

East Lyme Public Trust Foundation, Inc



P.O. Box 174, East Lyme, CT 06357

Monday, September 28, 2009

Mr. Robert J. DeSista – Chief, Permits and Enforcement Branch
Regulatory Division – US Army Corps of Engineers – New England District
696 Virginia Road
Concord, Massachusetts 01742-2751

re: File Number: NAE-2006-325
Attention: Susan K. Lee

Dear Mr. DeSista:

On behalf of the East Lyme Public Trust Foundation, Inc., I am pleased to endorse the above referenced file. We request its approval under your authority pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, and given specific reference to all conditions and specifications contained in subject File NAE-2006-325, as published in your Public Notice of September 8, 2009.

Since 1994, this Foundation has dedicated its full efforts to design, fund, and implement the Niantic Bay Overlook project and its shoreline as a public coastal park that we donated to East Lyme in 1999 to provide the public free and safe access to this 1.1 mile shoreline of Long Island Sound. The proposed Amtrak project to replace the Niantic River Railroad Bridge will impact the adjacent public park very significantly. We are cautiously pleased and relieved that after many years of working with the Federal Railroad Administration, the State of Connecticut, the U.S. Corps of Engineers, the U.S. Coast Guard, the National Marine Fisheries Service, and Amtrak, we now see this important federal construction permit pending issuance by your agency. It is the last critical step in project implementation. That implementation, if you condition it with the specifications in File NAE-2006-325, will significantly help protect and improve the public park that we are dedicated to preserve and improve. Replacement of the Niantic River Railroad Bridge can result in the Niantic Bay Boardwalk and its associated beach actually being made better, larger, and more stable after the permitted work than it was before, provided you endorse all the conditions in the File that control that proposed work.

However, we understand that File NAE-2006-325, as it is now revised was not fully coordinated with the Corps or with its commenting agencies, especially the National Marine Fisheries Service (NMFS), and that it is presently not fully compliant with your requirements. We understand that the present revised File lacks compliance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act and that, therefore, the NMFS, lacking information in the File, cannot advise you as a Commenting Agency on the proposed project without NMFS undertaking an Essential Fish Habitat Consultation (WWW.NERO.NOAA.Gov/HCD). We understand that the absent information pertains to the added proposed construction of a groin and beach nourishment -- revisions not yet fully

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defined to the satisfaction of the Corps or the NMFS in light of the required Essential Fish Habitat Consultation (EFHC - **50 CFR Part 600 Federal Register**/Vol. 67, No. 12 /Thursday, January 17, 2002 / Rules and Regulations). Based on our knowledge of the project site, its marine ecology and of the considerable environment field data that exists at the site, much of which results from years of aquatic benthos monitoring by the Millstone Environmental Laboratory and others, Amtrak can provide you with the information that NMFS requires in order for it to conduct its EFHC. Guidance by the National Oceanic and Atmospheric Administration (NOAA - <http://www.nmfs.noaa.gov/habitat/efh/Consultation/introduction.html>) and NMFS is the basis for our confidence that Amtrak can readily revise its application.

We believe that the potential natural resources in question, such as Winter Founder and clam habitat, in fact are not impacted by the proposed groin and beach nourishment. We understand that you must receive the missing information from Amtrak, before you can begin processing the File, so it will remain pending unless and until you receive the missing assessment. We are fully confident that Amtrak is aware of what has been noted as lacking and that it will provide that information so that the EFHC can be initiated and successfully completed.

We also understand that the Corps will offer Amtrak an opportunity to provide missing information as it relates to documenting the absence of possible benthic habitat impacts. Such evidence will thus allow this important project to go forward. If our understanding of these facts is in error, please correct our misunderstanding. However, and regardless of the outcome of this federal permit processes, rest assured that the Foundation will continue its work to preserve and protect the park and that we will continue to report to our 1,500 donors and the thousands of annual park visitors who want to track progress over the long duration of the anticipated Amtrak construction. In anticipation of that effort, we donated several security video cameras to East Lyme that will continue to provide live and recorded images of the Niantic Bay coastal zone and, in particular, the construction site in question. We invite you to view our initial efforts at:

<http://www.publictrustfoundation.org/webcam.htm>

If there is any aspect of your permit process that you feel may be assisted by our involvement, we are ready to offer any efforts that will help to preserve and protect the public trust and the Niantic Bay Overlook that is the epitome of that trust.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert DeLaney".

President