

No. \_\_\_\_\_

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**UNITED STATES OF AMERICA  
BEFORE THE DEPARTMENT OF COMMERCE**

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**AES Sparrows Point LNG, LLC**

**Mid-Atlantic Express, L.L.C.**

**Appellants,**

**vs.**

**Maryland Department of the Environment**

**Respondent.**

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**INITIAL BRIEF ON APPEAL OF AES SPARROWS POINT LNG, LLC  
AND MID-ATLANTIC EXPRESS, L.L.C.  
UNDER THE COASTAL ZONE MANAGEMENT ACT**

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Randolph Q. McManus  
G. Mark Cook  
Jessica A. Fore  
Adam J. White  
Emil J. Barth  
BAKER BOTTS L.L.P.  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400  
(202) 639-7700

Counsel for Appellants  
AES Sparrows Point LNG, LLC  
and Mid-Atlantic Express, L.L.C.

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## STATEMENT OF THE CASE

AES Sparrows Point LNG, LLC (“AES Sparrows Point”) has applied for authorization from the Federal Energy Regulatory Commission (“FERC” or “Commission”) to site, construct, and operate a liquefied natural gas (“LNG”) import terminal at the Sparrows Point industrial complex in Baltimore County, Maryland. The proposed import terminal would have a delivery capacity of 1.5 billion cubic feet per day (“bcfd”) of natural gas and would benefit the public by introducing new supplies of clean-burning natural gas into the Mid-Atlantic region of the United States to meet growing demand. Concurrently, an affiliate of AES Sparrows Point, Mid-Atlantic Express, L.L.C. (“Mid-Atlantic Express” and, together with AES Sparrows Point, “AES”), filed for a certificate of public convenience and necessity from FERC to construct, own, and operate a natural gas pipeline to transport regasified LNG from the import terminal to interconnections with three existing interstate pipelines that currently supply natural gas to the Mid-Atlantic region. The pipeline will terminate at a location near Eagle, Pennsylvania. The LNG import terminal and the pipeline comprise the “Sparrows Point Project” or “Project.”

In addition, AES has applied for permits from the United States Army Corps of Engineers (“ACOE”) for authorization to improve the existing navigational channel to facilitate the transit and maneuvering of LNG ships to the proposed LNG terminal and in connection with laying the associated pipeline in jurisdictional wetlands.

Pursuant to the Coastal Zone Management Act (“CZMA” or “Act”) and the regulations promulgated thereunder, AES submitted a certification of the Sparrows Point Project’s consistency with the State of Maryland’s federally-approved Coastal Zone Management Program (“MCMP”) to the Maryland Department of the Environment (“MDE”). AES’s certification demonstrated that the LNG import terminal, the pipeline to be located within the Maryland coastal zone, and the proposed dredge and fill activities are all consistent with the MCMP’s

enforceable policies. MDE, after almost seventeen months of review, including six months of formal evaluation of AES's state Coastal Facilities Review Act ("CFRA") application, objected on July 9, 2007, to AES's consistency certification, asserting that the Sparrows Point Project was inconsistent with the MCMP and, in the alternative, that MDE did not have enough information to determine whether the Project was consistent with the MCMP.

MDE's Objection should be overridden. As a threshold matter, MDE has not complied with the provisions of the Act and the regulations issued thereunder in making its Objection to the consistency certification, justifying its summary dismissal.<sup>1</sup> As an independent and alternative ground, the Secretary should also override MDE's objection for substantive reasons, because the Project is consistent with the objectives of the Act and, in addition, is otherwise necessary in the interest of national security.

#### **STATEMENT OF THE FACTS**

1. AES proposes to site, construct, and operate an LNG import, storage, and regasification terminal ("LNG Terminal") on a portion of the Sparrows Point industrial complex situated on the Sparrows Point peninsula east of the Port of Baltimore in Maryland. The site is zoned for heavy industrial use and is classified as an Intensely Developed Area under Maryland law. See MD. REGS. CODE tit. 27 § 01.02.03.

2. The LNG Terminal will permit the importation of up to 1.5 bcf/d of natural gas (expandable to 2.25 bcf/d) that can be sourced from world production areas and its delivery to

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<sup>1</sup> Based on established precedent, MDE's multiple failures in conducting its review warrant summary dismissal of its objections and AES is therefore submitting contemporaneously herewith a request for dismissal of MDE's objection on the grounds set forth in Section I of this Brief.

three existing interstate pipeline systems that serve Maryland and the Mid-Atlantic region via an interconnected 88-mile, 30-inch diameter pipeline (“Pipeline”).<sup>2</sup>

3. On March 24, 2006, AES filed with FERC a request to initiate the Commission’s pre-filing environmental review process under 18 C.F.R. § 157.21 for the Project. On April 3, 2006, the Commission staff issued a notice commencing the pre-filing review process for the Sparrows Point Project. During the mandatory pre-filing period, AES conducted extensive studies, prepared reports, conducted and participated in public meetings and meetings with agency staff, responded to numerous data requests regarding the studies and draft reports, and communicated extensively with FERC and other affected and interested federal and state agencies, including MDE, regarding various aspects of the Project.

4. On January 8, 2007, upon completion of the pre-filing process, AES Sparrows Point filed its application for authority to site, construct and operate the LNG Terminal under Section 3 of the Natural Gas Act (“NGA”), 15 U.S.C. § 717b. Mid-Atlantic Express concurrently filed its application for a certificate of public convenience and necessity authorizing the construction of the Pipeline under Section 7 of the NGA, 15 U.S.C. § 717f. These applications are consolidated and pending before FERC in Docket Nos. CP07-62 and CP07-63.

5. On January 9, 2007, AES filed with MDE a “State of Maryland (MDE)/Corps of Engineers Joint Application Form” for ACOE permits to improve the existing navigational channel to facilitate the transit and maneuvering of LNG ships to the LNG Terminal and in connection with laying certain segments of the Pipeline in jurisdictional wetlands in upland areas. Specifically, AES applied for dredge and fill permits under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403.

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<sup>2</sup> For purposes of consistency review, the MCMP defines the Maryland coastal zone as “the inland boundary of the counties bordering the Atlantic Ocean, Chesapeake Bay and the Potomac River, as far as the municipal limits of Washington, D.C.” MCMP at 74. Approximately 48 miles of the Pipeline will be located within this coastal zone.

6. That same day, AES submitted to MDE documentation relevant to the completion of Maryland's consistency review, including, as part of the state's approved application form, the consistency certification (attached in the Appendix at A-1), copies of AES's federal permit applications, and copies of the thirteen resource reports prepared for FERC that comprehensively analyze the environmental impacts of the Project ("Resource Reports" or "RRs"). In addition to describing the results of the extensive environmental studies of all aspects of the Project undertaken by AES, the Resource Reports also describe measures that will be carried out during the construction and operation of the LNG Terminal and the Pipeline to prevent or mitigate any limited environmental impacts. The FERC staff, cooperating federal agencies and various Maryland state agencies, including MDE, reviewed these Resource Reports during FERC's pre-filing process, generating additional data requests to which AES responded with supplementation of the Resource Reports. Copies of the Resource Reports are included in the consolidated record provided with AES's notice of appeal.

7. On January 16, 2007, a copy of AES's consistency certification was filed in the consolidated AES dockets at FERC.

8. On July 5, 2007, one business day prior to the end of the six-month consistency review period, MDE informed AES by letter of the status of MDE's review of AES's responses to a request for additional information on impacts to wetlands and waterways (attached at A-3). The letter stated that without information concerning avoidance and mitigation measures at certain wetlands and waterways and the proposed use of recycled dredged materials, MDE could not concur with the consistency of the Project.

9. On July 9, 2007, MDE objected to AES's consistency certification by a letter to Mr. Christopher H. Diez, Vice President, AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C. ("Objection") (attached at A-2).

10. MDE objected to the consistency certification on the ground that the proposed activities are not consistent with the MCMP. Such an objection must be predicated on the existence of sufficient information for the state agency—here MDE—to make a consistency determination. 15 C.F.R. § 930.63(b). MDE nevertheless asserted, as an alternative ground for its Objection, that AES had not provided sufficient information for MDE to make a consistency determination.

11. MDE also states that its Objection is (or would be) justified by an amendment to a local zoning ordinance enacted by Baltimore County on February 5, 2007, that purports to prohibit LNG facilities that receive and unload LNG in areas located within 1,000 feet of the shoreline. Because an LNG import terminal is marine-dependent, it must be constructed in the coastal zone; the zoning amendment effectively precludes such a facility from being sited in the coastal area.

### **SUMMARY OF ARGUMENT**

As a threshold matter, MDE's objections to AES's consistency certification are not validly made. MDE failed to identify specific "enforceable polices" under the MCMP with which the Sparrows Point Project is purportedly inconsistent, and MDE's objection based on a claim of insufficient information cannot be considered because it was made only in the alternative and not as a ground for denial of consistency. MDE's claim of insufficient information, even if considered, must still be rejected because MDE failed to specify in its objection letter the necessity of such information for its consistency review. MDE's conditional

third objection, based on a local zoning ordinance, is not cognizable under the regulations as it rests on an ordinance that is not an enforceable policy of the MCMP.

If not overridden as a threshold matter, MDE's Objection must be overridden because the Sparrows Point Project is consistent with the objectives of the Act. The Project is an energy-related activity that furthers the national interest in a significant and substantial manner by helping ensure that future energy needs of the Mid-Atlantic region are met. Any limited coastal impacts of the Project to the industrial site proposed for the LNG Terminal, and to the area in which the Pipeline will be sited, are far outweighed by the national interest. Moreover, there is no reasonable alternative to the Project. Beyond these incontrovertible facts, the Project's contribution to national security independently warrants an override of MDE's Objection. By diversifying energy supply and providing an incremental source of clean-burning fuel, the Project is necessary in the interest of national security.

## ARGUMENT

### **I. The Secretary Should Override The Objection As A Threshold Matter Because The Objection Was Defective In Failing To Comply With The CZMA Regulations**

The Secretary should override the Objection as a threshold matter on the grounds that the Objection is not in compliance with Section 307(c)(3)(A) of the Act, 16 U.S.C. § 1456(c)(3)(A), and the regulations contained in subpart D of 15 C.F.R. Part 930 ("subpart D"). Indeed, an override is mandatory under these circumstances: "[i]f the State agency's consistency objection is not in compliance with section 307 of the Act and the regulations contained in Subparts D, E, F, or I of this part [15 C.F.R. Part 930], the Secretary shall override the State's objection." 15 C.F.R. § 930.129(b). The regulations further provide that "[t]he Secretary may make this determination as a threshold matter."<sup>3</sup>

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<sup>3</sup> Id.; See, e.g., Dismissal Letter - Collier Resources Company Consistency Appeal (Apr. 17, 2002) at n. 6.

Here, MDE's Objection failed to specify a single "enforceable policy" of the MCMP as a basis for its objection, which is the minimum required by the CZMA regulations. MDE also objected in the "alternative" on the ground of having insufficient information to make a consistency determination. Such an objection, however, cannot be raised given MDE's simultaneous determination (however deficient) of "inconsistency". MDE's third ground for objection, based on a Baltimore County zoning ordinance that is not an "enforceable policy" of the MCMP, is, for that reason, likewise invalid. Since none of these objections is in compliance with CZMA regulations, MDE's Objection must be overridden by the Secretary.

**A. MDE's Objection On The Ground Of Inconsistency Does Not Comply With The CZMA Regulations**

As a threshold matter, the Secretary should override the Objection because it was not made in accordance with 15 C.F.R. § 930.63(b), which states, in relevant part:

State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program.

Id. (emphasis added).

MDE failed to identify how the Sparrows Point Project is inconsistent with any specific enforceable policies of the MCMP or even to cite a specific enforceable policy. See generally Objection. This is fatal to its Objection. See Decisions and Findings in the Consistency Appeal of Henry Crosby, Dec. 29, 1992, at n. 2 (An objection must "cite[] policies that are part of its management program" and "explain[] how the proposed project will be inconsistent with those policies" in order to comply with 15 C.F.R. § 930.63(b) (formerly 15 C.F.R. 930.64(b)); Decisions and Findings in the Consistency Appeal of Carlos A. Cruz Colon, Sept. 27, 1993, at 4 (An objection must "contain[] sufficient detail and explanation to satisfy the requirements" of 15 C.F.R. § 930.63(b) (formerly 15 C.F.R. 930.64(b)).

All that MDE provided was a list of state statutes that it asserts are applicable to its consistency determination and that require AES to obtain unidentified state permits. But that list is silent as to what “policies” the statutes implement, whether they embody “enforceable policies” under the MCMP that are cognizable for consistency review purposes, or whether MDE believes that the Project is inconsistent with the policies in such statutes. This falls well short of the CZMA’s requirements set forth in subpart D of the regulations. See Decisions and Findings in the Consistency Appeal of Mobil Exploration & Producing U.S. Inc., Jun. 20, 1993, at 4 (holding that “a state must clearly base its objection on enforceable provisions of a federally approved CMP”). An unsupported conclusory statement regarding “inconsistency,” which is all that MDE has offered, must be overridden as a matter of law.<sup>4</sup>

**B. MDE’s Objection On The Ground Of Insufficient Information Is Not Properly Before The Secretary And Is Not In Compliance With The CZMA Regulations**

**1. The objection on the ground of insufficient information is not properly before the Secretary.**

MDE’s “alternative” objection—that AES had not provided “sufficient information” for MDE to make a consistency determination—is not properly before the Secretary because MDE cannot object simultaneously on the ground of inconsistency, which necessarily presupposes that MDE has sufficient information, and also on the ground that it has insufficient information to make such a determination. MDE is the only decision maker under the CZMA regulatory scheme charged with determining whether MDE had enough information before it to make a consistency determination.<sup>5</sup> It is contrary to the design of the CZMA consistency review process

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<sup>4</sup> Specificity is crucial in cases such as this one where the state’s coastal zone management program is not coherently set out in one document.

<sup>5</sup> In contrast, on appellate review, the Secretary determines whether he has sufficient information to make his determination, not whether the state agency issuing an objection had enough information. See Decisions and

for MDE to issue an Objection based on the conflicting grounds of (i) sufficient information, but a lack of consistency, and (ii) insufficient information, when, in the latter case, it is MDE's responsibility to determine whether it has enough information to make a consistency determination. By objecting on the basis of the factual record, the MDE has vitiated its assertion that it has insufficient facts to conduct its review. MDE's attempt to have it both ways reduces the entire consistency review process to a shell game. The Secretary should, therefore, ignore MDE's "alternative" objection on the ground of insufficient information.

**2. The objection on the ground of insufficient information does not comply with CZMA regulations.**

Even if the Secretary could find that an Objection based on insufficient information is properly before him, the Secretary still must override the Objection because MDE has otherwise not complied with subpart D of the CZMA regulations. MDE may only object to the consistency certification on the basis of insufficient information if AES failed to supply information required by 15 C.F.R. § 930.58 or other information necessary for MDE to determine consistency, after receiving a written request from the MDE. See 15 C.F.R. § 930.63(c). While MDE made a request of AES for wetlands and waterways information claimed to be related to the consistency certification on July 5, 2007, MDE's request was made only one business day before MDE issued its objection on July 9, 2007, the day the 6-month deadline for its review expired. See 15 C.F.R. § 960.62(a). Because its untimely request failed to provide AES with any opportunity to prepare a response before the determination deadline provided for in the regulations, that request does not satisfy 15 C.F.R. § 930.63(c).<sup>6</sup>

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Findings in the Consistency Appeal of Mobil Oil Exploration & Producing Southeast, Inc., Sept. 2, 1994, at 7 ("Mobil Southeast").

<sup>6</sup> MDE also requested from AES by letter additional data on wetlands and waterways on May 7, 2007 (attached at A-4). That request, to which AES responded to on May 31, 2007, gave no indication that the information was needed for MDE's consistency determination.

In any event, MDE's objection on the basis of insufficient information is also deficient because it fails to describe, as required by subpart D of the CZMA regulations, "the necessity of having such information to determine the consistency of the activity with the management program." Id. MDE's Objection only claims that MDE "simply cannot render a complete substantive consistency determination based on incomplete information." Because MDE's Objection plainly fails to provide AES with any description of why the information requested in its July 5 letter was necessary for MDE's consistency determination, the Secretary must find that the Objection does not comply with 15 C.F.R. § 930.63(c) for this reason as well.

**C. The Baltimore County Zoning Ordinance Is Also Not A Proper Ground For Objection**

In a footnote, the Objection references Baltimore County Bill 9-07 ("Bill 9-07"), a county zoning ordinance currently the subject of litigation in the U.S. Court of Appeals for the Fourth Circuit,<sup>7</sup> as another basis for a finding of inconsistency. This, too, must be rejected, because Bill 9-07 is not an "enforceable policy" of the MCMP. First, Bill 9-07 has not been submitted to the National Oceanic and Atmospheric Administration ("NOAA") for approval and therefore is not a "policy" of Maryland's NOAA-approved MCMP. Second, even if Bill 9-07 could be adopted as a land use regulation under provisions of state law referenced in the MCMP, Bill 9-07 would not become an "enforceable policy" of the MCMP under 16 U.S.C. § 1456(c)(3)(A), because local prohibitions on siting of LNG terminal facilities are specifically preempted by Section 3 of the NGA, 15 U.S.C. § 717b(e)(1).

**1. Bill 9-07 Is Not an Enforceable Policy Under the MCMP**

Bill 9-07 is the second attempt by Baltimore County ("County") to ban LNG terminals at the Sparrows Point site. The first attempt, Bill 71-06, a zoning prohibition on LNG terminals

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<sup>7</sup> AES Sparrows Point LNG, LLC v. Smith, No. 07-1615 (4th Cir. filed June 27, 2007).

located in Baltimore County and within five miles of a residential zone, was struck down as unconstitutional, on the grounds that Section 3 of the NGA, which reserves to FERC the “exclusive authority” to approve applications to site LNG terminals, preempted that zoning law. AES Sparrows Point LNG, LLC v. Smith, 470 F. Supp. 2d 586 (D. Md. 2007) (“AES I”).<sup>8</sup>

Two weeks after the court in AES I determined that Bill 71-06 was unconstitutional, the County enacted Bill 9-07, also a zoning prohibition on LNG terminals, that would, if valid, bar the Sparrows Point Project (and, as a practical matter, any other LNG import facilities in the County). AES again filed a suit in federal court for the enjoinder of Bill 9-07’s enforcement as unconstitutional. AES Sparrows Point LNG, LLC v. Smith, No. 07-325 (D. Md. filed Feb. 6, 2007) (“AES II”). The County responded that the land use restriction of Bill 9-07 was not preempted by the NGA by virtue of 15 U.S.C. § 717b(d)(1), which preserves “the rights of States under . . . the [CZMA].” The County claimed that because the zoning law could be (and, in fact, subsequently was) approved by the Chesapeake Bay Critical Areas Commission under the State’s Chesapeake and Atlantic Coastal Bays Critical Area Protection Program (the “Critical Area laws”), Md. Code, Nat. Res. §§ 8-1801, et seq., and the Critical Area laws were incorporated into the MCMP, Bill 9-07 came within the ambit of the CZMA savings clause. But neither the Critical Area laws nor NOAA’s approval in 1986 of inclusion of the Critical Area laws in the MCMP as a routine program change authorize the “automatic” inclusion of new Critical Area-related laws into the MCMP. If accepted, the County’s argument would give the

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<sup>8</sup> The County initially sought to pursue an appeal of AES I, but later dropped that pursuit. Thus, AES I is valid and controlling law.

County carte blanche to amend the County's local program to prohibit energy facilities in the County and eviscerate the requirement that NOAA review even routine program changes.<sup>9</sup>

That Bill 9-07 would be an "amendment" under NOAA's regulations is unarguable: "amendments are defined as substantial changes" in areas such as "[u]ses subject to management . . . and [c]oordination, public involvement, and the national interest." 15 C.F.R. § 923.80(d)(5). Nowhere does the MCMP now purport to impose a blanket ban on energy facilities, such as LNG terminals, in the coastal zone. The addition of LNG facilities as a "prohibited use" in the critical area plainly changes "uses subject to management."<sup>10</sup> Furthermore, such an outright ban on LNG import terminals would be at direct odds with the NOAA-approved MCMP itself, which states a policy of locating facilities like the one at issue here in already industrialized zones, e.g. the Sparrows Point Peninsula. See MCMP at 28. Each of these reasons demonstrates the imperative of NOAA approval before a prohibition on LNG terminals could become a policy of the MCMP. Therefore, Bill 9-07 is not grounds for an objection. See 15 C.F.R. § 930.63(b).

## **2. Bill 9-07 Is Also Not Enforceable Because It Is Preempted**

Bill 9-07 is preempted by Section 3 of the NGA, 15 U.S.C. § 717b(e)(1). Even if it were among the policies of the MCMP, it still would not be an "enforceable policy" for the purposes of consistency review.

### **a. A Preempted Law Cannot Be an "Enforceable Policy" of the MCMP**

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<sup>9</sup> In rejecting AES's preemption claim, the District Court held that Bill 9-07, upon approval by the Critical Area Commission, "is within the delegated authority under the [CZMA] and is enforceable as part of the [MCMP]" and thus not preempted. AES II, No. RDB-07-325, 2007 WL 1826889 at \*8 (D. Md. June 22, 2007).

<sup>10</sup> Even if it were deemed a routine program change that merely adds further detail by "implementing provisions approved as part of the State's approved" MCMP without resulting in a "substantial change," Bill 9-07 would still need to be presented to NOAA for review "to ensure it does not constitute an amendment." 15 C.F.R. § 923.84(b)(1).

MDE can base its objection only on the “enforceable policies” of the MCMP. 15 C.F.R.

§ 930.63(b). The CZMA defines “enforceable policies” as follows:

State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.

16 U.S.C. § 1453(6a). Thus, a MCMP policy is “enforceable” only if it is “legally binding.” A preempted state or local law is not “legally binding”; it is “a nullity.” N. Natural Gas Co. v. State Corp. Comm’n, 372 U.S. 84, 92 (1963) (emphasis added). NOAA recognized in its latest CZMA rulemaking that preempted state laws cannot be accepted as amendments to a state’s coastal zone management program, and, where already incorporated into coastal zone management programs, they cannot be enforced in consistency reviews. See Coastal Zone Management Act Federal Consistency Regulations, 71 Fed. Reg. 788, 823-24 (Jan. 5, 2006). In response to a commenter who questioned whether the NGA’s preemption of state laws regarding the siting of LNG terminals would affect consistency reviews, NOAA stated: “So long as State policies do not include specific preempted restrictions and a State’s policies are implemented in a manner contemplated by the CZMA, then the State is acting properly.” Coastal Zone Management Act Federal Consistency Regulations, 71 Fed. Reg. at 824 (emphasis added). NOAA then observed that it would not approve proposed coastal zone management program amendments “that on their face contain requirements that are preempted by Federal law.” Id. at 823.

**b. Bill 9-07 Is “A Specific Preemption Restriction” And Therefore Not An “Enforceable Policy” of the MCMP**

Bill 9-07 is a “specific preempted restriction”: It is a local ban on siting LNG import terminals at any location in Baltimore County that was specifically and purposefully adopted in

the face of an NGA provision declaring that LNG terminal siting decisions are committed to FERC's exclusive authority. As the federal district court recognized in AES I, blanket geographical restrictions on the siting of an LNG terminal fall squarely within the coverage of the NGA's preemption clause, 15 U.S.C. § 717b(e)(1), which reserves to the FERC alone the "exclusive authority" to approve the site of an LNG terminal. That law "leave[s] state and local governments no residual power to take actions that would effectively approve or deny proposals for the siting of LNG terminals." AES I, 470 F. Supp. 2d at 598 (internal quotation marks omitted).

In AES II, the case currently on appeal, the district court agreed that Bill 9-07 would be preempted by FERC's "exclusive authority" were it not for the savings provision of 15 U.S.C. § 717b(d)(1) that preserves "the rights of States under" the CZMA. AES II, 2007 WL 826889 at \*8. The only issue regarding preemption in AES II is whether Bill 9-07 is among "the rights of States under" the CZMA and thereby saved from preemption by 15 U.S.C. § 717b(d)(1). It demonstrably is not. The state police power, which was the font of authority underlying Bill 9-07, is not a right created by the CZMA; it pre-exists the CZMA as a right inherent among all of the States and is neither enhanced nor abrogated by the CZMA.<sup>11</sup>

The Secretary should forcefully reject MDE's interpretation of the CZMA, and should expressly find that Bill 9-07 is not an "enforceable policy" of the MCMP, is preempted by federal law, and therefore could not be grounds for an objection under 16 U.S.C. § 1456(c)(3)(A) and 15 C.F.R. § 930.63(b).<sup>12</sup>

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<sup>11</sup> See, e.g., 16 U.S.C. § 1456(e) ("Nothing in [the CZMA] shall be construed . . . to diminish either Federal or state jurisdiction, responsibility, or rights"); Norfolk S. Corp. v. Oberly, 822 F.2d 388, 394-95 (3d Cir. 1987) ("While the CZMA states a national policy . . . it does not on its face expand state authority to legislate . . .").

<sup>12</sup> Making this determination in this proceeding is important to foreclose any possible attempt by MDE to reassert an objection based on Bill 9-07 in the unlikely event it were to be upheld by the Fourth Circuit.

## **II. The Sparrows Point Project Is Consistent With The Objectives Of The CZMA**

Apart from overriding the Objection based on the threshold failures of MDE described in Section I above, the Secretary should override the Objection based on the fact that the Sparrows Point Project is consistent with the objectives of the Act. See 16 U.S.C. § 1456(c)(3)(A). As a coastal-dependent major energy project that is designed to bring much needed additional natural gas supplies to Maryland and the Mid-Atlantic region, the Project plainly furthers the objectives of the Act and the national interest. Therefore, the Secretary should override the Objection, allowing all federal permits, including the relevant FERC and ACOE permits, to be issued. Id.

Under the CZMA regulations, a project will be considered consistent with the objectives of the Act if it satisfies each of the following elements: (a) the activity furthers the national interest as articulated in Section 302 or 303 of the CZMA in a significant or substantial manner; (b) the national interest furthered by the activity outweighs the activity's adverse coastal effects, whether those effects are considered separately or cumulatively; and (c) there is no reasonable alternative available that would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's coastal zone management program. 15 C.F.R. § 930.121. As demonstrated below, the Sparrows Point Project readily satisfies each of these three elements of the consistency standard.

### **A. The Sparrows Point Project Furthers The National Interest In A Significant And Substantial Manner**

The Sparrows Point Project promotes the national interest in a significant and substantial manner for three reasons, each of which is sufficient for the Secretary to find that the Project meets the first element. First, the Project will significantly and substantially further the national interest in major coastal-dependent energy facilities. See 16 U.S.C. § 1452(2)(D). Second, the Project will further the national interest by developing the resources of the coastal zone to

provide significant volumes of natural gas supply to meet demand in the Mid-Atlantic region. See 16 U.S.C. § 1452(1) (declaring that it is national policy to “develop . . . the resources of the Nation’s coastal zone” (emphasis added)). Third, by siting the LNG Terminal as part of a coastal-dependent industrial complex, providing the Mid-Atlantic region with clean-burning fuel, and dredging to improve the existing navigation channel with the resulting removal and recycling of contaminated sediments, the Project furthers the national interest by “preserv[ing], protect[ing] . . . restor[ing] [and] enhanc[ing] . . . the resources of the Nation’s coastal zone.” *Id.* Because Congress has broadly defined the national interest in the coastal zone in Sections 302 and 303, this first element of the consistency standard “normally will be satisfied on appeal.”<sup>13</sup>

**1. The Sparrows Point Project significantly and substantially furthers the national interest in siting major coastal-dependent energy facilities.**

One of the objectives of the Act is to give “priority consideration . . . to coastal-dependent uses and orderly processes for siting major facilities related to . . . energy.” 16 U.S.C. § 1452(2)(D). The Sparrows Point Project promotes this objective in a significant and substantial manner because it will be a major coastal-dependent energy facility.

**a. The Sparrows Point Project consists of major coastal-dependent energy facilities.**

The Sparrows Point Project facilities are major coastal-dependent energy facilities under the CZMA. The Act defines “energy facilities” as “any equipment or facility which is or will be used primarily in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource.” 16 U.S.C. § 1453(6). The LNG Terminal and Pipeline qualify as “major facilities related to . . . energy” because they will

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<sup>13</sup> See *Mobil Southeast* at 13; *Decision and Findings in the Consistency Appeal of Amoco Production Company*, July 20, 1990, at 14 (“*Amoco*”).

provide significant volumes of natural gas to the Mid-Atlantic region by allowing the import, storage, and regasification of LNG and its transportation to proposed interconnections with interstate pipelines and end-users.<sup>14</sup>

The Project facilities are “major” because of their value and capacity. See Decision and Findings in the Consistency Appeal of Islander East Pipeline Company, L.L.C., May 5, 2004, at 8 (“Islander East Decision”), set aside on other grounds, Connecticut v. United States Dep’t of Commerce, No. 3:04cv1217, 2007 WL 2349894 (D. Conn Aug. 15, 2007).<sup>15</sup> The Project facilities will cost an estimated \$650 million to construct, and will have the capacity to provide enough natural gas to heat about 3.5 million homes or generate power to provide electricity to approximately 7.5 million homes.<sup>16</sup> Cf. id. (finding that an energy facility was “major” because of its estimated cost of \$180 million and capacity to provide natural gas to heat 600,000 homes).

Further, the Project is a coastal-dependent use because LNG will be delivered via ocean-going LNG tankers that will dock and unload at the LNG Terminal, which itself will be directly on the waterfront extending into waters that are part of the Chesapeake Bay. The Pipeline facilities are also coastal-dependent uses because they “must be located in a coastal zone to deliver natural gas” from the LNG Terminal located on the Chesapeake Bay to connections downstream. Id. at 9 (holding that a pipeline is a coastal-dependent use when its “location in or

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<sup>14</sup> The dredging activities proposed by AES “are directly associated with and further its proposed” siting of coastal-dependent energy facilities. See Mobil Southeast at 13. The dredging activities therefore also satisfy this element of the consistency standard “even if they only indirectly further” this objective of the CZMA. Id. at 13-15.

<sup>15</sup> Islander East remains authoritative with respect to the first element of the consistency standard. The court in Connecticut v. United States Dep’t of Commerce found that “the Secretary’s Decision shows that he considered the proper standards concerning this [first] element, and made a reasoned determination that the factor had been satisfied. As a result, his decision regarding element one was not arbitrary and capricious.” 2007 WL 2349894 at \*9.

<sup>16</sup> These figures are provided for illustrative purposes. Assuming that the number of residences that can be served can be extrapolated from pipeline capacity, and using the same ratio of pipeline capacity-to-homes heated as was utilized in Islander East, the Sparrows Point Project would be able to heat about 3.5 million homes. Regarding electric generation, it is assumed that the natural gas would be used in a 500-megawatt combined-cycle power plant (as opposed to a more inefficient simple-cycle power plant), that the power plant would consume a daily average of 100,000 MMBtu, and that 1 megawatt serves the needs of 1,000 homes.

near the coastal zone is required to achieve the primary goal of the project in question”). See also Decisions and Findings in the Consistency Appeal of the Southern Pacific Transportation Co., Sept. 24, 1985, at 3 (holding that a facility partially located in the coastal zone was consistent with the objectives of the Act).

**b. The Sparrows Point Project significantly and substantially furthers the national interest in siting major coastal-dependent energy facilities.**

A project furthers the national interest in a substantial manner if it “contribut[es] to the achievement of a CZMA objective to a degree that has a value or impact on a national scale.” Islander East at n. 26. See also Coastal Zone Management Federal Consistency Regulations, 65 Fed. Reg. 77,124, 77,150 (Dec. 8, 2000) (“CZMA Rule”). A project furthers the national interest in a significant manner if it “provid[es] a valuable or important contribution to a national interest [identified in the CZMA] without necessarily being large in scale or having a large impact on the national economy.” Id. The Sparrows Point Project meets both standards.

First, as noted above, the Project facilities will cost an estimated \$650 million to construct, and will have the capacity to provide enough natural gas to heat millions of homes. See Islander East at 8-9 (finding that an energy project’s “value on a national scale” of \$180 million and its “delivery capacity” of natural gas to heat 600,000 homes significantly furthered the national interest). The Sparrows Point Project also will enhance reliability of energy supplies in the Mid-Atlantic region by adding a new source of natural gas supply that can deliver up to 1.5 bcf/d of natural gas to the region.<sup>17</sup> See RR 1 § 1.2.2 (attached at A-5). This new capacity to will serve growing demand in the region. It will also promote price competition that will benefit consumers by making significant incremental gas supplies available to the Mid-Atlantic

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<sup>17</sup> See id. at 5 (discussing energy supply reliability as a benefit that furthers the national interest in major coastal-dependent energy facilities).

market.<sup>18</sup> See RR 1 § 1.2.2. Because these benefits will have a “scope, magnitude and importance beyond [the project’s] location in [the Chesapeake Bay],” the benefits of the Sparrows Point Project “are both substantial and significant.” See Islander East at 5.

The CZMA Rule notes that major coastal-dependent energy facilities “typically fulfill the requirement” of “significance or substantiality” by their very nature. CZMA Rule at 77,150. The siting of energy facilities is an example of “an activity that significantly or substantially furthers the national interest” because such energy facilities “are coastal-dependent industries with economic implications beyond the immediate locality in which they are located.” Id. In Islander East, the Secretary found that because a facility met the definition of “energy facilities” and was “also coastal-dependent,” it “further[ed] the national interest in a significant and substantial matter.” See Islander East, at 5-6.<sup>19</sup> The same is true of the Project.

**2. The Sparrows Point Project significantly and substantially furthers the national interest in the development of the coastal zone.**

The Sparrows Point Project furthers the national interest articulated in Section 303 of the Act in “develop[ing] . . . the resources of the Nation’s coastal zone”. 16 U.S.C. § 1452(1). The Sparrows Point Project promotes this development objective because it is a proposal for the utilization of coastal resources for commercial and economic development.<sup>20</sup>

The Sparrows Point Project constitutes favored development of a portion of the coastal zone because it will “allow its use for a particular purpose that was previously not available” —

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<sup>18</sup> See Islander East at 5 (discussing price competition as a benefit that furthers the national interest in major coastal-dependent energy facilities).

<sup>19</sup> The court in Connecticut v. United States Dep’t of Commerce approved the Secretary’s reliance on the CZMA Rule in determining that the facilities at issue in Islander East significantly furthered the national interest. 2007 WL 2349894, at \*8. The court found that “[a]ccording to the [CZMA Rule], the siting of coastal dependent energy facilities inherently has economic consequences beyond the immediate locality where the facility is located, that is, involves a significant national interest.” Id.

<sup>20</sup> See Decision and Findings in the Consistency Appeal of Davis Heniford, May 21, 1992, at 6 (stating that “it is clear that commercial development is one of the recognized competing uses of the coastal zone”).

namely the importation of natural gas via marine vessels to meet growing regional demand. See Islander East at 6. The associated Pipeline constitutes development of the coastal zone for the same reason and because it will “provid[e] vital infrastructure to support activities in the coastal zone,” id. at n. 27, specifically, the transportation of natural gas from the LNG Terminal to the Mid-Atlantic market. The Sparrows Point Project, through the proposed dredging, also constitutes development of the coastal zone by improving an existing marine channel to allow its use for a particular purpose that was previously not available (i.e., the transit and berthing of vessels with a draft of 40 feet or more). See id. at 6.

Consideration of the benefits of the Project is relevant in determining whether it will substantially or significantly further the national interest because “the benefits of the [facility] are a direct consequence of the [coastal] modifications that comprise [the project] and therefore are appropriately considered in determining the degree to which the [p]roject furthers the national interest in coastal zone development.” Id. at 6. Here, both the facilities and the resulting benefits are substantial. They will “contribut[e] to [the development of the coastal zone] to a degree that has a value or impact on a national scale” because of their size and extent. Id. at n. 26. And, the facilities and resulting benefits are significant because they will “provid[e] a valuable or important contribution to a national interest” because of the importance of energy infrastructure and supplies. Id.

The Project will help meet growing energy demand in the Mid-Atlantic region, including Maryland and the Baltimore metropolitan area, thereby substantially and significantly furthering the national interest. See id. at n. 30 (finding that a project that “is needed to meet the growing demand for natural gas” in a metropolitan region “furthers the national interest in a substantial manner). The Energy Information Agency (“EIA”) has recognized the need for additional gas

supply in the Mid-Atlantic region, projecting that U.S. demand for natural gas will grow steadily through 2020. Dep't of Energy, Energy Information Agency, Annual Energy Outlook 2007 at 89 (Feb. 2007) (“AEO 2007”) (attached at A-6). For the Mid-Atlantic region, the EIA predicts that natural gas demand will grow by 370 trillion Btus from 2007 to 2020. AEO 2007 at Supplemental Table 2. The EIA emphasizes the importance of LNG imports, stating that LNG imports to existing and proposed terminals are expected to “meet much of the increased U.S. demand for natural gas.” AEO 2007 at 12. The incremental natural gas supplies introduced by the Project will serve this purpose. See RR 1 § 1.2; RR 5 § 5.4 (attached at A-7).

LNG imports introduced through the LNG Terminal should also moderate prices through competition and enhance energy reliability by providing a new source of natural gas, both of which further the national interest substantially and significantly.<sup>21</sup> See RR 1 § 1.2.2. The Secretary and FERC have recognized that a natural gas project that will bring these benefits furthers the national interest. See Islander East at 5; Hackberry LNG Terminal, LLC, 101 FERC ¶ 61,294 (2002) (attached at A-8) (holding that new LNG import terminals providing competitive sources of natural gas serve “[t]he public interest . . . through encouraging gas-on-gas competition by introducing new imported supplies of natural gas which will be accessible to all willing purchasers”).

In sum, the Sparrows Point Project’s development of the coastal zone and the corresponding benefits that will result from this development further the national interest in a significant and substantial manner.

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<sup>21</sup> See Islander East at 5 (finding that reliability resulting from diversity of supply and price competition resulting from the introduction of new natural gas supplies are benefits that further the national interest).

**3. The Sparrows Point Project furthers the national interest by “preserv[ing], protect[ing] . . . restor[ing] [and] enhanc[ing] . . . the resources of the Nation’s coastal zone.”**

The Sparrows Point Project furthers the national interest by “preserv[ing], protect[ing] . . . restor[ing] [and] enhanc[ing] . . . the resources of the Nation’s coastal zone.” 16 U.S.C. § 1452(1). The Project promotes this objective because it will provide certain regional environmental benefits that will restore and enhance the resources of the coastal zone. The Project also promotes this objective because siting the LNG Terminal as part of a coastally-dependent industrial complex preserves and protects coastal resources by minimizing disturbances to the coastal zone.

**a. The Sparrows Point Project significantly and substantially furthers the national interest in restoring and enhancing the resources of the coastal zone.**

The Sparrows Point Project will have a number of regional environmental benefits, some of which will substantially further the national interest in restoring and enhancing coastal resources in the region. The Project will “provide the region with a source of clean burning fuel,” which will further the national interest “in terms of . . . environmental consequences avoided.” See Islander East at 5 & n. 22. This is confirmed in Resource Report 10, where it is demonstrated that using clean burning natural gas instead of fossil fuels will have significant environmental benefits. See RR 10 § 10.3.2 (attached at A-9). The Project will also directly restore and enhance coastal resources in the region by improving water quality through the containment and treatment of currently uncontrolled stormwater run-off. See RR 2 § 2.4.9.2 (attached at A-10). In addition, the Project will improve the health of the Chesapeake Bay by safely removing, treating (as necessary), and recycling contaminated sediments from areas offshore of the Sparrows Point peninsula. The sediment sampling data collected from the dredge footprint indicates that the removal of contaminated sediment during project dredging should

improve the condition of the waterbody. See id. § 2.4.3.2; RR 8 § 8.5.6 (attached at A-11); After the sediments are removed, AES proposes an innovative re-use processing facility to recycle dredge spoils into material for beneficial application, such as Brownfields redevelopment and construction fill. See RR 1 § 1.5.1.2; RR 2 § 2.4.8.4.

Such benefits significantly and substantially further the national interest in restoring and enhancing the resources of the coastal zone. They “contribut[e] to [the restoration and enhancement] to a degree that has a value or impact on a national scale” as a result of the size and extent of measures that the Sparrows Point Project will undertake and the environmental benefits that will result. Islander East at n. 26.

**b. The Sparrows Point Project significantly and substantially furthers the national interest in preserving and protecting the resources of the coastal zone.**

The Project also furthers the national interest, as articulated in Section 303, by “preserv[ing], [and] protect[ing] . . . the resources of the Nation’s coastal zone.” 16 U.S.C. § 1452(1). By siting the LNG Terminal as part of an existing industrial complex zoned for heavy industrial use and classified as an Intensely Developed Area under Maryland law, AES will minimize the coastal resources affected by the Project. See MD. REGS. CODE tit. 27 § 01.02.03. The use of this existing industrial site with a long history of commercial marine usage, assures that the LNG Terminal will only have a de minimis impact on the surrounding community and the environment, both during construction and in its operation. Section 303 of the Act explicitly recognizes that this serves the national interest in preserving and protecting the coastal zone, stating that priority consideration should be given to “locat[ing], to the maximum extent practicable, [] new commercial and industrial developments in or adjacent to areas where such development already exists.” 16 U.S.C. § 1452(2)(D). Maryland law also recognizes such a

benefit, providing that new port-related facilities “shall be located near existing port facilities.” MD. REGS. CODE tit. 27 § 01.02.03(D)(6) (emphasis added).

Locating the Project at an existing industrial site also significantly and substantially furthers the national interest in protecting and preserving the resources of the coastal zone because of the size and extent of the coastal resources that will be undisturbed as a result of the utilization of an existing marine industrial site for the project. See generally RR 10 § 10.5. Further, the siting “provid[es] a valuable or important contribution to a national interest” because it allows for the development of much needed energy infrastructure in a way that avoids significant adverse impacts to the coastal zone. Islander East at n. 26.

**B. The National Interest Furthered By the Sparrows Point Project Outweighs Any Putative Adverse Coastal Effects**

The significant and substantial national benefits of the Sparrows Point Project outweigh any limited adverse impacts to Maryland’s coastal zone. As noted in Section II-A-3, the environmental impact of the Sparrows Point Project on Maryland’s coastal zone is generally positive and beneficial, and this Project “does not involve impacts to threatened or endangered species, or broad impacts”, Islander East at 10, to Maryland’s waters or the Chesapeake Bay ecosystem. See RR 3 §§ 3.5 & 3.6 (attached at A-12). To the extent there may be any potential adverse coastal effects resulting from the construction or operation of the Project, AES has worked to eliminate or mitigate them to the greatest possible degree.

The thirteen environmental Resource Reports, the supplemental information filed by AES in response to subsequent data requests, and application materials submitted to MDE in the Maryland state permitting process, provide analysis of all aspects of the proposed LNG Terminal, Pipeline, and dredging activities, including coastal impacts. See RRs 1 to 13. This information documents in detail the steps AES has taken and proposes to take to insure that any

coastal impacts will be minimal or beneficial. For example, as discussed in Resource Report 1, AES has selected an existing industrial site located in a maritime heavy industrial area for the LNG Terminal and will use existing infrastructure, including piers, as appropriate. See RR 1 § 1.3. This assures that the construction and operation will have de minimis impact on coastal resources. In fact, rehabilitation of this Brownfield site, with the accompanying improvements to stormwater runoff, will benefit the environment. See RR 8 § 8.3.1; RR 2 § 2.4.9.2. By removing and safely recycling dredged material, the Chesapeake Bay will be made cleaner because the low to moderate contaminants that currently exist in the sediments will no longer migrate into sensitive areas of the Bay. See id. § 2.4.3. In Resource Reports 2 and 3, AES discusses its dredging plan, highlighting that the area to be dredged has been subject to historical dredging and ongoing maintenance dredging, that the area is already covered by federal and state dredging permits, and that AES will undertake a number of mitigation measures and employ advanced techniques to avoid significant adverse environmental impacts. See RR 2 § 2.4; RR 3 § 3.3.3.1.

The Pipeline will also have de minimis impact on the coastal area. The Pipeline has been routed along existing rights-of-way (“ROWS”) (e.g. existing pipeline corridors, electric transmission line corridors, roadways, railways, etc.) with deviations only to avoid areas where development has encroached upon the existing rights-of-way and where it was found, based on in-field investigations and discussions with regulatory agencies, that environmental impacts could be avoided or mitigated by using an alternate route. See RR 8 § 8.3.2; RR 10 §§ 10.6.2 to 10.6.4.

As the Resource Reports demonstrate, the adverse coastal effects that will result from the Sparrows Point Project will be insignificant in magnitude as well as temporary in duration. These impacts are substantially outweighed by the Project’s furtherance of the national interests

discussed in Section II-A. For example, dredging operations could cause direct mortality to and a temporary loss of available habitat for the benthic communities within the dredging footprint (i.e. entrance channel, turning basin and berthing area). See RR 3 § 3.3.3. It is also possible that dredging could cause direct mortality to and temporary loss of available habitat for finfish species. In both cases, however, any such mortality would be limited to the duration of the dredging period, which is expected to be 24 months, and to the area where dredging operations would occur. The impact on finfish species would be minimal because finfish “are highly mobile” and “would avoid the area of disturbance and utilize nearby habitat during construction.” See id. In any event, any impact on finfish would also be mitigated by the use of advanced dredging techniques to limit sedimentation that could cause gill abrasion. See id. Even the temporary loss of available habitat for the finfish and benthic communities will be limited. See id. As Resource Report 3 concludes, “the footprint [of the dredging area] is small relative to the entire Patapsco River Estuary, hence the overall impact to the existing benthic communities is expected to be minimal, as recruitment and re-colonization of the disturbed area would be plentiful from nearby, unaffected portions of the estuary.” See id. See also RR 2 § 2.4.8.2. For finfish, the same is expected to occur once displacement due to the actual dredging operations ceases.

Assessing the cumulative adverse effects of the Project and other activities in the coastal zone does not alter the conclusion that adverse effects are outweighed by the benefits of the Sparrows Point Project to the national interest. For purposes of the second element of the consistency standard, cumulative adverse effects have been defined to mean “the effects of an objected-to activity when added to the baseline of other past, present and reasonably foreseeable future activities occurring in the area of, and adjacent to, the coastal zone in which the objected-

to activity is likely to contribute to adverse effects on the natural resources of the coastal zone.” Amoco at 39 (citing Decision and Findings in the Consistency Appeal of Gulf Oil Corporation, Dec. 23, 1985, at 8).

Resource Report 2 identifies two “reasonably foreseeable” infrastructure proposals that may also result in limited adverse impacts to wetlands in the coastal zone, as well as cumulative adverse effects to wetlands as defined by the Secretary: the expansion of Interstate Highway 95 in the vicinity of Interstate Highway 695 in Maryland and the construction of a new natural gas pipeline by Eastern Shore Natural Gas Company. See RR 2 § 2.5.4. As explained further in Resource Report 2, taken together with the Sparrows Point Project, the cumulative impacts to wetlands will be minimal because each project will be required to comply with federal, state and local permit conditions and because the construction activities for each project will be temporary and take place to some extent in areas where development exists (e.g. in existing pipeline and highway ROWs). See id.

Resource Report 9 also provides a cumulative impacts analysis for air quality. Based on worst-case project emissions modeling, the report concludes that Project emissions will not be considered regionally significant. See RR 9 § 9.3.5(I) (attached at A-13). AES also conducted additional cumulative air impacts modeling at the request of the FERC to take into account a proposed ethanol plant to be located in Baltimore County, which is the only new or reasonably foreseeable project expected to be located near the Project. This study, which was submitted to FERC staff on July 2, 2007, indicated that the combined emissions of the Sparrows Point Project and the ethanol plant will be in compliance with all applicable National Ambient Air Quality Standards as implemented by Maryland (attached at A-14).

As shown above and in the Resource Reports, the limited adverse coastal effects of the Sparrows Point Project are insignificant in magnitude and short-term in effect. Accordingly, they are far outweighed by the significant and substantial national benefits of the Sparrows Point Project and the demonstrated, offsetting environmental benefits to the coastal region, as identified and discussed supra in Section II-A.

### **III. The Sparrows Point Project Is Necessary In The Interest Of National Security**

Separate from finding the Sparrows Point Project consistent with the objectives of the CZMA, the Secretary can override the Objection on the ground that the Project is necessary in the interest of national security. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.122. The CZMA regulations provide that a federal license or permit activity is “necessary in the interest of national security” if a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. *Id.* Under this standard, the Secretary should find that the Sparrows Point Project is necessary in the interest of national security because it will contribute to the diversification of the nation’s energy supply.

Diversification of the nation’s energy infrastructure is an important component of national security. As President George W. Bush has stated: “Extending hope and opportunity depends on a stable supply of energy that keeps America’s economy running and America’s environment clean. . . . It is in our vital interest to diversify America’s energy supply.” State of the Union Address (January 23, 2007) (attached at A-15).

The importance of natural gas imports to the country’s energy security was recently underscored in a National Petroleum Council report that concludes that LNG imports are “making a small but increasingly important contribution to U.S. gas supply,” especially given that domestic natural gas production has been “relatively flat . . . while demand has been growing.” National Petroleum Council, Facing the Hard Truths about Energy, at III-B-11 (July

18, 2007) (attached at A-16). Indeed, the report concludes that LNG imports will be necessary to “balance the market.” Id. at III-B-13, 18 (citing EIA data). By contributing to the diversification of energy supply and helping to meet domestic demand for natural gas, the Sparrows Point Project would enhance the nation’s energy security.

In addition to supply diversity, geographic diversity of energy infrastructure helps to mitigate the effects of natural disasters on the Nation’s energy supply, thereby furthering the interests of national security. In the aftermath of Hurricanes Katrina and Rita, then Secretary of the Interior Gale Norton noted the importance of new energy for our national security:

Hurricanes Katrina and Rita clearly demonstrated we have no margin to mitigate the impacts of natural disasters on our energy supply . . . Diversification of our Nation’s energy supply is a key goal for this Administration and must remain a top priority for our Nation’s economic and national security.

Testimony of Gale A. Norton, Sec. of U.S. Dep’t of the Interior, before the Senate Committee on Energy and Natural Resources (Oct. 27, 2005) (attached at A-17). By siting the LNG Terminal and Pipeline in the Mid-Atlantic region — a high-demand area that is far away from the concentration of existing energy facilities (including LNG facilities) in the Gulf of Mexico and other areas of energy production and supply — the Sparrows Point Project provides geographic diversity that serves the interest of national security.

## **CONCLUSION**

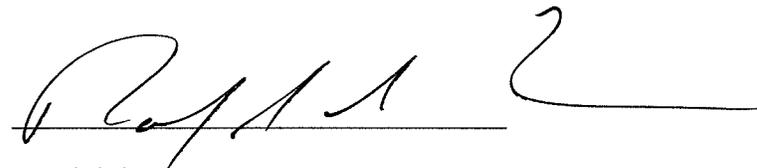
For the foregoing reasons, AES respectfully reiterates:

One. MDE failed to comply with Section 307 of the Act and subpart D of the CZMA regulations with respect to its objections based on sufficient and on insufficient information. Also, MDE’s objection based on Bill 9-07 is invalid because Bill 9-07 is not an “enforceable policy” of the MCMP and is preempted by federal law. Therefore, pursuant to 15 C.F.R. § 930.129(b), all of MDE’s objections are required to be overridden as a matter of law.

Two. The Sparrows Point Project is consistent with the objectives and purposes of the Act because the Project furthers the national interest as articulated in Section 303 of the CZMA in a significant and substantial manner, the national interest furthered by the Project outweighs any putative adverse coastal effects, and there is no reasonable alternative which would permit the Project to be conducted in a manner consistent with the enforceable policies of the MCMP. As such, all of MDE's objections should be overridden by the Secretary.

Three. The Sparrows Point Project is necessary in the interest of national security and, as such, all of MDE's objections should be overridden by the Secretary.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'R. McManus', is written over a horizontal line. The signature is stylized and includes a long, sweeping flourish that extends to the right.

Randolph Q. McManus  
G. Mark Cook  
Jessica A. Fore  
Adam J. White  
Emil J. Barth  
BAKER BOTTS L.L.P.  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400  
(202) 639-7725

Counsel for  
AES Sparrows Point LNG, LLC  
Mid-Atlantic Express, L.L.C.

Dated: September 7, 2007

## CERTIFICATE OF MAILING

Consistent with 15 C.F.R. § 930.127, copies of this brief and supporting materials have been sent to the following:

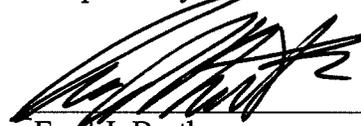
Mr. Elder Ghigiarelli, Jr.  
Deputy Administrator  
Federal Consistency Coordinator  
Wetlands and Waterways Program  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD 21230

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

Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 1st Street N.E.  
Washington, D.C. 20426

Mr. Joseph P. DaVia  
US Army Corps of Engineers - Baltimore District  
Attn: CENAB-OP-RMN  
P.O. Box 1715  
Baltimore, Maryland 21203-1715

Respectfully submitted:



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Emil J. Barth  
BAKER BOTTS L.L.P.  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400  
(202) 639-1103  
Counsel for  
AES Sparrows Point LNG, LLC  
Mid-Atlantic Express, L.L.C.

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