attainment zone for several criteria air pollutants. Broadwater will use, store and discharge these hazardous materials into the air, in violation of the law and this policy.

Policy # 8 – Broadwater Violates This Policy As It Will Cause Environmental Degradation.

Policy # 8 seeks to minimize environmental degradation of Long Island Sound from solid and hazardous wastes. Broadwater does nothing to foster this policy. Rather, Broadwater will degrade the environment by its thermal and chemical discharges, by its use of ballast water and by its construction, which will disturb critical underwater areas of the Sound.

LA1-44

LA1-44 ↑

Policy # 13 - Broadwater Violates This Policy Because It Is Unsafe.

Policy # 13 requires, in pertinent part, that energy facilities, including LNG facilities “must be safely sited and operated.” As discussed at length in this document and in the accompanying affidavits, Broadwater cannot meet this policy as it cannot be operated safely.

LA1-45 [

6. Hearing

Broadwater raises significant safety, security and environmental concerns that cannot be properly evaluated without an evidentiary hearing. A full examination of all impacts must be analyzed in an open and public forum in which all parties may present real evidence subject to the time-honored test of cross-examination. The safety, security and environmental integrity of Long Island Sound demand it.

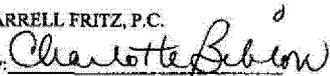
CONCLUSION

For the reasons listed above, Suffolk County urges FERC, USACE, NYSDOS and all other agencies involved in this matter to deny Broadwater’s applications in their entirety. The safety, security and environmental health of Long Island Sound and the safety, security and health of the area’s millions of residents demand such a result.

Dated: Uniondale, NY
January 22, 2007

Respectfully submitted,

FARRELL FRITZ, P.C.

By: 
 Charlotte Biblow, Esq.
 John M. Armentano, Esq.
 Attorneys for the County of Suffolk, New York
 1320 Reckson Plaza
 Uniondale, New York 11556-1320
 (516) 227-0700
cbiblow@farrellfritz.com
jamentano@farrellfritz.com

LA1-45 The Commission will hold a hearing on the Broadwater Project as a part of its decision-making process. Information on the hearing will be provided to interveners and other interested parties in accordance with FERC requirements.

LA1 – Farrell Fritz, P.C.

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Of Counsel:

G.S. Peter Bergen, Esq.
27 Pine Street
Port Washington, New York 11050
pbergen@optonline.net

To:

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

Via Federal Express
US Army Corps of Engineers
New York District
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278-0090
Attention: Regulatory Branch

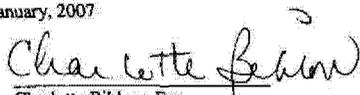
Via Federal Express
New York State Department of State
Consistency Review Unit
Division of Coastal Resources
41 State Street
Albany, New York 12231

All counsel on FERC's service list

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Uniondale, New York, this 22nd day of January, 2007:


Charlotte Biblow, Esq.

Farrell Fritz, P.C.
Attorneys for the
County of Suffolk, New York
1320 Reckson Plaza
Uniondale, NY 11556-1320
Tel.: (516) 227-0686
Fax.: (516) 336-2266
cbiblow@farrellfritz.com

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Exhibit A

Intro. Res. No. 1806-2006 Laid on Table 6/13/2006
Introduced by Presiding Officer, on request of the County Executive, Deputy Presiding Officer
Victoria-Fisher and Legislator Cooper

**RESOLUTION NO. 621 -2006, ADOPTING LOCAL LAW
NO. 40 -2006, A LOCAL LAW TO PROHIBIT THE
CONSTRUCTION AND OPERATION OF LIQUEFIED NATURAL
GAS (LNG) FLOATING STORAGE REGASIFICATION UNITS IN
THE LONG ISLAND SOUND**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on June 27, 2006, a proposed local law entitled, "A LOCAL LAW TO PROHIBIT THE CONSTRUCTION AND OPERATION OF LIQUEFIED NATURAL GAS (LNG) FLOATING STORAGE REGASIFICATION UNITS IN THE LONG ISLAND SOUND," and said local law in final form is the same as when presented and introduced; now, therefore, be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 40 -2006, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO PROHIBIT THE CONSTRUCTION AND OPERATION OF
LIQUEFIED NATURAL GAS (LNG) FLOATING STORAGE REGASIFICATION
UNITS IN THE LONG ISLAND SOUND**

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK, as follows:

Section 1. Legislative Intent

This Legislature hereby finds and determines that the New York State Legislature has conferred upon Suffolk County the right to regulate its abutting navigable and tidal waters.

This Legislature hereby finds and determines that the ecology of Long Island Sound and the health, safety and security of those who are adjacent, or approximate to those waters must be protected.

This Legislature further finds and determines that the State's codification of the County's jurisdiction is historical in origin and is derived from royal land grants, patents, and laws establishing the boundaries of the County over the waters of the Long Island Sound to the Connecticut State Line, as evidenced by, among other laws and documents, Chapter 665 of the Laws of 1881, "An Act Extending Jurisdiction of Queens and Suffolk Counties . . . Over the Waters of Long Island Sound."

This Legislature further finds and determines that the New York State Legislature, through Navigation Law § 1 and 2(4), further established the County's jurisdiction to protect the waters of the Long Island Sound by exempting from the definition of "navigable waters of the state" all tidewaters bordering on and lying within the boundaries of Nassau and Suffolk Counties.

This Legislature also finds and determines that Suffolk County has consistently maintained jurisdiction and regulation of all tidal waters/tidewaters bordering on and lying within its boundaries.

This Legislature hereby finds that Liquefied Natural Gas ("LNG") facilities may pose significant health, economic, safety, security and environmental hazards to the Long Island Sound.

Therefore, the purpose of this law is to prohibit, by the exercise of the County's jurisdiction over its tidal waters/tidewaters, the construction and/or operation of LNG floating storage regasification units or similar LNG facilities in Long Island Sound for health, safety, security and environmental reasons.

Section 2. Amendments.

1. The Suffolk County Code is hereby amended by the addition of a new Chapter 109 to Part II of the Administrative Local Laws as follows:

Chapter 109. Liquefied Natural Gas (LNG) Floating Storage Regasification Units Prohibition

§ 109-1. Definitions

A. "Person" shall mean an individual, a partnership, an unincorporated association, a corporation or any other legal entity.

B. "Construct" shall mean to build, assemble, place, erect or install.

C. "Action" shall mean any steps taken to initiate or advance a liquefied natural gas (LNG) floating storage regasification unit project.

§ 109-2. Prohibited Acts

It shall be unlawful for any person to construct any type of liquefied natural gas (LNG) floating storage regasification unit in or on the tidal waters/tidewaters of the Long Island Sound bordering on and lying within the boundaries of Suffolk County.

Section 3. Applicability.

This law shall apply to any action taken at any time to initiate or advance a liquefied natural gas (LNG) floating storage regasification unit project.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision,

section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5 (a) (20) of Title 8 of the NEW YORK CODE OF RULES AND REGULATIONS (8 NYCRR) and within the meaning of Article 8 of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 6. Effective Date.

This law shall take effect upon filing in the Office of the Secretary of State and apply to any action taken at any time to install or advance a liquefied natural gas (LNG) floating storage regasification unit project.

[] Brackets denote deletion of existing language
 Underlining denotes addition of new language

DATED: August 8, 2006

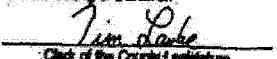
APPROVED BY

 County Executive of Suffolk County
 Date: August 28th, 2006

SUFFOLK COUNTY
 County Legislature
 RIVERHEAD, N.Y.

This is to Certify That I, TIM LAURE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution held on file in this office, and which was duly adopted by the County Legislature of said County on August 8, 2006, and signed by the County Executive on August 28, 2006, after a public hearing duly held on August 28, 2006, and that this same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk on


 Tim LaRue
 Clerk of the County Legislature



STATE OF NEW YORK
DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231-0001

GEORGE E. PATAKI
GOVERNOR

CHRISTOPHER L. JACOBS
SECRETARY OF STATE

December 20th, 2006

NYS Office of General Services
Bureau of Land Management
26th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242

Re: F-2006-0345
Federal Energy Regulatory Commission (CP06-54,
CP06-55) and U.S. Army Corps of Engineers/New
York District (2006-00265), U.S. Coast Guard-Sector
Long Island, NYS Department of Environmental
Conservation, and NYS Office of General Services
(LUW 001038); Long Island Sound: Towns of
Smithtown, Brookhaven, Riverhead and Southold;
Suffolk County; Broadwater Energy, LLC, Broadwater
Pipeline LLC

Dear Mr. Bauder,

In response to your Notice of Availability of Review of the Broadwater application dated December 5, 2006, the NYS Department of State, Division of Coastal Resources (DOS) submits the following comments:

Broadwater has submitted its certification to DOS for consistency with the New York State Coastal Management Program and the relevant policies as developed under the Long Island Sound Regional Coastal Management Program (LISCMP). DOS commenced review of this project on November 17, 2006 upon the receipt of the Draft Environmental Impact Statement from the Federal Energy Regulatory Commission. DOS has six months to complete the review from the start date.

The application to OGS involves an easement of public trust submerged lands and waters. Policies 1, 9, and 10 of the LISCMP are relevant to OGS in its review of the proposed easement. These policies, their subpolicies, and a summary of issues are listed below:

Policy 1: Foster a pattern of development in the Long Island Sound (LIS) 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

- **Subpolicy 1.1: Concentrate development and redevelopment in or adjacent to traditional communities**
- **Subpolicy 1.2: Ensure that development or uses take appropriate advantage of their coastal location**
- **Subpolicy 1.3: Protect stable residential areas**
- **Subpolicy 1.4: Maintain and enhance natural areas, recreation, open space, and**

- agricultural lands.
- *Subpolicy 1.5: Minimize adverse impacts of new development and redevelopment.*

There is concern that a semi-permanent industrial facility in the middle of the LIS could impair the character of the Sound and of its traditional coastal communities that Policy 1 seeks to advance.

Policy 9: Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the LIS coastal area.

- *Subpolicy 9.1: Promote appropriate and adequate physical public access and recreation throughout the coastal area.*
- *Subpolicy 9.2: Provide public visual access from public lands to coastal lands and waters or open space at all sites where physically practical.*
- *Subpolicy 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.*
- *Subpolicy 9.4: Assure public access to public trust lands and navigable waters.*

There is concern that the proposed project will limit public access to a portion of the LIS area currently held in public trust. Policy 9 provides guidance in considering the conditions for minimum standards of public access.

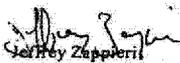
Policy 10: Protect the LIS's water-dependent uses and promote siting of new water-dependent uses in suitable locations.

- *Subpolicy 10.1: Protect existing water-dependent uses.*
- *Subpolicy 10.2: Promote maritime centers as the most suitable locations for water-dependent uses.*
- *Subpolicy 10.3: Allow for development of new water-dependent uses outside of maritime centers.*
- *Subpolicy 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.*
- *Subpolicy 10.5: Minimize adverse impacts of new and expanding water-dependent uses, provide for their safe operation, and maintain regionally important uses.*
- *Subpolicy 10.6: Provide sufficient infrastructure for water-dependent uses.*
- *Subpolicy 10.7: Promote efficient harbor operation.*

There is concern that the proposed project, involving both water-dependent and non-water dependent uses, could potentially displace, adversely impact or interfere with water-dependent commercial and recreational fisheries, navigation, and general recreational uses that Policy 10 seeks to support.

DOS' policy analysis in our final decision letter will contain additional information and will be available to OGS for consultation on this matter.

Sincerely,


 Jeffrey Zappardi
 Supervisor of Consistency Review
 Division of Coastal Resources

cc: William Little, NYSDEC
 Pam Otis, NYS OPRHP
 James Martin, FERC ✓



1320 Jackson Plaza
Uniondale, New York 11556-1320
Telephone 516.227.0700
Fax 516.227.0777
www.farrellfritz.com

Charlotte Biblow
Partner

Direct Dial 516.227.0686
Direct Fax 516.336.2266
cbiblow@farrellfritz.com

Our File No.
19301-100

January 22, 2007

Via Federal Express

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

FILED
OFFICE OF THE
SECRETARY
2007 JAN 23 A 11:21
FEDERAL ENERGY
REGULATORY COMMISSION

Re: Broadwater Energy – LNG Project
FERC Docket Nos.: CP06-54-000
CP06-55-000
CP06-56-000

Dear Secretary Salas:

This firm represents the County of Suffolk, New York, ("Suffolk County") an intervener party in the above-referenced proceedings. Enclosed are the original and two copies of Suffolk County's comments and objections to the November 2006 Draft Environmental Impact Statement ("DEIS") concerning the Broadwater project. Suffolk County's submission is comprised of its Comments, Affidavits of Vito A. Minei and Joseph F. Williams and Exhibits annexed thereto. Suffolk County objects to the Broadwater project for the reasons stated in its submission and respectfully requests that FERC consider these reasons and deny Broadwater's applications. Please file this submission in the FERC dockets for this matter. As set forth in the FERC DEIS Notice, we labeled one of the copies "Attention Gas 3, PJ-11.3".

Thank you.

Very truly yours,

Charlotte Biblow
Charlotte Biblow

cc: All counsel on FERC's service list (w/enclosure)

FERC-317(2)169-01

Bridgethampton • East Hampton • Melville • New York

LA1 – Farrell Fritz, P.C.

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2. I submit this affidavit in support of the comments of County of Suffolk, New York ("Suffolk County") to the Draft Environmental Impact Statement ("DEIS") prepared by the Federal Energy Regulatory Commission ("FERC"), the November 24, 2006 Public Notice issued by the United States Army Corps of Engineers ("USACE") and the December 6, 2006 Public Notice of the New York State Department of State ("NYSDOS"), all of which concern the proposed project of Broadwater Energy LLC and Broadwater Pipeline LLC (collectively "Broadwater") in Long Island Sound. Suffolk County opposes the Broadwater project on many grounds, some of which are explained in greater detail in this affidavit.

3. I am a licensed professional engineer in the State of New York and I have held that license since 1974. I obtained a B.S. Degree in Civil Engineering from Villanova University in 1969. I obtained an M.S. Degree in Civil Engineering from New York University in 1975.

4. I began working for Suffolk County in 1972, specializing in groundwater and surface water quality protection, pollution prevention/mitigation and environmental management. I became the Director of the DEQ for the SCDHS in December 1999. In that position, I oversee all technical and administrative environmental programs of SCDHS. DEQ currently has a staff of approximately 160 professionals and support personnel. DEQ's 2007 annual operating budget is approximately \$15 million. I am generally responsible for all environmental quality issues that involve Suffolk County. Attached as Exhibit A is a copy of my curriculum vitae, which describes in greater detail my education, training and experience.

5. As noted above, I submit this affidavit in opposition to the Broadwater liquefied natural gas ("LNG") project, in which Broadwater proposes to permanently locate a floating storage regasification unit ("FSRU"), a yoke mooring system ("YMS") and 22-mile underwater pipeline in Long Island Sound, within the waters under the jurisdiction of Suffolk

County. The FSRU and YMS are proposed by Broadwater to be located approximately nine miles north of the Suffolk County shoreline.

6. Broadwater's proposed FSRU is an enormous storage and processing facility into which LNG is to be supplied by large internationally-flagged tankers. Broadwater intends to regasify the stored LNG at the FSRU and discharge the gas into a 22-mile pipeline for ultimate connection to an existing pipeline operated by another company.

7. The SCDHS had significant concerns about the Broadwater proposal, which were not adequately evaluated in the DEIS. In fact, several of our concerns were not evaluated at all in the DEIS.

8. At the outset, it must be noted that Broadwater's FSRU and YMS are very large floating industrial facilities. Nothing similar has ever been permanently anchored in Long Island Sound. The FSRU, alone, is approximately a quarter-mile long, 80 feet in height above the water and 200 feet in width. The YMS is proposed to be embedded in the seabed and rise above the surface water by about 50 feet. In addition, the United States Coast Guard ("USCG"), in its September 2006 Water Suitability Report, requires a permanent exclusion zone around these structures which is 950 acres in size. The USCG also requires that each supply vessel be surrounded by a 1,722 acre exclusion zone that moves with the vessel as it transits from the Atlantic Ocean, through Block Island Sound and into and through the Long Island Sound.

9. Broadwater proposes to supply the FSRU by two or three deliveries of LNG each week, all of which supply vessels and LNG will be coming from foreign countries. The supply vessels would follow a route from Point Judith, Rhode Island, through The Race and eastern and central basins of the Long Island Sound, until they attach to the FSRU for the transfer of the LNG. In addition, a second route is also possible, going through Block Island Sound around Montauk Point, then through The Race, and the eastern and central basins of the Long Island Sound until the

supply vessels attach to the FSRU for unloading. It must be noted that The Race is a heavily used recreational and commercial fishing area. It is a geographically constricted area of the Sound with a large tidal exchange through uneven depths which results in generally rough waters and erratic currents.

10. Suffolk County has numerous objections to the Broadwater proposal. From my prospective as Director of the DEQ, responsible for the environmental quality and management, the Broadwater proposal presents many adverse environmental effects which cannot be mitigated. In order to understand Suffolk County's opposition to Broadwater, one must recognize that Long Island Sound is a treasured body of water lying between Connecticut and Long Island. Its preservation has been and continues to be the primary focus of the federal government and the governments of the States of New York and Connecticut, Suffolk County, and many other county and local municipal governments. The Long Island Sound is one of only 28 federally-designated Estuaries of National Significance. The special nature of this great resource was again confirmed by the federal government in 2006, when it enacted the Long Island Stewardship Act. In so doing, the federal government again acknowledged that Long Island Sound is "a national treasure of great cultural, environmental and ecological importance." The 2006 Act also acknowledged that Long Island Sound contributes more than \$5 billion annually to the regional economy. Jeopardizing this resource for private economic gain contravenes these national, state and local policies.

11. In support of these policies to restore water quality, natural resources and public enjoyment and use tens of millions of dollars of taxpayer funds have been spent to enhance and restore the Long Island Sound. Since 1985, more than \$54 million has been spent on the Long Island Sound Study. In addition, since 2001, almost \$20 million in federal funds have been spent by New York and Connecticut under the federal Long Island Sound Restoration Act. Moreover, in excess of \$200 million has been allocated under the State Environmental Bond Act to enhance and

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preserve Long Island Sound for ecological purposes and recreational and shipping users, not for the industrialization of it by locating a floating gas factory.

12. It has taken more than 20 years and many millions of dollars in taxpayer funds to obtain the current level of restoration in the Long Island Sound. The funding mentioned above, along with other monies, was and continues to be used to improve the ecosystem of the Long Island Sound and to protect its surface waters, shorelines and underwater lands from pollution. None of this effort is appropriately evaluated in the DEIS, nor are the public access or potentially significant impacts that Broadwater will have on the Long Island Sound ecosystem properly evaluated.

LA1-46

LA1-46 Please see our response to comment LA1-13.

13. I and my staff analyzed the environmental concerns presented by the Broadwater proposal. These include the following:

- The facility will require the storage and use of certain toxic or hazardous materials. It is anticipated that, at a minimum, the following scenarios involving the use, storage and potential discharge of these toxic and hazardous materials are likely:

- o The cryogenic system that Broadwater proposes to use to keep the LNG in a liquefied state during storage will likely use chlorofluorocarbon-based compounds and other ozone-depleting substances as refrigerants. The quantity of refrigerants contained in the system may be considerable. Putting aside the catastrophic results that loss of coolant will have on the LNG, leaks of the refrigerant could adversely impact air quality.

LA1-47

LA1-47 Please see our response to comment LA1-14.

- o The on-board machinery, such as pumps and compressors, require petroleum-based lubricants for satisfactory operation. The quantities of lubricants to be stored and used on the FSRU, YMS and on-shore facilities is significant and trigger requirements under Article 12 of the Suffolk County Sanitary Code. Yet, the DEIS is silent about these requirements, the impacts of the storage and discharge of such

LA1-48

LA1-48 Please see our response to comment LA1-15.

LA1 – Farrell Fritz, P.C.

- LA1-48 chemicals into the Long Island Sound and the fact that such discharges are banned under Suffolk County law.
- LA1-49
 - o Impurities such as longer-chained or branched aliphatic compounds are expected to accumulate in regasifier equipment on the FSRU. These impurities would be required to be purged and disposed of, possibly into the Long Island Sound. Yet, the DEIS fails to acknowledge the adverse impacts that this discharge would have on the water and marine life that inhabit Long Island Sound.
- LA1-50
 - o Chlorinated solvents are likely to be used for cleaning and degreasing of on-board machinery. The storage and discharge of such hazardous materials are covered by Article 12, yet the DEIS does not include any evaluation of these environmental issues.
- LA1-51
 - o Fuel storage (most likely diesel fuel) for small auxiliary engines or on-board cranes, forklifts and derricks are not adequately addressed in the DEIS.
- LA1-52
 - o Bilge water that may accumulate in storage tanks or piping may be contaminated and would have to be treated prior to disposal overboard. The contaminants and the treatment chemicals are of concern to Suffolk County.
- LA1-53
 - o Marine water intake screens for cooling water on both the FSRU and supply vessels may use antifouling chemicals to keep intake screens free of marine growth such as mussels, algae and aquatic plants. These chemicals, such as bleach, would then be discharged back into the Long Island Sound, causing potentially significant adverse impacts on the water quality and marine life.
- LA1-54
 - o From a regulatory perspective, the nature of the facility poses unique environmental management problems which should be evaluated. Security restrictions, logistical challenges with access, and other impediments could make regulatory oversight

LA1-49 Please see our response to comment LA1-16.

LA1-50 Please see our response to comment LA1-17.

LA1-51 Please see our response to comment LA1-18.

LA1-52 Please see our response to comment LA1-19.

LA1-53 Please see our response to comment LA1-20.

LA1-54 Please see our responses to comments LA1-15, LA1-17, and LA1-18.

LA1 – Farrell Fritz, P.C.

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- LA1-54 impracticable, so that it could be difficult or impossible to ensure proper use, storage, and disposal of toxic and hazardous materials at the facility.
- LA1-55 • Broadwater proposes to discharge certain cooling water at elevated temperatures, likely to be as much as four degrees higher than the waters of Long Island Sound. Over the course of many decades, we have learned that even a modest increase in water temperature of less than one degree can cause depletion of oxygen levels and massive fish and crustacean kills in Long Island Sound. A four degree hike in temperature can potentially have significant detrimental environmental impacts to Long Island Sound affecting finfish, shellfish and lobster resources. This is virtually ignored in the DEIS.
- LA1-56 • Depending on the angle of tanker approach and exit, the proposal would result in the interruption of all boat traffic in and around Block Island, Montauk Point, Point Judith, the Race and all points in Long Island Sound west to Wading River up to 312 days annually based on three tanker trips weekly.
- LA1-57 • Substantial disruption of public transportation and commercial goods by the Cross Sound Ferry Service from Orient to New London, and ferry service from Montauk and Point Judith to Block Island will almost certainly occur because of the tanker exclusion zones. The DEIS labels these interruptions as “minor” without any basis for doing so.
- LA1-58 • Long Island Sound, including parts of the FSRU mooring areas and vessel routes, has been designated as Essential Fish Habitats for 19 fish species, which could be impacted by entrainment during water intake in the FSRU and supply vessels.
- LA1-59 • The FSRU will take on 5.5 to 8.2 million gallons per day (mgd) of water from Long Island Sound, which will be treated with biocide and discharged back into the Sound. The LNG supply vessels will each have average water intakes of 22.7 mgd. This impact of such a large

LA1-55 Please see our response to comment LA1-21.

LA1-56 Please see our response to comment LA1-22.

LA1-57 Please see our response to comment LA1-23.

LA1-58 Please see our response to comment LA1-24.

LA1-59 Please see our response to comment LA1-25.

LA1 – Farrell Fritz, P.C.

LA1-59 mass of biocide on marine life in the Long Island Sound is not adequately evaluated in the DEIS.

LA1-60 • LNG supply vessels are likely to carry ballast water obtained from foreign locations and any intentional or accidental discharge may introduce invasive and harmful species into Long Island Sound or Block Island Sound.

LA1-61 • The DEIS concentrates its comments on discrete discharges and environmental concerns but wholly fails to provide any assessment of Broadwater's cumulative impacts on the Sound.

LA1-62 14. As mentioned above, Article 12 of the Suffolk County Sanitary Code has jurisdiction over many aspects of the operation of the FSRU and supply vessels, in particular with respect to the storage, handling and discharge of hazardous chemicals. The DEIS has failed to consider any provisions of this Code and is, thus, an incomplete and inadequate assessment of the environmental impacts of the proposed action.

15. Another important aspect of this proposal is the safety and security impacts Broadwater poses to Long Island Sound.¹ If approved, Broadwater will permanently take 950 acres of Long Island Sound surrounding the FSRU and bar the public from ever using the area. The USCG requires this exclusion zone to be enforced by armed boats and personnel. Further, the USCG requires that the LNG tankers used to supply the FSRU have moving security exclusion zones around them at all times of 1,722 acres, also enforced with armed gunboats and personnel.

LA1-63 My staff has created a pictorial representation of the moving exclusion zone, which demonstrates that Broadwater will cause significant disruptions to other users of the Long Island Sound. This pictorial representation is attached as Exhibit B. It must be noted Broadwater and the DEIS assume that the impacts this moving exclusion zone will have on other users is based upon tanker speeds of ten knots. The DEIS fails to adequately and realistically assess this. As the Race is approximately

LA1-60 Please see our response to comment LA1-26.

LA1-61 Please see our response to comment LA1-31.

LA1-62 Please see our response to comment LA1-15.

LA1-63 Please see our response to comment LA1-28.

¹ This is discussed in greater detail in the other documents submitted herewith by Suffolk County, including the affidavit of Commissioner Joseph F. Williams and the Comments of Suffolk County.

LA1-63

3 nautical miles across, and each tanker requires a three mile long public exclusion zone, significant areas in and immediately around the Race would need to be cleared of all other boat traffic for a significant period of time, on the order of hours per day, as tankers enter and exit the area for up to 312 days per year. FERC's calculation that only 60 hours per year are needed by the supply vessels to transit The Race based upon a 15 minute transit time demonstrates a fundamental misunderstanding of the time and navigation requirements for private and commercial craft to vacate and return to utilize this water body. Long-term displacement of commercial and recreational fisherman from all points on the tanker transits, and especially The Race as one of the most productive striped bass fisheries in the northeast, will be commonplace if Broadwater is built.

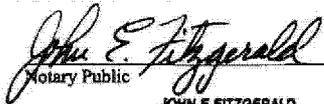
16. In conclusion, Broadwater will create an area of the Long Island Sound that is a private lagoon for a profit-making private company right in the heart of the shipping lanes, boating and recreational areas, fishing and lobstering and other maritime businesses. The impact assessment of this project is flawed and incomplete and does not support approval of the project.

WHEREFORE, for the reasons stated above, I respectfully request that the Broadwater project be denied in all respects.



VITO A. MINEI

Sworn to before me this
19th day of January, 2007



Notary Public

JOHN E FITZGERALD
NOTARY PUBLIC STATE OF NEW YORK
NO. 01F16013847
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES 09/28/2010

FFDOCS11724354.01

LA2 – Suffolk County Legislature

200701235010 Received FERC OSEC 01/23/2007 11:01:00 AM Docket# CP06-54-000

SUFFOLK COUNTY LEGISLATURE
COUNTY OF SUFFOLK

JOHN M. KENNEDY, JR.
Legislator, 12th District



COMMITTEES:

- CONSUMER PROTECTION
- ENVIRONMENT, PLANNING & AGRICULTURE
- HEALTH & HUMAN SERVICES
- LABOR, WORKFORCE & AFFORDABLE HOUSING

January 22, 2006

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

Ref. Docket Nos.: Broadwater—CP06-54-000, CP06-55-000, CP06-56-000
Iroquois—06M0878, 06G1185, 06G1186

Dear Ms. Salas:

LA2-1

This letter is submitted to amplify and further request review of the above referenced applications by FERC. Review of the Broadwater application makes minimal reference to the construction of an extension of the Iroquois pipeline known as the "Brookhaven Lateral". There is no environmental evaluation, no needs based assessment, no discussion of alternatives, or of no action.

Review of the Code of Federal Regulations provides guidance when considering the scope of matters that an environmental impact statement must take into account. 40 CFR CH. V, §1508.25. This section of the code outlines the responsibility of an agency to review simultaneously occurring actions, specifically that "(ii) are interdependent parts of a larger action and depend on the larger action for their justification." 40 CFR §1508-25(D)(ii). This section of the Code also describes Cumulative Actions, as well as Similar Actions. 40 CFR §1508.25 (2) & (3).

Review of the application on the part of Iroquois indicates the primary purpose of the project is the firm service fueling of the proposed Caihness power plant, with 50 million cubic feet of gas per day (CFGD). However, the ultimate capacity of the pipeline is 250 million CFGD. The applicant, Iroquois, is a consortium, of which 44.5% ownership is held by Transcanada, who is also a principal in the Broadwater application.

LA2-1

The Brookhaven Lateral is addressed in Section 4.3.1.1 of the final EIS. Section 4.3.1.1 of the final EIS has been updated to provide the most recent available information on the potential Brookhaven Lateral Pipeline Project. Iroquois has formally withdrawn its proposal for the Brookhaven Lateral, and so it is no longer considered in regard to cumulative impacts or alternatives in the final EIS.

111 Smithtown Bypass, Suite 120 Hauppauge, New York 11788 Tele. (631) 854-3735 Fax (631) 854-3744
e-mail: john.kennedy@suffolkcountyny.gov

LA2 – Suffolk County Legislature

200701235010 Received FERC OSRC 01/23/2007 11:01:00 AM Docket# CP06-54-000

SUFFOLK COUNTY LEGISLATURE

LA2-2 [In order for the applicant Broadwater to fulfill its commitment to furnish 15%-20% of the one billion CFGD to Suffolk County, the Brookhaven Lateral must be constructed. Based on this integration of the projects, and the significant presence of Transcanada as a principal in both projects, it is incumbent on FERC to consider these projects as connected. The actionable language as applied by the Court is that if there is a clear nexus between the actions such that the actions justify and depend on each other, they are connected. See the Yaak v. Block 840 F.2d 714, 720 (9th Cir. 1988).

LA2-3 [As the EIS for Broadwater makes reference to the Brookhaven Lateral, and by and through its own 2005 Annual Report, Transcanada Corporation makes reference to both Iroquois and Broadwater as components of its integrated natural gas delivery system, it is imperative that FERC properly expand the Broadwater FEIS to evaluate the environmental impacts of the Brookhaven Lateral construction.

Please add these comments to the official records of both the Broadwater and Iroquois Brookhaven Lateral applications referenced above. Your assistance with this request is appreciated.

Sincerely,

John M. Kennedy, Jr.
Legislator, 12th District

FERC12287.doc

LA2-2 Please see our response to comment LA2-1.

LA2-3 Please see our response to comment LA2-1.