

U.S. Department of  
Homeland Security

United States  
Coast Guard



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United States Coast Guard

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16590  
June 15, 2009

Mr. Dan Stamper, President  
Ambassador Bridge  
Detroit International Bridge Company  
12225 Stephens Road  
Warren, MI 48089

**SUBJ: AMBASSADOR BRIDGE ENHANCEMENT PROJECT PERMIT APPLICATION DECISION**

Dear Mr. Stamper:

The purpose of this letter is to advise you that, as a result of a significant lack of clarity and a number of still unresolved issues over current and future Ambassador Bridge scenarios, the U.S. Coast Guard is putting all Ambassador Bridge Enhancement Project (ABEP) National Environmental Policy Act (NEPA) work into abeyance, along with any final agency decisions regarding whether to issue a Final Finding of No Significant Impact (FONSI) or proceed to an Environmental Impact Statement (EIS). Further, the decision regarding further processing of the permit application and the decision to issue a permit is also being held in abeyance. We note that your counsel, by letter dated June 9, 2009, specifically requested that the Coast Guard not process the permit application at this time. The rationale behind this decision, and the triggers necessary to again move the process forward, are outlined below.

As you know, the Coast Guard released a Final Environmental Assessment (EA) and Draft FONSI for the ABEP on February 27, 2009, for which the public comment period closed on April 30, 2009. In addition, on March 17, 2009, the Coast Guard conducted a public meeting in Detroit, Michigan. During the comment period, the Coast Guard received approximately 75 comments from the public and state or Federal agencies.

Significant comments received related to concerns over air quality, project segmentation associated with the Ambassador Bridge Gateway Project (ABGP), environmental justice, issues of property ownership, and lack of Canadian approval of the ABEP. Many comments requested that the Coast Guard require an EIS for the ABEP. Of note, the U.S. Environmental Protection Agency (EPA) advised the Coast Guard that it had significant concerns regarding the cumulative effects on air quality from the ABEP and ABGP; EPA specifically noted differences between the ABGP environmental documentation, how the ABGP is operating while under construction, and how it might ultimately operate when completed. The City of Windsor also documented multiple concerns, most notably concerning air quality.

Furthermore, the Michigan Department of Transportation (MDOT) has advised the Coast Guard that the ABGP, as currently constructed, is not being implemented by the Detroit International Bridge Company (DIBC) per the project's contractual agreement. This impacts the ABEP, in that traffic passing through the plaza (via the Gateway) will necessarily affect traffic at the bridge since these projects are physically adjacent to one another. As a result, the efficacy of the NEPA analysis contained in the ABEP EA is in question.

On March 20, 2009, the Coast Guard presented DIBC with a show cause letter, requesting proof as to why DIBC's start of construction on the new Ambassador Bridge (ABEP Pier 1) prior to receipt of a Coast Guard Bridge Permit was not in violation of 33 U.S.C. § 491, and 33 C.F.R. § 115.01 *et seq.* DIBC replied that the pier in question was Pier 19 of the ABGP, not Pier 1 of the ABEP. MDOT has disputed this determination and continues to maintain that the pier in question is not part of the Gateway Project,

but is in fact Pier 1 of the ABEP. MDOT has requested that DIBC remove ABGP Pier 19/ABEP Pier 1, since it obstructs construction work activities of the ABGP. This situation remains unresolved.

Resolution of this issue must be achieved between MDOT and DIBC, with notification from MDOT of such resolution, before the Coast Guard will proceed with any agency decisions. However, I need to be clear that this is not the only issue requiring resolution.

To better understand the current and future plans for both the ABGP and the ABEP, along with the right-to-build issue between DIBC and the City of Detroit, the Coast Guard hosted a multi-agency meeting on April 14, 2009, in Detroit, Michigan. In attendance were representatives from the Coast Guard, Federal Highway Administration, MDOT, EPA, General Services Administration, Southeast Michigan Council of Governments, and the City of Detroit.

At that meeting, the Detroit City Planning Commission presented the Coast Guard with a Detroit City Council Resolution passed the day prior, which clearly states that DIBC requires property rights to a significant portion of Riverside Park to build the ABEP. This land was acquired and improved with grants from the National Park Service Land Water Conservation Fund (LWCF) and the Michigan Natural Resources Trust Fund (MNRTF). The City states that the LWCF and MNRTF stipulate that the park can only be used for recreational purposes in perpetuity, and any use of Riverside Park in addition to or other than for recreational purposes may constitute a violation of state and federal law. This situation, too, remains unresolved.

The Coast Guard has advised DIBC on several occasions that 33 CFR 115.05 states "*Especial care will be taken that Federal approval is not granted when there is doubt of the right of the builder to construct and utilize the bridge.*" Despite our repeated requests, DIBC has yet to provide the Coast Guard with convincing evidence that DIBC has the necessary property rights to build the ABEP as described in their bridge permit application and as analyzed by the ABEP Final EA.

As a result of these many still unresolved issues, but especially the lack of clarity over actual versus permitted construction of the ABGP and the resultant impacts on the ABEP, the Coast Guard cannot with any degree of confidence evaluate the propriety of an EA versus an EIS, which is a necessary precursor to permit consideration.

To summarize, based upon:

- 1) the uncertainty of the final outcome of ABGP construction on DIBC owned property
- 2) uncertainty over final ABGP impact on NEPA for the ABEP, and
- 3) City of Detroit allegations that DIBC does not have the right to build the ABEP on Riverside Park,

in effect requiring a change in proposed design of the ABEP, the Coast Guard has determined that the ABEP, with the current information available, cannot be accurately evaluated under NEPA and the evaluation process must therefore be placed in abeyance until these issues are satisfactorily resolved and such is made known to the Coast Guard.

Specifically, to move the NEPA process forward, the Coast Guard requires that:

- 1) documentation be received by the Coast Guard from MDOT and FHWA which indicates whether the Ambassador Bridge Gateway Project has been constructed as approved by MDOT and whether further NEPA analysis for the ABGP is required due to ABGP design changes;
- 2) US EPA concurrence that its concerns with regard to air emissions have been resolved, and
- 3) documentation be received by the Coast Guard that clearly demonstrates that City of Detroit concerns with regard to Riverside Park have been resolved.

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Furthermore, no agency decision shall be taken regarding the un-permitted construction of ABEP Pier 1, until resolution of the dispute between MDOT and DIBC on the same matter is reached, and MDOT provides the Coast Guard the results of the resolution.

Once the Coast Guard receives the documentation required, and DIBC specifically requests that the Coast Guard recommence processing the bridge permit application for the ABEP, we will make a determination regarding issuance of a FONSI or elevation to an EIS. It is only after the NEPA process has been completed that the Coast Guard can make a final determination as to whether to issue a Coast Guard Bridge Permit for the ABEP.

Finally, I note that DIBC must still resolve environmental assessment and other procedural issues pertaining to the Canadian permit process. Although resolution of those issues must occur before construction can begin on the U.S. side, lack of any such resolution does not impact our ability to move forward with NEPA or permit consideration, assuming all documentation is received as outlined above.

If you have any questions, please feel free to contact me at 202-372-1511.

Sincerely,



Hala Elgaaly, P.E.  
Administrator, Bridge Program  
U. S. Coast Guard  
By direction of the Commandant

- Enclosures:
- (1) USCG ltr to DIBC dated March 20, 2009
  - (2) City of Detroit resolution dated April 13, 2009
  - (3) DIBC ltr to USCG dated April 27, 2009
  - (4) EPA ltr to USCG dated April 29, 2009
  - (5) MDOT ltr to USCG dated April 29, 2009
  - (6) MDOT ltr to DIBC dated May 15, 2009
  - (7) MDOT ltr to DIBC dated May 18, 2009
  - (8) DIBC ltr to USCG dated June 9, 2009

Copy:

- w/o Enclosures
- CGD9(dpb)
- CGD9(dp)
- CGD9(de)
- CG-0942
- CG-0944
- CG-443
- Stephen Heifetz, DHS
- Eleanore Fox, DOS
- Senator Ray Basham, Michigan State Legislature
- State Representative Rashida Tlaib, Michigan State Legislature
- Fred Eberhart, USDOT
- Mark Sanborn, USDOT
- Charlene Vaughn, ACHP
- Donald Melcher, GSA
- Brian Conway, MISHPO

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Carmine Palombo, SEMCOG  
Kenneth Cockrel, Jr., Detroit City Council  
Marcell Todd, City of Detroit, City Planning Commission  
Paul Arvanitidis, Canadian Embassy  
Teresa Pohlman, DHS w/Enclosures  
Jim Steele, FHWA w/Enclosures  
Ken Westlake, EPA w/Enclosures  
Kirk Steudle, MDOT w/Enclosures  
Kaarina Stiff, Transport Canada w/Enclosures  
Mohammad Murtaza, Canadian Environmental Assessment Agency w/Enclosures