



DEPARTMENT OF THE ARMY  
OFFICE OF THE CHIEF OF ENGINEERS  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

August 25, 2006

CEMP-NAD

SUBJECT: Hudson Raritan Estuary, New Jersey, Liberty State Park

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on the Hudson Raritan Estuary, Liberty State Park, ecosystem restoration study. It is accompanied by the report of the district and division commanders. These reports are in partial response to a resolution of the Committee on Transportation and Infrastructure of the U.S. House of Representatives adopted 15 April 1999. This resolution requested the Secretary to "review the reports of the Chief of Engineers on the New York and New Jersey Channels, published as House Document 133, 74<sup>th</sup> Congress, 1<sup>st</sup> Session; the New York and New Jersey Harbor Entrance Channels and Anchorage Areas, published as Senate Document 45, 84<sup>th</sup> Congress, 1<sup>st</sup> Session; and the New York Harbor, NY Anchorage Channel, published as House Document 18, 71<sup>st</sup> Congress, 2<sup>nd</sup> Session, as well as other related reports with a view to determining the feasibility of environmental restoration and protection relating to water resources and sediment quality within the New York and New Jersey Port District, including but not limited to creation, enhancement, and restoration of aquatic, wetland, and adjacent upland habitats." This feasibility study was conducted in cooperation with the non-Federal sponsor (the Port Authority of New York and New Jersey). Pre-construction engineering and design activities for this proposed project will continue under the authority provided by the resolution cited above.

2. The reporting officers recommend a plan of improvement for Liberty State Park (LSP), which consists of the following improvements:

- a. Construction of a 46 acre salt marsh and tidal creek system;
- b. Construction of a 50 acre upland berm, utilizing 700,000 cubic yards of material from the excavated tidal creek;
- c. Construction and restoration of 26 acres of freshwater wetlands;
- d. Construction of two drainage pipes;
- e. Construction of a drainage swale to connect interior freshwater wetlands;

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f. Construction of 15 acres of buffer areas surrounding the tidal marsh, and 25 acres of buffer areas surrounding existing freshwater wetlands. The implementation of these two measures will result in significant incidental benefits to 75 acres of existing uplands that are not the subject of any actions under the recommended plan.

g. Adaptive Management and Monitoring.

3. Based on October 2005 price levels, the total first cost for construction of the recommended plan is \$33,376,000. Cost sharing for initial construction will be 65 percent Federal and 35 percent non-Federal in accordance with the requirements of Water Resources Development Act (WRDA) 1986, as amended. The estimated total Federal first cost of construction is \$21,694,000, and the estimated total non-Federal first cost of construction is \$11,682,000. All costs for operation, maintenance, repair, rehabilitation, and replacement of the recommended project are the responsibility of the non-Federal sponsor.

4. The recommended plan is the National Ecosystem Restoration plan. The proposed restoration of rare and ecologically significant saltwater tidal marsh and tidal creek system, and improvement/protection of existing freshwater wetlands, grasslands, and forest and shrub habitats will provide an improvement to significant habitats in a highly urbanized environment within the New York-New Jersey Harbor. Constructing 46 acres of salt marsh at LSP will increase a scarce resource in the harbor, significantly enhance the ecological value of limited nearby existing salt marshes in the harbor, and contribute invaluable wildlife habitat in the center of the most densely populated area of the country. Use of the excavated material for a sheltering berm provides a cost effective disposal method, improves the hydrology of adjacent freshwater wetlands, buffers the project from nearby developed areas, and provides approximately 50 acres of warm weather grasslands in the southwest corner of the site. Grassland habitat values, largely replaced by agricultural fields in the past, are fast disappearing as agriculture lands are now developed for more intensive uses; therefore, this type of habitat is also considered threatened in New Jersey. The warm weather grasses will provide forage and breeding areas for many passerine and raptor species. They will enhance the potential for successful nesting of the Northern Harrier, a state listed species. The development of 26 acres of freshwater wetland systems will help to restore this locally endangered habitat. While no action is planned for the remainder of the site, consisting of 112 acres in the interior sections of the park, management of the site by the sponsor will provide a protective buffer for these rare habitats. The interior area includes the 23 acres of seasonally flooded wetlands and an urban forest of about 74 acres which is currently dominated by northern hardwood tree species and maritime shrubs assemblages. The urban forest is one of the largest contiguous areas of naturally established successional hardwoods in the metropolitan area and will indirectly contribute to the reestablishment of a diverse ecological mosaic of habitats. Construction impacts associated with this project will be temporary and long term beneficial effects of the project fully compensate for the temporary impacts. Based on October 2005 prices and a Federal discount rate of 5.125 percent, the

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estimated average annual cost of the recommended plan is \$2,145,000, and a net gain of 4,436 ecological functional units.

5. I generally concur in the findings, conclusions, and recommendations of the reporting officers. The plan developed is technically sound, economically justified, and environmentally and socially acceptable. The plan conforms to essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and complies with other administrative and legislative policies and guidelines.

6. The views of interested parties, including Federal, State, and local agencies, have been considered. Letters of support for the recommended alternative were provided by the State of New Jersey and the U.S. Fish and Wildlife Service (FWS). Additionally a specific request was made by the FWS for additional coordination on Endangered Species Act consultation for the bald eagle. FWS was notified that the development of a management plan is not appropriate at this time, given that the FWS has determined that the proposed project would not adversely affect the species. The Corps of Engineers has agreed to support the preparation of a bald eagle management plan should the species be attracted to the site in the future, and would enlist the cooperation of the non-Federal sponsor in the event that future consultation under section 7 of the ESA is warranted. The District, Division, and Headquarters have reviewed the impact assessments and found them to be compliant with Corps regulations.

7. Accordingly, I recommend implementation of the authorized project in accordance with the reporting officers' plan with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing, financing, and other applicable requirements of WRDA 1986, as amended by Section 210 of WRDA 1996. Also, this recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies, including the following requirements:

a. Provide non-Federal costs assigned to ecosystem restoration as further specified below:

(1) Enter into an agreement which provides, prior to construction, 25 percent of pre-construction engineering and design (PED) costs;

(2) Provide, during construction, any additional funds needed to cover the non-Federal share of PED costs;

(3) Provide all lands, easements, and rights-of-way, including suitable borrow areas, and perform or ensure the performance of any relocations determined by the Federal Government to be necessary for the construction, operation, maintenance, repair, rehabilitation, and replacement of the project;

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(4) Provide, during construction, any additional amounts as are necessary to make its total contribution equal to 35 percent of initial project costs assigned to ecosystem restoration;

(5) Provide 35 percent of the costs of monitoring and adaptive management of the ecosystem restoration features as may be determined necessary by the Government; however, financial participation by the Government for monitoring shall not exceed one percent of total ecosystem restoration costs minus the cost of monitoring and adaptive management and financial participation by the Government for adaptive management shall not exceed three percent of total ecosystem restoration costs minus the cost of monitoring and adaptive management;

b. For so long as the project remains authorized, operate, maintain, repair, rehabilitate, and replace the completed project, or functional portion of the project, at no cost to the Federal Government, in a manner compatible with the project's authorized purposes and in accordance with applicable Federal and State laws and regulations and any specific directions prescribed by the Federal Government;

c. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal Sponsor, now or hereafter, owns or controls for access to the project for the purpose of inspecting, operating, maintaining, repairing, replacing, rehabilitating, or completing the project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall relieve the non-Federal Sponsor of responsibility to meet the non-Federal Sponsor's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance;

d. Hold and save the United States free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the United States or its contractors;

e. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 Code of Federal Regulations (CFR) Section 33.20;

f. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Public Law 96-510, as amended, 42 U.S.C. 9601-9675, that may exist in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for the initial construction, operation, and maintenance of the project. However, for lands that the Federal Government determines to be subject to the navigation servitude, only the Federal

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Government shall perform such investigations unless the Federal Government provides the non-Federal Sponsor with prior specific written direction, in which case the non-Federal Sponsor shall perform such investigations in accordance with such written direction;

g. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be necessary for the construction, operation, or maintenance of the project;

h. Agree that the non-Federal Sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and to the maximum extent practicable, operate, maintain, repair, rehabilitate, and replace the project in a manner that will not cause liability to arise under CERCLA;

i. If applicable, comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended, 42 U.S.C. § 4601 et seq., and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way, required for the initial construction, periodic nourishment, operation, and maintenance of the project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act;

j. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army;

k. Provide 35 percent of: the costs of any identification, survey or evaluation of historic properties; the costs of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation; and the costs of data recovery activities associated with historic preservation in excess of one percent of the total amount authorized to be appropriated for the project;

l. Prescribe and enforce regulations to prevent obstruction of or encroachment on the project that would reduce the level of output it affords or that would hinder future operation and maintenance of the project;

m. For so long as the project remains authorized, the non-Federal Sponsor shall ensure continued conditions of public ownership and use of the property upon which the amount of Federal participation is based;

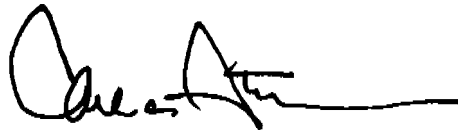
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n. Recognize and support the requirements of Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element; and

o. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

8. The recommendation contained herein reflects the information available at this time and current departmental policies governing formulation of individual projects. It does not reflect program and budgeting priorities inherent in the formulation of a national civil works construction program, nor the perspective of higher review levels within the executive branch. Consequently, the recommendation may be modified before it is transmitted to Congress as a proposal for authorization and implementation funding. However, prior to transmittal to Congress, the Port Authority of New York and New Jersey, the non-Federal sponsor; the State of New Jersey; interested Federal agencies; and other parties will be advised of any modifications and will be afforded an opportunity to comment further.



CARL A. STROCK  
Lieutenant General, US Army  
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