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Delaware Riverkeeper Network Files for Injunction to Stop Floodplain Development

LURE OF FEDERAL FUNDS CONTINUES TO BLIND EASTON PARKING AUTHORITY

Philadelphia PA – Delaware Riverkeeper Network (DRN) filed a motion for preliminary injunction today to stop all action on building a critical transportation facility in the floodplain of the Delaware River in the Historic District of Easton, PA.

Despite the Federal Transit Administration's (FTA) decision – in response to DRN's lawsuit filed in June – that the Riverwalk federal transportation project requires an environmental assessment before the project can move ahead, the Easton Parking Authority continues to ignore Federal law and Easton's own sound policies regarding floodplain development lured by the continued expectation of big federal dollars. The Easton Parking Authority will not commit to a brief pause in its pursuit of this project as requested by DRN, which made it necessary to file for a preliminary injunction.

The Riverwalk development project is going to use federal funding from the FTA for a transit facility (bus depot and parking garage) in a joint venture by the Lehigh and Northampton Transportation Authority, the Easton Parking Authority and a private condominium developer who will add 7 stories of residential condominiums to the structure, producing a 12 story tower that will loom over the Delaware River and the historic districts of Easton and Phillipsburg, NJ.

"There is much at stake here with the siting of a public transportation facility in the flood zone," states Maya van Rossum, the Delaware Riverkeeper and head of the Delaware Riverkeeper Network. "Not only is it foolish to construct where it floods, a transit facility is a gathering place for large numbers of people, making it all the more dangerous to place it in harm's way". "The message that Easton is sending is its OK to ignore its established policies that protect its own citizens and the environment if the government is going to pay for it," said van Rossum.

Last week DRN sent the Parking Authority and other agencies involved a letter explaining that an injunction would be sought and requesting that further commitments of public resources, including the awarding of construction contracts not be made in the interim. "The FTA has revoked its categorical exclusion from the environmental impact review process yet nobody has indicated that the federal dollars will be returned or that

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construction will await compliance with the National Environmental Policy Act," notes DRN attorney John Fritschie who filed the suit and injunction motion. "This a matter of respect for federal environmental law and the court system, and prudent care of the public's trust. We continue to request that the Parking Authority allow the Court a chance to rule on our injunction motion prior to making any further commitment of resources, such as awarding bids on a construction contract," stated Fritschie. The FTA letter dated July 18 stated I am writing to advise you that grant funds may need to supplement the environmental work that was previously performed on this project but that, pending the outcome of this assessment, all other actions in furtherance of the Riverwalk project must be suspended if federal funds are intended to be used in the project.

The City of Easton itself has recognized the significant impacts the project will have. This project does not meet the City's local policies and requirements, yet has gained local approvals because of the "level of investment." In a memorandum dated 7.12.05, the Chief Planner for the City of Easton so informed the Parking Authority thusly: we will not seek additional commercial development directly in this area, since it is located in the floodplain. While our flood plain ordinance restricts development to some extent and thereby controls it, recent flood events have forced our thinking toward the practical – and that is that flood plain development is not only costly, but can be heartbreaking.

Floods are routinely the most expensive and deadly of natural disasters in America in any particular year.

According to the Congressional Research Service:

Historically, floods have caused more economic loss to the nation than any other natural hazard. Almost 90% of all declared disasters include a flooding component. Flood-related property losses have risen to \$6 billion a year, from approximately \$3.3 billion in the mid-1980s. Combating the devastating effects of flooding has become a national priority involving flood hazard identification, the purchase of federally subsidized flood insurance by homeowners, renters, and business owners, and state and local land-use controls designed to minimize flood loss and guide development away from floodprone areas.

Congressional Research Service, Report to Congress, Federal Flood Insurance: The Repetitive Loss Problem (June 30, 2005) (<http://www.fas.org/sgp/crs/misc/RL32972.pdf>).

Northampton County has received three flood related Presidential Disaster Declarations since Tropical Depression Ivan in September 2004. For the City of Easton (as of February 28, 2007) there have been a total of 243 NFIP claims for a total payout of \$10,175,470.97 (http://bsa.nfipstat.com/reports/1040_200702.htm). The June 2006 flood event alone resulted in 56 National Flood Insurance Program claims paid in Easton, totaling \$3,411,593 in damage costs, making Easton among the highest in the Commonwealth. (http://www.state.nj.us/drbc/Flood_Website/NFIPanalysis/June06-ClosedClaimsRanking.pdf). From an economic standpoint, keeping structures out of floodplains makes sense.

Repetitive loss properties (those properties with 2 or more losses reported which were paid more than \$1,000 for each loss, for losses written within 10 years of each other and at least 10 days apart) account for a large share of claims paid. The 2004 Flood Insurance Reform Act Congressional Findings noted, "repetitive-loss properties comprise approximately 1 percent of currently insured properties but are expected to account for 25 to 30 percent of claims losses". Bunning-Nereuter-Blumenauer Flood Insurance Reform Act of 2004 as reported in "Watermark", National Flood Insurance Program (2005, Number 2) at 11. Easton is among the highest in claim dollars in Pennsylvania with \$7,233,692 total payouts for repetitive loss properties from January 1978 through February 28, 2007. (http://www.state.nj.us/drbc/Flood_Website/NFIPanalysis/RepetitiveDetail3-Dollar.pdf). The Intermodal Facility's location in the floodplain will possibly result in it becoming a repetitive loss property.

The expert declaration of John Miller, a licensed engineer and certified floodplain manager with the consulting firm of Princeton Hydro, filed by DRN with the injunction motion explains: "The siting of an intermodal transportation facility in the floodplain creates additional commitment to first-responders, increases the risk to users, employees and emergency management personnel, creates a health hazard post-flooding and shuts down a critical facility during a time of need, during flooding and for days afterward. Evacuation plans and procedures

are not foolproof. An intermodal bus facility will serve a variety of ages (children and the elderly), with differing abilities to read and understand languages (age, hearing and sight challenges and non-English speaking), and with physical and mental disabilities. As a public critical facility, an intermodal transportation facility should be located outside the delineated floodplain."

The Motion for Preliminary Injunction was filed on August 9 in U.S. District Court for the Eastern District of Pennsylvania in Philadelphia by Delaware Riverkeeper Network, the Delaware Riverkeeper, and the American Littoral Society against the Easton Parking Authority, the Lehigh and Northampton Transportation Authority and the Federal Transit Administration.

For a copy of the Motion, contact Shannon@delawareriverkeeper.org