

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

August 20, 2009

The Honorable Brian Higgins
U.S. House of Representatives
Washington, DC 20515

Dear Representative Higgins:

Thank you for your March 26, 2009 letter regarding land preclearance for border crossings between Buffalo, New York, and Fort Erie, Ontario. Public Safety Canada Minister Peter Van Loan, Secretary of State Hillary Clinton, and Representatives Louise Slaughter and John McHugh have also asked me to personally look into the shared border management issue.

The United States and Canada negotiated in good faith on a pilot program for land preclearance between 2005 and 2007. Although our two governments were able to reach agreement on some key issues, negotiations ended in 2007 when a mutually acceptable framework could not be reached due to sovereignty issues for both the United States and Canada.

Implementing the proposed land preclearance framework would have required the United States to accept a lower level of security at a land preclearance crossing than at any other U.S. port of entry or required Canada to accept actions contrary to its Charter of Rights and Freedoms. U.S. Government concerns included limited U.S. law enforcement authority, the right of individuals to withdraw applications, limitations on fingerprint collection and sharing, and potential future interpretations of the Charter. The Department of Homeland Security (DHS) subsequently developed a concept that would have deployed U.S. Customs and Border Protection officers to Canada to perform primary inspection and reserved all authority to conduct secondary inspections on U.S. soil, but Canada was not interested in pursuing that option and suggested that attention shift to other efforts to facilitate low-risk commercial traffic.

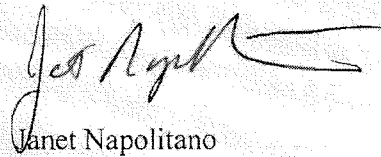
Since the beginning of the land preclearance negotiations, there have been significant improvements at the Peace Bridge that have facilitated travel and trade, and more are planned. These include an expanded number of truck lanes, a redesign of the plaza, the creation of a new pedestrian lane and expanded passenger processing terminal, the creation of a dedicated NEXUS lane and opening of a second enrollment center, and the installation of radio frequency identification (RFID) technology. Current plans to redesign the U.S. plaza at the Peace Bridge, long term plans to build a companion bridge, and the expected saturation of the traveling public with RFID-enabled Western Hemisphere Travel Initiative-compliant documents, are expected to address long-standing challenges of limited capacity and outdated infrastructure. These improvements will lead to the relief sought through land preclearance well before it would have been possible to implement land preclearance.

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Having reviewed the significant legal and sovereignty issues that were at the heart of the decision to terminate negotiations, as well as the current situation on the ground, I have decided DHS will not be reopening negotiations on land preclearance at the Peace Bridge. However, DHS will continue to engage with Canada on preclearance issues more generally and will continue to explore new ideas for creating additional efficiencies at our shared ports of entry. I welcome your input, as well as the input of public and private sector stakeholders, in these endeavors to further enhance the flow of legitimate trade and travel at the Peace Bridge and the U.S.-Canadian border more generally.

Thank you again for your interest in homeland security, and your commitment to the physical security and economic well-being of the United States and Canada. A similar response was sent to Representative Christopher J. Lee, who cosigned your letter. Should you need additional assistance, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,



Janet Napolitano