



SURREBUTTAL TESTIMONY of SEAN WIRTH

The ADSEIR Fails to Address the Substantial Changes in Project Footprint

- ▣ It relies on the contested FEIR/S.
- ▣ Theoretically reduced take is still take nonetheless.



This reasoning is a type of circular logic

The justification used for a new conclusion are as flawed or more flawed than the original conclusion that it is based on, but claims are made that the original conclusions now support the new conclusions.





AMM20 is the flawed underpinning of the ADSEIR/S for Sandhill Cranes

The first element of the noise and disturbance avoidance and minimization measures relates to timing and it is supposed to minimize construction during the crane wintering season, but only if it is “practicable in light of project schedule and logistical considerations.

“Practicable is hardly an assurance.



- ▣ The exhaustive qualifiers and non-binding language of this measure make it aspirational at best and as a result it provides very little help for dealing with the new impacts identified for Greater Sandhill Cranes in the ADSEIR/S.

To the extent feasible is no better

There is already construction planned in the winter crane season despite the first measure discussed, and there is no actual requirement that no new disturbances occur when the cranes are here, unless it is feasible. Once again we are left with non-binding language that is aspirational at best.



First two AMM20 measures are duds

- There is nothing in these two measures that provides any assurance that the impacts described in the FEIR/S were adequately addressed and that there will be no take of Greater Sandhill Cranes, and equally it provides nothing for the ADSEIR in that regard.





AMMs for Greater Sandhill Crane foraging

Not practicable to minimize loss through water conveyance facility design?

- The first measure here is also to the extent practicable and relies on water conveyance facility final design to “minimize pile driving and general construction related loss of Greater Sandhill Crane habitat.”



Not practicable to avoid impacts from moving northern shaft location on Staten Island?

It appears that the project proponents felt that it was not practicable to minimize loss of foraging when the northern shaft was moved further south on Staten island resulting in significant issues with sight lines for foraging and roosting cranes.



Limiting noise

But wasn't there supposed to be no winter construction in crane season?



Noise to be limited from one hour after sunrise to 1 hour before sunset for noises exceeding 50 dBA Leq

- The visual effects of noise barriers on Sandhill cranes are unknown, so all the other options to reduce noise will be implemented “before installing noise barriers in close proximity to crane habitat.

The Greater Sandhill Crane is a “no take” species, there would likely need to be an extraordinary amount of noise barriers to avoid “take” from birds flushing off of their forage sites due to construction related disturbance and hitting a power line during winter construction.



AMM20 is the bulwark of the Sandhill Crane impact strategy in the FEIR/S and the ADSEIR.



- AMM20 is flawed in its individual measures and as a package of measures.

Are sound barriers our only available solution?

Winter construction is planned and it is going to occur when the cranes are here.

- Daytime only noise limitations might help with roosting but that doesn't seem very relevant to foraging.

The noise barriers will have to do the heavy lifting of dealing with the construction disturbance noise and activity.

- Enhanced foraging opportunities will hopefully keep cranes in their wintering grounds and away from the loudest aspects of the construction.

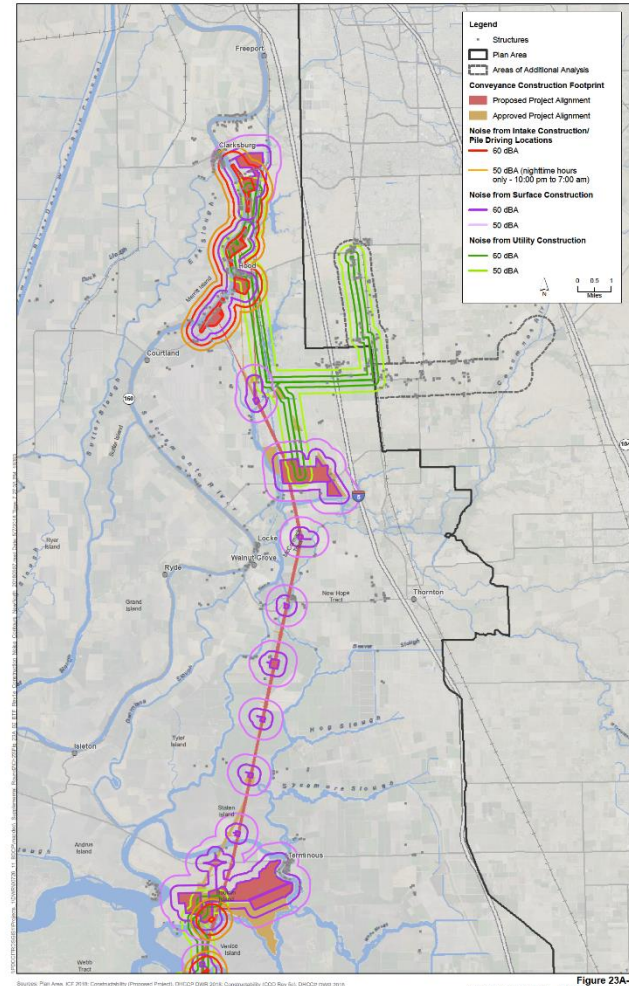
Staten Island as an example of what using sound barriers would like like.

- Staten Island performance standard same as design for conveyance facilities which includes the sound barriers.

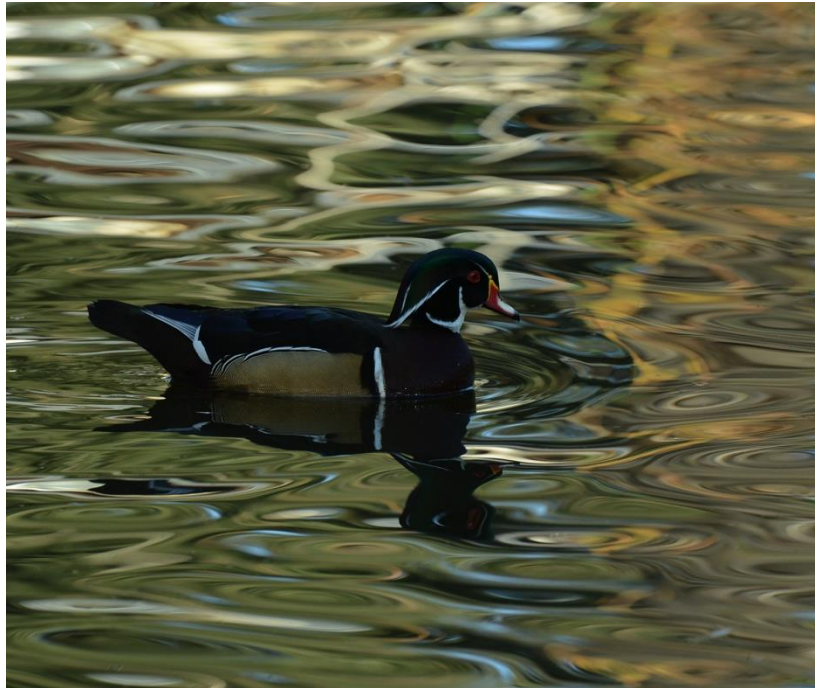


ADSEIR App. 23A

- The noise contours appear to extend over about a third of the island, but noise barriers could reduce that area.



Huge noise footprint on Staten and visual barriers could have same negative footprint due to visual impacts.



- As indicated in AMM20, the effectiveness of noise barriers is not known because of visual effects and a very visual bird like a Greater Sandhill Crane may stay well clear of the sound barriers.

“No take” is a high bar, an absolute.

- This illustrates the paradoxical nature of using noise barriers for a “no take” species. Because of the inherent risk of flushing birds due to construction related disturbance, it would be prudent to use the maximum amount of noise barriers where any winter construction is undertaken within the cane wintering area to avoid “take” of the species from flushing related injuries. But the maximum amount of visual barriers would potentially create their own hazards for wintering cranes and also result in “take”. Any effort that went only partway to address the construction disturbance impact would also risk take of Greater Sandhill Cranes.



The only absolute way to avoid construction impacts to Cranes would be to do no construction during the Crane wintering season, period.



- The sheer scale of the project and the no take status of three avian species results in an absolute (meaning that NO Greater Sandhill Crane, Black Rail, or White-tailed Kite could be taken). The unenforceability of many of the AMM's and the plan to do winter construction in the Crane wintering area essentially guarantees that "take" will occur due to construction disturbance.

For the northern most shaft on Staten Island this would mean no SOSC-86 work whatsoever on the shaft or in any of the safe haven work areas for the entirety of the Crane wintering season.

This standard was not met and the ADSEIR continues to rely on AMM20 and the legally challenged FEIR/S.



Bouldin Island, Lesser Sandhill Cranes SOSC-86 and Conclusion

