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VIA ELECTRONIC MAIL

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**Re: Delaware River Partners, LLC, Joint Application for Multiple Land Use Permits
Activity No. 0807-21-0002.1-LUP-210001**

Dear Ms. Biggins,

Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper, (collectively, "DRN") provide the following comments for your review in evaluating Delaware River Partners LLC's ("DRP's") application for a Freshwater Wetlands Individual Permit and Transition Area Waiver, Waterfront Development Individual Permit, and Coastal Wetlands Permit ("Joint Application"). DRP seeks to construct a "rail loop" for trains to support the transloading of cargo, including liquefied natural gas ("LNG"), at the Gibbstown Logistics Center ("GLC") in Greenwich Township, Gloucester County.

New Jersey Department of Environmental Protection ("NJDEP") must deny DRP's Joint Application because the lawfulness of DRP's proposed LNG operations is currently an unresolved issue before the Federal Energy Regulatory Commission ("FERC") and the Pipeline and Hazardous Materials Safety Administration ("PHMSA"); because the entire GLC has been segmented through piecemeal applications; because the Joint Application fails to include the information necessary to justify the issuance of the permits requested; because the risks associated with transportation, storage, and transloading of LNG are not acceptable in the densely-populated area of the GLC; and because the Joint Application proposes unacceptable impacts to threatened and endangered species as well as wetlands and vegetation.

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No further construction or infrastructure at the GLC to support proposed LNG transloading operations should be approved until both FERC rules on DRP’s Petition for Declaratory Order and PHMSA reaches a decision on LNG by rail.

For the Project to be authorized under the Freshwater Wetlands Protection Act Rules, it must be “otherwise lawful.”¹ Whether the proposed LNG operations at the GLC are “lawful” is an open question that is currently being considered by both the Federal Energy Regulatory Commission and the U.S. Department of Transportation’s PHMSA.

DRP’s Joint Application is for the authorization of additional infrastructure to support the LNG transloading operations at the GLC. At the same time, pending before FERC is a petition for declaratory order² filed by DRP seeking a ruling that the GLC is *not* subject to FERC’s jurisdiction under the federal Natural Gas Act.³ NJDEP should not issue additional permits for the GLC until FERC has resolved the issue of Natural Gas Act jurisdiction currently before it. To do otherwise would deprive the public of the important oversight provided by FERC in the siting and construction of natural gas infrastructure and would further exacerbate the cart-before-the-horse approach that DRP has pursued thus far in developing the GLC.

NJDEP first issued permits for the construction of the Gibbstown Logistics Center in 2017, authorizing a dock and associated marine terminal.⁴ Later, in 2019, DEP issued another waterfront development permit for a deep-water port intended to receive and export LNG, among other products.⁵ Now, after substantial construction has been completed on the GLC, and after seeking a ruling from FERC on the extent of its jurisdiction over the facility, DRP yet again requests approval from NJDEP for additional infrastructure to support its LNG operations. In light of the likely ruling from FERC that DRP erroneously believed the GLC was not subject to the Natural Gas Act,⁶ any action from NJDEP to support additional construction at the site would compound this error.

To illustrate the problem—in 2020, New Fortress Energy LLC⁷ constructed an LNG facility in the Port of San Juan, Puerto Rico. Subsequently, FERC issued an Order to Show

¹ N.J.A.C. 7:7A-10.2(b)(11).

² Petition for Declaratory Order Disclaiming Jurisdiction, Doc. Accession No. 20200911-5331, Delaware River Partners LLC, FERC Docket No. CP20-522-000 (Sept. 11, 2020) (Enclosed). Delaware Riverkeeper Network and Maya van Rossum, the Delaware Riverkeeper intervened in that proceeding and filed a protest in opposition. *See* Protest in Opposition to Petition for Declaratory Order, Doc. Accession No. 20201015-5151, Delaware River Partners LLC, FERC Docket No. CP20-522-000 (Oct. 15, 2020).

³ 15 U.S.C. §§ 717-717z.

⁴ *See* NJDEP File No. 0807-16-001.2 WFD160001, WFD160002, FHA160001, FHA160002, CSW160001, FWW160001, and FWW160002.

⁵ *See* NJDEP File No. 0807-16-001.2 WFD19001. This permit is currently the subject of a Petition for Certification filed in the New Jersey Supreme Court by Delaware Riverkeeper Network and Maya van Rossum, the Delaware Riverkeeper. *See In re: Challenge of Delaware Riverkeeper Network*, Docket No. 86,039.

⁶ 15 U.S.C. §§ 717-717z.

⁷ Now known as New Fortress Energy, Inc., a corporation majority owned by Fortress Investment Group LLC. Delaware River Partners, LLC is a subsidiary of Fortress Transportation and Infrastructure Investors LLC, which is externally managed by FIG LLC, an affiliate of Fortress Investment Group LLC.

Cause why the already-constructed facilities were not subject to § 3 of the Natural Gas Act.⁸ Ultimately, FERC decided that the San Juan facility *was* subject to its jurisdiction, and that New Fortress Energy LLC was required to submit an application for authorization to operate the facility.⁹ Unfortunately, since the facility had already been constructed, FERC was no longer able to evaluate the facility's siting or construction as required by § 3(e)(1) of the NGA.¹⁰ Recently, NFEnergía LLC¹¹ applied for authorization to operate the San Juan facility, making clear that it did “not propose the construction of any new facilities and is merely requesting authorization to operate” the facility.¹²

To avoid a deprivation of FERC oversight required by the Natural Gas Act, DEP must refrain from approving new construction at the Gibbstown Logistics Center until the jurisdictional issue is resolved. Should FERC decide that the Gibbstown Logistics Center merits review under the Natural Gas Act, the siting and construction of the infrastructure proposed in the Joint Application must be reviewed and then approved, modified, or denied in that process, in cooperation with co-regulators such as DEP.

Additionally, the Special Permit that would have allowed unit trains to transport LNG to the GLC expired as of November 30, 2021,¹³ and PHMSA has proposed the suspension of the Hazardous Materials Regulations amendments that would allow LNG by rail nationwide.¹⁴ Thus, the legal status of being able to transport LNG by rail, a primary purpose of the GLC and the infrastructure proposed in the Joint Application, is currently in question. NJDEP should deny the Joint Application while the legality of transporting LNG by rail is unresolved.

The Joint Application should be denied because the development of the GLC has been segmented through piecemeal applications, depriving NJDEP of its authority to engage in a holistic analysis of the GLC's environmental impacts.

The Freshwater Wetlands Protection Act Rules provides that “an applicant shall not segment a project of its impacts by separately applying for individual permits for different portions of the same project.”¹⁵ The GLC, from its inception, was planned as a major facility

⁸ Order to Show Cause, New Fortress Energy LLC, 171 FERC ¶ 61,230 (June 18, 2020).

⁹ Order on Show Cause, New Fortress Energy LLC, 174 FERC ¶ 61,207 (March 19, 2021). New Fortress Energy, Inc. is seeking review of this Order in the U.S. Court of Appeals for the D.C. Circuit. *See New Fortress Energy, Inc. v. F.E.R.C.*, No. 21-1122 (D.C. Cir.).

¹⁰ 15 U.S.C. § 717b(e)(1)

¹¹ A wholly owned, indirect subsidiary of New Fortress Energy, Inc.

¹² Application for Authorization Under Section 3 of the Natural Gas Act at 10, Doc. Accession No. 20210915-5107, NFEnergía LLC, FERC Docket No. CP21-496-000 (Sept. 15, 2021).

¹³ *See* Special Permit DOT-SP 20534, U.S. Dept. of Transp., Pipeline & Haz. Mat. Safety Admin. (Issued December 5, 2019). Because Energy Transport Solutions, LLC, the holder of the Special Permit, did not apply for renewal at least 60 days before the Special Permit's expiration date, it expired by its terms. *See* 49 C.F.R. § 107.109(b).

¹⁴ Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail, Pipeline & Haz. Mat. Safety Admin., 86 Fed. Reg. 61,731 (Nov. 8, 2021) (Attachment A).

¹⁵ N.J.A.C. 7:7A-10.1.

handling bulk liquid products including LNG,¹⁶ although that commodity did not come to light throughout the regulatory process until it was discovered through a Freedom of Information Act request. Nevertheless, DRP has applied to NJDEP for three separate sets of permits for this development, all during the GLC's development, not after long periods of operation.

In particular, DRP has known since at least August 2017—when it applied for a Special Permit from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration—that its plans for the GLC involved the use of unit trains to transport LNG to the site.¹⁷ For reference, this application was made only a few months after NJDEP issued the first Waterfront Development, Flood Hazard Area, Coastal Wetlands, and Freshwater Wetlands permits to DRP,¹⁸ and over a year prior to the November 2018 minor technical modification of those permits to accommodate changes in support of the “bulk liquid and gas operations at the facility.”¹⁹ DRP planned to use unit trains at the site a full year and a half prior to its application for an individual Waterfront Development Permit to construct the Dock 2 Project, the purpose of which is to transload LNG from railcars and trucks to marine vessels.²⁰

A development as significant as the GLC must not be allowed to move through the regulatory process in a piecemeal fashion, and NJDEP's regulations forbid it. Accordingly, DRP's Joint Application should be denied to enforce the Freshwater Wetlands Protection Act Rules' prohibition against segmentation.

The Joint Application contains insufficient information regarding the stormwater impacts of the proposed Rail Loop and thus the Project does not comply with the Stormwater Management Rules.

The Project meets the regulatory definition of “major development” at N.J.A.C. 7:8-1.2, and accordingly, it must comply with the Stormwater Management Rules.²¹ In section 7.2 of its Compliance Statement, DRP states: “A Stormwater Management Plan has been developed and implemented for the marine Terminal. Compliance with Stormwater Management Rules for this Project is detailed in Section 9.4.1.” Section 9.4.1 reads:

The proposed activities disturb greater than one acre of land and therefore meet the definition of a “major development” at

¹⁶ Prospectus [Rule 424(b)(4)], Fortress Transportation & Infrastructure Investors LLC, SEC Accession No. 0001193125-15-191922 (May 18, 2015).

¹⁷ See Special Permit DOT-SP 20534, U.S. Dept. of Transp., Pipeline & Haz. Mat. Safety Admin. (Issued December 5, 2019).

¹⁸ See NJDEP File No. 0807-16-0001.2 WFD160001, WFD160002, FHA160001, FHA160002, CSW160001, FWW160001, and FWW160002.

¹⁹ See MINOR TECHNICAL MODIFICATION of Freshwater Wetlands Individual Permit, Freshwater Wetlands Transition Area, Flood Hazard Area Permit, Waterfront Development Permit, Application No. 0807-16-0001.2 FHA180001, FWW180001, FWTW180002, WFD180002 (Nov. 29, 2018).

²⁰ See Permit No. 0807-16-0001.2 WFD190001.

²¹ See N.J.A.C. 7:8.

N.J.A.C. 7:8-1.2. Stormwater management measures will be designed to meet the groundwater recharge standards, and stormwater runoff quality standards as applicable. Where feasible, green infrastructure BMPs will be used to meet the groundwater recharge standards and runoff quality standards. Therefore, this condition is met.²²

In response to a technical deficiency notice from NJDEP, DRP provided additional detail regarding how the Project will comply with N.J.A.C. 7:8-5.3, 5.4, 5.5, and 5.6. However, as DRP cites to the Stormwater Management Plan for the entire GLC as evidence of compliance with the Stormwater Management Rules for this application, DRP must provide an updated Stormwater Management Plan that includes the proposed Project area so that NJDEP and the public may review the stormwater effects of the GLC as a whole. In addition, the latest version of DRP's Stormwater Pollution Prevention Plan ("SPPP") associated with its 5G2 Basic Industrial Stormwater permit (that DRN is aware of) fails to address compliance with the Total Maximum Daily Load for polychlorinated biphenyls in the Delaware River.²³ Thus, an updated SPPP that includes the proposed Project and any potential PCB-laden discharges is necessary for NJDEP to evaluate compliance with the Stormwater Management Rules as well as to fully understand site-specific water quality impacts.²⁴

Furthermore, in accordance with N.J.A.C. 7:8-5.4(b)(3), DRP must address whether groundwater infiltration should be prevented due to the Project creating an area of high pollutant loading. The Project will be used to support the movement and storage of bulk liquid cargo such as liquid petroleum. As DRP explains in its application, the Project would "allow for two trains (one loaded and one empty) to be temporarily staged on the Site . . ."²⁵ DRP must address potential leaking of fuel or refrigerant from the train equipment itself as well as the risk of spills and leaks of cargo.

The Joint Application does not contain site-specific information needed to demonstrate compliance with the Freshwater Wetlands Protection Act Rules, the Flood Hazard Area Rules, and the Coastal Zone Management Rules.

Featured throughout the Joint Application's Compliance Statement are conclusory statements or statements that rely on non-specific actions to be taken in the future, in order to demonstrate compliance with the applicable regulations.

The proposed Project is an Energy Facility because it is a "facilit[y], plant[] or operation[]" for the distribution and storage of energy or fossil fuels.²⁶ Accordingly, the Project may not be sited in special areas or marine fish and fisheries areas "unless site-

²² Joint Application, Compliance Statement at Section 9.4.1.

²³ See Delaware Riverkeeper Network, Petition to Require Delaware River Partners, LLC to Apply for Individual NJPDES Permits Implementing the TMDL for PCBs in Zone 4 of the Tidal Delaware River, Permits NJG0263541, NJG0304042 & NJG0299201 (without enclosures) (Attachment B).

²⁴ See, e.g., N.J.A.C. 7:7A-10.2(b)(5), (b)(8), (b)(15); N.J.A.C. 7:13-12.1(b)(1), -12.2; N.J.A.C. 7:7-16.3.

²⁵ Joint Application, Compliance Statement at Appendix B: Alternatives Analysis, Section 2.

²⁶ N.J.A.C. 7:7-15.4(a).

specific information demonstrates that such facilities *will not result* in adverse impacts to these areas.”²⁷ In response to the requirement that the Project will not result in adverse impacts to marine fish and fisheries areas, DRP refers to Section 6 of its Compliance Statement, which merely states in a conclusory fashion that “fishery resources will not be adversely affected.”²⁸

In support of this conclusion, DRP cites to Appendix E of its Joint Application, which evaluates the impact of the Project on threatened and endangered species habitat. DRP also claims that it will use soil erosion and sediment control measures during construction to avoid water quality impacts. This analysis falls far short of site-specific information that demonstrates a lack of adverse impact for several reasons:

- It fails to address potential impacts to *all* marine fish and fisheries beyond just threatened and endangered species.
- It does not include a site-specific construction plan detailing the erosion and sediment control measures to be used.
- It does not describe any site-specific impacts associated with the operation of the Project post-construction.

For example, the Project involves the disturbance of a man-made waste treatment ditch system that has been used to hold wastewater, treated groundwater and conveyed stormwater for centuries.²⁹ DRP must be incredibly careful not to disturb or compromise these existing features. Because of proximity to priceless marshland and mainstem river, waste leeching from this site due to compromised structures could be perilous for wildlife, including marine fish. Site-specific information is needed to evaluate potential contamination within and near the ditch system that may be disturbed during construction or operation of the Project.

Additionally, DRP describes tide gates located at the head of Aunt Deb’s Ditch and at the northern outlet of Sand Ditch.³⁰ Because of these tide gates, DRP claims, fish (including Atlantic sturgeon) are not expected to be within the Project area. DRP must provide site-specific information about the effectiveness of these tide gates, and explain whether fish may still enter Aunt Deb’s Ditch and the on-site ditch system by other means³¹ or during high water conditions.

DRP explains that a Soil Erosion and Sediment Control (“SESC”) Plan will be approved by the Gloucester County Soil Conservation District prior to beginning work, but the Joint Application does not contain a draft of proposed SESC Plan for NJDEP to evaluate the site-specific impacts of the Project. The Joint Application lacks site-specific information about

²⁷ N.J.A.C. 7:7-15.4(b)(1).

²⁸ Joint Application, Compliance Statement at Section 6.8.

²⁹ Joint Application, Compliance Statement at Section 5.6.1.

³⁰ Joint Application, Compliance Statement at Sections 5.10 & 5.13.

³¹ Using Google Maps satellite view, there appear to be several streams on Mond’s Island that connect to Aunt Deb’s Ditch.

erosion and sedimentation controls as well as stormwater controls. Because the Atlantic sturgeon feeds on benthic creatures, excess siltation could directly impact foraging success on the bottom of habitats. Site-specific information is needed to demonstrate that the Project will not result in these adverse impacts.

Because the Project will involve the “storage of . . . gases and other potentially hazardous liquid substances,” NJDEP must also evaluate the Project under the standards listed in N.J.A.C. 7:7-15.4(p). That use is “conditionally acceptable in the Urban Area, Northern Waterfront and Delaware River regions if it is compatible with or adequately buffered from surrounding uses.”³² Whether the proposed storage of LNG and other hazardous substances such as natural gas liquids, liquid petroleum gases, and liquid hazardous gases, are “compatible with or adequately buffered from surrounding uses” depends on the risks associated with those substances. Here, the risks associated with LNG render the proposed use incompatible and NJDEP must deny the Joint Application.

In addition, NJDEP should liberally construe its CZM Rules and evaluate the Project under the standards applicable to liquefied natural gas (LNG) facilities.³³ Under those standards, application of several federal laws including the Natural Gas Act³⁴ and the National Environmental Policy Act³⁵ is required.³⁶ As explained in the first section of this comment, compliance with these statutes has not yet been demonstrated, and DRP’s petition for declaratory order remains pending before FERC. Accordingly, without a ruling from FERC on DRP’s petition for declaratory order, NJDEP has insufficient information to evaluate the impacts of an LNG export facility and should deny the Joint Application.

The risks of approving the joint Application without a robust federal and state regulatory review are dire. LNG is inherently dangerous due to the nature of the product, which must be kept frozen at extremely low temperatures, ~260 degrees F, and, when released transforms into a gas that is at least 600 times greater in volume than the cryogenic material.

LNG poses potential cryogenic temperature exposure hazards as well as fire and explosion hazards. Due to a large difference in temperature, the rapid transfer of heat from an object into the cryogenic liquid can cause burns if direct contact of liquid with skin occurs or if Personal Protective Equipment (PPE) is inadequate to prevent cold-temperature injury during an exposure. Additionally, large spills of the liquid onto metal structures can cause embrittlement and fracturing. Methane is

³² N.J.A.C. 7:7-15.4(p)(2)

³³ See N.J.A.C. 7:7-15.4(s).

³⁴ 15 U.S.C. §§ 717-717z.

³⁵ 42 U.S.C. §§ 4321-4370h.

³⁶ See N.J.A.C. 7:7-15.4(s)(1)(i). NJDEP itself is also required to consider “risks inherent in tankering LNG along New Jersey’s waterways,” “risks inherent in transferring LNG onshore,” and “the compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.” N.J.A.C. 7:7-15.4(s)(1)(ii).

odorless and LNG contains no odorant (unlike odorized residential natural gas supplies), making detection difficult without a flammable gas detector device.

....

Releases of LNG due to venting or to accidents involving either a MC-338 cargo tank or a DOT- 113C120W have the potential to create flammable clouds of natural gas. Large releases of LNG due to the breach of the inner tank of a tank car could pose pool fire, vapor fire and explosion hazards, which pose the highest potential impacts when compared to localized cryogenic hazards.³⁷

Response to a broken cryogenic tank car is very difficult for first responders and fire companies and risks catastrophe due to the great potential for explosions and large fires. The response is essentially to evacuate the area since a methane gas-fueled fire cannot be extinguished. Certainly, the huge volume of a gas cloud (600 times greater than the liquid) released from a breached LNG tank as well as the instance where a tank car is engulfed in fire compounds the potential for catastrophe in populated areas and for communities that are along the transportation route. The result is not only fire but can also result in a bomb-like explosion that is similar to a thermogenic event—literally a bomb.

New information has shown that LNG can cause a catastrophic BLEVE or Boiling Liquid Expanding Vapor Explosion if the vessel is exposed to high temperatures or a fire. The expansion of the liquid LNG in a vessel causes the pressurized liquid to boil, and the gas takes up more room than the liquid, stressing the container as pressure builds. Relief valves are only designed to release pressure slowly to keep equilibrium in the pressurized container. Exposed to high heat, the valve will fail to keep up and the metal will weaken, cracks will result in the container, causing LNG to be released with an explosion. The result is a BLEVE, a catastrophic failure of the container. There are many incidents over the years of BLEVE catastrophes, some as recent as 2019, but the fact that a BLEVE can occur with LNG has only recently been established.

When the gas or vapor cloud in the container is released, because it is flammable it is likely to ignite after the BLEVE, typically causing a fireball that burns fast, hot and wide. A fuel air explosion can also occur, known as a “vapor cloud explosion”. A vapor cloud explosion is the mechanism used in a thermobaric weapon that uses air to generate a high-temperature explosion, producing a long duration blast wave. These weapons are also termed a fuel-air bomb. This is the threat that LNG storage and transport brings to the Gibbstown region and to every traffic route used to carry the LNG to the Delaware River and on the river during export.

³⁷ SP 20534 Special Permit to transport LNG by rail in DOT0113C120W rail tank cars at 6-7, Final Environmental Assessment, Docket No. PHMSA-2019-0100 (Dec. 5, 2019).

On dry land such as a terminal where LNG is stored or is contained in tankers on trucks or rail cars, a BLEVE where there is no liquid in the local environment to absorb the heat, can rupture even faster than a vessel on water. In the event of a release of LNG, the LNG must gas off naturally, as the container cannot be capped or interacted with, the area must be immediately evacuated and secured, ignition sources must be eliminated, and water cannot be used, as the release is cryogenic. Water can plug the valves of the container with ice and any cold air release can freeze skin in seconds and can even turn air to liquid or solid form, removing oxygen, an obvious disaster for anyone in the area.

Currently, PHMSA has proposed suspension of 2020 amendments to its Hazardous Materials Regulations that authorized transportation of LNG in DOT-113C120W9 specification rail tank cars in order to develop a more complete understanding of the risks associated with this activity.³⁸ PHMSA specifically identified “potential direct and indirect GHG emissions associated with authorizing LNG by rail tank car and the adequacy of emergency planning and response resources” as areas in need of further study.³⁹ Although Energy Transport Solutions’ Special Permit is not directly affected by this suspension, the Special Permit was issued even prior to the 2020 amendments, meaning that PHMSA had the same, or even a lesser, understanding of the risks associated with LNG by rail when it issued the Special Permit. NJDEP cannot reach the conclusion that the proposed Project is “compatible with or adequately buffered from surrounding uses”⁴⁰ or that the proposed LNG facility is acceptable⁴¹ while these questions being explored by PHMSA remain unresolved. In addition, as detailed earlier in this comment, the Special Permit issued by PHMSA for the transport of LNG by rail to Gibbstown has expired as of November 30, 2021.

Catastrophic events can result from release of LNG. The dangers are well known to government regulatory agencies, which have advised that LNG facilities and storage areas be kept in remote areas, away from human populations, sensitive ecological systems and infrastructure. Thus, regardless of the outcome of the FERC proceedings or PHMSA’s rulemaking or decision on renewal of the Special Permit, NJDEP should deny DRP’s application because the risks associated with LNG are too great given the population density in the area to be affected by the Project.

The Joint Application proposes unacceptable adverse impacts to threatened and endangered species as well as wetlands.

The Bald Eagle, Osprey, and Atlantic and Shortnose sturgeon use habitat in the vicinity of or near the project area. As explained previously in this comment, the information contained in the Joint Application is insufficient for NJDEP to adequately evaluate the impacts of the Project on fishlife, including the endangered sturgeon habitat.

³⁸ Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail, Pipeline & Haz. Mat. Safety Admin., 86 Fed. Reg. 61,731 (Nov. 8, 2021) (Attachment A).

³⁹ *Id.* at 61,734–35.

⁴⁰ N.J.A.C. 7:7-15.4(p)(2).

⁴¹ N.J.A.C. 7:7-15.4(s)(1)(ii).

The threatened red knot, bog turtle, and sensitive joint vetch were also identified as being potentially present in the area. The Joint Application must include *site-specific* information about these species. Red knots: forage in wet habitats, they move towards sedge meadows and shores as they get older. They especially use marine habitats, sandy beaches, salt marshes, mudflats of estuaries to forage (where invertebrate prey may be high). Excess siltation from construction activities may disturb the red knot's foraging area by reducing sunlight necessary for vegetation growth or filling in crevices and other complex habitat necessary for invertebrate species.

Bog turtles occur in small discrete populations and are incredibly dependent on a mosaic of many habitats such as sedge meadows, marshes, and rivers next to wooded areas. Eggs are often laid in areas elevated from the waterway and habitat occupied. Siltation of bog turtle habitat poses a great threat to them. Bog turtles feed on insects, snails, and worms—all of which depend on predictable conditions in benthic habitat and will suffer when the conditions change too much too quickly.

Finally, Ramboll ignores the potential impacts to several NJ Species of Special Concern that likely inhabit the project area, including the Fowler's toad (*Anaxyrus fowleri*) and eastern box turtle (*Terrapene carolina carolina*). The marsh habitat is also highly suitable for the Atlantic Coast leopard frog (*Lithobates kauffeldi*), the conservation status of which has not been assessed yet due to how recently the species was discovered.

Because of the risk of flooding within the tidal flood hazard area of the Delaware River, removal of vegetation—especially trees—must be minimized to the maximum extent practicable. Trees and other vegetation represent some of the only natural flood buffers within the actual project site and considering the proximity of tidal waters, are very important. DRP proposes removal of vegetation, and explains that these areas “will be revegetated by reseeding with native vegetation and planting of native shrubs and trees to promote rapid reestablishment of vegetation.”⁴² Removing and then planting new trees would result in decades of degraded habitat and buffers until the newly-planted trees reached the level of maturity necessary to provide the benefits of the trees that they replaced.

DRP asserts that the project will result in the fill of 0.017 exceptional resource value wetlands as well as permanently impact 4.132 acres of transition area of intermediate and exceptional resource value wetlands that fall outside of the limit of disturbance. In addition, eight freshwater wetland features were identified and delineated in the Study Area with a total area of approximately one acre. All eight of these wetlands are also exceptional resource value wetlands due to the presence of threatened and endangered species (ospreys and bald eagles). These wetlands were identified as follows:

- SD-WB01 (0.211-acres)
- SD-WB02 (0.092-acres)
- SD-WB03 (0.016-acres)
- SD-WB04 (0.021-acres)

⁴² Joint Application, Compliance Statement at Section 4.4.2, 4.4.3.

- SD-WB05 (0.014-acres)
- SD-WB06 (0.175-acres)
- SD-WB07 (0.152-acres)
- SD-WB08 (0.253-acres)

According to the Freshwater Wetland Protection Act Rules' provision concerning the identification of a transition area:

(d) The standard widths of a transition area are set forth at (d)1 and 2 below. These standard widths shall only be modified through the issuance of a transition area waiver. The types of transition area waivers are listed at N.J.A.C. 7:7A-8.1(a).

1. The standard width of a transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet.
2. The standard width of a transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet.⁴³

Transition area waivers, if approved, may reduce the 150-foot transition area to 75 feet under certain conditions:

(i) With the exception of a transition area waiver for access approved in accordance with (a)5 above or a transition area waiver meeting the requirements for an individual permit at N.J.A.C. 7:7A-8.3(g), a transition area waiver shall not be approved to allow encroachment within 75 feet of an exceptional resource value wetland.⁴⁴

Ramboll has not demonstrated that their special activity transition area waiver would meet the standards for a freshwater wetlands individual permit because there are feasible alternatives and the activity would jeopardize or adversely modify a present or documented habitat for threatened or endangered species.

Therefore, the proposed activity does not qualify for a special activity transition waiver and is subject to a standard 150-foot transition area or 75 feet at a minimum with an approved averaging plan transition area waiver. However, DRP has not indicated any intention to maintain a 150-foot transition area for these exceptional resource value wetlands, nor have they indicated any intention to pursue a waiver for a 75-foot transition area. In fact, the transition area waiver section of the checklist was left blank in the application.

⁴³ N.J.A.C. 7:7A-3.3(d).

⁴⁴ N.J.A.C. 7:7A-8.1(i).

Ramboll also states that “the purchase of wetland mitigation bank credits is the most appropriate mitigation for the proposed permanent wetlands impacts associated with the Project.”⁴⁵ However, mitigation bank credits are a contingency utilized when onsite mitigation is not feasible. Under their Alternatives Analysis, Ramboll has not demonstrated that onsite mitigation is not feasible. The Freshwater Wetland Protection Act Rules provide that onsite mitigation must be prioritized:

(a) This section governs the mitigation alternative required and the location of mitigation in relation to the disturbance for a transition area impact in accordance with N.J.A.C. 7:7A-8.3(g) (special activity transition area waivers based upon individual permit criteria). Mitigation for a transition area disturbance shall be performed through restoration or enhancement of transition areas carried out on the site of the disturbance to the maximum extent feasible.

(b) If onsite transition area restoration or enhancement is not feasible, mitigation shall be performed through:

1. The purchase of credits from a mitigation bank with a service area that includes the area of disturbance; or
2. Offsite restoration or enhancement in the same watershed management area as the disturbance.⁴⁶

Not only are wetland mitigation bank credits inappropriate in this case, but also onsite restoration efforts should be focused on the osprey nesting habitat that was previously destroyed by DRP. In accordance with the Waterfront Development permit issued for the construction of the Marine Terminal (DLUR No. 0807-16-0001.2), osprey nests within the footprint of the terminal were removed, structures within the Marine Terminal that could support nests were made unattractive to nesting, and five nesting platforms were installed on the property outside the main Marine Terminal area. According to DRP:

In February 2018, osprey activity was observed near the nest box adjacent to the western tide gate on the Property. However, osprey never established a nest at this location and appeared to stop using it as a perching/resting location. A likely explanation for this is the increased presence and occurrence of eagle activity observed in the vicinity of Monds Island shortly after the installation of the nest box.⁴⁷

The notion that ospreys have not utilized the nest box due to the presence of bald eagles is unfounded and highly unlikely. While both species can be territorial, ospreys and bald eagles have completely different nesting habits and preferences. Ospreys are conditioned to the

⁴⁵ Joint Application, Compliance Statement at Section 4.4.1.

⁴⁶ N.J.A.C. 7:7A-11.11.

⁴⁷ Joint Application, Compliance Statement at Section 5.2.2.

presence of bald eagles because they have coexisted with them at the site long before DRP's habitat destruction. It is clear that the alteration of the original habitat and the disturbance from the construction activity from DRP is what drove the ospreys away. The original osprey nests that were removed were built there by the ospreys for a reason.

The application also mentions that potential vernal pool habitat was identified (Vernal Pool Habitat ID 1060), but Ramboll never addresses potential impacts to vernal pool habitat from the project, nor do they characterize the size of the habitat area. The NJDEP vernal pool mapping shows that Vernal Pool Habitat ID 1060 is extensive at nearly 675 acres and borders the project area.

Conclusion

NJDEP must deny DRP's Joint Application because the lawfulness of DRP's proposed LNG operations is currently an unresolved issue before FERC and PHMSA; because the entire GLC has been segmented through piecemeal applications; because the Joint Application fails to include the information necessary to justify the issuance of the permits requested; because the risks associated with transportation, storage, and transloading of LNG are not acceptable in the densely-populated area of the GLC; and because the Joint Application proposes unacceptable impacts to threatened and endangered species as well as wetlands and vegetation.

Sincerely,

Maya K. van Rossum



the Delaware Riverkeeper
Delaware Riverkeeper Network



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Delaware Riverkeeper Network