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August 28, 2007

VIA FACSIMILE AND FIRST CLASS MAIL

James L. Connaughton
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, DC 20503

Dear Chairman Connaughton,

We are writing today to express our grave concerns about the proposed replacement of the Herbert Bonner Bridge across Oregon Inlet on North Carolina's Outer Banks. We take the extraordinary step of writing directly to you because of the Council on Environmental Quality's (CEQ) role in overseeing and implementing NEPA. CEQ is tasked with ensuring that federal agencies meet their obligations pursuant to NEPA. We believe the NEPA process to find an alternative for the Bonner Bridge has been compromised and is on the road to an impasse.

As you are aware, CEQ acted earlier to block a proposed U.S. Army Corp of Engineers project to create massive stone jetties at Oregon Inlet, which would have destroyed 93 acres of Cape Hatteras National Seashore and 33 acres of Pea Island National Wildlife Refuge. We urge you to continue the strong record of assuring the integrity of environmental decision-making and ask you to investigate fully the current NEPA process for the replacement of Bonner Bridge.

Bonner Bridge crosses Oregon Inlet and the southern landing of the bridge is on the Pea Island NWR. Pea Island NWR is located on a dynamic barrier island that naturally shifts with storms, winds, waves, and currents. The existing state highway (NC-12) runs through Pea Island NWR and is constantly at risk from the shoreline erosion and storm events. Because of this dynamic environment, it has been extremely expensive and generally ineffective to implement artificial means of protecting NC-12 as it passes through the Pea Island NWR.

Bonner Bridge has reached the end of its serviceable life. To facilitate its replacement, a multi-agency team composed of both federal and state agencies has been working

through a process designed to merge the NEPA process and the EPA and the U.S. Army Corps of Engineers' (USACOE) 404 permitting process. The "Merger Team" for the Bonner Bridge project includes the USACOE, FWS, EPA, NOAA-NMFS, FHWA and the appropriate state agencies. In July of 2003, the NCDOT, Federal Highways Administration, and eleven other state and federal agencies with regulatory responsibilities unanimously concurred that a long bridge bypassing Pea Island NWR was a viable alternative for replacement of the Bonner Bridge. This decision by the Merger Team was based on an analysis of transportation reliability and safety, cost, and environmental impact. During that same year NCDOT stated that alternatives that simply replace the current bridge are "no longer viable due to recent trends in shoreline erosion, ocean overwash of NC 12, and other changes in the setting of the project."

Unfortunately, state officials intervened in the ongoing agency approval process to promote a short-term and short-sighted alternative of replacing the Bonner Bridge in its current location and then building a series of bridges through Pea Island NWR, subjecting the Pea Island NWR to more than 30 years of construction and resulting ultimately in a bridge in the Atlantic Ocean. On August 27, 2007, a subset of the Merger Team reversed or overrode outstanding agency objections on the viable alternatives and selected a variant of this "phased approach" as the least environmentally damaging practicable alternative (LEDPA). This decision jeopardizes the integrity of the NEPA process and undermines the legal viability of the FEIS.

Although 12 federal and state agencies participate in the basic merger process, once an issue is identified and cannot be resolved, a subset of the Merger Team has the sole decision-making authority. The decision to designate the "phased approach" as the LEDPA effectively eliminated the voice of the dissenting federal agencies. FWS, NPS, EPA, NOAA-NMFS did not agree that the "phased approach" could be the LEDPA. None of those agencies, however, had a seat at the table. In fact the deliberations of the Review Board were closed to the dissenting federal agencies and to the public.

NCDOT's summary of the Review Board decision highlights the legal issues of promoting the "phased approach" or segmented project approach as the LEDPA. We have provided the summary document as an attachment to this letter.

- Building a replacement bridge in an identical location as the existing Bonner Bridge "does not meet purpose and need of the project." The selected alternative cannot meet the purpose and need identified in the DEIS and SDEIS.
- NCDOT has not provided sufficient information to the permitting agencies to satisfy their needs to permit subsequent phases of work.
- Any additional phases must be evaluated and include "all reasonable, practicable, and feasible alternatives" as well as "avoidance, minimization, and compensatory mitigation" for each additional phase. The Review Board decision will clearly affect the available alternatives and this phased approach results in segmenting the project.

- The entire LEDPA (the “phased approach”) may or may not meet other federal legal requirements. For example, FWS must complete a compatibility determination pursuant to the National Wildlife Refuge Improvement Act of 1997 and has indicated that compatibility is an issue.

The review Board meeting represents the low-water mark for an increasingly suspect process. Even before yesterday’s meeting the NEPA process has failed to adequately consider the barrier island dynamics, including shoreline erosion and likely inlet formation, the effect of climate change, the impacts to federally listed endangered species. Furthermore, it rests on a flawed cost analysis.

The alternative that is selected will have serious, long-term consequences for the Pea Island NWR and the NC-12 transportation corridor. The majority of NC-12 on Pea Island NWR is considered highly vulnerable to washouts, not only from storm events, but even springtime high-tide events, because of the road’s proximity to the Atlantic Ocean. Millions of dollars are spent by NCDOT each year to remove sand from the road and maintain artificial dunes that are designed to keep the ocean at bay. In addition, millions more have been spent nourishing “hot spots” (areas susceptible to breach or inlet formation) with dredged sand. This approach often leaves residents and tourists with no or limited access via NC-12, posing a real threat to their safety in the event of a hurricane evacuation.

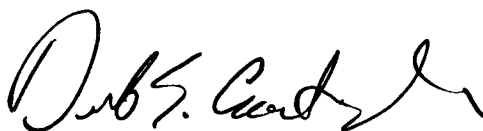
Equally important for the management of Pea Island NWR is the impact this ineffective infrastructure has on federally listed nesting sea turtles and nesting shorebirds and waterfowl habitat. Storm overwash areas form important wildlife habitat, particularly for the endangered piping plover, and it assists in the accretion of marsh habitat on the Pamlico Sound side of the refuge and maintains a low vegetative structure across the island, important for the refuge’s wildlife. The continual fight to preserve NC-12 from over-wash has seriously compromised the ability of Refuge staff to ensure proper marsh accretion, resulting in a diminution of the refuge’s ecological integrity. Additionally, the constant use of bulldozers and dredge soil piping along the Pea Island beaches has greatly diminished the aesthetic experience for visitors to this natural treasure.

The current cost analyses of the phased approach fails to consider the many factors known to affect costs of maintaining a transportation corridor on a quickly eroding and mutable shoreline. For instance, even under the phased approach, where costs are assumed to be spread out over decades, a storm event could cause massive roadway damage and new inlets, requiring more immediate construction of bridge segments or temporary shoreline stabilization, such as dune building or renourishment. If multiple inlets were to form, the delays and costs would increase.

We also are very concerned that NCDOT has unrealistic expectations regarding the lawfulness of the short bridge alternatives, including the phased approach. We repeatedly have expressed concerns regarding the inadequacy of the NEPA and 4(f) reviews and the

clear incompatibility of the short bridge with the laws that govern the administration of the National Wildlife Refuge system. We urge CEQ to investigate the procedures and lawfulness of the Bonner Bridge NEPA process. Please contact us if we can be of further assistance.

Sincerely yours,



Derb Carter
NC/SC Office Director
Southern Environmental Law Center



Amy Pickle
Staff Attorney
Southern Environmental Law Center



Chris Canfield
Executive Director
Audubon North Carolina

AEP/mdb
attachment

Potential Summary of Merger 01 Dispute Resolution Board Meeting
8.27.2007

Issue: Concurrence Point 3 – Least Environmentally Damaging Practicable Alternative (LEDPA)

Bonner Bridge : B-2500

The Sponsoring Agencies (hereafter referred to as agencies) of Merger 01 have reached concurrence on an approach to advance the Bonner Bridge project and provide a replacement of the Bonner Bridge essentially within the same alignment or with minor changes to the current alignment as presently outlined in the Parallel Bridge alternates.

- The agencies concur that a Final Supplemental Environmental Impact Statement needs to address all comments received to date and a Record of Decision completed as soon as possible.

- Concurrence on this point does not imply that state or federal permits or other approvals for this activity will be granted: rather, it simply means that the agencies agree that, given the information provided, the Phased Approach/Bridge Alternative can be identified as the LEDPA in the NEPA/404 document.

The environment in the study area is complex and constantly changing. The ability to predict the effect of Mother Nature's future impact on the study area is extremely difficult to quantify. The shoreline alone is continually moving and unexpected storms will exacerbate the uncertainties. The environment present today can be changed overnight by Mother Nature. The environment outlined in an environmental document at the time of approval will likely change before permits are requested.

Based on the information available to the agencies as of today, the agencies concur in the following:

- The Pamlico Sound Bridge corridor is not practicable, based upon cost estimates, and thus is not the LEDPA.
- The Parallel Bridge Corridor contains various alternates, all of which include a short parallel replacement structure adjacent to the existing Bonner Bridge. The agencies concur that Phase I of the project should be to construct the replacement bridge within this corridor as soon as possible. Every possible effort

needs to be made for the bridge touchdown point to stay within the existing alignment on Pea Island. The agencies agree, based upon the information available today, Phase I should be advanced through the Merger '01 Process in order to insure applicable permits and other approvals can be granted when requested by NCDOT.

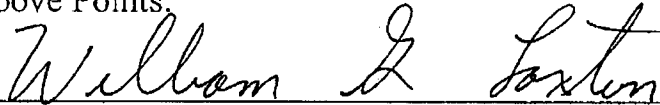
- Phase I alone as outlined above does not meet purpose and need of the project and thus additional phases of work will be needed to meet purpose and need.
- The agencies concur that the remaining phases of work present substantial challenges before the appropriate agencies will be satisfied in order to grant applicable permit and approvals. It will be incumbent on NCDOT to provide the necessary information to the permitting agencies to satisfy their needs before permits and approvals are granted.
- At the time of permit application, all reasonable, practicable and feasible alternatives will be considered and evaluated for each phase. This evaluation will include avoidance, minimization, and compensatory mitigation considerations for each selected alternative.
- The NCDOT should finalize the Supplemental Draft EIS and address all comments to date. It is expected that the Phased Approach/Bridge will be identified in the Record of Decision as the LEDPA. The agencies today are concurring this alternate is the LEDPA, but with the clear understanding that no permitting agency is bound by this concurrence to grant permits or approvals for the entire LEDPA. To reiterate, the agencies believe Phase I needs to be advanced through Merger '01. Remaining phases beyond Phase I are more problematic from a permitting aspect given the information available today. These remaining phases of work in the Phased Approach/Bridge Alternative indicate work on Pea Island will be done within the existing easement via the construction of short bridge segments, or other alternatives as determined at that time. The agencies concur, based on the information available today, they can not conclusively say that permits or approvals will or will not be granted for these additional phases. The agencies do agree that permits will not be granted for these remaining phases of work until their applicable laws

and regulations have been satisfied. The agencies are reaching concurrence on this approach for the purposes of advancing the project to a ROD but are making it clear the remaining phases of work may need further study after the ROD but before any permits or approvals are granted.

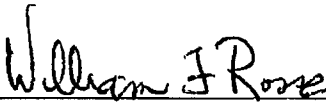
One of the basic principles of Merger 01 is found in Paragraph B of the Memorandum of Understanding that states:

Regulatory/Resource Agency participation in this process does not imply endorsement of a transportation plan or project. Nothing in these procedures is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the agencies involved. In the event of any conflict between this process and other statutes or regulations, the statutes or regulations control.

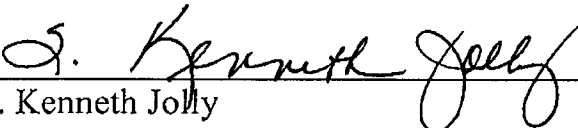
The Signatures of Sponsor Agencies Below Signify Agreement To the Above Points:



William G. Laxton,
Deputy Secretary, North Carolina Department of Environment and Natural Resources



William F. Rosser
State Highway Administrator, North Carolina Department of Transportation



S. Kenneth Jolly
Chief, Regulatory Division, Wilmington District, United States Army Corps of Engineers



Donald J. Voelker
Assistant Division Administrator, Federal Highway Administration North Carolina Division