

## Public Comment Table of Contents

<b>I. BACKGROUND</b>	<b>4</b>
A. Puerto Rico’s Setting	4
1. <i>Environmental Context</i>	5
2. <i>Basic Human Context</i>	8
3. <i>Energy Context</i>	11
B. Vía Verde Project	12
<b>II. GENERAL FAILURE OF THE DRAFT EA AS TO THE DETERMINATION OF FONSI</b>	<b>13</b>
<b>III. ADVERSE IMPACTS OF VÍA VERDE PROJECT</b>	<b>20</b>
A. Impacts On Waters And Wetland	20
B. Impacts On Wildlife And Habitat	24
C. Impacts On Cultural And Historic Resources	26
D. Impacts On Public Safety	30
1. <i>Via Verde Affects The Security Of Thousands Of People In Puerto Rico In A Significant Manner.</i>	30
E. Environmental Justice Considerations	35
F. Other Impacts On People And Communities	38
1. <i>Observations On Public Concern</i>	40
2. <i>Social Impact Variables</i>	41
3. <i>Observations On Risk, Health, And Safety</i>	43
G. Public Controversy	46
H. Economic And Energy Impacts	48
<b>IV. MISLEADING PROJECT SCOPE AND DESCRIPTION</b>	<b>50</b>
<b>V. MISLEADING STATEMENT OF PURPOSE AND NEED AND OVERLY RESTRICTED RANGE OF ALTERNATIVES</b>	<b>54</b>
A. USACE Did Not Do An Independent Review Of The Project’s Purpose And Need, Accepting Instead The Applicant’s Narrow Definition.	54
B. Flawed Alternative Analysis: The Costa Sur Alternative	55
C. Floating Storage And Regasification Units (FSRU’s) Alternative	56
D. Draft EA Ignores Other Practicable Alternative: The Barch Alternative	56
E. Applicant And The Governor Now Acknowledge That The Pipeline Will Cost Approximately \$800 Million Instead Of \$477 And That They Are Currently Considering Alternatives To The Pipeline That Were Not Considered In The Draft EA.	57

F. The Draft EA Fails To Adequately Notify The Public Of The Proposed Action, It Has Numerous Errors In Fundamental Areas Such As The Project’s Purpose And Description That Warrant A Corrected Draft EA And A New Comment Period.	58
<b>VI. FAILURE TO COMPLY WITH LEGAL REQUIREMENTS FOR ENVIRONMENTAL REVIEW AND INTERAGENCY CONSULTATION</b>	<b>58</b>
A. Clean Water Act Permitting Requirements	58
B. National Environmental Policy Act - Environmental Review Requirements	60
1. <i>Major Federal Action Significantly Affecting The Quality Of The Human Environment</i>	60
2. <i>Public Participation Requirements Under NEPA</i>	62
C. Endangered Species Act Consultation Requirements And Prohibitions	64
D. National Historic Preservation Act Consultation Requirements	66
<b>VII. CONCLUSION</b>	<b>67</b>
<b>VIII. APPENDIX A: COMMENTERS</b>	<b>1</b>
A. Organizations:	1
B. Individuals:	3
<b>IX. APPENDIX B - SUPPLEMENTAL INFORMATION</b>	<b>5</b>

January 30, 2012

**VIA U.S. MAIL AND EMAIL**

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**Re: Vía Verde Natural Gas Pipeline Project - U.S. Army Corps of Engineers, Permit Application No. SAJ 2010-02881 (IP-EWG): Comments on the Draft Environmental Assessment and Statement of Findings (Issued November 30, 2011)**

Dear Mr. Barron:

On behalf of our clients (collectively, “Commenters”<sup>1</sup>), we are submitting for your consideration the comments set forth below as well as the supplemental information included on the enclosed compact discs, in response to the Vía Verde Natural Gas Pipeline Project (“Vía Verde”), Permit Application No. SAJ 2010-02881 (IP-EWG). We hereby incorporate by reference and reassert, on behalf of all the Commenters, the statements and claims previously submitted in: (1) our April 28, 2011 comment letter; (2) our meeting with the U.S. Army Corps of Engineers (USACE) at the Jacksonville District office in July 15, 2011; (3) our August 8, 2011 letter to USACE; (4) our 60-Day Notice Letter relating to Endangered Species Act (ESA) violations; (5) our December 6, 2011 request for Spanish translation of the draft Environmental Assessment; (6) our Petition for an Emergency Listing of the *Coquí Llanero* as an endangered species; (7) our letter to the Advisory Council for Historic Preservation regarding the conflict of interest of the State Historic Preservation Office; (8) our December 19, 2011 letter to Environmental Protection Agency (EPA) requesting permit elevation under Section 404(q) (404 Permit) of the Clean Water Act (CWA); (9) our December 23, 2012 letter to the United States Fish and Wildlife Service (FWS) requesting ESA concurrence withdrawal; (10) our January 3, 2012 request for Spanish translation of the draft Environmental Assessment and related documents; and (11) our January 6, 2012 letter to the EPA requesting elevation of the permitting matter to the Council on Environmental Quality under Section

<sup>1</sup> The Commenters consist of conservation groups, community organizations, and individuals concerned with the wide array of adverse impacts associated with the proposed Vía Verde Project. The conservation and community organizations include Ciudadanos del Karso, Federación Espeleológica de Puerto Rico, Sociedad Ornitológica Puertorriqueña, Inc., Vegabajefios Impulsando un Desarrollo Ambiental Sustentable, Comité Utuadeño Contra el Gasoducto, the Center for Biological Diversity, and the Sierra Club. See Appendix A for a more detailed list and discussion of the Commenters and their interests. Some of these Commenters may submit additional comments in addition to those set forth here.

309 of the Clean Air Act; (12) the comments and other materials listed in Appendix B. We are also incorporating by reference the materials listed in Appendix B. The comments we are submitting today are meant to supplement our previous submissions as well as the additional items listed in Appendix B.

Specifically, this letter contains commentary to the draft document published on November, 30, 2011, titled *Environmental Assessment (EA), 404(b)(i) Guidelines Evaluation, Public Interest Review, and Statement of Findings*, subsequently referred to here as “draft EA.” In this draft EA, USACE found that the proposed project qualifies for a “finding of no significant impact” (FONSI) under 40 CFR §1508 27.<sup>2</sup> Although a determination as to compliance with 404(b)(i) was withheld,<sup>3</sup> the referred document contains preliminary conclusions that determine that Via Verde’s impacts are minor or nonexistent. Generally based on alleged mitigated actions, and specifically related to the wetlands, the draft EA states that the effects on wetlands would be “neutral,”<sup>4</sup> “small,”<sup>5</sup> and merely “temporary.”<sup>6</sup>

First and foremost, it should be noted that, in many instances, the draft EA and USACE’s Public Notice for the Via Verde project contains admittedly incomplete project information. Examples of this include: insufficient information to fully analyze project T-valve connections<sup>7</sup>, incomplete information from PREPA regarding wetlands determinations and a full accounting of the impacted wetlands acres<sup>8</sup>, lack of a completed emergency plan required to address safety concerns<sup>9</sup>, failure to conduct a full geophysical investigation to confirm depth of rock caves<sup>10</sup>, failure to conduct and explain results of required endangered species pre-construction surveys<sup>11</sup>, a final determination of the effects of the project on historical properties<sup>12</sup>, and a full accounting of the economics of the project.

With respect to the economics, and the very viability of the project, USACE has ignored recent publicly announced decisions and statements made by the Governor of

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<sup>2</sup> Environmental Assessment (EA), 404(b)(i) Guidelines Evaluation, Public Interest Review, and Statement of Findings at page 103. FONSI elements are considered in pages 100-103.

<sup>3</sup> *Id.* at page 103.

<sup>4</sup> *Id.* at pages 73 and 93.

<sup>5</sup> *Id.* at page 93.

<sup>6</sup> *Id.* at page 100.

<sup>7</sup> *Id.* at page 5.

<sup>8</sup> *Id.* at page 34-35.

<sup>9</sup> *Id.* at page 68,

<sup>10</sup> *Id.* at page 70.

<sup>11</sup> *Id.* at 77-87.

<sup>12</sup> *Id.* at 88.

Puerto Rico and by PREPA, through its Chairman of the Board of Directors, Mr. Jose Ortiz Vazquez, that they are presently evaluating alternatives to the Vía Verde pipeline project.<sup>13</sup> Similarly, the Chairman of the Board has indicated that to date the true costs of the project is \$800 million, that is, almost double the estimate of \$437 million cost of the project as suggested in the draft EA.<sup>14</sup> These public announcements confirm information provided to the USACE months ago by several interested parties and commentators—notably the Casa Pueblo Technical Commission—regarding the true cost of the project, and they call into question USACE’s willingness to blindly defer to PREPA on all issues concerning the benefits of the project (such as its ability to reduce consumer costs) and its anticipated determination that the project will serve the public interest. Unfortunately, the handling of the application by USACE without recognition of this information has led to dedication and investment to this day of substantial federal and local Puerto Rican public and private resources and money.

The lack of real participation in this permit application process is critical. The decision of whether to hold public hearings or not has also been withheld.<sup>15</sup> Even when the concession of public hearings in this case could be considered discretionary, it is evident that the denial of adequate and meaningful public participation has prevented USACE from obtaining valuable information essential to arriving at a responsible and informed judgment of the project. This issue intensifies with the USACE refusal to translate the draft EA, and other key documents, such as the Joint Permit Application. A Spanish-language translation of this document is the very foundation for protecting the Puerto Rican people’s right to participate in a decision that will significantly and permanently affect them. Prior petitions to translate the draft EA and other key documents to Spanish, including letters referred to USACE on April 28, 2011, August 8, 2011, December 6, 2011, and January 3, 2012 by the undersigned, are also to be considered as part of these comments.

In addition, on December 27, 2011, an executive summary of the draft EA was released. Despite the inherent recognition of a need for Spanish language documents, this 14-page summary does not address the need to translate the entire document EA, based on the extent and complexity of the project. It is nothing short of surprising that USACE has refused, to date, to hold public hearings in a case that presents profound and permanent consequences to present and future generations of Puerto Ricans. Furthermore, USACE has continued to deny any need or obligation to fully translate the original document containing the basic findings, that is, the draft EA.

We hereby request preparation of a full Environmental Impact Statement (EIS) and that the preliminary FONSI determination be discarded in light of the extensive and significant impacts of the permit application at hand. The ratification of the FONSI would

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<sup>13</sup> See, Más cara Vía Verde, *El Vocero*, January 11, 2012; Fortuño cancelaría el gasoducto, *El Nuevo Día*, January 11, 2012

<sup>14</sup> Más cara Vía Verde, *El Vocero*, January 11, 2012;

<sup>15</sup> See *Id.* at page 99.

be unlawful because the preparation of an EIS, prior to the issuance of the permit, is indispensable to measuring the dimension of the actual and possible impacts of the construction, operation, and maintenance of the more than ninety-two (92) mile-long gas pipeline as well as a right of way (ROW), access roads, staging areas, pads, and other related facilities. Additionally, public participation should not be substituted for the possibility to comment a mere draft EA written in a language unintelligible to eighty percent (80%) of the local population: the celebration of public hearings is crucial before any decision regarding the Vía Verde project is made.

As we have insisted on several occasions, this permit should be denied. The proceeding sections elaborate on many reasons in support of our recommendation to USACE. Among the multitude of factors, we want to emphasize that the issuance of this permit is contrary to the public interest. The significance of the short and long term effects on biodiversity and particularly on human life, added to the risks that the construction and/or operation of the proposed pipeline presents and surpasses any and all alleged benefits of the project. We also wish to alert the USACE that its environmental reviews, interagency consultation, and permitting process to date have been deeply flawed and, if finalized, will be in violation of numerous federal statutory and regulatory requirements.<sup>16</sup>

## **I. BACKGROUND**

### **A. PUERTO RICO'S SETTING**

The overall context of the pending permit application is addressed in this section. Beginning with a narrative of the environmental conditions on the island, the relevant data concerning the biodiversity and geology of Puerto Rico is also included. In the subsequent section on the human context, collected data exposes the socioeconomic conditions of those communities that would be directly affected by the pipeline. We emphasize, once again, that the areas exposed to significant impact, and permanently put at risk by the project, are mainly populated by low-income families.<sup>17</sup> The information provided makes evident our concern over possible infringement on the basic principles of environmental justice. Regarding the energy context, these comments include a brief history, as well as a description of the current situation, and the so called “energetic crisis” that motivates the construction of the Vía Verde Project. Also, an analysis is provided on the future prospects and projections of the gas pipeline and other alternative energy sources.

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<sup>16</sup> We note that, in light of the issuance of the Biological Assessment and the U.S. Fish and Wildlife Service concurrence and the issuance of the final Biological Opinion for the project, the interagency consultation process regarding endangered and threatened species is already final

<sup>17</sup> See “Human Context” *infra.* at page 7..

## 1. Environmental Context

The island of Puerto Rico is one of the world's premier biodiversity hotspots, supporting a multitude of endemic tropical and subtropical flora and fauna species.<sup>18</sup> The relatively small island, 110 miles in length from east to west and 40 miles wide from north to south, supports an extremely varied topography consisting of at least ten diverse ecological and geo-climatic zones.<sup>19</sup> These unique ecological zones include coastal semi-deciduous forests, coastal mangrove forests, moist submontane and lower montane rain forests, cloud forest formations, dry and wet karst limestone forests, moist broadleaf evergreen forests, and mixed lowland dry and moist forests.<sup>20</sup> Puerto Rico's diverse and distinct ecological habitats are home to many endangered and threatened species, with new species being discovered all the time.

Puerto Rico's land cover is variable, with much of the center of the island dominated by high mountains (40%), surrounded by forest hills (35%) and a narrow coastal plain (25%).<sup>21</sup> The diversity of ecosystems in the Island is notable with the dynamics of altitude and climate described by a US Government publication:

*There are a variety of ecosystems distributed laterally and vertically according to **topography**, altitude, soils, rainfall, and a variety of other factors. The island lies directly in the path of the trade winds that blow from the Atlantic Ocean to the east. This assures a fairly reliable source of rain and occasionally a hurricane or two. The presence of high mountains creates a very interesting rainfall pattern resulting in the creation of an **orographic rain shadow** on the Caribbean side of the central mountain ranges, and some rain shadow valleys in the interior sections of the mountains.*

*The highest altitude on the island is 1338 meters (4,389 feet) in the Cordillera Central range at Cerro de Punta, and there are numerous peaks over 915 meters (3,000 feet). Cerro de Punta is just north of Ponce within the Toro Negro Commonwealth Forest and can be accessed by Route 143 (Luis Muñoz Marín Panoramic Highway). Mountains can be seen from anywhere on the island. The entire center of the island is a continuous series of mountains that basically cuts the island in half as they*

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<sup>18</sup> Conservation International, Biodiversity Hotspots, Caribbean Islands, <http://www.biodiversityhotspots.org/xp/hotspots/caribbean/Pages/default.aspx> (last visited Jan 12, 2012). App. I-1.

<sup>19</sup> Helmer, Ramos, López, Quiñones, and Díaz, Mapping the Forest Type and Land Cover of Puerto Rico, A Component of the Caribbean Biodiversity Hotspot (2002), available at [http://edcintl.cr.usgs.gov/ip/macga/docs/cjs\\_map\\_pr.pdf](http://edcintl.cr.usgs.gov/ip/macga/docs/cjs_map_pr.pdf) (last visited Jan 12, 2012). App. I-2

<sup>20</sup> *Id.*

<sup>21</sup> Miller, Gary L. Guide to the Ecological Systems of Puerto Rico, June 2009. This useful publication provides information of the ecological components of Puerto Rico. It is available at [http://www.fs.fed.us/global/iitf/pubs/IITF\\_gtr35.pdf](http://www.fs.fed.us/global/iitf/pubs/IITF_gtr35.pdf) ((last visited Jan 12, 2012). App. I-3

*run east to west from Humacao to Mayagüez. Approximately 25 percent of the island is above 305 meters (1,000 feet) altitude. The high mountains exhibit high degrees of slope to the south and east, and the north slopes are heavily eroded with numerous river valleys. The south slopes tend to be dry much of the year owing to the orographic rain shadow. During tropical storms and hurricanes, rivers on the south coast may become rapid torrents that flood extensive areas and often kill domestic grazing animals or human squatters living in the dry riverbeds or flood plains. The Cordillera Central has a break in the area of Caguas, and the mountain range located northeast is the Sierra de Luquillo. This range also has a series of peaks in excess of 915 meters (3,000 feet), and these peaks experience the highest amounts of rainfall on the island. The Luquillo range includes the El Yunque National Forest, also designated as the Luquillo Experimental Forest and known as the world-famous Luquillo Rain Forest or El Yunque. This 11 200-hectare (28,000-acre) forest is a biosphere reserve site and attracts about three-quarters of a million visitors per year.<sup>22</sup>*

As stated, forests cover a major part of Puerto Rico, playing a vital role in the welfare of the Island:

*Forests now cover 40 percent of Puerto Rico. Older mature vegetation covers only 1 percent of the island, whereas older successional vegetation covers 10 percent. The remaining forest cover is young mixed-species stands. Today, the forests of Puerto Rico are very important because they supply the habitat for thousands of species of plants and animals. In addition, they are vital in helping to provide life support for nearly 4 million people. This is especially true for water supplies for municipalities, agriculture, and industry. They are also becoming important as recreation destinations for a growing urbanized population. The changes in forest dynamics intensively studied in Puerto Rico may be useful in gauging changes that will be experienced in many tropical islands throughout the world as the human population continues to expand.<sup>23</sup>*

The geology of Puerto Rico is among the most complex in the world.<sup>24</sup> A brief explanation of the island's geology follows:

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<sup>22</sup> *Id.* at pages 19-20.

<sup>23</sup> *Id.* at page 79.

<sup>24</sup> See Report by Pedro Jimenez Quiñones, Ph D. Report on *Via Verde* Project of the Electric Energy Authority Titled *Gasoducto de Puerto Rico: a Technical Evaluation*. Submitted on January 11, 2012. App. I-4



*Geologically, Puerto Rico is complex. Its origin is volcanic, and it initially arose as a result of seismic activity associated with the Caribbean-North American plate boundary zone. The initial formation was believed to have been 140 to 200 million years ago in the Triassic era. These **volcanic** deposits were then folded, faulted, and uplifted to produce the Cordillera Central Mountains province (fig. 6). Puerto Rico is relatively young, only about 100 million years old. Evidence of its volcanic period can be seen in weathered pillow lavas observable in road cuts south of Cayey on Route 52. Secondary **metamorphic** and **igneous** activities resulted in **gneisses** and **serpentinite** formations. Large outcrops of serpentinite occur on the western end of the Cordillera Central in the Maricao district west to Mayagüez (app. 2). This is a beautiful blue-green rock that produces a soil typically low in calcium and high in chromium or other metals. Some plants in western Puerto Rico show hyperaccumulations of nickel (Brooks 1987). Younger sedimentary rocks and sediments are present throughout the coastal plain province. The carbonate province is located on the flanks of the central mountain core and is composed of marl, dolomite, and calcareous sandstones. On the north coast there is a spectacular display of karst topography that ranges back to 30 million years. A large area of limestone is located along the south coast and underlays the Guánica subtropical dry forest. In the karst district that runs from Loíza to just east of Aguadilla, many haystack-shaped hills dot the landscape by the thousands. They are locally called mogotes or **haystack hills**. The rivers that run north from the Cordillera Central in the karst area produce deep cuts in the landscape owing to differential rates of erosion in the limestone. Some of the rivers periodically run underground in association with caves. There are thousands of caves and **sinkholes** in the region (see app. 2). A more detailed description of karst will be presented in the forest zone section.<sup>25</sup>*

This source also graphically depicts the various types of forests. The south-north portion of the Subtropical Wet Forest (SWF) and Subtropical Moist Forest (SMF) are the ones most at risk due construction and maintenance of the pipeline ROW for decades to come.<sup>26</sup> Rain intensity in the SWF is 80-160 inches per year and in the SMF is 40-80 inches per year.<sup>27</sup> Except for the Subtropical Rain Forest in the East, the pipeline south-

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<sup>25</sup> *Id.*

<sup>26</sup> *See Id.* at page 82. *See* Figure 15.

<sup>27</sup> *See Id.*

north route runs through the highest and most rain-intense regions of Puerto Rico.<sup>28</sup> As will be explained, the EA basically ignores the nature of this terrain, all with very negative consequences.

## 2. Basic Human Context

Several different route maps have been published for the Vía Verde Project. Nevertheless, there is a consensus among the agencies on which areas are subject to direct impact. According to this data, thirteen (13) counties (“municipios”) would be affected by the construction, including Peñuelas, Adjuntas, Utuado, Arecibo, Barceloneta, Manatí, Vega Baja, Vega Alta, Dorado, Toa Baja, Cataño, Bayamón, and Guaynabo. The data published in the local EIS expressly indicates that the project will impact 326,793 citizens, dispersed throughout 142 wards (“barrios”) along these municipalities.<sup>29</sup> It is our concern that the socioeconomic background of these people has not, but should be, considered in order to comprehend both the fragility of their current living situation, and the magnitude of the impact the construction of the Vía Verde Project may have on their communities. Also, important information regarding the demographics and income status of these citizens may serve to highlight environmental justice concerns surrounded some unarticulated premises that may be operating in the selection of these poverty stricken localities, as opposed to more affluent neighboring areas.

The most recent US Census reported that the population of Puerto Rico is almost four (4) million people.<sup>30</sup> Although that Census stated that the median family income is approximately forty-seven thousand dollars (\$47,000),<sup>31</sup> more recent data reports that the average family income is less than nineteen thousand dollars (\$19,000).<sup>32</sup> Furthermore, with an unemployment rate of sixteen percent (16%), statistics show that forty-five percent (45%) of the population lives below poverty levels.

The local EIS relies on data from the US Census of 2000, before the onset of the recent economic difficulties. Although this information is outdated, it reveals important and actual indications about the poverty levels in the affected municipalities.<sup>33</sup> The median family income for these municipalities was \$19,450.91 and per capita income

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<sup>28</sup> For a recent publication integrating land forms and geoclimate regions for the purpose of modeling variations in vegetations, *see* Gould, W.A.; Jiménez, M.E.; Potts, G.S.; Quiñones, M.; Martinuzzi, S. 2008. Landscape units of Puerto Rico: Influence of climate, substrate, and topography. Scale 1: 260 000. IITF-RMAP-06. Río Piedras, PR: US Department of Agriculture Forest Service, International Institute of Tropical Forestry. App. I-5

<sup>29</sup> *See* Chapter 7 of the local EIS at page 9.

<sup>30</sup> *See* [http://www.census.gov/compendia/statab/cats/puerto\\_rico\\_the\\_island\\_areas.html](http://www.census.gov/compendia/statab/cats/puerto_rico_the_island_areas.html)

<sup>31</sup> *See* <http://www.census.gov/compendia/statab/2012/tables/12s1321.pdf>

<sup>32</sup> *See* <http://www.census.gov/prod/2011pubs/acsbr10-02.pdf>

<sup>33</sup> *See* Chapter 7 of the local EIS.

was \$8,938.97.<sup>34</sup> The number of households under the poverty level was 90,272, making for a 40.6% poverty level in the area.<sup>35</sup> These localities consist of highly dense populations. Almost forty percent (40%) of the population of Puerto Rico lives along the thirteen (13) municipalities previously mentioned. The population density in these areas is twenty-five percent (25%) higher than the population density of Puerto Rico.<sup>36</sup> Among these listed areas, the municipalities on the north coast of the island are the most populated.

This commentary incorporates a summary of the demographics of the communities to be impacted within the mentioned municipalities. The objective is to demonstrate the dimensions of the impact of the Vía Verde Project on the individuals and communities in the affected areas. The following is a summary of the impacted population statistics for the forty-eight (48) neighborhoods located throughout the thirteen (13) municipalities.

The proposed pipeline ROW, particularly on the South-North portion, is mostly projected to pass through mountainous terrain. The counties mentioned below are located in this area. As are the other municipalities established in the mountainous part of the island, these communities are ranked among the lowest income localities in the island:

- Peñuelas has thirteen (13) neighborhoods; five (5) of them are subject to suffer significant impact from the construction of the gas pipeline: Barrio Encarnación, Rucio, Tallaboa Alta, Tallaboa Poniente, and Tallaboa Saliente. The approximate population in these areas is 7,544 inhabitants.
- Adjuntas has sixteen (16) neighborhoods and the pipeline construction would impact five (5) of them: Barrio Pellejas, Portugués, Saltila, Vegas Abajo and Vegas Arriba. The population in these five (5) neighborhoods is 5,491 inhabitants.
- Utuado is composed of twenty-four (24) neighborhoods, and the pipeline construction would impact seven (7) of them: Barrios Arenas, Caniaco, Pueblo, Río Abajo, Sabana Grande, Salto Abajo y Salto Arriba. The total of 15,289 inhabitants in Utuado will be affected.

As stated before, the north coast counties are the most densely populated areas. The following municipalities in that region will be affected by the construction of this phase of the pipeline:

- **Arecibo** is composed of nineteen (19) neighborhoods, and the pipeline construction would impact eight (8) of them: Barrios Cambalache, Carreras, Factor, Garrochales, Hato Viejo, Río Arriba, Santana, and Tanamá. The population in these neighborhoods is 21,938 inhabitants.

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<sup>34</sup> *See Id.*

<sup>35</sup> *See Id.* at pages 7-52.

<sup>36</sup> *See Id.* at pages 7-19, 20.

- **Barceloneta** is composed of four (4) neighborhoods, and the pipeline construction would impact two (2) of them: Barrios Garrochales and Palmas Altas. The population in these neighborhoods is 9,076 people.
- **Manatí** is composed of nine (9) neighborhoods, and the pipeline construction would impact five (5) of them: Barrios Bajura Afuera, Coto Sur, Río Arriba Poniente, Río Arriba Saliente, and Tierras Nuevas Poniente. 18,768 inhabitants will be affected.
- **Vega Baja** has of fourteen (14) neighborhoods, and the pipeline construction would impact three (3) of them: Barrio Almirante Norte, Pugnado Afuera, and Río Abajo. The population in these neighborhoods is 21,490 inhabitants.
- **Vega Alta** has eight (8) neighborhoods, and the pipeline construction would impact three (3) of them: Barrios Bajura, Espinosa, and Sabana. The affected population is compounded by 29,307 citizens.
- **Dorado** has six (6) neighborhoods, and the pipeline construction would impact three (3) of them: Higuillar, Maguayo, and Mameyal. The cumulative effects of several other constructions and projects in these areas aggravate the impact of the pipeline for the 27,228 inhabitants.
- **Toa Baja** has five (5) neighborhoods, and the pipeline construction would impact four (4) of them: Barrios Candelaria, Media Luna, Palo Seco, and Sabana Seca. The population in these four (4) neighborhoods is 93,363 inhabitants.
- **Cataño** has two (2) neighborhoods, and the construction would impact one (1) of them: Barrio Palmas. The population in this neighborhood is 25.443 inhabitants.
- **Bayamón** has twelve (12) neighborhoods, and the pipeline construction would impact one (1) of them: Barrio Juan Sánchez. The population in this neighborhood is 25.747 inhabitants.
- And finally, **Guaynabo** has ten (10) neighborhoods, and the pipeline construction would impact one (1) of them: Barrio Pueblo Viejo. The population in this neighborhood is 26.109 inhabitants.

The socioeconomic conditions of these communities underly several concerns about the projected ROW. It has been reported that the route has undergone changes to avoid impacting properties owned by wealthy and influential families.<sup>37</sup> For those individuals who are members of the poverty-stricken areas, the route has become an inalterable and immovable menace to their lives and property. The impact of the construction, the risk of further malfunctioning, or even an explosion or leak of the gas in the pipeline adds to the harm caused by the removal and forceful acquisitions procedures among the communities.

Finally, it is important to state that most of the inhabitants of these municipalities are part of the eighty percent (80%) of the population that speaks English “less than very

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<sup>37</sup> See Centro de Periodismo Investigativo. “AEE cambió la ruta del Gasoducto por Fonalledas y Rubi” (*PREPA Changed the Pipeline’s Route Because of Fonalledas and Rubi*) [http://cpipr.org/inicio/index.php?option=com\\_content&view=article&id=214:aee-cambio-ruta-del-gasoducto-por-fonalledas-y-rubi&catid=58:actualidad&Itemid=105](http://cpipr.org/inicio/index.php?option=com_content&view=article&id=214:aee-cambio-ruta-del-gasoducto-por-fonalledas-y-rubi&catid=58:actualidad&Itemid=105) App. I-6

well.”<sup>38</sup> Without a proper Spanish translation of all the relevant documents and public hearings in Puerto Rico, these people will be unduly disadvantaged in understanding the impacts posed by the construction of the pipeline to their municipalities.

### 3. Energy Context

Puerto Rico’s electricity generation system is an island-wide integrated system with a generating capacity of 5,839 MW and a peak demand of 3,404 MW.<sup>39</sup> Due to this surplus in generation capacity Puerto Rico Electric Power Authority (PREPA) is currently contemplating closing some of its oldest and most inefficient power plants.<sup>40</sup> The system is 99% fossil fuel dependent with an approximate fuel usage of 68% oil, 15% natural gas, 15% coal and less than 2% hydro.<sup>41</sup> Due to the high cost of oil, which must be shipped to the island, PREPA’s customers pay a very high price for their electricity.

One characteristic of PREPA’s electrical system is that most of its generation occurs in the south coast while most of the demand is in the north coast, concentrated near the metro area. It has been this way since the 1950’s. This discrepancy is due in part to unrealized large industrial projects programmed for the south coast during the 1960’s and 1970’s. Nonetheless, PREPA authorized the construction of two new power plants in the south coast in the late 1990’s, coal fired AES power plant in Guayama and natural gas fired Eco Eléctrica in Peñuelas. Combined, these two facilities produce 30% of the total electricity of the island.

In July 2010 the Governor of Puerto Rico declared an energetic emergency through an executive order<sup>42</sup> due to the high cost of electricity. The declared emergency created a fast track procedure that rushes the environmental review and permitting process of energy projects that do not depend on oil. The evaluation procedures are fast tracked mainly by limiting public participation and reducing to a minimum the inter agency commenting period. Vía Verde and various other energy projects have been evaluated under this “emergency process”.

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<sup>38</sup> See 2010 American Community Survey from the US Census Bureau, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_1YR\\_DP02PR&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_DP02PR&prodType=table) App. 1-7

<sup>39</sup> See PREPA Rating Agency Presentation, March 2, 2010, available at <http://www.aeepr.com/INVESTORS/DOCS/Financial%20Information/Rating%20Report/PREPA%20Ratings%20Presentation%203-2-10%20-%20FINAL.pdf>. App. 1-9

<sup>40</sup> See *Id.*

<sup>41</sup> See [http://www.prepa.com/aeees2\\_eng.asp](http://www.prepa.com/aeees2_eng.asp)

<sup>42</sup> Executive Order OE-2010-034, July 19, 2010

## B. VÍA VERDE PROJECT

PREPA is proposing a natural gas pipeline of at least 92 miles long<sup>43</sup> that will cross the entire island of Puerto Rico, traversing many of the island's most important and fragile ecologies. The pipeline will convey liquefied natural gas (LNG) from the EcoEléctrica LNG Terminal in Peñuelas on the southern coast, northward across the interior of the island to the Cambalache Termoeléctricas Authority Central power plant in Arecibo on the northern coast, and then eastward along the northern coast to the Palo Seco power plant in Toa Baja and the San Juan power plant in San Juan.<sup>44</sup>

According to PREPA, the Project's footprint would cover approximately 1,672 acres of land, require a 100-foot wide right-of-way during construction<sup>45</sup>, traverse 235 rivers and wetlands, require a **permanent** 50-foot maintenance right-of-way,<sup>46</sup> cross approximately 158 jurisdictional waters of the United States, and impact approximately 369 acres of wetlands.<sup>47</sup> The more than 92-mile long pipeline would traverse Commonwealth Forests, Natural Reserves, forested volcanic and karst areas, and portions of privately-owned lands participating in conservation programs due to their high ecological value.<sup>48</sup> Moreover, as proposed, the project will affect more than forty endangered and threatened species.<sup>49</sup>

This public corporation has submitted an EIS "to meet the requirements of the Commonwealth of Puerto Rico," presented a biological evaluation document in consultations with the FWS, with respect to Section 7 of the Endangered Species Act, and more recently an application to USACE for a 404 Permit and a Permit to Work in Navigable Waters of the U.S. (Section 10). The USACE permit application process is the last step towards the construction of the Via Verde Project.

The characteristics of the three northern power plants that would be serviced by the pipeline are as follow: The Cambalache power plant in Arecibo is an old, inefficient and small peaking plant with an output capacity of 247 MW, and an efficiency rate of

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<sup>43</sup> See, compact disc in App. II-1. In order to illustrate the nature of the evaluated terrain as well as other parts of the route, enclosed is an animated version prepared by Alexis Dragoni.

<sup>44</sup> Gov't of P.R., Office of the Governor, Planning Board, Federal and Commonwealth Joint Permit Application for Water Resource Alterations in Waters, Including Wetlands, of Puerto Rico (Aug. 2010, modified Nov. 2010) [hereinafter Joint Permit Application].

<sup>45</sup> Draft EA, p. 1

<sup>46</sup> Joint Permit Application, *supra* at note 44 at page 2.

<sup>47</sup> *Id.* at page 42.

<sup>48</sup> Letter from Edwin Muñoz, Field Supervisor, U.S. Fish & Wildlife Serv. Boqueron Field Office, to Sindulfo Castillo, Chief, Regulatory Section U.S. Army Corps of Eng's-Antilles Office 5 (Oct. 18, 2010) [hereinafter Letter from Edwin Muniz to Sindulfo Castillo (Oct. 18, 2010)].

<sup>49</sup> Letter from Edwin Muñoz, Field Supervisor, U.S. Fish & Wildlife Serv. Boquerón Field Office, to Robert Barron, Regulatory Program Manager, U.S. Army Corps Eng's-Jacksonville Dist. (May 20, 2011) [hereinafter Letter from Edwin Muñoz to Robert Barron (May 20, 2011)].

28%—recently identified by PREPA as being out of service. Palo Seco power plant in Toa Baja has a similar efficiency rate (28% - 30%) with an output capacity of 600 MW. Finally, the San Juan power plant units 5 and 6 have an output capacity of 440 MW and an efficiency rate of 45%.<sup>50</sup> With the exception of the San Juan Power Plant units 5 and 6, the most efficient generators are located on the south coast.

The procedure has raised a number of complaints and criticism regarding the impacts of the project itself and the limited opportunities for public participation. People are afraid of losing their houses, jobs and lives because of the risks that accompany the construction and operation of a pipeline within their communities. Additionally, disinformation and lack of transparency in this process have elevated the general concern about the interests behind the *Vía Verde* Project. At the present time, the proximity of the upcoming elections imbues the process with serious doubts about the Governor's personal and economical affiliations to the representatives of the corporations that were contracted to develop the project. Meanwhile, thousands of individuals and their organizations, representatives from various sectors of society, continue protesting against this project. In 2010, Congressman Luis Gutiérrez joined the claims of Casa Pueblo, Sierra Club and many other community groups to demand for more public hearings and to take into consideration the opinion of thousands of people who would be affected by the more than 92-mile long pipeline.

As the key to such vital public participation, the draft EA issued on November 30, 2011 was solely published in English, although the population of Puerto Rico is mainly Spanish-speaking and is oftentimes incapable of understanding English. Several requests demanding the Spanish translation of the document were presented to USACE. Nevertheless, USACE refused to translate the whole document, instead offering a thirteen-page (13) long document described as a summary of the draft EA. This translation is deemed as insufficient and contrary to the right to public participation in this process.

The numerous procedural and substantive insufficiencies of the draft EA are addressed further on. With the primary purpose of refuting the USACE preliminary finding of no significant impact, this commentary is but the latest effort to demonstrate and expose the risks and harms of the *Vía Verde* Project. These comments are a response to the environmental, social and legal issues that the EA merely attends superficially or neglects completely. Finally, it is a justified demand for the preparation of an EIS.

## **II. GENERAL FAILURE OF THE DRAFT EA AS TO THE DETERMINATION OF FONSI**

USACE must prepare an EIS because the impacts of the pipeline are significant and have been excluded from the draft EA leading to an erroneous determination of a FONSI. The FONSI determination in the draft EA ignores important aspects of the

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<sup>50</sup> All rates and outputs were taken from [www.prepa.com](http://www.prepa.com)

projects effects and improperly evaluates others. The draft EA also wrongly accepts the Applicant's stated project purpose as delivery of natural gas to the north coast PREPA plants, thereby avoiding consideration of other vital alternatives.<sup>51</sup> Several erroneous or very questionable premises must first be addressed because they permeate the draft EA and explain in part the failure to identify the significant effects of this huge project.

The draft EA's FONSI determination is premised on a limited analysis of the short-term effects of the project; they are understood to be merely temporary, such as the potential wetlands loss.<sup>52</sup> The analysis is limited to short-term effects of construction<sup>53</sup> along the ROW and staging areas, but does not consider the longer-term, indirect and cumulative effects of even temporary actions. Despite this determination, the draft EA admits that not enough information has been provided regarding project activities, such as the identification of access roads.<sup>54</sup> Indeed, the uncertain scope of the "action area," for purposes of the analysis of impact on endangered species, has prevented proper consideration of the true impact on all the plant and animal species in the impact areas.

The draft EA fails to consider the effects from the dual elements of the actual physical impact and the indirect or long-term impacts that may have permanent adverse consequences for the local ecology. As such, the draft EA does not consider longer-term effects of the **erosion** from the ROW and access areas; **maintenance procedures** along the ROW and on wetlands; endangered plant and animal species; effects to other vegetation; or the **emergency procedures** in the case of any accidents along the route, in jurisdictional waters, or in other areas.

The draft EA also fails to carry out an **integral approach** or evaluation of the multiple and interconnected effects of the project. An individualized and fragmented view has prevented USACE from considering the true impact of the project. According to 40 CFR §1508.8, significant effects, such as those required for review in the assessment, encompass "indirect effects," that is those distant in time and space from the immediate or direct ones. The nature and scope of the project, the multiple ways in which it proposes to affect the human and natural environment and the impact to the entire complex ecosystem of a highly dense and small island will have far reaching consequences. The USACE decision not to carry out an EIS is intolerable in consideration of the great dimensions of the project and the extent of the impacts it will provoke.

Finally, the draft EA is premised on fundamental flaws in its scope of impacts over **time** and **space**. It ignores the adverse environmental effects of the elimination of all vegetation during excavation and attributed to the creation and permanent maintenance of the entire ROW. It avoids integrating a more holistic scrutiny of analysis of the myriad of project effects, and irresponsibly allows adoption of the stated project purpose without

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<sup>51</sup> See Draft EA.

<sup>52</sup> See draft EA at pages 72-100

<sup>53</sup> See *Id.* at pages 10, 74

<sup>54</sup> *Id.* at page 74



independent analysis. It lists no meaningful quantification or evaluation of the elimination of existing vegetation, nor of its potential impacts on bodies of water, including jurisdictional waters. Spatially, it limits the analysis of vegetation to wetlands and to a minuscule selection of the endangered species<sup>55</sup> listed in the original proposal, ignoring the fact that vegetation will be permanently eliminated or severely restricted along the ROW, as well as in staging or working areas and along service roads—also continuously failing to note the number of these new roads.

A vital component of the particularly fragile local ecosystem, trees and other deep-rooted vegetation will be eliminated permanently from the ROW. The harm is not diminished even where the ROW is reduced to 60 feet in highlands—note that, according to PREPA, the total construction areas for the ROW and work areas add up to 1672 acres. The elimination of vegetation is thus a significant effect by itself, and the revegetation plan, referred to in the draft EA,<sup>56</sup> has no details, nor will it suffice to reduce or completely counteract the elimination of vegetation. The draft EA does not consider other adverse environmental effects, such as the aesthetic degradation to occur mainly in upland and forested areas due to construction and operation of the ROW. This degradation adversely affects enjoyment of green areas and also reduces the intrinsic ecological value for tourism on the island. The ROW will effectively create a visual scar running from south to north for approximately 35 miles; no consideration at all can be found in the draft EA, even though environmental effects under NEPA clearly include aesthetics as one of them.<sup>57</sup>

Another adverse environmental effect, essentially ignored in the draft EA, is caused by the fact that the pipeline will traverse mountainous areas of Puerto Rico. The areas referred to here abound the south-north part of the route, depicted in maps pages 2, 3, 4 and 5 as attached to the Public Notice of November 30, 2011. The highly irregular and sloping nature of this terrain has been documented in many sources, such as: the geotechnical evaluation by engineer Pedro Jimenez, PhD and Juan II, 2011;<sup>58</sup> the College of Engineer's Report of December 17, 2010,<sup>59</sup> and the report by Geologist Mario Soriano of May 27, 2011.<sup>60</sup> These and other sources document, but specially the Jimenez geotechnical report, the very difficult and unstable nature of these high areas. Also, access is extremely difficult, especially in the cities of Adjuntas and Utuado.

The impact to these mountain areas causes two sets of environmental concerns: the serious risk and security problem of establishing a natural gas pipeline along the route

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<sup>55</sup> *Id.* See 72, 73; 74-88, respectively.

<sup>56</sup> *Id.* at page 70

<sup>57</sup> 40 CPR 1508.8(b).

<sup>58</sup> Draft EA, at page 19.

<sup>59</sup> *Id.* at pages 21-23.

<sup>60</sup> *Id.* at page 25.

traversing these mountains due to instability and other problems, and additionally, gaining access and establishing working areas along this route will necessarily cause great devastation, erosion, destruction of all vegetation. Yet, the draft EA neglects to address either of these two sets of environmental consequences. Only the former is briefly addressed in one sentence: “The Corps presumes that the professional engineers and other professionals of PREPA and their contractors will properly design and construct this project recognizing these natural forces.”<sup>61</sup>

The above sentence addresses, as stated, only one of the environmental problems, albeit improperly. An assumption of proper engineering cannot substitute analysis and data to support the conclusion, especially in consideration of the consequences in terms of risk and security. Totally excluded from the draft EA is the consideration of the devastation from the project operations, in the form of excavation and erosion, resulting in the elimination of vegetation in the mountainous regions of the ROW. NEPA requires a more responsible consideration of the consequences of establishing the pipeline along this south-north mountainous route.

It appears, in fact that the draft EA starts out from a one-dimensional, purely linear, top-down scope of the south-north route, thereby ignoring all the indirect and cumulative effects and implications of a very difficult terrain. The linear extension of the pipeline in reality is much longer than the announced 92 miles,<sup>62</sup> and the amount of potential acres to be affected is also much more substantial. Neither is truly considered in the draft EA, nor have the consequences been discussed. This results in an inadequate draft EA that is contrary to federal laws.

Dr. José Molinelli-Freytes,<sup>63</sup> a renowned geomorphologist, has also submitted comments regarding the instability and delicate nature of the region. He highlights the same oversight of critical natural force damage assessment in the draft EA.

*My main concern with regards to the "Natural Force Damage" is that the Environmental Assessment does not adequately consider critical hazard information that is essential for the determination of the viability of the Via Verde project. Detailed hazard and risk assessment is essential at this stage of the process and cannot be treated in a general way. The complex geology, geomorphology and hydrology of the three physiographic regions of Puerto Rico, combined with the occurrence of large magnitude geomorphic events, requires a detailed and comprehensive evaluation of the hazards along the proposed route.*

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<sup>61</sup> *Id.* at page 66.

<sup>62</sup> *See*, compact disc in App. II-1. In order to illustrate the nature of the evaluated terrain as well as other parts of the route, enclosed is an animated version prepared by Alexis Dragoni.

<sup>63</sup> José Molinelli-Freytes is a Full Professor at the College of Natural Sciences of the University of Puerto Rico, Rio Piedras campus. In his work and research in the field of geomorphology, he has focused on the area of natural hazards mitigation and planning.

*The presumption of the Corps of Engineers stated on page 66, that "the professional engineers and other professionals of PREPA and their contractors will properly design and construct this project recognizing these natural forces" is completely inadequate since one of the critical elements to be considered during the route selection process of a 92 mile pipeline is the determination of the hazards present along different segments of the pipeline. The vulnerability of each segment to single or combined hazards and the potential to create unstable conditions will impact areas beyond the project's corridor, potentially affecting the integrity of life and property along the route. When the hazards are seriously considered the findings might indicate that the proposed project is not viable and that other alternatives should be considered.*

*The approval of an environmental assessment that lacks detailed and comprehensive hazard and vulnerability assessment and excludes critical information that is essential for the project's cost-benefit analysis, route location and hazard mitigation along the corridor would be against the spirit of the National Environmental Policy Act.*

I am particularly concerned about the following critical aspects related to mass movements, floods and some earthquake-induced geologic hazards:

*A. Landslides and other mass movements*

*With regard to landslides and other mass movements, it is important to point out that the pipeline will extend throughout the central mountainous interior of Puerto Rico from the municipality of Penuelas to the municipality of Arecibo. Along the proposed route, the pipeline and its corridor will encounter weathered to deeply weathered geologic materials of late Cretaceous, Paleocene and Eocene age consisting of complex sequences of tuffaceous sandstone, siltstone, breccia, conglomerate, lava and tuff. These have been complexly folded and faulted during orogenic events during late Cretaceous and early Tertiary periods. The present geomorphic landscape results from the action of tropical weathering acting upon the rocks and the constant work of fluvial erosion and hillslope processes as dominated by surface erosion, mass movements and rock dissolution and general weathering.*

*Many mountainous slopes are precariously stable and may become unstable if excavated, cleared or intervened. Recognizing such critical conditions and their location is critical to proper route siting, because it is essential to avoid any significant change in slope stability in order to avoid pulling a "kin-pin" that will result in major slope instability. When such a complex system becomes unstable adjacent areas out of the route corridor can become unstable due to retrogressive slope movement. The best example of such a domino effect occurred along the PR-10 highway*

*whose initial estimated cost increased from \$70 to \$153 million due to complex retrogressive slope movements caused by improper route location along the contact between San Sebastian and Lares formations.*

*[...] In conclusion, the Environmental Assessment does not evaluate many of the critical aspects concerning the "Natural Force Damage" of the proposed project at its current location, nor its risk to population and adjacent infrastructure and land property, The complex hazards present along the 92-mile corridor in this densely populated Island requires a serious effort to properly evaluate the real impact upon the population and the environment.*

*Lastly, I want to emphasize that the approval of the Environmental Assessment without a detailed and comprehensive hazard and vulnerability assessment will exclude critical information essential for the project's cost-benefit analysis, route location and hazard mitigation along the corridor; The Environmental Assessment lacks many critical elements that must be properly analyzed and thus should not be approved, A more rigorous and complete environmental impact assessment must be required to the proponents.<sup>64</sup>*

The environmental consequences of excavation, the creation and maintenance of the ROW, and the relevant access roads and working areas throughout the forested areas of the south-north route, are no less than staggering. These forest areas are of extraordinary beauty and valuable ecological services. This route is characterized in short by the most difficult complex, steep, erodible, landslide-prone, veined and rainy terrain in Puerto Rico, but the draft EA basically ignores this. The draft EA, for example, is not supported by, nor does it reference, any credible topographical detailed information on the south-north route. The draft EA admits that the information on the access roads is lacking; even the most basic geotechnical information is not contained or referenced. This lack of fundamental technical and scientific standards regarding the specific nature of the south-north route means that the draft EA has not properly considered the environmental consequences of the permit application; this includes those on jurisdictional waters because of the expected erosion, vegetation removal and expected terrain instability.

It must be also emphasized that this special dimension ignored by the draft EA is matched only by the avoidance of the time implications of the application decision at hand. As stated, the project will be on-going for decades, and not merely a temporary one of excavation for the basic pipeline infrastructure. The permanence of the ROW, the need for access roads, the need to attend to emergency situations, the transportation a very hazardous substance through very difficult terrain, near populated areas and valuable resources are all dimensions that are irresponsibly and illegally not addressed in the draft EA.

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<sup>64</sup> José Molinelli, *Letter to USACE Regarding Via Verde Project Permit Application SAJ-2010-02881*, January 30, 2012

Engineer Edgardo González, from the Technical and Scientific Committee of Casa Pueblo, has summarized his view on the all-encompassing effects of the project as follows:

*Puerto Rico has been recovering from a massive deforestation period where our forest coverage went down to 6% and currently there are reports from the US Forest Service that established forest coverage near 50% in the island. Through this process, a new forest that combines exotic, opportunistic and native species of trees have provided the opportunity to endemic and native fauna to survive and reclaim habitat and space in our landscape...*

*Vía Verde will massively impact these recovery and natural recuperation of habitat. This project divides the landscape as a permanent open wound that will run for over 90 miles, from north to south and through most of our northern landscape producing a massive impact in the island environment by a combination of factors, from which we will point out the followings:*

- *A reduction of habitat to endemic, threatened and native fauna and flora species.*
- *The impact and modification of the hydrology of the island, especially the karst region that is recognized as critical region for water conservation and use.*
- *Permanent disconnections of landscapes that function and provide services as an integrated ecosystem, like the high elevation forest zones of the island. Regions of Elfin and Sierra palm forest will be permanently divided by this open wound that will provide access to changes in light, micro climatic conditions, species population migrations, and other negative elements that only time will let us identify.*
- *Changes in the mountain scenery that will have consequence in tourism activity, local resident migration because of safety concerns and uppermost, a permanent change in rural communities with high poverty indexes which have as their main asset the serenity of their rural landscape.*
- *Changes in wetlands that have mostly naturally recover and survive the urban expansions of a densely populated island protecting species like the “coqui llanero” that was recently discovered in this type of habitat.*
- *A cascade effect of impacts caused by landslides; which will happen, as in other projects like road constructions through similar*

*landscapes, increasing the use of acreages for stabilization and safety issues as the project develops.*

- *The permanent fragmentation of forested landscape that had mostly recovered from natural succession and that now provide essential reproduction habitat to raptors and other birds species that survive our previous deforestation regime and now will have a reduced habitat because of a pipeline and right of way that will be used part time because of the gas storage limitations.*<sup>65</sup>

The main concern of Edgardo González is “with the unpredicted damages that cannot be identified now, but that will happen as the project develops and changes from its presented plans.”<sup>66</sup> He recognizes that the significant impact “cannot be considered by an EA and that even with an EIS [there] will be apprehensions that should be measured with the critical needs and social benefits of the project.”<sup>67</sup> Taking into consideration all of the above, it is evident that the impact of the Vía Verde project before the USACE are significant and that a fragmented view of its myriad effects is fictitious and radically underestimate the total effects.

### **III. ADVERSE IMPACTS OF VÍA VERDE PROJECT**

#### **A. IMPACTS ON WATERS AND WETLAND**

Another important reason why USACE must provide an EIS is the significant impact of the proposed pipeline to several surface waters, ground water, drinking water, wetlands and other water resources used to agricultural, recreational and other purposes. The pipeline will traverse 235 rivers and wetlands, covering 369 jurisdictional Waters of the U.S. according to the draft EA. This, by itself, is sufficient to understand real and complex dimensions of the proposed pipeline, and therefore its clearly significant effects in the human environment.

The draft EA fails to include a full functional wetlands assessment for all wetlands to be affected by the proposed project ROW. The draft EA states that the project will traverse 141 wetlands<sup>68</sup>; however in its analysis of impacts on wetlands, USACE visited a mere 26 wetlands locations along the ROW to conduct wetlands assessments.<sup>69</sup> For the remaining 115 wetlands crossings, USACE merely *extrapolated to similar wetland areas*.<sup>70</sup> This procedure is extremely problematic and caused USACE to wrongfully

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<sup>65</sup> Comments of Edgardo González, *Available at App. III-10*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Draft EA, at 3.

<sup>69</sup> Draft EA, at 72.

<sup>70</sup> Draft EA, at 72

assume that wetlands located in nearby areas were similar enough to receive the same classification. Thereby, as stated by Ariel Lugo, Ph.D., USACE underestimated the extent of wetlands to be impacted along the proposed pipeline route.<sup>71</sup> In particular, by utilizing this extrapolation method and by failing to conduct the required jurisdictional determination ground-truthing, USACE failed to assess the project's impacts on non-palustrine wetlands in the mogote valleys, non-palustrine marshes, and *S. campanulata* forested wetlands on alluvial and karst soils.<sup>72</sup> Therefore, it is very likely that USACE underestimates the area of wetlands along the proposed project ROW and the area to be affected by the project is larger than revealed in the draft EA.

The draft EA does not take into consideration the effects of the additional pipeline that will be constructed and connected to the pipeline. The Bayamón and the Barceloneta stubs will be located in wetlands that will be affected in the future. These are part of the potential effects that should be taken into consideration as USACE considers the necessity of an EIS.

In addition, the effects on small creeks and streams at the origin of watersheds are not assessed. Other concerns about the effects of directional drilling on wetlands were also not effectively addressed.

Another concern is the effect of the pipeline construction at the north coast since this region is

*[U]ndergoing rapid and intense urbanization, and, because of all the vital services supplied by the wetland, it is essential that wetlands not be destroyed or degraded in this area of rapid growth. They are essential to maintaining water quality in the rivers, bays, estuaries and open sea associated with the entire Puerto Rican coastal zone. Puerto Rico can ill afford to lose its wetlands. Wetlands in Puerto Rico are especially vulnerable because they are fairly small, interrupted in distribution, and often located in areas that people want to develop or alter in some way. Historically, wetlands have been looked upon as wastelands. Puerto Rico's wetlands need better oversight and protection because they represent habitats of concern and are not wastelands. Once gone, they will likely be gone forever, and with their disappearance will follow the loss of all those free ecological services and the many species they support.*<sup>73</sup>

It is also well documented that mitigation plans like artificial wetlands are a “poor substitute of the real thing.”<sup>74</sup> In addition, it is also well documented how in many

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<sup>71</sup> See Ariel E. Lugo's Comments on Department of the Army Environmental Assessment and Statement of Findings for Permit Application SAJ-2010-02881. App. III-4

<sup>72</sup> Id.

<sup>73</sup> See Attached: Guide to the Ecological System of Puerto Rico, Miller and Lugo, Chapter 4, 2009. App. I-3

<sup>74</sup> See Chapter 4, Miller and Lugo, at page 173. App. I-3

instances there is no post-construction monitoring or even when the projects are not done.<sup>75</sup> With this in mind, it is not sufficient to state that “[m]any of the wetlands are current or abandoned agriculture and the impacts are generally are temporary presuming reestablishment of the wetland functions.” This is not a comprehensive and serious analysis of the real significant impacts in the wetlands. There is an obvious lack of information, especially about wetland’s economic, health, recreational and biological capacities, functions, and importance. Moreover, it is clear the lack of information that accompanies the analysis on wetlands and important water resources. It also denotes ignorance about the development and importance of wetlands in Puerto Rico.

It is neither accurate nor responsible to state plainly that “[o]ther than the fill permanently placed on 1.68 acres, all other fill discharged from the construction is temporary and the wetlands will be restored. All aquatic ecological losses will be mitigated.” It is inadequate to state that the impacts related to wetlands are simply “low-degree-mitigated” because they will be restored. We have particular concerns, since these mitigation plans are not sufficient. EPA has recently expressed concerns about PREPA’s claim that most wetland impacts from the pipeline would be temporary. Moreover, EPA Regional Administrator, Judith Enck, stated that the EPA does not have the final wetland mitigation plan. EPA will require deed restrictions to be placed on any parcel acquired as part of wetlands mitigation.<sup>76</sup> More recently, the FWS notified USACE that the Vía Verde Project would have an impact on aquatic resources of national importance.

The draft EA depends too much on inadequate and often unstated or vague mitigation strategies. For example, regarding the mitigation plans for Caño Tiburones Natural Reserve, it states that “it will take into consideration factors such as risk; time lag; vulnerability to changes in hydrology, degraded water quality, and other impacts.” What other impacts? There is no precise assessment of the real impacts the pipeline’s construction will have on this important ecological sanctuary, which has been protected for years. There is not even a clear mitigation method, since it only lists some of the ways it can be mitigated, and not the precise and correct mitigation by area, depending on the species, water supplies, migratory birds patterns and conditions, time of the year and other factors that are necessary to take into consideration to have an idea of the real significant negative impacts on water resources, and the activities in which the people of Puerto Rico depend on. In addition, the mitigation plans are not completed.<sup>77</sup>

As previously mentioned, the Compensatory Mitigation Plan for the Vía Verde is insufficient. It addresses only 1.68 acres of “permanent impacts associated with the construction of main line valve stations and/or their access roads.”<sup>78</sup> Consequently, it

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<sup>75</sup> See *Id.*

<sup>76</sup> See also letter from EPA (Carl-Axel Soderberg) October 28, 2011 and the news article from El Nuevo Día, dated November 15, 2011. App. III-1 and App. III-2

<sup>77</sup> See page 97 of EA, where it states that that the on-site mitigation plan for Caño Tiburones is a “Draft plan under review.”

<sup>78</sup> See page 1 of the Updated Compensatory Mitigation Plan. App. III-3



does not consider the impacts to streams due to pipeline crossing or any other permanent direct and indirect impacts.<sup>79</sup> The Mitigation Plan, not only lacks of essential details regarding the restoration of the impacted wetlands, but it “does not adequately compensates for the project impact.”<sup>80</sup> For example, one of the mitigation strategies is removing agricultural activities from the Caño Tiburones area to eliminate the impediment of natural succession on desirable plant species.<sup>81</sup> However, the USFWS stated that this area outside Caño Tiburones has not been evaluated in order to determine the credits with and without the mitigation. As stated by EPA and USFWS, there is a need for more detailed and comprehensive Mitigation Plan.

In addition, the draft EA does not make a reference to specific wetlands, its characteristics and impacts in water quality, and therefore on health and economic issues and activities related to water resources.<sup>82</sup> The draft EA does not adequately assess the impact of wetlands and its effects on habitat and species. The numeration of the mitigation plans should not substitute a real analysis. In fact, it is not even possible to correctly mitigate the impacts if there is not a required study that correctly assesses the impacts in wetlands according to the type of wetland, habitats, soil characteristics, susceptibility of the species and interdependence relation with others, water resources and supplies. As Ariel Lugo, Ph.D. points out, it is wrong for USACE to assume that the “topography of the wetlands and bathymetry of waters can be restored to ‘original conditions’” as purported in the draft EA if a full functional analysis of wetlands has not been completed.<sup>83</sup> It is not sufficient to state that, regarding for example the Coquí llanero, it will be relocated during construction survey. Furthermore, it does not assess the impact on other habitat and species that will be significantly affected by the construction and ROW of the pipeline.<sup>84</sup> It should also be noted that a petition has been presented to the United States Fish and Wildlife Service (FWS) requesting to expedite the finalization of the proposed listing of the *Coquí Llanero* (*Eleutherodactylus juanariveroi*) as endangered pursuant to the Endangered Species Act (ESA), 16 U.S.C. § 1533, and to designate appropriate Critical Habitat. FWS declined this petition, instead waiting until the statutory deadline of October 2012 to afford the species and its critical habitat full protection under the ESA.

Note also that FWS via its letter dated October 13, 2011, stated that it continues “to recommend that USACE and the applicant use the best available information to determine stream impacts and develop a comprehensive mitigation plan that addresses

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<sup>79</sup> See also letter of USFWS (October 13, 2011). App IV-2

<sup>80</sup> *Id.*

<sup>81</sup> See draft EA at page 95.

<sup>82</sup> See also attached Letter by Dr. Ariel Lugo dated August 23, 2011. App. III-4 and App. III-5

<sup>83</sup> See Ariel E. Lugo’s Comments on Department of the Army Environmental Assessment and Statement of Findings for Permit Application SAJ-2010-02881. App. III-4

<sup>84</sup> See also supra at note 79

impacts to all aquatic resources,” and that “[i]n order to properly evaluate project impacts to fish and wildlife resources including wetlands and aquatic habitats, a complete set of the updated drawings needs to be provided.”<sup>85</sup>

The draft EA is vague and incomplete. USACE’s reliance on the Applicant’s use of unreliable maps for wetland identification and the limited number of sites that were actually visited, leave open the real possibility for wetlands along the ROW that have not yet been identified or delineated. The functional assessment included in the draft EA is also inadequate. There are no details on how each of the wetlands will be affected, since there is inadequate information regarding each wetland’s characteristics, including depth of organic material, seasons that are flooded, species and their role, water specific quality and characteristics, susceptibility of animals and plants and other categories that should be evaluated in determining the overall ecological and functional value of the wetlands. Finally, USACE’s reliance on the Applicant’s proposal to mitigate the alleged “temporary” impacts by restoring the water bodies and wetlands following construction is inadequate. USACE, itself, admits in the draft EA that the Applicant will likely fail to restore all the waters bodies and wetlands and other federal agencies have been critical of the likelihood of success of this mitigation proposal. Therefore an EIS is needed in order to complete a thorough analysis of this project’s impact in Puerto Rico’s waters and wetlands.<sup>86</sup>

## **B. IMPACTS ON WILDLIFE AND HABITAT**

The draft concludes that there will be negative, though minimal impact on fish and wildlife values in the proposed route of the Vía Verde gas pipeline. However any type of documentation or analysis does not support this conclusion. The draft EA briefly addresses some serious concerns brought up by comment letters submitted early in the permit process. Among the main concerns of the Vía Verde gas pipeline impact on wildlife and habitat, an EIS would be needed in order to provide a full analysis on possible habitat fragmentation, impact on the habitat of wildlife in the karst region, migratory birds and any other possible cascade effects caused by the impact on habitats or wildlife in the proposed route.

As some experts have expressed, Puerto Rico has one of Earth’s twenty-five (25) Biodiversity Hotspots.<sup>87</sup> In addition, a large proportion of Puerto Rico’s rich vertebrate species only live in the mountain region. Given that the majority of the Vía Verde gas pipeline proposed route consists of cutting its way through the mountains, not only the final infrastructure of the project will adversely affect wildlife, but the construction phase of project will impact the habitat of listed and not listed federal and state species.

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<sup>85</sup> See *supra* at note 79

<sup>86</sup> See also comments of Ariel Lugo, Ph.D. and Hector Quintero, Ph.D. regarding this document. Also, see Neftali Rios, Ph D. comments on aquatic resources

<sup>87</sup> Myers, N.R.A. Mittenmeier, C. G. Mittermeier, G.A.B. da Fonseca, and J. Kent. 2000. Biodiversity hotspots for conservation priorities. App. III-7.

Ecologist and Herpetologist Neftali Ríos states that as the wildlife territories become fragmented by the Vía Verde project, most individuals will suffer of the profound consequences of population dynamics and species abundance.<sup>88</sup> This impact alone should be considered serious enough to deserve an EIS.

In addition, other experts have expressed their concern on the draft EA's ignorance on previous comments concerning their approach and analysis concerning the limited number of endangered species that the USACE decides to include in their assessment. Particularly, the adverse effect on the Broad-Winged Hawk habitat should raise much more concern than a simple conclusion that the effect to 104 acres is a small proportion. In order to effectively conclude the impact of the project's Right of Way taking of the Broad-Winged Hawk habitat, further studies are necessary and an EIS would definitely clarify and attend most of the experts concerns.<sup>89</sup> A similar concern has been brought regarding the Puerto Rican Sharp-Shinned Hawk.<sup>90</sup>

The effect to the habitat of both of these hawks would result in a population reduction, which was already affected by the construction of the Puerto Rico 10 highway, and this would cascade into an ecosystem effect that could ripple through trophic chains.<sup>91</sup> According to avian ecologist and Endangered Species Specialist, Carlos A. Delannoy, the loss of a top predator in fragmented or modified landscapes could lead to *mesopredator release*, in which medium species, many of which are facultative nest predators, high population densities.<sup>92</sup> Without and EIS or at least further studies, the long run cumulative effects to the environment would be overlooked.

Regarding several species of amphibians, particularly coquí, which are ecologically, environmentally and culturally important wildlife of Puerto Rico, Dr. Rafael L. Joglar, estimates that in 6.8 miles of the pipeline could affect between 1.2 and 2.5 million coquí because of the projects contribution to the *amphibian crisis* as a result of the fossil fuel emission of natural gas.<sup>93</sup> In addition, the FWS determined that at least thirty-two listed species may be present.<sup>94</sup> This number was later adjusted upward to include additional species under FWS and NMFS jurisdiction; thereby, technical

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<sup>88</sup> See Neftalí Ríos-López January 9, 2012 letter to USACE and Neftalí Ríos-López January 12, 2012 letter to Mr. Robert Barron. Apps. III-8, III-9

<sup>89</sup> See Ariel E. Lugo's Comments on Department of the Army Environmental Assessment and Statement of Findings for Permit Application SAJ-2010-02881. App. III-4

<sup>90</sup> *Id.*

<sup>91</sup> See Carlos A. Delannoy January 10, 2012 letter to Mr. Bob Barron Re: Vía Verde Permit Application SAJ-2010-02881. App. III-11

<sup>92</sup> See *Id.*; Crooks, K.R. and M.E. Soule 1999. Mesopredator release and avifaunal extinctions in a fragmented system. App. III-12

<sup>93</sup> See Rafael L. Joglar, Ph. D. January 8, 2012 letter to Mr. Bob Barron. App. III-13

<sup>94</sup> *Id.*

assistance on the Project's effects between the Services and USACE included over forty listed species.<sup>95</sup>

Despite the large number of endangered and threatened species, USACE and FWS conducted formal consultation for only three species – the Puerto Rican Boa (*Epicrates inornatus*), the Puerto Rican Sharp-shinned Hawk (*Accipiter striatus venator*), and the Puerto Rican Broad-winged Hawk (*Buteo platypterus brunnescens*).<sup>96</sup> For the remaining species, USACE determined that the Project is “not likely to adversely affect” the species or would have “no effect,”<sup>97</sup> and FWS concurred with these determinations.<sup>98</sup> Within six weeks after the commencement of formal consultation, FWS issued its Biological Opinion, which concluded that the proposed Vía Verde Project is “not likely to jeopardize the continued existence”<sup>99</sup> of the Puerto Rican Boa, the Puerto Rican Sharp-shinned Hawk, and the Puerto Rican Broad-winged Hawk. The Biological Opinion has been finalized, and USACE has concluded its ESA consultation with FWS. Moreover, USACE has not initiated consultation with NMFS, despite repeated requests from that agency.

In addition to the comments submitted in this letter, we reiterate and incorporate by reference all the information and allegations regarding endangered species found in the proposed Vía Verde gas pipeline route of our ESA 60-day Notice. Because of the entire project's direct, indirect, and cumulative impacts, USACE should provide for an EIS. We are also submitting copies of all scientific studies and comments by experts and other relevant documents that relate to wildlife and habitat impact that should be considered by USACE in the evaluation the need for an EIS.

### C. IMPACTS ON CULTURAL AND HISTORIC RESOURCES

The draft EA states that USACE has not yet made a determination of whether the project will have an effect on any sites: “A determination has not yet been made whether the project will have any effect on any sites listed, or eligible for listing, in the National Register of Historic Places, or otherwise of national, state, or local significance.”<sup>100</sup> It goes on to point out several aspects or shortcomings of the submitted Phase 1A and IB

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<sup>95</sup> See U.S. Fish & Wildlife Serv., RE: Biological Opinion Vía Verde Project, Puerto Rico SAJ 2010-02881 (IP-EWG) (Aug. 23, 2011), available at [http://www.fws.gov/Caribbean/PDF/BiologicalOpinion\\_VíaVerde.pdf](http://www.fws.gov/Caribbean/PDF/BiologicalOpinion_VíaVerde.pdf) [hereinafter Vía Verde Biological Opinion] (Table 1 of listed species contains more than the initial 32 species).

<sup>96</sup> Letter from Robert Barron, Regulatory Program Manager, U.S. Army Corps Eng's-Jacksonville Dist., to Edwin Muniz Field Supervisor, U.S. Fish & Wildlife Serv. Boquerón Field Office (July 11, 2011) [hereinafter Letter from Robert Barron to Edwin Muniz (July 11, 2011)]. App. III-14

<sup>97</sup> *Id.*

<sup>98</sup> Letter from Edwin Muñoz, Field Supervisor, U.S. Fish & Wildlife Serv. Boqueron Field Office, to Robert Barron, Regulatory Program Manager, U.S. Army Corps Eng's-Jacksonville Dist. (July 15, 2011) [hereinafter Letter from Edwin Muniz to Robert Barron (July 15, 2011)].

<sup>99</sup> Vía Verde Biological Opinion, *supra* note 53, at 52–53. App. III-15.

<sup>100</sup> Draft Ea, at page 88.

reports. Yet the draft EA has made a proposed FONSI determination even when USACE basically ignores the consequence of the project on protected sites. Even worse, USACE proposed to authorize the construction and determine simultaneously possible effects, which represent serious potential threat to sites.

In the draft EA, USACE states that the parties accorded not constructing in the sampled area until the Army Corps of Engineers determined that there were not archaeological properties present or that the identified properties are not eligible to be included in the National Register. As mitigation techniques, the draft mentions that there are historical properties next to the project but that potential harm would be evaded through techniques as realignment, the establishment of a data recovery plan or the use of HDD to pass under the resource. These measures are inappropriate to deal with archaeological findings. It results much more adequate and effective to conduct a full investigation, without pressures, before approving the project or starting any type of construction in the area, either in anterior or posterior segments. A declaration of non-significant impact without conducting a complete investigation, without knowing if there are properties or not, results in a highly irresponsible and wrong decision and it has the effect of leaving unprotected the possible findings of an area with unique cultural resources, as the own draft refers to them.

Drs. Reniel Rodríguez and Jaime Pagán, along with other scientists and engineers, consistently mention omissions and defects carried out during the process. Among these, they identified omissions in the inventory and the fact that a systematic protocol of recognition does not exist. Only a portion of the route was sampled, excluding the routes of access, and the subsurface of the ground was not properly examined. Although USACE conducted Phase IA and IB studies, both of them, but specially the Phase IB results deficient for its purpose.<sup>101</sup> Both reports are disorganized and repetitive. Some defects in Report IA are that it lacks a title page, a table of contents and an abstract, all of them requirements of the PRSHPO. None of the reports in this phase consider the access roads to transport heavy machinery and materials to the areas of construction, which constitutes a planning blunder.<sup>102</sup> The Phase IB Report does not specify key issues, such as the width of the surveyed transects or how the alignment of the survey transects was maintained or the test intervals for each environment.<sup>103</sup> USACE itself, in the Environmental Assessment, accepts the deficiencies of the archaeological studies made by the proponent.

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<sup>101</sup> See Letter from Reniel Rodríguez Ramos to Mr. Edgar W. García, Department of Defense, Jacksonville District Corps of Engineers (December 16, 2010). App. III-17.

<sup>102</sup> See Letter from Reniel Rodríguez Ramos to Mr. Edgar W. García, Department of Defense, Jacksonville District Corps of Engineers (February 2, 2011). App. III-18.

<sup>103</sup> See Letter from Pedro Saadé Llorens and Rafael M. Espasas García, to Ms. Charlene Vaughn, Assistant Director, Federal Permitting, Licensing and Assistance Section, Office of Federal Agency Program, Advisory Council on Historic Preservation (Dec. 6, 2011). App. III-19.

There is a Programmatic Agreement managing between the Advisory Council on Historic Preservation, the Puerto Rican Electric Power Authority and the Army Corps of Engineers, as an alternative to comply with Section 106 of the National Historic Preservation Act of 1966. A Programmatic Agreement establishes an alternate procedure to comply with NHPA's Section 106 and it is normally used in complex cases, divided in phases and in undertakings whose effects cannot be determined at early stages of planning. The parties accord the terms and conditions during the consulting period.

A Programmatic Agreement shall not proceed in this situation because it would have the effect of dividing the project into various segments and would allow construction to proceed before a complete evaluation of all historical and archeological resources along the ROW. It is problematic if a segment of construction is allowed before completing the archaeological studies in the remaining segments. For these reasons, a Programmatic Agreement is not a recommendable alternative, nor supported in the current regulations to comply with Section.<sup>106</sup>

As of today, an emergency to manage a permit does not exist. The energetic emergency was created for political purposes. There is no necessity to incur a Programmatic Agreement before completing the identification efforts, ordinarily, with the due care. Although the Puerto Rican Electric Power Authority justifies its use in the fact that "the effects on historic properties cannot be fully determined prior to the issuance of the Corps of Engineers Permit" there are not technical reasons for not identifying the archaeological properties before the permit is completed.

This Programmatic Agreement mentions general mechanisms to identify historical properties, such as identification surveys, research for eligibility assessment; treatment plans in case a property is found.<sup>104</sup> However, nothing in particular is described. This has the effect of causing the impression that there is a strategy to work with the situation, when the reality is that the matter is not being treated with the seriousness and importance that it merits.

Additionally, the celebration of a Programmatic Agreement is inadequate, besides, because in the present case the true extent of the undertaking is not known, nor are the access roads and staging areas included; the rugged nature of the terrain is not taken into consideration, and neither is the project's width, resulting in a pipeline that is more than 92 miles in length once compensation for the inclination of the geography.<sup>105</sup>

It must also be stated that a potential conflict of interest exists in the Section 106 Process Review. The PRSHPO, Mr. Carlos Rubio Cancela, is an employee of the Puerto Rico Electric Energy Authority with an unpaid leave to direct that office. This impairs

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<sup>104</sup> See Programmatic Agreement Among the US Army Corps of Engineers, Advisory Council on Historic Preservation, Puerto Rico State Historic Preservation Office and Puerto Rico Electric Power Authority for the Via Verde Natural Gas Pipeline Project, SAJ-2010-2881. App. III-21.

<sup>105</sup> See Letter from Pedro Saadé, *supra* note 103.

PRSHPO's impartial assessment of the effects of this undertaking on historic properties and could invalidate the process.<sup>106</sup>

The *Vía Verde* Archaeological Studies fail to comply with the Secretary of Interior's Standards I, II and III. These standards determine how federal agencies may comply with Section 106. Standard I, "Identification of Historic Properties Is Undertaken to the Degree Required to Make Decisions," is not met by the *Vía Verde* Archaeological Studies. The study lacks research design of any kind and it does not have either a founded prediction on archaeological potentiality. Standard II, "Results of Identification Activities Are Integrated into the Preservation Planning Process" was not met, because they did not established or accepted "methodology" to identify known or unknown archaeological sites. Standard III, "Identification Activities Include Explicit Procedures for Record-Keeping and Information Distribution," was not met either. The studies failed to gather archaeological data in a systematic way that permitted access to interested parties in the process. For example, results did not summarize or explain the design and methods used to reach the results. There is no discernible correspondence between archival research, walk-over surveys, and subsoil testing because each of these tasks was developed independent of the others and without any minimally-accepted framework. This makes it impossible for others to review the survey results with any higher level of scrutiny.

On the other hand, adequate consultation efforts were not carried out. The National Historic Preservation Act requires "consultations appropriate to the scale of the undertaking and the scope of Federal involvement." In this case, the consultation has been minimal and important parties were left out. In fact, the two consulting archaeologists, Drs. Rodríguez and Pagán went through a process uphill of waiting and delay by the Council in order to grant them the status of consulting parties.<sup>107</sup> They requested to be included as interested parties under 36 CFR Part 800, ss. 800.3 (f) (1) and were recognized as consulting parties almost eight months after their initial request. At this point, the identification efforts had ceased and the Programmatic Agreement was drafted. This clearly violates the Council's requirement that consultation with interested parties commence at early stages of project planning.

Due to the extension and invasive nature of the project it is predictable that it will have profound and unprecedented impacts on archaeological resources. Experts state that the *Vía Verde* Project has the potential to impact approximately 60 yet unidentified historical sites, making it the most destructive undertaking to the cultural patrimony of Puerto Rico in decades. They mention as an example a cave that contains a historic deposit that lies within the ROW of the project but has been overlooked even though it is a highly visible resource. For example, PREPA proposes in the draft Programmatic

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<sup>106</sup> See note 103.

<sup>107</sup> See Letter from Jaime Pagán Jiménez and Reniel Rodríguez Ramos to Ms. Charlene Vaughn, Assistant Director, Federal Permitting, Licensing and Assistance Section, Office of Federal Agency Program, Advisory Council on Historic Preservation (July 15, 2011), Letter from Jaime Pagán Jiménez and Reniel Rodríguez Ramos to Mr. Sindulfo Castillo, Section Chief, Regulatory Division, US Army Corps of Engineers (June 20, 2011). App. III-22.

Agreement to avoid archeological sites such as Tallaboa and La Esperanza by use of HDD technology; however, PREPA never fully determined the boundaries of these sites and therefore cannot be sure that HDD will fully avoid all impacts to these sites.<sup>108</sup> USACE cannot be sure that the ROW fully avoids archeological sites unless these sites are fully delineated and studied. In some instances, the ROW was realigned around, but remains close to, archeological sites that were never fully delineated – Santa Teresa, Central Plazuela, Rio Santiago, Taíno Rock Shelters 1 and 2 in Manatí, Terrazas, Las Granjas Shelter, and Ingenio Cañero.<sup>109</sup> Moreover, of the 19 sites identified by the Programmatic Agreement and USACE, only eight of these sites were actually studied by PREPA.<sup>110</sup> During construction, use of heavy machinery, trenching through sensitive karst geology, and use of drilling presents the potential for collapsing or damaging many of these sensitive sites. These facts reinforce the necessity of an Environmental Impact Statement that includes an inventory of all the identified historic properties to be affected prior to granting any permit.

#### **D. IMPACTS ON PUBLIC SAFETY**

The United States Corps of Engineers (COE) has erred in finding that the Via Verde Gas Pipeline project does not significantly affect the quality of the human environment and therefore does not warrant an Environmental Impact Statement (EIS). As will be shown below, Via Verde will indeed significantly affect the quality of the human environment. For that reason, the project requires the preparation of an EIS as mandated by the National Environmental Policy Act (NEPA).

##### **1. Via Verde affects the security of thousands of people in Puerto Rico in a significant manner.**

**Title 40 CFR § 1508.27** defines **significantly** as used in NEPA as requiring an analysis of the **context**: “This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.” An analysis of the **intensity** of the action or the severity of its impact must also be made. In evaluating intensity it is important to evaluate “the degree to which the proposed action affects **public health and safety**”, “the degree to which the possible effects on the human environment are highly uncertain or involve **unique or unknown risks**”, and “[w]hether the action is related to other actions with

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<sup>108</sup> *Programmatic Agreement Among the US Army Corps of Engineers, Advisory Council on Historic Preservation, Puerto Rico State Historic Preservation Office, and Puerto Rico Electric Power Authority for the Via Verde Natural Gas Pipeline Project*, Attachment C: Table of Known Sites.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*



individually insignificant but cumulatively significant impacts. **Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.**"

In page **page 102** of the draft Environmental Assessment (EA), when analyzing the degree to which the effects on the quality of the human environment are likely to be highly controversial, although the COE considers there is a high probability for the effects to be controversial it also wrongfully states that "[t]here is **no scientific argument that there is risk of injury for persons living near a pipeline**, and there are established methods to calculate the distances for which people will be at risk." The COE had information in its hands that impedes it from reaching the first conclusion.<sup>111</sup>

There's empirical data that suggests that there is a risk of injury for persons living near a gas pipeline. This empirical data is provided by the Office of Pipeline Safety (OPS). They report that there have been 1,108 significant accidents involving gas transmission pipelines during the last twenty years (an average of 55 accidents per year) and 138 serious accidents (more than four per year). On the other hand there were 829 serious accidents involving gas distribution pipelines and 1,595 significant accidents during the same period. The **Pipeline and Hazardous Materials Safety Administration (PHMSA)** defines Significant Incidents as those incidents reported by [pipeline](#) operators when any of the following occur:<sup>112</sup>

1. Fatality or injury requiring in-patient hospitalization.
2. \$50,000 or more in total costs, measured in 1984 dollars.
3. Highly volatile liquid releases of 5 barrels or more or other liquid releases of 50 barrels or more.
4. Liquid releases resulting in an unintentional fire or explosion.<sup>113</sup>

On the other hand, a **serious** accident is an [event](#) involving a fatality or injury requiring in-patient hospitalization<sup>114</sup>.

Even when only taking into account the lower occurrence of serious accidents it's hard to conclude that natural gas pipelines do not pose a risk of injury to persons living near them since, on average, at least four serious accidents have occurred per year (an accident where **at least** there was one injury or at least one death). This is more than enough to meet the **risk of injury** threshold. It's even harder to reach this conclusion when taking into account the fact that the definition of a *significant incident* offered by the PHMSA is much stricter and narrower than the definition of *significant impact* in the National Environmental Policy Act. The PHMSA focuses in injuries to persons or material damages in order to qualify an incident as significant whereas the COE must take into account a myriad of factors in order to determine whether there is a significant impact that warrants an EIS or not. For instance, according to 40 CFR 1508.8, **impacts**

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<sup>111</sup> We will analyze the second conclusion further on.

<sup>112</sup> <http://primis.phmsa.dot.gov/comm/reports/safety/SigPSI.html?nocache=7605>

<sup>113</sup> *Id.*

<sup>114</sup> <http://primis.phmsa.dot.gov/comm/reports/safety/SerPSI.html?nocache=6251>

(which is synonymous to *effects* according to this section) **include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.**

It is important to take into account the Puerto Rican environment when studying the level of impact that the Vía Verde Pipeline will have in the island. One of the factors that was ignored by the COE in its analysis was population density. Mark J. Stephens emphasizes in his report that “whereas the interpretation of reported burn areas and burn distances is obvious, **caution should be exercised in interpreting maximum offset distances to injury and fatality. Given that most of the incidents occurred in sparsely populated areas, the reported injury and fatality offsets are more indicative of where people happened to be at the time of failure rather than being representative of the maximum possible distances to injury or fatality for the incident in question.**”<sup>115</sup>

The population density in some areas of the current proposed alignment is much higher than those in the reported incidents in Stephens’ paper. For example in Beaumont, KY there was an accident where the offset to a fatality was a radius of 150 feet according to Stephens’ chart.<sup>116</sup> This is the same distance that PREPA says they will **try** to maintain between the pipeline and other structures (although they’ve stated that the distance will be much shorter in many segments of the alignment). The population density in Harrisburg City, where Beaumont is located, is 1,206.8 persons per square mile (p/m<sup>2</sup>) while in Levittown (located in Toa Baja) the population density is 13,279 p/m<sup>2</sup>. That’s 11 times higher than in Harrisburg City.<sup>117</sup> It’s important to note the impact that this explosion had in this relatively sparsely populated area. The force of the escaping high-pressure gas ripped open 30 feet of pipeline, blasted an opening across Kentucky State highway 90, and dug out a crater 90 feet long, 38 feet wide and 12 feet deep. The escaping gas ignited and incinerated an area about 700 feet long and about 500 feet wide. **Five persons in a house 318 feet north of the rupture were killed and three persons 320 feet south of the rupture were burned as they ran from their house trailer.** Two houses, three house trailers, a sawmill, two barns, numerous parked cars and abandoned vehicles, and nine pieces of road construction equipment were destroyed.<sup>118</sup>

The accident reported in NTSB-PAR-83-2, which according to Stephens’ paper had a fatality at an offset of around 75 feet, occurred in Hudson City, Iowa, an area with a population density of 271.5 persons per square mile. Again, compare this with the

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<sup>115</sup> J, Stephens. A Model for Sizing High Consequence Areas Associated with Natural Gas Pipelines, at page 13 (2000), *Available at* App. III-23.

<sup>116</sup> See US National Transportation Safety Board, “Pipeline Accident Report—Texas Eastern Gas Pipeline Co. Ruptures and Fires at Beaumont, Ky., on Apr. 27, 1985, and Lancaster, Ky., on Feb. 21, 1986,” Report No. NTSB/PAR-87/1, Feb. 18, 1987. *Available at* App. III-24.

<sup>117</sup> See Population density info is according to the 2010 US Census .

<sup>118</sup> See Technical Report Documentation Page – Abstract. *Available also at* <http://www.nts.gov/doclib/reports/1987/PAR8701.pdf>

population density of Levittown and the difference is startling to say the least. The truth of the matter is that Puerto Rico, with 3,725,789 people living in the island, doesn't have a single geographic area comparable to those utilized by Stephens' in his *model to sizing high consequence areas*. According to the 2010 US Census more than 60% of the geographic area of Puerto Rico has a population density of more than 5,000 persons per square mile, more than 85% of the geographic area has more than 2,000 persons per square miles and more than 95% has a population density of more than 1,000 persons per square miles. Needless to say, Puerto Rico is a very densely populated island. Much more so than any of the localities used to create the model for sizing high consequences areas in cases of an accident.

Accident number DCA10MP008 which occurred on September 9, 2010 in San Bruno, California, left five civilians dead, 66 injured and thirty-seven homes completely destroyed. It is of utmost importance to note that this pipeline was operating at a psi of 386 whereas *Vía Verde* will operate at 650 psi (this is 1.4 times higher). The explosion left a 72 feet long by 26 feet wide crater and a piece of the pipeline was found 100 feet from the explosion. The [population density](#) in San Bruno was 7,505.0 people per square mile, almost the same as the density of 20% of the geographic area of Puerto Rico. PREPA has admitted that in some areas it will not be able to maintain the 150 feet set-off distance between the pipeline and human structures. PREPA even conceded that in some areas of the pipeline there will be people as close as 25 feet from the pipeline. Most of *Vía Verde's* proposed alignment is near populated areas or highly transited roads. The effects of a natural gas line explosion in Puerto Rico are clearly unprecedented.

The COE failed to take into account the particularities of the island when analyzing the significance of the impact *Vía Verde* will have in Puerto Rico and they also disregarded the data about accidents provided by the OPS, ascribed to the PHMSA. All this data is available at the *National Transportation Safety Board* (NTSB) website and confirms that there is, at the least, **a risk of injury** for persons living near natural gas pipelines. By analyzing this empirical data it's easily foreseeable that natural gas pipelines will someday present problems and falter. *Vía Verde* represents a significant impact to the environment and must thus be properly analyzed through the drafting of an EIS before conceding any sort of permit for its construction.

The absence of a fixed distance to populated areas or properties under federal regulation cannot be taken as the equivalent of an exception of effects for purposes of the NEPA. The risks of the pipeline through or near populated areas constitute an adverse effect which requires an EIS. It is unacceptable that compliance with NEPA may be avoided by merely invoking the lack of fixed regulatory distance because this failure does not mean an absence of risks. The importance to protect human life and property requires the most careful and detailed considerations possible. An unsupported statement to the effect that there is "no scientific argument that there is risk of injury for persons"<sup>119</sup> must be discarded.

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<sup>119</sup> *Id.* at page 102

The most striking difference between the Vía Verde Project and the areas studied by Stephens is that the Vía Verde ROW passes through densely populated areas or high-traffic. USACE should be concerned with the fact that the “conservative” offset distance for Vía Verde suggested by Stephens’ model is of 422 feet at both sides of the pipeline but PREPA proposed a setback distance of 150 feet and sometimes even less. USACE is charged with complying and assuring third-party compliance with NEPA. As such, USACE is required to take this setback distance into very serious consideration. Furthermore, if an applicant provides information to USACE based on a study, and the applicant wrongly interpreted said study, USACE should exercise its discretion and examine the information provided by the applicant.

The fact that there isn’t a minimum distance established by Federal law does not give the lead agency *carte blanche* in terms of how close to communities they will construct a natural gas pipeline. The Corps completely disregard the distance argument, which represents a **significant** threat to the human environment in Puerto Rico, by hiding behind the fact that there isn’t a minimum distance established by federal law. Does this mean that the Corps can disregard NEPA and abandon all common sense whenever they evaluate a natural gas pipeline project? The COE seems to imply that as long as PREPA complies with the federal regulation pertaining pipelines and classifies the alignment in classes 1 through 4, delineates the High Consequence Areas and drafts a mitigation plan they can then construct the pipeline as close as 25 feet from people’s houses. It seems that just because there isn’t a minimum distance established by federal law the Corps can’t exercise common sense and determine if the distance proposed by PREPA is reasonable. It should be within the Corps’ purview to ensure that PREPA, at the least, is correctly determining the distance between the pipeline and other structures. It should concern the Corps that PREPA cites a paper that creates a model for sizing high consequence areas and for establishing a setback distance between the pipeline and other structures as the basis for their proposed 150 feet offset distance and that PREPA has incorrectly interpreted said study. It should concern the Corps that PREPA has stated that Stephens’ model suggest a distance of 150 feet when in fact it doesn’t. It should also concern the Corps the fact that the distance of 150 feet “suggested” by Stephens is the distance where fatalities were reported.

The COE should be concerned that most of Vía Verde will be constructed besides densely populated areas or highly populated roads in stark contrast to the areas studied by Stephens. The Corps should also be concerned with the fact that the “conservative” offset distance for Vía Verde suggested by Stephens’ model is of 422 feet at both sides of the pipeline but PREPA proposed a total setback distance of 150 feet and sometimes even less. NEPA requires the COE to seriously analyze all these concerns. Furthermore, if an applicant provides information to the Corps based on a study and the applicant wrongly interpreted said study the Corps should exercise caution and revise the information provided by the applicant. For all these reasons the COE has erred in finding that the Vía Verde project does not requires an EIS.

## E. ENVIRONMENTAL JUSTICE CONSIDERATIONS

The multiple infringements to the principles of environmental justice, present in the Vía Verde Project as implemented and proposed to date, represent an area of extreme concern because they are not adequately addressed, if they are referenced at all, in the draft EA. The communities in the areas directly impacted by the construction of the pipeline are composed of individuals from a low-income, Spanish-speaking minority group, who have been afforded little to no access to the information provided by the Government, participating agencies, or the draft EA. This fact, coupled with the denial of public hearings, signals a major violation to the right of these communities to receive fair treatment and meaningful participation in the decision-making as well as equal access to redress. Therefore, we strongly recommend USACE analyze the scope of this project in light of the guarantees and protections of environmental justice.

The EPA defines environmental justice as:

*[...] the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.*<sup>120</sup>

In this context, the concept of “fair treatment” means that “no person or group should bear a greater share of negative environmental impacts that result from environmental programs.”<sup>121</sup> In relation to environmental justice, the EPA states, “disproportionate impact (of minority populations)” refers to:

*[...] communities of low income and/ or color and in the **presence of high-risk environmental hazards**. Those communities in the presence of environmental and human health hazards are more at risk of developing chronic health problems or experiencing **environmental racism** due to their surroundings **than other parts of the country**.*<sup>122</sup> (Emphasis added)

The CEQ advises that “[a]gencies should recognize that the question of whether agency action raises environmental justice issues is highly sensitive to the **history or circumstances** of a particular community or population, the particular **type of environmental or human health impact**, and the **nature of the proposed action** itself.”

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<sup>120</sup> Available at <http://www.epa.gov/region07/ej/definitions.htm>

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> (emphasis added). Since all agencies involved in NEPA processes are required to consider these issues at every step, and USACE has thus far failed to consider these elements in the draft EA, the population is being subjected to environmental discrimination inuring to the benefit of procedural fast-tracking.

In addition, the broad range of impacts covered by NEPA, and encompassed in environmental justice issues, require that USACE evaluate the natural or physical environment, as well as any related social, cultural, and economic impacts by adhering to a set of basic principles. These include considerations of the following:

- Area composition to determine the **presence of minority and low-income populations** as well as any disproportionately high, negative human health and environmental impacts to these populations;
- **Data on the potential increase in risk exposure** to human health and the environment, be it multiplied or accumulated, regardless of the control or discretion of the action agency, as well as any mitigation measures identified in the proposal;
- The “**interrelated cultural, social, occupational, historical, or economic factors** that may amplify the natural and physical environmental effects of the proposed agency action;”
- **Strategies and active outreach mechanisms** to overcome **linguistic, cultural, institutional, geographic, or other barriers to meaningful participation**; and
- Ensure **meaningful participation, as early as possible** in the evaluation process, by recognizing the diversity of the community and endeavoring to include **complete representation of the community as a whole**;

In addition to the impacts on the protected communities, the social impact assessment should also include an evaluation of the **equity of the distribution** of the benefits and risks of those decisions.<sup>124</sup>

Because the magnitude and severity of project impacts may vary according to area or action, the direct, indirect and cumulative impacts that may affect these populations of minority and low-income communities must be subjected to a strict analysis for any resulting discriminatory or disproportionate treatment. Under this review, direct impact is understood as “caused by the [project] action and occurs at the same time and place;”<sup>125</sup> an indirect impact is “caused by the [project] action [but] occurs later in time or farther

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<sup>123</sup> CEQ. “Environmental Justice – Guidance Under the National Environmental Policy Act” (Dec. 1997) page 8. Available at: <http://ceq.hss.doe.gov/nepa/regis/ej/justice.pdf>

<sup>124</sup> See United States Department of the Interior. *PEP - Environmental Compliance Memorandum No. ECM95-3* (May 30, 1995) “Subject: National Environmental Policy Act (NEPA) Responsibilities Under the Departmental Environmental Justice Policy” p.1; see also United States EPA, Region 2 Draft Interim Policy on Identifying EJ Areas, June, 1999.

<sup>125</sup> Available at [http://www.section4f.com/nepa\\_glossary.htm](http://www.section4f.com/nepa_glossary.htm)

removed in distance, but is still reasonably foreseeable;”<sup>126</sup> and CEQ guidance for implementing NEPA defines cumulative impact as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.”<sup>127</sup>

In addition, EPA “guidelines provide methodologies for developing an environmental load profile (ELP) to represent burden” that “can be related to ambient conditions, a specific source or sources, and/or cumulative or area-wide sources.”<sup>128</sup> Therefore, an examination of the severity of this disproportionate impact must also consider pre-existing environmental impacts and degradations caused by coetaneous projects or actions, regardless of their relationships with the action agency. The Via Verde project represents the creation of a continuous and wide-spread threat to the security and psychological well-being of the COCs. In addition to the security threat to human life that constitutes “an acknowledged health standard for the burden,”<sup>129</sup> the refusal to publish the draft EA and accompanying documentation in the language commonly used by the COCs disproportionately impacts these communities by effectively screening their participation. This constitutes discriminatory behavior against their ethnic and national origin.

As previously stated, thirteen (13) municipalities will be impacted by the construction of the proposed pipeline. The effects on the water resources, wildlife and habitats, as well as the impact on historic and cultural resources, land erosion, public safety, property ownership and land use threatens these communities in a highly specific manner. This possibility of harm has been recognized in the draft EA, but nevertheless is suspiciously tempered by a strategically placed recognition that, despite the attention and interest received by some on the mainland, it is not of US national concern. Continuing on from this assessment of public interest, the draft EA does recognize the effect the project will have for the entire island. The draft EA specifically states, “[w]hile this permit application has garnered interest outside of PR, the area and population affected is limited to Puerto Rico. The placement of the pipeline affects 29 communities. The environmental and economics affect the citizens of the Commonwealth as a whole.”<sup>130</sup>

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<sup>126</sup> *Id.* (“Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”).

<sup>127</sup> 40 CFR ~ 1508.7

<sup>128</sup> EPA, Region 2 Draft Interim Policy, *supra* note 124 at § 2.1.1.

<sup>129</sup> EPA, Region 2 Draft Interim Policy, *supra* note 124 at § 2.2.5.

<sup>130</sup> *See* draft EA at page 100.

In upholding the principles of environmental justice, the US Supreme Court has held that Title VI of the Civil Rights Act of 1964<sup>131</sup> “[has] delegated to the agencies in the first instance the complex determination of what sort of disparate impacts upon minorities constituted sufficiently significant social problems, and [are] readily enough remediable, to warrant altering the practices of the federal grantees that have produced those impacts,”<sup>132</sup> always bearing in mind the particular elements of evaluation delineated in subsequent EJ legislation. Therefore, ignoring the linguistic limitations of the COC effectively discriminates against the group, denies them their right to meaningful public participation, and consequently places the burden of the effects to be shouldered disproportionately onto those who the laws and principles of environmental justice are intended to protect.

We are submitting copies of relevant documents relating to environmental justice impacts and request that they be considered in conjunction with these comments.

#### F. OTHER IMPACTS ON PEOPLE AND COMMUNITIES

A key part of this EA process should be the preparation of a social impact assessment (SIA), a discussion of potential changes to local culture should the pipeline be built. This evaluation is a response to the NEPA requirement to understand the impact on the human environment, and means that agencies need to assess the “aesthetic, historic, cultural economic, social, or health [effects]...whether direct, indirect, or cumulative.”<sup>133</sup> NEPA states that all agencies of the federal government “shall utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man’s environment”<sup>134</sup> (emphasis added). Federal Agencies also have to “insure that *presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.*”<sup>135</sup>

In order to assist agencies in the fulfillment of these duties, the United States Congress created the Council of Environmental Quality (CEQ). The CEQ, in turn, developed specific guidelines that federal agencies must follow in their evaluation of proposed actions that may pose environmental effects. According to the CEQ Regulations for Implementing NEPA, §1508.8, “effects” include: “...ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), **aesthetic, historic, cultural**, economic, **social**, or health, whether **direct**,

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<sup>131</sup> 42 U.S.C. § 2000d (1994) (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

<sup>132</sup> 469 U.S. 287, 293–94 (1985).

<sup>133</sup> 40 CFR 1508.8

<sup>134</sup> 42 USC 55 §4332 (A)

<sup>135</sup> *Id.*, §4332 (B)



**indirect, or cumulative**<sup>136</sup> (emphasis added). The CEQ also states, “Effects and impacts as used in these regulations are synonymous.”<sup>137</sup>

To comply with these federal regulations, an SIA, or analysis of “socio-economic impact considerations,” has to be conducted before the approval of a project. Since federal law does not dictate the specific components of such an assessment, and since different agencies used different approaches to fulfill NEPA’s social impact assessment requirements, a group of distinguished social scientists and SIA practitioners developed and published the *Principles and Guidelines for Social Impact Assessment in the United States* (PGSIA).<sup>138</sup> The general consensus achieved by the Committee was that SIAs should adhere to a set of principles to guide the methodology, concepts, and processes:

- Create an understanding of local and regional settings;
- Identify the key elements of the human environment, including social and cultural elements;
- Develop appropriate methods and assumptions;
- Provide quality information for decision-making;
- Ensure that any environmental justice issues are addressed; and
- Establish mechanisms for evaluation/monitoring and mitigating.

These principles should be applied in the potential or actual impacts to such elements as “...health [...], recreational activities, aesthetic interests, land and housing values, jobs opportunities, community cohesion, lifestyles, governmental activities, psychological well-being, and behavioral response on the part of individuals, groups, and communities.”<sup>139</sup> In light of these principles, federal regulations, and a rational standard of review, the critical mechanism for complying with SIA obligations is a fair and meaningful public participation action plan.

Moreover, substantial case law has clarified that an additional factor of consideration, *ex ante* for public participation, is the language of the documents provided to the public. While NEPA’s plain language requirement<sup>140</sup> establishes a “common readability” standard for document publication, a more specific and grammatically relevant analysis of the “plain language” requirement, in light of NEPA’s public

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<sup>136</sup> 40 CFR §1508.8

<sup>137</sup> *Id.*

<sup>138</sup> The first edition of the *Principles and Guidelines* was published in 1994; we cite the more recent version published in the peer-reviewed journal: *Impact Assessment and Project Appraisal*, Vol. 21, No. 3, September 2003, pp.231-250 (The experts came from federal agencies like the NMFS and the Forest Service, academia, and the private sector —professional SIA practitioners. The group was organized as the Interorganizational Committee on Social Impact Assessment under the NMFS’s sponsorship; it included Sociologists, Anthropologists, Natural Resources Analysts, and Economists).

<sup>139</sup> Hundloe, T., McDonald, G. T., Ware, J., and Wilks, L., “Cost-Benefit Analysis and Environmental Impact Assessment,” *Environmental Impact Assessment Review*, vol. 10, 1990, pp. 55-68

<sup>140</sup> 40 C.F.R. § 1502.8

participation requirements,<sup>141</sup> must be construed and interpreted in relation to the specific linguistic characteristics of the affected population. As such, the EPA has actively promoted the full translation of highly technical and scientific information into plain and understandable language for the affected population as a way of ensuring compliance with NEPA and CEQ public involvement requirements. Thus, while there is no minimum level of public comment and participation required, preparation and publication of NEPA documents and processes in a language not spoken by the majority of the affected population is “**a complete failure to involve or even inform** the public about an agency's preparation of an EA and a FONSI violates NEPA.”<sup>142</sup>

Consequently, USACE (and all the agencies involved at all levels) is under the obligation to prepare and provide an SIA that should identify the disadvantaged, at risk and minority populations, describe and measure their social and cultural characteristics (assess the relevant social and cultural elements to the NEPA **process** and project **impacts**), develop appropriate methods to ensure the fair and meaningful participation of the mainly Spanish-speaking public (the majority of whom reside in rural and difficult-to-access locations), and establish culturally-sensitive mechanisms for monitoring and mitigating for these social impacts.

### 1. Observations on Public Concern

One of the first elements of public concern that should be addressed in an adequate SIA, is the initial language barrier. The most prominent element of PREPA has already recognized the social or demographic profile, of both the 29 communities and the island as a whole, to be constituted almost exclusively by a Spanish-speaking minority population and mostly low-income. Consequently, “[i]f any significant impacts to minority and low-income populations and communities are identified during the scoping and/or planning processes, **the environmental document should clearly evaluate and state the environmental consequences of the proposed project, action or decision**”<sup>143</sup> on the community of concern (COC).

The draft EA constitutes a negligible effort on the part of PREPA and USACE to include a proper assessment of social impacts by limiting the scope of review to socio-economic characteristics,<sup>144</sup> and subsequently failing to elaborate on this topic. The USACE fails to meet EPA Interim Policy requirements when it accepts PREPA's erroneous statement that the socio-economic alternative “**must** substitute the ethnic

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<sup>141</sup> See *Dine Citizens Against Ruining our Env. v. Klein*, 747 F. Supp. 2d 1234 (D. Colo. 2010) appeal dismissed, 439 Fed. Appx. 679 (10th Cir. 2011)(unpublished)

<sup>142</sup> *Ocean Mammal Inst. v. Gates*, 546 F. Supp. 2d 960, 972 (D. Haw. 2008) modified in part, CIV. 07-00254DAELEK, 2008 WL 2020406 (D. Haw. 2008)

<sup>143</sup> EPA, Region 2 Draft Interim Policy, *supra* note 124 at § 2.2.5.

<sup>144</sup> *Id.*

approach”<sup>145</sup> (emphasis added). The Interim Policy provides flexibility regarding these elements stating that because “it is usually not useful to compute a difference in [ethnicity] between the COC and the reference area,” socio-economic status may be used to identify a potential environmental justice community (EJC).<sup>146</sup> However, in the current project, ethnicity must be understood in its more holistic sense, to include elements of language. The Hispanic population on the island is mostly Spanish-speaking, but no reference has been made by PREPA or USACE as to disparate impact on the limited- and non-English-speaking Hispanic population of the COCs. In this case, the preliminary burden analysis should be developed and the demographic information referenced to the language statistics of the documentation being released for public scrutiny.

## 2. Social Impact Variables

As a way of facilitating the evaluation process, the PGSIA established a set of variables that must be considered when conducting an SIA. These variables represent quantifiable changes in communities, social relationships, and human populations, as an effect of the proposed action. Drawing on more than 50 years of research on social change and natural resource development, the Inter-organizational Committee outlined these variables and stated that “(f)or each project/policy stage, the assessor should identify potential impacts on each SIA variable identified [...] This approach ensures that no critical areas are overlooked.”<sup>147</sup>

Although there is no codified list of requisite variables, application of the highest standards of scientific standards and methodology is a general obligation for any and all studies undertaken within the federal government. Thus, having already received public comments highlighting concerns and testimonies regarding a multitude of elements highlighted in the *Principles and Guidelines*, USACE would do well to comply with these standards. To date, it has not adequately evaluated or even addressed many of the SIA variables that should be analyzed, such as:

- **Population changes** with forced community relocations, population shifts, desertification and rapid urbanification, and housing demands;<sup>148</sup>
- **Community and institutional structures** surrounding employment limitations, joblessness or full and structural unemployment levels, along with the actual and historic income demographics in the areas, job scarcity, and high cost of living;
- **Political and social resources** that help identify and assist interested and affected individuals;

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<sup>145</sup> *Id.*

<sup>146</sup> EPA, Region 2 Draft Interim Policy, *supra* note 124 at § 2.3.1

<sup>147</sup> *Principles and Guidelines*, *supra* page 242

<sup>148</sup> Settlements in the areas affected by the project respond to strong traditional family ties. The displacement of these communities and the consequential dispersion of its individuals may result in the complete dismemberment of a social group.

- **Community and family changes** in the routines, dependencies, networks, and structures of daily living for families, social networks, individual attitudes, and
- **Community resources** that characterize the community's use of historical resources, access and regard for archeological and cultural resources, as well as the public services available to the community.

As was stated above, most short-term and all long-term social impacts from this project have been completely ignored in the draft EA, even though the displacement of families or property owners is essential for the construction and operation of the pipeline and constitute the complete upheaval of sometimes vital social structures. The increased risk to life, and corresponding loss of well-being, is also completely ignored in relation to those residents living near the pipeline route. Of notable significance in this regard is the draft EA's recognition that the pipeline necessarily entails a decrease in public safety.<sup>149</sup> It also recognizes the need to displace people and acquire their properties, but is deficient in its analysis of the impact this action will have.

Among the long list of variables delineated by the Committee and the concerned citizens, the SIA presented by PREPA covers only four<sup>150</sup>—and these in a superficial and limited way. USACE subsequently failed to address these deficiencies in the draft EA by not requiring PREPA to complete an SIA with all the variables present in the COCs. USACE received thousands of comments regarding a myriad of social impacts, yet it disregarded them in its analysis, with no further discussion.<sup>151</sup> USACE failed to recognize that the most important aspects of social impacts involve not, for example, the forced **physical** relocation threatened by the pipeline ROW, but the **underlying and complex significance** attached to these impacts.<sup>152</sup>

It is clear that the construction of a gas pipeline will cause irreversible disruption to these families and communities. The perils of expropriation, forced removal and the incapability to understand and participate in the procedure aggravate the disadvantageous position of these citizens. The mere proposition of a pipeline ROW that would impact these communities, as discussed above, implies the disbanding of the groups and the disjuncting of long-established social networks. Also, given the demonstrated capabilities to manage social development and lack of planning to mitigate such issues, it is unlikely

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<sup>149</sup> *Id.* at 68.

<sup>150</sup> The SIA presented by PREPA dedicates three pages to socio-economic impacts (DIA-P, Chapter 6, §6.16 pp. 60-62). This section briefly lists economic “benefits”; describes the community, lists impacts to public facilities, and explains land acquisition procedures. The SIA does, however, dedicate a full chapter to “Environmental Justice” (Chapter 7). The analysis of that particular section is also superficial but it will not be discussed in this section of the comments on the draft EA, since USACE stated it would leave that analysis for a later time.

<sup>151</sup> Among the social impacts presented besides safety/risk were: relocation of people after expropriations, trust in political institutions, decrease in value of properties after construction of pipeline, damage to archaeological sites and historical resources, and concerns over health (physical and psychological), to name a few.

<sup>152</sup> See generally *Principles and Guidelines*, supra

that the Government of Puerto Rico is prepared to carry the cost of providing financial support, households and stability to these families in a reasonable time frame. The draft EA errs when it concedes a preliminary finding of no significant impact regarding the human context. The impacts considered here are only a fraction of the irreparable harms that these citizens are exposed to. At the very least, the EA completely ignores the social consequences of the pipeline along its route.

### **3. Observations on Risk, Health, and Safety**

While the majority of social impacts were analyzed by neither PREPA nor USACE, USACE did briefly address the issue of “risk/safety” as part of its social impact evaluation.<sup>153</sup> It of course, had to, since, of the thousands of comments received by USACE, the issue of “risk and safety” is by far one of the more common. As USACE declares in the draft EA, “Comments received provide a diversity of viewpoints on private property, cultural resources, environmental and safety issues. Of these, the one that arises in most comments is safety.”<sup>154</sup>

Among the thousands of comments submitted to USACE for the permit evaluation, one of the most common concerns was the issue of safety and risk. NEPA states that it is the continual responsibility of the federal government to “use all practicable means...to...(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences”<sup>155</sup> (emphasis added).

As a federal law requirement, USACE cannot dismiss concerns over security and risk by stating that it “presumes PREPA is aware of and is prepared to fulfill their obligations under Title 49 of the U.S. Code (USC), Subtitle VIII, Chapter 601 et seq. titled ‘Pipelines – Safety’.”<sup>156</sup> This presumption is not warranted by NEPA, and USACE erred in circumscribing its analysis to it. This is especially true when one considers that serious concerns have been raised by other federal agencies, like the Environmental Protection Agency (EPA), regarding the mitigation and monitoring plans that would “reduce” said risks.<sup>157</sup> If thousands of citizens are particularly worried about the risk to life, a risk acknowledged by USACE in the Environmental Assessment, “PREPA’s compliance with Federal regulations for the design and operation of the pipeline would mitigate the risk of injury/fatality, but does not eliminate them, therefore, the addition of

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<sup>153</sup> USACE also dedicated a paragraph to “Considerations of property ownership.” draft EA, SAJ-2010-02881, November 30, 2011, page 69.

<sup>154</sup> See, draft EA, SAJ-2010-02881, at 102

<sup>155</sup> 42 USC 55, §4331 (b)(3)

<sup>156</sup> See, draft EA, SAJ-2010-02881, at 69

<sup>157</sup> See EPA Comment #3, April 1, 2011; and Comment #1, October 28, 2011, SAJ-2010-02881, page 27

a pipeline in the community decreases public safety,<sup>158</sup> (emphasis added) USACE had a duty to request further analysis of the *social impact* this would create in the community.

This type of social impact requires the analysis of a social science professional, namely a social psychologist or sociologist, who could adequately evaluate the effect this issue will have in the community. If we take into account that, by USACE' own admission, “[t]he detrimental effects to individuals living near the pipeline, in that there is an increased risk of injury or fatality, would exist for the life of the pipeline,” USACE should not have so easily dismissed the concerns of the public without requiring a thorough analysis of this issue. The superficial treatment it gave to the public's exposure to concrete risk, and the immediate psychological effects this may bring, is unacceptable. As required by federal law, USACE had to “utilize a systematic, **interdisciplinary approach** which will insure the **integrated use** of the natural **and social sciences** [...] in planning **and in decisionmaking**...”<sup>159</sup> (emphasis added).

As USACE recognizes, “(m)any commented on fear and anxiety caused by the potential hazard being located close to their existing homes [...] USACE has received over 6,000 letters and petitions opposing this project citing the concern for the hazards, indicating **a wide-spread and real feeling** that the pipeline would result in some degradation in the welfare of the community.”<sup>160</sup> To live every day in fear, worrying about the risk of an explosion or accident would be so detrimental to the emotional health of hundreds of citizens that USACE had to request an EIS, which in turn would require a new Social Impact Assessment be completed. USACE should have also considered for its decision that none of these issues, neither psychological well-being nor dangers of risk and safety, were ever analyzed by PREPA in its SIA. It is clear that if they weren't analyzed they would definitely not be part of the “alternatives” analysis nor be included as part of the mitigation plan, yet the profound effects they will have on the lives of hundreds of people are too important to ignore. Furthermore, in developing procedures for the application of CERCLA, USACE has established that risk assessment “... combines information about risk with economic, political, legal, ethical, and value judgments to reach decisions.”<sup>161</sup> As such, USACE underscores the importance of interdisciplinary analysis. Clearly, a “presumption” of the permit applicant's capabilities does not fulfill USACE' own guidelines for risk evaluation.

There have been studies that focus on the psychological harm that will be caused to population directly impacted by the pipeline. Rita Cordova, a renowned social worker, defines this harm as psychosocial stress, a result of a cognitive appraisal of what is at stake and what can be done about it, when people look at a perceived threat to their lives

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<sup>158</sup> SAJ-2010-02881, page 68

<sup>159</sup> 42 USC 55 §4332 (A)

<sup>160</sup> SAJ-2010-02881 page 69

<sup>161</sup> U.S. Army Corps of Engineers. *Risk Assessment*. September, 2008. <http://www.lrb.usace.army.mil/fusrap/docs/fusrap-fs-risk-2008-09.pdf>

and discern that it may require resources that they don't have."<sup>162</sup> She indicates that the massive opposition to the Vía Verde Project added to the constant public discussions result in "clinically significant increased levels of psychosocial stress for the persons and families living in the immediate geographical areas of the proposed construction"<sup>163</sup>. This direct injury includes the exposition to forced removal and expropriation procedures. The construction of the pipeline implies the risk of forced removal for at around sixty (60) families who live in Adjuntas and Utuado. The numerous manifestations of psychosocial harm are already evident among these communities and citizens:

"One of Utuado's families spokesperson who has appeared on TV newsreels is a humble farmer who has been summoned to Courts because PREPA will forcefully expropriate their home which has been the extended family living quarters for three generations. This immediate and concrete threat of losing one's house and way of living has resulted in the following behaviors and consequences: a sustained sense of a foreshortened future due to the fact that people cannot understand the reasons for this action. Due to the real danger of losing their way of life these families have reported suffering from: sleeplessness, insomnia, psychomotor agitation, crying sprouts, melancholia, numbing of general responsiveness and difficulty in concentrating."<sup>164</sup>

At this point, the preparation of an EIS with a proper SIA is mandatory, and "must take into consideration the social, demographic, economic, cultural and occupational data of the population living in Adjuntas, Utuado, Peñuelas, Arecibo, Toa Baja and Cataño, Puerto Rico that will be directly affected by said project"<sup>165</sup> This comprehensive and multidisciplinary study becomes a crucial part of a responsible process under NEPA. The lives of communities and families depend on the understanding of the significant impacts on both their physical and mental health.

The U.S Congress, in its passing of NEPA and the creation of the CEQ, social scientists from the Federal Government and academia, private SIA practitioners, and even USACE agree: an interdisciplinary approach is necessary to fully address the variety of social impacts people can experience as part of a project. In the evaluation of the Vía Verde Project, USACE failed to respond to this mandatory standard. The evaluation performed by USACE did not utilize that approach, and in turn, did not fulfill its duty under NEPA. Furthermore, is deficient. Other than acknowledge public concerns, it did not adequately analyze its implications on the mental condition of these communities. While citizens presented a wide-array of social impacts<sup>166</sup>, USACE did not analyze the majority of these issues. In the particular case of risk and security USACE rested on a

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<sup>162</sup> See, Comments of Mrs. Rita Córdova Campos, MSW, ACSW. *Available at* App. III-25

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> "Comments received provide a diversity of viewpoints on private property, cultural resources, environmental and safety issues" SAJ-2010-02881, at page 101

“presumption” to dismiss the affected public’s concerns. Even within the framework of an EA this “presumption” is not enough. As the CEQ states, an EA is a document where the agency has to “Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact<sup>167</sup>.” (Emphasis provided). Clearly, the superficial analysis of social impacts performed by USACE does not fulfill this requirement. USACE should have recommended a full SIA as part of an EIS.

## **G. PUBLIC CONTROVERSY**

The public response to the proposed Via Verde Project has been one of general opposition and manifest discontent. To this day, thousands have marched throughout the Island expressing their disagreement with the construction of the gas pipeline that is expected to permanently affect the security and stability of more than 200,000 individuals. Numerous opinion polls have gathered the feelings of general uncertainty towards the real dimensions of the development and the significance of its impact to general safety. On a weekly basis, new groups and local committees are founded, unifying and organizing communities with the sole objective of preventing the construction of the pipeline. Protesters, often finding themselves lacking the legal conduits to oppose the project, have expressed their willingness to turn to civil disobedience and be arrested in order to stop the project. Nevertheless, the Government in conjunction with several agencies has continued the permit applications processes as a preamble to the construction of the gas pipeline. With little information given to the public, people have turned to the same federal agencies responsible for the issuing of these permits in order to receive important and vital data about the project’s impacts. The preparation of an Environmental Impact Statement would provide key information pertaining these communities’ interests in protecting their property, environment and life.

It is evident that USACE’s refusal to consider public controversy in the draft EA is clearly contrary to the objective of NEPA. To the extent that the national policy of this Act is to encourage “productive and enjoyable harmony between man and his environment,”<sup>168</sup> the controversy that may result from a proposal must be carefully considered. NEPA Regulations clearly reject the application of categorical exclusion from substantive environmental review requirements to any action that “is known or expected not to be cost-effective or to cause significant public controversy.”<sup>169</sup> Additionally, the CEQ standards provide that the intensity of significant impact of a given project or action may be measured according to “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial.”<sup>170</sup> Following this rationale, the

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<sup>167</sup> 40 CFR 1508.9 (a)

<sup>168</sup> 42 U.S.C. § 4321 (1976)

<sup>169</sup> Sec. 6. 107

<sup>170</sup> 40 C.F.R. s 1508.27(b) (4)



Courts have stated that “The existence of a public controversy over the effect of an agency action is one factor in determining whether the agency should prepare [an EIS].”<sup>171</sup> Although it has been stated that the opposition to use is not a sufficient criteria to prove the existence of “public controversy,” a federal action is considered controversial if “a substantial dispute exists as to [its] size, nature or effect.”<sup>172</sup> It has also been stated that “the numerous responses from conservationists, biologists, and other knowledgeable individuals, all [...] disputing the draft EA's conclusions [regarding the likely effect of] reopening [the road], led this court to conclude that this is precisely the type of ‘controversial’ action for which an EIS must be prepared.”<sup>173</sup> As the largest infrastructure project in Puerto Rico in recent decades, the proposed Vía Verde project has provoked significant public controversy due to the substantial size, nature, and effect of the project on communities and the ecosystem. The project’s vast impacts have incensed strong public criticism from scientists, particularly regarding the draft EA’s analysis of the project on the health and welfare of the people of Puerto Rico, the impacts of the project on ecological and biological resources, on historic sites, on endangered and threatened wildlife, and on valuable wetlands and freshwater sources. This scientific criticism outlining the vast shortcomings of the draft EA warrants cause for preparation of a full EIS.

In Puerto Rico, public controversy over the effects of the proposed natural gas pipeline has been summarized by recent opinion polls. According to *El Nuevo Día*, Puerto Rico’s leading newspaper, sixty-five percent (65%) of the Island’s population express serious concerns and oppositions towards the project.<sup>174</sup> Massive protests have been organized, including a march celebrated on May 1, 2011 in which more than thirty thousand (30,000) people participated.<sup>175</sup> Acts of civil disobedience have also been organized, including a protest in the White House that resulted in the arrest of the Illinois Congressman Luis Gutierrez and several other supporters.<sup>176</sup>

Public concern regarding the pipeline project is intense also as to the need and costs of the project. Several contradictions have risen in this aspect. The applicant and other PR Government officials have publicly addressed their concerns about the environmental impacts of the construction. Some of them have publicly refrained from supporting the pipeline till the solution of these preoccupations. They have also claimed

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<sup>171</sup> *Greenpeace v. Franklin* 14 F. 3d. 1324 (1993), 40 C.F.R. § 1508.27(b)(4)

<sup>172</sup> *LaFlamme v. F.E.R.C.*, 852 F.2d 389 (1988). *Foundation for North American Wild Sheep*, 681 F.2d 1172, 1182 (1982)

<sup>173</sup> In *Foundation for North American Wild Sheep*, 681 F.2d 1172, 1182 (1982), the Ninth Circuit stated that “the numerous responses from conservationists, biologists, and other knowledgeable individuals, all ... disputing the draft EA's conclusions [regarding the likely effect of] reopening [the road], led this court to conclude that this is precisely the type of ‘controversial’ action for which an EIS must be prepared.” *Id.*

<sup>174</sup> See newspaper clippings.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

that the pipeline is the best solution to reduce the oil-dependency, reduce cost to the consumer and lessen air pollution, in stark contrast to the draft EA's stated objective of delivering natural gas to the north-coast PREPA facilities.

Public concern has also been intense as to the risk and public security implications of the pipeline, as evidenced by the numerous letters, e-mails, articles and reports which the draft EA recognizes. As a matter related to the controversial nature of the project is the consistent and generalized petitions before USACE to hold public hearings in this case. It is a reflection of the great concern and controversy regarding the risk and safety of the project that the public has repeatedly requested USACE to hold public hearings; a petition is unfortunately ignored to date.

The draft recognizes the obligatory character of the controversy element in determining whether to prepare or not an EIS, but does not adequately discuss or consider properly the depth of this element. It merely refers briefly to the public risk and security aspect of the project and only to attempt to refute it with the rather surprising and wholly unsupported conclusion that there "...is no scientific argument that there is risk of injury for persons."<sup>177</sup> USACE thus engages the substance of the controversy and avoids the fact there is substantial controversy as to all environmental aspects of the project; even though it seems to recognize this controversial aspect "High-Degree-Negative"<sup>178</sup>.

At present time, opposition based on the uncertainty of the effects of the project along with the serious contradiction and gaps found by experts have developed a general willingness to continue and extend the protests. The EIS becomes crucial to understand the impacts of Vía Verde, addressing the issue of public controversy and general discontent as an important and valid issue created by the construction of the proposed pipeline. Furthermore, the existence of public controversy demonstrates the general concern about the significant impacts of the project.

We are submitting digital copies of several press reports and other documents relating to public opposition. Also, we are adopting comments filed by biologists, archaeologists and other experts that should be considered in conjunction with these comments. As shown by these comments from distinguished experts from various fields of study, significant scientific controversy exists regarding the impacts of the proposed project. Moreover, these comments provide important and well-documented criticisms of USACE's draft EA and the controversial scientific process by which USACE assessed the project's impacts in the draft EA and supporting documentation.

## **H. ECONOMIC AND ENERGY IMPACTS**

USACE erroneously concluded that a \$477 million pipeline which may yield savings of less than 2 cents per kWh is a sound investment. In fact, the Vía Verde project is now estimated to cost between \$600 and \$800 million, almost twice the \$477 million

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<sup>177</sup> Draft EA at page 10-102

<sup>178</sup> *Id.*

contemplated in the draft EA and with which most of the economic calculations were made.<sup>179</sup> In its economic analysis, USACE admits that PREPA's estimates of the consumer cost reductions the project would provide are not accurate. USACE "does not know whether PREPA is basing its 20% estimate on the current available of supply of natural gas or if it is based on the full capacity of the north coast power plants."<sup>180</sup> Paul Chernick, President of Resource Insight, Inc., further believes that the Vía Verde project will more likely increase rather than reduce PREPA's costs and rates. He points out that the project will cost an additional \$62 million annually in interest repayment and pipeline maintenance.<sup>181</sup>

PREPA has not been honest with the public nor USACE. PREPA's website gives some indicia of this in its Frequently Asked Questions section of their special Vía Verde website. This site states that Vía Verde will generate 1,500MW. PREPA makes this claim to the public knowing that there is only enough gas supply for approximately 400MW.<sup>182</sup> Moreover, this limited amount of gas, 93MMcf/day, is an erroneous assumption. That number is based on the maximum output of the EcoEléctrica regasification unit. The average output is closer to 77.4 MMcf/day and PREPA has indicated that it has no plans to increase gas supplies beyond this amount.<sup>183</sup> This level of output could only sustain one of PREPA's Costa Sur generators at 40% capacity or one San Juan generator at full capacity. There would never be any gas for the Palo Seco or San Juan steam plants or Cambalache.<sup>184</sup>

However, in order to justify the lack of accuracy of PREPA's estimates and public statements, USACE concludes erroneously "[a] reduction, of any amount, will benefit the economy."<sup>185</sup> It has not been established whether there will be a reduction of consumer costs by any amount at all, nor has it been demonstrated whether "any amount" will necessarily benefit the economy or the public interest. USACE evaluation process lacks any type of cost-benefit analysis to weigh in fundamental factors under their purview. The cost of the environmental, social and cultural degradation plus the risk to public safety far outweighs the savings, if any, of the project. PREPA alleges that part of the benefit of Vía Verde will be to meet air quality standards; however, the gas provided by the project will displace the expensive #2 oil and not the cheap environmentally degrading #6 oil due to cost competition.<sup>186</sup> USACE has not analyzed the air pollution

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<sup>179</sup> See comments from energy expert Paul Chernick. Appendix V-4 at 12.

<sup>180</sup> Draft EA, Sec. 7(A)(8), at page 71

<sup>181</sup> See comments from energy expert Paul Chernick. Appendix V-4 at 12–13.

<sup>182</sup> See "<http://www.aeepr.com/preguntasViaverde2.asp#6>

<sup>183</sup> See comments from energy expert Paul Chernick. Appendix V-4 at 5.

<sup>184</sup> See comments from energy expert Paul Chernick. Appendix V-4 at 7.

<sup>185</sup> Draft EA, Sec. 7(A)(8), at page 71

<sup>186</sup> See comments from energy expert Paul Chernick. Appendix V-4 at 10.

issue in any depth in the draft EA and has no basis for concluding that the project will result in significant reductions in air pollution, or that on balance these reductions, if any, outweigh the harm caused by the project such that approval of the project will serve the public interest.

Even after calculating the reductions in the cost of electricity with the variables most favorable to PREPA, creating a very improbable best case scenario, the reductions do not justify the project. According to various energy experts, the reduction in the best case scenario for PREPA would be less than 2 cents per kWh at the most. More realistic calculations suggest that the project savings might be a fraction of a cent per kWh or that the project might even cause financial losses for PREPA and/or consumer cost increases.<sup>187</sup> These savings do not justify the environmental damage of transecting the entire island, risk to public safety, impact to cultural and historical resources, and the unprecedented environmental degradation.<sup>188</sup> Moreover, there is no need for Via Verde. Given PREPA's other plans and commitments over the next few years, PREPA will soon be using very little oil, even without Via Verde. PREPA has plans to construct a coal plant and construct a gas port in Aguirre. Thus, the pipeline would thus have little effect on PREPA's oil use and would not further diversify the fuel mix for PREPA's system.<sup>189</sup> Based on all of the available information, Mr. Chernick states there is no basis to conclude that Via Verde will result in any net savings or reduce electricity rates. Moreover, there is no need for Via Verde. Given PREPA's other plans and commitments over the next few years, PREPA will soon be using very little oil, even without Via Verde. PREPA has plans to construct a coal plant and construct a gas port in Aguirre. Thus, the pipeline would thus have little effect on PREPA's oil use and would not further diversify the fuel mix for PREPA's system.<sup>190</sup>

#### **IV. MISLEADING PROJECT SCOPE AND DESCRIPTION**

Even though the applicant states project purpose would be to “economically construct a pipeline to deliver natural gas to three existing power facilities operated by PREPA,”<sup>191</sup> recent statements of PREPA's engineer José Rivera Camacho shows that there are going to be twenty (20) connection stubs throughout the more than 92-mile long pipeline. Fourteen (14) of these stubs has been identified as security valves and the

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<sup>187</sup> See comments from energy experts Gerson Beauchamp and Paul Chernick. Appendix V-2 and V-4

<sup>188</sup> See comments from energy expert Gerson Beauchamp Appendix V-2, *supra* note 188

<sup>189</sup> See comments from energy expert Paul Chernick. Appendix V-4 at 2–5.

<sup>190</sup> See comments from energy expert Paul Chernick. Appendix V-4 at 2–5.

<sup>191</sup> Draft EA, at page 3.

remaining valves are proposed connections to serve the industrial sector of the Island in the future.<sup>192</sup>

USACE determined that all issues related to the proposed connection stubs, were outside of its scope. Hence, no analysis was made in the Environmental Assessment and, for that matter, in any other place related to the expected environmental consequences of the industrial connections.

However USACE does find:

1. The installation of these “stubs” implies there will be future additional pipelines extending laterally from these stubs.”<sup>193</sup>
2. That the connections were added by the request of Puerto Rico Industrial Development Corporation (PRIDCO) “to serve various industrial areas.”<sup>194</sup>
3. Whereas “applicant by letter subsequently expanded that statement, confirming there are no plans to serve industrial users along the route.” (Footnotes omitted)<sup>195</sup>
4. The “pre-installation of these “T” could potentially constrain the NEPA analysis of alternative alignments.”<sup>196</sup>
5. But concludes, “the Corps is confident that future review should not be constrained by PREPA’s choices of location.”
6. The proposed connections do not constrain the ability to avoid or minimize impacts to wetlands.
7. “The locations of the “Ts” are such that those connections would likely require a Corps permit”<sup>197</sup>
8. “The Aguirre stub is located on non-wetland at the edge of a farm field but the stub is pointed toward a possible waterway 200+feet away that would have to be crossed. The Barceloneta stub is located in the midst of a large extent of wetland and the Bayamón stub is located in the edge of a waterway but enough uplands are in the area that would probably require Corps permits.” (Footnotes omitted; EA page 5).

There are a series of contradictions between the findings and the conclusions.

PRIDCO is planning to connect industrial users to the pipeline where as PREPA states it has no such defined plans, but they still plan to install the stubs anyway.

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<sup>192</sup> See, Gerardo E. Alvarado, *El gasoducto tendría 20 válvulas de interconexión*, El Nuevo Día, October 27, 2011. Available at, <http://www.elnuevodia.com/elgasoductotendria20valvulasdeinterconexion-1104228.html>. App. IV-1

<sup>193</sup> Draft EA, at page 4.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at page 5

According to them, it is cheaper to do so now than to wait and install them later. This might sound correct, but if it is not in their plans to expand and connect industrial users to the pipeline, it is cheaper not to install them at all.

USACE correctly concludes that the pre-installation of the “T’s” could potentially constrain their review. At this time point A (location of the stub) point B (location of industries) the only factor pending would be the route to be followed. USACE even agrees with use that whatever route is followed it will affect wetlands and waterways of their jurisdiction. Because of the location of the stubs, we know what wetlands and waterways will be affected. In this sense, USACE does have a responsibility to include these potential additions to the pipeline in its analysis analyze.

Furthermore, it is not clear as to how many connection valves they are planning to construct, according to the information provided by to the Fish and Wildlife Services there will be 14 valves,<sup>198</sup> however on the other hand Mr. José Rivera-Cacho the lead Engineer and Manager in charge of the Vía Verde Pipeline (“Gasoducto”) at PREPA states that the number of proposed connection valves is 20.<sup>199</sup>

The main purpose of an EA is to determine the need of an environmental impact statement (EIS). One of the many factors that must be considered by the federal agency when determining if an EIS is necessary is the scope of the project in the permit application. In this case, the Vía Verde project has many subdivisions and ramifications that in order to make any determination, has to be seen as a whole. All its parts have to be evaluated. If only some of its divisions are evaluated while others are left to be done at some other time, the real environmental impact of the project would be under-appreciated. In this sense, the Council on Environmental Quality regulations applies to all federal agencies evaluating a permit under a NEPA review. Said regulation under 40 CFR 1508.25 (a) states that:

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

*(a) Actions (other than unconnected single actions) which may be:*

*Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:*

- 1. Automatically trigger other actions, which may require environmental impact statements.*

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<sup>198</sup> USFWS letter to Robert Barron (October 13, 2011). App. IV-2.

<sup>199</sup> See, *supra* note 166.

2. *Cannot or will not proceed unless other actions are taken previously or simultaneously.*
3. *Are interdependent parts of a larger action and depend on the larger action for their justification.*

Additionally, 40 CFR 1508.7 establishes:

*"Cumulative impact" is the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (emphasis added)*

Under these regulations USACE is required to do something more than to merely discard 20 connection valves by stating “[t]he proposed connections do not constrain the ability to avoid or minimize impacts to wetlands.” Is the impact avoidable after PREPA is authorized a given location for each of the 20 valves? Is USACE not sufficiently constrained by the fact that in order to avoid or to minimize the impacts on the environment, in the near future, they would have PREPA either not use a given valve or have them move it somewhere else?

Federal Courts have interpreted §1508.25 recognizing that “[a]ctions that are ‘similar’ and ‘connected’, and have cumulative effects must be considered in one EIS.”<sup>200</sup> In addition, the installation of each of the 20 valves indicates that future projects related to those valves are *connected actions*. According to 20 CFR §1508.25(a)(1), actions are connected or closely related if they “(i) Automatically trigger other actions which may require environmental impact statements, (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; [or] (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.”<sup>201</sup> USACE recognizes most of these valves are located in areas that will likely require a Corps permit. Furthermore, these valves were added at the request of the Puerto Rico Industrial Development Corporation, the leading state agency on economic development, as an essential tool to improve the development of industrial areas. Therefore, the scope of the project is not limited to the transportation of natural gas to the northern plants, but to transform the energy industry in Puerto Rico. The environmental and economic impacts of the projects that will depend of each of these 20 valves are undoubtedly substantial and would not proceed unless they are installed at this time.

According to the National Environmental Policy Act, even though federal agencies are given the primary task of defining the scope of NEPA review and their determination is given considerable discretion, **cumulative actions**, as those foreseeable

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<sup>200</sup> Hammond v. Norton, 370 F. Supp. 2d 226, 243-44 (D. D.C., 2005).

<sup>201</sup> 40 C.F.R. §1508.25(a)(1).

with the installation of this large number of valves, must all be considered in one environmental impact statement (EIS) to prevent any agency from dividing a project into multiple actions, each of which individually has insignificant environmental impact, but collectively have a substantial impact.<sup>202</sup> In this case, the mere installation of such a substantial number of valves is indicative of future projects, even if PREPA will not disclose them at this time. In order to evaluate the cumulative impact on the environment of this complex project, future use and expansion of the pipeline must be divulged and analyzed in one EIS.

For these many other considerations USACE should order the preparation of an environmental impact statement, that includes each of the projects that depend on the existence of the proposed valves, of PREPA's permit request before any action is taken.

## **V. MISLEADING STATEMENT OF PURPOSE AND NEED AND OVERLY RESTRICTED RANGE OF ALTERNATIVES**

### **A. USACE DID NOT DO AN INDEPENDENT REVIEW OF THE PROJECT'S PURPOSE AND NEED, ACCEPTING INSTEAD THE APPLICANT'S NARROW DEFINITION.**

The applicant defined the project's purpose very narrowly in order to limit the range of alternatives and increase the chances of approval by USACE. Because of this, Via Verde's permit application is founded on a false presumption that if withdrawn, all other components of the permit application will fall as well. And as we will explain, the applicant has just done so by admitting to be currently evaluating alternatives discarded in the draft EA or even worse, not discussed in the draft EA.

Via Verde pipeline project was presented to the people of Puerto Rico as a solution to the energetic emergency declared through an executive order due to the high cost of electricity.<sup>203</sup> Nonetheless the draft EA acknowledges that Via Verde "is a subset of a larger program" approved by PREPA Board of Directors designed to reduce PREPA's dependency on oil.<sup>204</sup> The ultimate goal, as the draft EA recognizes in various paragraphs, is to lower the cost of electricity for Puerto Rico consumers. The Puerto Rico EIS dedicates most of the project's justification section reiterating the benefits of NG, not the need to burn it on the north coast, concluding that "the project is based on the stabilization and/or reduction of energy costs on the island and the environmental benefit of substituting Diesel fuel and bunker #6 with natural gas" (translation submitted).<sup>205</sup>

However, according to the draft EA, "[t]he overall project purpose is to deliver an alternate fuel source, which already exists at the EcoEléctrica terminal, to the three

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<sup>202</sup> See 42 U.S.C.A. §4321; 40 C.F.R. §1508.25(a)(2); *Texas Committee on Natural Resources v. Van Winkle*, 197 F. Supp. 2d 586 (N. D. Tex., 2002).

<sup>203</sup> Executive Order OE-2010-034, July 19, 2010

<sup>204</sup> Draft EA, Sec. 3(a)(3)(c), at page 8.

<sup>205</sup> Puerto Rico EIS, Section 1.3.



existing electric power generating facilities located in the north coast of Puerto Rico.”<sup>206</sup> USACE then states that it will not evaluate alternatives that might reduce oil dependency and reduce energy costs that do not contemplate delivering NG to simultaneously to the three northern plants because its role is “to determine whether or not to issue a permit that enables PREPA to implement its decision to deliver natural gas to its north coast power plants.”<sup>207</sup>

Because of this narrow definition of the project’s purpose and need, practicable alternatives which could possibly be in more tune with the “larger program” of ending oil dependency and the ultimate goal of lowering the cost of electricity were discarded without any analysis.

#### **B. FLAWED ALTERNATIVE ANALYSIS: THE COSTA SUR ALTERNATIVE**

For example, the alternative of no construction and supplying instead the available supply of NG from EcoEléctrica to nearby, NG ready and already pipeline connected, Costa Sur power plant was discarded because it did not fit the narrow project purpose of burning the NG on the north coast. Costa Sur is capable of burning all the 93 MMscf/day of NG available from EcoEléctrica in just one of its two NG ready units (Costa Sur units 5 and 6 are ready to burn NG) and could burn another 93MMscf/day if EcoEléctrica decides to expand its LNG terminal.

This alternative warrants further review in order to compare the economic and environmental benefits of using the NG in Costa Sur over the proposed pipeline since it requires no investment and has no environmental effects.<sup>208</sup> If using the available NG in Costa Sur advances PREPA’s goals of reducing oil dependency and the ultimate goal of reducing electricity without the costs, risk and environmental damage of Vía Verde, USACE must deny the permit, however, until such analysis is made, USACE is not protecting the public interest. According to Casa Pueblo’s energy expert, the difference in savings from burning the NG in Costa Sur instead of Vía Verde is .2 cents.<sup>209</sup> Paul Chernick, another expert on energy and economy has expressed similar concerns as well.<sup>210</sup> Under such scenario it would be irresponsible to allow the environmental, cultural and social damage associated with the project if you have an alternative readily available that accomplishes the same objective without any of the damage.

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<sup>206</sup> Draft EA, Sec. 3(a)(3)(b), at page 8.

<sup>207</sup> *Id.*, Sec.4(a), at page 35.

<sup>208</sup> See Energy Expert Gerson Beauchamp’s comments on the draft EA, App. V-2

<sup>209</sup> See Energy Expert Gerson Beauchamp;s comments on the draft EA, App. V-2

<sup>210</sup> See Energy Expert Paul Chernik’s comments on the draft EA. Appendix V-4

### **C. FLOATING STORAGE AND REGASIFICATION UNITS (FSRU'S) ALTERNATIVE**

There is also contradiction in the FSRU's alternative analysis due to the narrow project purpose adopted by USACE. For instance, even though USACE admits that *Vía Verde* will have enough NG to operate only one of the northern plants at a time, presumably the San Juan facility, USACE analysis on this alternative included besides the FSRU a pipeline from Arecibo to San Juan or three FSRUs, one for each power plant, in order to supply the three northern power plants. Not surprisingly they were quickly discarded because the cost of building half the pipeline plus the cost of an FSRU or the cost of three FSRU's would render the project economically unviable. Given the facts that the Cambalache power plant in Arecibo is a small and inefficient "peaking" power plant plus the issue of the supply of NG, USACE should have analyzed instead the alternative of a single FSRU for the San Juan and/or Palo Seco facilities. This analysis would have been more realistic than what USACE did. In fact this analysis is precisely what PREPA recently announced that it will do.<sup>211</sup>

### **D. DRAFT EA IGNORES OTHER PRACTICABLE ALTERNATIVE: THE BARCH ALTERNATIVE**

PREPA has considered other alternatives to deliver NG to the northern coast power plants that were not included on the draft EA. For instance, PREPA's March 2, 2010 Rating Agency Presentation<sup>212</sup>, under the section titled "Central Elements of Fuel Flexibility Program", states that:

1. ...
2. ...
3. LNG to fire PREPA's generators will be delivered in bulk to Ecoelectrica's terminal or directly shipped from Trinidad
4. LNG will then be transferred to Barchs and transported to the PREPA generating sites.

Transferring the LNG through Barchs for delivery at power plants is an alternative that was not considered on the draft EA. This alternative is also currently being evaluated by PREPA outside of the JPA permit process.<sup>213</sup>

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<sup>211</sup> See *Busca la AEE nuevas alternativas para sustituir el gasoducto*, *El Nuevo Día*, January 12, 2012

<sup>212</sup> See PREPA Rating Agency Presentation, March 2, 2010, available at "<http://www.aeepr.com/INVESTORS/DOCS/Finacial%20Information/Rating%20Report/PREPA%20Ratings%20Presentation%203-2-10%20-%20FINAL.pdf>

<sup>213</sup> See *Busca la AEE nuevas alternativas para sustituir el gasoducto*, *El Nuevo Día*, January 12, 2012; *Más cara Vía Verde*, *El Vocero*, January 11, 2012; *Fortuño cancelaría el gasoducto*, *El Nuevo Día*, January 11, 2012; *García Padilla la emprende contra Fortuño*, *El Nuevo Día*, January 12, 2012

**E. APPLICANT AND THE GOVERNOR NOW ACKNOWLEDGE THAT THE PIPELINE WILL COST APPROXIMATELY \$800 MILLION INSTEAD OF \$477 AND THAT THEY ARE CURRENTLY CONSIDERING ALTERNATIVES TO THE PIPELINE THAT WERE NOT CONSIDERED IN THE DRAFT EA.**

PREPA Director and the Governor himself have recently stated in the news that PREPA is currently evaluating alternatives to the pipeline that are cheaper and safer.<sup>214</sup> These alternatives, which include placing a FSRU in the north coast to deliver NG to the San Juan and Palo Seco facilities, a FSRU in the west coast to deliver NG to the Mayagüez facility, and implementing a Barch delivery system to transfer NG from Eco Eléctrica or from the newly contracted Aguirre FSRU to PREPA's facilities. None of these alternatives were considered in the draft EA. Nonetheless, USACE would have rejected all of them because of the narrow project purpose adopted.

Since USACE limited itself by accepting applicant's narrow project purpose, any alternative considered in the draft EA that did not include delivering NG to the three north coast power plants was discarded without any analysis. Meanwhile, the same alternatives discarded without any analysis are the ones been considered by PREPA right now. As explained in the previous section, in the draft EA, the alternative of delivering NG by placing FSRU's on the north coast included two options, a pipeline between Arecibo and San Juan in order to deliver NG to the three power plants through the same FSRU or placing three FSRU's, one for each plant. Both alternatives were discarded mainly due to cost. But what PREPA is pursuing right now is very different, just one FSRU off Toa Baja to deliver NG to the San Juan and Palo Seco facilities through a shorter pipeline along the ROW that connects both power plants. This alternative was not considered in the draft EA. Furthermore, beside cost, the main reason to discard an FSRU off the San Juan and Palo Seco facilities was the damage it would do to endangered coral reefs, but now PREPA Director has acknowledged that there is an industrial ROW just outside of the Palo Seco facility currently been used by the Puerto Rico Water Authority and by other industries to dump waste water deep in the ocean that could be used by the FSRU as well so it will impact already impacted areas along the coast.<sup>215</sup>

PREPA is also considering other alternatives that depart from its own narrow project purpose of delivering NG to the three northern power plants by considering delivering NG through a FSRU to the Mayagüez facility, located on the west coast of the island. By doing so PREPA is now broadening the scope of its project beyond the north coast power plants and the north-south-demand-generation mismatch.

PREPA's recent announcement of a new and more ample alternative analysis outside of the JPA process; the fact that there are other alternatives available to PREPA that were not included in the draft EA; the fact that PREPA is currently evaluating alternatives that clearly fall outside its own narrow project purpose; USACE's refusal to

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

expand the project's scope when there are 21 valves for industrial use in the north coast ; and USACE's refusal to question the project's need to supply natural gas to a small and inefficient power plant like Cambalache that is conveniently located near the industrial zone which the valves would service; all by themselves render the agency's scope, project need and alternative analysis inadequate for purposes of NEPA.

**F. THE DRAFT EA FAILS TO ADEQUATELY NOTIFY THE PUBLIC OF THE PROPOSED ACTION, IT HAS NUMEROUS ERRORS IN FUNDAMENTAL AREAS SUCH AS THE PROJECT'S PURPOSE AND DESCRIPTION THAT WARRANT A CORRECTED DRAFT EA AND A NEW COMMENT PERIOD.**

The draft EA, on its very first page, under the Project Purpose and Need section, fails to acknowledge that there is a power plant in San Juan which would be serviced by Vía Verde. According to the draft EA, the project consists of a gas utility pipeline that will “[d]eliver an alternate fuel source to three existing electric power generating facilities located in Peñuelas, Arecibo, and Toa Baja operated by the Puerto Rico Electric Power Authority (PREPA).”<sup>216</sup> This information is misleading, since the generating facility located in Peñuelas is not operated by PREPA nor is going to be serviced by Vía Verde, while the San Juan facility, which would be serviced is not mentioned. People from San Juan who read the first page of the draft EA will not know that their municipality is among the affected ones.

Likewise, in the same very first page the draft EA ignores again PREPA's San Juan facility when it states that “[t]he applicant proposes to construct and install a 24-inch diameter steel natural gas (NG) pipeline approximately 92 miles long with a construction right of way (ROW) of 100 feet wide, that traverses the island of Puerto Rico from EcoEléctrica Liquid Natural Gas Terminal in the municipality of Peñuelas, to the Cambalache Thermoelectric Power Plant in the municipality of Arecibo, then east to the Palo Seco power plant facility in the municipalities of Toa Baja and San Juan”.<sup>217</sup> These errors, besides being misleading to the public, are vivid examples of the lack of care and inattention to duty with which the USACE has evaluated this project.

**VI. FAILURE TO COMPLY WITH LEGAL REQUIREMENTS FOR ENVIRONMENTAL REVIEW AND INTERAGENCY CONSULTATION**

**A. CLEAN WATER ACT PERMITTING REQUIREMENTS**

USACE has a duty to restore and protect the integrity of waters of the United States, including wetlands.<sup>218</sup> USACE carries out this duty by issuing permits for the

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<sup>216</sup> Draft EA, Sec. 1(d)(2), at page 1.

<sup>217</sup> *Id.*, Sec. 1(f), at page 1.

<sup>218</sup> 33 U.S.C. § 1251(a) (2006).

“discharge of dredged or fill material into the navigable waters.”<sup>219</sup> Through regulations and guidance, USACE has established a process, standards, and requirements for the issuance of such permits.<sup>220</sup> Most importantly, these permits must be issued in strict compliance with the guidelines established by the EPA and USACE under Section 404(b) (1) of the CWA.<sup>221</sup> These guidelines require that “dredged and fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.”<sup>222</sup> Additionally, the degradation and destruction of wetlands and other special aquatic sites are considered “among the most severe environmental impacts.”<sup>223</sup> In recognition of their importance, USACE’s stated policy for wetlands is “no net loss.”<sup>224</sup>

Section 404 permit applications must include a statement of purpose and need for the proposed activity.<sup>225</sup> In order to obtain a dredge-and-fill permit, the Applicant must show that the proposed project is the “least environmentally damaging practicable alternative.”<sup>226</sup> When considering alternatives to a project, USACE must conduct the appropriate public interest review of the project to obtain “information necessary to evaluate the probable impact on the public interest.”<sup>227</sup>

The Vía Verde project will negatively impact approximately 1,672 acres and 235 rivers and wetlands, covering 369 acres of jurisdictional Waters of the United States. By relying on the applicant’s use of inadequate maps and conducting on-site assessments of only a small percentage of the impacted water bodies and wetlands, it is likely there are other aquatic resources in the proposed ROW that have not yet been identified or delineated. With regard to those jurisdictional waters identified to date, the effects of construction are significant and are not fully assessed in the draft EA. For example, the draft EA does not take into consideration the effects of the additional pipeline that will be constructed and connected to the pipeline. The Bayamón and the Barceloneta stubs will be located in wetlands that will be affected in the future. Future pipeline spurs will also impact other waters and wetlands not mentioned in the draft EA. In addition, the effects on small creeks and streams at the origin of watersheds are not assessed. Other concerns about the effects of directional drilling and trenching in wetlands were also not

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<sup>219</sup> 33 U.S.C. § 1344 (2006).

<sup>220</sup> 33 C.F.R. § 320.4 (2010); 40 C.F.R. §§ 230.1-98 (2010).

<sup>221</sup> 33 U.S.C. § 1344(b)(1) (2006); 40 C.F.R. § 230.1 (2010).

<sup>222</sup> 40 C.F.R. § 230.1(c) (2010).

<sup>223</sup> 40 C.F.R. § 230.1(d) (2010).

<sup>224</sup> Compensatory Mitigation for Losses of Aquatic Resources, 73 Fed. Reg. 19594 (April 10, 2008).

<sup>225</sup> 33 C.F.R. § 325.1(d)(1) (2010).

<sup>226</sup> 40 C.F.R. § 230.10(a) (2010).

<sup>227</sup> 33 C.F.R. § 320.4 (2010); 33 C.F.R. § 325.3(a) (2010).

effectively addressed. There are no details assessing how each of the wetlands will be affected. The draft EA dismisses impacts to wetlands as “temporary in nature” without a true comprehensive and serious analysis of the real significant construction impacts in the wetlands. Moreover, the functional assessment is inadequate because there is a lack of information regarding each wetland’s characteristics, including depth of organic material, seasons that are flooded, species and their role, water specific quality and characteristics, susceptibility of animals and plants and other categories that should be assessed to evaluate the ecological and functional value of the wetlands.

Additionally, the draft EA and public interest review process was conducted in violation of the CWA public interest review regulations. The draft EA fails to adequately notify the public of the proposed action, it has numerous errors in fundamental areas such as the project’s purpose and description. For example, the draft EA fails to conduct a proper assessment of the full social impacts and economic of the project by limiting the scope of review, fails to conduct a full independent review of the project’s purpose and need, and fails to assess the full range of project alternatives that are less damaging to the environment. The draft EA also fails to demonstrate that the *Vía Verde* project serves the public interest because the USACE blindly accepts the PREPA’s statements that the project will result in cost savings without independently reviewing the economics of the project. The *Vía Verde* project, in fact, does not make economic sense. Because the draft EA fails to support an adequate public interest review, does not contain a full impacts analysis for all waters of the United States and does not support the FONSI finding with regard to effects on wetlands and streams, USACE should conduct an EIS in order to fully comply with NEPA and the CWA.

## **B. NATIONAL ENVIRONMENTAL POLICY ACT - ENVIRONMENTAL REVIEW REQUIREMENTS**

### **1. Major Federal Action Significantly Affecting the Quality of the Human Environment**

According to NEPA standards, an EIS must be prepared when a proposed project significantly affects the quality of the human environment.<sup>228</sup> A project triggers the need for an EIS when there are substantial questions raised as to whether a project may cause significant degradation to the human environment.<sup>229</sup> The human environment must be viewed comprehensively to include “the natural and physical environment and the relationship of people with that environment.”<sup>230</sup> Moreover, the significance of the impacts must be determined by examining their context and intensity.<sup>231</sup>

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<sup>228</sup> 42 U.S.C. § 4332(2)(c) (2006).

<sup>229</sup> *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 864 (9th Cir. 2005).

<sup>230</sup> 40 C.F.R. § 1508.14 (2010).

<sup>231</sup> 40 C.F.R. § 1508.27 (2010); See also 32 C.F.R. § 651.39 (2010) (“Significance of impacts is determined by examining both the context and intensity of the proposed action.”)

Under NEPA, an agency preparing an EIS may not *segment* its analysis so as to conceal the environmental significance of the project or projects.<sup>232</sup> Both the Council on Environmental Quality guidelines and federal regulations require that cumulative effect of impact, and not merely functional integration of projects, must guide federal agencies' threshold determinations of significant impact and, while agencies may divide projects among themselves, responsibility to perform comprehensive initial assessment of environmental impact under the NEPA is not diminished by a limited project definition.<sup>233</sup>

Furthermore, NEPA requires an EIS to analyze alternatives to the proposed action. The range of alternatives is dictated by the nature and scope of the project purpose.<sup>234</sup> In this sense, USACE must consider in detail a reasonable range of alternatives that meet the underlying project purpose and can be feasibly accomplished.<sup>235</sup> According to the CEQ, the scope of a project “consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement.”<sup>236</sup> In order for an agency to determine the scope of a project, it must consider three types of actions, three types of alternatives and three types of impacts. The impacts may be direct, indirect or cumulative.<sup>237</sup> The courts have decided that when deciding whether an environmental impact statement is required, the agency’s environmental assessment must give a realistic evaluation of total impacts and cannot isolate proposed projects, viewing it in vacuum.<sup>238</sup>

The Via Verde project is a major federal action because it is subject to federal control and responsibility.<sup>239</sup> Its impact on 235 rivers and 369 acres of jurisdictional waters requires a 404 Permit from USACE. In addition, the project’s impact in several endangered species and habitats, the threats to the safety of people, the vast modification of the terrestrial landscape, and the impacts to historical and archeological sites requires compliance with several federal statutes and regulations. If USACE finalizes its draft EA and FONSI and issues a 404 permit for the Via Verde project, it will also be in violation of NEPA requirements based on its failure to conduct a full EIS for the project because

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<sup>232</sup>*Hammond v. Norton*, 370 F.Supp.2d 226 (D. D.C. 2005).

<sup>233</sup>42 U.S.C.A. § 4332; *Citizens for Responsible Area Growth (CRAG) v. Adams*, 477 F.Supp. 994 (D. N.H. 1979).

<sup>234</sup>See 33 C.F.R. Pt. 325, App. B (2010) (indicating the stated goal of a project dictates the scope of reasonable alternatives); *‘Ilio’ulaokalani Coalition v. Rumsfeld*, 464 F. 3d 1083, 1095 (9th Cir. 2006); *Friends of Southeast’s Future v. Morrison*, 153 F. 3d 1059, 1065 (9th Cir. 1998).

<sup>235</sup> 33 C.F.R. Pt. 325, App. B (2010).

<sup>236</sup> 40 C.F.R. § 1508.25 (2010).

<sup>237</sup>*Id.*

<sup>238</sup>*Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 351 (C.A.D.C. 2002)., *see also* ), 42 U.S.C.A. § 4332(2) (C); 40 C.F.R. § 1508.7.

<sup>239</sup>See 40 C.F.R. §1508.18(a) (2010) (stating major federal actions with effects are those that may be major and are potentially subject to federal control and responsibility including activities and projects entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies).

the effects of the project are individually and cumulatively *significant* for all of the reasons mentioned throughout the comment letter.

USACE must prepare a full EIS because the Vía Verde project is a major federal action significantly affecting the quality of the human environment. Considering the above comments and all other comments referenced and incorporated herein, USACE should prepare a full EIS, translated into Spanish, in order to consider meticulously several factors when making its determination of the intensity of the impacts. These factors include, but not limited to: the degree to which the environmental impacts are highly controversial and uncertain (see III.A & III.B); the effect on public health or safety (see III.D & III.F), proximity and impact to historic and cultural resources (see III.C), the impact on threatened or endangered species or their habitat; and whether the actions is related to other actions with individually insignificant but cumulatively significant impacts (see IV).<sup>240</sup> When considering these factors, USACE cannot segment the project's impacts nor improperly narrow the scope of the project to the precise right-of-way, but rather must assess the project's full impacts on each of these factors.

As discussed in the above comments,<sup>241</sup> USACE has limited the scope of the project and dismissed the cumulative impact of the project given the interest of the proponents to expand Vía Verde through the installation of a series of valves. USACE has intentionally segmented or fragmented the project in order to evade its legal obligation under NEPA to conduct a full EIS given the clear cumulative impact of the proposed route and location of over 20 valves. When taken as a whole, the past, present, and future cumulative effects of this project, including but not limited to the negative effect on wetlands, rivers, endangered species and their habitats, necessitates completion of a full EIS in order to fully evaluate the impact of a project of this magnitude. USACE cannot segment the project's effects and ignore the vastly compounded impacts if construction of the project commences. Moreover, as discussed in the above comments, the applicant and USACE have presented an overly-restrictive range of alternatives through a narrow project scope, thereby failing to comply with the basic NEPA requirement of a full alternatives analysis. USACE must conduct a full and thorough EIS accounting for the full range of the project's impacts and alternatives.

## **2. Public Participation Requirements under NEPA**

The purpose of NEPA is to ensure that both public officials and citizens are informed of the impacts associated with the Vía Verde project before decisions are made and actions are taken.<sup>242</sup> The purpose of an EIS is “to provide decision-makers with an environmental disclosure sufficiently detailed to aid in the substantive decision whether to proceed with the project in light of its environmental consequences [...] and provide

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<sup>240</sup> 40. C.F.R. §1508.27 (2010).

<sup>241</sup> See IV Misleading Project Scope and Description.

<sup>242</sup> 40 C.F.R. §1500.1(b) (2010).



the public with information on the environmental impact of a proposed project as well as encourage public participation in the development of that information.”<sup>243</sup> Public participation in the form of public comment letters, public meetings, and public hearings are an integral part in the evaluation for a project of this magnitude. It is important to remember that public participation is essential to satisfy NEPA requirements.<sup>244</sup>

For NEPA compliance, CEQ regulations require an agency to “make diligent efforts to involve the public”<sup>245</sup> in the process and hold public hearings or meetings “when there is substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.”<sup>246</sup> Even before the current public comments process for the draft EA, there have been substantial showing of public interest and petitions to USACE to initiate a process of public hearings.

In a memorandum that accompanied Executive Order 12898, the President recognized the importance of the NEPA procedures in identifying environmental justice concerns.<sup>247</sup> The memorandum states, “each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including the effect on minority communities and low-income communities, when such analysis is required by [NEPA].”<sup>248</sup> In fact, the memorandum directs that “each Federal agency shall provide opportunities for community input in the NEPA process.”<sup>249</sup>

As of today, USACE has continually declined to begin a process for public hearings; declined to offer a full translation of all relevant documents to Spanish, given the fact that the proposed project impacts citizens that speak English only as a second language; and has failed to provide a complete analysis of the environmental impact even after the implementation of the substandard mitigation plans.

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<sup>243</sup> *Id.* at 1282; *Calvert Cliffs Coord. Comm v. Atomic Energy Comm’n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

<sup>244</sup> 40 C.F.R. § 1502.1, 1503.1, 1506.6 (2010)

<sup>245</sup> 40 C.F.R. §1506.6 (2010).

<sup>246</sup> *Id.*

<sup>247</sup> COUNCIL ON ENVTL. QUALITY, ENVIRONMENTAL JUSTICE: GUIDANCE UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT 1 (1997), *available at* <http://ceq.hss.doe.gov/nepa.regs/ej/justice.pdf>; *See also* III.E.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

### C. ENDANGERED SPECIES ACT CONSULTATION REQUIREMENTS AND PROHIBITIONS

The Endangered Species Act (ESA) is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.”<sup>250</sup> The ESA’s “language, history and structure” convinced the U.S. Supreme Court “beyond doubt” that “Congress intended endangered species to be afforded the highest of priorities.”<sup>251</sup> Indeed, the “plain intent of Congress in enacting [the ESA] was to halt and reverse the trend toward species extinction.”<sup>252</sup> In light of these lofty objectives, the Supreme Court declared that “endangered species [have] priority over the ‘primary missions’ of federal agencies.”<sup>253</sup> Furthermore, federal Circuit Courts have held that the ESA imposes an “affirmative duty on each federal agency to conserve each listed species.”<sup>254</sup>

As the permitting agency for a dredge-and-fill permit under Section 404 of the Clean Water Act (404 Permit),<sup>255</sup> USACE is required to insure that its permitting decisions comply with all of the substantive and procedural requirements of the ESA.<sup>256</sup> Substantively, the ESA requires that any action “authorized, funded, or carried out” by USACE, including issuance of a 404 Permit, is “not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species [...] determined [...] to be critical.”<sup>257</sup>

In addition, the ESA strictly prohibits any person from “taking” any endangered or threatened fish or wildlife species.<sup>258</sup> This substantive prohibition applies to all federal agencies that “cause to be committed” the take of a listed species through regulatory or permitting action.<sup>259</sup> “Take” of a species is defined broadly to include actions such as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”<sup>260</sup> The term “harass” is similarly defined broadly to include any “intentional or negligent act or omission which creates the likelihood of injury to

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250 *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978)

251 *Id.* at 174.

252 *Id.* at 184.

253 *Id.* at 185.

254 *Sierra Club v. Glickman*, 156 F.3d 606, 616 (5th Cir. 1998); *Florida Key Deer v. Paulison*, 522 F.3d 1133, 1138 (11th Cir. 2008).

255 33 U.S.C. § 1344(a) (2006).

256 16 U.S.C. § 1536(a)(2) (2006).

257 16 U.S.C. § 1536(a)(2) (2006).

258 16 U.S.C. § 1538(a)(1) (2006); 50 C.F.R. § 17.31 (2010).

259 16 U.S.C. § 1538(g) (2006); *Strahan v. Coxe*, 127 F.3d 155 (1st Cir. 1997), *cert. denied*, 525 U.S. 830 (1998).

260 16 U.S.C. § 1532(19) (2006).

wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.”<sup>261</sup> The definition of prohibited “harm” includes “significant habitat modification or degradation where it actually kills or injures wildlife.”<sup>262</sup>

Procedurally, the ESA requires USACE to consult with the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), or both, concerning the potential effects of proposed federal actions on endangered and threatened species and their habitat.<sup>263</sup> The fundamental purpose of this mandatory consultation procedure is to facilitate informed agency decision-making in order to insure no jeopardy to endangered species and no adverse modification of critical habitat.<sup>264</sup>

On October 26, 2011, the undersigned commenters provided USACE with a Notice of Intent (NOI) to Sue under the ESA and are hereby referencing, incorporating, and reasserting the NOI into these comments.<sup>265</sup> In the NOI, the undersigned informed USACE of its numerous procedural and substantive violations of the ESA. We reassert all violations described in the NOI, including: violations of the ESA based on an inadequate Biological Assessment and failure to undergo formal consultation for thirty-nine threatened and endangered species; violations of the ESA for failure to insure “no jeopardy” for thirty-nine species; violations of the ESA based on a reasonable likelihood of “take” for ten wildlife species; violations of the ESA for failure to consult with NMFS for six marine species; violation of the ESA based on failure to confer with FWS on the newly proposed *Coquí llanero* listing; and violations of the ESA based on USACE’s reliance on an inadequate Biological Opinion and inadequate formal consultation for three species.

The draft EA is inadequate and demonstrates the USACE has not complied the requirements of the ESA. The draft EA fully incorporates the faulty ESA Section 7 outcome for the Vía Verde Project and assumes a FONSI for all species, concluding that the project will either have “no effect,” “is not likely to jeopardize,” or will “not adversely affect” more than forty endangered and threatened species. However, USACE has still not complied with the ESA consultation requirements for twenty-nine plant species and ten wildlife species, despite the concerns of multiple scientists regarding the project’s impact on these species. Because USACE never underwent consultation for these species, USACE has failed to insure that the Vía Verde Project will not cause

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<sup>261</sup> 16 U.S.C. § 1532(19) (2006).

<sup>262</sup> 16 U.S.C. § 1538(a)(1) (2006); 50 C.F.R. § 17.3 (2010); See also Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687 (1995) (cited for the interpretation of “harm”).

<sup>263</sup> 16 U.S.C. § 1536(a)(2) (2006); 50 C.F.R. § 402.01(b) (2010).

<sup>264</sup> 16 U.S.C. § 1536(a)(2) (2006); Sierra Club v. Marsh, 816 F.2d 1376, 1389 (9th Cir. 1987) (“Congress intended that the consultation process would operate so as to prevent substantive violations of the act”)

<sup>265</sup> Notice of Intent to Sue U.S. Army Corps of Engineers for Violations of Sections 7 and 9 of the Endangered Species Act, as well as 50 C.F.R. §402.16, in Connection with the Issuance of a Permit under Section 404 of the Clean Water Act for the Vía Verde Natural Gas Pipeline Project (October 26, 2011).

adverse impacts to these species and the eventual “take” of endangered and threatened species. By incorporating this inadequate consultation process in its findings, the draft EA fails to provide measures necessary for the project to fully comply with the ESA.

Moreover, even where formal ESA consultation occurred for three endangered species, this consultation process failed to produce USACE’s informed decision-making such that USACE cannot ensure no jeopardy to species and no adverse modification to critical habitat. Scientific and other evidence, as detailed by comments of Rafael L. Joglar, Ph.D., Carlos A. Delannoy, Ph.D., Hector E. Quintero, Ph.D., Nefthalí Ríos-López, Ph.D., and others demonstrates that the USACE’s failure to fully analyze the impacts on endangered species from the proposed project and make an informed decision is likely to jeopardize the continued existence of species such as the Broad-winged Hawk, Sharp-shinned Hawk, and Puerto Rican Boa. Moreover, subsequent project modifications, expansion of work areas and access roads, and future project expansions were never analyzed by USACE with respect to endangered and threatened species. Because the draft EA does not support the proposed FONSI finding with regard to endangered and threatened species, USACE should conduct an EIS in order to fully comply with NEPA and the ESA and should initiate formal ESA consultation for all species contained in the draft EA.

#### **D. NATIONAL HISTORIC PRESERVATION ACT CONSULTATION REQUIREMENTS**

The National Historic Preservation Act of 1966 requires federal agencies to consider the effects of their actions with respect to historic properties. Agencies must take steps to establish and maintain a preservation program that meets the applicable Secretary of the Interior’s Standards for Federal Agency Historic Preservation Programs. The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation are created<sup>266</sup> under Sections 101 (f) (g), (h) and 110.<sup>267</sup> These standards are intended to provide technical advice about historic and archaeological preservation activities.

Section 101 (f) mentions as a requirement to “cooperate with the Secretary, the Board of Historic Preservation and other federal and state agencies, organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development.” Section 101 (g) establishes a requirement to provide public information, education, training and technical assistance on the issue of historic preservation. Section 101 (h) refers to a requirement to cooperate with local government in developing local historic preservation programs and assist local government in the process of certification under subsection (c).

Section 110 says that the heads of federal agencies must take responsibility for the preservation of historic properties under the control of that agency. This shall be

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<sup>266</sup> 48 FR 4471.

<sup>267</sup> Id.

consistent with the preservation of historic properties, the agency's mission and professional standards established by Section 101 (g). Each agency must establish a preservation program for the identification, evaluation and nomination to the National Register of Historic Places and to protect historic properties.

This program should ensure that historic properties under the jurisdiction of the agency are identified, evaluated and nominated for the National Register and that these properties are managed considering their historical, archaeological, architectural and cultural value under Section 106 of the National Historic Preservation Act. Finally, properties that are not under the agency's jurisdiction but may be affected by agency actions should be also considered in the planning process.

The National Historic Preservation Act states that the goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.<sup>268</sup> USACE has not accomplished this goal in the draft EA, neither has it done a good faith effort to carry out appropriate identification of properties. This violates NHPA standards and translates in proposing a Finding of Non Significant Impact without knowing if there are historic properties or not.

## **VII. CONCLUSION**

Based on the above comments and the totality of the record to date, we formally request the USACE to deny the permit application SAJ 2010-02881 (IP-EWG). Not only would granting the application be contrary to law and to the well-being of Puerto Ricans, but also applicant itself has already announced that it is actively seeking other alternatives to the pipeline. These comments demonstrate that the Via Verde Project is not a viable alternative to attend the energetic situation in Puerto Rico. Certainly, the environmental, archeological, social and economic risks explained above contradict the USACE preliminary finding of no significant impact. Also, the various dimensions of the project addressed in this commentary such as the social impact, the public concern and the observations on risk, health and safety reveal, reveal the urgency of guaranteeing participation to those communities and thousands of individuals who will be directly impacted by the construction.

The permit application must be denied because this project does not comply with the applicable legal standards provided by federal law. For instance, the proposed FONSI finding is incompatible with the absence of a full impact analysis on waters, wetlands and streams according to both NEPA and CWA. A violation of NEPA is also present when public participation is denied and no adequate method to guarantee community input is provided. The lack of public hearings, added to the nonexistence of an EA in Spanish deprived these communities of partaking in a permit application process that will affect their property, families and well-being. Additionally, the USACE has a duty under its

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<sup>268</sup> 36 CFR ss. 800.1 (a).

own regulations to make decisions in the public interest, and this requires that it be denied because the project lacks an economic or environmental justification. As previously stated, in order to comply with NEPA and ESA, USACE should conduct an EIS to analyze the impact of this project on all endangered and threatened species, particularly, those mentioned in the EA. Finally, we identified a violation of NHPA standards, once the proposed route will directly impact important archaeological and historic sites. The draft EA does not provide for a process of consultation and identification of those historic properties to be impacted by the pipeline. The unavoidable result of this deficiency is the failure to identify adequate methods to avoid, minimize or mitigate any adverse effects on these sites. Once this legal frame is used as a reference to evaluate the impacts of this project, the FONSI finding does not proceed and is contrary to the applicable statutes.

Moreover, in the context of important findings regarding the availability of gas in the Island, the applicant has not stated the functionality of the project. These comments have demonstrated that there is not an adequate fuel supply once and if the construction of the pipeline is completed. This fact implies that the multiplicity of human and environmental consequences, many of them irreversible and irreparable, may be proven even more unjustified and useless because the project, as proposed, is impossible to operate under the Island's current condition. The data discussed above shows that the objective stated by the applicant is impossible to fulfill and consequently, the significant impacts of this project will be proved to be futile and unfair not only for those communities subject to direct harm, forced removal and distress, but also for the future generations to come. It is unreasonable and unlawful for the USACE to blindly defer to PREPA's assertions regarding how the project will achieve its stated purpose and need and provide benefits to the public. The USACE must conduct its own review and assessment of these critical facts and circumstances.

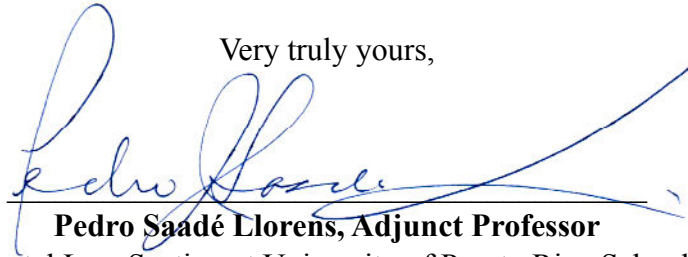
Furthermore, the applicant has already publicly announced that additional alternatives to the proposed project are being analyzed. These alternatives are incompatible substitutes for the pipeline and may include solutions to the energetic situations while avoiding the environmental and human costs of the Via Verde Project. The consistency of the latest announcements made by the President of the Board of Directors for PREPA, José Ortíz, Governor Luis G. Fortuño prove that there is a vast array of possibilities to the gas pipeline that are being explored and discussed in both the country's governmental and public spheres. Therefore, the permit approving a project that will significantly impact the citizens of Puerto Rico shall not be granted, once this project seems premature and impulsive in the light of more environmentally suitable alternatives.

In any case, we are formally requesting that the preliminary FONSI be discarded. The preparation of a full EIS, translated to Spanish, and the celebration of public hearings, are vital to provide public participation for the communities and individuals to be affected.

If you would like to discuss the issues raised in this comment letter, please do not

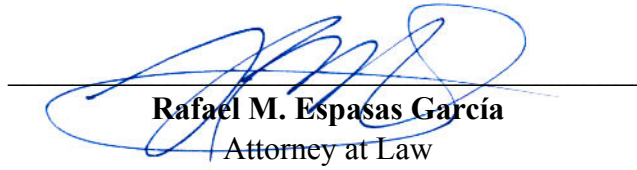
hesitate to contact us at (787) 397-9993 or via email at [saadellorensp@microjuris.com](mailto:saadellorensp@microjuris.com).

Very truly yours,



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\* We wish to acknowledge and express our appreciation for the contributions to these comments made by ENRC staff attorney Michelle Walker and pro bono attorney Teresa Clemmer; student clinicians MariCarmen Cruz Guilloty, Christopher Foy, Ariadna Godreau Aubert, Alec Mullee, Noeli Perez De La Torre, Ninoshka Picart, Rohemir Ramirez Vallegas, Regina Rodríguez Manzanet, Karen Schmidt, and Merangelí Valentín Santiago; and by Rebecca Dorno Pesquera, Zilkia Rivera Vásquez and ANDA attorneys, David Rodríguez Andino, Laura B. Arrollo Lugo, Omar Saadé Yordán, Verónica González Rodríguez, and Luis J. Torres Asencio.

Enclosures: Appendix A – Plaintiffs  
Appendix B – Comments and Other Materials Incorporated by Reference  
(Index and Compact Discs)

CC: Via U.S. Mail and/or Email

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## APPENDIX A: COMMENTERS

### A. ORGANIZATIONS:

**Ciudadanos del Karso**  
(Citizens of the Karst)

CDK is a nongovernmental organization, nonprofit consisting of 30 active leaders, incorporated in 1994 under the laws of the Commonwealth of Puerto Rico, and dedicated to the protection and conservation of natural resources in the karst of Puerto Rico. Its mission is to protect and conserve the natural systems of Puerto Rico, especially the karst of Puerto Rico, and to encourage and develop actions that illustrate how the social organization and nature can and should be supported.

**Sociedad Ornitológica Puertorriqueña, Inc.**  
(Puerto Rican Ornithological Society)

SOPI promotes the preservation, conservation, restoration and sustainable management of important sites for birds in Puerto Rico by encouraging the study, appreciation and protection of birds, and providing alternative technical and scientific support for those actions that may have a significant impact on birds. SOPI is recognized as the leading non-governmental entity and spokesman essential for the conservation, management and all matters relating to birds in Puerto Rico. As a vital organization for the conservation of the environment, with approximately 100 members, SOPI bases its opinions on the best scientific evidence available and participates actively in leading efforts to create awareness of the need to protect, restore and manage major areas for birds.

**Federación Espeleológica de Puerto Rico**  
(Speleological Federation of Puerto Rico)

Founded in 1996 and consisting of approximately 70 members, FEPUR's mission is to coordinate and combine efforts between the various caving organizations in Puerto Rico in the study of the speleology and the Karst, its preservation and protection, as well as in other areas of common interest. The main objectives of the organization are to: coordinate the development of caving in Puerto Rico; provide a forum for discussion of situations, social problems and issues of common interest related to caving, cave rescue, conservation and protection of speleological resources and any resources, natural or historical related; and exchange information sources, bibliographies and literature on the subject of caving, cave rescuing and related topics.

**Vegabajeños Impulsando un Desarrollo Ambiental Sustentable**  
(Vegabajeños Supporting Sustainable Environmental Development)

V.I.D.A.S. is a non-partisan NGO, recognized as an institution that works for the defense of the coastal ecosystems of Puerto Rico, its surrounding communities, and public natural resources through environmental education and projects. V.I.D.A.S. believes that, at the end of the day, we all breathe the same air and use the same waters. Therefore, V.I.D.A.S. respects the environment and nature for all. V.I.D.A.S. consists of a steering committee of 9 members and approximately 30 volunteers and collaborators.

**Sierra Club**

The Sierra Club is a national, nonprofit organization dedicated to protecting and restoring the quality of the natural and human environment. The mission of the Sierra Club is: To explore, enjoy, and protect the wild places of the earth; To practice and promote the responsible use of the earth's ecosystems and resources; To educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club has approximately 1.3 million members as well as sixty-three Chapters and twenty-seven Field Offices throughout the United States, including a Chapter in Puerto Rico.

**Comite Utuadeño Contra el Gasoducto**  
(The Utuadeño Committee Against the Gas Pipeline)

The Utuadeño Committee Against the Gas Pipeline (Comité Utuadeño Contra el Gasoducto) was organized in August 2010 to fight against the construction and placement of the gas pipeline in Puerto Rico. The Committee is composed of several families and individual citizens, many of whom will be directly affected by the pipeline. Among the goals of the Committee are to educate communities about the dangers of such project and the effects it will have on the flora and fauna (environmental issues), security and eminent domain issues. The CUCG has a radio program every week on Mondays in a local radio station. They also visit communities located in the pipeline route and provide orientation to their residents. The CUCG has a steering committee composed of ten persons.

**Comité Bo. Portugués Contra el Gasoducto**  
(The Committee of Portugés Community Against the Gas Pipeline)

The Comité Bo. Portugués Contra el Gasoducto, organized in 2010, is a group dedicated to educational activities and denunciation of the pipeline project. Its purpose is to inform the community about the safety risks of the pipeline and prevent construction of the pipeline. The Comité believes that construction of the pipeline would affect the wellbeing, health, and environment of the community. It is composed of approximately 30 community members from the Portugués community of Adjuntas, Puerto Rico, many of whom live close or along the pipeline route.

**Asociación de Acampadores de Puerto Rico, Inc.**  
(Camping Association of Puerto Rico, Inc.)

Asociación de Acampadores de Puerto Rico, Inc. (ADAPRI), a nonprofit organization since 1979, is dedicated to promoting backpack camping, protection of the environment and natural resources, and enhancement of our cultural diversity in and outside of Puerto Rico. It is composed of approximately 100 members throughout the island.

**Center for Biological Diversity**

The Center for Biological Diversity is a national, nonprofit organization whose mission is to protect and restore endangered species and wild places through science, policy, education, advocacy, and environmental law. The Center has over 320,000 members and on-line activists, some of whom reside and recreate in Puerto Rico.

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## **APPENDIX B - SUPPLEMENTAL INFORMATION**

### **VIA VERDE NATURAL GAS PIPELINE PROJECT - U.S. ARMY CORPS OF ENGINEERS, PERMIT APPLICATION NO. SAJ 2010-02881 (IP-EWG): COMMENTS ON DRAFT ENVIRONMENTAL ASSESSMENT AND STATEMENT OF FINDINGS**

**(ISSUED ON NOVEMBER 30, 2011)**

#### **Table of Contents**

##### **Introduction (Letters from Vermont Law School and UPR Law School)**

1. Letter to USACE, Public Comments on Via Verde Project ( April 28, 2011)
2. Letter to USACE, Meeting regarding Via Verde Natural Gas Pipeline held at the USACE's Jacksonville Office (August 8, 2011).
3. Notice of Intent to Sue U.S. Army Corps of Engineers for Violations of Sections 7 and 9 of the Endangered Species Act, as well as 50 C.F.R. § 402.16, in Connection with the Issuance of a Permit under Section 404 of the Clean Water Act for the Via Verde Natural Gas Pipeline Project, Permit Application No. SAJ 2010-02881 (October 26, 2011)
4. Request for Spanish translation of the draft Environmental Assessment (December 6, 2011)
5. Petition for an Emergency Listing of the Coquí Llanero as an endangered species; (December 6, 2011)
6. Letter to the Advisory Council for Historic Preservation regarding the conflict of interest of the State Historic Preservation Office (December 12, 2011)
7. Letter to Environmental Protection Agency (EPA) requesting permit elevation under Section 404(q) (404 Permit) of the Clean Water Act (CWA) (December 19, 2011).
8. Letter to the United States Fish and Wildlife Service (FWS) requesting ESA concurrence withdrawal (December 23, 2012).
9. Request for Spanish translation of the draft Environmental Assessment and related documents (January 3, 2012).
10. Letter to EPA requesting elevation to CEQ under section 309 CAA (January 6, 2012).

##### **I. Background**

1. Conservation International, Biodiversity Hotspots, Caribbean Islands.
2. Helmer, Ramos, López, Quiñones, and Díaz, Mapping the Forest Type and Land Cover of Puerto Rico, A Component of the Caribbean Biodiversity Hotspot (2002).

3. Miller, Gary L. Guide to the Ecological Systems of Puerto Rico, June 2009.
4. Report by Pedro Jimenez Quiñones, Ph D. Report on Vía Verde Project of the Electric Energy Authority Titled Gasoducto de Puerto Rico: a Technical Evaluation. Submitted on January 11, 2012
5. Gould, W.A.; Jiménez, M.E.; Potts, G.S.; Quiñones, M.; Martinuzzi, S. 2008. Landscape units of Puerto Rico: Influence of climate, substrate, and topography. Río Piedras, PR: US Department of Agriculture Forest Service, International Institute of Tropical Forestry
6. Press Clipping: “Centro de Periodismo Investigativo. AEE cambió la ruta del Gasoducto por Fonalledas y Rubí” (PREPA Changed the Pipeline’s Route Because of Fonalledas and Rubi)”
7. American Community Survey from the US Census Bureau (2010).
8. Puerto Rico Does it Better, Renewable Energy.
9. PREPA Rating Agency Presentation (March 2, 2010)
10. PREPA On Energy Dependency (2009)
11. Letter from Casa Pueblo, Adjuntas to Sindulfo Castillo, Regulatory Section U.S. Army Corps of Eng's-Antilles Office 5 (February 28, 2010)

## **II. General Failure of the Draft EA as to the Determination of FONSI**

1. Alex Dragoni Gas Pipeline Animation (DVD included)
2. Via Verde EA draft comments from José Molinelli-Freytes (January 30, 2012); and list of José Molinelli-Freytes projects in Puerto Rico.

## **III. Adverse Impacts of Via Verde Project/Determination of FONSI**

1. Letter from EPA, Carl-Axel Sodeberg to Colonel Pantano (October 28, 2011).
2. Media Report/Article: El Nuevo Día, “La EPA insiste en los daños a humedales” (November 15, 2011)
3. Updated Compensatory Mitigation Plan, pages 4-11 (September 23, 2011).
4. Ariel Lugo Comments on Department of The Army Environmental Assessment And Statement Of Findings For Permit Application SAJ-2010-0288.
5. Ariel Lugo, Comments On The Biological Opinion Via Verde Project SAJ 2010-02881 (August 23, 2011)
6. Hector Quintero, Letter to the USACE (September 15, 2011)
7. Myers, N.R.A. Mittenmeier, C. G. Mittermeier, G.A.B. da Fonseca, and J. Kent. 2000. Biodiversity hotspots for conservation priorities.
8. Neftali Rios, Letter to the USACE (January 9, 2012)
9. Neftali Rios, Letter to the USACE (January 12, 2012)
10. Engineer Edgardo González, Technical and Scientific Committee of Casa Pueblo, Letter to USACE (January 30, 2011).
11. Carlos A. Delannoy, Letter to the to Mr. Bob Barron Re: Vía Verde Permit Application SAJ-2010-02881 (January 10, 2012) .



12. Crooks, K.R. and M.E. Soule 1999. Mesopredator release and avifaunal extinctions in a fragmented system.
13. Rafael Joglar, Letter to Robert Barron sent on January 8,2012
14. Robert Barron, Letter to Mr. Muñiz (USFWS), Request to initiate consultation for the Via Verde Project (July 11, 2011).
15. USFWS Biological Opinion (August 11, 2011).
16. USACE Draft Environmental Assessment (November 30, 2011)
17. Letter from Reniel Rodríguez Ramos to Mr. Edgar W. García, Department of Defense, Jacksonville District Corps of Engineers (December 16, 2010).
18. Letter from Reniel Rodríguez Ramos to Mr. Edgar W. García, Department of Defense, Jacksonville District Corps of Engineers (February 2, 2011).
19. Letter from Pedro Saadé Llorens and Rafael M. Espasas García, to Ms. Charlene Vaughn, Assistant Director, Federal Permitting, Licensing and Assistance Section, Office of Federal Agency Program, Advisory Council on Historic Preservation (Dec. 6, 2011).
20. Letter from Jaime Pagán Jiménez, Isabel Rivera Collazo, Reniel Rodríguez Ramos, José R. Oliver, Madeliz Gutiérrez Ortiz, Jalil Sued Badillo to Advisory Council on Historic Preservation (October 28, 2011).
21. Programmatic Agreement Among the US Army Corps of Engineers, Advisory Council on Historic Preservation, Puerto Rico State Historic Preservation Office and Puerto Rico Electric Power Authority for the Vía Verde Natural Gas Pipeline Project, SAJ-2010-2881.
22. Letter from Jaime Pagán Jiménez and Reniel Rodríguez Ramos to Ms. Charlene Vaughn, Assistant Director, Federal Permitting, Licensing and Assistance Section, Office of Federal Agency Program, Advisory Council on Historic Preservation (July 15, 2011), Letter from Jaime Pagán Jiménez and Reniel Rodríguez Ramos to Mr. Sindulfo Castillo, Section Chief, Regulatory Division, US Army Corps of Engineers (June 20, 2011)
23. J, Stephens. A Model for Sizing High Consequence Areas Associated with Natural Gas Pipelines (2000).
24. US National Transportation Safety Board, “Pipeline Accident Report—Texas Eastern Gas Pipeline Co. Ruptures and Fires at Beaumont, Ky., on Apr. 27, 1985, and Lancaster, Ky., on Feb. 21, 1986,” Report No. NTSB/PAR-87/1, (Feb. 18, 1987).
25. Letter of Mrs. Rita Córdova Campos to Robert Barron (January 30, 2012).
26. Media Report/Article: El Nuevo Día, Millones perdidos en gasoductos (January 13, 2012).

#### **IV. Misleading Project Scope and Description**

1. Media Report/Article: El Nuevo Día “El gasoducto tendría 20 válvulas de interconexión”

2. USFWS letter to Robert Barron, Via Verde Project, Impacts to Aquatic Resources and Proposed Mitigation plan, Puerto Rico (October 13, 2011).

## V. Misleading Statement of Purpose and Need and Overly Restricted Range of Alternatives

1. Executive Order OE-2010-034, July 19, 2010.
2. Gerson Beauchamp's comments on the Draft EA (January 26, 2012).
3. Media Report/Article: "Fortuño cancelaría el gasoducto" (January 13, 2012).
4. Paul Chernick, Analysis of Via Verde Need and Economics (January 29, 2012).

## VI. List of Press Reports and Articles

Date	Neswspaper	Page	Title
October 18, 2010	El Vocero	11	Mínimo el impacto del gasoducto
October 19, 2010	El Vocero	8	Fatal eliminar el ajuste por combustible
October 19, 2010	El Nuevo Día	26	En tres días el informe de las vistas
October 19, 2010	El Nuevo Día	12	Demanda roja para detener el gasoducto
October 26, 2010	El Vocero	13	Impacta Vía Verde la Universidad
October 26, 2010	El Nuevo Día	20	Convoca Planificación a vistas sobre gasoducto
October 27, 2010	El Nuevo Día	16	Demanda comunitaria pretende frenar el gasoducto
October 28, 2010	El Vocero	38	Columna- Gasoducto, inversión o malgasto?
October 28, 2010	El Nuevo Día	33	Hallan serias fallas en DIA-P gasoducto
November 9, 2010	Primera Hora	34	Se levantan contra el gasoducto
November 10, 2010	Claridad	7	¿Habrá engavetado el gasoducto?
November 11, 2010	Puerto Rico Daily Sun	6	Specialist says Vía Verde highly dangerous
November 11, 2010	El Nuevo Día	25	Más de 200mil personas en riesgo por gasoducto
November 11, 2010	Primera Hora	46	Desprecios al gasoducto
November 12, 2010	El Nuevo Día	18	Gobierno gana primer asalto con gasoducto
November 16, 2010	El Nuevo Día	12	Engañosos los argumentos sobre el gasoducto
November 19, 2010	El Nuevo Día	32	Somete la AEE nueva DIA-P del gasoducto
November 20, 2010	El Vocero	11	Protestan en Barcelona por la Vía Verde
November 23, 2010	Primera Hora	31	Penepés se contradicen sobre gasoducto
November 24, 2010	El Nuevo Día	36	Revive el gasoducto del sur
November 24, 2010	Claridad	9	Gasoducto amenazaría 200mil personas
November 24, 2010	Claridad	12-13	Evaluación del gasoducto del Norte
November 25, 2010	El Nuevo Día	48	Innecesario erigir un gasoducto

November 26, 2010	El Vocero	30	Piden nuevas vistas sobre VV
November 27, 2010	El Nuevo Día	10	Veinte empresas en carrera por el gasoducto
November 29, 2010	Primera Hora	10	Tajante oposición al gasoducto
November 29, 2010	El Nuevo Día	6	Opuestos al gasoducto darán su lucha en la calle
November 29, 2010	Primera Hora	2	Hay otras opciones para energía
November 29, 2010	El Nuevo Día	49	Prestos los opositores a derramar su sangre
November 29, 2010	Primera Hora	4-5	Energía renovable: Escaso su uso por la AEE
November 30, 2010	Puerto Rico Daily Sun		Firefighters ready for any emergency, even pipeline
December 2, 2010	El Nuevo Día	12	Aprobada la DIA F del gasoducto
December 2, 2010	El Vocero	2	En manos del pueblo detener el gasoducto
December 2, 2010	El Nuevo Día	77	Gasoductos y desprecio a la vida
December 6, 2010	Puerto Rico Daily Sun	4	Maritime, unique march against gas pipeline
December 6, 2010	El Vocero	14	Protesta marítima contra el gasoducto
December 6, 2010	Primera Hora	22	Navegan contra la Vía Verde en Cataño
December 8, 2010	Claridad	3	Editorial: Crece la resistencia contra el gasoducto
December 8, 2010	Claridad	6	Así pensaban sobre el gas natural y el gasoducto
December 8, 2010	El Vocero	14	Exigen diálogo nacional por el gasoducto
December 13, 2010	El Nuevo Día	26	Colegio Ingenieros da visto bueno al gasoducto
December 17, 2010	El Vocero	13	Más oposición a Vía Verde
December 18, 2010	El Vocero	8	Fortuño no descarta cambios a Vía Verde
December 18, 2010	El Vocero	26	Columna- Vía Verde; una línea de transferencia de gas natural
December 23, 2010	El Vocero	14	Otra piedra se cruza en la Vía
December 27, 2010	El Vocero	6	Letal Vía Verde si ocurre un terremoto
December 28, 2010	Puerto Rico Daily Sun	3	Senate report casts doubts on Via Verde
December 28, 2010	Primera Hora	18	Fas exige que Senado apague Vía Verde
December 28, 2010	El Nuevo Día	16	Acogido el malestar entorno al gasoducto
December 28, 2010	El Vocero	8	Pide detener el gasoducto & Cumplirá requisitos, gasoducto con medidas prevenir daños sismos
December 31, 2010	El Vocero	6	Estocada federal a Vía Verde
January 3, 2011	El Vocero	10	Asesor resta importancia a federales
January 3, 2011	Puerto Rico Daily Sun	6	Committee against pipeline praises EPA's statement

January 3, 2011	El Vocero	9	Pide cabeza de propulsores de Vía Verde
January 4, 2011	El Vocero	16	(Eco Eléctrica) No tiene permisos para Vía Verde
January 4, 2011	El Nuevo Día	10	Zapata económica para el gasoducto
January 4, 2011	Puerto Rico Daily Sun	6	PREPA defends value of Via Verde
January 10, 2011	El Vocero	11	Silencio finalizó con Vía Verde
January 11, 2011	El Vocero	11	'Invisible' la Vía Verde
January 13, 2011	El Nuevo Día	68	Editorial: Ominoso balance en materia ambiental
January 17, 2011	El Vocero	12	Pedazo a pedazo el Gasoducto
January 20, 2011	El Nuevo Día	18	Finaliza la emergencia (energética)
January 21, 2011	Primera Hora	17	Muchos asuntos que atender
January 24, 2011	El Vocero	10	Nuevo golpe a la Vía Verde
January 24, 2011	El Nuevo Día	33	Pretenden negarnos nuestro día en corte
January 24, 2011	El Vocero	16	Truenan contra el gasoducto
January 24, 2011	El Nuevo Día		Gas natural: la alternativa energética insuperable
January 26, 2011	El Nuevo Día	12	En suspenso permiso del gasoducto
January 26, 2011	Primera Hora	54	Anuncian marcha contra el gasoducto
January, 27, 2011	Primera Hora	26	Vía Verde preocupa a Fish and Wildlife
January 27, 2011	El Vocero	14	No pega una Vía Verde
January 27, 2011	El Nuevo Día	6	JCA se ignoró a si misma & Nuevo golpe de una agencia federal contra la DIA-F & Retrasa la AEE la construcción del gasoducto
January 28, 2011	El Nuevo Día	37	Suenan tres compañías & 'Contados' los días del gasoducto
January 28, 2011	PR Daily Sun	7	PREPA to Feds: Vía Verde passes all tests
January 30, 2011	El Nuevo Día	16-17	Una maravilla natural que lucha por su vida
January 30, 2011	El Nuevo Día	14-15	Llena de tesoros la ruta del gasoducto
January 30, 2011	El Vocero	7	Consultor de AEE defiende la Vía Verde
February 1, 2011	El Vocero	12	Request for Proposal
February 1, 2011	El Nuevo Día	24	Cuestionan itinerario de conversión AEE
February 1, 2011	El Nuevo Día	50	Columna Economía, seguridad y ambiente
February 2, 2011	El Nuevo Día	10	Opción al Gasoducto (conversión Costa Sur y Aguirre)
February 2, 2011	El Vocero	5	Insisten en Vía Verde como alternativa
February 3, 2011	El Nuevo Día	36	Preocupa la respuesta a escapes, explosiones y fuegos

February 3, 2011	Puerto Rico Daily Sun	5	Environmentalists to Corps: deny pipeline permit
February 3, 2011	El Vocero		Se oponen a expropiación
Febrero 4, 2011	El Vocero	27	Carta lector: La AEE y su embeleco
February 7, 2011	El Nuevo Día	10	Isla como modelo energía limpia
February 9, 2011	Claridad	6	(Insiste Casa Pueblo) Contradicciones del Gasoducto lo hacen insalvable
February 9, 2011	Primera Hora		El discurso en arroz y habichuelas
February 9, 2011	El Vocero	14	"Con todas las de la ley Vía Verde"
February 11, 2011	Puerto Rico Daily Sun		Natural gas explosion in Pa. kills 5 people
February 11, 2011	El Vocero	9	Hablan de Vía Verde en círculos federales
February 14, 2011	El Nuevo Día	14	Cabildeo "impropio" en pro de Vía Verde
February 16, 2011	El Vocero	10	Vía libre a extender estado emergencia
February 16, 2011	Claridad		Masiva Oposición al gasoducto
February 18, 2011	Primera Hora	20	Sospechosos contratos de Vía Verde
February 27, 2011	El Nuevo Día	36	Sin éxito el PPD contra Vía Verde
March 1, 2011	El Vocero	25	Carta de lector: Sigue siendo un embeleco de la AAEE
March 2, 2011	Claridad	9	Más denuncias y oposición a "vía verde"
March 3, 2011	El Vocero	37	Carta: AEE contesta sobre proyecto Vía Verde
March 15, 2011	Primera Hora	22	Dicen que el tubo resiste terremotos
March 17, 2011	El Nuevo Día	8	Por un camino distinto la AEE
March 27, 2011	El Nuevo Día	17	Encuesta END-Gran preocupación con el gasoducto
March 28, 2011	El Nuevo Día	6	Encuesta END-Sordera gubernamental
April 4, 2011	El Vocero	9	Endoso condicionado
April 5, 2011	Primera Hora	18	EPA da su endoso a Vía Verde
April 6, 2011	El Nuevo Día	4	Flujo de millones por el gasoducto
April 6, 2011	El Nuevo Día	5	Ajustan la ruta en cuatro tramos
April 7, 2011	El Nuevo Día	6	Vía a los verdes
April 7, 2011	El Nuevo Día	4-5	Los hombres del Gasoducto
April 8, 2011	El Nuevo Día	5	Acuerdos sin subastas Levantan bandera de alerta (falta transparencia)
April 8, 2011	El Nuevo Día	4-5	El rastro azul del Gasoducto
April 8, 2011	El Nuevo Día	32	"No" de Gutiérrez al Gasoducto
April 11, 2011	Primera Hora	4	La Vía Verde repleta de gran desinformación
April 11, 2011	Primera Hora	2-3	Gasoducto no bajará la factura

April 11, 2011	El Nuevo Día	4-5	Un contrato salvavidas & Justicia previó un conflicto de intereses (Contratos Rey Chacón)
April 12, 2011	El Nuevo Día	10	Contratista del Gasoducto delegó su tarea en otro
April 13, 2011	Primera Hora	16-17	No dejarán sus casas por el Gasoducto
April 13, 2011	El Nuevo Día	22	“Problema de inseguridad” en torno al Gasoducto
April 14, 2011	El Nuevo Día		(Editorial) Sin transparencia con el Gasoducto
April 15, 2011	Primera Hora	34	Congresista Luis Gutiérrez ataca al Gobernador y proyecto de Vía Verde
April 15, 2011	El Nuevo Día	6	Vía de la discordia
April 17, 2011	El Vocero	13	Se defiende ingeniero de Vía Verde & Guerra abierta por gasoducto
April 18, 2011	El Vocero	9	Desestiman demanda Vía Verde
April 20, 2011	Claridad	10	Casa Pueblo desmiente a la EPA
April 21, 2011	Primera Hora	20	Estela de terror por “explosión” del Gasoducto
April 21, 2011	El Nuevo Día	10	Simulan explosión de Gasoducto
April 22, 2011	El Nuevo Día	37	Columna El Problema no es el gas natural
April 26, 2011	Primera Hora	22	Alzarán la voz contra el Gasoducto
April 26, 2011	Primera Hora	20	En líos agencia federal por endoso a VV
April 26, 2011	El Vocero	17	Disputa federal por el Gasoducto
April 26, 2011	El Nuevo Día	6	“Sorprendidos” los federales
April 27, 2011	Primera Hora	10	“La otra cara del Gasoducto es la muerte”
April 27, 2011	El Nuevo Día	26	Tiene otra cara el gasoducto
April 27, 2011	Puerto Rico Daily Sun	3	Study shows VV emotional effects
April 28, 2011	El Nuevo Día	10	Incompatibles gasoducto y finanzas AEE
April 28, 2011	Puerto Rico Daily Sun	3	US Rep post evidence of EPA
April 28, 2011	Puerto Rico Daily Sun	6	UTIER says gas supplier to power plant lacks capacity
April 29, 2011	El Nuevo Día	6	Incumple varias leyes federales
April 29, 2011	Puerto Rico Daily Sun	3	Legal study VV fails 5 categories
May 1, 2011	El Nuevo Día	63	Anuncios sobre Vía Verde; Mejor alternativa reducir dependencia & En PR hay consenso
May 1, 2011	El Nuevo Día	22	El gasoducto ya explotó
May 1, 2011	El Nuevo Día	18	Esperan miles en marcha de hoy

May 1, 2011	El Nuevo Día	20	Irreal la construcción de gasoducto en 12 meses
May 2, 2011	Primera Hora	3	Dicen no la gasoducto
May 2, 2011	Primera Hora	6	El gasoducto lo hacen a espaldas del pueblo
May 2, 2011	Puerto Rico Daily Sun	3	Thousand march against Vía Verde
May 2, 2011	El Vocero	5	Marchan contra gasoducto
May 2, 2011	El Nuevo Día	6	Este monstruo será detenido
May 4, 2011	Primera Hora	31	Con el gas, pero no con Vía Verde como está
May 6, 2011	Puerto Rico Daily Sun	6	Corps Engineers: Vía Verde info deficient
May 9, 2011	Puerto Rico Daily Sun	5	Vía Verde Project manager defends initiative
May 9, 2011	El Vocero	4-5	Del petróleo al gas
May 10, 2011	El Vocero	24	Columna Llamado a sensatez
May 10, 2011	Primera Hora	16	Tubos que se llevan millones del pueblo
May 10, 2011	Puerto Rico Daily Sun	5	Vía Verde approval moved to Florida
May 10, 2011	El Vocero	21	Columna Vía Verde; venta de oportunidad para Puerto Rico
May 10, 2011	El Nuevo Día	8	Permiso del gasoducto se evaluará en Florida
May 10, 2011	Primera Hora	17	Rara movida federal
May 11, 2011	El Nuevo Día	24	Confirmado el cambio
May 11, 2011	El Nuevo Día	22	La Vía Verde persigue al primer ejecutivo
May 11, 2011	Claridad		Unido el pueblo contra el gasoducto
May 12, 2011	Puerto Rico Daily Sun	6	Army Corps confirms shift to Florida
May 12, 2011	El Nuevo Día	14	Cabildero impulsa gasoducto desde su antigua oficina
May, 12, 2011	Primera Hora	28	“Alto interés público” causó movida & Renace campamento gasoducto
May 14, 2011	El Nuevo Día	33	Fallo a favor del gasoducto
May 18, 2011	Vocero	25	Columna Vía Verde: seguridad, ahorro, progreso
May 19, 2011	Puerto Rico Daily Sun	6	Gutierrez calls in the Army on Vía Verde
May 21, 2011	El Nuevo Día	32	Confirman el rol de BC Peabody en el gasoducto
May 21, 2011	El Nuevo Día	58	Columna El gasoducto y los mayores
May 22, 2011	El Nuevo Día	16	Comunidades costeras rechazan el gasoducto
May 30, 2011	El Nuevo Día	12	Extenderán uso gas natural en Costa Sur
June 9, 2011	Primera Hora		Piquetean contra “tubo de la muerte”

June 9, 2011	Puerto Rico Daily Sun		Fortuño defends Vía Verde at forum
June 9, 2011	El Nuevo Día		Buscan mayor apoyo
June 10, 2011	Primera Hora	28	AEE vs. Fish and Wildlife por Vía Verde
June 10, 2011	Puerto Rico Daily Sun	3	Vía Verde protested in NY City
June 14, 2011	Puerto Rico Daily Sun	3	PREPA engineer touts benefits, safety Vía Verde
June 16, 2011	Caribbean Business	2	Feds OKs only half VV demands
June 22, 2011	Claridad		Gasoducto sin gas hasta el 2015, según EcoEléctrica
June 27, 2011	Primera Hora	20	Desobediencia civil en contra del gasoducto
June 27, 2011	El Nuevo Día	24	Desobediencia civil para paralizar el gasoducto
June 28, 2011	El Nuevo Día	10	Intercede Fortuño por EcoEléctrica
June 29, 2011	El Nuevo Día	14	Denuncian conflicto de intereses en el gasoducto
June 30, 2011	El Nuevo Día	10	Le faltan trámites estatales al gasoducto & Rodeado de anomalías el proyecto
July 2, 2011	El Nuevo Día	58	Columna Gas natural: revolución pacífica
July 27, 2011	El Vocero	11	Complacido con progreso de Vía Verde
July, 27, 2011	Puerto Rico Daily Sun	3	Rep. Gutierrez seeking congressional help in opposing gas pipeline
July 27, 2011	Claridad	37	Más lejano el gasoducto & Casa Pueblo optimista ante reunión Cuerpo de Ingenieros en Florida
July 30, 2011	El Nuevo Día	20	Fortuño kayakea en Lajas y defiende el gasoducto
August 5, 2011	Puerto Rico Daily Sun	5	Surgeons warn on health hazards from Via Verde
August 7, 2011	El Nuevo Día	4-5	Luz Verde al gasoducto
August 8, 2011	El Nuevo Día	14	Cuestionan impacto económico del Gasoducto
August 9, 2011	Puerto Rico Daily Sun	4	Casa Pueblo: Fire PREPA head for Vía Verde failure
August 9, 2011	El Nuevo Día	10	Fatal un accidente en el Gasoducto
August 10, 2011	El Nuevo Día	12	Nuevo ataque al Gasoducto
August 17, 2011	Claridad	31	Reafirman que Gasoducto sería un error para el país
August 17, 2011	Claridad	30	Casa Pueblo pide destitución de Miguel Cordero y cancelación contratos Vía Verde



August 19, 2011	El Vocero	17	Uso del gas natural debe ser transitorio
August 29, 2011	El Nuevo Día	30	Endoso federal para el Gasoducto
August 30, 2011	El Nuevo Día	28	Le faltan estudios al Gasoducto
August 31, 2011	El Nuevo Día	12	Advierten sobre tres nuevos gasoductos
September 1, 2011	El Nuevo Día	17	Pagan \$1 millón para cabildear por Gasoducto
September 1, 2011	El Nuevo Día	22	Se fue agosto y los permisos no llegaron
September 1, 2011	Primera Hora	32	Truquera la AEE con el gasoducto
September 1, 2011	Claridad		Se esfuma el vaticinio de Cordero El ajuste por combustible
September 2, 2011	El Nuevo Día	12	Este mes se sabría si va el Gasoducto & Largo historial de cabildeo
September 3, 2011	El Nuevo Día	26	Aferrado al Gasoducto
September 4, 2011	El Nuevo Día	14	Arrestado Alexis Massol frente a Casa Blanca
September 9, 2011	Puerto Rico Daily Sun	5	Scientists see poor methodology in Fish & Wildlife report
September 14, 2011	Claridad	12	Fortuño presionó a Servicio de Pesca y Vida Silvestre
September 20, 2011	Claridad	25	Arrestan los Massol al protestar Gasoducto frente a Casa Blanca
September 21, 2011	El Vocero		Revelarán evaluación de Vía Verde
September 23, 2011	Claridad	29 6	Sin tregua al Gasoducto: Impugnarán la opinión biológica Se esfuma el vaticinio de Cordero
September 23, 2011	El Nuevo Día	12	Gasoducto a “medio tiempo”
September 27, 2011	Puerto Rico Daily Sun	3	Prepa executive director resigns
September 28, 2011	El Nuevo Día	14-15	El agua es mala para el Gasoducto
September 30, 2011	El Vocero	7	Incierto comienzo de Vía Verde
October 1, 2011	El Nuevo Día	26	El gasoducto sufre otro revés
October 2, 2011	El Nuevo Día	27	Es una victoria parcial, pero no definitiva
October 7, 2011	Puerto Rico Daily Sun	3	Casa Pueblo demands an end to Vía Verde
October 12, 2011	El Vocero	7	Gas natural es la mejor opción (Estudio BGF)
October 12, 2011	Claridad	5	Hasta nuevo aviso el gasoducto
October, 12, 2011	Claridad	28	Massol insiste con Obama contra el gasoducto & Biólogos y salubristas contra el gasoducto
October 13, 2011	Primera Hora	29	Agencia defiende su evaluación a Vía Verde

October 13, 2011	Primera Hora	14-15	Urgente proteger el coquí llanero
October 13, 2011	Puerto Rico Daily Sun	3	Social workers oppose Vía Verde & renew commitment communities
October 14, 2011	El Nuevo Día	22	Renuevan contrato del gasoducto (expropiación)
October 17, 2011	El Nuevo Día	24	Comunidades unidas contra los desalojos
October 17, 2011	Puerto Rico Daily Sun	3	Communities demand end to evicting poor
October 17, 2011	Primera Hora	11	Marchan contra desalojos
October 18, 2011	Puerto Rico Daily Sun	5	Environmentalist: Fish and Wildlife enabling Vía Verde
October 19, 2011	Claridad	8	Gasoducto cada vez menos viable
October 21, 2011	El Nuevo Día	33	Fluyen más contratos para el gasoducto
October 24, 2011	Primera Hora	25	Casa Pueblo denuncia chantaje
October 24, 2011	Primera Hora	24	Nueva reglamentación EPA elevaría costo de la energía
October 27, 2011	Primera Hora	38	En pie de guerra en contra de la Vía Verde
October 27, 2011	Puerto Rico Daily Sun	3	Proposed PR Pipeline could face lawsuit
October 27, 2011	El Nuevo Día	10	El gasoducto tendría 20 válvulas de interconexión
October 28, 2011	Puerto Rico Daily Sun	3	Gutiérrez Federal permits for Via Verde unlikely
October 28, 2011	El Nuevo Día	4	En riesgo los humedales & Solo 26 familias serán expropiadas
November 1, 2011	El Vocero	21	Frenazo a la Vía Verde
November 1, 2011	El Nuevo Día	12	Serias reservas de la EPA sobre el gasoducto
November 2, 2011	El Nuevo Día	69	Columna El gasoducto: preocupaciones
November 2, 2011	Puerto Rico Daily Sun	3	EPA deals blow to Vía Verde Project
November 2, 2011	El Nuevo Día	25	La misma AEE se ha buscado este problema
November 2, 2011	El Vocero	8	Leen la cartilla a la AEE
November 3, 2011	El Nuevo Día	27	Accidentado viaje por el sur (protesta gasoducto)
November 4, 2011	El Nuevo Día	14	EPA mantienen su opinión negativa
November 7, 2011	El Nuevo Día	22	Cuestionan expropiaciones
November 7, 2011	Primera Hora	10	Férrea oposición al gasoducto
November 7, 2011	Puerto Rico Daily Sun	3	Opponents pledge to block Vía Verde
November 8, 2011	El Vocero	6	Estancada la Vía Verde
November 9, 2011	Puerto Rico Daily Sun	6	Free legal services to residents facing Vía Verde seizures

November 9, 2011	Claridad		EPA recomienda no aprobar Vía Verde
November 10, 2011	Puerto Rico Daily Sun	3	Vía Verde construction permits stuck
November 14, 2011	El Vocero	6	Luz roja a la Vía Verde
November 15, 2011	El Vocero	6	En blanco y negro <i>issue</i> de EPA con la Vía Verde
November 15, 2011	El Nuevo Día	16	La EPA insiste en los daños a los humedales
November 16, 2011	Claridad	8	Nace alianza contra gasoducto
November 17, 2011	El Nuevo Día	12	Baja el fervor por el gasoducto en la AEE
November 18, 2011	Puerto Rico Daily Sun	4	Vía Verde opponents reject vote on project
November 22, 2011	El Nuevo Día	4	Tras una tarifa más justa
November 22, 2011	El Nuevo Día	5	Surgen alternativas al gasoducto
November 23, 2011	Claridad	6	Abogados representarían gratis expropiaciones gasoducto
November 23, 2011	Claridad	4	Cuerpo de Ingenieros desmiente a Fortuño sobre expropiaciones
November 23, 2011	Claridad	7	Gasoducto amenazaría valle de Lajas
November 23, 2011	Claridad	5	Se desinfla el gasoducto
November 30, 2011	Puerto Rico Daily Sun	5	Corps issues Vía Verde draft impact statement
November 30, 2011	Primera Hora	30	Darían luz verde al gasoducto
November 30, 2011	El Nuevo Día	6	Gasoducto da un paso adelante
November 30, 2011	El Vocero	6	Se apunta una la Vía Verde
December 1, 2011	Primera Hora	16	Con buenos ojos para la Vía Verde
December 1, 2011	El Vocero	3	Vía Verde va
December 1, 2011	El Vocero	4	No habrá impacto significativo
December 1, 2011	El Vocero	6	Falta información
December 1, 2011	Puerto Rico Daily Sun	4	Gas pipeline one step closer to fruition
December 1, 2011	El Nuevo Día	14	Sin evidencia científica que sea riesgoso
December 2, 2011	El Nuevo Día	6	Aceptan que hay riesgo & Suavizan defensa de la tubería
December 2, 2011	Primera Hora	7	Vía Verde llena de irregularidad
December 2, 2011	El Vocero	4	USACE reclama potestad final
December 2, 2011	Primera Hora	6	Cuerpo de Ingenieros no tiene decisión final sobre tubo de gas
December 2, 2011	Puerto Rico Daily Sun	3	Corps of Engineers defends draft & Massol: Vía Verde misses goal of cheap energy
December 5, 2011	El Nuevo Día	20	Mutis del Gobierno por razones políticas
December 5, 2011	El Vocero	3-4	Los Tubos han costado un ojo de la cara

December 6, 2011	El Nuevo Día	51	Columna: El fantasma del gasoducto
December 6, 2011	El Nuevo Día	18	El gasoducto se apunta endoso (UPR)
December 6, 2011	Puerto Rico Daily Sun	3	Utuaod dig threatened by Vía Verde, UPR post says
December 7, 2011	El Vocero	36	Columna: Vía Verde no está muerta y propuesta no está escrita en piedra
December 7, 2011	Puerto Rico Daily Sun	5	Environmental group to challenge Army Corps report
December 7, 2011	Primera Hora	18	Exigen que el Cuerpo Ingenieros se exprese en español
December 7, 2011	Claridad	4	Casa Pueblo solicita a Ortiz desista gasoducto
December 7, 2011	Claridad	3	Editorial: El ingeniero Ortiz y el gasoducto
December 8, 2011	El Nuevo Día	17	Estudios retrasarán la construcción del gasoducto
December 8, 2011	El Nuevo Día	16	Nuevo reclamo de Gutiérrez al Ejercito de EEUU
December 12, 2011	Primera Hora	18	Vía Verde desvaloriza casas
December 13, 2011	Puerto Rico Daily Sun	5	Gas pipeline could devaluate properties
December 14, 2011	Claridad	4	Acción Cuerpo Ingenieros es sentencia de muerte para pueblo
December 14, 2011	Claridad	6	Opositores a gasoducto consideran demandar a Cuerpo de Ingenieros
December 14, 2011	Claridad	7	Intringuilis tras evaluación inicial del Cuerpo Ingenieros
December 15, 2011	Puerto Rico Daily Sun	4	Vía Verde comment period extended through January
December 15, 2011	El Nuevo Día	34	Rinde frutos halón de orejas de EPA
December 22, 2011	El Vocero	4	Más presión sobre la AEE
December 23, 2011	El Nuevo Día	23	Gas natural para la Central Aguirre
December 28, 2011	Puerto Rico Daily Sun	3	Army Corps issues Spanish version of VV report
December 28, 2011	Primera Hora	38	En español evaluación ambiental de VV
December 30, 2011	Puerto Rico Daily Sun	4	Residents of Toa Baja considers translation of Corps report a joke
January 2, 2012	El Vocero		Revés judicial (Expropiaciones)
January 3, 2012	El Vocero	21	Columna- 2012: Año del gasoducto
January 3, 2012	Puerto Rico Daily Sun	4	Environmentalist chalk up to court victory
January 3, 2012	El Nuevo Día	25	No cesan las expropiaciones
January 11, 2012	El Vocero	3	Doble costo de Vía Verde

January 12, 2012	El Vocero	3	Ordena buscar alternativas gasoducto
January 12, 2012	El Nuevo Día	12	El gasoducto tiene los días contados
January 13, 2012	El Nuevo Día	28	Millones perdidos en gasoductos
January 13, 2012	El Vocero	6	Sigue viva Vía Verde
January 14, 2012	El Nuevo Día	36	Sobre la mesa el futuro del gasoducto
January 15, 2012	El Nuevo Día	36	Gasoducto del norte, relato de un natimuerto
January 16, 2012	El Vocero	18	Columna Misión bajarle la luz a la gente
January 16, 2012	El Nuevo Día	42	Editorial: No mas ambigüedad con el gasoducto
January 19, 2012	El Nuevo Día	14	Aumenta cantidad de fallas en gasoducto
January 20, 2012	El Vocero	8	Otro no al gasoducto
January 20, 2012	El Nuevo Día	18	Mucho más caro el gasoducto
January 20, 2012	Puerto Rico Daily Sun	3	\$1.2billion Vía Verde environmental and monetary costs surpass alleged benefits
January 22, 2012	El Nuevo Día	10	La gran entrevista: Arturo Massol- La solución está en las comunidades
January 24, 2012	Primera Hora	24	Cocinan marcha contra la Vía Verde
January 24, 2012	El Nuevo Día	28	Convocan a marcha contra gasoducto
January 24, 2012	Puerto Rico Daily Sun	5	March slated to call for halt of VV