



Save The River®

Upper St. Lawrence RIVERKEEPER®

*Protecting the St. Lawrence River through Advocacy, Education and Research
since 1978 ...now and for generations to come.*

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John Petrilla
Environmental Branch Chief, Acting
Border Patrol & Air and Marine PMO
U.S. Customs and Border Protection

March 7, 2022

Via email: BPAMNEPA@cbp.dhs.gov RE: US Customs and Border Protection (CBP)
Facility near Blind Bay, Town of Orleans, Jefferson County, NY

Dear Mr. Petrilla:

These comments are being submitted on behalf of the 1400 members and 15,000 followers of Save The River Upper St. Lawrence Riverkeeper®. The comments of Save the River (dated February 23, 2022), Thousand Islands Land Trust (dated February 28, 2022), and Thousand Island Park (dated March 3, 2022) are also hereby incorporated by reference. Legal opinions are those of Charles M. Tebbutt Esq., P.C. The Town of Orleans has passed a formal resolution opposing the location of the CBP facility in Blind Bay.

The Draft Environmental Assessment (DEA) prepared for the project is deficient in many ways. As a result, the project should be scrapped entirely. In reviewing this DEA, the U.S. Customs and Border Protections (CBP) has failed to take a hard look at several extremely significant environmental impacts that can be expected, and thus a Finding of No Significant Impact (FONSI) is in error. If the CBP does decide to continue with evaluating this project, it will need to conduct a full Environmental Impact Statement and open the project to complete public review. At the very beginning, there has been no outreach to the local and state agencies that know more about this site than the CBP and its contractors. An elementary look would have revealed that the proposed project violates local zoning ordinances, is proposed in a New York State designated wetlands area, would impact critical habitat for multiple aquatic and land-based species (some of which are endangered or threatened under federal and state law), and is within direct eyeline of Thousand Island Park, which is on the National Register of Historic Places. Failure to use the scoping process available, 43 CFR 46.235, resulted in these most obvious errors.

The DEA is flawed in numerous other respects, starting with PURPOSE AND NEED. The DEA fails to even acknowledge the recent \$215 million dollar Customs and Border Protection project on Wellesley Island. CBP's website states: "As the United States' first unified border entity, CBP takes a comprehensive approach to border management and control, combining customs, immigration, border security, and agricultural protection into one coordinated and supportive activity." The Border Patrol, the enforcement arm of CBP, can easily be housed by that project.

For instance, parking is designed for over 200 employees, while only 75 now are used. The 12 detention facilities, very few of which are ever used, are more than enough for temporary detention. In case of arrest, the New York State Troopers usually take and house the detainees. Therefore, the DEA, and the project as a whole, should be DOA (dead on arrival).

ALTERNATIVES. The failure to even acknowledge the above mentioned CBP project, now nearly completed, contradicts CBP's mission statement and constitutes a fundamental flaw in the alternatives analysis as the CBP has more than adequate new space.

Additionally, Mr. Yost's comments for Thousand Island Park, submitted on March 3, on the proper NEPA alternatives analysis process are directly on point and specifically adopted herein. The alternatives analysis is the "heart" of NEPA, and therefore "an agency must on its own initiative study all alternatives that appear reasonable and appropriate for study at the time, and must also look into other significant alternatives that are called to its attention by other agencies, or by the public during the comment period afforded for that purpose." *Dubois v. Dept of Agriculture*, 102 F.3d 1273, 1291 (1st Cir. 1996), quoting *Seacoast Anti-Pollution League, v. Nuclear Reg. Comm'n*, 598 F.2d 1221, 1231 (1st Cir. 1979) (emphasis from *Dubois* court) (internal citations omitted).

While it is not the public's job to provide alternatives, the DEA furthermore fails to address the ability of the existing Wellesley Island facility to handle boat storage and River access and fails to mention access through the Coast Guard facility, its sister agency, next door. The boats that the Border Patrol might add, if shown to be necessary, could easily be housed on existing Wellesley Island facilities, or by renting extra dockage at the Thousand Islands Club, NYS Trooper docks at, for instance, Grasse Point, or sharing with other law enforcement in Alexandria Bay or Clayton.

Inland areas, or other places such as the Thousand Islands Bridge Authority, could house an additional facility without implicating the numerous environmental concerns of disturbing Blind Bay.

ENVIRONMENTAL CONSEQUENCES. While the environmental impacts of the project are numerous, one issue not addressed in the DEA and the subsequent FONSI is the impact of light pollution on the River community as a whole, and particularly on sensitive species. The recently completed CBP project on Wellesley Island has already contributed significant light pollution to the region. Night views in Eel Bay, for example, have been substantially impaired. Failure to give more than cursory mention to light pollution from the proposed federal project, in addition to other recent projects in the area such as the new border station, constitutes segmentation under NEPA and a corollary failure to address cumulative impacts. Light pollution, among other things, also affects the nocturnal activities of bats, particularly endangered species such as the Indiana bat (*Myotis sodalis*) and the northern long-eared bat (*Myotis septentrionalis*) that are known to frequent the proposed project area.

Other environmental consequences, many of which are raised in the comments of Save the River, TILT, and Thousand Island Park, and expressly incorporated by reference herein, include impacts on NYS designated wetlands and muskellunge spawning and feeding grounds. With the Muskie being under extreme environmental pressures, preservation of their remaining habitat is imperative.

No mention is made of testing dredged sediments for legacy Great Lakes pollutants such as mercury, PCBs, dioxin, 2,4-D and its metabolites, DDT and its metabolites, as well as other heavy metals.

No real analysis is done on affected birds pursuant to the Migratory Bird Treaty Act, nor is stormwater control discussed during construction and operation under the Clean Water Act, other than the cursory mention that generic BMPs would be used.

OTHER ISSUES. There is no mention of the need for additional federal space in the area, other than the oversimplified mention of the old Wellesley Island facility by the Coast Guard station. Blind Bay would be no more strategic a place than almost any other place already available.

For all of the reasons listed, including the scientific and public controversy surrounding this flawed proposal, the undersigned request that this project be withdrawn in its entirety.

Sincerely,



John Peach
Executive Director & Riverkeeper

Cc: U.S. Senator Kirstin Gillibrand
U.S. Senator Charles Schumer
State Senator Ritchie
U.S. Rep. Elise Stefanik
Assemblyman Walczyk
Councilman Phil Reed
Lloyd Withers, Thousand Island Park
Jake Tibbles, Thousand Islands Land Trust
Charles M. Tebbutt Esq
Kevin Rarick, Supervisor

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