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Via First Class Mail and E-Mail

Robert "Bobby" Jones
Corpus Christi Field Office
Regulatory Division, CESWG-RD-R
U.S. Army Corps of Engineers
5151 Flynn Parkway, Suite 306
Corpus Christi, TX 78411-4318

Re: **Permit Application SWG-2018-00789**; Application of Axis Midstream Holdings, LLC, for a permit reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Dear Mr. Jones:

I represent Port Aransas Conservancy (PAC) and I am writing to express concerns related to the review of the above-referenced permit application by the United States Army Corps of Engineers (USACE). As you should be aware, there are multiple permit applications pending before the USACE related to development on and around Harbor Island in Nueces County, Texas. The above-referenced application is one of them, while two other related applications are SWG-2019-00067 (related to the deepening of the Corpus Christi Ship Channel) and SWG-2019-00245 (related to construction of the Harbor Island Terminal Facility).

On February 14, 2019, Mr. Robert W. Heinly, the Chief of the Policy Analysis Branch, issued a letter advising that the above-referenced application and the applications in matter numbers SWG-2019-00067 and SWG-2019-00245 constituted a single project and would need to be considered together by the USACE. A copy of that letter is attached for your reference, with appropriate portions highlighted for your convenience. Of particular relevance, Mr. Heinly's letter states:

[I]t is clear that the deepening of the [Corpus Christi Ship Channel] and the construction of the Harbor Island Terminal Facility are interdependent and should be considered a single and complete project. In addition to the Harbor Island Terminal Facility, the Corps has received a permit application from Axis Midstream Holdings to construct a series of pipelines and facilities to transport crude oil for loading onto marine transport vessels at the proposed Harbor Island Terminal Facility. Considering that Axis' proposed project is designed to serve a single customer, the Harbor Island Terminal Facility, the Corps has concluded that the proposed pipelines and facilities are also interdependent with the Harbor Island Terminal Facility and the deepened channel.

On April 9, 2020, the USACE issued a notice advising the public of the upcoming scoping process for the Environmental Impact Statement (EIS) that has been determined necessary for SWG-2019-00067. A copy of that public notice is attached. Notably, that public notice provides no reference to SWG-2019-00245 or SWG-2018-00789. This is concerning because the facts and the applicable law continue to require these three permit applications to be considered together as a single project. I am aware of no subsequent communications reversing Mr. Heinly's prior determination nor any justification for such determination to be reversed.

In fact, the NEPA Implementation Procedures, 33 CFR Part 325 Appendix B, at 7(b)(1) require that all three projects be considered together. Specifically, those guidelines provide:

(1) In some situations, a permit applicant may propose to conduct a specific activity requiring a Department of the Army (DA) permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of a larger project (e.g., construction of an oil refinery on an upland area). The district engineer should establish the scope of the NEPA document (e.g., the EA or EIS) to address the impacts of the specific activity requiring a DA permit *and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review.* . . . These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action.

This guidance is directly on point here where the three projects proposed by permit applications SWG-2019-2045, SWG-2018-00789, and SWG-2019-00067 are interrelated and part of the overall project to develop Harbor Island's terminal facility. A failure to consider these permit applications together would be a failure to follow the clear guidelines for NEPA review.

While I understand the comment period is closed for the above-referenced application, I wanted to bring these matters to your attention so that you can ensure that the appropriate review is conducted in regard to the above-referenced application. This application should be included in the EIS review process currently beginning in SWG-2019-00067 and no determination in regard to this application may appropriately be made until after the EIS process is completed in SWG-2019-00067, as such is necessary to fully consider the impacts of all three permit applications that are part of the single project on Harbor Island. In your role in regard to this project, it is incumbent that you ensure its inclusion in the EIS review in SWG-2019-00067.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

/s/ Craig R. Bennett

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