

LA3 – Suffolk County Department of Fire, Rescue and Emergency Services

Unofficial FERC-Generated PDF of 20070124-0149. Received by FERC OSEC 01/23/2007 in Docket#: CP06-54-00

**ORIGINAL**

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  
2007 JAN 23 A 11:20  
SUFFOLK COUNTY

AFFIDAVIT OF JOSEPH F. WILLIAMS IN SUPPORT OF 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.

STATE OF NEW YORK )  
                                  ) SS:  
COUNTY OF SUFFOLK )

JOSEPH F. WILLIAMS, being duly sworn, deposes and says:

1. I am the Commissioner of the Suffolk County Department of Fire, Rescue & Emergency Services ("SCFRES"). I am fully familiar with the facts and circumstances of this matter from my personal knowledge, from my employment, training and education, from my

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review of pertinent documents and from my discussions with employees of the SCFRES and other governmental employees.

2. I submit this affidavit in support of the comments of the 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 ("NYS DOS"), 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 became the Commissioner of SCFRES in October 2004. My duties and responsibilities include supervising Suffolk County's administration, communications, emergency medical service systems, fire prevention education, fire/rescue scene coordination, inspections, training, technical assistance. Emergency management, incident command and criminal and civil fire investigations for the 105 County-based fire departments and the 29 County-based EMS agencies, with more than 12,000 fire/EMS personnel. I am responsible for developing and implementing procedures and protocols for daily and emergency operations in Suffolk County, including the County Fire and EMS Mutual Aid Plan.

4. My prior employment has involved various aspects of fire safety, security and training. I was a New York City Police Officer from 1966 to 1970, where I was a member of the elite Tactical Patrol Force. In 1970, I joined the New York City Fire Department ("NYFD") and retired from that position in 1986, having been promoted to the rank of Lieutenant. Since retiring from the NYFD, I have held a series of jobs in the fire and safety fields. From 2002 to 2004, I

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was the Director of Fire Safety for Boston Properties, which manages major properties located in Times Square, in Manhattan. In particular, I was responsible for the fire safety and security at #5 and #7 Times Square. From 2000 to 2002, I worked for Weldon Technologies, Inc. as their National Sales Manager for the Fire Division. I was responsible for working with manufacturers and fire departments to help design fire safety products. From 1999 to 2000, I worked for the Fire Research Corporation as their Vice President of Sales & Marketing. I worked with fire departments throughout the USA on specialized equipment and training. My background is more fully set forth on my curriculum vitae, a copy of which is attached as Exhibit A.

5. I have reviewed and evaluated many documents relating to the Broadwater proposal. In addition, members of my staff have been participants on several inter-governmental Task Forces created to evaluate Broadwater. As a result of the assessment done by me and my staff, we have identified several major safety and security concerns that are associated with Broadwater which make it an unacceptable proposal from a fire safety and security point of view.

6. To begin with, it must be noted that SCFRES is not a Fire Department. It does not fight fires. Rather, it 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 responsible for enforcing the applicable fire codes on County-owned or leased property. It is not, however responsible for fire code enforcement on private or other governmentally owned or operated property.

7. 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.

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8. Because of SCFRES' coordination role, we are well aware of the capabilities, equipment and training of the local fire departments. There is no fire department located in Suffolk County that has equipment that would permit it to fight a fire on the FSRU or on the LNG supply vessels. Indeed, there are no fire boats under Suffolk County's jurisdiction or the jurisdiction of any Suffolk County based-local fire department. 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.

9. Currently, the only fire boats that have 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 over 60 miles away from the proposed location of the FRSU.

10. Currently, if there is a marine-based fire in Long Island Sound, the USCG responds. However, I understand that the USCG has formally admitted that it lacks sufficient boats and personnel to protect Broadwater. Under these circumstances, it is impossible for anyone to respond to an emergency of any kind on the FSRU.

11. I have several questions about responding to emergencies at the FSRU or its supply tankers, questions which remain unanswered by Broadwater, FERC, the USCG or any other entity. None of the local first responders is 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? Local fire districts are charged with the responsibility of being the first responders but 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. Moreover, they would have to be on guard 24/7/365. Who will respond to such emergencies and with what types of equipment? Who

LA3-1 As described in Section 3.10.6 of the final EIS, Broadwater would be required to work with the appropriate federal, state, and local agencies to prepare an Emergency Response Plan. The plan would include a Cost-Sharing Plan to provide funding for the agencies that agree to participate in emergency response actions. FERC must approve the Emergency Response Plan prior to final approval to begin construction.

LA3-1

# LA3 – Suffolk County Department of Fire, Rescue and Emergency Services

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LA3-1 ↑ will pay for this? Broadwater's grand experiment is in the wrong place at the wrong time. Long Island Sound is not a laboratory to test out a new and unproven method of storing and fueling LNG.

LA3-2 12. I understand that the USCG determined that a highly flammable vapor cloud from the FSRU could travel as far south as parts of Southold. As we learned from the Shoreham experience, it is impossible to evacuate such large sections of Long Island, especially on a moment's notice of a pending conflagration.

LA3-3 13. I am also concerned about other types of chemicals used on the FSRU and supply vessels. For example, the FSRU will store and use diesel fuel, sodium hypochlorite, ammonia and 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. Who will contain the spill of these materials? 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. Again, why experiment in Long Island Sound?

14. We are, of course, concerned with the threat of terrorism, especially since terrorists have announced that they intend to target LNG facilities.

LA3-4 ↓ 15. We are also concerned about responding to fires and other emergencies at the on-shore facilities associated with Broadwater. Little 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

LA3-2 The Coast Guard's risk analysis did not indicate that a release of LNG from the FSRU could result in an unignited vapor cloud reaching Southold. The FSRU would be about 9 miles from the nearest shoreline, and as described in Section 1.4.4 of the WSR (Appendix C of the final EIS) and in Section 3.10.3.2 of the final EIS, the maximum possible distance an ignitable vapor cloud would extend from the FSRU is 4.7 miles. For more detail, please refer to Section 3.10.3.2 of the final EIS. Additionally, the calculations used to determine the extent of the unignited vapor cloud were based on the methods and information in the Sandia Report (Sandia 2004) and other relevant data available at the time the WSR was prepared.

LA3-3 If Broadwater receives initial authorization from FERC, it would be required to coordinate with federal, state, and local agencies to develop an Emergency Response Plan (see Section 3.10.6 of the final EIS), an SPCC plan (see Section 3.2.2.1 of the final EIS), and a hazardous materials Facility Response Plan (as outlined in 33 CFR 154). These plans would address both the use and potential for release of hazardous materials and the emergency response procedures that would be followed if an incident were to occur during construction or operation of the proposed Project. FERC must approve the Emergency Response Plan prior to any final approval to begin construction. If the plans are not sufficient, or if either FERC or the Coast Guard has additional concerns regarding safety, security, or environmental impacts associated with implementation of the plans, FERC would not authorize Broadwater to operate the facility. As a result, all aspects of the emergency response needs for Project safety would be addressed by FERC and the Coast Guard, as would the plans for spill control and countermeasures.

LA3-4 The onshore support facilities for the proposed Project would be housed in existing buildings and therefore generally would be subject to the same fire fighting needs as the existing or past tenants. We agree with the comment that information on stored materials would be required for firefighters. Broadwater would need to comply with hazardous materials reporting requirements under the Emergency Planning and Community Right to Know Act (EPCRA), under which hazardous materials inventories are reported annually to state and local emergency response agencies. Hazardous materials information would be included in the Emergency Response Plan and the SPCC plan (see the response to comment LA3-3). Those 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.

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LA3-4 ↑ facilities. Here, because of the lack of information, no first responder would know what is stored or done at these on-shore operations.

LA3-5 [ 16. Furthermore, much of the Broadwater project will be located underwater – in the form of the YMS and 22-mile pipeline. There have been no studies done and no evidence presented about leaks occurring underwater. Rather, all we have is Broadwater's self-serving 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, we have no information about how one addresses a hull failure and rapid release of a cryogenic liquid into Long Island Sound.

LA3-6 [ 17. Finally, there may well be conflicting fire fighting techniques that come into play as you do not fight a natural gas fire the same way you fight fires associated with the other chemicals that are to be stored on the FSRU.

LA3-7 [ 18. Overall, SCFRES has grave concerns about the ability of any local first responder or private companies to respond to any emergency at the FSRU and supply tankers.

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

Sworn to before me this  
19 day of January, 2007

*Donald G. Lynch*  
Notary Public

*Joseph F. Williams*  
Joseph F. Williams  
DONALD G. LYNCH  
Notary Public, State of New York  
No. 0116180446  
Qualified in Suffolk County  
Commission Expires March 14, 2010

LA3-4

**Continued**

Broadwater would not be authorized to initiate construction until a satisfactory Emergency Response Plan and SPCC plan are completed and approved by FERC.

LA3-5

Section 3.10.9.3 of the final EIS provides information regarding a leak of natural gas from the underwater pipeline. Section 3.10.3.2 of the final EIS has been revised to address an underwater LNG release from the FSRU or an LNG carrier.

LA3-6

Please see our response to comment LA3-3.

LA3-7

Please see our response to comment LA3-3.

LA3 – Suffolk County Department of Fire, Rescue and Emergency Services

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**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.

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*County of Suffolk, New York*  
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LA4 – Long Island Farm Bureau



164 Edwards Avenue, Suite 3  
 Calverton, NY 11933  
 Tel (631) 727-3777 Fax (631) 727-3721  
 AskUs@lifo.com www.lifo.com

FERC Broadwater Public Hearing – January 11, 2007 Shoreham, New York

My name is Karen Rivara. I serve on the Executive Board of the Long Island Farm Bureau, a membership associate of over 6,000 individuals representing farmers, fishermen, agri-businessmen, landscapers and individuals interested in a rural quality of life. Many of our members are part of the commercial fishing industry. Long Island Farm Bureau and New York Farm Bureau are opposed to the proposed siting of Broadwater's Floating Storage and Regasification Unit (FSRU) in the New York waters of Long Island Sound, as this industrialization of the Sound will have a significant negative impact on the commercial fisherman in New York.

LA4-1  
 LA4-2  
 LA4-3

- 1) This impact will be felt as fishermen are displaced from their current productive fishing areas by:
- a. siting the FSRU in productive lobster grounds and establishing an off-limits safety zone with a radius of 0.7 miles around the FSRU.
  - b. Transient gear fishermen will be unable to fish near LNG carriers which also have a safety zone.
  - c. Fixed gear fishermen will have another shipping lane to contend with as established lanes are displaced into areas with fixed gear during LNG tanker transit. Traffic in these lanes destroys their gear.

There will be a reshuffling of fishing territory in the Sound resulting in a domino affect as fisherman who have lost their grounds seek space in other areas. Currently, each fishing commodity coexists with the other through a gentleman's agreement as to which areas are open to each fishery. Those who must move their gear will find themselves either in a crowded area, unproductive area, an area where the presence of their gear will create conflicts, or in some cases no area at all.

- 2) The displacement of fisherman due to this domino affect will have an adverse impact on the economy. The displaced fixed gear fisherman will lose income with less area available to fish. Transient gear fisherman will lose fishing opportunities due to LNG carrier traffic and the influx of fixed gear fishermen into their fishing areas. Monetary compensation to a few individual fishermen for their loss of business will not replace the loss of the fishing area and will not preserve fishing for future generations. All commercial fishermen with a NYSDEC food fish license may fish in these areas.

- LA4-1 Section 3.7.1.4 of the final EIS addresses impacts on commercial fishing of the proposed safety and security zones surrounding the FSRU and LNG carriers. Section 3.6.8.1 of the final EIS has been updated to include a discussion on the impacts to commercial lobstermen from the proposed moving safety and security zones around LNG carriers as they enter and exit the Sound. The analysis considers the potential that other large vessels entering or exiting the Race may alter their course, taking them through areas with high lobster pot density.
- LA4-2 The assessment of potential impacts to commercial fishermen in Section 3.6.8.1 of the final EIS includes consideration of the "reshuffling of fishing territory" due to implementation of the proposed safety and security zone around the FSRU. Section 3.6.8.1 also has been revised to further address impacts to commercial fishermen from the proposed moving safety and security zones around LNG carriers.
- LA4-3 Please see our response to comment LA4-1.

**LA4 – Long Island Farm Bureau**

LA4-4

The reduction of fresh seafood caught in Long Island Sound will be felt by the retail seafood and tourist related industries. Recreational fishing, another important economic engine on Long Island, will also suffer from loss of access to fishing areas.

LA4-5

3) The industry will be impacted by the intake and discharge of millions of gallons per day of Long Island Sound water. The FSRU will intake and discharge an average of 5.5 million gallons of water per day. The LNG carriers will also intake millions of gallons per day. The detriment to marine life will be a) the exposure to discharge water treated with a biocide and b) impingement or entrainment of marine life due to the intake of water. Marine life such as larval finfish, crustaceans and shellfish could be affect by this process.

LA4-6

Allowing the proposed installation of the Broadwater Floating Storage and Regasification Unit would result in the water dependent transport and unloading of Liquid Natural Gas and the non-water dependent process of regasification of the LNG, displacing the more important and historical water dependent industry of commercial fishing. The installation of this facility will displace commercial fisherman who fish the Long Island Sound from Wading River, east. This is not a fair or wise displacement of a traditional water dependent industry.

Thank you for the opportunity to present comments at this hearing.

LA4-4 Section 3.5.5.1 of the final EIS addresses potential impacts to recreational fishing and tourism, and Section 3.6.8.2 of the final EIS describes potential economic impacts to water-based recreation.

Section 3.7.1.4 of the final EIS presents the impacts to commercial fishing and states that the impacts would be minor. Long Island supports about 474 commercial fishermen, and Long Island is only one component of a regional fishery. Because the impacts to commercial fishing would be minor, if a catch reduction in Long Island Sound is attributable to Broadwater, it would be very small. The magnitude of the potential catch reduction would not result in a measurable impact to the retail seafood industry.

LA4-5 The potential impacts of water intakes and discharges are described in detail in Sections 3.2.3 and 3.3.2 of the final EIS. The estimated yearly entrainment and impingement impacts would represent less than approximately 0.1 percent of the standing crop in the central basin of Long Island Sound, and these losses are not expected to affect the overall finfish or lobster population within Long Island Sound.

LA4-6 Section 3.7.1.4 of the final EIS addresses the impacts to commercial fishing. Overall, impacts to commercial fishing would be minor, temporary, and localized during LNG carrier transits for the life of the Project. Many commercial fishing vessels likely would not experience any conflict with an LNG carrier and its associated safety and security zone because only one carrier would be present in the Sound at any one time.

## LA5 – New York City Energy Policy Task Force

200701235084 Received FERC OSEC 01/23/2007 04:46:00 PM Docket# CP06-54-000, ET AL.

January 23, 2007

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

Dear Secretary Salas:

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

In November of 2006, the Federal Energy Regulatory Commission, following a review conducted in conjunction with the United States Coast Guard and a number of other agencies, issued a Draft Environmental Impact Statement (DEIS) for the Broadwater Liquefied Natural Gas (LNG) Energy Project (hereafter, Broadwater). Broadwater is a proposal to moor a floating liquefied natural gas facility, approximately nine miles off the coast of Riverhead, New York. The facility would receive shipments of LNG, which would then be stored, regasified and transported to Long Island and New York City through an interconnection with the Iroquois Gas Transmission System. In sum, the DEIS concluded that with appropriate mitigation measures, the Project would have limited environmental impacts.

If New York is to remain the preeminent financial, corporate and communications capital of the world, and to continue to attract and retain businesses and residents, it must have a dependable source of reliable, affordable and clean electricity. As the overwhelming percentage of the generating capacity in the City uses natural gas as a primary fuel, there is a very close relationship between the availability of natural gas and the ability to ensure adequate and affordable electricity generation resources here.

Mayor Michael Bloomberg in 2003 directed the New York City Economic Development Corporation to organize and lead a public-private Energy Policy Task Force, which would comprehensively assess the City's energy needs and recommend specific policies and programs to meet those needs. The Task Force released its initial findings in January 2004 in a Report entitled "New York City Energy Policy: An Electricity Resource Roadmap" that details an integrated strategy comprising energy supply, energy delivery infrastructure, distributed resources and governmental initiatives from New York City. Among the central recommendations made in the Task Force Report is to "support diversity of fuel supply," including the "development of gas supply projects."

Local Government Agencies and Municipalities Comments

N-312

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## LA5 – New York City Energy Policy Task Force

200701235064 Received FERC OSER 01/23/2007 04:46:00 PM Docket# CP06-54-000, ET AL.

As proposed, Broadwater would diversify the City's energy supply by providing a significant amount of natural gas that is not subject to existing North American supply and transmission constraints. At present, the principal source of gas supply to the City is delivery over long-haul pipelines, primarily from the Gulf Coast and Western Canada. If placed into service, Broadwater would create an additional and far more proximate natural gas supply source.

At a peak send-out of approximately one billion cubic feet per day, Broadwater would appreciably increase the delivery capability of natural gas to New York City. Such production from Broadwater would supply enough gas to fuel substantial gas-fired electricity generation capacity. To the extent these projections are borne out, Broadwater would also improve system reliability, and exert downward pressure on the energy prices that would prevail in the absence of such an alternative fuel source.

An abundant supply of natural gas would not only help ensure that energy demands are met as the City continues to grow, it would do so with the most efficient and clean-burning fossil fuel. In order to meet anticipated air quality and climate change reduction goals and to repower the City's older power plants, it is critical to have an affordable and reliable supply of natural gas. Such plants are characterized by higher levels of air emissions, and their replacement would itself benefit the entire regional environment.

The prospect of an alternate source of reliable natural gas is thus a critically important one. To the extent that it can be made compatible with environmental requirements, as is suggested by the DEIS issued by the Commission, I strongly encourage your consideration of the Broadwater Project as a means to help ensure the energy diversity, reliability and affordability that is vitally needed for the future of New York City and the metropolitan region.

LA5-1

LA5-1 Thank you for your comments.

Very truly yours,

*/s/ Gil C. Quinones*

Gil C. Quinones

Chair,

New York City Energy Policy Task Force

Senior Vice President,

Energy & Telecommunications Department

New York City Economic

Development Corporation



## LA6 – Towns of Brookhaven, Huntington and East Hampton

200701235038 Received FERC OSEC 01/23/2007 02:45:00 PM Docket# CP06-54-000, ET AL.

### INTRODUCTION

These comments are submitted in opposition to any approval of the proposed Broadwater LNG Project subject of the above-referenced Docket Nos. CP06-54-000, CP06-55-000, CP06-56-000 and as described in the Draft Environmental Impact Statement dated November 2006 (the "DEIS") by the Federal Energy Regulatory Commission ("FERC") or by any other involved agency. The Towns of Brookhaven, Huntington and East Hampton (collectively referred to herein as the "Towns") also support and join in the comments of the Towns of Riverhead and Southold and the County of Suffolk.

The Towns oppose the Broadwater LNG Project (referred to herein also as "Broadwater" or the "Project") and are active intervenors in the pending FERC proceeding. These comments are submitted to supplement previous comments, filings and motions made in connection with the FERC proceeding as well as testimony made by or on behalf of the Towns at prior public meetings and hearings.

### PRELIMINARY STATEMENT

These comments are provided to show the failure of the DEIS to comply with the procedural and substantive requirements of the National Environmental Policy Act ("NEPA"). Simply put, the DEIS does not comply with NEPA and therefore the Towns demand it be rejected and a new DEIS be prepared. The DEIS fails the "hard look" standard as fashioned by the courts when reviewing the adequacy of a DEIS. The DEIS does not even meet the minimum requirement of presenting a full disclosure of the environmental impacts of the proposed Broadwater LNG Project. Furthermore, the DEIS is presented with a total lack of good faith objectively, and instead offers bias and conclusory reasoning in favor of the Project.

## LA6 – Towns of Brookhaven, Huntington and East Hampton

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Moreover, with respect to the potential problems with and criticisms raised about the Project, the DEIS merely attempts to sweep them “under the rug” or “out to sea” one might say.

While a litany of factors must be considered when evaluating the adequacy of a DEIS, the most important are: i) assessing the purpose and need of the proposed project, including its costs and benefits; ii) consideration of alternatives and the presentation of an objective basis for eliminating alternatives, and, iii) an analysis of the environmental consequences of the proposed action, including sufficient assessment of pollution prevention.

A discussion of cumulative environmental effects of a proposed action is also an essential part of the environmental quality review process and, therefore, must be fully presented in an impact statement. NEPA implicitly requires honest mitigation measures to be considered regarding any adverse environmental effects which cannot be avoided, in order to minimize environmental impacts, rectifying the impact by repairing, restoring or rehabilitating the affected environment, reducing or eliminating the impact overtime through preservation or maintenance, and compensating for the impact, including natural resource damages, or providing substitute resources.

As set forth in more detail herein, the DEIS does not comply with these basic tenants of NEPA or the requirements of an environmental impact statement and in doing so fails to ensure the integrity of the decision-making process. In sum, FERC or any involved agency cannot rely on the information disclosed or analysis provided in the DEIS as it is insufficient, bias, lacks critical reasoning and presents unsubstantiated conclusory statements.

It is preposterous to expect anyone to believe that the construction and operation of a 1,215 foot long, 200 foot wide barge filled with 8 billion cubic feet of liquid natural gas in cryogenic storage tanks, which if released would freeze any life its contacts instantly and then

# LA6 – Towns of Brookhaven, Huntington and East Hampton

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vaporize into a cloud which could asphyxiate life and ignite, which includes facilities for the manufacture of explosive natural gas, standing over 80 feet above the waterline and occupying over 2,000 acres of an Estuary of Natural Significance; along with a 21.7 mile subsea pipeline and a Yoke Mooring System towering 223 feet above the sea floor and occupying over 13,000 square feet of Essential Fish Habitat on State waters and underwater lands held in public trust, as well as an additional 118 LNG tankers annually restricting navigation and recreation on Long Island Sound, will result in "minor environmental impact," and the impacts to resources would be "avoided or further minimized with incorporation of the [federal government's] recommendations." See pg. 3-250. Indeed the DEIS comes to the unbelievable conclusion that not only do we need the Broadwater LNG Project but . . . "it would result in fewer environmental impacts than any alternatives considered to provide natural gas to Long Island."

When one objectively reviews the DEIS in light of this conclusion it is not difficult to question whether FERC and the cooperating agencies have ignored their responsibilities to protect the human and natural environment in favor of the business interests of the Project sponsors.

LA6-1

### THE DEIS IS INADEQUATE

The following presents specific questions, raises critical issues and identifies basic deficiencies in the DEIS.

1. The information presented and analysis provided about the purpose and need of the Project not only lacks objectivity, it also fails to provide essential information, as follows:

- a) The DEIS alleges that the Broadwater LNG Project will supply needed natural gas, as the region is in need of such gas and additional energy. However, the DEIS lacks information from the Long Island Power Authority ("LIPA") and KeySpan Energy

LA6-2

LA6-1

The EIS was prepared in compliance with the environmental review requirements of NEPA and did not consider in any way the "business interests of the Project sponsors." All conclusions presented are supported quantitatively and/or by best professional judgment. Section 4.0 of the final EIS presents the data and rationale for our determination that the alternatives to the Broadwater Project would result in greater impacts than those of the proposed Project.

LA6-2

As described in Section 1.1 of the final EIS, there is a general consensus that the demand for natural gas is expected to increase due to a combination of increasing demand from electrical generators, increasing population, and increasing per capita energy consumption. At the same time, net pipeline imports, primarily from Canada, are expected to decrease substantially. Based on consideration of the studies referenced in the EIS, FERC has concluded that, if regional prices are to be stabilized and if the integrity and reliability of the region's home heating and energy networks are to be maintained, new sources of natural gas – preferably from regions outside of the Gulf of Mexico and Canada – are needed for the New York City, Long Island, and Connecticut region.

Section 1.1.2.2 of the final EIS describes the relationship between natural gas as an energy source for end users and as input for electrical generation, and also addresses the current generating and distribution plans of LIPA and KeySpan Energy.

## Local Government Agencies and Municipalities Comments

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LA6-3

("KeySpan"). The DEIS also erroneously discusses providing natural gas as if it were synonymous with making energy available. These are clearly two separate notions and are not interchangeable. Therefore, the DEIS should discuss the exact relationships of Broadwater natural gas to any energy production capacity on Long Island.

Moreover, we are told by the DEIS and the Project's sponsor that we need Broadwater, that it is the best alternative, and Long Island Sound ("LIS") is the best location for the floating storage and regasification unit ("FSRU") for Long Island to have a sufficient supply of natural gas and that having Broadwater will reduce the cost of natural gas to Long Islanders and allow us to have cleaner and cheaper power. Unless we hear this from LIPA to whom Long Islanders pay for their power and Keyspan, which provides the majority of power LIPA sells to us and the natural gas which Long Island residents purchase, these comments are meaningless. We need LIPA and Keyspan to say we need Broadwater for this gas and that its presence will mean clean energy and reduce our rates, if it is true. However, we understand that Broadwater is actually a competitor to a proposed Keyspan project to bring more natural gas to Long Island. Frankly, that makes the conclusions in the DEIS on need

LA6-4

LA6-3 Please see our response to comment LA6-2.

LA6-4 As noted by the commentor, FERC has addressed the overall need for natural gas in the region and alternatives to the Project. However, the cost of natural gas to Long Islanders is not a component of our environmental review of the Project and therefore was not addressed in the EIS.

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and purpose nothing more than a sales advertisement for Shell Oil and Trans Canada, Broadwater's parents. Indeed, at page 1-5 of the DEIS, in a statement that is certainly confusing to any Long Island ratepayer, LIPA is described as a "provider of last resort", said to only offer power supply to any customer who is unwilling or unable to arrange for an alternative power supply. In reality it is LIPA that supplies electrical power to Long Island ratepayers, that is its responsibility as a matter of law and LIPA acknowledges it. To say generally that customers have a reasonable alternative is misguided and lacks credibility.

b) At its very first page (ES-1) the DEIS states that the Broadwater LNG Project will "... provide a new source of reliable, long-term, and competitively priced natural gas to the Long Island, New York City, and Connecticut markets. . ." This statement is no more than an unsubstantiated conclusion from the preparers of the DEIS who are obviously proponents of the Project.

Indeed, the DEIS is absent of any information about the physical sources and markets from where the LNG will come from to fill and be processed into natural gas by the Broadwater FSRU. The DEIS at pg. ES-2 merely states that the LNG in the Broadwater FSRU will be replenished by approximately 118 LNG tankers per year from foreign sources. There is no information presented as to where the originating source of natural gas is,

LA6-5 [

LA6-5 As stated in Section 1.1.2.2 of the final EIS, LIPA is designated as the "provider of last resort" for Long Island. This is a legally defined term that simply means that LIPA is responsible for offering power supply to any customer unwilling or unable to arrange for an alternative power supply. As the provider of last resort, LIPA has assumed much of the responsibility for ensuring that Long Island has sufficient generating capacity. We agree with the commentor that, except for the providers of power for the Green Choice Program, LIPA is in practice the provider of electrical power for residents of Long Island.

LA6-6 ]

LA6-6 At the time this final EIS was prepared, Broadwater had not specified the planned sources of LNG for the Project. As indicated in Section 1.1 of the final EIS, evaluation of pricing and long-term availability of non-U.S. sources is not within the jurisdiction of FERC and is thus beyond the scope of this EIS.

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LA6-6 [ where it is liquefied into LNG, the routes of the supply tankers, the owner(s) of the tankers or specifically the ownership and control of the LNG going into the Broadwater FSRU. Therefore, based upon the content of the DEIS, it is impossible for the public, involved agencies, the lead agency or any decision maker at all to come to the conclusion that the source of the LNG is reliable, long-term or competitively priced.

LA6-7 [ Even more importantly is that there is no information about the reliability or pricing of the natural gas intended to come to Long Island users from the Broadwater FSRU. The DEIS at pg. 4-10 simply states it will "hot-tap" into the existing Iroquois Gas Transmission System ("IGTS") pipeline in Long Island Sound. The unanswered question is how does the natural gas actually get to Long Island users as the IGTS hits landfall in Northport, New York and terminates in South Commack, New York. Also, as the existing undersea currently transports natural gas south from Connecticut to Long Island, the question remains as to how is the same pipeline going to transport the natural gas from the Broadwater FSRU to Connecticut. The DEIS is absent of any information of who will actually sell the natural gas to Long Island users and how it will be priced.

LA6-8 [

LA6-9 [ c) The DEIS at pg. 5-17 reports that the Broadwater LNG Project is not only essential to supply gas and power to Long Island, but

LA6-7 Section 1.1.1 of the final EIS lists the volumes of gas estimated to be transported to New York City, Long Island, and Connecticut. The distribution of natural gas within communities is the responsibility of local distribution companies (LDCs), not Broadwater or IGTS. The increased volume of gas that would be available in the IGTS pipeline if the Broadwater Project is implemented could be used by LDCs in existing distribution lines.

LA6-8 As discussed in Section 4.5.1 of the final EIS, IGTS (in a letter to FERC dated April 11, 2006) indicated that the proposed Broadwater Project would allow gas to flow through the IGTS pipeline to markets in Connecticut, Long Island, and New York City without improvements to the existing IGTS pipeline. This would be possible since the pressure would be provided at the FSRU, not by additional compression along the IGTS pipeline.

LA6-9 Information on who would sell natural gas to Long Island users and at what cost is beyond the scope of our environmental review and therefore has not been included in either the draft or final EIS.

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LA6-10 that “The proposed Project would result in fewer environmental impacts than any alternatives considered...”. It defies belief that a pipeline, FSRU and Mooring System in LIS would have fewer environmental impacts than merely say a pipeline. Considering this, one might view the Broadwater LNG Project as being primarily for New York City and not the best alternative for Long Island at all. In this perspective, the DEIS fails to recognize the decades of abuse suffered by LIS resulting from the failures of New York City to implement adequate environmental protection measures.

LA6-11 Similarly, it is difficult to accept that the Broadwater LNG Project in LIS, again an Estuary of National Significance, could have fewer environmental impacts than say offshore ocean LNG facility like the Safe Harbor Energy Project, proposed to be more than a dozen miles off the south shore of Long Island and almost twenty miles off the coast of New Jersey in the deep water of the Atlantic Ocean, which could reportedly supply more than two times more gas to New York City than Broadwater.

LA6-12 Just based on this simple overview, it is obvious the analysis of alternatives in the DEIS lacks reason and objectivity.

2. In the General Impact Assessment of Chapter 3.0 of the DEIS, entitled Environmental Analysis, at page 3-1 it states that:

LA6-10 The commentor made a general statement about comparative impacts, but that comment does not include consideration of the specific environmental conditions that are relevant to the impact analysis for the proposed Broadwater Project versus those of the alternatives. These conditions have been addressed throughout Section 3.0 of the final EIS and in Section 4.0, which also present the data and rationale for our determination that the alternatives to the proposed Broadwater Project would result in greater impacts than those of the proposed Project.

LA6-11 The environmental regulatory policies of New York City are beyond the scope of our environmental review of the Broadwater Project. However, those policies, as well as those implemented by Long Island and Connecticut, have affected the health of Long Island Sound. The condition of the Sound is described in great detail throughout Section 3.0 of the final EIS. We have also discussed the causes of the decline, which are believed to be related primarily, though not exclusively, to historical and current discharges especially wastewater and stormwater-into the Sound. The Broadwater Project and alternatives to the Project were evaluated with regard to the ability to provide the needed gas to the region, not just to Long Island.

LA6-12 Section 4.3.2 of the final EIS has been updated to include the most recent available information on other LNG terminal projects, including the Safe Harbor Project and other offshore LNG projects in the region. This updated analysis concludes that the Safe Harbor Project would not reduce environmental impacts relative to those of the Broadwater Project. Further, the Safe Harbor Project could not use the Transco pipeline, as proposed, to deliver natural gas to New York City in comparable volumes without additional pipeline and compressor station construction.

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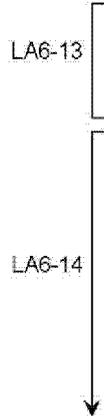
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“Conclusions and our recommendations in this EIS are based on our analysis of potential environmental impacts, with the following assumptions:

- Broadwater would comply with all applicable laws and regulations”

The Broadwater Project will not comply with all applicable laws and regulations and indeed it is not even a feasible project. The Project is not feasible because it requires easements from the State of New York for use of State underwater lands and Long Island Sound, which have not been granted. Nor is there any reason to believe such grants will be made by the State. Moreover, not only has Broadwater failed to even correctly apply for these easements, it would appear that the applicable State statutes may not even allow for such an easement for the mooring tower system proposed and the FSRU. This could mean actual new legislation would have to be adopted for the State to even consider such a use of Long Island Sound. To do so, the State would have to set aside its stewardship of Long Island Sound under the public trust doctrine, which calls for the State to hold these waters, underwater lands and natural resources in trust for all the public and not to encumber them for the purpose of private profits. There is no more than a passing mention in the DEIS of these essential easements and absolute impediments to the Project.

The DEIS merely lists the required easements in the chart regarding approvals required, but fails to provide any discussion of the requirements and complexities of the applicable State law at pg. 1-20, Table 1.3-1. Rather, the DEIS, apparently assuming the State law not only contemplates use of LIS by the Broadwater FSRU and mooring system, but that the grants will be made by the State, boldly concludes that the revenues generated by the Project will include easement acquisition fees paid by Broadwater to the State. At page 3-115 of the DEIS it cites one of the direct effects on tax revenues resulting from the Project is an increase in government



**LA6-13** Section 3.5.5.2 of the final EIS describes the procedures required to obtain an easement for the Project and Section 3.5.7.4 of the final EIS addresses the Project in relation to public trust issues. The legal issues associated with granting easements and the use of public trust lands are not components of our environmental review and therefore have not been included in the EIS; however, it is worth noting that several utilities and numerous dock and harbor facilities use public trust lands for profitable endeavors.

**LA6-14** Please see our response to comment LA6-13.

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LA6-14 [ revenue to the State associated with rights of way acquisition. No background information, analysis or justification for this statement is provided in the DEIS.

3. The DEIS provides that prior to construction Broadwater will file documentation of concurrence from the New York State Department of State of the Project's consistency with the New York Coastal Zone Management ("CZM") Program. But then, beginning at page 3-103, the DEIS provides information from the applicant's purported CZM consistency determination and an indication of where the impact analysis associated with the policies are presented in the EIS. This is not only procedurally confusing, but arguably deceptive and in any case, an inadequate approach and analysis.

LA6-15 [ The DEIS should not merely set out a requirement of the filing of the consistency documentation prior to construction; such documentation must be part of the EIS. The approach presented in the DEIS is particularly curious, as while the DEIS lists the New York State Department of State as a "cooperating agency", the determinations on CZM consistency presented therein are only from Broadwater.

LA6-16 [ A fair reading of the CZM policies as applied to the Project will show that the Broadwater LNG Project is plainly inconsistent with the Coastal Zone Management Plan for Long Island Sound as well as various Local Waterfront Revitalization Plans of the Towns on Long Island which are not even discussed in the DEIS. The use of our coastal waters by the Broadwater Project is plainly inconsistent with State Coastal Policies generally and specifically contrary to the Long Island Sound Coastal Management Program policies. These policies are comprehensive and reflect existing state law and authority, representing a balance between economic development and preservation, that are written and implemented to permit the beneficial use of, but prevent adverse effects on, the Sound's coastal resources and

LA6-15 Summaries of the information Broadwater filed in its Coastal Zone Consistency Determination were presented in the draft EIS to provide readers with an understanding of what Broadwater's position was for each policy and then referred to our impact analysis that related to the topic. As stated in Section 3.5.7.1 of the final EIS, it is the responsibility of NYSDOS to determine whether the Broadwater Project complies with coastal policies. It is our understanding that NYSDOS will make that determination after the final EIS is issued. Consequently, FERC cannot provide documentation of the decision in the EIS. Finally, because NYSDOS is responsible for reviewing Broadwater's consistency determination and either concurring or disagreeing with the information presented based on its regulations, policies, and guidelines, it would be inappropriate for FERC to separately assess the Broadwater determination.

LA6-16 Please see our response to comment LA6-15.

LA6-17 Please see our response to comment LA6-15. In addition, we have revised Section 3.5.7 of the final EIS to include information on Local Waterfront Revitalization Plans of the towns.

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LA6-18 [ communities. While the DEIS attempts to assess the Broadwater Project against these policies, the biased review is really just another chapter in the fiction novel FERC wants to label a DEIS.

As an example, a critical policy is to protect and restore the quality and function of the LIS ecosystem. This policy was reinforced by the New York Ocean and Great Lakes Ecosystem Conservation Act adopted by the State Legislature and signed into law in 2006, which is also not even mentioned in the DEIS. It is now the policy of the State to implement

ecosystem based management for our coastal waters. It is difficult to see how an industrial energy complex such as Broadwater could be consistent with such a policy. A consistency determination by the NYSDOS, including references to this new Act, rather than the applicant should be presented in the EIS.

LA6-19 [

4. The DEIS fails to provide a full detailed disclosure and analysis of the public health and safety risks and hazards of the Broadwater LNG Project, specifically the FSRU and mooring system. While the DEIS at page 3-190 states that the operation of the Project "...poses a potential hazard that could affect the public safety..." it further states that "...it is also important to recognize the stringent requirements for the design, construction, operation, and maintenance of the facility, as well as the extensive safety systems that would be in place to detect and control potential hazards." Obviously, FERC and the Project sponsors are unfamiliar with Long Island's experience with the Shoreham Nuclear Power Plant. More substantively, the discussion of hazards do nothing more than unjustifiably minimize the risk of potential horrific consequences of Broadwater to the public. Here are some of the hazards as described on pages 3-192, 3-226 and 3-227 of the DEIS:

LA6-20 [

"LNG's principal hazards result from its cryogenic temperature (-260°F), flammability, and vapor dispersion characteristics. As a liquid, LNG will

LA6-18 The commentor has failed to read the text clearly provided on page 3-103. We state that the policy summaries listed on pages 3-103 through 3-107 are "... summaries of key information from the applicant's consistency determination" (emphasis added). At no point did we suggest that those were FERC's determinations of consistency. We have not attempted to infringe on the responsibility of NYSDOS and assess Broadwater's compliance with the policies, and we clearly did not provide a biased review. We simply stated in the draft EIS what Broadwater had determined. To avoid confusion, we omitted the text on Broadwater's review in the final EIS.

LA6-19 Please see our response to comment LA6-15.

LA6-20 FERC and the Coast Guard have conducted extensive assessments of safety, security, and hazards. We believe that the statement that the draft EIS "unjustifiably minimizes" the risk of "potential horrific consequences to the public" is inaccurate and misleading. Section 3.10 of the EIS identifies the potential risks and hazards posed by the proposed Project, including evaluations of the potential consequences from a large-scale release of LNG to water. In addition, Sections 4, 6, and 8 of the WSR (Appendix C of the final EIS) address hazards, risks, and consequences of major incidents. As described in both documents, Hazard Zones 1 and 2 do not extend to shorelines for releases from the FSRU or from the LNG carriers while along the proposed transit routes. The individual resource sections of the final EIS have been revised to include information on the potential impacts of a release from an LNG carrier while in the proposed transit route. Section 3.10.4.4 of the final EIS has been revised to address the potential hazards associated with an incident that results in an LNG carrier grounding.

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neither burn nor explode... As a cryogenic liquid, LNG will quickly cool materials it contacts, causing thermal stress in materials not specifically designed for ultra-cold conditions. Such thermal stresses could subsequently subject the material to brittleness, fracture, or other loss of tensile strength."

"Methane, the primary component of LNG, is colorless, odorless, and tasteless, and is classified as a simple asphyxiant. Methane could, however, cause extreme health hazards, including death, if inhaled in significant quantities within a limited time. At very cold temperatures, methane vapors could cause freeze burns."

"When released from its containment vessel and/or transfer system, LNG will first produce a vapor or gas. This vapor, if ignited, represents the primary hazard to the public. LNG vaporizes rapidly when exposed to ambient heat sources such as water or soil, producing 620 to 630 standard cubic feet of natural gas for each cubic foot of liquid. LNG vapors in a 5- to 15-percent mixture with air are highly flammable. The amount of flammable vapor produced per unit of time depends on factors such as wind conditions, the amount of LNG spilled, and whether it is spilled on water or land."

"Once a flammable vapor-air mixture from an LNG spill has been ignited, the flame front will propagate back to the spill site if the vapor concentration along this path is sufficiently high to support the combustion process. An unconfined methane-air mixture will burn slowly, tending to ignite combustible materials within the vapor cloud. LNG is not explosive as it is normally transported and stored. However, LNG vapors (primarily methane) can explode if contained within a confined space, such as a building or structure, and ignited."

"The duration of an ignited accidental LNG spill detailed in Section 3.10.4.3 is approximately 48 minutes. For an ignited intentional LNG spill, the duration is approximately 7 minutes. The maximum increases in ambient pollutant concentrations due to the natural gas fire would occur downwind of the LNG spill. Ambient air pollutant concentrations in downwind areas could potentially exceed short-term NAAQS and state ambient air quality standards over the duration of the fire, as well as experience soot deposition and diminished visibility due to soot transport. Given the distance to shore from a potential fire along most of the transit route in the Long Island Sound, it is unlikely that sensitive receptors, such as schools, day care centers, hospitals, retirement homes, convalescence facilities, and residences, would be exposed to substantial pollutant concentrations for a significant period. There would be no long-term effects."

"If a pool fire occurred where the transit route is closer to shore, businesses within 2,195 feet of the center of a spill could be subject to a long-term loss of use. Vegetation and wooden structures subjected to greater than 3,000 BTU/ft<sup>2</sup>-hr may ignite. Because the hazard area surrounding an LNG carrier is transient

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(moving with the carrier along its route) it is not possible to accurately quantify the economic impact of such an incident. Section 3.10.4.3 discusses the effects of an LNG spill in greater detail.”

“In the event of a collision or allision of sufficient magnitude to rupture an LNG cargo tank, it is likely that sparks or flames would ignite the flammable vapors at the spill site. In the unlikely event that ignition did not occur, an LNG spill would rapidly vaporize on water and form a potentially flammable cloud. If the flammable vapor cloud encountered an ignition source, the cloud would burn back to the spill site, rather than outward shoreline habitats.”

“Given these considerations, impacts to shoreline habitats as a result of an accidental LNG spill are unlikely to occur. A spill would be unlikely to result in significant impacts to shoreline habitats and wildlife that occur along the transit route. Hazard distances for intentional breaches are discussed in Section 3.10.4.3. Although an intentional breach scenario may result in greater hazard distances, such scenarios are associated with the desire to inflict damage to major infrastructure, population and commercial centers, rather than to environmentally sensitive areas along the carrier route. Also, given the navigation controls and safety and security procedures in place to specifically prevent such accidents and intentional spill scenarios, the indirect impact associated with Coast Guard actions are not reasonably foreseeable events.”

LA6-21

To the extent that the Broadwater LNG Project presents such hazards as described, the analysis of alternatives to the Project should also include a weighing of the risks of the Broadwater LNG Project and its hazards against any associated with the alternatives. We also request the EIS include an independent risk assessment of these hazards.

5. The DEIS provides an extremely limited discussion on the reliability of the Yoke Mooring System which is intended to hold the FSRU and the actual consequences of its failure.

The DEIS at page 3-201 states:

“The overall reliability and safety of the FSRU and its operation is dependent upon the reliability of the YMS. The risk and safety concerns associated with the YMS include the following:

- Accidental detachment of the FSRU mooring structure from the yoke – the FSRU could then interfere with other vessels and/or could impact

LA6-21

The alternatives analysis consisted of a screening process that first considered the ability of an alternative to meet the purpose of the proposed Project and then considered the potential environmental impacts of the alternatives. Based on those two criteria, none of the alternatives were superior to the proposed Project, and we did not find it necessary to evaluate the comparative risks of alternatives with those of the proposed Project.

We believe an additional independent risk assessment of the hazards associated with the Project and alternatives to the Project is not warranted. (FERC didn't do a risk assessment. Risk = consequence x probability. We did a "consequence" analysis but we avoid the "probability" factor for numerous reasons).

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shoreline facilities; detachment would also damage or disconnect the flexible jumpers and could lead to a natural gas release;

- Mechanical failure of FSRU-to-YMS flexible jumpers, the YMS-to-subsea pipeline risers, or failure of the YMS gas swivel and other mooring head equipment – any of these conditions could result in a gas release and fire that may threaten FSRU personnel and equipment;
- Failure of control system cables from the FSRU to the YMS – this could impede the ability to shutdown the subsea shutoff valve at the base of the mooring tower; and
- Failure of the mooring tower – this could result in a navigational hazard due to the release of the FSRU or grounding of the FSRU.

These failure scenarios would result from excessive forces acting on the YMS. Extreme weather conditions, including wind, waves, and ice floes, would induce force directly on the YMS jacket and directly on the FSRU, which would transmit forces through the yoke to the mooring head and YMS jacket.”

LA6-22

It then goes on to recommend certain preventative measures. However, what is lacking is complete assessment and analysis of the consequences of the failure of the mooring system, including the fate of the FSRU, the resulting damages and any remedial or corrective action plan for both the human and natural environment which could result from a runaway FSRU.

6. Similar to the DEIS downplay of the hazards of the Broadwater LNG Project to public safety, its actual and potential environmental impacts are minimized by an obvious prejudice in favor of the Project. In sum, the DEIS fails to take the required “hard look” at these impacts.

As an example, the DEIS acknowledges that the National Marine Fisheries Service, (“NMFS”) the Federal agency responsible for the protection and management of fisheries, has designated the sea floor and the water column of LIS as Essential Fish Habitat (“EFH”). In addition, NMFS has identified 19 fish species as EFH – designated species, including early life stages of 9 fish species in LIS. The DEIS states that the primary impact to the EFH managed

LA6-22

As stated in Section 4.3.5 of the WSR (Appendix C of the final EIS) and in Sections 2.1.2, 3.2.1.2, and 3.10.2.3 of the final EIS, the YMS would be designed to withstand the forces equivalent to those of a Class 5 hurricane, and all design reviews of the facility would be conducted by an independent certifying entity, as addressed in Section 4.6.2 of the WSR. If the Project is authorized to proceed to operation by FERC, that authorization would be based on the detailed design information required for the continuing evaluation of safety and security. Section 3.10.2.3 of the final EIS and Section 4.3.5 of the WSR address the possibility and the risk of the FSRU breaking away from the YMS. In addition, as described in Section 3.10.6 of the final EIS, Broadwater would be required to prepare an Emergency Response Plan in cooperation with the appropriate federal, state, and local agencies prior to construction of the FSRU. That plan would address emergency situations and appropriate responses for a variety of situations, including the FSRU breaking away from the YMS and the appropriate response procedures. FERC must approve the Emergency Response Plan prior to final approval to begin construction.

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LA6-23 fish species would be associated with impingement and entrainment during operation of the ESRU, which would result from the daily intake of some 28.2 mgd of seawater associated with FSRU and LNG carrier operations. However, the purported impact analysis in the DEIS, particularly as to EFH, is presented without actual consultation with NMFS. To properly assess the impacts of the Project on EFH the EIS must incorporate comments from NMFS.

LA6-24 In addition, there are inconsistencies in the analysis of potential impacts to natural resources from certain aspects of the construction and operation of the Project. When presenting its CZM consistency determination the Project sponsor reports on the use of a closed-loop vaporization system to avoid the need for water withdrawal from LIS, purporting to justify a statement that the Project would protect sound water quality. (See DEIS p. 3-105). However, the DEIS also discusses an annual daily water intake of some 28.2 mgd, resulting in substantial impingement/entrainment of Ichthyoplankton, the majority of which would be discharged along with chemical additives, back into the Sound effecting the environment including thermal impact, among other things.

LA6-25 Similarly, in discussing the trenching for the appurtenant subsea pipeline, the DEIS suggests Broadwater proposes to leave the majority of the trench to backfill naturally. In later discussions, including those about cumulative impacts, the DEIS indicates a recommendation to backfill the entire length of the trench immediately after construction, leaving seemingly unsettled what will have the least impact and which approach will actually occur. While it may be plausible to provide a menu of mitigation measures, the EIS must clearly disclose the nature of the Project, which it does not.

LA6-26 7. Finally, the DEIS concludes that the Project will present a significant need for and have an impact on public services, including those of the Coast Guard which does not have

LA6-23 The commentor misrepresents our coordination with NMFS. NMFS is a federal cooperating agency in the preparation of the EIS. FERC has been coordinating with NMFS for over 2 years regarding fisheries issues (including EFH) and threatened and endangered species. This coordination has included a variety of interagency meetings and conference calls, and submittal of the interagency draft of the EIS, interagency final EIS, and the EFH assessment to NMFS for review and comment prior to public distribution.

LA6-24 The commentor misrepresents the statements throughout the EIS. Section 3.2.3.2 (among numerous others) repeatedly identifies the specific water volumes that would be used by the proposed Project. However, the statement in question explicitly relates to the closed-loop regasification process, which does not use seawater for vaporization. Open-loop vaporization, which has been proposed for other offshore LNG terminals, can use over 100 million gallons of water per day. In addition, these terminals with open-loop vaporization would also require volumes of cooling water and ballast water for FSRU and LNG carrier operations, similar to that proposed for the Project.

LA6-25 Section 3.1.2.2 has been updated in the final EIS to provide more information on this topic. FERC recommends that Broadwater conduct post-construction monitoring to assess backfilling and successful burial of the pipeline, rather than allow the trench to backfill naturally.

LA6-26 As described in Section 3.10.6 of the final EIS, Broadwater would be required to develop an Emergency Response Plan and the plan would need to be approved by FERC before Broadwater could receive approval to begin construction of the facility. Consequently, prior to construction, all aspects of the emergency response needs for the Project would be addressed by FERC and the Coast Guard.

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LA6-26 ↑  
the capacity to meet the Project needs, and local governmental entities, particularly in the form of emergency response services. But, the DEIS fails to discuss exactly how and by who those services will be provided, if at all. Here, it is not a question of incorporating mitigating measures, but a case of missing and/or unavailable services obviously necessary to the Project. The EIS must discuss the impacts of the Project to the extent these services may not exist.

LA6-27 [ Similarity, the DEIS outlines the need for an Emergency Response Plan, including necessary evacuation measures. However, absent from the DEIS is any discussion of the timeline, mechanism and obligations, if any, of the respective parties and public to actually participate, formulate, implement and pay for such a Plan. The EIS must include such information and analysis.

### CONCLUSION

The Towns, having reviewed the DEIS presented for the Broadwater LNG Project, conclude that the DEIS is inadequate and fails to comply with the requirements of NEPA. Further the Towns conclude from the information presented by Broadwater and the cooperating agencies in the DEIS that the actual need for and purpose of the Broadwater LNG Project has not been accurately presented, the DEIS has failed to take the required "hard look" at the impacts of the Project to the human environment and natural resources and that an objective analysis of alternatives to the Project has not been undertaken. Therefore, the Broadwater LNG Project or any aspect of such Project may not be approved by FERC or any

LA6-27 Section 3.10.6 of the final EIS describes the requirements of the Emergency Response Plan that Broadwater must prepare, including timing, agency participation, and cost sharing. FERC must approve the plan prior to authorizing construction of the proposed Project.

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involved or cooperating agency,

January 23, 2007

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D#531056v2

**LA7 – Town of Brookhaven**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

BROADWATER ENERGY LLC  
BROADWATER PIPELINE LLC

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

**DEIS COMMENTS  
SUBMITTED BY  
THE TOWN OF BROOKHAVEN  
TOWN BOARD**

**INTRODUCTION**

The Town of Brookhaven is just to the west of the FRSU. The northern border of the Town is the Connecticut line in the Sound and the eastern border is in Wading River. The pipeline will travel through the State owned waters within the Town.

The DEIS insufficiently reviews several adverse environmental impacts which are particular to the Town of Brookhaven, which are discussed below:

**THE DEIS IGNORES THE POTENTIAL IMPACTS OF THE  
PROPOSED ONSHORE SUPPORT FACILITY AND THE  
ADMITTED POTENTIAL OF THE OFFSHORE SITE  
TO BE A TERRORIST TARGET**

The DEIS discussion on the potential Port Jefferson onshore support facility is confusing and amounts to an improperly segmented NEPA review.

The DEIS indicates the necessity for "an onshore facility that would provide office support, warehousing and waterfront access for tugs and vessels servicing the FRSU". The DEIS suggests locations in either Greenport or Port Jefferson, but improperly defers selection and

LA7-1

LA7-1

Section 4.8 of the EIS discusses both onshore facility alternatives and states that Broadwater is not proposing any modification to either site except for installation of a perimeter fence and a security checkpoint/guard station. Use of these sites would not result in significant impacts, and neither site appears to offer an environmental advantage over the other. As stated in the EIS, we do not believe that construction of a perimeter fence on a disturbed site warrants further review.

**Local Government Agencies and Municipalities Comments**

**LA7 – Town of Brookhaven**

environmental review until an unspecified, future time. DEIS 3.5.2.3. See, 40 CFR 1502.4(a) and 1508.25(a)(1).

LA7-2

Indeed, Section 3.5.2.3 of the DEIS indicates that...“prior to construction, Broadwater will identify a specific site and confirm that no environmental impacts would result from the use of these facilities”. In the next paragraph, however, Broadwater indicates that such an onshore facility “would not result in land use conversions or impacts”, contradicting the statement a line earlier that impacts would be confirmed.

LA7-3

Section 3.5.2.3 also refers to Section 2.1.4. The referenced Section 2.1.4, however, does not discuss onshore facilities. Section 2.1.3.5, indicates that onshore support facilities “such as those described in Section 2.3.2.5 would be utilized”. However, Section 2.3.2.5 does not exist anywhere in the DEIS!

Section 2.4.4 of the DEIS further describes the proposed onshore facility as “office space for 6-10 staff, a warehouse for storage handling and handling of spare parts, tools and equipment, dock space for berthing 4 tugs, a workshop for tug maintenance, and a waterfront staging area capable of supporting container transfer cranes, large trucks, and a personnel transfer and boarding area. Apart from the installation of a *perimeter security fence* and *guard posts*, Broadwater does not anticipate modifying the existing facilities in any way”.

LA7-4

Section 2.4.4 of the DEIS also refers to figures 2.4-2 and 2.4-3 for maps of the potential sites. These maps are not in the DEIS, which refers the reader to the FERC website. A search of the website with key words did not locate the figures 2.4-2 or 2.4-3.

An e-mail inquiry of FERC, attached hereto, indicates that the map of the Pt. Jefferson site was not included in the DEIS because it is “considered Non-Internet Public Information under Commission Order No. 630, FERC Stats and Regs Paragraph 31, 140 (2003) (“Order 630”). Exhibit “A”

MTL/D531253v1/M040703/C0113150  
1.23.07

LA7-2

As described in Section 3.5.2.3 of the final EIS, Broadwater proposes to use existing facilities and has identified the area within which the facilities are located. Therefore, as currently proposed, no impacts would be expected with the use of the existing onshore facilities by the Project. When the specific facilities are chosen and the final use plan is prepared, FERC is requiring Broadwater (1) to confirm that no environmental impacts would be associated with the facilities; or (2) if the final use plans indicate a potential for currently unforeseen impacts, to comply with environmental permit requirements in order to ensure that any impacts that may occur are acceptable to state and local permitting authorities.

LA7-3

Thank you for identifying these discrepancies. Onshore support facilities are discussed in Section 2.4.4 of the final EIS.

LA7-4

All of the mailed copies of the draft (over 5,000) and final EIS contain Figures 2.4-2 and 2.4-3. They were designated “Non-Internet Public” for the draft EIS and were not available on the FERC website. We have re-evaluated the figures and removed the “Non-Internet Public” designation for the final EIS.

**LA7 – Town of Brookhaven**

The referenced Order 630 “establishes a procedure for gaining access to critical energy infrastructure information (“CEII”) that would otherwise not be available under the Freedom of Information Act (“FOIA”). These restrictions and final rule were necessitated by the terrorist acts committed on September 11, 2001, and the ongoing terrorism threat”. The summary of Rule 630 goes on to state that the rule will “help keep sensitive infrastructure information out of the public domain, decreasing the likelihood that such information could be used to plan or execute terrorist attacks”!

LA7-5

In other words, the map depicting the potential site for the on-shore support facility was kept out of the DEIS because the site is a potential terrorist target. Yet, incredibly, the DEIS asserts there will be no environmental impacts from this onshore support facility. Of course, in reaching this no impact conclusion, the DEIS fails to mention that there are single-family residences directly across the narrow street, i.e. Beach Street, from the proposed onshore facility. Certainly, these residences would be adversely impacted by such an admittedly dangerous proposed use!

LA7-6

Figure 2.4-3, which was finally obtained from FERC, is a 40-year old geological map of an area in Port Jefferson Village which does not reflect current uses in the area.

LA7-7

The rectangular area marked in figure 2.4-3 includes several parcels of property with a multitude of owners. A specific site should have been located and described further in accordance with the NEPA regulations, which require that environmental impacts of this onshore facility on the harbor should not be segmented and deferred. See, 40 CFR 1502.4(a) and 1508.25(a)(1). Other than the terrorist threat, which must result in immediate rejection of this site as an alternative, truck traffic, harbor traffic and the presence of an armed “security outpost” at a site would have to be analyzed.

LA7-5

The figure was not excluded from the draft EIS (see response to comment LA7-4). We have re-evaluated the figures and removed the “Non-Internet Public” designation for the final EIS.

LA7-6

The purpose of Figures 2.4-2 and 2.4-3 is to depict the areas within which Broadwater has proposed locating the onshore facilities, not to specify land uses in that area. Broadwater would use existing facilities that would be consistent with existing uses. Nevertheless, in response to this comment, we have revised the figures in the final EIS to use more current base maps.

LA7-7

Impacts associated with use of the onshore facilities are addressed in Sections 3.5.2.3, 3.7.2.3, and 3.8.5 of the final EIS. As noted in those sections, the onshore facilities would be used to support the offshore operations. This would include providing warehouse space for supplies and materials, office space for workers, and docking areas for tugs. By selecting existing facilities for Project-related use that would be similar to current use, we do not anticipate that there would be a greater threat of terrorist activity at the facilities than currently exists.

**Local Government Agencies and Municipalities Comments**

LA7 – Town of Brookhaven

LA7-8

Potential for inconsistency with the Port Jefferson Harbor Complex Management Plan ("Pt. Jeff Harbor Plan") of March 1999 and, in turn, the CMP Policy 4, Subpolicy 7 requires the State to consider local harbor management plans developed by local governments. Among other things, the Pt. Jeff Harbor Plan seeks to improve public access along the waterfront, which certainly would be reduced by Broadwater's heavily secured onshore support facility. Guards with the kind of military weaponry necessary for Homeland Security purposes certainly will not enhance the commercial waterfront of Port Jefferson Harbor!

LA7-9

The DEIS also must review the potential inconsistency of this proposed onshore support facility with the Long Island North Shore Heritage Area Management Plan, which includes in its goals the maintenance and revitalization of tourism in the area. Of course, the presence of heavily armed guards and a security fence will not enhance those goals.

**SAFETY AND SECURITY**

Obviously, based on the foregoing discussion of the onshore support facility, the DEIS contains an inadequate assessment of safety and security. As the United States Coast Guard stated in the security assessment contained in the September 2006 Waterways Suitability Report ("Coast Guard Report"):

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

The Coast Guard went on to note:

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

(Coast Guard Report pp. 156-157)

LA7-8

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 applicable local land management programs. NYSDOS is responsible for determining whether the Project is consistent with those policies. It is our understanding that the agency will file its determination with FERC after the final EIS has been issued. However, the determination will not address a "heavily secured onshore support facility . . . with the kind of military weaponry necessary for Homeland Security purposes . . ." because the onshore facilities would have only a small guardhouse at the entrance to prevent unauthorized entry. The proposed use of the facility (as described in response to comment LA7-7) does not require a higher level of security.

LA7-9

Section 3.5.7.2 has been revised to address the Long Island North Shore Heritage Management Plan.

**LA7 – Town of Brookhaven**

LA7-10 [ The bottom line of the Coast Guard Report is that the citizens and taxpayers of the Town of Brookhaven would be strapped with the burden of providing and paying for much of the security this facility and the concededly onshore support facility would demand. The Town simply does not have the resources. It will be the firefighters and EMT's from Brookhaven who will be burdened with responding to emergencies...potential catastrophic events, as well as

LA7-11 [ responding to the workers on the FRSU, personnel on the tankers and the onshore facility who suffer medical emergencies and injuries. The citizens of Brookhaven should not be saddled with either the monetary or the human cost of this for-profit corporate venture.

**INCONSISTENCY WITH THE LONG ISLAND SOUND COASTAL MANAGEMENT PLAN**

LA7-12 [ The DEIS sidesteps a key issue--namely, that the use of the Town's coastal waters by the Broadwater Project is plainly inconsistent with State Coastal Policies generally, and, specifically, contrary to the Long Island Sound Coastal Management Plan policies. These policies are comprehensive and reflect existing Federal and State law and authority, representing a balance between economic development and preservation that are written and implemented to permit the beneficial use of--and prevent adverse effects on--the Sound's coastal resources and communities.

The Broadwater proposal is inconsistent with at least three policies of the Long Island Sound Coastal Management Plan, i.e., Policies 1, 9 and 10. These policies are set forth 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 1.4:** Maintain and enhance natural areas, recreation, open space and agricultural lands.

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

LA7-10 Section 3.10.6 of the final EIS describes the requirements of the Emergency Response Plan that Broadwater must prepare, including a Cost-Sharing Plan for both emergency responses and security. FERC must approve the plan prior to authorizing construction of the proposed Project. Section 3.6.6.2 of the final EIS presents an assessment of the expected changes in local government revenue associated with construction and operation of the proposed Project.

LA7-11 Please see our response to comment LA7-10.

LA7-12 Please see our response to comment LA7-8.

## LA7 – Town of Brookhaven

**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.

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

Broadwater's inconsistency with each of these policies is discussed below.

**Policy 1:** Foster a pattern of development in the Long Island Sound Coastal areas 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.

The Broadwater proposal conflicts with the goal of preserving open space. The Coast Guard Report and DEIS emphasize the fact that some 2,000 acres of the Long Island Sound will be made unavailable for public use.

Broadwater will permanently deprive the public of access of 950 acres of the surface of the Long Island Sound by virtue of this circular security exclusion zone with a radius of 1,210 yards (USCG Waterways Suitability Report Section 4.6.1.5, p. 130). Since the LNG tankers used to supply LNG to the FRSU will have moving security zones around them that are 1,500 yards wide and 5,000 yards long plus the length of the carrier itself. The moving security zones will prohibit public access to 1,222 acres of the surface of the Long Island Sound at least 4-6 times a week. (The Waterways Suitability Report, Section 4.6.1.4, pp. 128-130).

Pursuant to the Public Trust Doctrine, New York State holds underwater lands and its navigable waters in its sovereign capacity as trustee for the beneficial use and enjoyment of the public. In Illinois Central Railway Co. v. Illinois, 146 U.S. 387 (1892), the Supreme Court explained the public trust doctrine to prohibit easements such as the one Broadwater seeks from the New York State Office of General Services. In Illinois, the Illinois legislature claimed to

## LA7 – Town of Brookhaven

have transferred rights to a one-thousand-acre portion of the bed of Lake Michigan adjacent to Chicago to the Illinois Central Railroad Company. *Id.* at 452. The Supreme Court ruled that the transfer was a “gross perversion of the trust over the property under which it was held” by the State of Illinois. *Id.* at 455. The Supreme Court explained that under the public trust doctrine, the State holds underwater lands in trust for the public so that the public “may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, *freed from the obstruction or interference of private parties.*” *Id.* at 452 (emphasis added).

Broadwater’s application violates the canons of the public trust doctrine set forth long ago by the Supreme Court and adopted by the highest court of New York. In Coxe v. State of New York, 144 N.Y. 396 (1895), a physical obstruction of the public’s access to navigable waters was found to violate the public trust doctrine. In Coxe, the State Legislature purported to transfer the State’s title to all of the submerged lands adjacent to Staten Island and Long Island. The Court of Appeals rejected that transfer as being “absolutely void”, stating that “so far as the statutes [conveying the land] attempted to confer titles to such a vast domain which the state held of the benefit of the public, they are absolutely void...” *Id.* at 405. The Coxe court articulated the test for a public trust doctrine violation. It held that, “title which the state holds and the power of disposition is an incident and part of its sovereignty that cannot be surrendered, alienated, or delegated, *except for some public purpose, or some reasonable use which can be fairly be said to be for the public benefit.*” *Id.* at 406 (emphasis added). The Coxe court further noted that the public trust doctrine is so broad that it would also prohibit transfers that are “for the public benefit” if they “might seriously interfere with the navigation upon the waters...” *Id.* at 408. If Broadwater is permitted to go forth with their Project, like the voided transfer in Coxe, it would “seriously interfere with the navigation upon the waters”, depriving the public of the use and enjoyment of thousands of acres of the surface of Long Island Sound. As stated in Cox v. City

## LA7 – Town of Brookhaven

of New York, 26 Misc. 177 (1898), “[t]he right of navigation is a public right, belonging not to towns, villages or cities as corporations, but, rather, to all citizens in severalty.” *Id.* at 178. The Broadwater Project attempts to side-step the long established and consistently held principles of the Public Trust Doctrine. A for-profit venture cannot be granted permanent and exclusive access and management of a significant portion of the unique public treasure of the Long Island Sound.

**Policy 2: Provide for access to recreational use of coastal water, public lands and public resources of the Long Island Sound coastal area.**

Of course, the same argument applies to Policy 9 as to Policy 1. The Public Trust doctrine will be violated.

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

Once again, the Long Island Sound water-dependent uses will be pre-empted by the liquefied natural gas facility, which is not necessarily a water-defendant use. Recreational boaters and fishermen utilize the area of the security zone and the LNG, particularly, the Race to travel to parts of Connecticut and Block Island.

Dated: January 23, 2007

Respectfully,

Brian X. Foley, Supervisor  
Steve Fiore-Rosenfield, Council Member  
Kevin T. McCarrick, Council Member  
Kathleen Walsh, Council Member  
Connie Kepert, Council Member  
Timothy P. Mazzei, Council Member  
Carol Bissonette, Council Member

LA7 – Town of Brookhaven

Message

Exhibit "A"

Page 1 of 1

**Maureen T. Liccione**

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**From:** Public Reference Room [Public.ReferenceRoom@ferc.gov]  
**Sent:** Monday, January 22, 2007 3:09 PM  
**To:** Maureen T. Liccione  
**Subject:** RE: Broadwater DEIS  
**Attachments:** 20061117-4004(16351551)(1).pdf

Attached is Figure 2.4-3, per your request.

"This information is considered Non-Internet Public information under Commission Order No. 630, FERC Stats & Regs. ¶ 31,140 (2003). For that reason, we request that you not post it on the Internet."

Thank you,

Public Reference Room/KQ-C

-----Original Message-----

**From:** Maureen T. Liccione [mailto:mliccione@shllp.com]  
**Sent:** Saturday, January 20, 2007 1:02 PM  
**To:** Public Reference Room  
**Subject:** FW: Broadwater DEIS

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**From:** Maureen T. Liccione  
**Sent:** Saturday, January 20, 2007 1:00 PM  
**To:** publicreferenceroom@ferc.gov  
**Subject:** Broadwater DEIS

Re: doc nos PF05-4, CP06-54-000, CP06-55-000

There are instructions in the DEIS on p 2-39 that public access to figure 2.4-3 on the proposed Pt Jeff Onshore facility location is available through the on line public reference room. Nothing came up. There also are instructions on page 2-39 to e mail this address to obtain this figure. Please send it to me via e mail ASAP. Thank you.

Maureen T. Liccione  
Partner  
Jaspan Schlesinger Hoffman, LLP  
300 Garden City Plaza  
Garden City, New York 11530  
Phone: 516 393 8285  
Fax: 516 393 8282

1/22/2007

Local Government Agencies and Municipalities Comments

N-339

BW030816

## LA8 – Town of East Hampton

200701235041 Received FERC OSEC 01/23/2007 02:52:00 PM Docket# CP06-54-000, ET AL.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

BROADWATER ENERGY LLC

Docket Nos. CP06-54-000

CP06-55-000

BROADWATER PIPELINE LLC

CP06-56-000

STATEMENT  
BY  
EDWARD S. MICHELS  
CHIEF HARBORMASTER  
TOWN OF EAST HAMPTON

I am the Chief Harbormaster of the Town of East Hampton and the Commanding Officer of the East Hampton Town Marine Patrol. A statement of my qualifications is attached.

I submit these comments on the Draft Environmental Impact Statement ("DEIS") and the appended U.S. Coast Guard Waterways Suitability Report (the "Coast Guard Report") for the proposed Broadwater LNG facility. The Coast Guard Report admits on page 156 and 157 that

The Coast Guard... 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... State or local law enforcement agencies could potentially assist with implementing some of the measures identified for managing potential risk to maritime security associated with the proposed Broadwater Energy Project... This assumes the State law enforcement agency has 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.

Local Government Agencies and Municipalities Comments

N-340

BW030817

# LA8 – Town of East Hampton

200701235041 Received FERC OSEC 01/23/2007 02:52:00 PM Docket# CP06-54-000, ET AL.

LA8-1

Much of the above-referenced burden for providing adequate security for the LNG carriers and their security zones, as well as some of the security to the FRSU itself, would fall upon the Town of East Hampton and the Marine Patrol Unit which I command. The Broadwater Proposal would require law enforcement from the Town of East Hampton to keep vessels out of the security zone to escort tankers, to arrest and impound fishing and other boats obstructing the security zone, aid and assist those with medical emergencies on the vessels and to deal with law enforcement issues on the carriers and even the LNG facility. In addition, the Town would be required to assist with clearing and assisting vessels and tankers in navigation mishaps in the shallow waters of Montauk Channel. The Town is not at all equipped to meet these demands, especially for the benefit of a for-profit operation such as Broadwater. The Town's fleet currently consists of two 28 foot marine patrol boats, one 32 foot work boat and several 20 foot outboards. None of these boats is armed. None is adequate.

LA8-2

The DEIS and the Coast Guard Report which it incorporates also fail to consider the law enforcement and security issues Broadwater would present on-shore. For example, incidents involving LNG carriers with potentially dangerous cargos occurring in the East Hampton/Montauk area would require my agency to close Montauk inlet and the local police to close on-shore facilities, tourist attractions and the docks in the Montauk harbor area.

The DEIS does not address these issues adequately.

Dated: January 23, 2007

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LA8-1

There is currently no plan to require the Town of East Hampton to assist in security activities associated with the proposed Project. Section 3.10.6 of the final EIS has been revised to provide additional information regarding implementation of the proposed safety and security zones around the LNG carriers. As noted in that section, the Coast Guard would be the agency with primary responsibility for enforcing the safety and security zone around each carrier but may allow local agencies to assist in security activities. However, the proposed LNG carrier route is about 8 miles from Montauk Point and much farther from other portions of the Town, suggesting that other state or local agencies would be involved in assisting the Coast Guard, if any are requested to assist.

Section 3.10.6 of the final EIS also describes the requirements of the Emergency Response Plan that Broadwater must prepare, including a Cost-Sharing Plan for both emergency responses and security activities that involved federal, state, and local agencies. FERC must approve the plan prior to authorizing construction of the proposed Project.

LA8-2

As described in Section 3.7.1.3 of the final EIS, the Montauk Channel Route is an alternative route for LNG carriers that would not be used on a regular basis. The shortest distance between the proposed Montauk Channel Route and Montauk Point would be about 8 miles (due east of Montauk Point), and the remainder of the route would be substantially farther. Hazard Zones 1 and 2 (see Section 1.4.4 of the WSR [Appendix C of the final EIS] and Sections 3.10.3 and 3.10.4 of the final EIS) would be approximately 7 miles offshore from Montauk Point and substantially farther from the other shorelines of the eastern end of Long Island.

As described in Section 3.10 of the final EIS and throughout the WSR, LNG carriers have been in operation for decades without a major release of LNG. Further, LNG carriers ply waters throughout the world, including major ports, channels, and rivers, without onshore facilities being shut down during transit, with the exception of carriers transiting through Boston Harbor which is located in a highly urbanized area. Finally, as described in Section 3.10 of the final EIS and in Section 8.3 of the WSR, the Coast Guard has made the preliminary determination that the transport of LNG in carriers in the Project Waterway would be a manageable risk with implementation of its recommended mitigation measures. Therefore, it would not be appropriate to close Montauk Inlet, onshore facilities, tourist attractions, or the docks in the Montauk harbor area when an LNG carrier is in transit.

## Local Government Agencies and Municipalities Comments

**LA9 – Bill Taylor - Town of East Hampton**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

BROADWATER ENERGY LLC  
BROADWATER PIPELINE LLC

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

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**DEIS COMMENTS  
BY  
BILL TAYLOR  
WATERWAYS MANAGEMENT SUPERVISOR  
TOWN OF EAST HAMPTON**

I am the East Hampton Waterways Management Supervisor. I am familiar with the area described in the DEIS. A statement of my experience is attached.

The movement of the LNG carriers with their huge safety zones is going to have a huge, detrimental impact on the East End of Long Island. The ships are so dangerous that the Coast Guard requires a moving safety around them 6,000 yards long and 1,600 yards wide. That is 60 football fields long and 16 football fields wide, moving with the ship at 10 knots.

The Race, the most dangerous part of the route for the LNG carriers to navigate, is one of the most heavily used fishing spots on the East End. Vessels utilize that area almost every day, weather permitting.

LA9-1 [ The six proposed passages a week (three in and three out) cannot be implemented without a huge dedicated federal protective force in place. Local assets will not be available.

LA9-2 [ The use of the passage between Montauk Point and Block Island is limited by weather conditions and vessel draft and cannot be used by LNG carriers at all times. This route is inappropriate for this cargo.

LA9-1 Resource requirements for safety and security enforcement would be determined during development of the safety and security plan for the Project, and in part, during development of the Emergency Response Plan described in Section 3.10.6 of the final EIS. Broadwater would be responsible for coordination with relevant federal, state, and local agencies. If the Coast Guard determines that an adequate force for protection of the Project is not available, or if either FERC or the Coast Guard has additional concerns about safety or security, FERC would not further authorize the Project.

LA9-2 We agree with the comment that use of Montauk Channel by LNG carriers would be limited by weather conditions and vessel draft. As stated in Section 3.7.3.1 of the final EIS, Montauk Channel is an alternate route: "Point Judith Pilot Station is considered the primary pilot boarding station, with Montauk Point Pilot Station considered an alternate. Vessel draft and weather conditions limit the use of the Montauk Point Pilot Station: vessels with a draft in excess of 38 feet may not be piloted through Montauk Channel; and pilots using Montauk Channel may not pilot a vessel if weather conditions, sea state, or vessel traffic pose a threat to the safety of any person, vessel, prudent navigation, or safety of the environment." However, as stated in Section 8.4 of the WSR (Appendix C of the final EIS), the Coast Guard has made the preliminary determination that the proposed use of the Project Waterway by the LNG carriers would be manageable with implementation of the recommended mitigation measures.

**Local Government Agencies and Municipalities Comments**

**LA9 – Bill Taylor - Town of East Hampton**

LA9-3

Although the Coast Guard Report, on page 74, claims that there are only 5 to 10 commercial fishing vessels in Montauk, this number is a gross undercount. Montauk is homeport to approximately 1,345 vessels, commercial and recreational. East Hampton Town is home to over 2,800 boats of all types. All these vessels will be impacted.

I prepared a count of the boat slips and moorings in 2002. In order to prepare this count, I relied upon a report the Town Planning Department and I had prepared for the application the Town submitted for a Federally Designated No Recharge Zone Permit. I also utilized data from marina websites, aerial photographs and onsite inspections. The results of that 2002 count were as follows:

**INVENTORY OF MOORINGS AND SLIPS**

<b>Montauk</b>		<b>East Hampton</b>	
Gosmans	3		
Town Dock, West Lake	18		
Tumas Area	34	Clearwater	120
Viking	4	Lion Head	51
Gosman Property	5	Private	10
Uhlcins	36	Devon	43
Snack bar area	6		
Montauk Marine Basin	130		
Sportmans	11		
Corrillos	57		
Costellos and Millers	25		
Captains Cove	75	TMH	153
West Lake Fishing	100	ACC	56
Snug Harbor	85	NW Creek	21
Star Island	146	Napeague	20
USCG	8	Lake Montauk	50
Town Dock, Star Island	30		
Montauk Yacht Club	232		
Crabby Cowboy	21		
Gone Fishing	172		
Inlet Seafood	28		
Entermans	16		
Kalaco	4		
Lake Club	79		
Private Docks	20		
<b>Total Montauk</b>	<b>1,345</b>		

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1.23.07

LA9-3

Thank you for providing the slips and mooring data. The comment compares the number of commercial fishing vessels based in Montauk, as presented in the WSR (Appendix C of the final EIS), with the total number of vessels, including recreational vessels, in Montauk. This comparison is therefore not appropriate. The impacts to recreational boating and fishing are presented in Section 3.5.5.1 of the final EIS and the impacts to commercial vessels are described in Section 3.7.1.4 of the final EIS. These analyses consider all vessels, including the vessels of concern to the Town of East Hampton. As noted in the final EIS, the impacts to those vessels due to operation of the LNG carriers and their associated safety and security zones would be at most temporary and localized during LNG carrier transits, which would periodically continue for the life of the Project.

LA9 – Bill Taylor - Town of East Hampton

East Hampton			
Halseys	50		
Harbor Marina	45		
Shagwong	40		
EHP	60		
Town	67		
Story's	65		
Three Mile Marina	60		
Briggs	70		
Duck Creek	100		
Town Dock Gann	25		
Harbor	95		
Flag Pole	10		
Sunset	30		
Folkstone	25		
Private Docks	39		
Other	224		
<b>Sub Total</b>	<b>1,005</b>		
<b>Grand Total</b>	<b>2,874</b>		

Dated: January 23, 2007

## LA9 – Bill Taylor - Town of East Hampton

**DEIS COMMENTS  
BY  
BILL TAYLOR  
WATERWAYS MANAGEMENT SUPERVISOR  
TOWN OF EAST HAMPTON**

**QUALIFICATIONS:**

1977 to April 1989: I worked as merchant mariner on the East Coast of the United States, from Maine to Florida, primarily in the New York Harbor area. I was employed as a barge captain, with the required United States Coast Guard issued Grade A tankermans certificate. I was responsible for the loading, discharging and safe handling of various petroleum products including jet fuel and gasoline. I also was responsible for the maintenance and safe operation of the vessel.

April 1989 to May 2000: I was employed as the Senior Harbormaster for the Town of East Hampton. I was responsible for the operation of the Marine Patrol and enforcement of all Town waterways and shellfish regulations. I received peace officer certification at the Nassau County Police Academy and received training in other areas including, but not limited to, boating accident investigation, safe boating instruction, and patrol vessel operation. I received and maintained a license as a New York State Joint Pilot and Engineer. I also have acquired a great deal of local knowledge related to the Town waters and maritime traditions.

May 2000 to Present: I was promoted to Waterways Management Supervisor and have been working on restoring and maintaining the environmental quality of East Hampton. I deal with such issues as wetlands restoration, shellfish restoration and maintaining water quality. I also am involved with environmental planning, and the development of the Town's all hazard mitigation plan and beach erosion issues.

Dated: January 23, 2007

MTL/D531183v1/M4048359/C0115990  
1.23.07

**LA10 – East Hampton Town Commercial Fisheries**

200701235041 Received FERC OSRC 01/23/2007 02:52:00 PM Docket# CP06-54-000, ET AL.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

BROADWATER ENERGY LLC  
BROADWATER PIPELINE LLC

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

**COMMENTS  
BY  
THE EAST HAMPTON TOWN  
COMMERCIAL FISHERIES  
ADVISORY COMMITTEE**

The purpose of this statement by the East Hampton Town Commercial Fisheries Advisory Committee is to analyze and explain how the activities of the Broadwater LNG carriers will impact the Town of East Hampton and our way of life. These impacts are overlooked in the DEIS.

The Commercial Fisheries Advisory Committee is made up of representatives of the commercial and recreational fishing industry, including trawling, longline fishing, shellfishing, lobstering and wholesale and retail fish and shellfish markets, and has as its task to advise the Town Board with regard to issues impacting the commercial and recreational fishing and shellfishing industries.

The plan for the Broadwater liquefied natural gas (LNG) terminal in Long Island Sound will require transit through Montauk Channel and Pt. Judith Channel of large LNG carriers to supply the terminal. Broadwater expects six trips by these LNG carriers per week.

LA10-1 [ One of the safety measures that the Coast Guard will impose is a zone or zones that will require vessels to cease their activities and leave the area while the LNG carriers are transversing local waters. Although the carriers and the barge will not enter East Hampton's borders, except

LA10-1 As proposed by the Coast Guard, the moving safety and security zone of each LNG carrier would cover an area of approximately 2,040 acres (3.2 square miles), and only one carrier would be present inside the pilot stations at any one time. Only the moving safety and security zone around each carrier would be an exclusion zone, not the entire transit path that extends in front of and behind the proposed safety and security zone of an LNG carrier. The amount of time for the LNG carrier and its associated safety and security zone to pass any single point would be about 15 minutes. Only vessels in the path of the LNG carriers and their safety and security zones would need to "leave the area" during LNG carrier transit; however, that departure would be temporary, lasting only for the time required for the carrier and its safety and security zone to pass. As described in Section 3.7.1.4 of the final EIS, some vessels not in the path of the carriers may be required to make minor alternations in their routes to pass behind or ahead of a carrier and its safety and security zone. Very few vessels would be required to "cease their activities and leave the area."

**Local Government Agencies and Municipalities Comments**

**LA10 – East Hampton Town Commercial Fisheries**

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LA10-2 for the occasions on which they may travel off course, the project will cause serious disruption to East Hampton commerce and our way of life. Broadwater will create hardships for transport,

LA10-3 recreational boating and fishing and, worst of all, commercial fishing. The commercial fisheries are an economic mainstay of the Town and any disruption will have a serious impact.

The commercial fisheries that will be impacted adversely by the movement of LNG carriers are commercial hand line fishing, trawl fishing and, most of all, lobster fishing.

Commercial hand line fishing is very diverse in the range and varieties of species caught.

LA10-4 The transit area of the LNG carriers overlaps the areas where commercial hand lining occurs. It is safe to estimate that up to 30% of fishing time would be lost. This is a significant loss to individual fishermen and to the economy of East Hampton.

The impact on trawl fishing can be directly assessed because the trawlers are confined to a given area and can provide an accurate estimate of their losses if forced to abandon the fishing grounds.

LA10-5 The LNG carriers will enter the Sound through the area between Montauk Point and Block Island. Trawl fishing is confined to a narrow area that is almost identical to the course earmarked for the LNG carriers. This is a crucial fishing area, used consistently from April through December on average of 15 days per month, by the trawling industry. The closure of this area for a portion of the day is likely to eliminate the profitability of trawling for the entire day. Six LNG carrier trips per week will result in a loss of nearly 50% of the fishing time in these very valuable grounds.

LA10-6 Ten vessels from East Hampton trawl these grounds. Depending on the size of the vessel, the gross income per day, per vessel, is between \$500 and \$1,000, for an average of \$7,500 per day of combined gross income. Multiplied by a conservative 15 day monthly average

LA10-2 We have assessed the impacts of LNG carrier transit and have found, as presented in Sections 3.5.5.1 and 3.7.1.4 of the final EIS, that disruptions to recreational and commercial marine traffic would be minor, localized, and temporary when they did occur during LNG carrier transit. Our response to comment LA10-1 also addresses this comment. 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). Section 3.7.1.4 of the final EIS has been revised to more clearly describe FERC's approach to this issue. Based on the proposed mitigation measures recommended by the Coast Guard and our impact assessments, the passage of LNG carriers would not likely cause "serious disruption" to the East Hampton economy.

LA10-3 Sections 3.6.8.1 and 3.7.1.4 of the final EIS have been revised to address the potential impacts to commercial lobstermen, trawlers, and commercial hand line fishing from the proposed moving safety and security zones around LNG carriers as they enter and exit the Sound, as well as throughout the Sound. This analysis considered the potential that other large vessels entering or exiting the Race may alter course, taking them through areas with high lobster pot density. As noted in those sections, implementation of the proposed Project would result in minor and temporary impacts to some commercial fishermen during LNG carrier transit, with many fishermen not affected at all.

LA10-4 Our response to comment LA10-1 provides information on the temporary and localized conflicts with the LNG carriers and their proposed safety and security zones that some fishing vessels may experience. Hand line fishing would be able to continue immediately outside the proposed moving safety and security zone around an LNG carrier. If a fishing vessel had to relocate to exit the path of an oncoming LNG carrier, the interruption would be temporary when it did occur and would not occur more than once per day for the life of the Project.

## LA10 – East Hampton Town Commercial Fisheries

LA10-5 Our response to comment LA10-1 provides information on the temporary and localized conflicts with the LNG carriers and their proposed safety and security zones that some trawlers may experience. In addition, as stated in Section 3.7.1.3 of the final EIS, the Montauk Point Pilot Station and the area between Block Island and Montauk Point would be used as an alternate route for the carriers; most carriers would use the Point Judith Pilot Station. As a result, there would not be six LNG carrier trips per week through Montauk Channel, and any interruptions of trawl fishing due to the presence of a carrier and its safety and security zone would be temporary and localized during LNG carrier transit. Trawling would continue while a carrier is in the area without interruption for many trawlers, and those in the vicinity of a carrier and its safety and security zone could continue trawling by either slightly altering their routes for 15 to 30 minutes, or by delaying trawling for the 15 minutes required for a carrier and its safety and security zone to pass.

LA10-6 Thank you for providing this information. We have revised Section 3.6.8.1 of the final EIS to include the data provided in your comment.

**LA10 – East Hampton Town Commercial Fisheries**

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LA10-6 of work days, the monthly gross is \$112,500. Multiplied by the 9 month season, the gross is \$1,012,500.

LA10-7 The lobster industry will be impacted the most severely. Lobster traps are stationary gear. Lobstermen leave their gear in one spot for an entire year. It is impossible to move the traps out of the way of an LNG carrier and the exclusion zone the Coast Guard will impose. The most productive lobstering grounds are in the Race at the entrance to Long Island Sound, a very narrow passage where lobster traps are concentrated. The lobstermen will be forced to leave the area during each and every LNG trip through the Race. This area imposes a strict time schedule for fishing due to the strong tides there. Lobstermen can only work about four hours a day in the area. Given the short four hour work day, each day an LNG carrier traverses the area, that day will be lost to the lobstermen. Because of natural impediments and an unknown transit schedule of the LNG ships, lobstermen could lose all their fishing time. And when one considers the Race provides at least 90% of a lobsterman's income, this is significant.

LA10-8 It is estimated the gross average income per lobsterman who has the majority of gear in the Race is \$110,000 per year. There are three East Hampton lobstermen who would lose a total gross of \$330,000.

LA10-9 In conclusion, the transit of LNG carriers through the fishing grounds near East Hampton will cause significant harm to the commercial fishing industry and the economy of the Town.

LA10-9 The DEIS callously suggests that the lobstermen and trawl fishermen receive monetary compensation for their losses. This proposed mitigation measure is inadequate because it fails to consider the impacts on Montauk harbor, our economy and, most important, it ignores the character of our community and our way of life.

Dated: January 23, 2007  
 Respectfully submitted,  
 COMMERCIAL FISHERIES  
 ADVISORY COMMITTEE – 2006

MIL-DS06572v1/M048369/00115380  
 1/23/07

LA10-7 As described in Section 3.7.1.4 of the final EIS, an LNG carrier and its proposed moving safety and security zone would pass through the 2.3-mile length of the Race in 25 to 35 minutes, depending on the speed of the carrier. The entire safety and security zone would pass a single point within about 15 minutes. As a result, if a carrier entered the Race when lobster fishermen who are actively working pots, the lobstermen may be required to temporarily move from their fishing positions, dependent on the exact location of the carrier and its proposed safety and security zone. However, as stated in Section 3.7.1.4, Broadwater has committed to avoiding LNG carrier transit through the Race around slack tide (contingent on Coast Guard approval of specific transits). Further, FERC expects that the mitigation measures presented in Section 8.4 of the WSR (Appendix C of the final EIS) would be required if the Broadwater Project is authorized. Section 3.7.1.4 of the final EIS has been revised to more clearly describe FERC's approach to this issue. Therefore, LNG carrier transits of the Race would not cause lobstermen to lose a full day of fishing time or lose a total gross income of \$330,000.

LA10-8 Please see our response to comment LA10-2.

LA10-9 As described in the responses above and in Sections 3.6.8.1 and 3.7.1.4 of the final EIS, implementation of the proposed Project would result in minor and temporary impacts to commercial fishing during carrier transit for the life of the Project. LNG carriers transiting to and from the FSRU and using the alternate Montauk Channel route would be no closer than about 12 miles from Montauk Harbor, with no more than one transit per day; however, as described in Section 3.7.1.3 of the final EIS, most carriers would use the Point Judith route and would be farther from Montauk Harbor. The carriers would appear similar to other commercial shipping vessels and would represent an increase in commercial shipping traffic in Long Island Sound of about 1 percent. The FSRU would not be visible from Montauk Harbor. As a result, the Project would likely not measurably affect the economy of the Montauk area, would not impact Montauk Harbor, and would result in at most a minor effect on the character of the community and the way of life.

**Local Government Agencies and Municipalities Comments**

LA11 - Town of Oyster Bay

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REGULATORY COMMISSION

January 19, 2007

VIA OVERNIGHT CARRIER

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

Re: **Proposed Broadwater Liquefied Natural Gas Terminal, Long Island Sound  
Draft Environmental Impact Statement (DEIS), November 2006  
Docket CP06-54-000 and Docket CP06-55-000**

Dear Secretary Salas:

The Office of the Supervisor of the Town of Oyster Bay has referred the above captioned matter to Cashin Spinelli & Ferretti (CSF) for review. CSF is a technical consultant to the Town's Department of Environmental Resources.

CSF attended the public hearings for the proposed action which were held on Long Island on January 10 and 11, 2007 in Smithtown and Shoreham, and we have reviewed the DEIS regarding this proposed action. We respectfully request that the present correspondence be incorporated into the official record and that the following comments, prepared on behalf of the Town of Oyster Bay, be addressed in the forthcoming Final Environmental Impact Statement:

- 1. The DEIS does not contain an assessment of the proposed action's consistency with the Long Island North Shore Heritage Area (LINSHA) Management Plan (November 2005). This plan underwent an exhaustive process of public outreach and review before being adopted by the member municipalities, including the Town of Oyster Bay, to provide a framework for advancing the protection and preservation of resources which contribute to the rich heritage of Long Island's North Shore. At the most fundamental level, it is evident that the installation of a massive, fixed petroleum product terminal in the middle of Long Island Sound, which serves as the critical backdrop for the entire North Shore area, does not conform to the goals and objectives of the LINSHA Plan.

In responding to this comment, the FEIS should not be limited to parsing a few elements of the LINSHA Plan with which, it could be argued, the proposed action may conform; rather, the FEIS should examine the project's consistency, or lack thereof, with each and every goal, objective and recommendation of the Plan.

LA11-1

LA11-1 Section 3.5.7 of the final EIS has been revised to address the Long Island North Shore Heritage Area Management Plan.

LA11 - Town of Oyster Bay

- LA11-2

2. Widespread concerns have been expressed regarding the potential for the proposed action to prompt or facilitate the "industrialization" of Long Island Sound. The manner in which the DEIS addresses this issue is cursory, at best, and provides a feeble argument which entirely misses the point.

The DEIS's position on this issue (Section 3.5.2.2), opining that the proposed project would not lead to any such impacts, is based largely on the assertion that a precedent already has been set for industrial activity in Long Island Sound, in the form of the long-term existence of industrial land uses along the shoreline and occurrence of transient commercial/industrial processes on the open waters of the Sound. However, the DEIS fails to acknowledge that the proposed action would represent a dramatic change in the character of industrial development in the Sound area.

Presently, Long Island Sound's industrial facilities are limited to the shoreline. Where offshore structures do occur (e.g., bulk off-loading platforms) they are accessory to principal facilities which are located on-shore. The undeniable precedent-setting nature of the proposed action lies in the simple fact that this project would represent the first fixed-position industrial facility to be situated in the open waters of the Sound. Surely there can be no doubt that if this project is approved and constructed, any future applicant for a fixed industrial or commercial facility in the open waters of the Sound would readily point to this project as a precedent for favorable consideration of their own proposal, rather relying on the current DEIS's tenuous strategy of citing existing shore-based facilities and cross-Sound commerce as points of reference.
- LA11-3

3. The fact that existing industrial facilities on the Sound's waterfront in some cases have been operating "for decades", as indicated in the DEIS, illustrates a well-established pattern of land uses along the shoreline. Presumably, these uses conform to applicable zoning, comprehensive plans, or other prevailing controls which have been enacted to regulate land-side development. In strong contrast, the existing planning documents which govern uses and activities in the open waters of Long Island Sound, most notably including the New York State Coastal Management Program, do not contemplate or support the siting of a fixed industrial facility in this area (although they do encourage commerce through the Sound). In short, the proposed project is not consistent with the relevant, existing comprehensive plan for Long Island Sound, as established by the State of New York.
- LA11-4

4. The occurrence of transient industrial activities on the open waters of the Sound is so substantially different from the proposed construction of a fixed industrial facility in these waters that citing the former as a precedent for allowing the latter calls into question the underlying objectivity of the DEIS. This association as presented in the DEIS is akin to identifying the occurrence of truck traffic along a particular roadway as justification for the placement of commercial or industrial facilities served by trucking anywhere along that roadway. In fact, however, the passage of truck traffic through recreational areas, residential neighborhoods, and other non-commercial/industrial development is a ubiquitous event which does not eliminate the intrinsic character of those adjoining uses. Similarly, the occurrence of commercial/industrial vessel traffic through Long Island Sound, an area that also has long been occupied compatibly by various transient recreational (e.g., boating, fishing, etc.) and commercial (e.g., fishing, lightering, etc.) uses, is not an appropriate or reasonable rationalization for siting any fixed industrial facility, much less one of the magnitude being proposed in the subject application, within this area.

LA11-2 As described in Section 3.5.2.2 of the final EIS, the Broadwater Project would not serve as a stimulus for future offshore industrialization of the Sound. Further, future proposals would be reviewed for compliance with then-existing and applicable environmental regulations, coastal zone management policies, and other applicable requirements.

LA11-3 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. In Section 3.5.7.1 of the final EIS, we summarize the coastal policies but do not assert 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.

LA11-4 The EIS text did not make a direct comparison between the transient industrial activities on the open waters of the Sound and the presence of the FSRU. In Section 3.5.2 of the EIS, summary information on the commercial activity on the open waters of the Sound is provided to make it clear that the LNG carrier activity would not add substantially to the commercial use of the Sound. In our environmental review process, we have assessed the impacts of the Project, including operation of the FSRU at its proposed location, for all of the appropriate natural resources, visual resources, land use, and socioeconomics. We determined that the overall impacts would be minor.

LA11 - Town of Oyster Bay

- LA11-5 5. Existing industrial facilities along the Sound's shoreline are situated on land in which the operators have ownership interest, conferring on them certain property rights which are being exercised through the existing uses and activities. Broadwater has no such property rights in the area of Long Island Sound in which they are seeking to site their proposed LNG terminal. Instead, this is public trust land which is owned by the State of New York and is expressly reserved and intended for the benefit of the people of New York, not for corporate financial gain. The legal implications of the proposal to devote New York State public trust land for private enterprise in this manner, both in general terms and with respect to the intended objective of supplying energy to the residents of another jurisdiction (i.e., the State of Connecticut), should be closely evaluated.
- LA11-6 6. The DEIS provides information regarding recent trends in electric and gas consumption and system capacity in the service area for the proposed project, but does not clearly integrate these two lines of analyses in substantiating project need. More specifically, the DEIS does not appear to quantify the cumulative magnitude of the additional system capacity that other pending and proposed projects will provide nor identify the specific point in the future at which this extra capacity would be expended to satisfy the anticipated increase in demand. The response to this comment should account for the fact that although a major fraction of the regional gas supply is used in electrical power generation, large projects are pending (e.g., Neptune Regional Transmission System) which will enhance the available electrical supply without increasing the demand for natural gas in the region.
- LA11-7 7. The DEIS's assessment of the purported need for the proposed project is based largely upon claims that North American natural gas supplies will diminish over the next 20 years (Section 1.1.1). However, this assertion is not consistent with information on the web site of the Department of Energy, Energy Information Administration, which shows that natural gas production in North America is expected to increase slightly through 2030.
- LA11-8 8. The overseas gas suppliers that would deliver LNG to the proposed facility are discussed only in very sketchy terms in the DEIS. Section 3.10.4.4 briefly lists LNG exporting nations and the percent of LNG imports to the entire U.S. supplied by each of these nations in 2003. This information is incomplete and potentially misleading. For example, although identified as providing 72 percent of the LNG supply to the U.S. in 2003, Trinidad is not among the top 20 nations in worldwide natural gas reserves. In evaluating the stability and viability of future LNG supplies to the proposed facility, more detailed information and analysis should be provided regarding supplies of foreign LNG to the project region during the recent past (extending beyond the single year of data provided in the DEIS, in order to establish a proper historical context) and as forecasted during the anticipated lifetime of the proposed facility.
- LA11-9 9. The DEIS provides only minimal discussion, expressed in broad generalities, regarding the potential impacts of establishing exclusion zones around the proposed LNG terminal and arriving tankers, suggesting that no meaningful investigation or analysis was conducted to assess the degree to which existing uses in Long Island Sound are likely to be impacted. Consequently, it is not clear, for example, whether the proposed action would necessitate exclusion zones in active fishing areas which could disrupt the activities of commercial fishermen. Since commercial fishing often operates at marginal economic viability, even minor or temporary interferences could result in significant consequences. In order to determine the magnitude of this impact,

- LA11-5 NYSOGS is responsible for issuing easements for use of underwater lands of Long Island Sound that are in the State of New York. As described in Section 3.5.2.2 of the final EIS, the proposed Project would not represent the first time the waters of the Sound would be used for private purposes. Commercial and industrial structures in or under offshore waters of the Sound include cable crossings, natural gas and petrochemical pipelines, and two petrochemical platforms. Legal issues related to public trust lands are not a component of our environmental review process and are therefore not included in the final EIS.
- LA11-6 Sections 1.1 and 4.0 of the final EIS have been revised to include information on recent updates to the studies and potential energy projects. The revisions also address the issues raised by the commentor.
- LA11-7 As stated in Section 1.1.1 of the final EIS, the natural gas supply for New York and New England is primarily provided by pipelines originating in the Gulf of Mexico and Canada. The 2007 Annual Energy Outlook (EIA 2007a) projects that domestic lower-48 production of natural gas will remain relatively stable over the forecast period while net natural gas pipeline imports will decrease substantially during the forecast period, due primarily to a decrease in imports from Canada.
- LA11-8 An analysis of the global LNG market is not a component of our environmental review for the proposed Project and is not included in the final EIS.
- LA11-9 The final EIS has been revised to include additional information on the potential impacts of the proposed safety and security zones around the FSRU and the LNG carriers. In the final EIS, recreational boating and fishing are addressed in Section 3.5.5.1, use of established trawl lanes is addressed in Section 3.5.5.2, commercial fishing and commercial shipping are addressed in Section 3.7.1.4, and economic impacts are addressed in Sections 3.6.8.1 and 3.6.8.2.

LA11 - Town of Oyster Bay

- LA11-9 there should be a more detailed inventory of existing uses and activities in the project area and an in-depth, objective evaluation of anticipated impacts.
- LA11-10 10. The DEIS presents little, if any, substantive analysis regarding the feasibility of an alternative to the proposed action which advances renewable energy resources as a means of reducing the U.S. dependence on foreign fossil fuels. The dismissive manner of this presentation is particularly unsettling given that the DEIS ostensibly has been prepared by the federal government, which should be aggressively spearheading a national initiative toward energy independence. Instead, the federal authors of the DEIS seemingly are acting as a proponent for the proposed project which, if approved, would rely exclusively on overseas gas supplies. The effect that this action would have on deterring or delaying the implementation of more sustainable sources of energy should be examined in detail.
- LA11-11 11. In regard to LNG system alternatives (Section 4.3.2), the DEIS states that the proposed KeySpan LNG Terminal Project in Providence, Rhode Island has been eliminated from consideration "because FERC has declined to authorize this project." The factors which led to that decision by FERC, and the specific manner in which the circumstances regarding that project differ from and are similar to the Broadwater proposal, should be discussed.
- LA11-12 12. The DEIS's conclusions regarding LNG system alternatives (Section 4.3.2) are not supported by substantial evidence, and the presentation of this information illustrates what appears to be an overriding bias throughout the DEIS in favor of the proposed Broadwater project. In this particular instance, it appears that the DEIS started with the premise that the given alternative was not as desirable as the proposed action, and provided bare minimum discussion in an attempt to defend that conclusion. Although such an approach would be understandable, if not expected, in a document written by a project sponsor, it is alarming to see this type of treatment in a DEIS authored by agencies which are supposed to sit in judgment of the action. The prominent lack of underlying analysis in this section makes it impossible to independently verify that the LNG system alternative is unviable, calling into question the usefulness of the DEIS as a decision-making tool.
- LA11-13 13. The DEIS (Section 4.3.2) states that except for the Safe Harbor Energy Project "all of the LNG terminals identified as potential LNG terminal system alternatives are located far from the markets proposed to be served by the Project." However, no analysis is provided to demonstrate why the distances involved (reportedly between 113 and 648 miles) make it impractical for gas supplies from the involved facilities to serve Long Island, New York City and Connecticut, particularly in light of the fact that the current gas supplies to this region are piped from sources that are at similar or greater distances (as illustrated in Figure 1.1-1).
- LA11-14 14. Section 4.3.2 speaks in overly broad generalities regarding purported impacts associated the LNG system alternatives, asserting that every facility that potentially could serve this purpose would require a major upgrade which would be more disruptive than the Broadwater project. This conclusion is entirely unsubstantiated, and appears to conflict with the conclusion that the proposed action would avoid such impacts despite entailing essentially the same facilities and activities (e.g., new piping, compressor stations, berths, tanks, and vaporization equipment) that are enumerated for the alternatives. In order to validate the DEIS's conclusion, a detailed, facility-by-facility analysis is needed to describe the precise nature of the expansion that would be

LA11-10 The Commission is responsible for reviewing applications for authorization to construct and operate natural gas pipelines, compressor stations, LNG terminals, and other associated facilities. We are not proponents for any of the thousands of applications that we review each year. We are proponents for our review process. We do recognize that the expanded use of renewable sources of energy is important to the nation. However, as described in Section 4.2.2 of the final EIS, the use of renewable resources and conservation measures could meet only a small portion of the region's growing energy demands. Section 4.2.5 has been updated to address the potential impact that implementation of the proposed Project may have on development of renewable energy sources.

LA11-11 Section 4.3.2 of the final EIS has been updated to clarify FERC's rationale for not granting a Certificate for the proposed KeySpan LNG Project. FERC denied granting a Certificate because the KeySpan Project, as proposed, failed to adopt the current federal safety regulations for the existing LNG facilities.

LA11-12 Section 4.3.2 of the final EIS has been updated to include the most recent information available on the Safe Harbor Project and other proposed LNG terminal projects in New England and northeastern Canada. This information presents quantified environmental impacts for each alternative project and compares them to the impacts for the proposed Broadwater Project. There is no bias in the comparison. This updated review confirms that these alternative projects could not satisfy projected natural gas needs for Connecticut, Long Island, and New York City with less environmental impact than the proposed Broadwater Project.

LA11-13 We have not stated that gas could not be transported long distances. As noted in response to comment LA11-12, the impacts associated with constructing the pipelines to alternative LNG terminals would be greater than those of the proposed Project.

LA11-14 Please see our response to comment LA11-12.

# LA11 - Town of Oyster Bay

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LA11-14 ↑

required at each location addressed under this alternative and to assess the associated impacts in a meaningful way.

LA11-15 [

15. The apparent bias in the DEIS favoring the proposed action gives rise to concerns regarding the objectivity of the review process. In order to address these concerns, and in the interest of full public disclosure, detailed clarification is requested regarding:

LA11-16 ]

- the specific guidelines and procedures that were applied by FERC in reviewing and evaluating the proposed action, and which pertain to FERC's review of LNG projects in general;
- the identity of the individuals who actually wrote or prepared any portion of the DEIS, including their agency affiliations and titles; and
- the applicant's involvement in the preparation of the DEIS.

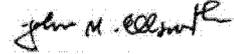
We appreciate the opportunity to comment upon this important matter.

Please do not hesitate to contact me if you have any questions. I can be reached at (516) 677-5824. My e-mail address is [jellisworth@oysterbay-ny.gov](mailto:jellisworth@oysterbay-ny.gov). My mailing address is:

c/o Town of Oyster Bay Department of Environmental Resources  
150 Miller Place  
Syosset, New York 11791

Very truly yours,

CASHIN SPINELLI & FERRETTI, LLC



John M. Ellsworth  
Director of Planning and Environmental Services

cc: Leonard Genova, Deputy Supervisor  
Richard W. Lenz, P.E., Commissioner, Department of Environmental Resources  
James M. Byrne, P.E., Commissioner, Department of Department of Public Works  
Federal Energy Regulatory Commission (2 copies, one to the attention of Gas Branch 3, DG2E)  
U.S. Army Corps of Engineers, New York District

LA11-15

The EIS was prepared by a team of experienced scientists and engineers. Section 1.2 of the final EIS lists the regulations and requirements that we followed in preparing the document.

LA11-16

The list of the preparers of the EIS, including their affiliations and titles, is included as Appendix L of the final EIS. Applicants are explicitly excluded from being involved in preparing FERC third-party EISs. Broadwater was not involved in any way in preparation of the EIS.

**LA12 – Town of Huntington – Town Board**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
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BROADWATER ENERGY LLC  
BROADWATER PIPELINE LLC  
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Docket Nos. CP06-54-000  
CP06-55-000  
CP06-56-000

**DEIS COMMENTS  
SUBMITTED BY  
THE TOWN OF HUNTINGTON  
TOWN BOARD**

**INTRODUCTION**

The Town of Huntington is the western most north shore town in Suffolk County. Its northern most border is at the Connecticut border in the Sound.

The Town's north shore contains many miles of coastline and acres of embayments, including fish habitats and wetlands feeding into the Long Island Sound.

The DEIS insufficiently reviews several adverse environmental impacts which are particular to the Town of Huntington, which are discussed below:

**IROQUOIS PIPELINE EXPANSION**

The DEIS fails to mention, as is detailed in the accompanying statement of Margo Myles, A.I.C.P. that the Iroquois Pipeline travels through State and Town-owned underwater lands within the boundaries of the Town of Huntington and makes landfall in Huntington.

As Ms. Myles describes in her statement, there is potential for expansion of the Iroquois Pipeline, given the increase in natural gas supply from Broadwater. The DEIS must address the

LA12-1  
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- LA12-1 Section 4.3.1 of the final EIS provides information on portions of the IGTS pipeline that are not associated with our environmental review as part of the proposed Broadwater Project.
- LA12-2 As discussed in Section 4.3.1 of the final EIS, IGTS has not indicated that improvements to the IGTS or Eastchester pipelines are contemplated beyond the proposed tie-in to the Broadwater pipeline as addressed in the EIS. If improvements are proposed in the future, FERC would evaluate project impacts and alternative through a separate or supplemental NEPA document.

**Local Government Agencies and Municipalities Comments**

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LA12-2 potential cumulative, homeland security and environmental justice impacts of the expanded gas lines converging in and on the Town of Huntington.

**SAFETY AND SECURITY**

The DEIS contains an inadequate assessment of safety and security. As the United States Coast Guard stated in the security assessment contained in the September 2006 Waterways Suitability Report (“Coast Guard Report”):

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

The Coast Guard went on to note:

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

(Coast Guard Report pp. 156-157)

LA12-3 As described by the Huntington Director of Marine Services, emergencies created by Broadwater will leave the Huntington waterways without Coast Guard, State or County protection or emergency services. This fact is particularly troubling since the Northport Power Station and the Mobil Oil facility require a security presence.

**INCONSISTENCY WITH THE LONG ISLAND SOUND COASTAL MANAGEMENT PLAN**

LA12-4 The DEIS sidesteps a key issue--namely, that the use of the Long Island Sound by the Broadwater Project is plainly inconsistent with State Coastal Policies generally, and, specifically, contrary to the Long Island Sound Coastal Management Plan policies. These policies are comprehensive and reflect existing Federal and State law and authority, representing a balance between economic development and preservation that are written and implemented to permit the

LA12-3 As described in Section 3.10.6 of the final EIS Broadwater would be required to prepare an Emergency Response Plan; development of the plan would include participation by federal, state, and local agencies. The plan would need to be approved by FERC before Broadwater could receive approval to begin construction of the facility. Consequently, prior to construction, all relevant aspects of the emergency response and security needs for the Project and for the other users of the area would be addressed.

LA12-4 Broadwater submitted a coastal consistency certification to NYSDOS and to FERC that contains Broadwater’s analysis of the Project’s consistency with New York State coastal policies, including applicable policies of the Long Island Sound CMP and the applicable local land management plans. NYSDOS is responsible for determining whether the Project is consistent with those policies and it is our understanding that NYSDOS will file its determination with FERC after the final EIS has been issued.

Section 3.5.7.4 of the final EIS addresses environmental issues associated with the Public Trust Doctrine. However, legal issues related to public trust lands are not a component of our environmental review process and therefore are not included in the final EIS.

beneficial use of--and prevent adverse effects on--the Sound's coastal resources and communities.

The Broadwater proposal is inconsistent with at least three policies of the Long Island Sound Coastal Management Plan, i.e., Policies 1, 9 and 10. These policies are set forth 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 1.4:** Maintain and enhance natural areas, recreation, open space and agricultural lands.

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

**Subpolicy 9.3:** 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.

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

Broadwater's inconsistency with each of these policies is discussed below.

**Policy 1:** Foster a pattern of development in the Long Island Sound Coastal areas 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.

The Broadwater proposal conflicts with the goal of preserving open space. The Coast Guard Report and DEIS emphasize the fact that some 2,000 acres of the Long Island Sound will be made unavailable for public use.

Broadwater will permanently deprive the public of access of 950 acres of the surface of the Long Island Sound by virtue of this circular security exclusion zone with a radius of 1,210 yards (USCG Waterways Suitability Report Section 4.6.1.5, p. 130). Since the LNG tankers

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yards wide and 5,000 yards long plus the length of the carrier itself. The moving security zones will prohibit public access to 1,222 acres of the surface of the Long Island Sound at least 4-6 times a week. (The Waterways Suitability Report, Section 4.6.1.4, pp. 128-130).

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

Broadwater’s application violates the canons of the public trust doctrine set forth long ago by the Supreme Court and adopted by the highest court of New York. In Coxe v. State of New York, 144 N.Y. 396 (1895), a physical obstruction of the public’s access to navigable waters was found to violate the public trust doctrine. In Coxe, the State Legislature purported to transfer the State’s title to all of the submerged lands adjacent to Staten Island and Long Island. The Court of Appeals rejected that transfer as being “absolutely void”, stating that “so far as the statutes [conveying the land] attempted to confer titles to such a vast domain which the state held of the benefit of the public, they are absolutely void...” Id. at 405. The Coxe court articulated the test

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for a public trust doctrine violation. It held that, “title which the state holds and the power of disposition is an incident and part of its sovereignty that cannot be surrendered, alienated, or delegated, *except for some public purpose, or some reasonable use which can be fairly be said to be for the public benefit.*” *Id.* at 406 (emphasis added). The *Coxe* court further noted that the public trust doctrine is so broad that it would also prohibit transfers that are “for the public benefit” if they “might seriously interfere with the navigation upon the waters...” *Id.* at 408. If Broadwater is permitted to go forth with their Project, like the voided transfer in *Coxe*, it would “seriously interfere with the navigation upon the waters”, depriving the public of the use and enjoyment of thousands of acres of the surface of Long Island Sound. As stated in *Cox v. City of New York*, 26 Misc. 177 (1898), “[t]he right of navigation is a public right, belonging not to towns, villages or cities as corporations, but, rather, to all citizens in severalty.” *Id.* at 178. The Broadwater Project attempts to side-step the long established and consistently held principles of the Public Trust Doctrine. A for-profit venture cannot be granted permanent and exclusive access and management of a significant portion of the unique public treasure of the Long Island Sound.

**Policy 2: Provide for access to recreational use of coastal water, public lands and public resources of the Long Island Sound coastal area.**

Of course, the same argument applies to Policy 9 as to Policy 1. The Public Trust doctrine will be violated.

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

Once again, the Long Island Sound water-dependent uses will be pre-empted by the liquefied natural gas facility, which is not necessarily a water-defendant use. Recreational

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boaters and fishermen utilize the area of the security zone and the LNG, particularly, the Race to travel to parts of Connecticut and Block Island.

LA12-5

Further, as the Huntington Director of Marine Services warns in his statement, loss of fishing and lobstering areas further east in the Sound will tax the resources in or near Huntington. Huntington commercial fishermen and recreation boaters will lose access to the Race and areas in the eastern sound during unpredictable closures of those areas to secure the safety of the LNG carriers.

Dated: January 23, 2007

Respectfully,

Frank Petrone, Supervisor  
Mark Cuthbertson, Councilperson  
Susan A. Berland, Councilperson  
Stuart A. Besen, Councilperson  
Glenda A. Jackson, Councilperson

LA12-5 Impacts to commercial fishing are addressed in Section 3.7.1.4 of the final EIS, which has been updated to include impacts to commercial fishing in the eastern portion of the Sound. Impacts to recreational boating and fishing are addressed in Section 3.5.5.1 of the final EIS, which also has been updated. As noted in those sections, interruptions to lobster fishing, trawling, hand line fishing, and recreational boating and fishing would be localized and temporary during carrier transit, including in the Race. In addition, Section 3.6.8.1 of the final EIS has been updated to address potential impacts to commercial fishermen who may be affected by the proposed moving safety and security zones around LNG carriers.

