

May 20, 2024

VIA EMAIL

Mr. John Petrilla
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Re: TILT Scoping Comments for CBP Supplemental Environmental Assessment

Dear Mr. Petrilla:

On behalf of the Thousand Islands Land Trust (“TILT”), I appreciate the opportunity to provide additional comments concerning the announcement by the U.S. Customs and Border Protection (“CBP”) regarding preparation of a Supplemental Environmental Assessment (“SEA”) under the National Environmental Policy Act (“NEPA”) for a proposed new Border Patrol Station to replace the current Wellesley Island Border Patrol Station. This letter responds to a letter dated April 15, 2024 from Timothy Smith of CBP’s Office of Facilities and Asset Management requesting comments on the SEA by May 20, 2024. Although Senator Schumer announced that CBP had extended the comment period by an additional 45 days to afford sufficient time for the public to comment and for CBP to hold a public scoping meeting, we have received no confirmation of that extension from CBP. If the comment period is extended, TILT reserves the right to supplement these comments.

TILT is a regional, community-based non-profit founded in 1984 and incorporated as an independent, 501(c)(3) in 1985. Working with private landowners, community and government leaders, and various conservation partners, TILT advances its mission to conserve the natural beauty, diverse wildlife habitats, water quality, and outdoor recreation opportunities of the Thousand Islands and St. Lawrence River Valley region, for present and future generations. The goal of TILT’s work is a greater quality of life for the region, an improved foundation for the local economy, and an enhanced environment in and around the area.

In 2009, TILT received national recognition for being among the first land trusts awarded accreditation status by the Land Trust Alliance Commission. To date, TILT has protected over 14,000 acres of critical habitats in support of its efforts to conserve the overall health of the Thousand Islands and St. Lawrence River Valley ecosystem.

TILT incorporates by reference its prior submitted comments to CBP on this matter, which remain accurate and applicable today. TILT strongly urges CBP to dismiss from consideration the property in the Town of Orleans, Jefferson County, New York (the “Blind Bay” site). The effects from construction and operation of a new CBP facility at that location would be fundamentally incompatible with that formally designated New York State Significant Coastal Fish and Wildlife Habitat and unacceptable to the longstanding, local residential community. Particularly in light of recent amendments to NEPA and its regulations—which CBP must fully

understand and take into account—CBP must fully disclose and justify with evidence its rejection of other reasonable alternatives, including the no action alternative and locations that do not directly abut the St. Lawrence River. Consistent with past findings and comments, including by the New York State Department of Environmental Conservation (“NYSDEC”), if CBP does elect to proceed with a new facility, the effects thereof likely would be significant and require a full Environmental Impact Statement (“EIS”) under NEPA rather than only an SEA. As further discussed below, and in previous comments, TILT has numerous concerns about the SEA and the consequences of CBP’s proposal.

A. The Environmentally Fragile Blind Bay Site Is an Inappropriate Location for a CBP Facility and Its Significant Effects.

According to the April 15, 2024 letter from Timothy Smith, the new facility CBP proposes would include a main administration building (17,322 square feet), support space (16,475 square feet), enclosed parking (15,180 square feet), and an outdoor parking area for service, government-owned, and employee-owned vehicles. The facility would also include a boat dock and ramp on the property of the facility in the St. Lawrence River. Support space infrastructure for the facility would include a short-stay canine facility, an ATV/snowmobile storage facility, a marine patrol canopy, a one-bay indoor vehicle wash, a one-tank fuel island, a communication tower, an emergency generator, perimeter fencing, and high intensity lighting.

The Blind Bay site is ecologically sensitive and entirely inappropriate for this type of industrial-scale, federal facility. As recorded through surveys completed by the State University of New York College of Environmental Science & Forestry (SUNY ESF) Thousand Islands Biological Station, the Blind Bay site is a breeding ground for multiple endangered and threatened species, including numerous bird, bat, and as many as 53 fish species, such as the Pugnose Shiner, the American eel, and the Blackchin Shiner. In particular, Blind Bay provides critical habitat and spawning grounds for the threatened and iconic muskellunge. Muskellunge are listed by the State as a Species of Greatest Conservation Need. As described under the SLR Muskellunge Management Plan, “The St. Lawrence River muskellunge is both an important ecological and economic resource to the State of New York and Providence of Ontario.”

It is well-documented that the Bay is utilized by both American Bitterns and Common Terns. The American Bittern is designated as a Species of Special Concern in New York State and is listed as Endangered in several neighboring states, including Connecticut, Massachusetts, and Pennsylvania. The Common Tern is state-listed as a Threatened Species by NYSDEC. In addition, during the later fall and wintering month, bald eagles utilize the Bay for feeding and loafing. The bald eagle is also listed as a Threatened Species by NYSDEC.

Surveys completed by SUNY ESF Thousand Islands Biological Station also collect data on turtles. NYS Species of Concern and Species of Conservation Need include the Common musk turtle and Northern map turtle, both of which are known to occur in Blind Bay. The Blanding’s turtle is listed as a Threatened Species in New York and the International Union for the Conservation of Nature lists it as endangered; further studies are necessary to determine whether Blanding’s turtles also utilize the Bay.

Moreover, the proposed facility at this site would be placed in a shallow estuary that would need significant modifications to be usable for water access, and it would also result in extensive light pollution throughout the River. Dredging required for dock construction and boat access would cause significant disturbance to the unique benthic ecosystem and would likely cause the release and re-distribution of legacy toxins and heavy metals.

Blind Bay was acquired by TILT utilizing federal mitigation funds (FEMRF - Fish Enhancement, Mitigation & Restoration Fund). The adjacent preserve land was acquired utilizing the North American Wetland Conservation Act Fund (NAWCA). This funding establishes a strict purpose and places restrictions on the use of lands acquired. Although FEMRF is primarily focused on fish conservation, it provides funding to benefit declining species, species of special concern, and species that are listed or candidates for listing under the Endangered Species Act. Funding under NAWCA is made available "to protect wetlands to support migratory birds and waterfowl." CBP must consider these funding sources and the limits they present on future land uses. CBP must also consider the unique compliance issues at this site posed under federal laws, including the Endangered Species Act and the potential for take of endangered or threatened species, the Clean Water Act and potential discharges onto wetlands or waters of the United States, and potential disturbances of protected historic or cultural areas at or near the site under the National Historic Preservation Act.

CBP thus is correct that further pursuit of the Blind Bay site would require, at a minimum, extensive ecological studies prior to any development such as under CBP's proposal. A 1983 National Park Service report, ("The St. Lawrence River -Thousand Islands Area Report"), identified the Thousand Islands Region as a unique, irreplaceable, and high-quality resource of statewide and national significance, and the New York State Coastal Management Program notes that the Thousand Islands is an internationally renowned scenic resource. The planned facility is clearly a large complex with a significant parking area and enhanced use of vehicles of all types, including a vehicle washing area. To provide a complete environmental baseline for impacts analysis, the studies should cover multiple times of year and multiple years. CBP of course can obviate such Blind Bay area studies by removing that location from further consideration.

Alternately, the significant, adverse impacts of CBP's proposed facility dictate that any plans to pursue the Blind Bay site would require, at a minimum, that CBP prepare an EIS. That EIS would need to be supported by evidence that CBP has undertaken all necessary environmental analyses of its preferred alternative for a project and all reasonable alternatives. Preparation of the EIS is a multi-step process, which involves publication of a Notice of Intent in the Federal Register to advise the public about the proposed action, a formal and publicly announced scoping period when the federal agency and the public collaborate to define the issues and potential alternatives to be addressed, public meetings, publication of a draft EIS for public comment, thorough responses to public comments received, and publication of a Final EIS and Record of Decision.

B. CBP Must Analyze All Reasonable Alternatives for a CBP Facility, Including Retaining Its Existing Facility and Off-River Locations.

TILT and others previously commented on the woefully inadequate alternatives analysis in CBP’s prior Draft Environmental Assessment (“Draft EA”). TILT is gratified that CBP belatedly recognized the flaws in the Draft EA, particularly its failure to analyze any build alternatives other than at Blind Bay. The Draft EA indicated that ten alternatives were identified, including the current site of the facility and the Blind Bay site, and that the remaining eight sites were rejected. In addition, according to the April 15 letter from Timothy Smith, CBP is now evaluating an eleventh alternative location, which was not included in the 2022 Draft EA—an 18.7-acre parcel of partially developed land located in Clayton, New York. We understand that this alternative has already met with strong opposition from the local community. To satisfy NEPA’s public transparency mandate, however, CBP must identify and analyze all of the eleven alternative sites for the facility and any other identified potential sites and must explain if and why each alternative has been rejected or is being carried forward for more detailed analysis.

TILT and other community representatives have previously informed CBP about other available, superior alternative sites, particularly including the Bonnie Castle Recreation Center owned by the Town of Alexandria, an alternative for which Senator Schumer has voiced support. The Bonnie Castle site would provide ample room for the new CBP facility without the detrimental impacts on the ecology of the St. Lawrence River and its wildlife ecosystems or the impacts on neighboring communities that would result from locating the facility at Blind Bay. Although CBP summarily claims that it requires the property on which it locates the new facility to directly abut the St. Lawrence River for mission readiness and adequate response times, this premise of needed river adjacency is arbitrary and unduly restricts consideration of a reasonable range of alternatives, including Bonnie Castle. At a minimum, CBP’s SEA must fully analyze the Bonnie Castle site as a reasonable alternative.

C. CBP Must Adhere to the Newest NEPA Regulations.

After CBP announced its SEA and scoping comment period, the Council on Environmental Quality (“CEQ”) published “Phase 2” amendments to its NEPA regulations, which are binding on CBP. 85 Fed. Reg. 35,442 (May 1, 2024) (“Rule”). The Rule makes extensive changes to the NEPA process. The Rule becomes effective July 1, 2024, and governs CBP’s current NEPA process. Like other federal agencies, CBP therefore must take the necessary time to review and understand the Rule and its proper application here.

Among other things, the Rule places increased emphasis and importance on identification and thorough analysis of the no action alternative and its effects. Specifically, the no action alternative “should serve as the baseline against which the proposed action and other alternatives are compared.” 40 C.F.R. § 1502.16. CBP must separately analyze “[t]he effects of the no action alternative, including any adverse environmental effects.” *Id.* § 1502.16(a). In other words, an agency must go beyond merely stating a no action alternative (here, to maintain CBP’s present facility in the region), and instead must conduct a detailed effects analysis of that scenario alone and in comparison to all other reasonable alternatives.

The Rule also emphasizes providing information to the public, specifically those most directly impacted by a proposed action to encourage greater and more meaningful public engagement in the NEPA process and enable members of the public to meaningfully participate by commenting and identifying suitable alternatives for the project. The community in and around the Blind Bay site, like many of the small communities in the Thousand Islands area, is small and made up of families to whom it has provided homes for decades. Many of the residents provided comments on the prior Draft EA and will almost certainly have comments on the SEA as well. CBP should afford those stakeholders the time and opportunity to provide such comments, and CBP then should take the time necessary to fully consider all of the comments it receives.

Conclusion

In sum, the environmental consequences of selecting Blind Bay are so great that the location should not be selected as the preferred alternative, and indeed, should be dropped from any further consideration as ill-suited for the proposed facility. If CBP retains Blind Bay as the preferred alternative, at a minimum, it must prepare an EIS due to the significant adverse environmental effects anticipated.

Sincerely,

/s/ Jake Tibbles

Jake Tibbles

Executive Director

Thousand Islands Land Trust