

PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

PACE UNIVERSITY SCHOOL OF LAW

78 NORTH BROADWAY

WHITE PLAINS, NEW YORK 10603

PHONE: 914.422.4343

FAX: 914.422.4437

SUPERVISING ATTORNEYS

KARL S. COPLAN

DANIEL E. ESTRIN

ROBERT F. KENNEDY, JR.

ADMINISTRATORS

MARY BETH POSTMAN

JENNIFER RUHLE

November 15, 2011

VIA EMAIL & FAX

Mr. Michael P. Anderson
Project Director
New York State Dept. of Transportation
4 Burnett Boulevard
Poughkeepsie, New York 12603

**Re: Riverkeeper, Inc. Comments on the Scope of the Tappan Zee
Bridge Environmental Impact Statement**

Dear Mr. Anderson:

On behalf of our client, Riverkeeper, Inc., (“Riverkeeper”),¹ the Pace Environmental Litigation Clinic, Inc. respectfully submits the following comments on the Tappan Zee Hudson River Crossing Scoping Information Packet, released October 2011 (the “Scoping Document”).

We request that you also consider this letter a statement of status as an “interested or affected” person or party under the National Environmental Policy Act² (“NEPA”) and accordingly, pursuant to the regulations provided by the Council on Environmental Quality at Section 1506.6(b), please notify us of all NEPA related documents, as they become available, and NEPA related meetings, as they are scheduled, which are related to this project. Similarly, please also consider this letter a statement of status as an “interested” person or party pursuant to State Environmental Quality Review Act (“SEQRA”) regulations at 6 NYCRR Part 617, and accordingly, please send us a copy of all filed SEQRA documents (including additional scoping documents, Draft Environmental Impact Statements, Environmental Impact Statements, and notices) as they become available, and provide notification of all relevant meetings. We would

¹ Riverkeeper is a member-supported, not-for-profit organization, dedicated to protecting the Hudson River and its tributaries, and to safeguarding the drinking water supply for New York City. Since 1966, Riverkeeper has used litigation, science, advocacy, and public education to end pollution, restore ecological health, and revitalize waterfront use and access.

² 42 U.S.C. § 4321, *et seq.* (2006).

also like to be included as a “consulting party” under Section 106 of the National Historic Preservation Act³ (“NHPA”) for this federal agency “undertaking.” Accordingly, please send us copies of all NHPA related discussions and analyses. If there is an additional specific procedure for any state or federal agency which should also be complied with for this status and notification under NEPA, please inform us as soon as possible. Riverkeeper has been involved in the Tappan Zee Bridge replacement proposals since the scoping on the initial 30-mile corridor revitalization plan in the early 2000s, when the project was named the “Tappan Zee Bridge/I-287 Corridor Project,” and is committed to continuing its involvement in the decision-making process as the project progresses.

Due to Riverkeeper’s historic environmental and legal involvement with the Hudson River and the communities of the Hudson River Valley, we are extremely concerned about this project and its potential environmental impacts. The environmental, economic, and social implications of most of the alternatives presented are enormous and will substantially impact the Hudson River as well as the communities and environment of Rockland and Westchester Counties. Moreover, since the scope of the project has been modified to only include a 4-mile span, as opposed to the originally intended plan of the 30-mile I-287 Corridor, we are also concerned that the review process will be practically and legally insufficient and contrary to the requirements of NEPA and SEQRA. The current 4-mile Tappan Zee Hudson River Crossing proposal is likely to result in uninformed decisions in the environmental review process, insufficient public participation, and inadequate goals and funding.

The original project considered regional transportation needs within the I-287 corridor, to alleviate traffic congestion between Port Chester and Suffern. If the original purpose of the project was to improve regional infrastructure, then it would follow that a plan that does not include mass transit, or an alternative to low-occupancy vehicles, would fall short of recognizing the future needs of the region. On October 12, 2011, both the Federal Highway Administration (“FHWA”) and the Federal Transit Administration (“FTA”) rescinded the Notice of Intent for the Tappan Zee Bridge/I-287 Corridor Project⁴ and issued instead a Notice of Intent for the Tappan Zee Hudson River Crossing Project.⁵ If the proposed action is limited to maintaining the “link in the regional and national transportation network,”⁶ then it fails to consider the project’s original purposes – improved infrastructure, reduced congestion, and safety. While maintaining the Tappan Zee link across the Hudson River is of critical importance for regional transportation, the project must contemplate the need for smart growth, and the environmental review must thoroughly analyze the project’s impacts on the I-287 Corridor.

³ 16 U.S.C. § 470f, *et seq.* (2006).

⁴ *See* Rescinded Notice of Intent: Environmental Impact Statement, Tappan Zee Bridge/I-287 Corridor Project (Rockland and Westchester Counties, New York), 76 Fed. Reg. 63346 (October 12, 2011).

⁵ *See* Notice of Intent: Environmental Impact Statement, Tappan Zee Hudson River Crossing Project (Rockland and Westchester Counties, NY), 76 Fed. Reg. 63,343, 63,344 (October 12, 2011).

⁶ *Id.*

I. The Project Is Inconsistent with the Executive Order Requiring New York State Reduction in Greenhouse Gases of 80% by 2050.

A. Only accommodating low-occupancy vehicles ignores the intent of Executive Order No. 24

By Executive Order, on August 6, 2009, Governor David Paterson declared, in part, that, “New York...should work collaboratively with the federal government to develop and implement plans and policies that will achieve reductions in greenhouse gas emissions in the United States...”⁷ The aim is to reduce greenhouse gas emissions in the State of New York by 80% from 1990 levels by 2050. To reach this goal, the Order creates a Climate Action Council (on which the Commissioner of the New York State Department of Transportation [“NYSDOT”] sits) that is responsible for developing a Climate Action Plan. As part of their duties, the Council is to “identify and assess short-term and long-term actions to reduce greenhouse gas emissions and adapt to climate change across all economic sectors, including industry, *transportation*, agriculture, building construction and energy production...” (emphasis added). Since the Commissioner of NYSDOT sits on the Council, it would work against the Commissioner’s obligations to the Council to approve a project that does not provide for mass transit. If New York State is to attain its greenhouse gas reduction goal by 2050, transportation projects must consider ways of reducing the use of low-occupancy vehicles and expanding mass transit options. This is especially true given the importance of the Tappan Zee Bridge to regional and national transportation networks and economies. The current proposal of an 8-lane bridge for automobiles without inclusion of any mass transit options is clearly inconsistent with the goals enumerated in Executive Order No. 24.

B. Greenhouse Gas Emissions from the demolition and construction process should also be considered.

The Scoping Documents lack any reference to the greenhouse gas emissions that could emanate from the demolition of the old bridge and the construction of a new one. The project will no doubt require the transportation of building materials, as well as rubble to and from the site. The Scoping Documents make no mention of the intensity of this operation, nor its effect on the surrounding environment and localities, which will have to bear the burden of dealing with increased traffic from construction and demolition vehicles. Riverkeeper therefore requests that the involved agencies consider the levels of greenhouse gas emissions that would likely result from all stages of the project.

⁷ N.Y. Exec. Order No. 24 (August 6, 2009) (available at <http://www.dec.ny.gov/energy/71394.html>).

II. The Three Week Time Period to Submit Comments on the Scoping Documents is Insufficient, Violates the Public’s Right to Meaningful Participation, and is Contrary to the Express Purposes of NEPA and SEQRA.

The fact that the project is being “fast-tracked” with funding from the federal government should not excuse the lead agencies from providing for open and robust public participation. The public must be given an adequate opportunity to provide input on the project’s potential impacts and alternatives. The project involves immense implications for the region’s growth, and requires a careful, comprehensive assessment of environmental impacts and legitimate construction alternatives. When one considers the short timeline the lead agencies designated for public review, contractor bidding, and construction, one gets the impression that the EIS has already been written; that the final EIS is sitting in a desk drawer at the FHWA. The lead agencies cannot just go through the motions of public participation, but must consider and address the public input they receive.

III. The Lead Agencies Must Take a “Hard Look” at Legitimate Alternatives and Justify Their Reasoning for Rejecting the Alternatives that They Did, and Did Not, Discuss in The Scoping Materials.

Under NEPA, agencies must take a “hard look”⁸ at “appropriate alternatives,”⁹ and the respective impacts associated with each.¹⁰ Westchester County officials, appearing at the scoping sessions to deliver comments, stated that the project is a non-starter without mass transit options. Without mass transit, the Bridge would be obsolete the day it is completed. As it stands now, the proposed “crossing” is a 1950s solution to a 21st Century problem. Furthermore, the CEQ regulations on NEPA requires that the EIS

“present the environmental impacts of the proposal and the alternatives in *comparative form*, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In [the alternatives] section agencies shall:

(a) *Rigorously explore and objectively evaluate all reasonable alternatives*, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

⁸ See, e.g., *National Audubon Soc’y v. Dep’t of the Navy*, 422 F.3d 174, 185 (4th Cir. 2005); see also, *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) (explaining that a court will review an agency decision to see if they have “taken a ‘hard look’ at environmental consequences”).

⁹ 42 U.S.C. § 4332(E).

¹⁰ See 42 U.S.C. § 4332(C) (describing the requirements of an EIS)..

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) *Include appropriate mitigation measures* not already included in the proposed action or alternatives.¹¹

A careful weighing and consideration of the alternatives is central to the environmental review process. It is thus imperative that the Alternatives Analysis be vigorous, highly detailed, comparative, and accessible to the public. The Alternatives Analysis should discuss the cost projections, the bases for those cost projections, and financing options. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action.”¹²

A. The DEIS should include a vigorous analysis as to why the new construction option is preferred as opposed to a complete rehabilitation of the current bridge.

Concerning the agency's choice of replacement over rehabilitation, the lead agencies should publish all technical information, including scientific and engineering studies, relating to the alleged deterioration of the bridge, and the information on which cost estimates were based. The agency must also clarify whether the cost of demolition was included in the cost estimate for the proposed project. If the cost to rehabilitate the existing Bridge and bring the structure into compliance with engineering standards will cost \$4 billion, then it makes little sense to spend \$5.2 billion to build a brand new crossing that offers nothing more than increased vehicular traffic. Riverkeeper requests that the lead agencies explain the discrepancy between the expected life span of a rehabilitated bridge in the 2008 I-287 Corridor Newsletter (“up to 150 years”)¹³ and the 2011 Scoping Information Packet (“as few as 50 years”)¹⁴.

¹¹ 40 C.F.R. § 1502.14 (emphasis added).

¹² 6 N.Y.C.R.R. § 617.9(b)(5)(v) (emphasis added).

¹³ Tappan Zee Bridge/I-287 Environmental Review Newsletter, Autumn 2008, p. 4.

¹⁴ Tappan Zee Hudson River Crossing Project Scoping Information Packet, October 13, 2011, p. 2-2.

B. The DEIS should discuss why construction of a New Bridge is preferable to construction of a Cross-Hudson Tunnel.

The price tag of the tunnel project cannot be the only consideration. While it is clear from the Scoping Information Packet that the main reason for rejecting the tunnel option is the price and duration of the project, the EIS should compare and contrast the environmental impacts of a tunnel and a bridge, and consider the potential for mitigation of those impacts. These environmental impacts include differences in air quality, differences in river quality (since the bridge would be totally removed from the river, and the river would essentially return it to its natural state), and the effects on surrounding municipalities with respect to locations of connections to the Thruway. A tunnel removes all traffic from the surface, thereby eliminating air pollution via scrubbing, noise pollution, visual blight, and weather caused problems. Additionally, the S-Turns on the Tappan Zee Bridge make it prone to sun glare which is a major cause of many of the accidents on the bridge.¹⁵

In similar European projects, costs per lane have been in the range of \$3 million to \$30 million per lane mile for tunnel construction, whereas the projected cost of the proposed Tappan Zee Crossing is \$250 million per lane mile, for a total of \$6 Billion for Twenty-Four (24) lane miles.¹⁶ However, \$250 million per lane mile may be a low estimate considering that the Oakland Bay Crossing (similar in scope; updated for seismic redundancy) reached \$370 million per lane mile.¹⁷ The speed of construction would also be different considering that boring rates for tunnels far exceed 100 feet per day, or less than one year for completion of a tunnel project from West Nyack to Elmsford.¹⁸ Use of a ferry service to cross the river to service the I-287 exits would be eliminated because of the tunnel project; such ferries allow for a certain number of cars and enable commuters with the ability to connect and appreciate the Hudson River while crossing it.¹⁹

¹⁵ See New York State Website, [Tappan Zee Bridge/I-287 Environmental Review](http://www.tzbsite.com/public-involvement/sawg-presentations/round11/bridge_20090423/image18.htm), http://www.tzbsite.com/public-involvement/sawg-presentations/round11/bridge_20090423/image18.htm (last visited November 13, 2011) (discussing how a dual level roadway would help to alleviate the sun glare issues on the Tappan Zee).

¹⁶ See Robert T. Hintersteiner, *The Tappan Zee Bridge: Where Do We Go From Here?*, 96 (2002)

¹⁷ See E-mail from Alexander Saunders, Saunders Foundry Supply, Inc., to Kathleen Fortino, Executive Assistant to the President, Scenic Hudson (Oct. 28, 2011, 22:56 EST) (on file with author).

¹⁸ See *id.*

¹⁹ See *id.*

C. The DEIS should include a discussion of the difference and viability of building a single new crossing instead of the two new crossings which are currently being proposed or even a possible third crossing for mass transit.

There has not been sufficient discussion about why the proposed project requires two new crossings. In the DEIS, the lead agencies must thoroughly consider the need for two crossings instead of one, since building two new structures would potentially double the impact on the riverbed and marine environment. Because a future possible third crossing for rail transit was suggested, we request that the analysis also include a discussion of the potential impact of three newly constructed crossings.

D. The DEIS should discuss the status of the current bridge, including the “no action” alternative, potential use of the existing bridge for bike and pedestrian traffic, as well as the costs and environmental impacts of demolishing the existing bridge.

The DEIS should also consider the differences in keeping the old bridge in place versus demolishing it. The Scoping Documents refer to a “No Build Alternative,” which “would retain the existing Tappan Zee Bridge in its current configuration with ongoing maintenance,” and will serve as the baseline to which the Replacement Bridge Alternative is compared.²⁰ “[T]he [CEQ] regulations [for NEPA] require the analysis of the no action alternative...provide... a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. Section 1502.14(c).”²¹ “[N]o action”...[means] “no change” from current management direction or level of management intensity.²²

Based on this guidance from the NEPA regulations, there needs to be a discussion of the continued maintenance of the current bridge as a “benchmark” for comparison to other alternatives. Such an analysis should include the costs of continuing the maintenance of the bridge, the number of years that the continued maintenance would extend the life of the bridge, and whether mass transit could legitimately be added to the current bridge. Additionally, in this regard, the lead agencies must publicly disclose technical engineering studies relied upon in its determination that the current bridge is impossible to maintain. Similarly, it is difficult to see how the “No Build Alternative” in the Scoping Documents would be different from a Rehabilitation Option, since both would require significant repair work and updates. Riverkeeper believes it is premature to eliminate consideration of the Rehabilitation Option from the DEIS.

These discussions should also consider the alternative of using the existing bridge for mass transit rail and a pedestrian and bike path. This alternative may be a legitimate way of

²⁰ Tappan Zee Hudson River Crossing Project Scoping Information Packet, October 13, 2011, pp. 2-1 – 2-3.

²¹ 46 Fed. Reg. 18026-01, 18027 (March 23, 1981).

²² *Id.*

adding alternative modes of transportation to the project now, as opposed to putting off the addition of mass transit to a later date. This alternative, which would allow the current bridge to stay in place, may also lessen the environmental impacts to the marine ecosystem which has developed around the pilings and caissons of the current bridge.

E. The DEIS must fully consider mass transit options, and the lead agencies cannot rely on the data studied in the I-287 Corridor Project, when such data was never available for public comment.

The Draft Environmental Impact Statement for the Tappan Zee Hudson River Crossing Project **must include** a discussion of the inclusion of mass transit on the bridge, including both bus rapid transit and commuter rail transit. It is utterly insufficient to reject mass transit before fully discussing the costs and benefits of mass transit with the public. The data released in the 2008 scoping documents for the I-287 Corridor Project was never part of a formal DEIS, and so it was never subject to public scrutiny. As discussed above, it is the responsibility of the lead agencies to consider legitimate mitigation measures under the CEQ regulations.²³ Inclusion of mass transit options would be an “appropriate mitigation measure” under the regulations to alleviate air quality issues and mitigate environmental impacts associated with increased automotive transport.²⁴ The analysis of mass transit should include the utilization of rail for both commuter service and heavy freight. This in turn would reduce the air pollution caused by the amount of trucks which cross over the bridge.

IV. The DEIS Should Include A Vigorous Analysis of the “Reasonably Foreseeable” Environmental Impacts for All of the Project Alternatives Considered.

Anything less than a full analysis of alternatives would fall short of the lead agencies’ responsibilities under NEPA to consider the “adverse environmental effects” of the “agency action” on the “human environment.”²⁵ According to CEQ regulations, the “effects” or “impacts”²⁶ that must be studied include those “which are caused by the action and are later in time or farther removed in distance, but are still *reasonably foreseeable*...[and] may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate...”²⁷ Because expansion of the Tappan Zee Bridge to eight lanes of automotive traffic will affect the traffic patterns on the I-287 Corridor, the proposed 4-mile study area is inadequate in light of the regional impacts that the project will have – and was

²³ See 40 C.F.R. § 1502.14.

²⁴ See *id.*

²⁵ 42 U.S.C. § 4332(C).

²⁶ See 40 C.F.R. § 1508.8(b) (2011) (describing “effects” and “impacts” as synonymous in the context of NEPA).

²⁷ 40 C.F.R. § 1508.8(b) (emphasis added).

originally expected to have. Since the proposed project will include 8 lanes, and since the highway on either side of the Bridge is currently 6 lanes wide, it is obvious that the imminent expansion of the highway will have impacts beyond the 4-mile project area. It is therefore Riverkeeper's position that the study area should not only include the 4-mile immediate project area, but also the obvious future impacts on the originally proposed 30-mile I-287 Corridor.

The DEIS should consider the project's effects on the surrounding residential communities, including the long term effects on new traffic patterns during and after construction. The lead agencies should also study the effects of the project on nearby connecting highways, as congestion impacts are likely to be far-reaching. The DEIS should also include an analysis of construction vehicles on the local roadways. There may also be impacts on local property values, neighborhood character, and aesthetics.

The DEIS should also consider impacts on historic and cultural resources in the construction area, including the historic Irving neighborhood, immediately next to the bridge in Tarrytown. Irving is a small riverside neighborhood – one of the oldest in Tarrytown. The neighborhood was built throughout 1790-2004, nestled in a pocket to the south of the Tappan Zee Bridge. Some of the homes in the neighborhood belonged to workers hired by the 19th Century millionaires who once owned estates perched on either side of the neighborhoods. A few older homes were originally built by abolitionists as part of the Underground Railroad. The effects on the historic resources of the Irving Neighborhood must be considered. As a corollary to this historic resource analysis, the review should examine the effect of the project on the neighborhood character of the surrounding municipalities.

The project should also consider how the project might promote suburban sprawl in Orange, Rockland, and Westchester Counties. The DEIS should thoroughly analyze the cumulative impacts of the proposed bridge project, in conjunction with other road/transportation infrastructure projects or even major developments that will doubtless have an impact on urban sprawl, traffic patterns, land use, etc. The proximity of the Project to two increasingly important air travel hubs – Stewart Airport in Newburgh and Westchester County Airport – necessitates the study of the Project's impacts on increased air travel. Increased development will in turn increase impermeable surface coverage, causing more runoff to enter the Hudson River as opposed to being absorbed into soil, possibly triggering Clean Water Act²⁸ issues. This would include increased point sources, through the construction of new storm water and sewage outfalls to increased capacity for a larger population, as well as general storm water from non-point sources – not necessarily a “discernible, confined and discrete conveyance”²⁹ – which will flow into the Hudson River because of the increased impervious ground coverage. Effects of suburban sprawl should not be limited to Rockland and Westchester Counties. Orange County municipalities discharge into tributaries of the Hudson River as well, and so the lead agencies should study suburban sprawl impacts on water quality as far away as Orange County.

²⁸ 33 U.S.C. § 1251, *et seq.* (2006).

²⁹ 33 U.S.C. § 1362(14) (defining a “point source”).

Though the FHWA has stated that the construction will not have an effect on traffic flow, they fail to consider the psychological disconnect of the public who may think that the project will lead to less congestion and will therefore be more inclined to drive across the new bridge. While the FHWA has stated that the project does not have the purpose of alleviating congestion, the inclusion of pictures of congestion on the Bridge and charts and graphs concerning traffic patterns in the scoping packet give the impression that the project does mean to address traffic congestion. This is misleading to the public. Furthermore, the focus on automotive transport raises environmental justice concerns, because low-income working families will not have access to jobs in Westchester if the project does not include affordable mass transit options.

The DEIS should also consider effects on marine traffic due to the construction, demolition, and placement of the new bridges. The crowding of floating construction machinery, bridge pilings, caissons, and other work-related disturbances will impede traffic flow through the Hudson River's navigable channel for barges, ships, and boats that pass through every day. A series of bridges could also impede the wind flow affecting the recreational use of sailboats on the Hudson River.

With respect to the construction of the new bridges, environmental review should consider dredging and filling, the storage and disposal of fill materials, and possible leaching effects on the benthic marine environment. The agencies should thoroughly discuss the coordination of the proposed two bridges with respect to the demolition, if any, of the existing bridge. The river flows have created underwater ridges and trenches which created a habitat for various Hudson River species. The level of disruption of this ecosystem must be considered. Environmental impacts might result from contaminants that are re-released into the Hudson, including Polychlorinated Biphenyls (PCBs) and other materials which may have leached from the nearby General Motors facility in Tarrytown. Throughout the dredging process, along with the renewed exposure of the ecosystem to contaminants, sediment will also be disrupted, thereby affecting the surrounding ecosystems. More importantly, the DEIS should consider the effects on the fisheries and species propagation. The Hudson River is critical habitat for federally listed endangered Shortnose Sturgeon,³⁰ and Atlantic Sturgeon - a "candidate species" for listing under the Endangered Species Act, and currently a Species of Concern under the National Atmospheric and Oceanic Administration.³¹ This is in addition to other fish populations which are in decline,

³⁰ See 50 C.F.R. § 17.11 (2011).

³¹ See Proposed Rule: Endangered and Threatened Wildlife and Plants: Proposed Listing Determinations for Three Distinct Population Segments of Atlantic Sturgeon in the Northeast Region, 75 Fed. Reg. 61,872 (to be codified at 50 C.F.R. pt. 223 and pt. 224) (October 6, 2010) (discussing the Atlantic Sturgeon's proposed threatened species listing); *see also* Proposed Rule: Endangered and Threatened Wildlife and Plants; Proposed Listings for Two Distinct Population Segments of Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*) in the Southeast, 75 Fed. Reg. 61,904 (to be codified at 50 C.F.R. pt. 224) (October 6, 2010) (discussing the Atlantic Sturgeon's proposed endangered species listing); *see also* National Atmospheric and Oceanic Administration Fisheries Website, [Proactive Conservation Program](#):

such as the American Shad.³² The impacts on the Shortnose Sturgeon and their “critical habitat” would trigger Endangered Species Act³³ issues, in addition to its inclusion in the EIS analysis, along with the effects of the project on the other declining fish species.

V. Conclusion

Central to the Environmental Impact Statement process is the full discussion and disclosure of available alternatives and their corresponding impacts. Public participation in this process must be meaningful and robust, and the lead agenc(ies) must strictly carry out their obligations under NEPA and SEQRA as required by the legislation. Riverkeeper has grave concerns based upon the scoping materials and the public presentations that misguided efforts to “fast track” this project will lead to unacceptable breaches in federal and state statutory requirements. Riverkeeper fully intends to hold the project sponsors accountable for strict compliance with their environmental review obligations under federal and state law.

Respectfully yours,

/s _____
Seth Kagan, Legal Intern

/s _____
Michael Sinai, Legal Intern

Copy: Paul Gallay, Riverkeeper
Phillip Musegaas, Riverkeeper
Karl Coplan, PELC
Daniel Estrin, PELC

Species of Concern (last updated November 4, 2011) <http://www.nmfs.noaa.gov/pr/species/concern/> (last visited November 13, 2011).

³² See Peter A. Henderson and Richard M.H. Seaby, The Status of Fish Populations and the Ecology of the Hudson River (Pisces Conservation, Ltd., April 2008); see also Daily Freeman, State Bans Hudson River Shad Fishing (March 18, 2010) <http://www.dailyfreeman.com/articles/2010/03/18/news/doc4ba1ac47e1232790359872.txt> (last visited November 13, 2011).

³³ 16 U.S.C. § 1531, *et seq.* (2006).