



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

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**FEB 11 2005**

Leonard Houston  
Chief, Environmental Analysis Branch  
U.S. Army Corps of Engineers  
New York District  
26 Federal Plaza  
New York, New York 10278-0090

Dear Mr. Houston:

The Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (draft EIS) prepared by the New York District Army Corps of Engineers for the Hudson River at Athens, NY Navigation Project (CEQ #040550). The draft EIS proposes a project to construct a 300 foot wide, 6,000 foot long, 24 foot deep navigation channel extension from the Hudson River Federal Channel to Athens Harbor.

According to the draft EIS, the dredging project will generate 935,000 cubic yards (CY) of material that will be deposited at the Houghtaling Island disposal site, which will need expansion by 116 acres, if the material is deposited there. However, the draft EIS states that the Corps is examining a beneficial use for some of the material around the Hudson River Habitat Restoration Project at Schodack-Houghtaling Island or at Middle Ground Flats. The final EIS will need to discuss in more detail the amount to be used and where and how the material is placed for beneficial use, and whether this influences the degree to which the disposal site is expanded. The final EIS will also need to address the question of whether the deposition of material from this project diminishes the capacity of the Houghtaling Island disposal site to accept material in the future and therefore hastens its closure. Within that discussion, the final EIS must discuss what other upland disposal sites may be available for the continuing dredging activities should the Houghtaling Island site become unavailable. Additionally, the draft EIS also stated at certain points that the amount of material to be dredged will be 1.3 million CY rather than the 935,000 CY. For example, 1.3 million CY was the amount that the Fish and Wildlife Coordination report used for its analysis. The final EIS will need to clarify which amount is the true amount to be dredged.

The discrepancy regarding the amount of dredged material raises a serious concern and opens several questions. The draft EIS indicates that the project is authorized to dredge to 24 feet, with a 2-foot overdepth allowance, yet, the draft EIS also discusses a 26 foot channel citing the need to serve the design depth of fully loaded barge vessels, and states in the Channel Design Appendix that the optimal design depth would be 26 feet. Furthermore, the document provides a Benefit Cost Ratio (BCR) evaluation for the 26 foot channel as a comparison to a BCR for dredging to the authorized 24 foot depth. Also, if the indication for a 26 foot deep channel is that the Corps anticipates performing advance maintenance as part of the initial dredging action, then the final EIS should evaluate the impacts of the total project scope to 26 feet. Therefore, we believe that an evaluation of the impact to the river resources and the disposal site from dredging to 26 feet plus the two foot overdredge, since it appears that there is a desire to dredge to that depth, is reasonable to be included in the final EIS.

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We are also very concerned with the draft EIS's economic justification and cost analyses. The draft EIS provides a summary of the original economic analysis done as part of the project viability report in 1998. The document also states that the Corps must reevaluate those economic analyses if more than three years have elapsed since the Report of the Chief of Engineers. In the ensuing years several economic factors have changed and now, based upon the 2004 forecast, the project is no longer economically justified at either the 24 foot or 26 foot depth. However, were the project economically justified, the draft EIS states that a single-user situation would exist because Peckham Industries is the sole owner of the terminals at Athens. As such, the Corps would be precluded from the Operations and Maintenance of the Channel. However, the draft EIS does not address whether the Corps is similarly precluded from dredging the initial channel, since the project is not economically justified, or how the project becomes justified for the Corps actions. This critical issue will need a much more detailed explanation in the final EIS.

In a related matter, the draft EIS briefly mentions that a Verizon Telecommunications line would be relocated and would be placed 7 feet below the channel depth. However, nothing in the document discusses the additional environmental impact (to water quality, air quality, fish resources etc.), from having to bury this telecommunication line below the channel bottom. Furthermore, the specific operation related to dredging, sidecasting or other means of burying the cable, such as directional drilling, should be discussed. The final EIS should contain a full impact evaluation of all of the activity in the dredged channel.

This brings us to another serious deficiency with the document. The draft EIS does not contain a substantive indirect or cumulative impact analysis. In this immediate stretch of the Hudson River, several other dredging projects are underway or proposed, such as maintenance dredging of the Federal channel, dredging for St. Lawrence Cement, and dredging for the Athens Generating Project. Though the draft Fish and Wildlife Coordination Report identified these projects and others for inclusion in a cumulative impacts analysis, particularly in regard to the effect on the overall habitat losses for fish, the draft EIS did not provide any cumulative impacts evaluation. The final EIS will need to address indirect and cumulative impacts from all of the activities in this section of the Hudson River that would increase turbidity and wave action and effect water quality (such as temperature, suspended solids, and flow), and river bottom substrate. Also, the final EIS will need a cumulative impacts analysis for biological resource areas such as aquatic habitat and fish and wildlife, focusing on species of particular concern, such as the Shortnosed Sturgeon, Bald Eagle and the Cerulean Warbler.

The draft EIS also lacks a Habitat Impairment Test as prescribed by the New York Department of State Division of Coastal Resources and in keeping with the goals of the Hudson River Estuary Program and Action Plan. The Vosburgh Swamp, the Middle Ground Flats, the Schodack and Houghtaling Islands, and Schodack Creek are all designated as Significant Coastal Fish and Wildlife Habitat. As such a Habitat Impairment Test must be performed for any activity that is subject to Coastal Zone consistency review under Federal and State laws. This test must evaluate if actions would destroy habitat or significantly impair the viability of the habitat. The Coastal Fish and Wildlife Habitat Rating forms for both areas identify any activity that would substantially degrade water quality, increase turbidity or temperature, or alter water depths resulting in the significant impairment of the habitat. Also, disruption of flows or elimination of wetlands and littoral zones in these areas would have major consequences for the habitat. Dredging is specifically listed as one of those activities having such an effect and therefore, needing a Habitat Impairment Test. Additionally, spills of hazardous substances is also listed as

a significant threat to the area. This Habitat Impairment Test evaluation is critical for determining the extent of the impacts to the overall river ecology in this area and therefore, the final EIS must have a complete Habitat Impairment Test for both areas that covers the dredging and operations of the terminals. Also, the final EIS must discuss the measures to prevent or avoid spills of asphalt product and ice melt products as well.

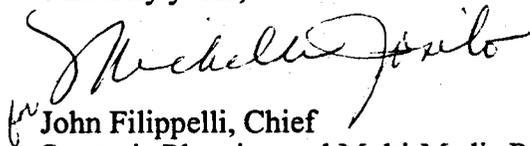
The draft EIS states that the sediments to be removed are clean of all hazardous, toxic, and radioactive wastes. This statement needs to be quantitatively substantiated since neither the locations of the sediment testing nor the actual results were provided in the document. However, we have information that there may be several contaminants in the sediments around this area, such as PCBs and PAHs. Though the concentrations of these hazardous substances may not be great enough to preclude upland disposal, beneficial use may be precluded for the more contaminated material. Nonetheless, we believe that the document was incorrect in the statement that the sediment does not contain any hazardous substances. In fact, the Fish and Wildlife Coordination Report identified the issue of contaminated sediment and the potential impact of resuspending those contaminants into the water column. The draft EIS did not address this issue, though it is of significant concern. We strongly recommend that the final EIS revise the statements regarding the presence of hazardous substances in the sediment and perform an impact evaluation of the effect of resuspending these substance into the water column or exposing contaminated sediments in side slopes of the channel or in the turning area.

Finally, the hard copy of the draft EIS was missing appendix D, the Short-nosed Sturgeon Biological Assessment. Though the Compact Disc version of the document did contain this appendix, it should have been in all versions of the document. Please ensure that the final EIS is complete with all relevant appendices.

In conclusion, based on our review and in accordance with EPA policy, we have rated this draft EIS as EC-2, indicating that we have serious environmental concerns (EC) about the projects economic viability, the scope of the project's dredging and sediment disposal, the impacts to water quality, fish and wildlife species and habitat, and the indirect and cumulative impacts. Accordingly, additional information (2), as outlined in this letter, especially the Habitat Impairment Test results, should be presented in the final EIS to address these issues.

Thank you for the opportunity to comment on this project. If you have any questions concerning our comments, please contact David Carlson of my staff at (212) 637-3502.

Sincerely yours,



<sup>for</sup> John Filippelli, Chief  
Strategic Planning and Multi-Media Programs Branch

cc: D. Rusanowsky, NMFS  
A. Chmielewski, USFWS