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United State Coast Guard, First District
Waterways Management Branch
Attention: Mr. Craig Lapiejko
408 Atlantic Avenue
Boston, MA 02110

**Re: Comments to Advance Notice of Proposed Rule Making
Expansion of Anchorage Grounds, Hudson River
Yonkers, NY to Kingston, NY
Docket No.: USCG-2016-0132**

Dear Mr. Lapiejko:

This firm represents the Historic Hudson River Towns, Inc. (“HHRT”) and submits this letter as public comment to be included in the record compiled during the Advance Notice of Proposed Rulemaking (“Proposed Rulemaking”) issued by the United States Coast Guard (“USCG”) in contemplation of expanding anchorage grounds in the Hudson River from the City of Yonkers to the City of Kingston under Docket No.: USCG-2016-0132. HHRT is strongly opposed to the proposal and, as set forth in more detail below, notes that both federal and state law require the USCG to undertake a thorough and meaningful analysis of state and local management requirements as codified in the state Coastal Management Plan (“CMP”) and further including but not limited to analyzing federally approved Local Waterfront Revitalization Programs (“LWRP”).

Federal law requires that the USCG participate in a coordinated review with local jurisdictions to certify that the Proposed Rulemaking is consistent with state and local policies regarding the protection, management, utilization and development of the natural resources. This

is including but not limited to satisfying a threshold question that the Proposed Rulemaking will not result in a significant adverse impact to the stated goals and implementation of those programs.

It is respectfully submitted that the process so far employed by the USCG has been woefully inadequate and has wholly failed to meet the applicable statutory and regulatory requirements governing the coastal and in-land waterways of the Hudson River.

Introduction

HHRT is a not-for-profit entity operating in the state of New York and duly organization under federal law. HHRT is a consortium of municipalities on both sides of the Hudson River with members ranging from the southern part of the river at the City of Yonkers to the City of Albany. The mission of the organization is to aid the Hudson Valley riverfront communities in their efforts to build, or rebuild, sustainable local economies through increased tourism, marketing, waterfront revitalization and downtown renewal ¹.

In 2012, National Geographic Magazine listed the Hudson River Valley as one of the top twenty tourist attractions in the world, due, in large part, to the picturesque setting encountered as one travels the river. According to Travel Hudson Valley.com, tourism in the Hudson Valley is a \$4.75 billion industry, supporting more than 81,000 direct jobs and generating \$318 million in local taxes. It is the fifth largest economic industry in New York State. HHRT is of the belief that the additional anchorage locations threaten the tourism industry and waterfront development in the Hudson Valley.

The Hudson River is the aesthetic driver in attracting tourists to the region and for many local jurisdictions it is viewed as the community's front door, its gateway to the larger community. Protecting the Hudson River as a natural resource is of vital importance to the tourism industry, the Proposed Rulemaking presents a direct threat to that economic lifeline. Having to endure rows of "parked" barges with stadium lighting, generators, noise and air pollution along miles of the Yonkers, Hastings-on-Hudson, Dobbs Ferry, Haverstraw, Montrose and Kingston waterfronts, as well as elsewhere in the Hudson, will destroy the irreplaceable aesthetic quality of the River and suffocate what so many elected officials, professionals and volunteers have worked so long and hard to achieve. What must not be ignored is the significant increase in the potential for an

¹ More information on HHRT and its mission can be found at <http://www.hudsonriver.com/about>

environmental catastrophe that would result from an accident that is unfortunately, is an occurrence more accurately described as “when” rather than “if”.

As part of this record, HHRT cites a letter dated September 1, 2016 to Rear Admiral Gerd Glang, Director of NOAA Office of Coast Survey, by the Hudson River Pilots Association requesting new bathymetric charts to assist with piloting tugs and barges outside the channel, where passing ships need to transit. The letter states, “The ships we pilot carry cargos such as scrap steel, grain, heavy lift project cargo, and the new player on the block, millions of barrels of Bakken crude oil being shipped out of the Port of Albany....” “The increasing frequency of these large ships transiting an unusually long, narrow channel (as well as barges/ATB’s carrying crude oil) creates difficult navigational challenges that we encounter on a daily basis.”

Those in support of this proposal have couched the above referenced request for additional anchorage sites as a means to make river travel safer for commercial shipping with an ancillary benefit of providing a greater degree of environmental protection. Also part of this record, Brian Vahey, Senior Manager of the Atlantic Region of the American Waterway Operators in an interview on FIOS Cable News, reiterated this point and then went on to claim that anchorages in themselves do not create more commercial traffic. The crux of the argument is that commercial barge and tug traffic is determined by the “demand” for the products being shipped. It is obvious that the USCG must review and analyze the accuracy of Mr. Vahey’s statements as this process unfolds.

An event that led to the instant proposal occurred in 2012 when the Global Partners terminal at the Port of Albany received a permit from the NYS Department of Environmental Conservation (“DEC”) to increase its oil handling capacity to 1.8 billion gallons per year, or approximately 118,000 barrels a day. Another entity benefiting from increased production is Buckeye Partners. It is asserted upon information and belief that within the last two years it has also received a permit to increase their capacity from 400 million gallons per year to 1.0 billion gallons per year, again relying on an already taxed rail and barge network to transport the crude out of the Port of Albany to domestic and international destination.

These and other changes in increases have allowed the Port of Albany to receive approximately 20-25% of the increased flow of Bakken crude production from North Dakota. In December 2015, the Federal Government lifted the ban on exporting crude oil, allowing the

products transported through the Port of Albany to be eligible for international sales. It is respectfully submitted that herein lies the fatal flaw in the traffic-catching the demand argument; the products being shipped on and along the Hudson are no longer driven solely by the demand for domestic consumption but rather by the lucrative international market. In other words, the Hudson River and the communities that line its banks are imperiled herein solely by an increase demand driven by the private sector at the expense of the public.

What must not happen as a result of the Proposed Rulemaking is the conversion of the Hudson River from unparalleled natural resource to a newly established oil-highway, floating infrastructure supporting the potentially unprecedented levels of transportation of crude product. The converting of this magnificent river into commercial infrastructure that destroys the jewel of local communities flies in the face of federal and state law governing the use and protection of these coastal and navigable waters. As a part of this rule making process, the USCG must, as a matter of black letter law, undertake an extensive review to answer the threshold question whether the impacts of this Proposed Rulemaking will violate the goals, purposes and consistency of the federally approved development plans and programs. Such a review will undoubtedly prove that this proposal is well outside the purposes and goals set forth in each and every LWRP.

Federal and State Requirements for Consistency Review

a. The Federal Coastal Zone Management Act requires the USCG to undertake a consistency review.

The Federal Coastal Zone Management Act (“CZMA”) was enacted in 1972 to provide a proactive means of consolidating and coordinating local, state and federal review of projects impacting the Nation’s coastal and related in-land waterways and natural resources. *See, generally, 16 U.S.C. § 1451, et seq.; and, see, <http://www.coast.noaa.gov/czm/consistency/>.* The CZMA provides a regulatory framework with the public purpose of protecting the national interest in the protection and sound development of waterfront resources. Under the auspices of the CZMA, eligible states may participate in the benefits provided by developing and adopting a CMP. The CMP is a comprehensive management plan setting forth the following: (a) a description of the uses that are subject to the management program, (b) the jurisdiction of various agencies and the enforceable policies of the CMP, (c) the geographical boundaries of the CMP, (d) the organization of the program, (e) and any all remaining coastal management concerns. The individual state

opting-in to the program will develop a CMP with the input from the federal government, local agencies, industry representatives, other private sector interests and of course, the public at-large. Then, a local jurisdiction is eligible for the development and adoption of an LWRP, in furtherance of the CMP but now existing as a stand-alone document and recognized under the CZMA and being afforded standing for consistency review *Citations omitted*.

The cornerstone of the incentive for state and local jurisdictions to join this program is the consistency review triggered with applicable federal actions. The benefit being that any action undertaken by a federal agency that may have coastal effects must be shown to be consistent, to the maximum extent practicable, with the federally approved state CMP or local LWRP. The consistency review is not limited to federal agencies, it includes any non-federal entity applying for federal authorizations and funding must show consistency with the state's CMP. During the process the lead state agency will coordinate the consistency review with federal agencies. *See, generally, CZMA, Federal Consistency Overview, Office for Coastal Management, (Revised January 2016)*. The federal consistency review serves an important public policy in that it is meant to foster cooperation among the relevant agencies, the private sector and the public at large, for the protection and careful management of irreplaceable coastal resources. *See, generally, CZMA, Federal Consistency Overview, Office for Coastal Management, (Revised January 2016)*.

Under the NY Executive Law, the State Environmental Quality Review Act and the implementing regulations, the State of New York adopted a statutory framework and a CMP making it eligible for inclusion under the CZMA. This enabled the local municipalities discussed below to adopt individual LWRPs as a more detailed and locally relevant method of implementing growth and revitalization of local waterfront initiatives.

b. Review under NYS CMP and LWRP will demonstrate that the Proposed Rulemaking is inconsistent with federally approved management plans.

In New York State, the state CMP and local LWRP programs fall under the jurisdiction of the NYS Department of State ("DOS"). It bears repeating that the state CMP and myriad LWRP's have been submitted, vetted and approved by federal agencies under the auspices of the CZMA consistency review process discussed herein. As such, in this instance with the Proposed Rulemaking, the USCG must submit to consistency review. This includes the statutory obligation

for the USCG to coordinate with DOS and all relevant municipalities and agencies, a mandatory consistency review of the LWRPs adopted by the following municipalities:

- The City of Saugerties,
- The City of Kingston,
- The Town of Esopus (including the Villages of Port Ewan and Big Rock Point,
- The City of Poughkeepsie,
- The City of Newburgh,
- The City of Beacon,
- The City of Peekskill,
- The Town of Stony Point,
- The Village of Croton on Hudson,
- The Village of Haverstraw,
- The Village of Ossining,
- The Village of Sleepy Hollow,
- The Village of Nyack,
- The Village of Piermont,
- The Village of Dobbs Ferry.

Once the USCG fulfills its obligation to undertake a consistency review of each and every LWRP, the potentially significant adverse environmental impact that undoubtedly will result from the conversion of one of the world's most impressive natural resources to water-borne crude oil transportation infrastructure, the Proposed Rulemaking will be shown to be in direct contravention of the goals set forth in each of the existing federally approved LWRPs and the state CMP.

c. Examples from adopted plans that will require consistency review.

The executive summary of the Village of Dobbs Ferry's LWRP states that this "[a] comprehensive plan for the preservation and development of the Village's historic waterfront and downtown areas." See, <http://www.docs.dos.ny.gov/opd-wrp/LWRP/.pdf> The plan sets forth the Village's goals that include but are not limited to the revitalization of its waterfront through new mixed use residential projects, enhancement of existing waterfront parks and greenspace, as well as increasing recreational access to the waterfront, including access to the river. *Id.*, generally. The

plan speaks to the protection and enhancement of existing habitats, species, vegetation and historically significant sites.

The Village, as with all of the implementing programs, has adopted zoning laws to encourage the implementation of the LWRP. This process has engaged and activated the local citizenry with the formation of volunteer committees and working groups. The Village's LWRP describes describes the river as most significant water source in the region. *Id.* The Village's LWRP is over two hundred pages long. The USCG must submit to a consistency review of that program.

Another example is found slightly north-river within the LWRP adopted by the Village of Sleepy Hollow. Here, as with Dobbs Ferry, Sleepy Hollow adopted zoning to implement its vision and describes the purpose of its LWRP as follows:

It is also the purpose of the LWRP and RF Zoning District to encourage and allow for a mix of uses on the waterfront with a consistent set of design standards to ensure a unified and comprehensively planned development that will function effectively and achieve a high standard of site planning and architectural design. Such a development for this area of the Village is envisioned to replicate an "old Hudson River waterfront community image" with architectural style and overall development layout to reflect that which prevailed in the Hudson River Valley prior to 1900. Both the LWRP and the RF Zoning District also call for a high level of public access (both physical and visual) to the waterfront.

See, <http://www.sleepyhollow.gov/sites/sleepyhollowfiles/LWRP>.

The LWRP adopted by the Village of Sleepy Hollow is over two hundred pages long. The USCG must undertake a consistency review of this program.

The Village of Haverstraw is using its LWRP to restore, revitalize and redevelop deteriorated and underutilized residential, commercial, industrial, cultural, recreational, and other uses. *See, http://www.docs.dos.ny.gov/opd-lwrp/LWRP/Haverstraw_V/Original/HaverstrawSIII.pdf.* The Village offers a good example of how an LWRP can strengthen not only waterfront uses, but also its usefulness as a tool to spread the revitalization in-land for the benefit of downtowns and local businesses. And the same as above, the USCG must undertake a consistency of the voluminous program adopted by the Village of Haverstraw.

The goals are not limited to municipalities in Westchester or Rockland counties. Reviewing the LWRP for the City of Beacon, one notices immediately that the goals and purpose are similar

to those set forth above. The LWRP for Beacon states that the purpose of the plan is “to promote economic development and revitalization for the City’s local waterfront revitalization area while assuring the protection and beneficial use of coastal resources therein.” See, http://www.cityofbeacon.org/Pdf/Local_Waterfron_Revitilazation_Plan.pdf

And as with the three previous examples, the City of Beacon’s plan acknowledges that state and federal agencies are required by law to be consistent with the local program’s policies and purposes. Beacon identifies myriad opportunities afforded by the implementation of the LWRP and, as above, demonstrates that it has engaged its citizenry, its industry and the elected officials alike n focusing on important issues including but not limited to changing the underutilization of the waterfront and adjacent land, enhancing recreation, improving economic vitality and improving water quality. This program must undergo a consistency review.

Similarities are found even farther north with a review of the City of Kingston’s LWRP. Here, Kingston repeats the purpose of the LWRP is to promote economic growth, revitalization, increased public access and cultural resources. See, http://www.kingston-ny.gov/filestorage/8463/10953/10960/City_of_Kingston_LWRP.pdf. The Kingston program speaks to underutilization, non-conforming or inappropriate uses, revitalization of existing neighborhoods, historic resources, increased tourism, an improved environment and enhanced recreation opportunities. As above, the adopted program is hundreds of pages long and requires that the USCG undertake a consistency review as applied to Kingston.


The examples set forth above comprise a tiny fraction of the thousands of pages comprising validly enacted LWRP’s north and south and on both sides of the Hudson River. Each program require a consistency review. As a best practice, it is well settled that a federal agency undertaking an action such as the one proposed herein, should contact the state and local entities at the earliest possible moment to ensure that the required coordination and consultation take place. Unfortunately, the USCG has so far declined to formally involve the DOS, DEC, or any local jurisdiction in this process.

Conclusion

It is respectfully submitted that the USCG has failed to meet federal and state requirements triggered by the Proposed Rulemaking. It must immediately commence a consistency review process and engage the DOS and every municipality in a coordinated, meaningful analysis of the CMP and LWRP.

Thank you for attention to this matter.

Very truly yours,

By: 
Mark W. Blanchard