



Conservation Law Foundation

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Via E-Mail (Theodore.M.Lento@nae02.usace.army.mil) and U.S. Mail

Ms. Crystal I. Gardner, Chief
Permits and Enforcement Branch
Regulatory Division
U.S. Army Corps of Engineers
North East District
696 Virginia Road
Concord, MA 01742-2751

RE: Weavers Cove Energy and Mill River Pipeline LNG Proposal (File No. 2004-2355)

Dear Ms. Gardner:

Conservation Law Foundation ("CLF") presents these comments regarding Weaver's Cove Energy, LLC and Mill River Pipeline, LLC ("WCE"), applications to the U.S. Army Corps of Engineers ("Corps") for permits under section 404 of the Clean Water Act, 33 U.S.C. § 1344 et seq. and section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403 et seq. CLF's comments specifically address the § 404 permit application.

Founded in 1966, CLF is a nonprofit, member-supported organization that works to solve the environmental problems that threaten the people, natural resources, and communities of Rhode Island, Massachusetts and other New England states. CLF's advocates use law, economics, and science to design and implement strategies that conserve natural resources, protect public health, and promote vital communities in our region.

CLF members live in and use the natural resources that will be affected by WCE's project. CLF members' uses include swimming, kayaking, boating, fishing, and the opportunity to visit and enjoy the aesthetics of these natural resources. The project will cause deleterious impacts upon these natural resources, including: degrading water quality, destroying essential fish habitat, and impeding the propagation of a balanced indigenous community in Mount Hope Bay and the Taunton River. The impacts resulting from the issuance of the § 404 permit will adversely affect CLF members' uses of these natural resources, and therefore, CLF's members will be injured.

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PROJECT DESCRIPTION

The WCE project ("project") proposes to conduct dredging within an existing federal navigation channel, install structures, and discharge fill material in wetlands and waterways for the construction of the LNG import terminal and natural gas pipeline facilities. Specifically, WCE has proposed to dredge approximately 2.6 million cubic yards of material from the Taunton River and Mount Hope Bay within a footprint of approximately 200 acres; replace a pier with jetty structure; and install sheet pilings to stabilize and straighten approximately 2,650 ft of shoreline.

The project's stated "Purpose and Need", is to provide a new LNG import terminal, a competitive source of LNG, storage, and trucking capabilities for peak shaving facilities to serve the natural gas needs of the New England market, particularly in southeastern Massachusetts and Rhode Island.

LEGAL STANDARDS

The Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., prohibits the discharge of pollutants, including dredged spoil, into waters of the United States, except in compliance with various sections of the CWA, including section 404. See 33 U.S.C. § 1311(a). Section 404(a) of the CWA authorizes the Secretary of the Army ("Secretary"), acting through the Corps, to issue permits for the discharge of dredged or fill material into waters of the United States ("Section 404 Permit"). See 33 U.S.C. § 1344(a). Section 404(b) provides that in reviewing each permit application the Secretary must apply guidelines developed by the Environmental Protection Agency ("EPA") in conjunction with the Secretary. 33 U.S.C. § 1344(b). The guidelines developed pursuant to section 404(b) ("404 guidelines") are published at 40 C.F.R. § 230.1 et seq.

If the Corps finds that the permit application complies with the 404 guidelines, the Corps must issue the permit "unless the district engineer determines that it would be contrary to the public interest." 33 C.F.R. § 320.4(a)(1). The Corps' "public interest review" evaluates "the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest." *Id.* The Corps must then balance "benefits which reasonably may be expected to accrue from the proposal" against the proposal's "reasonably foreseeable detriments." *Id.* Among the factors to be considered by the Corps in its public interest review are: general environmental concerns, fish and wildlife values, water quality, energy needs and, in general, the needs and welfare of the people. *Id.*

SUMMARY OF ARGUMENT

CLF opposes the issuance of a § 404 dredge permit for WCE, and urges the U.S. Army Corps of Engineers to deny WCE's permit request. As is more specifically set forth below, the impacts to aquatic and other natural resources associated with this project are significant, and WCE has failed in their burden to satisfy several conditions of the 404 guidelines. Additionally, the project's foreseeable detriments to aquatic and other natural resources outweigh the public benefit that might reasonably accrue from the project. Accordingly, the

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issuance of the § 404 dredging permit for this project would be contrary to the public interest under § 320.4(a)(1).

In addition to WCE's failure to satisfy the 404 guidelines and the § 320.4 public interest review process, CLF believes that the Corps should terminate its review because it cannot permit a project that violates Section 7(b) of the Wild and Scenic Rivers Act ("WSRA").

I. THE WILD AND SCENIC RIVER ACT PROHIBITS THE CORPS FROM ISSUING A PERMIT

The federal Wild and Scenic Rivers Act, 16 U.S.C. § 1278 et seq., prohibits federal agencies from "assisting" projects that would have an adverse effect on a river that is either formally designated as "wild and scenic" or – like the Taunton River – is under consideration for such designation. The United States Department of the Interior's (DOI) July 5, 2005 comment letter¹ makes clear that the project, as presently designed, is not consistent with the Act and therefore cannot be approved by the Corps. See attachment A - DOI Letter.

Pursuant to the Act, all federal agencies are precluded from authorizing water resources projects that would have a direct and adverse effect on the values for which a river has been designated as wild and scenic. 16 U.S.C. § 1278(a). The Act also prohibits the Corps or any other department or agency from taking actions that might affect *the ability of a river to achieve designation* as wild and scenic once it is formally under consideration for such designation. Specifically, the Act mandates that once a river is under consideration for inclusion in the national wild and scenic rivers system,

[N]o department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval . . .

16 U.S.C. § 1278(b).

Courts have recognized that the Act vests the Secretary of Interior or Agriculture with the responsibility for determining whether a proposed project is consistent with the Act. See, Sierra Club North Star Chapter v. Pena, 1 F.Supp. 2d 971 (D.Minn. 1998) ("Once the National Park Service's (NPS) determined that project would have a 'direct and adverse

¹ Note that although the Department of the Interior's most recent comments were made part of the FEIS record some ten days prior to the issuance of Federal Energy Regulatory Commission's July 15 Order, they were submitted *after* the Commission had convened its June 30, 2005 hearing on the Project where it took action to approve the Weaver's Cove LNG project. It therefore appears that the Commission did not previously have an opportunity to fully consider the merits of the Department's comments regarding the project's impacts to the Taunton River's designation and therefore, Department's inability to provide the statutorily required letter of concurrence.

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effect' on the scenic and recreational values of a National Wild and Scenic Rivers System (WSRS) river, and thus under Wild and Scenic Rivers Act (WSRA) federal agency could not assist in construction and United States Army Corps of Engineers (COE) could not grant dredge and fill permits necessary for construction.") *Id.* at 972. Courts have also recognized that the Act provides similar safeguards for rivers under consideration for inclusion in the river system. See, Hughes River Watershed Conservancy v. Glickman, 81 F.3d 437 (4th Cir. 1996). ("The same protections that apply under § 1278(a) to rivers in the System also apply to potential additions to the System designated in WSRA.") *Id.* at 449.

The Federal Energy Regulatory Commission's (FERC) Final Environmental Impact Statement (FEIS) appropriately acknowledges that the "final determination on whether the Weaver's Cove LNG Project would have a substantial adverse affect on the Taunton River's potential designation as a Wild and Scenic River would be made by the U.S. Department of the Interior." FEIS at 4-168. Condition 25 of FERC's July 15 Order (Order) (See attachment B) sets forth a similar acknowledgement of the requirement to comply with the Wild and Scenic Rivers Act, and requires that the project file,

"documentation of concurrence" from the Department of the Interior indicating that the project would not have a substantial adverse affect on the Taunton River's potential designation as a Wild and Scenic River (WSR) and that the project would be consistent with the Wild and Scenic River Act if the Taunton River were designated as a Wild and Scenic River."

Order at 50.

As stated by the Corps in its comments to FERC on September 17, 2004 (see attachment C) "...a Corps permit cannot be issued until we have determined the proposed work in our jurisdiction complies with these Acts [referring to the WSRA]..." Finally, WCE's application to the Corps acknowledges the Corps' responsibility to seek concurrence from the DOI/NPS. See attachment E - WCE Corps application at 66.²

² WCE argues that the project does not affect the River's potential designation because Congress only authorized the study of the upper Taunton for potential designation in the WSRA System. The WSRA provides that Congress may authorize the Secretary of Interior or the Secretary of Agriculture to study additional rivers for inclusion in the wild and scenic rivers system. See, 16 U.S.C. § 1275. On October 19, 2000, Congress authorized the National Park Service (NPS) to study the upper Taunton for inclusion in the wild and scenic rivers system (Public Law 106-318). In the fall of 2002, the NPS "administratively" extended the study to include the Lower Taunton pursuant to a request by the Massachusetts Congressional Delegation. (Conversation with Jamies Fosburgh, National Park Service; August 11, 2005). The reality is, the entire Taunton River was studied and is currently being considered for designation. This fact is demonstrated by the NPS study and the DOI July 2005 comments to the FEIS (see page 3 of attachment A). Moreover, congressional legislation has been proposed which reflects that the entire river is being considered for designation - see attachment D. Even if WCE's assertion is correct, the DOI comments clearly show that impacts to fishery resources at the lower stem of the Taunton will impact the fishery values in the upper stem; as such, the project can be deemed to have a substantial adverse affect on the Taunton River's potential designation as a Wild and Scenic River. See 16 U.S.C. § 1278(b); "Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic or recreational, and fish and wildlife values present in the potential wild, scenic, recreational river area on the date of designation of a river for study as provided for in section 1276 of this title.

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In its comments on the FEIS, the Department of Interior expressed two primary reasons why the WCE project as proposed can not be found to be compatible with the WRSA:

- A. Inadequate protection of fishery resources; and
- B. Unavoidable impacts to fishery habitat.

A. **Protection of Fishery Resources**

As determined by the Department of the Interior, the Taunton River's outstanding fishery values are critical to potential designation of the Taunton River as wild and scenic, and the project is likely to have a direct adverse affect on these values.

"It does not appear that the conditions proposed as part of the FEIS adequately address protection of the fishery resource. Of particular concern to the NPS [i.e., National Park Service], the failure to require recommended dredging time of year restrictions to protect anadromous fish resources could result in a direct and adverse impact to the values for which *any portion* of the Taunton River would be designated as Wild and Scenic. (*Emphasis added*).

... In the absence of satisfactory fishery resource protection, *we will not be able to provide the statutorily required affirmative statement of no adverse impact to the values for which the Taunton River may be included in the National Wild and Scenic River System.* (*Emphasis added*).

July 5 DOI Comments.

As shown in WCE's application to the Corps on pages 27 and 66 (Attachment E), WCE proposes dredge time of year (TOY) restrictions of January 15 – April; the Department recommends dredge TOY restrictions January 15 – July 31. WCE proposal is to dredge in the months of May, June and July, which is in direct contravention of the Department's recommendations. In sum, unless the Corps' permit includes time of year restrictions to protect fishery resources, it is unlikely that the project can be deemed compatible with the WRSA § 1278(b).

No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter." (*Emphasis provided*).

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B. Unavoidable Impacts to Fishery Habitat

Even if the Department's time of year (TOY) dredge restrictions were required in the Corps' permit, the Department is also concerned about unavoidable site impacts to the lower Taunton River.

"The relevant State and Federal fishery agencies, in their comments on the DEIS, have indicated that there may be *unavoidable adverse site impacts* related particularly to the enlargement of the turning basin and development of the Weaver's Cove site. These include the permanent loss of 11 acres of winter flounder habitat and 1.15 acres saltmarsh and intertidal/subtidal habitat. The FEIS appears to agree that these impacts to this portion of the Lower Taunton River are *unavoidable*. (*Emphasis provided*).

In addition, the proposed development of the Weavers Cove site for LNG purposes appears to be contrary to the goals and intentions of the City of Fall River as it relates to the desire to seek Federal Wild and Scenic River designation and endorse the Taunton River Stewardship Plan. Development of this site would foreclose opportunities for the City to connect a significant portion of their waterfront to the Taunton River through redevelopment, emphasizing public access and recreation as an important aspect of economic revitalization and quality of life improvement."

July 5 DOI Comments.

For the reasons cited by the Department of Interior, the proposed project cannot be made compatible with Wild and Scenic River designation of the Taunton River, and therefore the Department was not able provide the statutorily required documentation of concurrence. Accordingly, the Corps cannot issue a § 404 dredge permit to WCE, because to do so would contravene 16 U.S.C. § 1278(b) and the Corps' policy of insuring that projects satisfy the Wild and Scenic River Act.

II. THE PROJECT DOES NOT SATISFY THE 404(B) GUIDELINES

The Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., prohibits the discharge of pollutants, including dredged spoil, into waters of the United States, except in compliance with various sections of the CWA, including § 404. See 33 U.S.C. § 1311(a). Section 404(a) of the CWA authorizes the Secretary of the Army ("Secretary"), acting through the Corps, to issue permits for the discharge of dredged or fill material into waters of the United States ("Section 404 Permit"). See 33 U.S.C. § 1344(a). Section 404(b)(1) provides that, in reviewing each permit application, the Secretary must apply guidelines developed by the Environmental Protection Agency ("EPA") in conjunction with the Secretary. 33 U.S.C. § 1344(b).

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The guidelines developed pursuant to § 404(b)(1) ("404 guidelines") are published at 40 C.F.R. § 230.1 et seq. The purpose of these guidelines is to restore and maintain the chemical, physical, and biological integrity of waters of the United States through the control of discharges of dredged or fill material. § 230.1(a). Fundamental to these guidelines is the precept that dredged or fill material should not be discharged into an aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern. § 230.1(c). The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources. § 230.1 (d). To ensure the purpose and policies described in § 230.1(a)-(d) are satisfied, §§ 230.10, 230.11 and 230.12 (titled, Subpart B- "Compliance with Guidelines") define conditions that must be satisfied before a § 404 permit can be issued.

As more thoroughly described below, the impacts associated with the WCE project will contravene § 230.1(c)-(d) and several prohibitions of §§ 230.10, 230.11 and 230.12; therefore, the Corps must deny the § 404 permit application.

A. Practicable Alternatives Exist That May Have Less Adverse Impact on the Aquatic Ecosystem

Section § 230.10(a) states that, "[n]o discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. For the purpose of this requirement, practicable alternatives include, but are not limited to discharges of dredged or fill material at other locations in waters of the United States or ocean waters." § 230.10(a)(1)(ii). "An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered." § 230.10(a)(2).

The following discussion describes several alternatives, both alone or in combination,³ that could satisfy the basic purpose of the WCE project, and that might have less adverse impacts on the aquatic ecosystem. However, because the FEIS alternatives analysis was so flawed,⁴ whether the alternatives would have other significant adverse environmental consequences is

³ The FEIS concluded in its system alternatives section of the FEIS, "[w]hen considered independently, none of the LNG import projects in the region would be capable as serving as an alternative." "However, when considered together, several of the projects in or outside of the region could meet many of the project objectives." FEIS at ES-11. Unfortunately, the Commission did not evaluate or consider the environmental impacts of these combined alternatives.

⁴ From the inception of the Project to the present, the FEIS alternatives analysis has been wholly inadequate. The FEIS rejected alternatives based on the erroneous assumptions that new LNG supplies from other sources/projects were too indefinite, by stating: "it is not possible at this time to foresee which (if any) of the LNG import projects proposed in the New England region will move forward and be constructed." FEIS 3.2.4. Based on the information presented below, it is now possible to foresee which of the LNG import projects are likely to move forward.

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unanswered. The WCE application to the Corps is even less helpful in resolving this issue, because § 5.0, titled "Alternatives Analysis," is devoid of any discussion related to off-site alternatives, and merely provides a superficial analysis of the potential alternatives at the Fall River location. The inadequacy of the alternatives analysis results in three (3) possible findings for the Corps:

1. Deny the permit pursuant to §230.10(a) because WCE failed to demonstrate that the proposed project is the least environmentally damaging practicable alternative; or
2. Deny the permit pursuant to section 230.12(a)(3)(iv) because, there does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines; or,
3. Pursuant to § 230.10(a)(4), require WCE to conduct a new, updated analysis of site and system alternatives for LNG facilities and pipelines, consistent with concerns raised by the Corps, the City of Fall River, EPA and NOAA. The Corps should also conduct an additional public hearing to address these significant issues, to ensure that the public has a full and fair opportunity to understand, assess and comment upon the technical bases upon which WCE seek to justify their proposed project.

The Corps has recognized the importance of alternatives to the WCE project, and expressed concerns about the inadequacy of the alternatives analysis. In the Corps September 17, 2004 comments to FERC, the Corps requested that the EIS ...

"more fully describe and evaluate an off-shore LNG alternative with the characteristics of the Excelrate Energy LLC's proposed Northeast Gateway Project to construct an offshore LNG facility..."

The EPA's comment to FERC's FEIS also expressed concerns about the inadequacy of the alternatives analysis, by stating,

Offshore LNG

"Our comments on the DEIS noted that offshore LNG facility development was inappropriately eliminated as a reasonable alternative and that Weaver's Cove's potential for significant and avoidable direct and cumulative marine impacts to the Taunton River ecosystem underscores the need to include an evaluation of an offshore alternative to bring a new natural gas supply to the New England market. The DEIS concluded that environmental, economic and technical factors made the offshore LNG options impractical. We disagreed with those conclusions and note that the FEIS now includes a partial analysis of offshore LNG technology including the projects proposed by Neptune LNG and Excelerate Energy, L.L.C. in Massachusetts Bay.

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The FEIS highlights FERC concerns about the reliability of the LNG supply from deepwater port projects, such as those proposed by Neptune and Exceletrate.⁵ It concludes that neither project could provide an additional source of LNG to meet the needs of existing peak shaving facilities. We continue to believe there is sufficient information based on actual experience with the buoy system technology to understand how well the buoy system can be expected to perform in unfavorable weather/rough seas and what types of "severe weather" would cause the facility to go "offline". We accept that the offshore LNG facilities would by design not be able to satisfy the peak shaving market but continue to view offshore LNG as a potentially significant means to bring LNG to the New England market—albeit with a different set of environmental impacts that must be evaluated."

EPA comments ADC at 1.

By adopting the view that the WCE project is superior to other LNG facility alternatives, the FEIS failed to consider whether these viable alternatives can actually meet the project's basic purpose of increasing the natural gas supply to the region, in a quicker time frame than the WCE project. More importantly, recent applications and natural gas supply contracts, which were not available for FERC's consideration in July 2005, make the Corps review of these alternatives even more important. As discussed below, the Corps should consider project alternatives including:

1. New Canadian Maritime LNG supplies and infra-structure improvements;
2. Proposed offshore facilities such as the Neptune LNG and Northeast Gateway LNG projects;
3. Any *combination* of alternatives, including other LNG facilities, efficiency, conservation, and renewables.

1. Canadian Maritime LNG Supplies and Infra-Structure and Pipeline Improvements Were Not Considered

On July 15, 2005, Repsol YPF entered into an agreement with Maritimes and Northeast Pipeline to transport 750,000 MMBtu/d from Canaport LNG by 2008. In September 2005, Canaport LNG, the LNG receiving and regasification facility proposed by Irving Oil and Repsol for Saint John, New Brunswick, Canada, commenced construction, with an anticipated in-service date of 2008. Attachment F at 4.

On July 15, 2005, Anadarko Petroleum Corp. entered into an agreement with Maritimes and Northeast Pipeline to transport 813,000 MMBtu/d from Bearhead LNG by 2008. Bear

⁵ From the inception of the Project to the present, the FEIS alternatives analysis has been wholly inadequate. The FEIS rejected alternatives based on the erroneous assumption that new LNG supplies from other sources/projects were too indefinite, by stating: "it is not possible at this time to foresee which (if any) of the LNG import projects proposed in the New England region will move forward and be constructed." FEIS 3.2.4 - Existing or Proposed System Alternative Conclusion.

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Head KNG awarded the first construction contracts for its marine offloading, LNG storage and regasification project in August 2005, with an anticipated in-service date of 2007. Attachment F at 4.

In September 2005, Maritimes and Northeast Pipeline (which notably brings natural gas from the Canadian Maritimes to the New England region) submitted its pre-filing to the Commission for its Phase IV Expansion. The expansion would provide 1,563.00 MMcf/d of additional pipeline capacity into the New England region, with subscribed supply as described above. Attachment G. See, also October 14, 2005 notification from the Federal Energy Regulatory Commission (FERC) concurring with the proposed schedule of February 2007 for FERC approval of the Maritimes and Northeast Pipeline expansion under Docket Number PF05-17-000. Attachment H at 3.

Admittedly, the FEIS was published prior to these announcements. However, it is certainly not too late for the Corps to consider these alternatives in its §404 review process, especially because the new Canadian Maritimes LNG projects already underway may well meet the Project Purpose of meeting local demand for natural gas, without need for the WCE Project.

2. Offshore Alternatives Such as the Neptune and Northeast Gateway LNG Projects Were Eliminated as Viable Alternatives on Inappropriate Grounds

The FEIS unreasonably rejected the Northeast Gateway and Neptune LNG offshore facilities as reasonable alternatives to Weaver's Cove on the basis of unreliable in-service times and questionable reliability. As discussed below, these bases for elimination are inappropriate.

Given that the WCE project has an unreliable in-service time and could not reasonably be expected to go into service before 2010 even if it could be built at all⁶, it is illogical for the

⁶ The enactment of SAFETEA-LU § 1948 on August 10, 2005 prohibits WCE's project from being successfully constructed and thus constitutes a fatal flaw for the Project. This new federal law requires the maintenance (and improvement of) the existing Brightman Street Bridge, which makes locating the LNG terminal at the proposed project site impossible because LNG tankers can not pass under the existing Brightman Street Bridge. This federally mandated restriction thereby renders useless any LNG terminal at the project site, and clearly leaves the Project unable to meet its own purpose and need. To date, WCE has not adequately addressed how the Project can proceed in the face of § 1948. The Massachusetts Executive Office of Environmental Affairs' (EOEA) Certificate ("Certificate") (See attachment I) underscores the need for WCE to articulate, with specificity, how the Project will proceed in light of § 1948.

...The FEIR must address the issue posed by the recently passed federal legislation...that prohibits the use of federal funds for the demolition of the Brightman Street Bridge....the entire Weaver's Cove project has been called into question as a result of this legislation, and certainly the ability of the project to meet its originally stated purpose. The FEIR should thoroughly address this issue by either demonstrating that the existing Brightman Street Bridge will be able to accommodate the passage of LNG tankers if it is not demolished, or by presenting another viable alternative for delivering LNG to the project site.

Certificate at 1 and 6.

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FEIS to dismiss the offshore facilities as viable alternatives on the basis of unreliable in-service times or on the basis that the technology is supposedly unproven. While the FEIS does provide a cursory description of these projects, it omits several material facts that have come to light in recent months. First, Northeast Gateway received notice, on August 19, 2005 (published in the September 2, 2005 Federal Register; 70 FR 52422) from the United States Maritime Administration that its application, submitted on June 13, 2005, was deemed complete. The Deepwater Port Act of 1974 requires that the Maritime Administration issue a decision on the license application not later than July 31, 2006. The Northeast Gateway Project anticipates an in-service date by Q1 2008.

The FEIS also does not reflect the fact that the Neptune LNG LLC project also received notice from the Maritime Administration, on September 30, 2005 (published in the October 7, 2005 Federal Register; 70 FR 58729) that its application, submitted to the Maritime Administration on February 17, 2005, was deemed complete, requiring that a decision on the license application be issued not later than September 5, 2006. The Neptune LNG Project anticipates an in-service date of Q4 2008 – Q1 2009. Both of these projects anticipate the ability to provide additional sources of natural gas to the region well in advance of any date when the WCE Project might possibly be complete, if it could be constructed at all.

The primary basis upon which the FEIS premised its rejection of a full consideration of these projects as viable alternatives has been the claim that offshore facilities cannot withstand harsh weather conditions in New England and that only one project using similar technology to the Northeast Gateway Project; the Energy Bridge Project located in the Gulf of Mexico; has been deployed and remains untested in the face of severe storms.

Last year's hurricanes dispelled any notion that offshore technology such as that proposed for the Northeast Gateway project is unproven. As set forth in Attachment J, the Energy Bridge facility not only withstood these massive storms, it did not even suffer an interruption in service, unlike many of the fixed platform facilities.

3. The Alternatives Analysis in the FEIS and WCE Application is Inadequate Because it Fails to Explore Alternatives Taken in Combination With Each Other.

Having improperly dismissed the proposed offshore terminals as alternatives, the FEIS then failed to consider whether the offshore terminals when combined with pipeline expansions and other sources of natural gas may partially or fully meet the region's LNG demands. In other words, the FEIS fails to consider whether these alternatives, when combined with other resources, will provide better long-term solutions and options for our region's natural gas supply, and thus meet the needs and welfare of the public. The proper range of an alternatives analysis should include not only alternatives that will meet the "objective" of the WCE Project; rather the range should include alternative ways to meet the *underlying need or*

If the Corps chooses to continue its review, the Corps should also require WCE to address the project's viability as it relates to § 1948.

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objective of bringing a new LNG supply to New England to serve the natural gas needs of the New England market, particularly in southeastern Massachusetts and Rhode Island.

Because the FEIS prematurely dismissed these alternatives on inappropriate grounds and because WCE's application to the Corps failed to address off-site alternatives, there is insufficient information for the Corps to reach a reasoned conclusion as to which of these alternatives is environmentally preferable to the WCE project. Given the significant inadequacy of the alternatives analysis, we urge the Corps to deny WCE's § 404 permit application pursuant to §230.12(a)(3)(iv), and require WCE to conduct a new, updated analysis of off-site and system alternatives for LNG facilities and pipelines.

B. The Project Will Cause or Contribute to Violations of Water Quality Standards

Section 230.10(b)(1) provides, "No discharge of dredged or fill material shall be permitted if it causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard." Information contained in the FEIS coupled with the comments provided by EPA, it is clear that the WCE project cannot satisfy the prohibitions of 230.10(b)(1)⁷, therefore, the application must be denied.

The Project has never been able to meet state water quality standards for zinc or copper and does not pretend to do so. The FEIS states expressly that elutriate test results for copper and zinc exceed water quality criteria for both acute and chronic exposures; see, FEIS at 4-40 and 4-41. As discussed more fully below, EPA cast significant doubt that the Applicant's dredging activities will meet state water quality standards. In their comments to FERC, EPA stated,

"EPA's comments on the DEIS noted that Mount Hope Bay and the Taunton River do not meet state water quality standards and are on the Commonwealth of Massachusetts' Clean Water Act § 303(d) list (a list of water bodies not meeting state water quality standards).... Our comments also described our expectation that dredging and the discharge of liquid from dewatered dredged material will exacerbate existing water quality problems... EPA is concerned that the discharges are not likely to meet state water quality standards in Mount Hope Bay and the Taunton River since those water bodies are currently impaired.

The FEIS indicates that copper concentrations in the Taunton River exceed EPA water quality criteria by a factor of 12 (chronic) and 7 (acute). The FEIS argues that water quality modeling shows that inputs of copper from the dredging will result in a relatively small area with levels elevated over these background concentrations. Additionally, the analysis claims that the elevated copper concentrations in the river

⁷ The prologue of § 230.10 in part states, [all] requirements in §230.10 must be met.

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represent the "natural" condition of the river and that organisms have adapted to these conditions.

We do not agree that elevated copper concentrations in the Taunton River are "natural"; elevated levels are the result of anthropogenic influences. Furthermore, we question the validity and basis (scientific evidence or rationale) for the unsupported assertion that organisms adapt to this degraded environment. Currently, ambient copper concentrations are well above the applicable copper criteria that have been established to protect aquatic organisms against acute and chronic toxicity. Therefore, sensitive marine organisms are already at risk of lethal and sublethal effects. Even a small addition of copper to this system would likely increase this risk. If the slope of the dose-response curve for copper is steep, small incremental changes in copper concentrations can produce substantial differences in toxicity.

The Massachusetts DEP has indicated that in order for a § 401 water quality certification to be issued for the dredging, it is likely that site-specific criteria for copper and zinc will need to be developed (Yvonne Unger, Massachusetts Department of Environmental Protection, personal communication, 6/13/2005). While we would support exploration of site-specific criteria, it is premature to say whether such criteria would result in the current ambient levels being in attainment.

The instream exceedances of copper criteria will also have implications for the NPDES permit for dewatering discharges from onsite processing of any dredged material to be disposed on the site. Pursuant to 40 C.F.R. §§ 122.4(d) and (i), an NPDES permit may be issued for a discharge into impaired waters where it can be demonstrated that the discharge will not cause or contribute to a violation of water quality standards. (Emphasis provided).

EPA Comments; June 28, 2005 at ADC-6 and ADC-7.

It is clear from EPA's comments that the additions of copper and zinc will likely cause a violation of water quality standards and is expected to contribute to a violation of water quality standards, and at a minimum will exacerbate existing water quality problems. Of equal concern, is the FEIS's admission that dredging activities will result in exceedances of water quality standards for copper and zinc. Given that the Project cannot satisfy § 230.10 (b)(1), the Corps must deny WCE's 404 permit application.

C. The Project Will Cause or Contribute to Significant Degradation of the Taunton River and Mount Hope Bay

Section 230.10(c) provides "[n]o discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States... [E]ffects contributing to significant degradation considered individually or collectively, include:

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(c)(1) Significantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on ... fish, shellfish, wildlife...

(c)(2) Significantly adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical, and chemical processes;

(c)(3) Significantly adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat....”

As described below, the WCE project will have significant impacts upon the ecosystem, cause the loss of valuable aquatic resources, and adversely affect fish and shellfish. The impacts of the project violate the prohibition of § 230.10(c), and therefore the § 404 permit application must be denied.

The Corps’ analysis should be informed by recognition of the valuable resources present in the Taunton River and Mount Hope Bay aquatic complex. The Massachusetts Department of Fish and Game/Division of Marine Fisheries identified the complex as “Significant Shellfish Habitat” (See attachment K at 1), the National Marine Fisheries Council classifies the complex as “Essential Fish Habitat” and the Atlantic States Marine Fisheries Council classifies the complex as “Habitat Areas of Particular Concern” (Id. at 2). NOAA/NMFS identify the complex as “Aquatic Resources of National Importance” and “Essential Fish Habitat.” (See attachment L at 1)

1. WCE’s Proposed Dredging Will Adversely Impact Fishery Resources

As noted by the National Park Service (NPS), the failure to impose sufficient dredging time of year (TOY) restrictions is likely to result in a “direct and adverse impact” on the fisheries (DOI letter at 2), including upstream spawning migrations that the National Marine Fisheries Service (NMFS) considers to be “aquatic resources of national importance.” *Id.* (quoting NMFS comments – See attachment L). As discussed supra, NOAA/NFMS recommends TOY restrictions of January 15 – July 31; WCE’s Corps application proposes dredging during May, June and July.

The EPA also shared NMFS’ and NPS’ concerns about the impact of dredging on fisheries. (“EPA, Comments on Weavers Cove FEIS at ADC 2-3 (June 28, 2005) – See attachment M”). As noted by the EPA,

[t]he Project is expected to have a significant detrimental impact on already-declining winter flounder populations, the importance of which “extends well beyond the boundaries” of the spawning grounds of Mount Hope Bay and the Taunton River.

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Id. at 3. The Commission's suggested dredging method and its "turbidity plumes, noise, and light" threaten passage of juvenile anadromous fish, which could further threaten commercial fish stocks in offshore waters. Id. Conditions placed on the operation of nearby Brayton Point Station have been unsuccessful in stemming the decline of the flounder populations and, as noted by the EPA, dredging activities at Weaver's Cove would exacerbate the problem. Id.

The Massachusetts Department of Fish and Game/Division of Marine Fisheries (DMF) expressed concerns about the impacts of the project, in particular the effects from dredging. See attachment K. Specifically, the DMF set forth time of year (TOY) restrictions on dredging activities from mid-January – November 30. DMF comments, December 9, 2005 at page 3⁸. WCE's Corps application proposes dredging during the prohibited months of May – November.⁹

2. WCE's Project Will Impact the Diversity, Productivity, and Stability of the Taunton River and Mount Hope Bay Ecosystem

The FEIS properly recognizes the adverse affects that entrainment and impingement (associated with LNG ship ballast water) have upon the diversity, productivity, and stability of an aquatic ecosystem, by stating,

These withdrawals [referring to ship ballast water] could entrain and/or impinge larvae and eggs.... Impacts attributable to impingement mortality and entrainment include losses of early life stages of fish and shellfish, reductions in forage species, and decreased recreational and commercial landings. FEIS at 4-108.

The EPA considered the FEIS's examination of entrainment and impingement issues to be inadequate, and described the project's impacts regarding entrainment/impingement of fish larvae associated with ballast and cooling water intake required for the ongoing operations of the LNG terminal and tankers as follows:

⁸ **Diadromous Species:** Alewife, Inward migration: Mid-March through Mid-June/Outward migration: Mid-June through September; Atlantic sturgeon, Inward migration: April through June/Outward migration: June through November; Blueback herring, Inward migration - April 15 through July 30/Outward migration: September through early November; Rainbow smelt, Inward migration -March 1 through May 15; White perch, Inward migration – Mid February through May; American eel – Elver (juveniles) inward migration -March 15 through June 15

Shellfish: American oyster, Spawning (may occur twice per year) Mid-June through September 15; Quahog, Spawning (may occur twice per year) Mid-June through September 15; Soft-shell clam, Spawning (may occur twice per year) May through October.

Winter Flounder: Spawning and larval development -Mid-January through May 31; Juvenile settlement and development - May through September.

⁹ By not adopting NMF and DMF TOY restrictions, i.e., not taking steps to minimize impacts, WCE cannot not satisfy § 230.10(d), which provides, "[no] discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem."

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“EPA appreciates efforts in the FEIS to quantify impingement and entrainment losses and FERC’s recognition that fish populations in Mount Hope Bay are in serious jeopardy. However, FERC’s analysis ultimately dismisses any losses associated with the project as minor in comparison to other sources (Brayton Point Power Station in particular). It has recently come to EPA’s attention, after much work on the offshore LNG facilities, that water usage, and the potential for correspondingly greater impacts, by the LNG vessels is much more significant than those assigned to address entrainment losses for the withdrawal of ballast water. The FEIS water usage estimate does not include cooling water used for the ship boilers that power the vessel and its propulsion system. Thus, while the vessels are transiting Narragansett Bay, Mount Hope Bay and the Taunton River, they will represent a source of entrainment for aquatic resources.

The projected level of entrainment may well be small in comparison to current levels at Brayton Point Station, but unlike Brayton Point, this represents a new source of entrainment that adds to the cumulative burden on the ecosystem. In addition, Brayton Point Station has offered to reduce their water usage by 33% and EPA is attempting to reduce their water usage by substantially more. Thus, the relative importance of this new source would only increase with substantial reductions of water usage at Brayton Point Station. Given the numerous substantial efforts in place to improve the condition of the Mount Hope Bay ecosystem, EPA is concerned about any activity in the Taunton River and Mount Hope Bay that has the potential to offset gains from the reduction of impacts attributable to other sources or to make conditions worse.

EPA 2005 FEIS comments at ADC-5.

The Massachusetts Division of Marine Fisheries expressed similar concerns associated with the “potential impacts from withdrawal of millions of gallons of river water from ballast and hydrostatic testing...” The cumulative impact of 50-70 annual withdrawals of as much as 14-million gallons of water needs should have been discussed within the contest of other similar activities within the embayment...” DMF December 9, 2005 comments to EOE.

These impacts, both individually and collectively, are contrary to guiding principles of § 230.10(c), and will significantly affect fish, shellfish and wildlife. Given these facts, the Corps should find that the foreseeable detriments of the Project will not satisfy § 230.10(c)(1)-(3), and deny the permit application.

D. The Corps Must Make a Finding of Non-Compliance

Section § 230.12 provides that the Corps must make a findings of compliance or non-compliance with the restrictions on discharge, or in the alternative, find that there does not exist sufficient information to make a reasonable judgment as to whether the proposed

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discharge will comply with these Guidelines. These findings shall include the factual determinations required by §230.11. See generally, 40 CFR §230.12.

Section 230.11, titled "Factual Determinations," directs the Corps to, ... [d]etermine in writing the potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the aquatic environment... Such factual determinations shall be used in § 230.12 in making findings of compliance or non-compliance with the restrictions on discharges described in § 230.10.

Pursuant to § 230.12(a)(3)(ii), the Corps should make a factual determination and find that the WCE project fails to comply with the requirements of the 404 guidelines because the proposed discharge:

1. Is not the least environmentally damaging practicable alternative under § 230.10(a).
2. Will result in significant degradation of the aquatic ecosystem under §230.10(b) or (c).

Additionally, pursuant to § 230.12(a)(3)(iii), the Corps should find that the WCE project fails to comply with the requirements of the 404 guidelines because the proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem pursuant to §230.10(d); i.e., WCE application does not include sufficiently protective TOY restrictions recommended by state and federal agencies.

In the alternative, pursuant to § 230.12(a)(3)(iv), the Corps could find that there does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines, based on the failure of the alternatives analysis in the FEIS and WCE's application to provide the necessary information to determine if this is the least environmentally damaging practicable alternative under § 230.10(a).

III. WCE'S PROJECT IS CONTRARY TO THE PUBLIC INTEREST

Each of the above mentioned defects in § 230.10 is fatal to the application. However, even if the application is able to overcome those barriers, the application still fails because it is contrary to the public interest.

Pursuant to Corps regulations, if the Corps finds that the permit application complies with the 404 guidelines, the Corps must issue the permit "unless the district engineer determines that it would be contrary to the public interest." 33 C.F.R. § 320.4(a)(1). The Corps' "public interest review" evaluates "the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest." *Id.* The Corps must then balance "benefits which reasonably may be expected to accrue from the proposal" against the proposal's "reasonably foreseeable detriments." *Id.* The decision whether to authorize a

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proposal, and if so, the conditions under which it will be allowed to occur, are determined by the outcome of this general balancing process. Among the factors to be considered by the Corps in its public interest review are general environmental concerns, fish and wildlife values, water quality, energy needs and, in general, the needs and welfare of the people. See generally, § 320.4(a)(1).

A careful and proper balancing of the project's foreseeable detriments against the benefits reveals that approval of the Weaver's Cove LNG terminal is not in the public's interest. The region's need for increased supplies of natural gas is undisputed and the public would benefit from increased supplies and stable/competitive natural gas prices. Indeed, greater use of natural gas is better for the environment as it is a cleaner burning fuel than its fossil fuel cousins; coal and oil. However, given the impacts to fishery resources, water quality (and other impacts discussed by the City of Fall River in their 2.8.06 comments to the Corps) the general needs and welfare of the people will not be served by the WCE project. Sudeen Kelly, FERC Commissioner and the sole dissenter in both FERC Orders, succinctly stated why the Weaver's Cove Project is not in the public interest:

[u]nder the facts and circumstances of this case, it would not be in the public interest to authorize the Weaver's Cove LNG facility under NGA section 3. In my view, there are reasonable alternatives to this facility for meeting New England's growing demand for natural gas. Given these alternatives, I think that, on balance, the unresolved safety, environmental and socioeconomic concerns raised by this project outweigh the benefit of the additional gas supply that it would provide.

FERC Order (January 2006), Kelly dissent at 1. 114 FERC ¶ 61,058.

CONCLUSION

The Corps cannot issue a permit to WCE, on four independent grounds:

1. To do so would be unlawful pursuant to Section 7(b) of the Wild and Scenic Rivers Act.
2. The WCE project cannot meet the restrictions on discharge; therefore, the Corps must make a finding that the WCE project does not comply with the 404 guidelines, and deny the permit.
3. Alternatively, the Corps should make a finding of non-compliance because there does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will be the least environmentally damaging alternative.
4. In the event the Corps deems the application satisfies the 404 guidelines, the Corps should find, that the public's interest in protecting and preserving the natural resources coupled with the viable alternatives discussed, outweigh the benefit accrued from the WCE project.

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As always, the Conservation Law Foundation appreciates the opportunity to comment on this § 404 dredging and filling permit application, as well as your attention to the issues raised herein.

Respectfully submitted,

Conservation Law Foundation

By: 
Christopher A. D'Ovidio, Staff Attorney

To: U.S.Army Corps of Engineers

From: Amy Buckley

Re: Weaver's Cove LNG Terminal

As a resident of Somerset Massachusetts which is directly across the Taunton River from the proposed Weaver's Cove LNG Terminal I wish to tell you that I am opposed to this project.

The sudden speed at which this project is proceeding is frightening. The pile drivers pounding during the night, keeping residents awake are disturbing. We were told that this was going to be a standard bridge crossing the river. In the past year they have been driving huge metal pieces into the river bed for a draw- bridge.. This is going to be a Bascule bridge with counter weights that will lift this bridge to allow those huge tankers full of gas to pass up this river very close to the shore of residential homes and businesses. Surely this short span of space from shoreline to shoreline is not legally safe. What about our pledge to Homeland security? This is my United States Homeland in which a totally new project is not secure for safety, but being rushed on to completion as quickly as possible. The gas will then be piped under the power line areas that pass behind and or adjacent to schools, homes, playgrounds, shopping centers through marshlands to join up with the Algonquin Gas line that passes through Swansea on its way to Greater Boston. What is the rush. The Hess Oil Company and the Weaver's Cove Energy Company have one goal in mind. To make money!!!!. They are already making windfall profits.

If this natural gas is so important to us why not build this LNG terminal off shore? Send the underground pipelines through unpopulated areas. Miami, Florida refused terminals into their waterways. Just last year their concerns were granted. Off shore terminals are being planned and studied.

All the residents received a slick flyer in the mail to "Our Neighbor" from Weaver's Cove Energy with myths and facts. " Fact: in the last 40 years not a single public fatality injury or MAJOR LNG spill has occurred."

Well Hello! Yoo-hoo!.... in the present we live in a much more dangerous world. Have they not heard of 9/11 that has us on constant alert. Yesterday, President Bush warned us of terrorist threats to Los Angeles, CA. We are constantly being frightened by terrorist threats. Are they going to close passage of our waterways when these 950 foot tankers travel over 26 miles, 100 to 140 times a year? The route...through Narragansett Bay in Rhode Island past Newport, Jamestown, Portsmouth, Bristol, Warren, and Tiverton 's coastal farms into Mount Hope Bay and onto heavily populated Fall River? What about the beaches we flock to in the summer? Our fishing areas? The Navy's Undersea Warfare Center? Are there going to be fighter jets flying overhead? Coastguard patrol boats with machine guns ready to attack? That's what happens in Portsmouth, NH naval yard when submarines are there for repairs! There are always high risk industrial accidents at oil refineries, on oil tankers, and in underground pipelines. There is one currently going on in Russia.

The Weaver's Cove developers are also telling us they will generate \$ 3 million in tax revenue. If there ever was a terrorist attack or industrial accident at Weaver's Cove the consequences could be devastating. Our safety, health, happiness and piece of mind is priceless.

They also promised that our monthly utility bills will go down. We are in the midst of sky-rocketing gasprices...and they're making windfall profits. Their actions speak louder than their words.

In ending I have another question. I know that one of the main jobs of the Army Corps of Engineers is to maintain navigable water ways. I have also read that you have a very limited budget that covers many other projects such as flood controls, rebuilding port entries, levees etc. Why would you want to use your limited resources that are taxpayers dollars dredging a shallow narrow river for multibillion dollar oil and gas companies who do not have the public's best interest at heart?

I sincerely hope you turn down the dredging task.

Amy L. Buckley
162 Fatima Drive
Somerset, MA 02726

7 February 2006

**Mr. Ted Lento
U. S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA**

Dear Mr. Lento,

Please find attached below as part of this FAX transmission my comments of the permit requests of Weaver's Cove Energy, LLC and Mill River Pipeline, LLC to conduct dredging in an existing federal navigation channel (i.e., the Taunton River and Mount Hope Bay), and other associated activities. U. S. Army Corps of Engineers, New England District File Number 2004-2355.

My input is made as a private citizen living in one of the communities that would be impacted by the proposed dredging.

Six pages of written comments follow this cover letter. It is my intent to forward the original of this correspondence, with signature, to you by U. S. Mail but wanted to be sure you received these comments by the deadline of 8 February.

Yours truly,



**Guy F. Borges
72 Duke ST
Somerset, MA 02726**

RECEIVED

FEB 10 2006

REGULATORY DIVISION

Comments of Guy F. Borges, Somerset, Massachusetts on the Permit Requests of Weaver's Cove Energy, LLC and Mill River Pipeline, LLC to Conduct Dredging in an Existing Federal Navigation Channel (i.e., the Taunton River and Mount Hope Bay), and other Associated Activities. U. S. Army Corps of Engineers, New England District File Number 2004-2355

My comments are focused directly on the probable impact of the proposed activity on the public interest.

OVERVIEW

Dredging of any body of water constitutes an activity with strong potential to adversely impact the body's ecosystem in the immediate vicinity. Dredging of the magnitude of the proposed has a potential for profound direct and negative impacts on the ecosystem of the Taunton River and Mount Hope Bay. Undoubtedly, these impacts would pose the greatest potential negative impacts of any sort since the construction of support piers and pilings for the Braga Bridge in the early 1960s. Since that time, virtually every human action relative to the waterways, with the exception of ongoing condenser water cooling discharges from the Brayton Point Power station, has resulted in substantial improvement in the water quality and the health of the ecosystem of the affected waterways. Regulatory action has mandated an abundance of difficult and costly actions to achieve these results in a fashion that substantially constrained all the communities, businesses and persons in the watershed. The actions have included municipal sanitary sewer treatment upgrades, the Federally-mandated CSO project in Fall River (costing nearly \$200 Million), storm water management initiatives, restrictions on ISDS systems throughout the watershed, strict hazardous waste management regulations, widespread and mandatory Spill Prevention Control and Countermeasures programs. There have also been restrictions on wide varieties of excavation and development activities embodied in typical Coastal Zone management regulations aimed at precluding increases in stormwater runoff rates, volumes, and the entrainment of suspended solids and appurtenant pollutants. Without any conceivable dispute, the proposed dredging action holds potential to negate much, if not all, of the positive impact of decades of actions that have not only cost taxpayers extraordinarily large sums of money but have formed the basis of Government constraint on the use and property rights of businesses, communities, and persons all along the Taunton River & Mount Hope Bay that would have been considered oppressive and tyrannical before the mid 1960s. Substantial future regulatory constraints on activities by private parties in the Taunton River & Mount Hope Bay watersheds appear to be a certainty. The United States Environmental Protection Agency proposes to implement regulatory restrictions on the Brayton Point Power Station that will force them to abandon decades-long practice, that was perfectly legal during those decades, and modify their cooling water discharges to return to conditions having impacts comparable to those that existed in the mid 1960s, prior to the expansion of the plant's capacity (fully approved by regulatory authorities). Even before detailing the specific issues associated with the proposed dredging, the proposal must be viewed in a context described. Over the last 40 years, the towns, cities, states, and populations along the Taunton River and Mount Hope Bay have achieved very

substantial and meaningful improvements to those waterways at considerable expense and curtailment of discretionary actions, often extending inland to a considerable physical separation from those waterways. The impacts of the proposed dredging and the associated construction can only have negative impacts on the affected waterways, potentially severe, or, at very best, moderately negative. Over a 40 year projected lifetime of the proposed LNG terminal, there are no conceivable arguments that can be advanced that the irretrievable consequential impacts of the physical presence of the terminal and its operation, the inevitable maintenance of the shipping channel, and the relentless traverse of some of the largest vessels in the world through that channel, will have anything but negative impacts. Again, possibly mild to moderate impacts, at best, but certainly with potential to be severely negative. The core operative questions for the Corps of Engineers in considering the specific applications in question are these:

Is there such a profound likelihood the proposed LNG terminal will ever actually be built and put into service to justify the CERTAIN negative impacts of dredging? (There is substantial likelihood that other competing proposals for LNG terminals serving the New England market will come online ahead of the proponents', obviating the need and viability of the proposed LNG terminal, moreover the Fall River city Government has publicly expressed a clear intent to exercise its constitutionally-based right of eminent domain to take the proposed site for other public purposes)

If built, will the LNG terminal remain sufficiently viable, economically to deliver on the promised mitigation (associated with its consequential impacts of its operations) on the waterways for the **next 40 years**? (Case in point, 40 years ago, the proposed site was a thriving petroleum shipping terminal, now abandoned as a result of unforeseen economic changes, with all necessary environmental mitigation now occurring at the site being an involuntarily mandate imposed upon the former owners by the Federal and State Governments).

Over the next 40 years, will the LNG terminal be subject to regulatory evolutions that could force its closure, outright, or force it into an unsustainable economic condition? (Case in point, the nearby Brayton Point power station is being forced to adhere to condenser water temperature mitigation that was not even remotely foreseen as necessary or legally enforceable 40 years ago, mitigation that has been cited by the power industry as a threat to the plant's economic viability.)

If the proposed LNG terminal is actually built and actually operated, will its operation be **LIKELY** to result in consequential benefits that exceed and offset the negative impacts of dredging to a degree even remotely approaching those positive impacts on the Taunton River & Mount Hope Bay ecosystem that have been achieved by 40 years of costly efforts that included widespread and intrusive constraint on the use and ownership prerogatives of public and private property owners in the communities forming the watershed?

More colloquially, with absolutely every entity along the Taunton River & Mount Hope having endured significant property rights curtailment over the last 40 years to achieve improvement in the waterways and, incidentally, having funded numerous large and costly

projects to achieve those improvements, why should we risk having 40 years of improvement undone to perform dredging for an end purpose that may never be built, may never operate if built, is highly unlikely to remain viable for the next 40 years, and which is far more likely to result in short term economic benefit for narrow private interests than in the widespread public benefit that accrued from the efforts over the last 40 years?

SPECIFIC COMMENTS

- The construction and operation of an LNG terminal, the intended purpose justifying the proposed dredging, is unlikely. The City of Fall River has publicly stated an intent to take the proposed site by eminent domain to be used for public purposes not involving an LNG storage tank. Given that exercising this constitutionally-affirmed authority would be quite costly, the City has also stated its intent to exhaust other, less costly avenues to preclude siting of the proposed LNG terminal before exercising its sovereign eminent domain authority. In view of the recent Supreme Court of the United States ruling affirming the right of state and local governments to apply eminent domain authority for even quasi-public purposes, it must be presumed that the City has full constitutional authority to execute its stated intent and, therefore, there is substantially unlikely the project will never be built than the inverse. Given the likelihood that the terminal will never actually be built, the proposed dredging has no usefulness for any known or likely purpose and the application must be denied. Even if the probability of numerous separate and discrete future events is presumed to be much more favorable to the applicant than is now evident, a presumption that is almost purely speculative, the application for a dredging permit is premature. All issues that hold significant potential to preclude not only the construction of the proposed terminal but its long term economic viability (e.g. ability to receive large LNG vessels) must be conclusively and irrevocably resolved in the applicants' favor before approving dredging. Since dredging is the constituent part of the overall proposed action that is almost exclusively negative in its direct impact, it must not be approved until there is clear, convincing, and objective evidence to conclude that a terminal WILL be built; its operation has a substantial likelihood of remaining economically viable for 40 or years or more; and the LNG terminal's existence and operation will deliver positive benefits, in the aggregate, that will equal or exceed the negative impacts of the dredging.
- The Corps of Engineers has no legal basis for granting approval for dredging for either no purpose or for purposes that are essentially speculative in nature. To justify dredging, there must either be a public purpose, or a private purpose consistent with law governing Federal shipping channels, with direct and consequential impacts that are positive, neutral, or negative but de minimis. The current state of applicable Federal law that is relevant to the proposed project, prohibits the demolition and removal of the existing Brightman Street Bridge. Moreover, the lead agency with the clear jurisdictional prerogative to contest that Federal law, the United States Coast Guard, has publicly stated that it has no intent to seek to repeal the law. The Corps of Engineers must treat the existing Federal law with respect to the Brightman Street Bridge as dispositive, particularly in light of the Coast Guard's stated intent to accept the law. As governing Federal law now stands, the existing Brightman Street Bridge will remain in place. There is no legal basis,

whatsoever, to presume that the status of the existing Brightman Street Bridge under Federal law will change, especially given that the specific Federal law was recently enacted by the United States Congress in full knowledge of the proposed LNG terminal and with the support and urging of all duly elected governmental bodies in the proximity of the project. The Corps of Engineers would be abusing its discretion and acting in an arbitrary and capricious manner, and more likely in a manner exhibiting prohibited bias in favor of the applicants (i.e., Weaver's Cove Energy, LLC and Mill River Pipeline, LLC) if it assumes anything other than the continued existence and physical presence of the Brightman Street Bridge, a fact that would limit the width of vessels that could pass through it. Consideration of the long term operability of the Brightman Street Bridge as a vehicle transport route is irrelevant, even if it is closed for that purpose, its piers and supports would still constrain the width of the shipping channel. Since the existing Brightman Street Bridge regularly permits the passage of a coal ship to and from the Montaup Station power plant (directly across the river from the proposed LNG terminal) there must be a presumption that the existing dimensions of the channel are already fully adequate to support a substantive and meaningful Federal mission of the shipping channel to support energy-related commerce. Representatives of Weaver's Cove LLC have repeatedly and publicly stated that the LNG terminal can be placed into operation even if the existing Brightman Street Bridge remains in place. Having made that assertion, the Corps of Engineers should compel Weaver's Cove LLC to conclusively demonstrate the existence and availability of LNG transport ships that are narrow enough to pass through the existing Brightman Street Bridge but which require dredging for vertical clearance. Absent a showing by Weaver's Cove LLC that dredging is necessary to accommodate a class of vessel that actually exists (which can pass through the existing horizontal opening) but which requires greater channel depth, the application for dredging should be denied.

- With respect to the evaluation criterion of protection and utilization of important resources, the direct impacts of the proposed dredging would clearly and inarguably pose a significant and substantial threat to the protection of the Taunton River & Mount Hope Bay ecosystem. This ecosystem is an important resource for a variety of concerns, including marine habitat, human recreation, and facilitation of commerce. The only impact of the dredging that is in any way positive is a consequential impact, not a direct impact, and this positive impact would never occur, at all, or vanish entirely if several other more likely circumstances arise. The sole positive impact of the dredging would be the facilitation of enhanced commerce in the form of movement of LNG vessels MUCH LARGER IN SIZE than the coal ships that routinely traverse the river to the Montaup Station power plant. As noted above, this particular impact cannot occur, at all, if the LNG terminal is not built or the existing Brightman Street Bridge is not demolished. Moreover, even if an LNG terminal is put into operation, the enhancement of shipping impact would be negated with respect to the traverse of LNG vessels, of any size, if and when the terminal closes and/or becomes economically not viable.
- If the population of the affected communities are to rely on the veracity of repeated public assertions by senior officials working for the applicants, the realization of the goal of greater utilization of the shipping channel as a resource is met substantially without any

dredging by making use of vessels that can pass through the existing Brightman Street Bridge. If these statements are sincerely and accurately advanced, and not merely self-serving manipulations aimed at influencing various regulatory entities, dredging will cannot be justified as a necessary condition to meet a goal of enhancing use of the waterway resource to increase commerce.

- Current practice in Boston Harbor, only about 50 miles from the site of the proposed dredging, is for the Coast Guard and State of Massachusetts security agencies to strictly enforce maritime security exclusion zones in all directions around the LNG vessels while they are underway inbound, or moored while still substantially laden with fuel. Since this practice is actually occurring within the very same state and Coast Guard jurisdiction as the proposed LNG terminal, and has been the practice for many years, the enforcement of onerous maritime security zones around LNG vessels servicing the proposed terminal **MUST BE REGARDED AS A REASONABLY FORESEEABLE** consequential impact of the dredging, as an absolute minimum. I assert that is much more appropriate and justified to project that, over a 40 year period, it is **LIKELY** that onerous maritime security exclusion zones on the Taunton River & Mount Hope Bay around LNG vessels will be a regular and recurring impact that would not otherwise occur if not for the dredging. Without regard to any claims by the applicants or the Coast Guard, the Corps of Engineers may not regard this as a de minimis consequential impact of the dredging unless it can independently conclude that, over a 40 year period of time, the establishment and enforcement of maritime security exclusion zones comparable to those enforced in Boston Harbor for many years, is so remote and unlikely as to fall below the threshold of reasonably foreseeable. Admittedly, the causality of dredging to the impacts of maritime exclusion zones is weakened in the unlikely event that the applicants can demonstrate the existence of LNG vessels capable of passing through the existing Brightman Street Bridge.
- The above comments addressed the probability and plausibility of maritime security exclusion zones as a consequential impact. The nature and extent of the impact of maritime security exclusion zones associated with LNG tankers moving in the Taunton River, or moored at the proposed terminal, are profound. Because of the location of the shipping channel and the narrowness of much of the river in the area of proposed traverse, the exclusion zones will absolutely preclude movement of any other vessels past the LNG tanker. This will effectively result in the recurring closure of the river as navigable waterway connecting the upper Taunton River to Mount Hope Bay, Narragansett Bay, and the Atlantic Ocean. Clearly and inarguably, this impact would, as a minimum, completely offset a consequential benefit of increasing commerce on the river associated with approximately 50 LNG tanker round trips per year. While the utilization of the river would increase on about 50 occasions per year, to the benefit to just a single private entity in a narrow sector of commerce, the direct impacts of the particular utilization would result in reduction in transits of the river by other vessels 2-3 orders of magnitude greater in frequency than the increased use, affecting a diverse community of recreational and commercial boaters. I assert that it is obvious and irrefutable that no net positive enhancement of shipping channel utilization by users, of all types, will result from any dredging to support a LNG terminal and that there would a very substantial reduction in

the utilization of the river as a true fully navigable waterway connecting the upper Taunton River with Narragansett Bay and the Atlantic Ocean.

- Maintenance Dredging. Consideration of the application must include the direct impacts of maintenance dredging over a 40 year period. Deep draught LNG tankers pose the greatest physical risks from grounding or striking submerged objects of any class of non-military vessel. It is both reasonably foreseeable and likely that compromise of clearances between the shipping channels and hulls of LNG vessels will be tolerated less than for any other class of vessel, especially as the LNG tanker fleet ages and margins of safety for hull integrity diminish. This will inevitably result in a much more frequent need for maintenance dredging of the Taunton River and Mount Hope Bay than has occurred over the last 40 years. Consideration of the application eeds to presume that maintenance dredging will occur at the minimal projected interval and be at the highest end of projected extent.
- Ecological impacts of dredging. The draft and final Environmental Impact Statements (DEIS and FEIS) advanced by the Federal Energy Regulatory Commission (FERC) with respect to the proposed LNG terminal must not be relied upon by the Corps of Engineers as a fair and credible evaluation of the direct impacts of dredging. I personally and carefully reviewed the DEIS and FEIS and found them to them to be riddled with bias that could not be explained as simple honest error and which were almost entirely devoid of full, fair and objective evaluation meeting the requirements of the National Environmental Policy Act (NEPA). From contact I have had with other interested commentors, including the City of Fall River and the State of Rhode Island, I fully expect that one or more of those parties will file suit under NEPA to challenge the fairness and adequacy of the FEIS. While I make no claim of expertise about dredging and the aquatic environment, based on my formal training on NEPA procedures, I did find an abundance of evidence of bias in other areas of the DEIS and FEIS to raise doubt about the accuracy and fairness about any conclusions relating to the direct impacts of dredging. I urge the Corps of Engineers to disregard any conclusions and interpretations contained in the FEIS with respect to impacts of dredging, and rely entirely on your own expertise in assessing those impacts or simply defer any action on the application until after the expected litigation challenging the adequacy of FERC's NEPA review is resolved.

***** END OF COMMENTS *****

**Cecile J. Montplaisir
61 North Main Street
Assonet, MA 02702**

February 7, 2006

Ms. Bettina Chaisson
Regulatory Division
U. S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

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REGULATORY DIVISION

Re: File Number 2004-2355
Ted Lento

Dear Ms. Chaisson:

With reference to the above mentioned File Number 2004-2355, I have a few concerns about the navigation and dredging of the Narragansett Bay, Mount Hope Bay and Taunton River for bringing LNG tankers to Weaver's Cove LNG facility in Fall River, MA.

Will there be a fire boat escort in addition to the Coast Guard and gun boat escorting the LNG tanker from point of entry into Narragansett Bay to the LNG terminal in Fall River? If so, who will be paying for this extra cost? As you are probably aware the Boston Harbor has had a few problems with their fire boat due to its age and had to be put out of service for a short period of time for repairs. Also, if one of the LNG tankers had a crack, as there apparently was such an incident in the United Kingdom (see attached article), how would you be able to handle this problem?

The dredging will undoubtedly disturb the sediment and toxins that have settled and have been dormant in Mount Hope Bay and the Taunton River for years. The closer you get to the two power plants in Somerset, the dredging will disturb the toxins and pollution from the power plants as well of years of dumping into the Taunton River by Park Shellac, which was located in Somerset, as well as ICI in Dighton which had dumped dyes into the Taunton River. Due to these contaminants as well as others, what condition will this leave the beaches in Somerset and Swansea as well as small beaches along the shores of Somerset and Swansea, throughout the shores of the 22 miles of dredging and also downstream? Will people be prohibited from swimming in these areas? Will they be able to get water quality tests that will make it feasible for people to swim in these areas? If not, who will be responsible for rectifying the problem? Per a recent article from one of the crew on the Coast Guard buoy tender, the Providence River is muck that stinks and the Taunton River was "horrible". Also, after a period of time, will the same area that was dredged need to be redredged due to refilling of the channel?

We now have coal, chemical, various products and cruise ships entering the Narragansett Bay, Mount Hope Bay and the Taunton River that cause no risk compared to what an LNG tanker would as these LNG tankers are in an entirely different category. It is of utmost concern to everyone living in the area and urge that consideration be given to the individuals living along the shores of the various towns along the entire proposed dredged area.

Very truly yours,

A handwritten signature in cursive script that reads "Cecile J. Montplaisir".

Cecile J. Montplaisir

Encs.

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Bristol's Coast Guard team has a big job on the bay



Coast Guard navigation team members Robert Kuivinen (left) and Matt Haley (right) steer their 49-foot buoy tender down the Taunton River.

BRISTOL - For sheer sucking power, few things beat Bristol Harbor mud. United States Coast Guard personnel stationed at Bristol's Aids to Navigation station found that out a few summers ago as they sunk, and attempted to retrieve, a 4,000-pound "sinker" during a training exercise at the far western end of the station's Constitution Street pier.

"We dropped it, and it just sunk," said coxswain David Gauvin. "I mean the mud just swallowed it, sucked it right up. We had to get a crane to pull it out."

Most times, the sinkers, large concrete anchors to which are tethered the navigational buoys that guide mariners through Narragansett and Mt. Hope bays, come up easier. But retrieving them isn't always pleasant. Just as it's said native Alaskans have dozens of words for snow, station members know all you could ever want to know — and probably more — about the what lies under the area's waterways.

Providence River muck? "Stinks," says Matt Haley.

Fall River bottom? "Horrible," adds Coxswain Gauvin.

On a typical day, crew members see it all.

Tough job

The Aids to Navigation station, which has been a steady, if quiet, presence in Bristol since the 1960s, has a big job. Its

13 crew members are responsible for maintaining 260 navigational buoys that guide boaters from the upper Taunton River all the way south to Westport, Mass. and west to Watch Hill, R.I.

Though they may be tethered to sinkers weighing as much as 8,000 pounds, the markers — cans, they're also called — can move with the current and during storms, and they take a beating even on the calmest of days. Keeping them where they need to be to safely mark channels is a constant job that never ends. In the summertime, crew members deal with grounded boaters, serious harbor congestion and heat. In the winter, they share the water with seals, ice floes, frigid temperatures and bone-chilling wind and water.

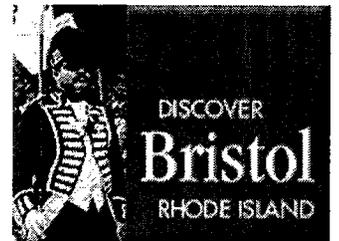
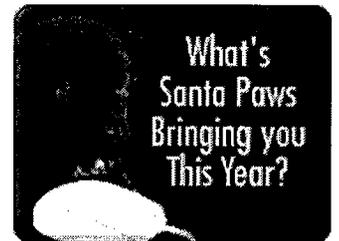
Most of the station's work is done from its 49-foot buoy tender, a solid steel vessel equipped with powerful winches and cranes. The boat, also outfitted with satellite positioning systems, radar and other sophisticated electronics, draws little enough water to allow it to get into very shallow areas. The station keeps a log of every navigational buoy in its jurisdiction, and members try to inspect and, if need be, repair all of its markers on a regular basis.

Last Friday, the boat headed far up the Taunton River to the station's northernmost jurisdiction, to inspect and replace mooring chains on three channel markers. Though the large chains look indestructible, said Coxswain Gauvin, they must be replaced regularly.

"They corrode," he said. "And they just get beat up in general."

Joe Ash-Jones, a soft-spoken Jamaica native who crew members said still gets cold before anyone else — "he's our thermometer," joked the coxswain — was the deck boss. Robert Kuvinen served as the engineer, Matt Haley the captain, and Will Garrido, who was born in Peru but moved to the states at age 13, worked the deck. It took them the better part of the morning to inspect and replace the chains on three buoys along the northern end of the Taunton River.

The job is its own reward, said Coxswain Gauvin, which is good since the station generally attracts little attention in Bristol despite its decades-long presence here.



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"I wouldn't have it any other way," he said on the way back home. "I couldn't imagine living in the middle of the country somewhere. It's beautiful out on the water."

Bristol's Coast Guard station takes on new role

The United States Coast Guard's Aids to Navigation Team, which has concerned itself with waterway maintenance for nearly 40 years, may soon take on law enforcement duties.

Five of the station's 13 members have taken qualification courses to become law enforcement officers and boarding team members with powers to board other vessels. And the station's chief, Herman "Bo" Hause, said it is his goal to have at least half his men and women qualify for that role.

The new responsibilities come out of changes in the United States Coast Guard's mission implemented after the Sept. 11, 2001 terrorist bombings of the World Trade Center and Pentagon.

The guard, said Chief Hause, "wants all units to assist with homeland security and to take an active role."

"That was not one of our traditional roles, but we are going to be taking it on," the chief said Tuesday. To that end, he said, his staff will continue to take training courses which will allow them to carry weapons and serve in boarding capacities. There is no plan yet to equip the station with new boats, he said, but "we are on call."

The changes come even as the station faces lower staffing than it has had in years.

Formerly staffed by 18 Coast Guardsmen and women, the Bristol station currently has 13 members. A recent study of navigation station staffing in the Northeast showed that other stations are stretched thinner than Bristol; five former Bristol staff, he said, were transferred to stations where the need was greater.

By Ted Hayes

thayes@eastbaynewspapers.com

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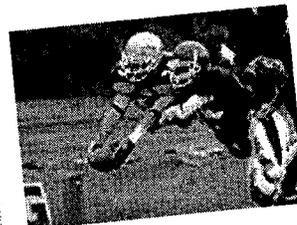
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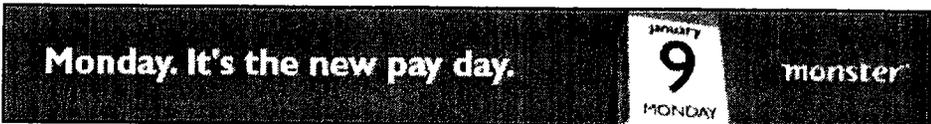
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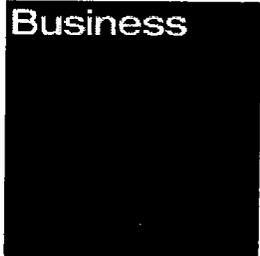


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Experts raise safety fears over new generation of liquid gas terminals

- Explosion fear as plan 'is railroaded through'
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Steven Morris and Terry Macalister
Tuesday January 31, 2006
[The Guardian](#)

The government is railroading through plans to build a new generation of potentially dangerous gas importation terminals without exhaustive safety checks, industry experts warn. Environmentalists and politicians are also worried, particularly about the shipping side of liquefied natural gas (LNG) schemes already being built in south Wales.

The issue has heated up since admissions by the UK gas company BG that cracks have been found on one of its new LNG vessels which forced it to return to the yard where it was built. Malcolm Wicks, the energy minister, told the Guardian that safety was paramount with the schemes, but critics believe they are being fast-tracked to prevent an energy shortage in Britain, which has seen soaring gas prices this winter and predictions of more trouble in 12 months' time.

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Fears have been raised by local residents opposing a plant planned by the British Gas parent company, Centrica, at Canvey Island in Essex. A former minister and safety experts have also expressed anxieties. But the chief concerns currently centre on Milford Haven in Wales, where BG, ExxonMobil and others are constructing two LNG plants which within a few years could provide up to a quarter of Britain's gas supply. Critics claim that no full, open safety assessments have yet been done on how safe it is to have ships containing LNG in the harbour, though the terminals are planned to be operational by the end of next year. Opponents of the scheme have argued in the high court that in an accident - as at the Buncefield oil depot last month - 20,000 people living in surrounding towns could be killed by a cloud of burning gas. Retired pilots who have worked the stretch of water for years claim there is a risk of a collision between tankers coming into Milford Haven and moored LNG tankers.

In recent weeks, the issue of safety at the Pembrokeshire port has been raised in the House of Lords and the Welsh assembly as well as the high court. The former secretary of state for Wales, Lord Crickhowell, said there was a "black hole" surrounding the safety of ships coming into Milford Haven. He said public confidence in the government's energy policy would be eroded if it was not made clear that full safety checks had been undertaken. The policy would be in tatters if an accident did occur.

Lord Crickhowell also suggested that government pressure may have been put on safety officials in the build-up to the granting of permission for the terminals. The Guardian has seen emails showing that just before a vital planning decision, Department of Trade and Industry officials reminded Health and Safety Executive officials how crucial the project was to "UK plc".

A Welsh assembly member, Lisa Francis, is demanding a full statement on the health and safety issues raised at Milford Haven. She said: "The emphasis has been, 'This is great for the area, good for the local economy. Don't knock it.' But especially since Buncefield there are real safety concerns." A risk consultant who has worked on projects involving LNG, Tony Cox, said he had seen no evidence that a full risk assessment at Milford Haven had been done. He said: "I don't feel there has been due process in terms of approving the project."

A big fear at Milford Haven concerns a jetty being built at the South Hook LNG terminal on a former oil refinery site. Some retired pilots fear a major accident could happen because tankers coming into the haven have to pass within a few hundred metres of the jetty - and head directly towards it at one point.

The HSE looked in detail at the shoreside operation during the planning process but, after checking with the government, did not carry out an assessment of the likelihood of an accident at sea. Safety checks on the marine side have been carried out by, or at the behest, of Milford port authority and the companies involved in the development, all of which, critics argue, have a financial interest in the scheme.

Critics point to a series of emails seen by the Guardian suggesting pressure from government officials. Just before a crucial planning meeting on the terminals, a DTI official wrote to an HSE officer: "The project would make an important contribution to UK security of gas supply from winter 2007/8 ... any delay would jeopardise reliability (security) of supply". Before the meeting at which a particular consent was granted, a planner from Pembrokeshire coast national park authority wrote: "The [Welsh] assembly and the DTI seem to be involved in the background."

Lord Crickhowell said: "Public confidence will be undermined if the regulatory bodies are thought to be under pressure from government departments in how they perform their duties."

A spokesman for the DTI denied that pressure was being put on planning authorities. He said: "Our own gas production is declining - we have become a net importer. It's important, in national terms, that gas import capacity is increased. That means new gas import facilities.

"Of course, these will need to obtain the necessary regulatory consents - including planning permission, environmental, safety. That's a given." Mr Wicks added: "We don't compromise on safety."

The port authority insisted that proper risk assessments had been done and would continue to be undertaken. One report produced by Lloyd's Register said there was as much chance of an accident as of an individual being struck by lightning. The operators of the terminals said LNG had been delivered safely by sea for more than 40 years without major accidents. They would also continue to carry out extensive safety checks.

But more than 4,000 local people have signed a petition expressing concerns that the risks have not been properly considered.

Gordon Main, spokesman for Safe Haven, a group campaigning over the schemes, said: "Our focus on the marine safety of the LNG projects starts from a local point of view. Put quite simply - are our loved ones and friends going to be safe if this project goes ahead on our doorsteps? The very fact that no one can answer that question convincingly raises huge concerns."

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State of Rhode Island and Providence Plantations
COASTAL RESOURCES MANAGEMENT COUNCIL
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
(401) 783-3370

Michael M. Tikoian
Chairman

Grover J. Fugate
Executive Director

February 7, 2006

Mr. Ted Lento
US Army Corps of Engineers
696 Virginia Road
Concord, MA 01742

Re: Weavers Cove Energy, LLC

Dear Mr. Lento:

The Rhode Island Coastal Resources Management Council (CRMC), the agency that implements the approved coastal zone management program has the following comments in regard to the revised notice for the Weavers Cove LNG project in Fall River, Massachusetts:

The applicant, as of this date, has not provided the agency with the necessary data and information needed for the CRMC to make a consistency determination on the revised project. We will be unable to find it consistent without submittal of all necessary data and information required under the CZMA. The Corps permitting actions under Section 10 of the Harbors and Rivers Act and Section 404 and 103 of the Clean Water Act are a separate consistency filing than the FERC filing.

This activity directly affects the State's coastal resources both through the dredging and transport of dredge material through State's waters. The data and information submitted has not included any analysis that details the potential impacts to RI coastal resources for the transport and disposal of the dredge material. The transport corridor is heavily utilized by recreational and commercial traffic. We do not know, at this point, what mitigation measures are being proposed to avoid conflicts. This must be part of the application and review.

The data and information available does not have the concurrence of the Northeast Marine Pilots which is a great concern to the CRMC. There are indications that navigation in the proposed channel and berthing areas could be problematic. The proposed dredge depth to -37' MLLW may in fact be insufficient for safe navigation. This is due to the fact that the proposed vessels have a draft of -37.5' which will require them to "ride the tide" up the river. This gives approximately 3 feet of under keel clearance which does not provide adequate steerage for such a

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Mr. Ted Lento
February 7, 2006

long transit. This is of particular concern near the major bridges that the LNG tankers must pass under. It appears that the applicant is going for a less contentious dredge depth with a clear need for deeper draft for safe all weather non tide dependent navigation. This very limited steerage appears to give limited options, particularly in heavy winds, based on shipments in excess of one per week. It also reduces the ability of the applicant to propose mitigations measures to address transit conflicts.

The need for the project has not addressed the change in status of the Brateman Street bridge. It is our understanding that the proposed LNG tankers cannot pass through this bridge. This renders the need to dredge mute until resolved.

The proposed dredging around the clock outside of typical windows in this stressed fishery has not been adequately addressed. The RI resource agencies have found that the modeling submitted is not adequate. If the need for the dredging can be established, dredging should be accomplished over two or more seasons within typical windows to be protective of the fishery. This will coincide with the upland construction time frame. These fishery issues of which the council has jurisdiction over as well as DEM would normally be addressed in the State's 401 Water Quality Certification which is a prerequisite for all non-federal dredge disposal project. The state has consistently required the 401 Water Quality Certification for every dredge and disposal project that was not a direct federal activity.

Please don't hesitate to contact this office if you have any questions.

Sincerely,


Grover J. Fugate, Executive Director
Coastal Resources Management Council

cc. Eldon Hout, Director, Office of Ocean and Coastal Resource Management.
Suzan Cater-Snow, Director, Massachusetts Coastal Zone Program
Patrick Lynch, Attorney General State of Rhode Island
FERC Docket Nos. CP04-36, CP04-41, CP04-42, CP04-43
R. Gordon Shearer, CEO Weaver's Cove Energy, LLC
Mike Tikoian, Chair, CRMC
Brian Goldman,



United States Department of the Interior

FISH AND WILDLIFE SERVICE
New England Field Office
70 Commercial Street, Suite 300
Concord, New Hampshire 03301-5087



REF: Public Notice NAE-2004-2355

February 7, 2006

Ms. Christine Godfrey, Chief
Regulatory Division
U. S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

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Dear Ms. Godfrey:

We have reviewed the Public Notice on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities in Bristol County, Massachusetts proposed by Weaver's Cove Energy. These are the comments of the Department of the Interior. The following comments are provided in accordance with the Fish and Wildlife Coordination Act (948 stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287, as amended).

The proposal is for the development of a LNG terminal on the site of a former Shell Oil Facility along the Taunton River in Fall River, Massachusetts. Site development will include over one acre of permanent wetland and waterway fill. Moreover, the dredging of 2.6 million cubic yards of material from the navigation channel and turning basin will have significant impacts to fishery and shellfishery resources.

We previously addressed our concerns for anadromous fish, and the Wild and Scenic Rivers issue, in our letter of September 22, 2004 to the Corps of Engineers, and the Department's July 5, 2005 comment letter to FERC.

Protection of Fishery Resources

As we have stated previously, the Taunton River provides important habitat for anadromous fish, including the blueback herring, alewife, American shad and rainbow smelt. These species use all or some of the Taunton River for passage, spawning, nursery and foraging. To protect these resources, we have previously recommended time-of-year restrictions for both upstream and downstream migrations. Subsequent to our recommendations, the applicant has decided to use ocean disposal of dredge material and to institute time-of-year restrictions for the spring

upstream migrations. However, the applicant has refused to incorporate restrictions to protect downstream migrations.

We recommend a time-of-year restriction of March 1 – July 31 for the protection of the incoming anadromous fish migration. To adequately protect the downstream migration, we continue to recommend a time-of-year restriction of July 1 through October 31. If this is unacceptable, we recommend that no dredging take place upstream of the I-195 bridge from July 1 to October 31.

Taunton Wild and Scenic River Study

Public Law 106-318, the Taunton River Study Act of 2000, authorized a study of the Upper Taunton River from its headwaters at the confluence of the Town and Matfield Rivers to its confluence with the Forge River in Raynham.

Interim Protections of Study Rivers

Resource values contributing to the potential designation of such congressionally-authorized study segments are afforded statutory protection under the Wild and Scenic Rivers Act.

The pertinent language from Section 7(b) of the Wild and Scenic Rivers Act is:

“...and, no department or agency of the United States shall assist by loan, grant license or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval...”

(and)

“Nothing in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area...”

Protection of the Wild and Scenic River Values of the Taunton River

The significance of the anadromous fish resources of the Taunton River is well documented, and is one of the values for which the upper Taunton River would be designated by Congress as a component of the National Wild and Scenic Rivers System. The statutorily required resource protections of the Wild and Scenic Study legislation, as cited above, therefore apply to the protection of anadromous fish resources. In order to comply with the required protection standard, no diminishment of this resource value may be allowed. It is the Department's determination that the time-of-year restrictions stipulated in this letter will ensure that this standard is met.

Considerations Related to the Lower Taunton River

In September, 2002, responding to petitions from the five lower Taunton River communities from Taunton to Fall River, U.S. Representatives Barney Frank, James McGovern and Stephen Lynch formally requested that the study area be extended to include all of the Taunton River to its confluence with Mt. Hope Bay. In the spring of 2003, the National Park Service agreed to expand the study area as requested. The expanded area is not subject to the statutory protection of the study legislation.

Current Status of Wild and Scenic River Study

Between November 2004 and July 2005, all ten communities abutting the mainstem of the Taunton River voted through Town Meeting or City Council (Cities of Fall River and Taunton) to endorse the Taunton River Stewardship Plan and to seek federal Wild and Scenic River designation. Such community votes are the final step required by the National Park Service's Study process. Since that time, the Commonwealth of Massachusetts, through a letter from the Secretary of the Executive Office of Environmental Affairs, has written to express support for Wild and Scenic River designation of the entire Taunton River, as have many non-governmental and citizen groups. Legislation has also been filed in both the U.S. House of Representatives and the U.S. Senate to designate the entire mainstem of the Taunton River. A Draft Report to Congress is under preparation that will document study findings and the expressed public support for designation.

Lower Taunton Site Impacts

Consistent with the Department's July 5, 2005 comment letter to FERC on the Final EIS for this project, we continue to believe that there are likely to be unavoidable site impacts associated with this project that render its construction and operation incompatible with Wild and Scenic River designation of the lower-most portion of the mainstem of the Taunton River (below Steep Brook in north Fall River). While this incompatibility is not subject to the same statutory protection requirement afforded the Upper Taunton Study area, there has been a substantial demonstration of the public interest in seeing the entire mainstem protected as a National Wild and Scenic River. This demonstration has been noted elsewhere in this letter. The Department believes that this expression of public interest needs to be fully considered by the Corps of Engineers in its own weighing of the public interest.

Conclusion

As currently proposed, the dredging for this project would have unacceptable adverse impacts to the anadromous fishery resources in the Taunton River. Without time-of-year restrictions for both upstream and downstream migrations, we continue to recommend that this application be denied. If you have any questions please call me at 603-223-2541, or Jamie Fosburgh, of the National Park Service, at 617-223-5191.

Sincerely yours,

A handwritten signature in cursive script, reading "William J. Neidermyer". The signature is written in black ink and is positioned to the right of the typed name.

William J. Neidermyer
Assistant Supervisor, Federal Activities
New England Field Office

ec: Reading File
NMFS
EPA
MA Marine Fisheries
J. Fosburgh, NPS
ES: WNeidermyer:2-7-06:603-223-2541



February 22, 2006

Colonel Curtis Thalken,
Commander

Lt. Col. Andrew Nelson,
Deputy Commander and Deputy District Engineer

Christine Godfrey,
Chief, Regulatory Division

U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

**RE: Weaver's Cover Energy LLC; Mill River Pipeline, LLC
NAE# 2004-2355
Denial of Applications for DA Permits**

Dear Colonel Thalken, Lt. Col. Nelson and Chief Godfrey:

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In the alternative, should the USACE determine that denial of the applications is not warranted at this time, the City of Fall River requests that the USACE, in accordance with 33 CFR § 325.2, provide a revised public comment period, including additional public hearings, to address what is essentially a new project proposal to be considered by the USACE.

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FEB 23 2006
REGULATORY DIVISION



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The gravity of this request is appreciated by the City of Fall River. It has been necessitated by the February 2, 2006 submission of what appears to be a new, segmented project or, at the very least, a substantial change in the proposed project, without notice or opportunity for public review or comment. The City of Fall River has been an active participant in all public proceedings convened by the USACE and the clandestine manner in which this new information was provided to the USACE cannot be reified. While the denial of the pending applications appears to be the wholly justified course of action, the opening of a revised public comment period is, at a minimum, consistent with the USACE's prior practice in this docket and is absolutely necessary in light of the radical and radically negative proposal now being proffered by WCE.

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² As described in the USACE November 1, 2005 Revised Public Notice, WCE proposed ocean disposal of the contaminated dredged materials, rather than upland placement of all but 60,000 cy (too heavily contaminated to meet the performance standards for ocean disposal) as the preferred alternative for disposal of the dredged materials.

Roy A. Nash, USCG. This was not a “change.” It was a wholly new proposal to radically increase the number of LNG tanker trips traversing the Taunton River from 50 – 70 to 120 per year.³ Given that these hypothetical smaller tankers have a carrying capacity of 55,000 m³ rather than the 145,000 m³ proffered in the original application, the 120 deliveries is completely suspect. 120 deliveries per year would decrease the total quantity of LNG delivered to new England by 650,000 m.³ That decrease alters the original project purpose concerning deliverable quantities and represents either a substantial economic shortfall to WCE or a significant increase in costs to consumers.⁴

The effects on the project purpose do not stand alone. The increased number of tanker trips imposes substantial direct, indirect, and cumulative impacts that were never contemplated by the USACE and for which alternatives were never considered, as required by the 404(b)(1) Guidelines. The project reviewed and commented on in December 2005 is NOT the project now proposed to be implemented by WCE.

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The USACE, under the 404(b)(1) Guidelines, must directly consider the impacts resulting from this significant increase in untried and untested tanker trips on the waters of the Taunton River and Mount Hope Bay, which include, but are not limited to continual sediment suspension, re-suspension, and the resulting impacts upon water quality, finfish, shellfish, and benthos. The USACE must also consider continuing violations of water quality standards in two states.

Several examples of the public interest factors that will be affected are the continual state of alert and the impact on emergency planning and response agencies, the existence of mandatory exclusion zones every day of the year, land-based traffic impacts occasioned by the massive delays for bridge closings, air quality impacts resulting from mobile source idle times, and economic impacts occasioned by both traffic and shipping time delays.

The most significant impacts are, of course, the impacts to human health and safety that will be multiplied by orders of magnitude as the result of this increased number of vessel trips. The twelve hours necessary to traverse the waterways to Fall River will not change; in fact, the window of vulnerability could increase given the inherent navigational dangers identified in the Marine Safety International report. The opportunities for accidents, incidents,

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February 22, 2006

Colonel Curtis Thalken,
Commander

Lt. Col. Andrew Nelson,
Deputy Commander and Deputy District Engineer

Christine Godfrey, ✓
Chief, Regulatory Division

U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

RECEIVED
FEB 23 2006
REGULATORY DIVISION

**RE: Weaver's Cover Energy LLC; Mill River Pipeline, LLC
NAE# 2004-2355
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and intentional attacks opened up by this new proposal cannot be "buried" by WCE. The stakes, in terms of human health and safety, are simply too high and the impacts cannot be mitigated.

In light of this new, extremely ill-advised proposal, the USACE should deny the applications. At a minimum, the USACE should provide a full reconsideration of this new proposal through a revised public comment period and new public hearings.

Sincerely,



Carol R. Wasserman

Director of Regulatory Strategies

cc: Mayor Edward J. Lambert, City of Fall River
Thomas McGuire, Esq., Corporation Counsel
Ted Lento, USACE
Betsy Higgins, United States Environmental Protection Agency, New England Region
Secretary Stephen Pritchard, Massachusetts Executive Office of Environmental Affairs

February 1, 2006

Lt. Colonel Andrew Nelson
U.S.A Army Corps of Engineers
New England District
696 Virginia Rd.
Concord, MA 01742-2751

Dear Lt. Colonel Nelson:

Re: File # 2004-2355

I am writing out of disillusionment and disappointment. I will not go into the multitude of reasons why the Taunton River should not be dredged. You will get those reasons from many other, more knowledgeable sources.

My disappointment stems from my feelings about my beautiful country, the beacon of freedom to the rest of the world. Our government feels democracy is so important that we are sacrificing our wonderful young people and billions of dollars, of which many billions are unaccountable, to bring it to Iraq. My question is why are we paying such a huge price to bring democracy to Iraq when we are losing ours at home.

This community doesn't want that huge tank (the biggest one built to hold N.E.) on the smallest site (only 13 acres) in the midst of a densely populated area. A terrorist suicide bomber (did you see Syria?) or human error can create a worst case scenario that would be catastrophic. Best case scenario: this huge blot on our landscape of the river-front would destroy any potential economic development. I always thought it was the job of our government to be concerned about our safety. The 22 L.N.G. accidents I am aware of belie the Wever's Cove claim of safety.

Many of my friends are cancer victims. Do you think it might have something to do with having 2 power companies and a trash dump releasing methane gas into our air that might have something to do

with it. Now they want to forced N.G on us.
When does it stop?

Please understand that this community
is very much opposed to this siting and we
respectfully request that you deny this
proposal.

1 Enclosure

pg

The above letter is approved and endorsed by us,
as follows:

Robert Goldsmith
197 New Hampshire Ave
Somerset, MA 02726

Rueck Chikhal
207 Vermont Ave
Somerset MA
02726

Cizaltine M Bacon
214 New Hampshire Ave.
Somerset, Mass. 02726-3748

Marguerite G. Brown
221 New Hampshire Ave.
Somerset, Ma. 02726

Willie C. Brown
221 New Hampshire Ave.
Somerset MA. 02726

Sincerely yours,
Lillian Goldsmith
197 New Hampshire Ave.
Somerset MA 02726

Nancy Mello
385 Regan Rd.
Somerset, MA 02726

Adelle J. Werner
126 Gibbs St.
Somerset, MA 02726

Donald Wiene
126 Gibbs St
Somerset Ma 02726

Marilyn Piskoll
281 Kaufman Rd.
Somerset, MA 02726

FERC fighter

DANIEL FOWLER

HERALD NEWS STAFF REPORTER

FALL RIVER — Based on his involvement in the fight to prevent Hess LNG from building a liquefied natural gas facility in the city, it would seem safe to assume Michael Miozza has always been a community activist.

Miozza, 50, is a member of the mayor's LNG Task Force and the Coalition for the Responsible Siting of LNG Facilities. He was the only private citizen to appeal the Federal Energy Regulatory Commission's decision to OK the LNG facility. When FERC denied the appeal, he filed a federal lawsuit challenging the ruling.

He never considered himself an activist — now he's leading the LNG opposition all the way to Washington. Who is Michael Miozza?

Miozza even flew to Washington, D.C., on his own dime to participate in a National Press Club event to raise awareness for Fall River's battle.

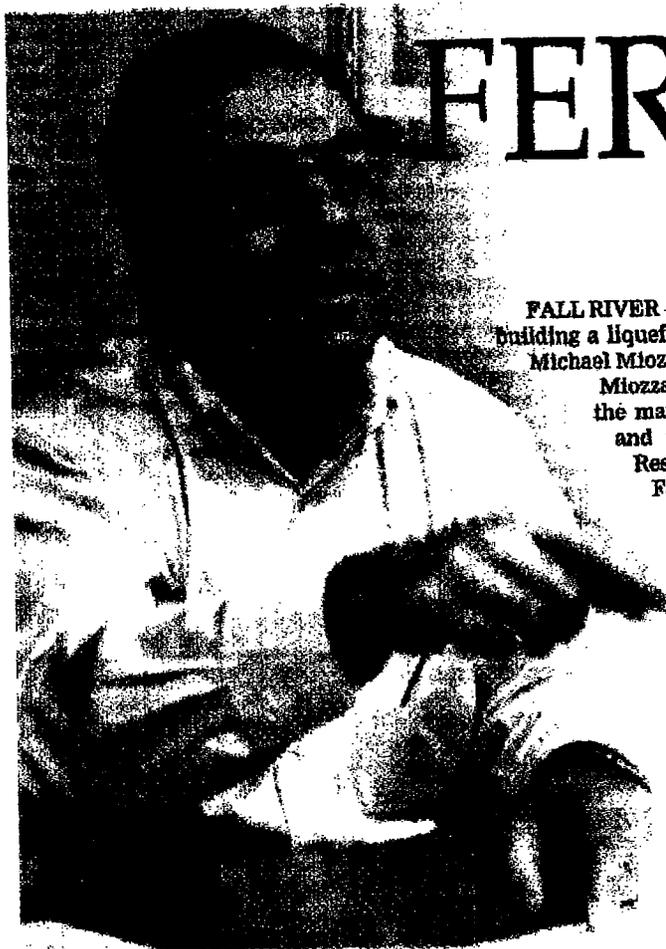


But you know what they say about assumptions.

"I've been a bystander my whole life," said Miozza, who lives about a half-mile from the Taunton River site where Hess LNG plans to build its facility. "I never had any passion to get involved in any issues."

Born and raised in Fall River, Miozza attended B.M.C. Durfee High School, where he met his wife, Susan. Miozza graduated in 1974 and the couple married a year later.

TURN TO **MIOZZA**, PAGE A5



HERALD NEWS PHOTO | DAVE SOUZA

Michael Miozza speaks about his fight to stop the Hess LNG facility from being built in Fall River, at his home recently. Miozza called himself a "bystander" — but his opposition to the LNG plan has been anything but idle.

Miozza: Anti-LNG activist

FROM PAGE A1

Except for a brief period in the mid-1980s, when he and his family (the couple has two children) moved south, Miozza has spent his adult life in Fall River.

During that time, Miozza has been busy raising his family, working and going to school.

A licensed safety professional, Miozza earned a Ph.D. in safety engineering in 2001.

Maybe it was the timing. Perhaps it was the issue. Likely, Miozza said, it was a combination of both that turned him from a self-proclaimed "bystander" into an activist.

In January 2004, Miozza attended a public meeting on LNG at Fall River Fire Department headquarters, his first involvement with the issue.

After the meeting, Miozza called several fellow safety professionals, including one who worked at the LNG facility in Everett.

"He said, 'Mike, do everything you can to stop that project,'" Miozza said.

For the past two years, Miozza has spent at least 10 hours per week following his colleague's advice, and has no plans to stop.

"When I get my teeth into something, I don't let go," Miozza said. "I don't want to regret that I didn't do everything I possibly could."

It's been quite a transformation for a man who first thought the LNG project "was a good thing."

Miozza said he learned of the project from neighbors, who told

Whether this gets sited is going to define this city. It's a major win for the city if we stand up for ourselves. ... If it is going to destr

him the LNG facility could benefit the community because taxes would probably go down.

He quickly decided any perceived benefits don't outweigh the risks.

"I think whether this gets sited or not sited is going to define this city," Miozza said. "This would be a major win for the city, that we stood up for ourselves. The other side of that coin

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Activist once a 'bystander'

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Michael Miozza

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zza said.
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p for our
that coin

is, if it does come in, it is going to
destroy this city."

Miozza, the safety and environ-
mental director at Taco Inc.
in Cranston, R.I., does safety
training and writes safety plans
for a living.

He worries about both acci-
dents and terrorist attacks asso-
ciated with the planned Hess
LNG facility.

"My concern about this whole

project is, there are alterna-
tives," Miozza said. "After 9/11,
we have to look at the world a
little differently."

When people suggest terror-
ists would never strike Fall
River, Miozza scoffs.

"If they kill 5,000 Fall
Riverites, it will play overseas as
5,000 Americans," he said.

While the LNG facility
threatens to transform the city
permanently, the battle has
already changed Miozza for good.

"I'm meeting a lot of influen-
tial people, gaining a lot of confi-
dence, writing skills, communication skills" and

"made lifelong friends," Miozza
said. "I've found my voice and I
know I have something to give to
the community."

He has even identified his
next cause.

"If we are successful, my next
project will be to have the city do
something with that valuable
piece of land," Miozza said. "I'll
be fighting to do something with
that waterfront in a positive way.
I'd love to see a convention
center down there. It could be a
little Newport."

E-MAIL DANIEL FOWLER AT
DFOWLER@HERALDNEWS.COM.



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400

TDD (401) 453-0410

Patrick C. Lynch, Attorney General

February 8, 2006

VIA EXPRESS MAIL

Lt. Colonel Andrew Nelson
Deputy Commander and Deputy District Engineer
United States Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

Re: **Weaver's Cove Energy, LLC;**
ACOE File No. NAE-2004-2355/
Application for Dredging Permit

Dear Lt. Colonel Nelson:

Enclosed are the Comments of Patrick C. Lynch, Attorney General of the State of Rhode Island. A compact disk will be forwarded separately that includes the Comments and the attached Exhibits.

On behalf of Attorney General, I would like to extend our deep appreciation for the courtesy extended by the Corps in extending the public comment period. We hope these comments will lead to the Corps to deny the dredging permit application of Weaver's Cove Energy LLC.

Please contact me directly if you have any questions.

Very truly yours,

Paul Roberti
Assistant Attorney General
Chief, Regulatory Unit

Attachments

applicants require section 10/404/103 permits because the proposed work occurs within jurisdictional waters of the United States.¹ The project also involves a taking of submerged lands owned by both Rhode Island and Massachusetts by virtue of the need to remove an additional two feet of sediment beyond the federally authorized channel depth of 35 feet. While the proposed dredging activities may be permitted under existing ACOE dredging regulations, any such removal of State-owned land by the applicants is contingent upon express State authorization, pursuant to non-federally preempted State rights over submerged tidal lands.

Role of United States Army Corps of Engineers

The Corps has been involved in regulating activities in the nation's waters since 1890. Until 1968, the primary thrust of the Corps' regulatory program was the protection of interstate navigation. As a result of several new laws and judicial decisions, the program has evolved to one involving the protection of the public interest by balancing favorable impacts of proposed projects against the detrimental impacts (33 CFR 320.1 (a)(1)). The procedural requirements of the National Environmental Policy Act ("NEPA") also apply to ACOE's activities, and are intended to ensure that the "broad national commitment to protecting and promoting environmental quality is 'infused into the ongoing programs and actions of the

¹ U.S. Army Corps N.E. District, Revised Public Notice 11/1/2005.

federal government.” Natural Resources Defense Council v. United States Army Corps of Engineers, 399 F.Supp.2d 386 (S.D.N.Y. 2005).

The public interest standards promulgated by the Corps thus require consideration of a wide range of factors, including the cumulative impacts of the project. In this manner, the Corps has traditionally exercised a broad degree of discretion to consider the totality of evidence to ensure that the proposed activities, and the ultimate project effort, are consistent with the public interest. As the ACOE Public Notice for the proposed project notes: “The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which may reasonably accrue from the proposal must be balanced against its reasonably foreseeable detriments.”

According to the ACOE Public Notice, all factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural value, fish and wildlife values, flood hazards, flood plain value, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production

and, in general, the needs and welfare of the people.”²

II. ACOE MUST EXERCISE THE FULL BREADTH OF ITS DISCRETIONARY AUTHORITY IN LIGHT OF FAILURES BY THE FEDERAL ENERGY REGULATORY COMMISSION

In the midst of this Weaver’s Cove’s licensing proceeding, the FERC and the Corps entered into a Memorandum of Understanding (MOU) on June 30, 2005, providing for the ACOE’s delegation of its obligation to make the vital determination as to the “purpose and need” of a specific project to the FERC. As a result, the Public Notice issued by the Corps states that Corps will “defer” critical components of its congressionally mandated public interest review obligations to FERC, based upon the addition of the following language:

The U.S. Coast Guard and FERC are the federal agencies responsible for safe vessel transit and facility operation, and the Corps will utilize the findings of these two agencies on these issues in its deliberations.³

The Attorney General submits that the ACOE’s Public Notice is procedurally inadequate in that it does not state (or describe) the findings relative to “safe vessel transit and facility operation” made by other agencies, or inform the public where they may be found. In addition, under the circumstances of this case, the Attorney General submits that the MOU entered by the ACOE constitutes an impermissible delegation of its public interest authority, and the

² U.S. Army Corps N.E. District, Revised Public Notice, 11/1/2005.

³ ACOE Revised Public Notice and Announcement of Public Hearing (November 1, 2005).

ACOE must recognize its own legal responsibilities to do more than simply “rubber stamp” the findings of FERC and the U.S. Coast Guard.

The Attorney General submits that if the ACOE independently examined such issues, as required by law, it would certainly conclude that FERC breached its commitment to the Corps under the MOU by performing a grossly inadequate analysis of issues related to vessel transit safety and the safety of operating the proposed facility in a densely populated urban center. There are compelling reasons why the Corps should not delegate these public interest determinations to FERC, particularly with respect to the need and safety of the project. The same conclusion applies to the United States Coast Guard as well, an entity that has consistently demonstrated that it views its role as a mere facilitator of FERC's approval of facilities, without regard to safety considerations.

The lack of vigilance relative to public safety and security by federal “regulators” to date, all of which will come at the ultimate expense and safety of Rhode Island and Massachusetts citizens over the course of decades to come, is simply astounding. By passing off the most vital and fundamental public interest determinations to each other, no single agency of the federal government has yet exercised

the type of regulatory vigilance required to protect the citizenry.⁴

When it comes to protection of public safety, the failures extend far beyond FERC and the U.S. Coast Guard, but also include the U.S. Department of Transportation, the U.S. Department of Homeland Security⁵ and most recently, the Naval Undersea Warfare Center.⁶

Much of the evidence on the safety dangers associated with LNG vessels and facility operations that has been ignored by FERC and these other federal agencies must be considered by the Corps. Such a legally-mandated, independent look at the relevant evidence would surely lead this agency to the conclusion that the dredging project should not be approved given (1) public safety considerations; (2) national security implications; (3) negative impacts on recreational and natural resources; (4) negative socioeconomic impacts (5) negative impacts on fish and wildlife species; (6) cumulative impacts; and lastly, (7) clear and convincing evidence demonstrating that the natural gas needs of the northeastern United States can and will be

⁴ The opposite is true with respect to fish and wildlife. The U.S. Department of the Interior along with U.S. Fish and Wildlife Service have been proactive with advising FERC about the problems of dredging with non-human resources such as the endangered Right Whale, certain turtle species, anadromous fish populations, other endangered species, and most importantly the prospect of endangering the Taunton River's impending designation as a National Wild and Scenic River. If ACOE defers to other federal agencies on safety, it should afford the same deference to USDO and USFWS on areas of their expertise, both of which have demonstrated in formal comments that they are not in favor of the Weaver's Cove Project.

⁵ The U.S. Department of Homeland Security has been asked to provide input regarding the sensibility of siting LNG terminals in urban areas, given the long term implications of defending and securing the facilities from the threat of terrorist attacks. In response, the agency has chose to remain silent.

⁶ After filing a Motion to Intervene and Request for Rehearing with FERC citing national security implications due to the threats associated with LNG tanker transits through the testing areas in Narragansett Bay, where the nation's cutting-edge military technology is currently being developed, NUWC flipped its position one day before FERC's scheduled decision on the State's Request for Rehearing and withdrew all pleadings from FERC. Apparently, the U.S. Coast Guard was able to alleviate NUWC's concerns by simply revising language in USCG planned security protocols.

satisfied through the ongoing development of other viable LNG projects.

While all of the concerns stated above emanate from the need to dredge Rhode Island and Massachusetts waters because the project's viability is critically dependent upon Corps approval, the Attorney General will take this opportunity to address each of the relevant public interest factors that must guide the Corps' decision pursuant to existing federal regulations.⁷

III. THE WEAVERS COVE LNG PROJECT IS BARRED BY AN ACT OF CONGRESS AND ACOE PERMIT ISSUANCE WOULD BE CONTRARY TO THE RECENTLY EXPRESSED WILL OF CONGRESS AND CONTRARY TO THE PUBLIC INTEREST

As a preliminary and dispositive matter, the Corps must recognize that no action should be taken on Weaver's Cove's dredging application given that the project is now moot: On August 10, 2005, the President signed into law Public Law No. 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"). Included in that Act is a specific prohibition against the expenditure of federal funds "for the demolition of the existing Brightman Street Bridge connecting Fall River and Somerset, Massachusetts," and the Act provides that "the existing Brightman Street Bridge shall be maintained for pedestrian and bicycle access, and as an emergency service route" with a specific appropriation

⁷ 33 C.F.R. § 320.4

statutorily earmarked for that purpose. SAFETEA-LU, §§ 1702 (project no. 4270), 1948.

These provisions ensure the continued use of the existing bridge after completion of the new bridge,⁸ and accordingly, the Corps should suspend any final action on the dredging application because the project is no longer feasible in that the vessels expected to transit to the proposed facility will not be unable to reach that destination.

IV. WEAVER'S COVE PROJECT IS NOT ECONOMICALLY VIABLE AND ACCORDINGLY, NO DREDGING PERMIT SHOULD ISSUE CONSISTENT WITH 33 CFR § 320.4 (Q).

Army Corps regulations specifically require the Corps to consider the economics of the proposed project to ensure that any proposal is “economically viable, and is needed in the market place.”⁹ In “appropriate” cases, the Corps is entitled to make an “independent review of the need for the project from the perspective of the overall public interest.”¹⁰ The scope of analysis should include the benefits to the “local economic base”, “employment, tax revenues, community cohesion, community services and property values.”

Relative to the first prong, the Corps must find that the project is no longer economically viable given the continued existence of the Brightman Street Bridge. Moreover, the Attorney General submits

⁸ We understand that the Governor of Massachusetts has sent a letter to the docket in this matter, informing the Commission that, in the light of the enactment of these provisions, it is “the Commonwealth’s intention to preserve the existing bridge for pedestrian, bicycle and emergency access.”

⁹ 33 CFR § 320(q).

¹⁰ *Id.*

that the project's economic benefits to Rhode Island and Massachusetts are far exceeded by the risk, liability and threat to quality of life. The opposition of the City of Fall River, the States of Massachusetts and Rhode Island, and all communities along the 26 mile transit route of LNG tankers, demonstrate that the project conflicts with ACOE regulation 33 CFR § 320.4(q) for a number of reasons, including:

(1) the project is not "important to the local community"

since the host community is staunchly opposed to it
and since natural gas will be supplied by better
alternatives;

(2) the project will not "contribute to needed

improvements in the local economic base" since the
City and States will be saddle with substantial
liabilities associated with the needed protection
against LNG accidents and terrorist attacks for every
transit up and down (140 per year) the 26 mile
waterway, and the project represents a permanent
public safety threat by virtue of storing substantial
amounts of hazardous and highly volatile LNG in a
densely populated setting;

(3) the project will be a drain on "community services" in

terms of public safety, law enforcement and

emergency response;

- (4) the project will create little permanent employment, will reduce property values due to public safety threats, and will destroy “community cohesion.”¹¹

Based upon the foregoing, the Corps’ review under 33 CFR § 320.4(q) militates against approval of the dredging permit.

V. THE EXISTENCE OF ECONOMICALLY VIABLE ALTERNATIVES MUST BE CONSIDERED BY THE CORPS IN LIGHT OF REFUSAL BY FERC TO QUANTIFY THE NEED FOR EACH LNG PROJECT, PURSUANT TO 33 CFR § 320.4(a)

“If two [LNG terminals] get built, we should be in good shape”

Statement of FERC Chairman Pat Wood¹²

It is common knowledge among industry representatives and FERC officials that the region’s needs for incremental supplies of natural gas are finite, and that only one or two LNG projects will need to come to fruition in order to meet that need. What follows is list of alternative sites that are ranked according to remote siting, safety and environmental impacts.¹³ Weaver’s Cove is at the bottom. FERC

¹¹ Community cohesion now exists from the unanimity of opposition to the Weaver’s Cove proposal, but that will be lost or destroyed if the project is allowed to be operated.

¹² FERC Chairman Pat Wood made this statement at an energy conference in Boston, MA referring to all of the pending LNG terminal proposals across New England and Canada. He was quoted in the Boston Globe on September 14, 2004.

¹³ This list was compiled by Downeast LNG after having conducted an extensive evaluation of all proposed LNG projects serving the northeast. The project developer recognized that “many believe that [FERC’s] site selection process to be uncoordinated and chaotic. An effective and equitable strategy to arrive at the optimal number of appropriately – sited terminals has been suggested as a necessary first step in the development of natural gas import and distribution projects. *Regional Site Selection Study by Downeast LNG, July 2005.*

never did a regional need analysis, but if it had, it would have found that the region's demand for natural gas could be satisfied with any one of a number of alternative sites that do not jeopardize the safety of thousands of people, and which would also eliminate all of the adverse environmental impacts associated with the Weaver's Cove project. The potential sites in the United States are as follows:

- (1) Robbinston, ME – Cannery Site
- (2) Robbinston, ME – Gravel Pit
- (3) Robbinston, ME – Mill Cove
- (4) Perry, ME – Coastal
- (5) Perry, ME – Gleason Cove
- (6) Eastport, ME – Estes Head
- (7) Lubec, ME – Quoddy Head
- (8) Lubec, ME – South Road
- (9) Lubec, ME – Bailey's Mistake
- (10) Cutler, ME – Navy Base
- (11) Gouldsboro, ME – Navy Base (Cianbro)
- (12) Searsport, ME – Sears Island
- (13) Searsport, ME – Mack Point
- (14) Harpswell, ME – Navy Base
- (15) Gloucester, MA – Off Shore (Excelerate)
- (16) Gloucester, MA – Off Shore (Neptune)
- (17) Broadwater LNG (Long Island Sound)
- (18) Boston, MA – Brewster Island
- (19) Fall River, MA – (Weavers Cove)

In addition to the list above, there are additional LNG terminal projects in Canada that are under construction and will have the capability to deliver significant quantities of natural gas into the interstate pipeline system serving the northeastern United States. Based on the applicable standards, the ACOE must evaluate these projects for itself, in which case it will conclude that the northeast region's future need for natural gas will, in fact, be satisfied by a

combination of the following LNG projects that have recently been approved or are under construction. The most significant developments are as follows:

- ▶ **Canaport LNG terminal in Canada:** under construction with capability to vaporize one billion cubic feet (bcf) of natural gas per day into the interstate pipeline system. Expected In-service date = 2008.
- ▶ **Bear Head LNG terminal in Canada:** under construction with capability to vaporize one billion cubic feet (bcf) of natural gas per day into the interstate pipeline system. Expected In-service date = November 2007. (Note: an additional storage tank could be added to increase send-out capacity to 1.5 bcf per day).
- ▶ **Maritimes & Northeast Pipeline Expansion:** Expansion of existing pipeline to permit total quantity of 1.5 bcf per day to New England.
- ▶ **Excelerate Energy LLC "Northeast Gateway":** Proposed deep-water LNG terminal in licensing phase with projected in-service date of first quarter of 2008 with peak capacity of 0.8 bcf per day.
- ▶ **Neptune LNG Deepwater LNG Terminal:** A second LNG deepwater terminal proposal with projected in-service date of 2010. Projected peak capacity: 0.7 bcf per day.
- ▶ **Downeast LNG (Robbinston, ME):** Town of Robbinston recently voted in favor of LNG terminal site due to remoteness of location and minimal environmental impacts. Terminal capacity = 0.75 bcf with in-service date in late 2009.

All of the above projects are viable and capable of meeting the regional need for natural gas; however, unlike the Weaver's Cove

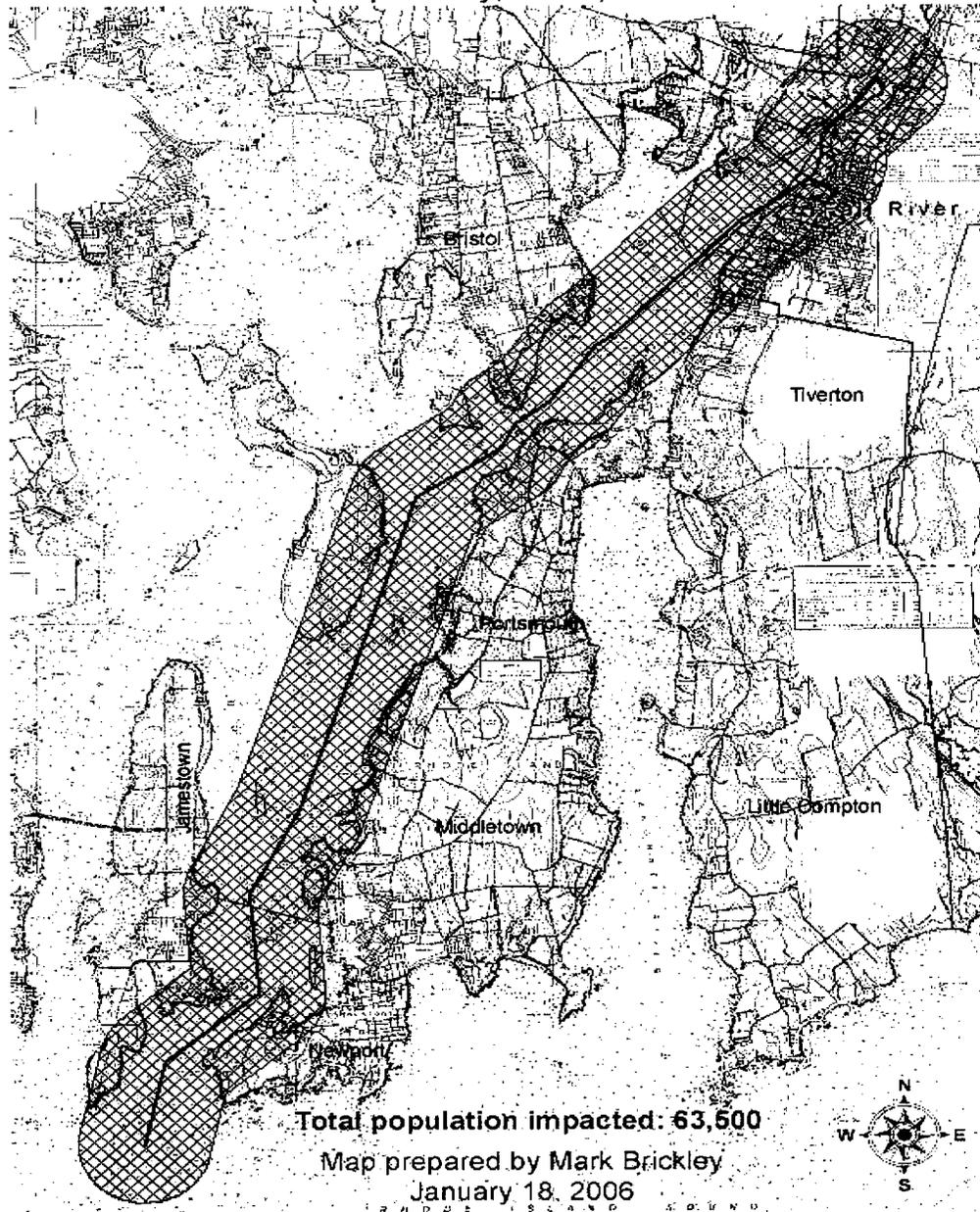
project, these projects have far less adverse environmental and public safety impacts. The total capacity of these projects easily exceeds 3 billion cubic feet per day, which is more than 50% of New England's peak day demand forecast for 2006.¹⁴ Yet, the projects listed above do not face the unanimous opposition experienced by Weaver's Cove – opposition at the federal, state, and local level, including every member of the respective congressional delegation of two States, the Governors of two States, the legislatures of two States, and every affected city or town along the LNG tanker transit route.¹⁵ Unlike the short list of superior projects listed above, where the project developers selected appropriate sites in sparsely populated areas that are accessible to LNG tankers without presenting substantial public safety hazards, Weaver's Cove chose what can easily be characterized as the most logistically difficult and most dangerous location of any LNG project being considered in New England. The Weaver's Cove project presents transient and permanent hazards to more than 5,000 people, as depicted in the graphic below.¹⁶

¹⁴ See Report of the New England Governor's, "Meeting New England's Future Gas Demands: Nine Scenarios and Their Impacts (March 1, 2005).

¹⁵ The Corps should take administrative notice that every Rhode Island City or Town along the transit route of LNG tankers – Newport, Jamestown, Middletown, Portsmouth, Bristol, Narragansett and Tiverton – is vehemently opposed to the Weaver's Cove Project. As Exhibit 1, we offer some of the resolutions passed by these municipalities and others. These municipalities also filed an Amicus Brief with the FERC stating their opposition. FERC simply rejected the pleading.

¹⁶ The graphic was produced by Professor Mark J. Brickley of the Gabelli School of Business at Roger Williams University. The map is comprised of various layers. There is a layer of census block level data with population data estimated for 2004 by ESRI. The path of the tanker is mapped by following the channel and buoys on the NOAA navigation chart for Narragansett Bay. The system then computes a 5780 foot buffer around the tanker's path (plus 75 feet to account for ½ of the tanker's 150 foot beam on each side of the path),

Weaver's Cove LNG Proposal
Tanker path including area impacted by
 1.6 kW/m^2 thermal radiation - buffer distance: 5780 feet
(as per Fay, 2004)



according to information provided by Dr Fay from Massachusetts Institute of Technology. Since the GIS software computes the area within the buffer for each census block, the percentage of the whole area is computed for each census block and then used to adjust the population figures. The calculations assume that the population is evenly distributed within each of the census blocks. The assumption appears reasonable given that some census blocks have their populations concentrated in the area beyond the buffer, while other blocks have their populations concentrated within the buffer.

Clearly, given the high stakes of achieving a reliable energy supply and the corresponding detriment to communities resulting from siting LNG terminals in the wrong locations, FERC should have exercised its clear authority under Section 3 of the Natural Gas Act and conducted a regional evaluation. Indeed, FERC was repeatedly urged to conduct a regional evaluation concerning all of the twenty or more LNG terminal proposals up and down the coast of the northeastern United States, as depicted in the attached request from Rhode Island Senator Jack Reed to the FERC Chairman.¹⁷ In the face of numerous other requests to do the same, FERC patently refused.

Given the changed world after September 11, 2001, FERC should have recognized that it had the responsibility to conduct a comprehensive review of all competing LNG projects, and to determine which ones were superior in terms of minimizing public safety impacts and environmental risks. Instead, FERC chose to approve every project as long as it did not violate regulations promulgated before September 11, 2001. FERC's "public interest" standard is simple and can be summarized as follows: No matter how many citizens are exposed to the serious risk of an LNG catastrophe whether by accident or deliberate act, and no matter how many bridges must be transited (and closed) as LNG tankers enter coastal waterways, and no matter how many cubic yards of sediment must be

¹⁷ See letter of Senator Jack Reed to FERC Chairman Pat Wood, dated February 1, 2005, Exhibit 2, attached hereto.

dredged from damaged or recovering ecosystems, and no matter how inconsistent the project is with natural and recreational and cultural resources, FERC will approve the project and let market forces alone determine which project ultimately wins the great LNG terminal race.¹⁸ In the Attorney General's view, this is such a serious omission and dereliction of responsibility that the Corps cannot defer to the FERC on project need or safety.

Clearly, there are substantial "unresolved conflicts as to resource use" that militate in favor of utilizing "reasonable alternative locations" that can fulfill the project purpose. 33 CFR § 320(a)(2)(ii). Accordingly, the Corps should conduct such an analysis as it is required by the public interest. Furthermore, the record should remain open to accept any information concerning the progress of alternative LNG terminals that are expected to deliver substantial quantities of natural gas far in advance of the in-service date for the

¹⁸ As characterized above, this flawed public interest standard was utilized in the Keyspan LNG case involving the proposed terminal in Providence. FERC denied authorization to Keyspan on one single ground: the proposed terminal would not comply with USDOT standards. LNG tankers in the Providence River would expose more than 28,000 people to the thermal radiation hazards associated with one of the scenarios contained in the Sandia Study. The terminal would also have occupied the federal navigation channel, expose thousands more to the transient hazards of navigating tankers 29 miles up the narrow coastal waterways of the East Passage and the Providence River, and further require bridge closures and severe impacts on the estimated 40,000 recreational boaters that would be impacted by the security zones required by the U.S. Coast Guard pursuant to federal regulations codified at 33 CFR § 165.121. FERC failed to mention any of these other public interest impacts in its decision denying Keyspan's project. The omission was clearly deliberate in light of FERC's approval of an equally dangerous project in Fall River. All of this counsel in favor of ACOE's independent review of the need and safety of the project. The citizens of Rhode Island and Massachusetts are greatly dependent upon the Corps in this unprecedented matter.

Weaver's Cove project.

VI. USEPA'S DECISION ON BRAYTON POINT GENERATING STATION SHOULD LEAD THE CORPS TO DENY DREDGING PERMITS GIVEN THE NATIONAL CONCERN FOR PROTECTION AND UTILIZATION OF IMPORTANT RESOURCES, 33 CFR § 320.4 (a)(1)

The Mount Hope/Narragansett Bay Watershed has an area of 112 square miles and encompasses all or part of eight municipalities, including small portions of the Cities of Fall River and Attleboro. The Narragansett Bay Estuary, designated an Estuary of National Significance by the Environmental Protection Agency in 1987, supports numerous wildlife and marine species, including the Kemp's Ridley Sea Turtle, a federally-endangered species of sea turtles. Over the past three decades, the Mount Hope Bay has seen drastic decrease in the quality of its environment.

In 1986, fisheries biologists from the Rhode Island Department of Environmental Management (RIDEM) were startled at the results of monthly fish surveys taken in Mt. Hope Bay. Eighteen of twenty-one key species showed dramatic reductions and several species (including winter flounder) with an 87% decline, had virtually disappeared. Subsequent years' data showed similar trends, adding to the concern over the declines.

RIDEM fisheries scientists issued a report in 1996 documenting the declines in fish populations. The report identified the Brayton

Point power generating plant, situated at the head of the bay in Massachusetts, as the "most likely" cause of the reductions. The plant had been allowed by the federal government to discharge cooling waters (thermal effluent) that are up to 23 degrees higher than the bay's ambient temperature, with a maximum cap at 95 degrees Fahrenheit. The report pointed to changes in the plant's operating permit in 1985 that allowed a 30% increase in the amount of water drawn by the plant for cooling purposes. The plant currently cycles through up to 1.4 billion gallons a day, exchanging approximately the entire volume of Mt. Hope Bay in one month.

A project report released in June, 2001, confirmed what R.I. DEM had suspected: the plant had raised the average summer and fall bay temperature by as much as 2 degrees Fahrenheit, and the effects of the heating covered a larger area than previously thought. The report concluded, "The simplest and most likely explanation for the relatively warm year-round temperatures in Mt. Hope Bay is the constant discharge of thermal effluent into the bay by the Brayton Point Power Station."

Just last week, Mount Hope Bay finally received a reprieve from the ongoing degradation to fish and wildlife resources caused by the operation of New England's largest fossil fuel powerplant – the Brayton Point Power Station. The U.S. Environmental Protection Agency's Environmental Appeals Board rejected Dominion Energy's

appeal of EPA Region I's order requiring all four of the generating station's units to be retrofitted to "closed-cycle cooling systems." The decision by the Environmental Appeals Board will require Brayton Point Station to use closed-cycle cooling on all four Units and require BPS reduce its intake of water from 1.4 billion gallons per day to 56 million gallons per day.

Finally, Mount Hope Bay may soon be turning the corner and starting to recover from the decimating impact of the existing open-cycle cooling systems that have permitted the facility to annually consume and discharge so much water at much higher temperatures that this "important estuarine ecosystem" has experienced "huge decreases in productivity over the last two decades."¹⁹ According to marine biologists, this power plant is likely responsible for the 87% decline in fish populations in Mount Hope Bay observed since 1986. The Corps' public interest determination must take into consideration that Mount Hope Bay may be finally turning the corner from decades of abuse, including the abatement of many other pollution sources that have also compromised the natural conditions of the lower Taunton River and Mount Hope Bay.²⁰

¹⁹ *In re: Dominion Energy Brayton Point LLC, Environmental Appeals Board of the U.S. Environmental Protection Agency, Docket No. NPDES 03-12 (Decision at 7-8) (February 1, 2006).*

²⁰ The Fall River Wastewater Treatment facility and the more than 10 communities in the Taunton River watershed have either made commitments to upgrade river water quality or are under legal and regulatory requirements to do so. See comments of Save the Bay, December 5, 2005.

This is not the only evidence of the revitalization of Mount Hope Bay. Fall River has already implemented the first phase of its combined sewer overflow abatement project, and is investing significant capital in riverfront improvements. Allowing the proposed LNG project would undermine the steps that the people of both Massachusetts and Rhode Island have taken to restore both Mount Hope and Narragansett Bay.

With last week's decision from the Environmental Appeals Board and these other recent measures, the Corps must allow the restoration progress to continue and not revert backwards through the needless dredging of more than 2.5 million cubic yards of sediment, the loss of essential fish habitats, and the permanent degradation this waterway. Only the Corps can prevent the next chapter of environmental destruction to Mount Hope Bay and the Taunton River. The Attorney General urges the Corps to deny the dredging permits for the benefit of citizens and future generations.

VII. THE NEGATIVE AND UNNECESSARY EFFECT ON FISH AND WILDLIFE RESOURCES IN MOUNT HOPE BAY AND THE TAUNTON RIVER DICTATE THAT THE DREDGING PERMITS BE DENIED CONSISTENT WITH 33 CFR §320.4(C)

The proposed dredging will cause three major classes of water quality impacts: (1) the suspension of sediments; (2) burial of habitat at the disposal site; and (3) the excavation of a deep channel that is

more likely to become seasonally hypoxic than existing conditions.²¹

The impacts are described in the attached affidavit of John Torgan from Save the Bay and are summarized as follows:

- 1) First, the dredging itself will suspend sediment into the water column. Some of the sediments in the vicinity of the project site are known to be contaminated with mercury. The applicant has waived testing of the most contaminated sediments around the project site opting for upland disposal, but Save The Bay is concerned that it may reach concentrations that exceed water quality standards during and immediately following dredging. This could harm migratory fish.
- 2) The proposed disposal site, in Rhode Island Sound, has limited capacity and was designated and intended to be used for Rhode Island dredging projects serving navigation or the public interest. Clearly, this is a Massachusetts-based project and its use of the Rhode Island Sound disposal site will cause impact to the Rhode Island environment via burial of benthic organisms at the disposal site. The material to be dredged for Weaver's Cove is more than 75% fine-grained, and may not be appropriate for the naturally coarser substrate at the Rhode Island Sound disposal site. It will also use up capacity, all without any compensation to Rhode Island for use of these public trust resources.
- 3) As discussed above, the potential for hypoxia will be increased by this project. This is a serious project deficiency. NEPA requires disclosure of "any irreversible and irretrievable commitments of resources which would be involved in the proposed action" (NEPA 42 USCA 4332). The EIS fails to account for the permanent alteration, conversion, and loss of estuarine habitat. The EIS does not propose any mitigation for these takings.²²

²¹ See affidavit of John Torgan, attached hereto as Exhibit 3.

²² *Id.*

Federal agencies are also required by section 7 of the Endangered Species Act (“ESA”) (Title 19 USC Part 1536 (c)), to ensure that any actions authorized, funded, or carried out by the agency do not jeopardize the continued existence of a federally listed endangered or threatened species, or result in the destruction or adverse modification of the designated critical habitat of a federally listed species. The list of endangered species in Rhode Island includes 14 animals and 2 plants, including the Leatherback Sea Turtle, Hawksbill Sea Turtle, Shortnose Sturgeon, the Finback Whale, and the Humpback Whale.

The most notable of animals on the Rhode Island endangered species list is the right whale. It is estimated that only about 325 to 350 individuals exist, thus making them one of the most critically endangered large whales in the world. The right whale is most commonly known to frequent the Narragansett Bay during the months of March through April and September through October, at which time the mid-Atlantic region of the United States is considered a principal migratory corridor. One of the serious concerns with the right whale involves collisions with large ships.

Weavers Cove has acknowledged that up to 70 LNG ships could unload cargo at the proposed site. That would mean increased traffic through the navigation route. “The additional ship traffic likely

increases the potential risk of a right whale strike.”²³ With the right whale being one of the most critically endangered large whales in the world, the Corps has an obligation to protect such animals. Several other listed endangered species in Rhode Island will also be affected by the navigation of LNG vessels through Narragansett Bay. These animals include the Kemps, Leatherback, and Loggerhead Sea turtles. These important species must be protected by the Corps through denial of the dredging permits.

The proposed dredging will permanently impact 191 acres of river bottom. This includes 144 acres of “relatively shallow habitat specifically identified as spawning beds for winter flounder.”²⁴ The proposal of continuous dredging over a three-year period will have a detrimental impact on many species including fourteen fin fish species that are subject to protection under both federal and state fisheries management programs, including alewife, American shad, hickory shad, gizzard shad, rainbow smelt, white perch, striped bass, American eel, winter flounder, Atlantic menhaden, tautog, bluefish, and a Massachusetts endangered species, Atlantic sturgeon.

Many shellfish resources will also be affected such as the northern quahog, American oyster and soft-shell clams. Mount Hope Bay is recovering from a horrendous period of environmental degradation associated with the operation of the Brayton Point and

²³ Final Environmental Impact Statement, 4-126 (2005).

²⁴ Id.

Somerset power plants. It would be wrong for the Corps to allow the initiation of a whole new era of environmental degradation that would occur as a result of the proposed dredging program, particularly when viable alternatives exist for meeting the regional natural gas demands without such damage.

Lastly, the applicant's proposal for a one-time "seeding and transplant program" as compensation for the permanent loss of productive shellfish grounds would be laughable were the consequences not so serious.

VIII. "HISTORIC, CULTURAL, SCENIC AND RECREATIONAL VALUES" THAT WILL BE PRESERVED BY DESIGNATING THE TAUNTON RIVER AS A NATIONAL "WILD AND SCENIC RIVER" REQUIRE THE CORPS TO DENY DREDGING PERMITS 33 C.F.R. § 320.4(e).

"I cannot think of another river in the Commonwealth of Massachusetts that captures the magnificence of New England better than the Taunton River."²⁵

The Corps must recognize the broad efforts and investment to restore the Taunton River and Mount Hope Bay to the thriving resource it once represented:

The Taunton River estuary is unique. It is the only river of its kind in this region of the world. Over its forty-mile course, there are no dams. This natural hydrology creates a classic estuary, where fresh water floats on salt water in a wedge moving with the tide. It is home to 69 state-listed threatened or endangered species, and boasts the highest freshwater mussel diversity in Massachusetts. This system is particularly important as a nursery area for fish, and is designated as essential fish habitat for 14

²⁵ Statement of former U.S. Representative Joe Moakley, who was instrumental in the Taunton River Stewardship Program.

federally-managed species including windowpane flounder, winter flounder, red hake, Atlantic mackerel, black sea bass, bluefish, scup, Atlantic herring, scup and summer flounder. It provides the largest anadromous fish runs (herring and alewives) in the Narragansett Bay watershed, with populations of more than 1 million fish.²⁶

It should be of great significance to the Corps that there is an ongoing effort to designate the Taunton River as a National Wild and Scenic River through the U.S. National Park Service. As explained by *Save the Bay* in comments to the Corps:

The Wild and Scenic Rivers process was the culmination of many years of hard work by the communities, and it aims to improve, protect and restore the health of the river. This LNG project will degrade water quality, and make the river a weaker candidate for the prestigious recognition it deserves. If permitted, the construction and operations of this LNG facility will make it difficult even to access the Taunton River by boat in the vicinity of the project. The security regime that will be required each time an LNG tanker transits the Bay and offloads its cargo will interfere with other commercial and recreational navigation throughout the East Bay.²⁷

The Taunton River Stewardship Plan, which is attached as Exhibit 4, is the product of the intensive, four-year study of the 40 mile long Taunton River corridor and many of its key tributaries all the way down to the entrance to Mount Hope Bay. According to the Study, the Taunton River is probably the “most diverse and intact coastal riverine ecosystem in all of Southern New England.”²⁸ It is

²⁶ Comments of Save the Bay to ACOE (November 20, 2004) (Emphasis supplied).

²⁷ Comments of Save the Bay to ACOE (December 5, 2005).

²⁸ See Taunton River Stewardship Plan, attached hereto as Exhibit 4, at page 5.

the largest freshwater contributor to the Narragansett Bay. Some of the outstanding attributes of the Taunton River corridor include:

- The longest undimmed coastal river in New England
- Over 154 species of birds and 45 species of fish, including the bald eagle and the globally rare endangered Atlantic sturgeon
- More than 360 identified plant species, including 3 globally rare species, Long's bittercress, Long's bulrush and Eaton's beggar ticks
- Globally rare freshwater and brackish tidal marsh habitats
- Economically important agricultural products including cranberries, blueberries, strawberries, pumpkins, Christmas trees, corn and nursery products
- The largest alewife run in the state including the Nemasket River with headwaters at the Assawompset Ponds, the largest natural lakes in Massachusetts
- Habitat for the globally rare bridle shiner and rainbow smelt; recently listed by NOAA as a species of concern
- The state designated Wampanoag Commemorative Canoe Passage, the ancient Native People's waterway from Massachusetts Bay in the east, to Mount Hope and Buzzards Bay in the south
- Wampanucket, located at the Assawompset Ponds in Middleborough; the location of one of the most significant Paleoindian depositions known in New England. This site contains evidence of dwellings dating from 12,000-8,000 years before present day
- The first four, five and six masted schooners were designed and/or registered in Taunton; the only seven-masted schooner to exist was also captained by a Tauntonian
- The first iron forge was set up on the Forge River in Raynham in 1652. This forge became the longest operating one of its kind in the country after more than 230 years in operation.
- Iron fittings for the USS Monitor were forged in Bridgewater during the Civil War.
- Historically important recreational activities including pleasure crafts, canoe launches and yacht clubs; resorts including amusement rides, dance pavilions and clambakes.
- Current recreational activities including swimming, canoeing, sailing, motor boating, and fishing.²⁹

²⁹ See Taunton River Stewardship Plan, at 6.

ACOE regulations specifically encourage the “conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in the application” through direct consultation with the U.S. Fish and Wildlife Service (“USFWS”), under the auspices of the U.S. Department of Interior (“USDOI”).³⁰ On July 5, 2004, USDOI filed formal comments with the FERC indicating that it could not support the Weaver’s Cove project. USDOI and USFWS indicated serious concerns about “unavoidable adverse site impacts related particularly to the enlargement of turning basin and development of the Weaver’s Cove site.”³¹ USDOI cited the permanent loss of 11 acres of winter flounder habitat and 1.15 acres of saltmarsh and intertidal/subtidal habitat. Most striking was USDOI’s admonition concerning the fate of the NPS Wild and Scenic Rivers Designation:

As of June 6, 2005, the legislative bodies of nine out of 10 communities abutting the main-stem of the Taunton River voted to endorse the Taunton River Stewardship Plan and seek Federal Designation as a Wild and Scenic River. . . . This showing of strong local support is the final step required to judge the suitability for Federal designation. . . . **The protection of the outstanding fishery value of the Taunton River was highlighted as a critical issue related to the potential Wild and Scenic River designation.**³²

³⁰ 33 C.F.R. § 320(c).

³¹ Comments of United States Department of Interior to FERC regarding final environmental impact statement (July 5, 2005).

³² Comments of United States Department of Interior to FERC regarding final environmental impact statement (July 5, 2005) (Emphasis supplied).

The proposed dredging and the creation of a deep water turning basin would permanently degrade these valuable fishery resources and compromise the Wild and Scenic River designation. As explained by one expert:

The creation of a deep channel and turning basin will compound and exacerbate existing low dissolved oxygen conditions in the river and likely lead to chronic hypoxia in the bottom waters. Presently, these shallow areas outside the dredged channel are typically not hypoxic, yet recent studies confirm that hypoxic and anoxic conditions do exist seasonally in the dredged channel in Mount Hope Bay and the Lower Taunton River.^[2] The deepening of the Taunton River in the turning basin has a high likelihood of causing these low oxygen conditions across the entire river in the vicinity of the project, forcing animals to swim a narrow gauntlet between two coal-fired power plants (Brayton Point, and Montaup) and this LNG facility in order to reach suitable habitat.³³

Not only does the project destroy scenic values through construction of a storage facility more than 200 feet high along the banks of the Taunton River, but the need to transit hazardous cargoes of LNG along 26 miles of narrow waterways of Rhode Island and Massachusetts probably constitutes the greatest single threat to these recreational resources. The siting of a LNG terminal and the need to expand access for deepwater draft vessels, along with the continuing need for periodic maintenance dredging, is squarely inconsistent with the decision of ten municipalities, the State of Massachusetts, the

³³ Statement of John Torgan, Save the Bay, ACOE Comments (December 5, 2005).

National Park Service, along with many other important stakeholders, to protect and preserve the beautiful Taunton River by securing the designation as a National Wild and Scenic River.

IX. THE WEAVER'S COVE PROJECT IS NOT CONSISTENT WITH RHODE ISLAND'S APPROVED COASTAL ZONE MANAGEMENT PROGRAM AND THUS ACOE MUST DENY PERMITS PURSUANT TO 33 CFR § 320.3(b)

The ACOE Public notice States the “where applicable the applicants state that any proposed activity will comply with and will be conducted in a manner consistent with the approved Coastal Zone Management Program. By this public notice we are requesting the State(s) concurrence or objection to the applicants consistency statement.” The applicant’s consistency statement is wrong. The Weaver’s Cove project is NOT consistent with Rhode Island’s approved Coastal Zone Management Program.

The Rhode Island Coastal Zone Management Program recognizes the importance of coastal resources to the social and economic welfare of the State. The Coastal Resources Management Council is vested by the legislature with the explicit mission to “preserve, protect, develop, and where possible, to restore the coastal resources of the state for this and succeeding generations” through a

comprehensive and coordinated long-range management of the State's coastal resources.³⁴

Weaver's Cove submitted an application to RICRMC in July 2004. However, the application was incomplete, contained fatal errors and to this day remains incomplete. The project that was submitted in the initial application was never permissible under the Coast Zone Management Program and failed to include the necessary prerequisites for docketing due to the Weaver's Cove's failure to identify a viable disposal location for dredged sediments. This has been born out by the recent developments involving the testing and suitability determination for offshore disposal at the Rhode Island Sound site. This substantial modification of the project requires a new or significantly modified application for Federal Consistency and State Assent. RICRMC continues to require that Weavers Cove provide a complete application before any determination can be made.

Additionally, Weaver's Cove failed to include any analysis that details the potential impacts to Rhode Island coastal resources from the transport and disposal of the dredged material off of Block Island. This must be part of a comprehensive application and review which this applicant is trying to avoid with the piecemeal application

³⁴ R.I.G.L. § 46-23-1 et seq.

processes before ACOE, RICRMC and Massachusetts environmental regulators.

The Northeast Marine Pilots have had no input on potential safety impacts to their operations involving the transport of dredge sediment barges and high interest LNG cargoes through the narrow coastal waterways between Brenton Point and the terminal location. This should be of considerable concern to the ACOE which should satisfy itself that the logistics of the applicant's operations will not result in tragic and preventable marine-related accidents. The ACOE's planned deference to the USCG relative to the safety of the project pending before the ACOE will undoubtedly come back to haunt the Corps should an avoidable accident come to pass.

Another example of the ongoing "shell game" among the responsible federal agencies concerns Weaver's Cove's proposal to dredge the channel. The proposal to dredge the channel beyond the authorized depth of 35 feet is an attempt to disguise the applicants unique needs as something required as result of unsophisticated dredging technology. Coming off the heels of the Providence River federal channel dredging project, the Corps knows well that the dredging technology exists today to avoid unnecessary dredging and its attendant ecological adverse impacts. Section 404 of the Clean Water Act requires that the Corps mandate the applicant's use of the best available control technology to avoid needless over-dredging of

the channel and thereby minimize the negative impacts to fish and wildlife species. The over-dredge regulation is clearly being used as a tool to expand the size of the federal channel in order to accommodate the deeper drafts of LNG tankers (which likely have drafts that exceed 37 feet). This is absolutely clear from testimony of a Weaver's Cove representative at the ACOE public hearing in Fall River held on December 14, 2005:

The existing federal channel will be deepened from its current authorized depth of 35 feet to approximately 37 feet.³⁵

The Corps has no authority to permit a private applicant to expand the dimensions of the federal channel by the planned removal an additional two feet of submerged public trust lands belonging to State of Rhode Island without its approval.³⁶

Moreover, even if the State consented to the channel expansion, the LNG vessels must still navigate on a "rising tide" basis as suggested in the Final Environmental Impact Statement, and thus the channel will still remain insufficient for safe navigation even after the dredging is completed. The insufficient keel clearance for LNG vessels will compromise steerage for the long transit up Mount Hope Bay and the Taunton River. This is of particular concern near the major

³⁵ Testimony of Theodore Barten, Managing Principal, Epsilon Associates, Inc. (ACOE transcript 12/14/05, at 17).

³⁶ Regarding this matter, the Attorney General specifically asked Weaver's Cove whether it would seek State permission for its planned activities in State waters (pursuant to Rhode Island's "Category B" regulatory program. Weaver's Cove replied that it would submit to the State's jurisdiction. See Correspondence of John Boehmert to Attorney General Patrick Lynch, dated June 7, 2005, Exhibit 5.

bridges that the LNG tankers must pass under. It would be contrary to the Corps' public interest mission to approve a request driven by the applicant's desire to avoid the contentious need for far more dredging that would be necessary for safe passage of these large vessels.

If the Corps somehow were to allow this project to go forward (despite the unanimous opposition of every elected official in both affected States), then, at a minimum, the Corps must require that the applicant refile an application for a project that will accommodate the safe transit of LNG tankers in all-weather and tidal conditions. As proposed, the LNG vessels will have virtually no margin of error when transiting through the proposed 37-foot channel. This very limited steering ability provides almost no options in a host of conditions, most particularly in heavy winds, despite the applicants plan to transit the channel on a year-around basis, and in all weather conditions, on average every five days.

The proposed use of the Rhode Island offshore dredge disposal site is also contrary to the public interest. That site was developed after years of hard work by State and Federal officials. It remains as a vital resource to the State and was intended to be used for projects that are supported by the State, and that are deemed by the State to be beneficial to the public. The deposition of dredged sediments carries with it significant ecological impacts on submerged lands of

the disposal site – located only a few miles from one of America’s greatest landscapes – Block Island. It is rather shocking to the State that Weaver’s Cove would seek to monopolize this important asset through the needless dredging of the Fall River federal channel.

Lastly, the record before the Corps clearly indicates that the Weaver’s Cove project is not a federal navigation project, nor is it required to facilitate the navigation of existing marine traffic. We emphasize that the Weaver’s Cove project has no valid public purpose, except to allow the project proponent to reap the windfall profits that it can expect by virtue of a business plan that maximizes profits at the expense of public safety and the environment. It would be one thing if Weaver’s Cove sought certification of its project from the FERC under Section 7 of the Natural Gas Act (NGA) and thereby subjected itself to “cost of service” regulation³⁷ like a traditional public utility, so that the savings that accrue from siting the facility in an urban location would ultimately be passed on to consumers. Instead, Weaver’s Cove seeks NGA Section 3 approval and will sell natural gas at prices dictated by global energy markets. An urban location close to existing pipelines will bring low costs to the project’s sponsors (Hess Amerada and Poten and Partners); and fetch high prices in the

³⁷ In such a case, Weaver’s Cove would certainly earn a fair profit from its operations, but would carry certain public interest obligations.

market as reflected in the New York Mercantile Exchange (NYMEX).³⁸ The people of Fall River and Rhode Island bear the risks and impacts of a poorly selected site, while the shareholders of the companies reap the benefit of owning the one or two LNG terminals that ultimately will be constructed somewhere in the Northeast.

X. WEAVER'S COVE DOES NOT POSSESS PROPERTY OWNERSHIP OF SUBMERGED PUBLIC TRUST LANDS IN RHODE ISLAND AND THEREFORE CAN NOT BE PERMITTED TO DREDGE CONSISTENT WITH 33 CFR § 320.4(g)

It is axiomatic that “in this state, at common law, fee of the soil in tide waters below high-water mark is in the state.” Bailey v. Burges, 11 R.I. 330, 331 (1876). The fairly recent decision by the United States Supreme Court in the Coeur d'Alene case emphasized the connection between the Public Trust Doctrine and state sovereignty. More importantly, the Court emphasized that the United States government is unlikely to ever seek to impair such state sovereignty. Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261 (1997), involving a dispute over a state's title to a lake bottom that was alleged to have been deeded-away by Federal authorities to an Indian tribe, deserves quotation at length:

³⁸ The Corps should be under no misapprehension that Weaver's Cove is focused on one thing only: profits. There is no public service here despite claims of preventing natural gas shortages. Weaver's Cove carries no obligation to ensure that LNG products will be available during times of shortages.

[T]he State . . . [has] sovereign control over submerged lands, lands with a unique status in the law and infused with a **public trust** As we stressed in Utah Div. of State Lands v. United States, 482 U.S. 193, 195-198, 107 S.Ct. 2318, 2320-2322, 96 L.Ed.2d 162 (1987), lands underlying navigable waters have historically been considered “sovereign lands.” State ownership of them has been “considered an essential attribute of sovereignty.” *Id.*, at 195, 107 S.Ct., at 2320. The Court from an early date has acknowledged that the people of each of the Thirteen Colonies at the time of independence “became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government.” Martin v. Lessee of Waddell, 16 Pet. 367, 410, 10 L.Ed. 997 (1842). . . . The importance of these lands to state sovereignty explains our longstanding commitment to the principle that the United States is presumed to have held navigable waters in acquired territory for the ultimate benefit of future States and **that disposals by the United States during the territorial period are not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain.** . . .

The principle which underlies the equal footing doctrine and **the strong presumption of state ownership** is that navigable waters uniquely implicate sovereign interests.

Coeur d’Alene at 283-84 (emphasis added; some internal quotation marks omitted).

Given the fact that Rhode Island, unlike Idaho, was one of the original thirteen states, and given the fact that Weaver’s Cove has less of a claim to submerged lands than a governmental unit of local

Native Americans, the underlying thrust of the Coeur d'Alene dictates that areas below the federal channel are sovereign state lands that can not be dredged without specific approval by the State of Rhode Island.

It is important to note again that the Weaver's Cove project does not present a situation where the United States government is seeking to secure expand or maintain a navigation with an existing federally authorized channel. Rather, a private entity is seeking to take State lands in order to expand the channel depth to accommodate LNG vessels. Accordingly, the State's sovereignty acts to bar any attempt to take the State's submerged tidal lands without specific consent of the State.

XI. THE POTENTIAL CONSEQUENCES OF AN LNG CATASTROPHE ARE SO SERIOUS THAT ACOE MUST CONSIDER SUCH INFORMATION AS A NECESSARY COMPONENT OF ITS PUBLIC INTEREST ANALYSIS, CONSISTENT WITH 33 CFR § 320.4(a)

The most significant issue in this case clearly stems from the need to navigate vast quantities of LNG through densely populated coastal waterways. In this regard, the Rhode Island Attorney General retained Richard Clarke, a nationally recognized counter-terrorism expert to analyze the threat and consequences associated with LNG

marine carriers. A detailed report³⁹ was filed with the FERC that directly contradicts every conclusion contained in the FEIS concerning the “manageability” and “acceptability” of terrorist threats. Unfortunately, the Commission has yet to even acknowledge the multitude of concerns raised in the Clarke Report, let alone seriously consider them. The Corps should not repeat FERC’s mistake.

The City of Fall River could be the first American city to be forced over its objection to host a LNG marine terminal in the post-September 11, 2001 environment. Fall River and all of the Rhode Island cities and towns along Narragansett and Mount Hope Bays (Newport, Jamestown, Middletown, Portsmouth, Bristol and Tiverton) would be forced to endure the risk and potentially catastrophic results stemming from a successful terrorist attack on the a transiting LNG tanker. The dangerous implications are fully articulated in the prefiled testimonies of Richard Clarke, Dr. Jerry Havens, Dr. Harry West and Dr. Bruce Auerbach, all of which are attached as Exhibits.⁴⁰

While the Clarke Report focused on the proposed Keyspan terminal in Providence, its conclusions are equally applicable to the nautical route to Fall River. Through the careful analysis of the nation’s foremost expert on terrorism, the Clarke Report concludes that there are no “low risk” areas for terrorism along the proposed

³⁹ “LNG Facilities in Urban Areas, A Security Risk Management Assessment,” (May 2005), available on the Rhode Island Attorney General’s website at www.riag.ri.gov.

⁴⁰ See Exhibits 6 through 9.

transit route to Fall River. The risk areas are depicted in the graphic, which was prepared with the assistance of an active-duty Navy Seal.



As documented in the Clarke Report, practical limitations on the ability to mitigate intentional attacks along the approximate 50 miles of affected shoreline up and down Narragansett and Mount Hope Bays directly undermine the bizarre conclusions of the Weaver’s

Cove FEIS that such “risks can be managed.” In other words, the *probability* that a catastrophe could occur is directly related to risk management and the effectiveness of security protocols. Clarke testified as follows:

First, the location of an on-shore LNG facility in an urban environment and the passage of LNG tankers along populated in-land waterways would present and exceedingly attractive target for terrorists, the very type of target that terrorists have identified for priority consideration. Second, it simply is not possible to conclude that those types of targets can successfully be defended from terrorist attack. Third, the consequences of a successful attack could well exceed in fatalities, in the infliction of unimaginably painful life-long injuries, and in the destruction of infrastructure, even the consequences of the attacks of 9/11.

* * *

An Urban LNG facility would necessarily rank high on any terrorist’s list of target opportunities. This is not a matter of speculation. We know that organized terrorists groups have long identified components of energy infrastructure as desirable targets. We know that tanker traffic, and in particular energy laden tanker traffic, has similarly been identified. And we know that when it comes to identifying targets of opportunity, the ability to inflict maximum human suffering, maximum economic loss, and maximum chaos factor heavily into the terrorist mindset. All of these objectives would be achieved were terrorists to succeed with an attack on either the KeySpan or the Weavers Cove facility or on LNG tankers while traveling to or from those installations.⁴¹

The Corps should recognize that the potential risk and catastrophic outcome from any disaster involving LNG far outweigh

⁴¹ Direct Testimony of Richard Clarke, at 5-6, see Exhibit 6.

any value the project may contain. The fact that terrorist groups have targeted energy infrastructure and vessels similar to the Weaver's Cove facility and the LNG tankers should lead the Corps to determine that risk of such an attack is real, and the impact that such an attack would have on an urban area or coastline community would be economically and socially catastrophic.

Dr. Bruce Auerbach MD, who is board certified in emergency medicine as well as being responsible for the emergency management plan at Sturdy Memorial Hospital (as well as being a member of the Bristol County Homeland Security Task Force), testified concerning the inadequacy of emergency response capability:

There is no longer any dispute that a major release of LNG and the expected "pool fire" would produce thermal radiation impacts that would present unprecedented and extraordinary impacts on the emergency response and medical care resources across the entire region. * * * If such a pool fire ever did occur along many areas of the 26 mile nautical route up Rhode Island and Massachusetts coastal waterways, the consequences would be so far beyond the capability of existing medical resources that there is absolutely no way any conceived emergency response plan could ever capably respond to such an event.⁴²

Based upon the testimony of Clarke, Havens, West and Auerbach, the Corps can independently conclude that the *probability* that the horrific consequences (depicted in the graphic below) will

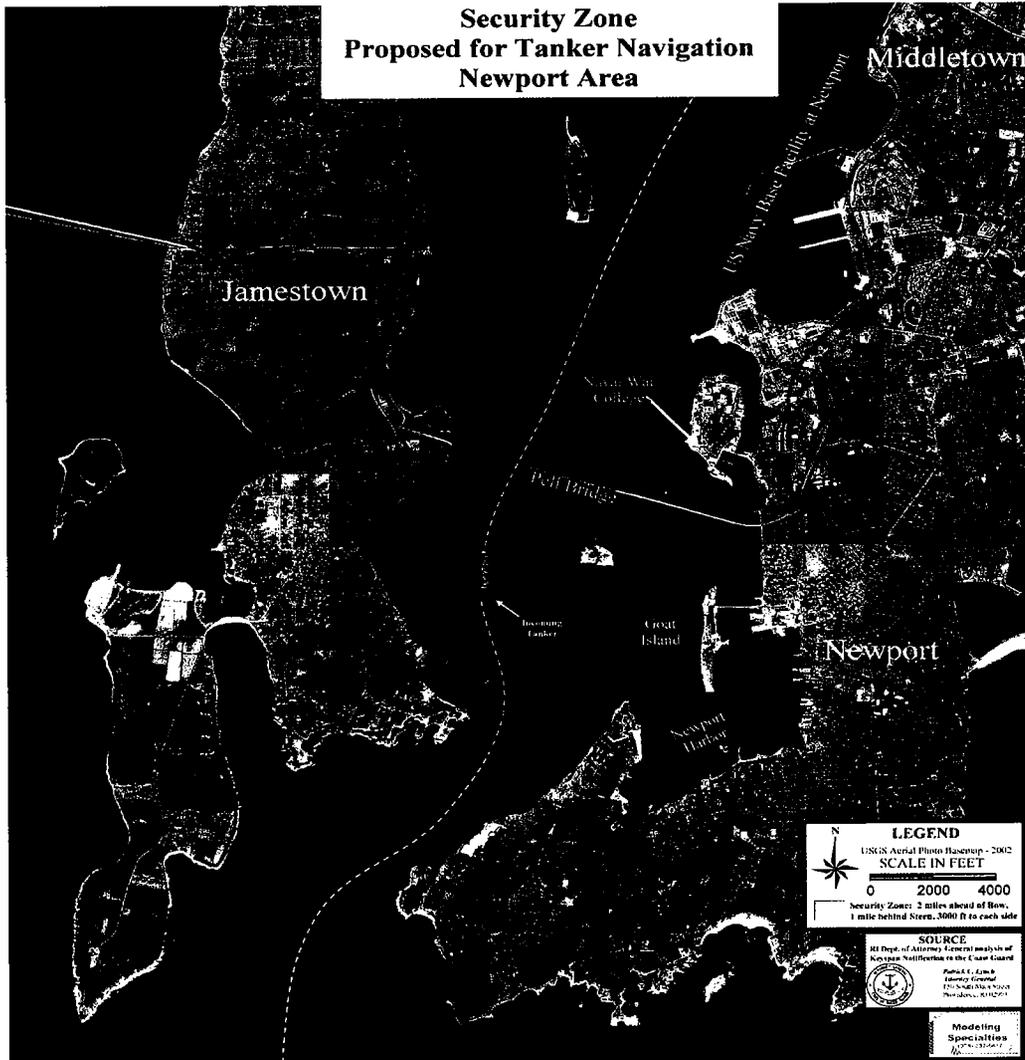
⁴² Direct Testimony of Bruce Auerbach, MD, p 5, see Exhibit 9.

occur are much *greater* than either FERC or the U.S. Coast Guard have concluded in the FEIS document.



XII. THE U.S. COAST GUARD SECURITY ZONES WILL COMPROMISE THE RECREATIONAL USE OF MOUNT HOPE BAY, NARRAGANSETT BAY AND THE TAUNTON RIVER, IN VIOLATION OF 33 CFR § 320.4(e)

The Aquidneck Island Planning Commission commissioned a study to analyze the effects of USCG safety and security zones that must be employed around LNG vessels transiting up and down Narragansett Bay. An example of the security zone, as defined by federal regulation, is provided below:



Although the study by Pare Engineering Corporation focused on impacts around Aquidneck Island, the conclusions of the analysis demonstrate that LNG tankers in Narragansett Bay will cause significant interference with commercial and recreational boating activities along the East Passage. It is important to note that the FEIS for the Weaver's Cove project did not analyze the impacts of security zones on recreational boaters – the primary use of the Narragansett Bay estuary. More than 40,000 boaters use Narragansett Bay, Mount Hope Bay and the adjoining tributaries.

The impacts of the security zones on recreational boaters, commercial fishermen, ferries, tour boats, charters, sailing regattas and cruise ships are significant. Delays from bridge closures of up to an hour are predicted, and it is almost a certainty that over the long-term, the frequency of hazardous cargo shipment will negatively impact the State and local economy. The major conclusions of the study are as follows:

- The introduction tanker traffic to Narragansett Bay will “impact the local economy and the way of life for Aquidneck Island residents and visitors alike;”
- LNG tanker activity will “directly affect recreational and competitive sailing, tourism, high-end life style second

home development, and the Naval Undersea Warfare Center;”

- The negative effects on the marine dependent economy will be “felt throughout the state economy as well;”
- Narragansett Bay is one of Rhode Island’s “primary economic assets. Its value to marine recreation, tourism, fisheries and aquaculture, boat building, boating-related businesses, shipbuilding, marine transportation, military and marine research, technology and education have been well documented.” The total annual value of Bay-related outdoor recreation activities is \$2 billion;
- Imposed LNG tanker safety and security zones will dominate much of the East Passage, temporarily blocking recreational and commercial marine traffic, ferry operations, tourist cruises, and lifeline ferry service and emergency runs to Prudence and Hog Islands;
- Delays to boaters could exceed 30 minutes in the Newport Harbor area, including areas to the north and south;
- Newport is recognized “nationally and internationally as a world-class yachting center.” Over 2/3 of events on Narragansett Bay are scheduled in the waters off Newport. The irregular and unannounced schedule of LNG tanker transits, together with delays to boating associated with

passage of LNG tanker safety and security zones, jeopardizes Newport's world-class image;

- Newport could lose the ability to retain major regattas and events such as the Tall Ships, which attract local, national and international participation;
- The cruise ship industry could find Newport less attractive as unannounced safety and security zones may preclude use of the cruise ship mooring area in close proximity to the federal channel;
- When combined with vehicular traffic impacts stemming from bridge closures and the general anxiety associated with safety, LNG tanker transport could jeopardize the marine oriented life of Newport and the surrounding communities of Jamestown, Middletown, Portsmouth, Bristol and other towns along the LNG tanker transit route.

Around the world, people may not know Rhode Island, but they do know Newport – an international destination for yachting and sailing. The introduction of LNG tanker traffic which would convert the current status of infrequent hazardous cargo shipments to a normal, routine practice on Narragansett Bay, is absolutely detrimental to Rhode Island's greatest recreational resource as well as

the State and local economy.⁴³ FERC, which never specifically analyzed the impacts of security zones on recreational boaters in the FEIS, was provided with the Pare Engineering Study along with the State's Request for Rehearing. FERC declined to even address the Study. FERC's blatant disregard of the Pare Engineering Study requires that the Corps review the Study carefully since the conclusions represent direct outcomes of the project purpose under consideration by the Corps. The Study is attached as Exhibit 11, and independently warrants denial of dredging permits.

XIII. THE DANGEROUS NATURE OF LNG CARGOES AND THE NEED FOR COAST GUARD SECURITY/EXCLUSION ZONES WILL IMPEDE NAVIGATION OF NAVIGABLE WATERS AND BE CONTRARY TO ACOE PUBLIC INTEREST STANDARDS SET FORTH IN 33 CFR § 320.4(o)

In addition to the impacts of moving safety and security zones around LNG vessels that will be employed by the Coast Guard, the Corps must also consider the impact of LNG vessels berthing at the terminal in the Taunton River. After the approximate five hour trip to reach the terminal, the LNG vessel will take approximately 16 to 24 hours for vessels to off-load the LNG into the facility's storage tank. During this period, the Coast Guard will employ a security zone that will severely constrict navigation. As the Corps knows, that portion of

⁴³ The negative impacts are also discussed in the attached affidavit of Evan Smith, see Exhibit 10.

the Taunton River in close proximity to the LNG terminal is less than ½ mile wide. The security protocols by the Coast Guard will essentially create a roadblock by the terminal every five days for up to 24 hours, as vessels will need to maintain a safe clearance from the tanker in order to ensure that a terrorist attack could not be mounted by a passing vessel. Given that the Taunton River is a forty-mile-long navigable waterway of the United States that is of particular importance to Rhode Island and Massachusetts citizens, the Corps should have grave concerns about the prospect of allowing a private company to convert a major public waterway into one that will be plagued by a continuous military-style exclusion zone, and one that during the off-loading of LNG tankers will literally shut down (or seriously hamper) the free flow of marine traffic along the waterway every five to six days on average.

What FERC and the Coast Guard have yet to comprehend or convey to the public is that the siting of new facilities that require the transport of hazardous cargoes through densely populated waterways carries with it enormous public policy implications. No recent use of the federal channel poses such substantial and negative interference beyond the limits of federal navigation channel both due to the unprecedented consequences of an LNG "pool fire" as well as the need to use federal military forces to temporarily exclude access of all other boaters to the public waterway while LNG tanker is in transit.

While FERC and the Coast Guard have turned a deaf ear to these concerns, the gravity of the situation should not be lost on the Corps – whose primary mission is to preserve and enhance (not impede and routinely stop) navigation for all maritime traffic: “Protection of navigation in all navigable waters of the United States continues to be a primary concern of the federal government.” 33 CFR § 320.4(o)(3). This mandate is clearly lost on the FERC, which sees its role as solely the supply-side facilitator of LNG projects. The mandate is equally lost on the U.S. Coast Guard, which sees its role as the federal police unit in the Ports and along the navigable waterways of United States.

In stark contrast, the Corps is the steward of the navigable waterways of the United States, including the 26 miles of federal channel running from Brenton Point to lower reaches of the Taunton river – and beyond. Accordingly, the Corps must take into consideration the detrimental impacts to navigation and the public’s continuing right to have free and open access to these cherished natural resources that truly are the economic and cultural lifeblood of Rhode Island.⁴⁴

⁴⁴ The Corps should weigh the impact of a terrorist attack on an LNG tanker or an LNG facility. In Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 774, 103 S.Ct. 1556, 75 L.Ed.2d 534 (1983), the court ruled, “effects on human health can be cognizable under NEPA, and that human health may include psychological health.” The psychological effect that the LNG facility and tankers would create on the welfare of the people of both Rhode Island and Massachusetts can’t be underestimated. The LNG tankers would close down bridges along the navigation route, making the tankers easily seen and add to the psychological effect on the welfare of the people along the navigation route.

**IX. THE ACOE MUST CONSIDER THE SAFETY OF
WEAVER'S COVE'S "PROPOSED ACTIVITY AND
PROBABLE USE" AS REQUIRED BY 33 CFR § 320.4(a)**

The Army Corps of Engineers is jointly responsible with the Coast Guard and FERC for safe vessel transit. See 33 CFR § 320(a). The Corps' public notice was legally deficient on its face in purporting to represent that "U.S. Coast Guard and FERC are the federal agencies responsible for safe vessel transit and facility operation, and the Corps will utilize the findings of these two agencies on these issues in its deliberations."

The Attorney General takes this opportunity to call the Corps' attention to 33 CFR § 320.4 entitled, "General Policies for Evaluating Permit Applications" and more particularly Section (a)(1) of that provision entitled, "Public Interest Review," wherein federal law provides as follows: "The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. * * * All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are . . . safety" (Emphasis added).

The Corps cannot sidestep its obligation to conduct the public interest review mandated by federal regulation simply because other federal agencies are involved with permitting certain aspects of the

project. By informing the public that it has delegated such authority to other agencies, in clear contravention of federal regulation, the ACOE has violated its legal mandate and should remedy this important procedural and substantive deficiency.

Even if the Corps was legally entitled to delegate critical components of its public interest review to other agencies, the findings of FERC and the Coast Guard to relative to vessel transit and facility operation are clearly erroneous, arbitrary and capricious, and should not be relied upon by the Corps. The ACOE was not intended to be a rubber stamp for other agencies that utterly fail to execute their respective obligations to provide for the safety of Rhode Island citizens. The Attorney General has secured access to all confidential material pertaining to the safety and security plan for the project and strongly recommends that the Corps gain similar access in order to make a fair assessment about the adequacy or inadequacy of the findings of these two agencies on the most vital issue raised in this case: safety.

We offer the following information to demonstrate that Corps should be highly skeptical of delegating safety considerations. In the FEIS, FERC assumed that the size of Coast Guard security zones around LNG vessels in Narragansett Bay would measure two miles off the bow, one mile off the stern and 1500 feet on either side of the LNG vessel. Yet, the actual federal regulation cited in the FEIS provides for

a security zone width of 3000 feet on either side of the vessel.⁴⁵ The existing regulation was promulgated weeks after the 9/11 attacks and was deemed to be necessary in the interest of securing much smaller, and much less frequent, shipments of LPG to the Port of Providence.⁴⁶ In promulgating the emergency regulation, the Coast Guard explained the need as follows:

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the highly volatile nature of the high interest vessels covered by this rule and the potential catastrophic impact of an attack on a high interest vessel, this rulemaking is urgently required to prevent possible terrorist strikes against high interest vessels within and adjacent to Rhode Island Sound, Narragansett Bay and the Providence and Taunton Rivers. * * * The sizes of the zones are the minimum necessary to provide adequate protection for high interest vessels and their crews, other vessels operating in the vicinity of high interest vessels and the crews, adjoining areas, and the public.

In stark contrast to the dire predictions about what is “minimally necessary” to safeguard the transit of volatile hazardous cargoes such as LNG, the Chief of Marine Safety and Security for the First Coast Guard District has signaled an intent to permit FERC to drastically reduce the size of security zones in order to facilitate the project. As the Marine Safety Chief public stated, the security zone

⁴⁵ See 33 C.F.R. § 165.121.

⁴⁶ LPG shipments number approximately 10 per year.

“isn’t as critical an issue as some people think it is” and that the Coast Guard can modify the existing zone to be consistent with the distances recommended by FERC.⁴⁷

It is with great reluctance that we must also point out that as well intended as the Coast Guard may be, it too has continued to face budgetary constraints, and experienced a major terrorist attack at its own military headquarters – the Pentagon in Washington D.C. At a time of major reshuffling of responsibilities among new and existing federal agencies, including the Coast Guard, it is astounding that the Coast Guard would even consider any attempt (particularly by another agency) to dilute existing security protocols around some of the largest and most hazardous cargoes to enter Narragansett Bay in the State’s history.

According to Coast Guard data, identifying threats and securing against maritime terrorist activities is ever more challenging given that the agency has to monitor 95,000 miles of coast line, 361 ports, 200 daily arrivals of foreign vessels and 76 million recreational boaters. By reducing the width of the security zones, the FERC and the Coast Guard are almost inviting a disaster given the inevitable conflict that will occur between the need to secure safe transit of the LNG vessels and ferreting out potential terrorists among the more than 40,000

⁴⁷ See Providence Journal, August 27, 2005, “Weaver’s Cove Rejects LNG Impact Study.” *Exhibit 12*.

boaters who use the Bay (many of whom will not know that a “hazardous cargo” is moving up or down the Bay).

Given available weaponry and the continuing need to safeguard both the public and the hazardous cargo contained in the ship, the Attorney General submits that the Coast Guard clearly has no legitimate basis to exempt LNG shipments from the rigors of current safety regulations. Moreover, any attempt to change federal law or to act unilaterally to reduce the scope of security in the face of requests from Weaver’s Cove Energy representatives and/or FERC officials would be inappropriate and reckless.⁴⁸

XV. THE PUBLIC INTEREST REQUIRES THE CORPS TO TAKE INTO CONSIDERATION RHODE ISLAND’S DECISION TO CLOSE THE BRIDGES DURING LNG TANKER TRANSITS, CONSISTENT WITH 33 CFR § 320.4(a)

Although the FERC speculated in the FEIS that major bridges would not be closed, on June 14, 2005, the Rhode Island Turnpike and Bridge Authority (“RITBA”), the state agency charged statutorily with control over the Newport/Pell Bridge and the Mount Hope Bridge,

⁴⁸ Even Keyspan’s Notice of Intent to the Coast Guard assumed a width of 3000 feet on either side of the LNG vessel. It is difficult to understand why the Coast Guard or FERC would sanction a substantial reduction in the scope of security when the other LNG project applicants were prepared to abide by existing regulations. Robust security protocols for hazardous cargo transits should not be sacrificed to facilitate the Weaver’s Cove project. On this point, Captain Mary Landry of the USCG was quoted stating that the security zones were malleable and that the Coast Guard would try to defer to FERC’s recommendation on this matter. (See Providence Journal, August 27 2005, entitled, Weaver’s Cove Rejects LNG Impact Study”, Exhibit 12). The security of the citizens of Rhode Island is a vital matter and the Attorney General would expect that any adulteration of security zones would be subject to notice and public comment via the Federal Register.

passed a resolution indicating the it would, in fact, close the Newport/Pell Bridge every single time an LNG tanker passed under the bridge.⁴⁹ As evidenced by RITBA's Resolution (see Exhibit 14), both the Claiborne Pell Newport Bridge *and* the Mount Hope Bridge will be closed during the projected 140 supertanker transits under both bridges as vast quantities of extremely hazardous cargo underneath Rhode Island's vital transportation infrastructure has been deemed to pose unacceptable risks.



An aerial view of the Mount Hope Bridge looking southeast.

⁴⁹ In contravention of NEPA, and what fairly can be characterized as an arbitrary and capricious action, the FERC apparently still refuses to acknowledge the validity and significance of RITBA's action since it was dismissively treated in the FERC's subsequent order approving the Weaver's Cove Energy project, and again in the FERC's Order denying Rhode Island's Request for Rehearing.



Aerial view of Newport/Pell Bridge looking Northwest.

The need for bridge closures are more fully articulated in the attached affidavit of Peter Janaros,⁵⁰ Director of Engineering for RITBA. For significant security reasons, the bridges will be closed “before, during and after” the tankers transit under the bridges. Despite Rhode Island’s request, the FERC refused to analyze the obvious disruptive impacts of 140 bridge closures for periods up to 20 minutes.

In light of RITBA’s decision to close the bridges in Rhode Island, the Aquidneck Island Planning Commission (an independent planning agency serving the three Aquidneck Island communities of Portsmouth, Middletown and Newport), commissioned a comprehensive analysis of the impacts that would occur as a result of frequent bridge closures due to the Weaver’s Cove project. The

⁵⁰ The Janaros Affidavit is attached as Exhibit 14.

analysis and conclusions – none of which are contained in the FEIS – demonstrate the severity of economic and public safety impacts that will result to the communities of Newport, Jamestown, Bristol, Middletown and Portsmouth. The analysis utilized Weaver’s Cove’s data regarding traffic volumes. The negative impacts are highlighted below:

- Bridge closures on the Newport/Pell Bridge would consistently result in traffic back-ups for more than one mile during the peak season months from May through September and during the commuter rush hours throughout the year;
- The average delay will be approximately 25 minutes before the traffic returns to normal flow conditions, assuming no accidents or heavy traffic volumes;
- Access to and from “any and all” emergency response/municipal facilities could be severely restricted by queues on the bridge approaches;
- The closures of the Mount Hope Bridge, which will be within feet of the passing LNG tanker, will cause even greater traffic impacts (delays up to 45 minutes long) due to existing traffic volumes and the lack of capacity on the two-lane roads in proximity of the bridge.

- The traffic congestion will delay or impair the ability of rescue vehicles to transport patients from Jamestown to Newport Hospital, and from Bristol to Newport Hospital, and could require transport to an alternative hospital (an additional 14 minute delay) and thus place patients' health and safety at risk;
- The repeated delays and traffic congestion would likely have a long-term devastating economic impact on the economy of Aquidneck Island.

The Traffic Impact analysis prepared by Louis Berger Group, Inc. is attached hereto as Exhibit 15. The detrimental consequences of bridge closures will be a direct outcome of granting Weaver's Cove the requested dredging permit. Accordingly, the Corps must consider the socioeconomic impacts of bridge closures, which only adds to the weight of evidence mounting before the Corps demonstrating without question that the dredging permits should be denied.

XVI. THE PUBLIC INTEREST MANDATES THAT THE CORPS WEIGH NATIONAL SECURITY IMPLICATIONS OF THE WEAVER'S COVE PROJECT AND THE PUBLIC SAFETY RISKS THAT ARE BORNE BY RHODE ISLAND CITIZENS

The Corps should consciously address some of the most critical but probable impacts associated with the proposed activities of the Weaver's Cove terminals: the threat of a terrorist attack on an LNG

tanker and the inability of the Coast Guard, State Police and local law enforcement to prevent such an attack, or manage its consequences.

Attached to the Attorney General's Comments are a number of affidavits from law enforcement and public safety officials who will bear much of the responsibility to secure the shoreline areas along the transit route and be required to respond to the consequences of an LNG pool fire. The theme of the affidavits is the same: protecting these LNG tankers from a well-coordinated attack and/or capably responding to an LNG catastrophe is practically impossible.⁵¹ As further evidenced in the attached letter from the Rhode Island Police Chiefs Association to Rhode Island Attorney General Lynch,⁵² there exists a serious concern about the capability of law enforcement agencies to secure the transits of LNG supertankers as well as the requisite bridge closures that will become necessary.

We also draw the Corps' attention to Attorney General Patrick Lynch's correspondence to Secretary of the Navy Gordon England regarding the placement of the Naval War College (NWC)— America's military "think tank"— directly within the zone of destruction in the event of a successful attack on an LNG tanker in Newport Harbor.⁵³ The Clarke Report already confirmed that multiple terrorist

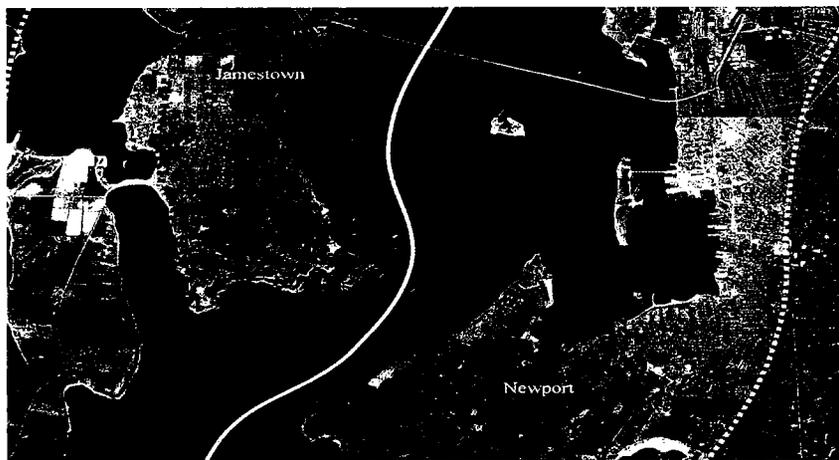
⁵¹ See attached Affidavits of James Bryer, Dennis Canario, Clement Napolitano and Diane Mederos, and Brendan Doherty, see Exhibits 16 through 20.

⁵² See Exhibit 21.

⁵³ See correspondence of Patrick C. Lynch, Attorney General of the State of Rhode Island, to Gordon England, Secretary of the Navy, dated August 17, 2005, attached as Exhibit 22.

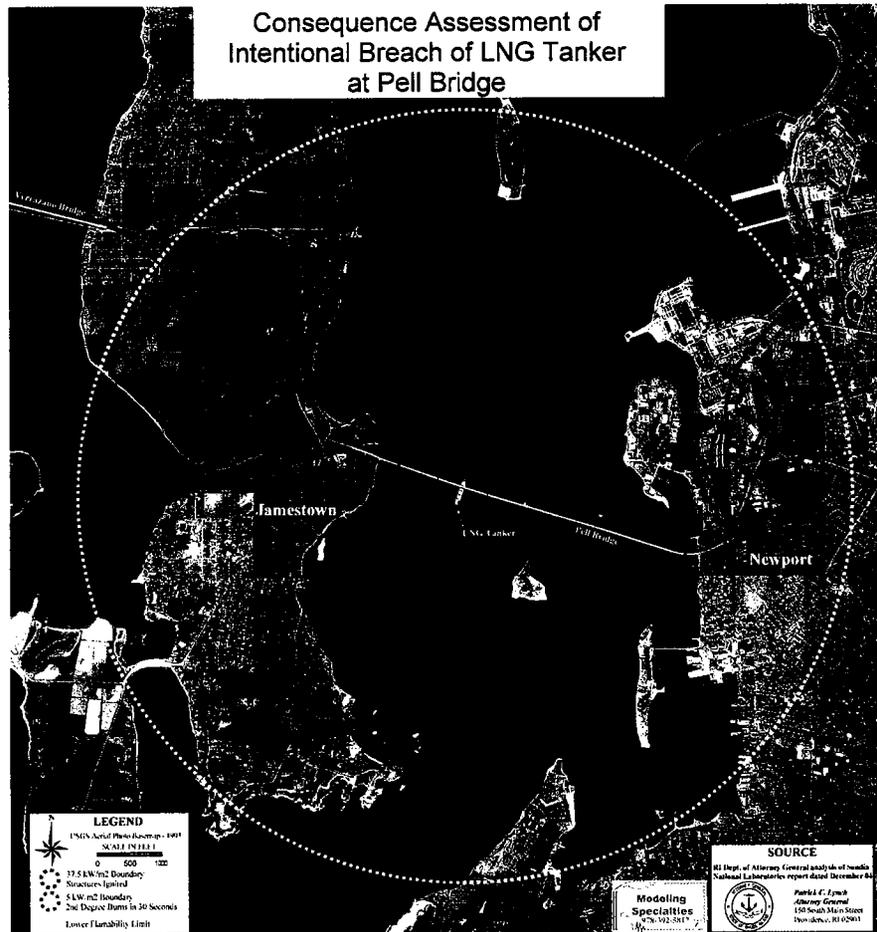
organizations possess the *intent* and *capability* to pull off a successful terrorist attack on a LNG supertanker. Moreover, Newport Harbor has been deemed an area of “extremely high risk” in terms of a potential terrorist attack.

What is most troubling is that the Department of the Navy refusal to respond to the legitimate questions posed by Attorney General Lynch’s letter will leave the citizens of the State vulnerable to the elevated risk and catastrophic consequences of a terrorist attack. As depicted in the graphics below, all of the proper ingredients exist: (1) U.S. military targets (i.e., U.S. Navy, NWC, Naval Undersea Warfare Center, and the Naval Educational Training Center); (2) transportation infrastructure (i.e. the Newport/Pell Bridge); (3) access to a major East Coast Port; (4) and the potential for heavy casualties.⁵⁴



*Source: Sandia National Laboratories Analysis of LNG Tanker Breach
Red Zone: 37.5 kW/m²; Orange Zone: 5 kW/m²; Yellow: LFL*

⁵⁴ The Attorney General has consulted with a NWC terrorism expert, and we recommend that the Corps inquire directly for itself to verify the concerns stated herein.



*Source: Sandia National Laboratories Analysis of LNG Tanker Breach
Red Zone: 37.5 kW/m²; Orange Zone: 5 kW/m²; Yellow: LFL*

Much of the concerns articulated herein (and contained in the studies and affidavits) forced Rhode Island’s Emergency Management Advisory Council to condemn the Weaver’s Cove proposal citing “extraordinary environmental, economic and public safety concerns.” The Resolution, attached hereto, was enacted after the State’s highest and most respected military official, Major General Reginald A. Centracchio, announced his staunch opposition to both the Keyspan

and Weaver's Cove proposals.⁵⁵ At the time, Major General Centracchio was the Director of the Rhode Island Emergency Management Agency (the state counterpart to FEMA), the Director of the State's Homeland Security office, and the Commander of the Rhode Island National Guard for more than a decade.⁵⁶ The May 10, 2005 minutes of the Rhode Island Emergency Management Advisory Council report that Major General Centracchio made the following comments:

General Centracchio stated that in emergency planning and homeland security, you must assume that the possibility is 100% that you could have a catastrophic scenario. As our resources stand today, the security necessary for such a facility requires and inordinate amount of resources. An attack on a tanker or expanded facility would immediately exhaust consequence capability in all of our hospitals, as well as our ability to evacuate on the highway and air. In General Centracchio's opinion, it would be absolutely irresponsible to locate this facility in an urban area. It clearly exceeds our capacity to bring to bear the resources that would be required not only to mitigate it, but also to deal with consequences. General Centracchio stated that positioning of this site in the Port of Providence is not feasible and if the intent to commit a suicide attack is there, the (terrorist) will succeed and we will have to deal with the consequences.⁵⁷

The Corps clearly has a public interest obligation to avoid the public safety and national security implications of allowing LNG tankers to transit through unique naval weapon testing areas, in close proximity to vital U.S. military installations, under landmark bridges,

⁵⁵ The RIEMA Resolution is attached as Exhibit 23.

⁵⁶ Major General Centracchio retired in 2005.

⁵⁷ See Minutes of Rhode Island Emergency Management Advisory Council, dated May 10, 2005 (attached along with Exhibit 23).

along numerous densely populated neighborhoods, and into the heart of a major city, thereby unnecessarily exposing thousands of Rhode Island and Massachusetts citizens to the catastrophic consequences of an LNG inferno on water. All of the concerns could be avoided with other reasonable alternatives. The Attorney General urges the Corps to recognize these impacts as probable consequences of the Weaver's Cove project that further demonstrate the extent to which the detriments far exceed any benefit.

XIII. THE CORPS SHOULD CONSIDER PUBLIC SAFETY IMPLICATIONS ASSOCIATED WITH THE LNG TANKERS TRANSITING UNDER HIGH-VOLTAGE POWER LINES ACROSS THE TAUNTON RIVER

LNG vessels transiting up the Taunton River to the terminal location will by necessity have to pass beneath 115,000 volt power lines that according to nautical charts have a height clearance of 145 feet above the waterway. The height of LNG tankers could leave as little clearance as 10-15 feet, and thus pose a real risk of electrical arcing from the power lines to the vessel, particularly during periods of high energy demand, high outdoor temperatures and high humidity, all of which can increase the chances of arcing electricity coming in direct contact with the passing LNG vessel.

The Corps understands the dangers of arcing from the Weymouth Fore River incident in August of 1999, in which a 40-foot sailing vessel was completely destroyed when power arced from

overhead transmission lines to the vessels mast, causing the vessel to be engulfed in flames within a matter of seconds. The incident is described in the attached affidavit and photographs.⁵⁸

In the matter before the Corps, the existing overhead clearance between the high-voltage power lines and the passing 37 million gallons of LNG provides an inadequate margin of safety to account for wakes, sagging, heat, arcing and extreme high tides. Consequently, the Corps' stated intent to rely on FERC and U.S. Coast Guard on all matters relative to safe vessel transit and facility operation would constitute an abrogation of the Corps' legal responsibility since neither agency has considered the potential public safety impacts of the power line crossing.

VIII. CONCLUSION

It is hard to conceive of a case where the detriments of a project stack so high, and where the benefits simply do not exist, than this project. In the post-9/11 environment, the Weaver's Cove project simply makes no sense. The project is also inconsistent with Rhode Island's Coastal Zone Management Program given negative impacts on natural, recreational and cultural resources. Unlike the other involved federal agencies, the Corps should exercise common sense in deciding whether the public interest will be furthered or harmed by

⁵⁸ See Exhibit 24. This copy is an unexecuted version of the affidavit that was supplied to the Rhode Island Energy Facility Siting Board. If necessary, an executed version can be obtained.

the project and should deny authorizations for the project given all of the serious concerns discussed herein, which severally and collectively demonstrate that the detriments of the Weaver's Cove project far exceed any benefit. Accordingly, the Attorney General respectfully requests that the Corps deny the requested authorizations.

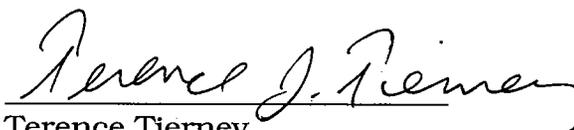
Respectfully submitted,

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