Rear Admiral Linda Fagan  
Commander, First Coast Guard District  
408 Atlantic Avenue  
Boston, MA 02110  

Re: Hudson River Anchorages  

Dear Rear Admiral Fagan:  

Attached is a copy of the Consistency Review for the Local Waterfront Advisory Program (LWRP) prepared by the Town of Rhinebeck Conservation Advisory Board. This Local Waterfront Revitalization Program (LWRP) was adopted and approved in accordance with provisions of the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (NYS Executive Law, Article 42) and its implementing regulations (6 NYCRR 601). Federal concurrence on the incorporation of this Local Waterfront Revitalization Program into the New York State Coastal Management Program as a routine program change was obtained in accordance with provisions of the U.S. Coastal Zone Management Act of 1972 (P.L. 92-583), as amended, and its implementing regulations (15 CFR 923).

In preparation of this LWRP, the CAB took time to include the pertinent and applicable sections from the LWRP that apply to the proposal at establishing three anchorage areas within the Town of Rhinebeck and Hamlet of Rhinecliff. Additionally, the CAB has provided numerous comments from its knowledge of the areas, as well as from local, state and federal sources.

Should you need any additional information or explanations contained within this LWRP, please contact me at your convenience.
Thanking you for your time and attention to this matter, I remain,

Yours,

Ryan Dowden

Ryan Dowden
Chairperson, CAB
rydowden11@gmail.com
Town of Rhinebeck
Local Waterfront Revitalization Program

Waterfront Advisory Committee (WAC)

Conservation Advisory Board (CAB)

Local Waterfront Revitalization Program (LWRP)

November 3, 2016

Consistency Review for LWRP

Background

In June, 2016, the U. S. Coast Guard announced that it was soliciting comments and concerns from the public and local town and county governments regarding a proposal to establish a large number of anchorage grounds for commercial (fuel) vessels in the Hudson River – 43 berths or 42 long-term mooring berths (and one short-term), in 10 locations from Yonkers to Kingston. The Coast Guard is considering proposing to establish new anchorage grounds on the Hudson River. The anticipated users of the proposed anchorage grounds are commercial vessels and their attending tug, tow, or pushboats. The approximate depths of the proposed anchorage grounds range from 21 feet to 65 feet, which would accommodate a variety of vessel types and configurations, and would (according to proponents of the proposal) not interfere with the areas where vessels have historically transited the Hudson River.  

Of major concern for the Town of Rhinebeck are the proposed anchorage sites of Kingston Flats South (279 acres), just north of Rhinecliff on the east side of the river, Port Ewen (47 acres), just to the south of Rhinecliff on the west side of the River, and Big Rock Point (208 acres).  

acres), on the west side of the river across from the Wilderstein Historic site. (See following maps.)

**Proposed Anchorage Sites**

<table>
<thead>
<tr>
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<td>2. 41-56.78N 073-56.85W</td>
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<tr>
<th>Conditions</th>
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<td></td>
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<tr>
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<tr>
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<tr>
<td></td>
<td>1-1300’ Circle</td>
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Figure KHI.2: KINGSTON FLATS SOUTH

**Contemplated Kingston Flats South Anchorage Ground**

We are considering proposing that a Kingston Flats South Anchorage Ground would cover approximately 279 acres for up to three vessels with a draft of less than 22 feet for long term usage. It would provide a vessel swing radius of approximately 1,300 feet for one vessel and of

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approximately 1,800 feet for two vessels.3

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<tr>
<td>Stay</td>
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<td>Capacity</td>
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</table>

Figure KHL.1: PORT EWEN

Contemplated Port Ewen Anchorage Ground

We are considering proposing that a Port Ewen Anchorage Ground would cover approximately 47 acres for one vessel with a draft of less than 30 feet for short term usage. It would provide a vessel swing radius of approximately 1,200 feet.4

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4 Ibid.
Contemplated Big Rock Point Anchorage Ground

We are considering proposing that a Big Rock Point Anchorage Ground would cover approximately 208 acres for up to four vessels with a draft of less than 35 feet for long term usage. It would provide a vessel swing radius of approximately 1,200 feet for each vessel.  

WAC Comments

The Hudson River is one of fourteen American Heritage Rivers; a designation that requires special consideration of the town communities when proposals could adversely affect the riverfront areas. According to Executive Order 13061 of September 11, 1997, Federal Support of Community Efforts Along American Heritage Rivers:

Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. . . Local Federal facilities, to the extent permitted by law and consistent with the agencies’

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5 Ibid.
missions and resources, should provide public access, physical space, technical assistance, and other support for American Heritage River communities. 6

Some of the proposed anchorage grounds also fall within an area designated as the Hudson River National Historic Landmark District. In accordance with the National Historic Preservation Act, any federal action in such a district requires Section 106 review to minimize the effects on historic resources.

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Section II

INVENTORY AND ANALYSIS

Historically, the Town of Rhinebeck has been a rural area intermixed with more intensive residential and commercial activity focused in and around the Village of Rhinebeck and along the banks of the Hudson River to the north and south of the hamlet of Rhinecliff and to the local towns of Ulster County directly across from the Rhinecliff area.

WAC Comments

Like the Town of Rhinebeck, many localities along the Hudson have long-term waterfront goals, coastal revitalization policies, or park and historic preservation plans that would be negatively affected if these anchorages are made official. Many towns and communities have experienced the disastrous effects of oil spills in their rivers. A similar disaster in the proposed areas (Kingston Flats, Port Ewen and Big Rock Point) would practically destroy all the efforts and programs Rhinebeck has done at preserving the historic and environmental qualities of this area. Therefore, any proposed development or use of the Hudson River that would endanger such lands and waters would be an environmental, health and economic disaster, not only to the Rhinebeck area, but to towns and cities both to the north and south of Rhinecliff.

In the past five years, the Hudson River Valley has faced a new environmental threat. Prior to 2011, crude oil shipping was almost nonexistent in New York, but that has changed. Starting in 2011, billions of gallons of volatile crude oil have been shipped from the Bakken oil fields in North Dakota by rail to the Port of Albany. There are two terminals in the Port of Albany, operated by Global Partners and Buckeye Partners, which are allowed to transport 2.8 billion gallons a year from North Dakota by trains that bring it to the Port of Albany. From there, the oil is transported by rail or barge down through the Hudson Valley.

The proposal claims that such barges or ships would be empty and would utilize the designated anchorage areas as a cost effective means of being closer to the Port of Albany to cut down on travel time to the Port of Albany when called upon to take on oil shipments from trains and transport such down the river to refineries in New Jersey. Riverkeeper, which has come out strongly against the proposal, noted that on their way back down the river, the barges also possibly could be used to store crude oil until prices rebound, a practice that they say has occurred in other parts of the country. 7 [Emphasis added.]

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B. EXISTING LAND USE

11. Water-Dependent Uses

At this time, the primary, publicly available site for water-related use is the Town Landing in Rhinecliff, which the Town is improving to enhance water-dependent uses and which is presently used by cruise boats, recreational fishermen, boaters (including ice boaters) and by commercial shad fishermen. Fishermen also utilize the shores of the Hudson River throughout the waterfront area. Moreover, fishermen and duck hunters enter the Astor Cove and Vanderburgh Cove area under similar conditions.

WAC Comments

An increase in commercial traffic and anchorage sites would certainly endanger any current and planned expansion of recreational use of the Rhinecliff waterfront area. The proposed anchorage areas, north and south of the Rhinecliff waterfront area would create hazardous conditions for recreational boaters and fisherman. According to a report on Recreational Boaters Navigating Near Commercial Shipping Channels:

Large commercial vessels and tugs with tows are often restricted in their ability to maneuver- as stated in Rule 3 of the Inland Navigation Rules- and therefore have the right of way over all recreational boats including sailboats. [Emphasis added.] In accordance with Rule 9 of the Inland Navigation Rules, vessels less than 20 meters in length shall not cross ahead or otherwise impede the passage of any vessel that can safely navigate only within a narrow channel or fairway. Accordingly, recreational vessels should avoid commercial shipping channels and when- ever possible transit them as near to the outer limit of the channel or fairway that lies on the vessel’s starboard as is safe and practical. If it becomes necessary to cross a channel, check for other vessels and pass astern of oncoming vessels. Be aware that tugs often tow

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barges and other objects on long submerged towlines which are difficult to see and should never cross between a tug and its tow. [Emphasis added.]

Barges transporting oil products up and down the Hudson River carry two kinds of petroleum products, refined petroleum and heavy or crude petroleum. Refined petroleum, such as gasoline and diesel fuel, are labeled as “light” oils. Such petroleum products are very volatile and can ignite or explode. If spread out on the river water due to a spill or leak, can evaporate quickly over a few days. However, “light” petroleum is considered toxic and if exposed to such, can destroy animals and plant life. Such “light” petroleum is equally dangerous to humans if breathed or comes into contact with skin.

In contrast, very "heavy" oils (like bunker oils, which are used to fuel ships) look black and may be sticky for a time until they weather sufficiently, but even then they can persist in the environment for months or even years if not removed. While these oils can be very persistent, they are generally significantly less acutely toxic than lighter oils. Instead, the short-term threat from heavy oils comes from their ability to smother organisms whereas over the long-term, some chronic health effects like tumors may result in some organisms. [Emphasis added.]

The crude oil to be hauled on these barges and ships on the Hudson River is referred to as Bakken crude oil, which is not refined petroleum product. Any crude oil leakage or spill would be more environmentally damaging than a refined petroleum product spill and significantly harder to clean up in a tidal, fast current-moving river like the Hudson.

Additionally, according to John Lipscomb, a Riverkeeper patrol boat captain and manager of its Water Quality Sampling Program, “There are proposals afoot to transport an even thicker crude, known as tar sands crude, [Emphasis added.] on the Hudson River. This oil,” Lipscomb said, “does something the Bakken oil does not when spilled into waterways: It sinks.” [Emphasis added.]

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According to the National Wildlife Federation, tar sands oil is one of the dirtiest, costliest, and most destructive fuels in the world. Just extracting tar sands:

- Destroys enormous amounts of important ecosystems in the boreal forest;
- Produces lake-sized reservoirs of toxic waste;
- Releases toxic chemicals when it is refined in the U.S. and Canada;
- Emits significantly more global warming pollutants than fuels made from conventional oil.

Tar sands has also proven to be extremely dangerous, unpredictable and uncontrollable as evident in the following incidents:

- **Exxon Mobil Pegasus Pipeline (Mayflower, Arkansas)** - On March 29, 2013, an Exxon Mobile pipeline carrying tar sands oil from Canada burst in the middle of a residential area in Arkansas, sending thousands of gallons of heavy crude oil through neighborhood streets.

- **Enbridge Line 6B Pipeline (Kalamazoo River, Michigan)** - In the summer of 2010, a ruptured pipeline dumped more than 1 million gallons of raw tar sands oil into Michigan’s Kalamazoo River, poisoning people and wildlife for miles around. It is known as the largest freshwater tar sands oil spill in U.S. history.  

  The cost of cleaning up the massive Kalamazoo, Mich. spill was estimated at $1 billion, with experts questioning whether habitat in the area would ever be restored. A 2013 tar sands oil spill in a Mayflower, Ark. neighborhood forced residents to abandon their homes and made some residents sick by exposing the community to carcinogenic benzene.

The threat of an accidental oil spill or terrorist act resulting in polluting the quality of air or damaging the drinking water source and river wildlife, is made evident by a number of pipeline accidents since 2010. Keystone 1, a tar sands pipeline running through the United States from Alberta, Canada, was labeled as the safest pipeline in history when it was constructed. However, there were twelve spills in its first year of operation, more than any pipeline in U.S. history. Since that time, there have been damaging spillages at other tar sands pipelines.

Additional information regarding tar sand crude oil, provided by the Center for Biological Diversity, claims that Global Partners, owner of two terminals in the Port of Albany,


12 Ibid.

13 “U.S. Oil Shale and Tar Sands,” Center for Biological Diversity, found at http://biologicaldiversity.org/programs/public_land/energy/dirty_energy_development/oil_shale_and_tar_sands/
has applied for a permit to install seven oil heating units in the Albany plant to facilitate transfer of the tar sands crude from tanker cars to ships or barges. According to the Center for Biological Diversity:

Transport of tar sands on or along the Hudson would be particularly risky for the river’s aquatic life, as tar sands spilled in water sink to the bottom and is expensive and difficult to remove. Atlantic and shortnose sturgeons spawn in the riverbed of the Hudson, and young sturgeon find shelter in gravel-bottomed areas as they migrate downriver. Sea turtles that ply the mouth of the river in the warmer months forage on the river bottom, and could be killed by dredging, or their food sources could be damaged. 14

Aside from the environmental issues being raised as to the establishment of anchorages in the Hudson River for these oil barges, there are other concerns that go beyond the Hudson River area. Regarding the production of tar sands, according to the Canadian Association of Petroleum producers, “Producing 1.8 million barrels per day of tar sands oil resulted in the emissions of some 47.1 million metric tons of CO2-equivalent in 2011, up nearly 2 percent from the year before and still growing . . . Projects either approved or under construction would expand tar sands production to over five million barrels per day by 2030.” 15 The future, long term effect of such production estimates would increase the quantity of this crude oil to be transported and anchored at the proposed sites on the Hudson River.

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12. Water-Enhanced Uses

All properties not dependent on the water, but located adjacent to, and with views of, the Hudson River or any of its tributaries can be considered water-enhanced uses. The largest percentage of land adjacent to the River remains in estate properties. Most of the estates are currently in residential use. In addition, some commercial enterprises in Rhinecliff, including restaurants, an inn and small offices, could be considered water-enhanced, especially since such businesses do capitalize on their riverfront views. Other activities, such as picnicking at the Town Dock, also are enhanced by waterfront location and views.

WAC Comments

The proposed four anchorage sites off Big Rock Point are located opposite the historic Wilderstein Estate. The scenic view of the Hudson River and opposite shoreline in Ulster County would be visibly marred by allowing fuel barges to anchor at this site. Any oil/fuel spillage could seriously affect the fish and wildlife that use the Vanderbourgh Cove, located to

14 Ibid.

the south of the Wilderstein Estate. Vanderburgh Cove is important to spawning and feeding fish, as well as a feeding area for migrating ducks and osprey. It is used by resting marsh wrens, herons, and egrets in late summer. The effects on the ecosystem of a crude or tar sands oil spill could last up to twenty years. “It can affect the ecosystem balance by removing top predators (marine mammals and birds), which can lead to imbalances and issues amongst certain species.”

Since some of the proposed anchorage grounds also fall within an area designated as the Hudson River National Historic Landmark District, any proposal that could affect properties within that district would need the following review as part of the National Historic Preservation Act.

According to United States Code of Federal Regulations (36 CFR 800.4 - Identification of historic properties), any lead agency having the authority to review a proposal in this case will consult with SHPO/THPO, and review the following:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties.¹⁷

According to United States Code of Federal Regulations (36 CFR 800.10 - Special requirements for protecting National Historic Landmarks), the lead agency will also adhere to the following:

(a) Statutory requirement. Section 110 (f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth


¹⁷ The Legal Information Institute (LII), found at https://www.law.cornell.edu/cfr/text/36/800.10.
in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section. [Emphasis added.]

(b) Resolution of adverse effects. The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) Involvement of the Secretary. The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) Report of outcome. When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking. 18

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13. Analysis of Existing Land Use

b. Preservation of Scenic and Historic Structures and Scenic Views.

It is desirable to maintain the scenic and historic qualities of the estates as they are viewed from major roads and from the River, or from the western shore of the Hudson River. [Emphasis added.] Thus, preservation and restoration of existing historic structures, siting of development relative to roads and to River frontage, and preservation of natural features along the roads and the riverside must be important planning considerations.

WAC Comments

Again, the location of the proposed mooring site at Big Rock Point is located opposite the historic Wilderstein Estate. The scenic view of the Hudson River on either shore, east of west would be marred by the anchoring of such barges.

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D. ENVIRONMENTAL FEATURES

3. The River

Tidal freshwater, which extends from Troy south generally to Hyde Park, is available in Rhinebeck. The River, classified "A" by the NYS Department of Environmental Conservation, in fact, serves as the source for the water supply system serving the Village of Rhinebeck, the

18 Ibid.
hamlet of Rhinecliff, and other properties in the vicinity. It also serves as a water source for the Port Ewen area of the Town of Esopus on the west bank.

The deep holes off Sturgeon Point serve as a winter habitat area for much of the resident population of the short-nose sturgeon (an endangered species); the River also serves as a spawning area for the American shad. Two deep water areas within the Town portion of the River have been categorized as significant habitat areas by the New York Department of Environmental Conservation. [Emphasis added.]

WAC Comments

The cargo of greatest risk to the Hudson River and its environment is petroleum. For decades, refined petroleum products like gasoline, heating oil and diesel have traveled north to the Port of Albany. Starting in 2012, however, crude oil produced in North Dakota, referred to as Bakken crude oil, began arriving by train down the Champlain and Mohawk Valleys. Any oil that does not continue south by rail is loaded onto barges and ships and carried south along the Hudson to refineries in New Jersey. Accidents, brought about through derailment of freight trains carrying crude oil, have occurred in the United States, resulting in deaths, along with millions of dollars in both economic and environmental damage.

While supporters of the anchorage sites claim that the use of the proposed anchorages will allow for safer transport of petroleum products down the Hudson River, the increased volume of such products in the narrow waterways north of Haverstraw Bay to Albany can pose a greater risk of an oil spill due to the fact that the tides in Hudson River are affected by freshets, winds, and droughts. Because of these variables, the predictions given in the Tide Tables for points above George Washington Bridge are based upon averages for the 6-month period between the months of May through to October, when the freshwater discharge is at a minimum. 19 Tugboat captains or river piolets, unfamiliar with such variables, or due to a sudden change in any of the variables, presents a greater risk of an accident leading to a major oil spill and habitat destruction.

The CAB/WAC joins those opposed to this proposal due to the fact that an increase in the amount of oil transported or stored at the proposed forty-three sites creates a greater risk of accidents and oil spills. Even with the greatest recovery efforts, large amounts of spilled crude oil in a tidal, moving river, would not be recovered, resulting in devastating effects such would have on the Hudson River environment and source of water for towns and cities.

There is also the issue(s) regarding blindingly bright lights and exceedingly loud noise from generators. Until the fall of 2015, northbound crude oil tugs and barges would sometimes anchor between Rhinecliff and Port Ewen waiting for open loading terminals in Albany. Before 2012, that reach of the river was quiet, dark and serene at night. But stadium lighting and

generator noise on the barges ended that. 20 The truth is that petroleum barges have generators mounted on deck that power equipment such as fuel transfer pumps and deck lighting. Residents report hearing barge generators in their living rooms in the summer when windows and doors are open. 21

According to United States Code of Federal Regulations (33 CFR 83.30 - Anchored vessels and vessels aground (Rule 30), any vessel using the proposed anchorage areas would have to comply with the following codes: 22

(a) A vessel at anchor shall exhibit where it can best be seen:

(i) In the fore part, an all-round white light or one ball;
(ii) At or near the stern and at a lower level than the light prescribed in paragraph (i) of this Rule, an all-round white light.

(c) A vessel at anchor may, and a vessel of 100 meters or more in length shall, also use the available working or equivalent lights to illuminate her decks. [Emphasis added.]

(h) The following barges shall display at night and if practicable in periods of restricted visibility the lights described in paragraph (i) of this Rule:

(i) Every barge projecting into a buoyed or restricted channel.
(ii) Every barge so moored that it reduces the available navigable width of any channel to less than 80 meters.
(iii) Barges moored in groups more than two barges wide or to a maximum width of over 25 meters.
(iv) Every barge not moored parallel to the bank or dock.

(i) Barges described in paragraph (h) of this Rule shall carry two unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile and meeting the technical requirements as prescribed in Annex I (33 CFR part 84).

(j) A barge or group of barges at anchor or made fast to one or more mooring buoys or other similar device, in lieu of the provisions of this Rule, may carry unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile that meet the requirements of Annex I (33 CFR part 84) and shall be arranged as follows:

(i) Any barge that projects from a group formation, shall be lighted on its outboard corners.
(ii) On a single barge moored in water where other vessels normally navigate on both

20 “Six Things You Should Know About the Proposed Hudson River Anchorages,” Riverkeeper, found at http://www.riverkeeper.org/patrol/6-things-know-proposed-hudson-river-anchorages.


22 Legal Information Institute (LII), found at https://www.law.cornell.edu/cfr/text/33/83.30.
sides of the barge, lights shall be placed to mark the corner extremities of the barge.

(iii) On barges moored in group formation, moored in water where other vessels normally navigate on both sides of the group, lights shall be placed to mark the corner extremities of the group.

Additionally, according to United States Code of Federal Regulations (3 CFR 83.22 - Visibility of lights (Rule 22), any anchored vessels and vessels any vessel using the proposed anchorage areas would have to comply with the following codes: 23

The lights prescribed in these Rules (Subpart C) shall have an intensity as specified in Annex I to these Rules (33 CFR part 84), so as to be visible at the following minimum ranges:

(a) In a vessel of 50 meters or more in length:

(i) A masthead light, 6 miles;
(ii) A sidelight, 3 miles;
(iii) A sternlight, 3 miles;
(iv) A towing light, 3 miles;
(v) A white, red, green or yellow all-round light, 3 miles; and
(vi) A special flashing light, 2 miles.

Due to a number of deadly boating accidents at the construction area of the new Tappan Zee Bridge, insurance companies might mandate that the number of lights illuminating the area of the anchored barges be increased in order to diminish any foreseeability issues and liability on the part of the barge owners. This foreseeable increase in the illumination of these barges, along with the mandated Federal regulatory codes regarding lighting, will increase the illumination of the anchorage areas and nearby residential areas. It would also exacerbate any issues interfering with nesting and migratory wildlife.

Located along the banks of the Hudson, just north of Rhinecliff at 76 Slate Dock Rd., is the Village of Rhinebeck water treatment plant. The water treatment plant serves 5300 people through 1706 accounts. The total water produced in 2015 was 159 million gallons. The daily average of water treated and pumped into the distribution system is 436,000 gallons per day. The highest single day was August 10, 2015 at 679,000 gallons. The amount of water delivered to customers was 123 million gallons. Total water not billed but accounted for was 15 million gallons. This leaves an unaccounted total of 21 million gallons. 24

23 Legal Information Institute (LII) found at https://www.law.cornell.edu/cfr/text/33/83.22.

5. Freshwater Wetlands Affected by Tides

These habitats are among the Town's most significant scenic and biological resources. The wetlands are found in the natural and railroad-impacted coves of the Town, supporting extensive and varied vegetation and animal life.

In his 1978 report Hudson River East Bank Natural Areas, Clermont to Norrie, Erik Kiviat, Executive Director of Hudsonia, lists the following cove areas from north to south within the Town: Mandara South Cove, Matambeson Cove, Clifton Point Cove, Astor Cove, Slate Dock Cove North, Slate Dock Cove Middle, Long Cove, Cattail Cove, Stream Cove, Suckley Cove and Vanderburgh Cove. **Of the several coves in the Town, Astor Cove, Suckley Cove and Vanderburgh Cove are considered the most ecologically significant.** [Emphasis added.]

The New York State Department of State has designated the Vanderburgh Cove and Shallows as a Significant Fish and Wildlife Habitat. The Dutchess County Environmental Management Council (EMC) has also named Astor Cove, the Vanderburgh Cove with surrounding ridges, Jones Island, Suckley Cove, and nearby shallows of the Hudson River as a Significant Natural Area. Astor Cove, a habitat which also supports extensive fish and birdlife, is particularly important because its stand of wild rice provides a valuable feeding area for ducks.

10. Significant Fish and Wildlife Habitats

Four of the thirty-nine Significant Coastal Fish and Wildlife Habitats within the Hudson Region lie within or adjacent to the Rhinebeck LWRA. These important habitats were designated by the Department of State Division of Coastal Resources.

a. Vanderburgh Cove and Shallows. Vanderburgh Cove and Shallows is located on the east side of the Hudson River, approximately four miles south of the Village of Rhinebeck, in the Towns of Rhinebeck and Hyde Park, Dutchess County (7.5' Quadrangles: Kingston East, N.Y.; and Hyde Park, N.Y.). Vanderburgh Cove is an approximate 100 acres, shallow, (less than 10 feet deep at mean low water), tidal, freshwater bay, separated from the open river by the Conrail tracks and land. The cove is connected by hydrology to the River via two bridges under the railroad tracks, and contains dense beds of water chestnut, wild celery, Eurasian water milfoil, pickerel weed, and yellow pond lily. Emergent marsh vegetation (e.g., river bulrush and cattail) is present only around the margin of Vanderburgh Cove. Outside of the railroad is an approximate 1,000-foot-wide extension of the shallow water area in Vanderburgh Cove,
encompassing approximately 300 acres. The latter area is predominantly sub-tidal, with a silt substrate and beds of aquatic vegetation. These shallows are located adjacent to a natural deep water channel in the Hudson River, so the area is not subject to habitat disturbance from periodic maintenance dredging. The land area bordering Vanderburgh Cove and Shallows is predominantly deciduous forest on moderate to steep slopes. However, since the 1970's, new residential development has been increasing in adjacent areas.

Vanderburgh Cove and Shallows is one of the largest contiguous areas of shallow, freshwater, sub-tidal flats in Dutchess County. Areas such as this are extremely valuable fish and wildlife habitats. However, the importance of this area is limited somewhat by its small size relative to similar habitats elsewhere in the Hudson River, and possibly by the abundance of water chestnut within Vanderburgh Cove. Suckley Cove is a high quality portion of the habitat, with minimal human disturbance.

Vanderburgh Cove and Shallows is a productive littoral area located near the lowest reaches of shallow freshwater in the Hudson River, which is a critical area for many fish species. The shallow, sub-tidal beds provide spawning, nursery, and feeding habitats for anadromous species such as striped bass, American shad, and white perch, and for a variety of resident freshwater species, such as largemouth bass, carp, brown bullhead, yellow perch, and shiners. The Landsman Kill and Fallsburg Creek also attract spawning runs of smelt, alewife, and blue-back herring, although the extent of reproduction has not been documented. Concentrations of spawning anadromous fish generally occur in the area between mid-March and July, with substantial numbers of young fish remaining well into the fall (October-November). Vanderburgh Cove and Shallows may also serve as a feeding area for populations of short-nose sturgeon wintering in the adjacent deep water channel. The abundant fisheries resources in Vanderburgh Cove and Shallows provide valuable opportunities for recreational (and possibly commercial) fishing, attracting anglers from throughout

b. Kingston Deepwater Habitat. The Kingston Deepwater Habitat encompasses a six-mile stretch of the Hudson River extending approximately from the City of Kingston in Ulster County and the hamlet of Rhinecliff in Dutchess County south to the southern boundary of the Margaret Lewis Norrie State Park in Dutchess County. The area is located in the Towns of Rhinebeck and Hyde Park in Dutchess County and the Town of Esopus in Ulster County (U.S.G.S. 7.5' Quadrangles: Hyde Park, N.Y. and Kingston East, N.Y.). The significant habitat area is a nearly continuous river bottom trench, where water depths of 50 feet or greater occur.

The Kingston Deepwater Habitat is the northern-most extensive section of deep water habitat in the Hudson River. Deepwater estuaries such as this are rare in the eastern United States and the Hudson River is the only river in New York State that contains these ecosystems.

Deep water areas trap pockets of denser saline water, providing wintering habitat for short-nose sturgeon and supporting a diversity of marine species in the Hudson River. Recent fisheries investigations of the Hudson River in this area indicate spawning, as well as wintering of sturgeon in the Kingston Deepwater Habitat area. . . The majority of both Atlantic and short-nose sturgeon taken for age-growth analysis during the 1936 biological survey came from
Rhinecliff and Port Ewen. During the spring spawning run of shad, commercial drift netting takes place in the area.

c. The Flats. The Flats is located in the middle of the Hudson River, roughly between the hamlet of Barrytown and the City of Kingston, in the Town of Ulster and City of Kingston, Ulster County, and the Towns of Red Hook and Rhinebeck, Dutchess County. The fish and wildlife habitat is an approximate four and one-half mile long underwater ridge, most of which is shallow (less than 10 feet deep at mean low water), fresh-water, inter-tidal mud flats, and sub-tidal aquatic beds (predominantly wild celery and Eurasian water milfoil). The Flats is bordered to the west by the Hudson River navigation channel, resulting in potential habitat disturbance from periodic maintenance dredging.

The Flats is one of the largest contiguous areas of shallow, freshwater, tidal flats in the Hudson River. Areas such as this are extremely valuable fish and wildlife habitats, and are not found in other coastal regions of New York State.

The Flats is one of the primary Hudson River spawning grounds for American shad. Between mid-March and June, adult shad concentrate between Kingston and Coxsackie, and spawning occurs primarily on extensive flats, shoals, sandbars, and shallow areas near the mouths of tributary creeks. These fish may move into adjacent deeper areas while tidal currents are strong. Reproduction by shad in the Flats area supports much of the commercial gillnet fishery for this species on the Hudson River, which is one of the largest such fisheries in the U.S. The importance of the Flats is highlighted by the fact that it is the only area on the Hudson where commercial fishing is prohibited during the shad spawning period. The Flats also serves as spawning, nursery, and feeding habitat for striped bass, white perch, and various resident freshwater species. Concentrations of the early developmental stages of several anadromous species occur in this area.

Short-nose sturgeon and Atlantic sturgeon may also use the area to feed (especially during slack water in late spring and summer), or as a resting area during river-wide movements, or as a slightly preferable habitat when water temperatures are warmer than in adjacent deeper waters (i.e., in early spring and fall). High catches of short-nose sturgeon occur in channels adjoining the Flats, particularly on the east side. The abundant fisheries resources in this area provide an excellent recreational fishery, attracting anglers from nearby portions of Ulster and Dutchess Counties.

Significant concentrations of waterfowl also occur in The Flats area. Dense growths of wild celery provide valuable feeding areas for many species of ducks, and are especially important during spring (March-April) and fall (mid-September-- early December) migrations. Concentrations of diving ducks, such as redhead, canvasback, common goldeneye, and mergansers, are regularly found out in the Flats. During calm weather, this open river area is also used by dabbling ducks, including mallard, black duck and blue-winged teal, and provides a refuge from hunting pressure in shoreline areas.

WAC Comments
Several of the proposed anchorages in the Hudson River are in areas relied upon by sturgeon for their survival. Both species of Hudson River sturgeon – Atlantic and shortnose – are on the endangered species list.

The river off Hyde Park, for example, may have the highest concentration of Atlantic sturgeon on the entire Eastern seaboard at spawning time in early summer. The area off Kingston, and “Sturgeon Point” across the way in Rhinecliff – is an important area for shortnose sturgeon. And both species of sturgeon overwinter near the proposed anchorages at Tompkins Cove and Montrose.25

Anchors and anchor chains scar and disturb the river bottom, where sturgeon spawn and feed and rest. The environmental impact caused by a barge or ship’s anchors and chains (ground tackle) dragging across the river’s bottom is increased due to movements caused by the changes in tides in the Hudson. This “scouring” effect may cause problems for the habitat area for the bottom-dwelling Atlantic and shortnose sturgeon. Riverkeeper has been working with researchers using sonar to survey sturgeon grounds. According to John Lipscomb, Captain of the Riverkeeper Patrol:

“The researchers can see that the anchor scours off of Port Ewen, which was being used illegally until October 2015, are still there, virtually unchanged,” Lipscomb said, “The effect doesn’t quickly go away.”

“What is unknown is whether disrupting the river bottom has any negative impact on the sturgeon. “What’s required here, is before we start using the river to park barges, is we have to find out how those anchor scours affect endangered species,” said Lipscomb. “Both Atlantic and shortnose sturgeon are endangered, and under the Endangered Species Act, you can’t negatively affect their habitat.”26

In a letter by Karl Coplan, Esq., Co-Director, Pace Environmental Litigation Clinic, Inc., regarding Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY Docket Number USCG–2016–0132, Mr. Coplan wrote:

One significant concern is that increased anchoring of large vessels with heavy ground tackle would cause environmental damage to river bottom habitat. Although the Federal Register announcement suggests that there are currently no anchorage grounds in the stretch of the Hudson from Yonkers to Kingston, in fact there is an anchorage at Hyde Park that was designated in 1999. From early 2015 through present, researchers have been imaging the bottom sediments at both the


existing approved Hyde Park Anchorage and the area between Port Ewen and Sturgeon Point that was used as an unauthorized anchorage until November 2015. Ongoing population surveys and historical fisheries data prove without doubt that both anchorage areas are used by significant concentrations of federally endangered Atlantic Sturgeon and Shortnose Sturgeon. Side scan imaging shows that “scour” from ground tackle is extensive and that the area off Port Ewen has not been used since late 2015 and ground tackle scour is still extensive today. 

It is essential that the scientific research and ecological restoration efforts currently underway are fully explored and discussed publicly before the Coast Guard considers any new anchorage grounds for designation.

Before any new anchorages are approved, researchers must determine definitively whether the disturbance to sturgeon habitat is detrimental or not.

Additionally, any oil spill, whether it be light or crude oil, would have potential harmful effects on aquatic fish and wildlife existing in the Hudson, as well as in the adjacent coves.

Oil destroys the insulating ability of fur-bearing mammals, and the water repellency of a bird's feathers, thus exposing these creatures to the harsh elements. Without the ability to repel water and insulate from the cold water, birds and mammals will die from hypothermia. Many birds and animals also ingest oil when they try to clean themselves, which can poison them.

Fish and shellfish may not be exposed immediately, but can come into contact with oil if it is mixed into the water column. When exposed to oil, adult fish may experience reduced growth, enlarged livers, changes in heart and respiration rates, fin erosion, and reproduction impairment. Oil also adversely affects eggs and larval survival.

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13. Analysis of Environmental Features

a. **Protection of Ground and Surface Water.** Since the Hudson River serves as a source of drinking water for some communities, including the Village of Rhinebeck water system, as well as an important ecological habitat, all efforts to protect and improve the quality of the water should be encouraged and activities which could threaten the quality of the water should be discouraged. [Emphasis added.]

b. **Protection of Environmentally Sensitive Areas.** Environmentally sensitive areas of the Town need to be retained and protected from alteration and pollution.


Among the Town's most valuable natural resources are the tidal coves and wetlands, particularly the Astor Cove and the Vanderburgh and Suckley Cove areas.

c. Impact Assessments for Significant Habitat Areas. Impact assessments are essential in dealing with the following significant habitat areas either within or adjacent to the Rhinebeck LWRA:

Vanderburgh Cove and Shallows - Any activity that would substantially degrade water quality in Vanderburgh Cove and Shallows could affect the biological productivity of this area. All species of fish and wildlife may be adversely affected by water pollution, such as chemical contamination (including food chain effects), oil spills, [Emphasis added.] excessive turbidity or sedimentation, and waste disposal. Continued efforts should be made to improve water quality in the Hudson River, which is primarily dependent upon controlling discharges from combined sewer overflows, industrial point sources, and ships. [Emphasis added.] resources of the area.

Any physical disturbance of the habitat, through dredging or filling (including dredge spoil disposal), would result in a direct loss of valuable habitat area; any dredging activities needed to maintain the existing channel should be scheduled in mid to late summer to minimize potential impacts on most aquatic organisms and migratory birds. Thermal discharges, depending on time of year, may have variable effects on use of the area by aquatic species and survival is often directly affected by water temperature.

Kingston Deepwater Habitat. Activities that would affect the water quality, temperature, turbidity or freshwater to saline distribution in the deep water portions of the River may adversely impact on the estuarine community. Major reduction in overall depths within the deep water trench may also have adverse effects on the sturgeon spawning, wintering, and continued use of the habitat. Deposition of dredged material or natural sediments, especially if contaminated, may degrade the quality of this unusual area.

The Flats. Any activity that would substantially degrade water quality in the Flats could affect the biological productivity of this area. All species of fish and wildlife may be adversely affected by water pollution, such as chemical contamination (including food chain effects), oil spills, [Emphasis added.] excessive turbidity or sedimentation, and waste disposal. Oil and other hazardous substance spills are an especially significant threat to this area, because the biological activity of tidal flats is concentrated at the soil surface, much of which may be directly exposed to these pollutants.

G. HISTORIC AND SCENIC FEATURES

The Mid-Hudson Historic Shorelands Scenic District, so designated, includes not only the Sixteen Mile Historic District and the Clermont Historic District, but also the River landings and pastoral lands connecting the River and the major State road paralleling the River.
H. PUBLIC AND FRANCHISE UTILITIES

1. Water Supply - The municipal water supply system for the Village of Rhinebeck, the hamlet of Rhinecliff and properties along Route 308 and a portion of River Road currently utilizes water from the Hudson River. The treatment plant is located on a 10.7-acre site on Slate Dock Road just off Rhinecliff Road.

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SECTION III

LOCAL WATERFRONT REVITALIZATION PROGRAM POLICIES

POLICY 1 - RESTORE, REVITALIZE, AND REDEVELOP DETERIORATED AND UNDERUTILIZED WATERFRONT AREAS FOR COMMERCIAL, INDUSTRIAL, CULTURAL, RECREATIONAL, AND OTHER COMPATIBLE USES.

The following guidelines will be used in evaluating development or redevelopment actions:

1. Along the shoreline of the Town, priority should be given to uses which are compatible with the historic and scenic character of the area and which are dependent on a location adjacent to the water;
2. The action should enhance existing and anticipated uses;

5. The action should have the potential to improve the existing economic base of the community and, at a minimum, must not jeopardize this base;
6. The action should improve adjacent and upland views of the water and shoreline, and, at a minimum, must not affect these views in an insensitive manner; and
7. The action should have the potential or improve the potential for multiple uses of the site (particularly recreational uses).

FISH AND WILDLIFE POLICIES

POLICY 7 - SIGNIFICANT COASTAL FISH AND WILDLIFE HABITATS, AS IDENTIFIED ON THE COASTAL AREA MAP, SHALL BE PROTECTED, PRESERVED, AND WHERE PRACTICABLE, RESTORED SO AS TO MAINTAIN THEIR VIABILITY AS HABITATS.

Habitat protection is recognized as fundamental to assuring the survival of fish and wildlife populations. Certain habitats are critical to the maintenance of a given population and, therefore, merit special protection. Such habitats exhibit one or more of the following characteristics: (1)
are essential to the survival of a large portion of a particular fish or wildlife population (e.g. feeding grounds, nursery areas); (2) support populations of rare and endangered species; (3) are found at a very low frequency within a coastal region; (4) support fish and wildlife populations having significant commercial and/or recreational value; and (5) would be difficult or impossible to replace.

The specific habitat impairment test that must be met is as follows:

**In order to protect and preserve a significant habitat, land and water uses or development shall not be undertaken if such actions would either destroy the habitat or significantly impair the viability of a habitat.** [Emphasis added.]

For this purpose, "habitat destruction" is defined as the loss of fish or wildlife use through direct physical alteration, disturbance, or pollution of a designated area, or through the indirect effects of these actions on a designated area. Habitat destruction may be indicated by changes in vegetation, substrate, or hydrology, or increases in runoff, erosion, sedimentation, or pollutants.

"Significant impairment" is defined as reduction in vital resources (e.g., food, shelter, living space) or change in environmental conditions (e.g., temperature, substrate, salinity) beyond the tolerance range of an organism. Indicators of a significantly impaired habitat focus on ecological alterations and may include, but are not limited to, reduced carrying capacity, changes in community structure (food chain relationships, species diversity), reduced productivity and/or increased incidence of disease and mortality.

Significant coastal fish and wildlife habitats are evaluated, designated and mapped pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law of New York, Article 42). The New York State Department of Environmental Conservation (DEC) evaluates the significance of coastal fish and wildlife habitats, and following a recommendation from the DEC, the Department of State designates and maps specific areas, three of which (Vanderburgh Cove and Shallows, Kingston Deepwater Habitat, and The Flats) lie within the Rhinebeck LWRA and are subject of below Policies 7A, 7B and 7C, with a fourth, Rondout Creek Habitat, found along the opposite westerly shore of the Hudson within the City of Kingston and Town of Ulster. [Emphasis added.]

**WAC Comments**

Before any approval is granted for the proposed anchorage sites for fuel barges, the CAB/WAC strongly recommends that a "habitat impairment test" be conducted for any activity that is subject to consistency review under federal and state laws, or under applicable local laws contained in an approved local waterfront revitalization program (LWRP). If that proposed action is subject to consistency review, then the habitat protection policy applies, whether the proposed action is to occur within or outside the designated area. The CAB/WAC recommends that Hudsonia be retained to conduct such test.
POLICY 7A - THE VANDERBURGH COVE AND SHALLOWS HABITAT SHALL BE PROTECTED, PRESERVED AND, WHERE PRACTICAL, RESTORED SO AS TO MAINTAIN ITS VIABILITY AS A HABITAT.

Any activity that would substantially degrade water quality in Vanderburgh Cove and Shallows could affect the biological productivity of this area. All species of fish and wildlife may be adversely affected by water pollution, such as chemical contamination (including food chain effects), oil spills, excessive turbidity or sedimentation, and waste disposal. [Emphasis added.] . . . Alteration of tidal fluctuations in Vanderburgh Cove and Shallows could have significant impacts on fish and wildlife; increased tidal exchange may improve habitat quality in the cove.

POLICY 7B - THE KINGSTON DEEPWATER HABITAT SHALL BE PROTECTED, PRESERVED AND, WHERE PRACTICAL, RESTORED SO AS TO MAINTAIN ITS VIABILITY AS A HABITAT.

Activities that could affect the water quality, temperature, turbidity or freshwater to saline distribution in the deep water portions of the river may adversely impact on the estuarine community. [Emphasis added.] Major reduction in overall depths within this deep water trench may also have adverse effects on the sturgeon spawning, wintering, and continued use of the habitat. [Emphasis added.]

POLICY 7C - THE FLATS HABITAT SHALL BE PROTECTED, PRESERVED AND, WHERE PRACTICAL, RESTORED SO AS TO MAINTAIN ITS VIABILITY AS A HABITAT.

Any activity that would substantially degrade water quality in the Flats could affect the biological productivity of this area. All species of fish and wildlife may be adversely affected by water pollution, such as chemical contamination (including food chain effects), oil spills, excessive turbidity or sedimentation, and waste disposal. [Emphasis added.]

Oil and other hazardous substance spills are an especially significant threat to this area, because the biological activity of tidal flats is concentrated at the soil surface, much of which may be directly exposed to these pollutants. [Emphasis added.]

POLICY 8 - PROTECT FISH AND WILDLIFE RESOURCES IN THE COASTAL AREA FROM THE INTRODUCTION OF HAZARDOUS WASTES AND OTHER POLLUTANTS WHICH BIO-ACCUMULATE IN THE FOOD CHAIN OR WHICH CAUSE SIGNIFICANT SUBLETHAL OR LETHAL EFFECTS ON THOSE RESOURCES.

Hazardous wastes are unwanted by-products of manufacturing processes and are generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, hazardous
waste is defined in Environmental Conservation Law [Section 27-0901(3)] as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed." A list of DEC-defined hazardous wastes can be found in 6NYCRR Part 371.

WAC Comments

Fish and wildlife resources in the Hudson River, significant fish habitat and spawning areas, along with the source of drinking water for the Village of Rhinebeck and hamlet of Rhinecliff all need to be protected from the threat of a potential environmental disaster brought upon by the proposed anchorage sites in all the designated sections of the Hudson River.

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GENERAL POLICY

POLICY 18 - TO SAFEGUARD THE VITAL ECONOMIC, SOCIAL AND ENVIRONMENTAL INTERESTS OF THE STATE AND OF ITS CITIZENS, PROPOSED MAJOR ACTIONS IN THE COASTAL AREA MUST GIVE FULL CONSIDERATION TO THOSE INTERESTS, AND TO THE SAFEGUARDS WHICH THE STATE HAS ESTABLISHED TO PROTECT VALUABLE COASTAL RESOURCE AREAS.

Proposed major actions may only be undertaken in the waterfront area if they will not significantly impair valuable coastal waters and natural, cultural, scenic, historic, resources. Proposed actions must take into account the social, cultural, economic and environmental interests of the State and Town and its citizens in such matters that would affect natural resources, historic and scenic assets, water levels and flows, shoreline damage, hydro-electric power generation, and recreation. [Emphasis added.] Any proposals to develop . . . or to begin any other major project within the LWRA of the Town of Rhinebeck, adjacent towns or nearby areas, including the west bank of the Hudson, must be thoroughly examined to determine that there will be no significant negative impacts on the Town’s residents or resources. [Emphasis added.]

WAC Comments

Any proposed actions must take into account the social, cultural, economic and environmental impacts a devastating explosion and ensuing fire such could have in the areas near these berthing locations within the Town of Rhinebeck & hamlet of Rhinecliff, along with that of the Ulster County river shoreline at Port Ewen, Rondout and Kingston Flats areas. These fuel-loaded ships and barges - up to 600 feet long - could become the targets of both foreign and domestic terrorist attacks. Some of these barges on the Hudson can hold up to 4 million gallons of crude oil. Not only would such an attack endanger the lives of the people in these area, such could have serious, damaging effects for Amtrak passenger and CSX commercial transportation
services on both sides of the Hudson River. It is the firm belief of the members of the CAB/WAC that the safety of human life within these residential areas; safeguarding the ecosystem of the Hudson River area; preserving the historic and scenic beautiful lands; as well as safeguarding the existing commercial activities within this area are more important than a commercial enterprise that presents a clear and present danger to such.

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HISTORIC AND SCENIC RESOURCES POLICIES

POLICY 23 - PROTECT, ENHANCE AND RESTORE STRUCTURES, DISTRICTS, AREAS OR SITES THAT ARE OF SIGNIFICANCE IN THE HISTORY, ARCHITECTURE, ARCHAEOLOGY OR CULTURE OF THE STATE, ITS COMMUNITIES, OR THE NATION.

Explanation of Policy

Structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the State, its communities, or the Nation comprise the following resources:

1. A resource, which is in a Federal or State park established, among other reasons, to protect and preserve the resource.
2. A resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places.
3. A resource designated by the State Nature and Historic Preserve Trust.
4. A designated local landmark, a park, or locally designated historic district that is located within the boundary of the Rhinebeck Local Waterfront Revitalization Area / Mid-Hudson Historic Shorelands Scenic District.

All practicable means to protect structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the Town, the State, its communities or the Nation include the consideration and adoption of any techniques, measures, or controls to prevent a significant adverse change to such significant structures, districts, areas or sites.

POLICY 24A - PREVENT IMPAIRMENT OF SCENIC RESOURCES INCORPORATED WITHIN THE MID-HUDSON HISTORIC SHORELANDS SCENIC DISTRICT AND THE ESTATES DISTRICT SCENIC AREA OF STATEWIDE SIGNIFICANCE.

The State-designated Mid-Hudson Historic Shorelands Scenic District, which is co-terminus with the Local Waterfront Revitalization Area of the Town, contains several historic districts noteworthy for their historic and scenic qualities. [Emphasis added.]

The Sixteen Mile Historic District, later expanded to the Hudson River National Historic Landmark District and listed on the National Register of Historic Places, contains a series of estates along the River which are scenic resources of great worth based primarily on the
architecture of the structures, the landscaped grounds and open space surrounding the primary buildings, and the scenic views of the Hudson River and the Catskill Mountains. These estates and other historic structures, such as those in the Town of Rhinebeck Multi-Resource Area Historic District included on the National Register, need to be protected and enhanced. [Emphasis added.] . . In addition, efforts will be undertaken through the environmental review process to attempt to protect the viewscape on the west bank of the River from any significant deterioration or alteration.

Portions of the Orlot and Atalanta (former Mandara) estates which are plainly visible from the Kingston-Rhinecliff Bridge and from the Hudson River are scenic resources of the utmost significance and visual accessibility and sensitivity. Any proposed plans for any development of these two estates will be reviewed with consideration of preserving these scenic resources.

**Note:** The proposed Kingston Flats mooring site is located to the south of the Kingston Rhinecliff Bridge.

**POLICY 24C - PREVENT IMPAIRMENT OF THE ESTATES DISTRICT AND ESOPUS/LLOYD SCENIC AREAS OF STATEWIDE SIGNIFICANCE.**

The Town of Rhinebeck is included in both the Estates District Scenic Area of Statewide Significance and Esopus/Lloyd Scenic Area of Statewide Significance (SASS), as designated by the Secretary of State. The Estates District and Esopus/Lloyd SASS are of statewide aesthetic significance by virtue of the combined aesthetic values of landscape character, uniqueness, public accessibility and public recognition . . . The section of the Estates District SASS within the Town of Rhinebeck is included within the following subunits:

- ED-10 Astor Cove
- ED-15 Rhinecliff
- ED-18 Vanderburgh Cove

1. The section of the Esopus/Lloyd SASS within the Town of Lloyd is included within the following subunits:
   - EL-1, Big Rock and Hemlock Points
   - EL-2, Esopus Uplands
   - EL-3, Esopus Bluffs

When considering a proposed action, agencies shall determine whether the action could affect the Estates District or Esopus/Lloyd SASS and, if so, whether the types of activities proposed would be likely to impair the quality of an identified resource. Impairment includes:

(i) the irreversible modification of geologic forms; the destruction or removal of vegetation; the modification, destruction, or removal of structures, whenever the geologic forms, vegetation or Incorporating sound, existing structures (especially historic buildings) into the overall development scheme;
WATER AND AIR RESOURCES POLICIES

POLICY 34 - DISCHARGE OF WASTE MATERIALS INTO COASTAL WATERS FROM VESSELS WILL BE LIMITED SO AS TO PROTECT SIGNIFICANT FISH AND WILDLIFE HABITATS, RECREATIONAL AREAS AND WATER SUPPLY AREAS.

The discharge of sewage, garbage, rubbish, and other solid and liquid materials from watercraft and marinas into the State's waters is regulated (Navigation Law 33-C, provides for the disposal of sewage and litter in waterways). Significant fish and wildlife habitats, beaches, and public water supply intakes need protection from contamination by vessel wastes. Specific effluent standards for marine toilets have been set by the Department of Environmental Conservation (6 NYCRR, Part 657). These standards will be followed. The Hudson River along much of the shoreline of the Town serves as a significant habitat area for finfish, including shad and short-nosed sturgeon, and also serves as the source of drinking water for the Village of Rhinebeck, portions of the Town of Rhinebeck along Route 308 and River Road, and the hamlet of Port Ewen area of the Town of Esopus. The River areas need to continue to be protected by State regulations. [Emphasis added.]

POLICY 36 - ACTIVITIES RELATED TO THE SHIPMENT AND STORAGE OF PETROLEUM AND OTHER HAZARDOUS MATERIALS WILL BE CONDUCTED IN A MANNER THAT WILL PREVENT OR AT LEAST MINIMIZE SPILLS INTO COASTAL WATERS; ALL PRACTICABLE EFFORTS WILL BE UNDERTAKEN TO EXPEDITE THE CLEANUP OF SUCH DISCHARGES; AND RESTITUTION FOR DAMAGES WILL BE REQUIRED WHEN THESE SPILLS OCCUR.

Applicants for the development of non-residential uses will be required to identify any hazardous materials associated with the proposed use and disclose information on use, storage, treatment and disposal. Emphasis added.]

As indicated in the Town's Zoning Law, "all activities involving handling, and all storage of, inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire or explosion and with adequate firefighting and fire suppression equipment and devices standard in the industry". In addition, "all applicable requirements of the New York State Uniform Fire Prevention and Building Code, NYSDEC regulations, as well as the provisions of the National Fire Protective Association (NFPA) Code, shall be fully observed". These regulations collectively provide for the design, placement, and monitoring of tank installations.

WAC Comments
There is a claim that oil barges and oil carrying vessels will only anchor for a few hours – “short term.” The facts are such barges often anchor for several days on end. And while industry is adamant that the anchorages are for short term use, in the Federal Register, the Coast Guard defines 42 of the 43 proposed berths as “long term.”

Regarding security measures of the anchored fuel barges at the Kingston Flats, Port Ewen and Big Rock anchorages:

1. Who will provide security of these barges while anchored at the three sites?
   a. Will security be provided by federal, state, local authorities? Or, will security be subcontracted out to a private firm?
   b. If security is to be subcontracted out to a private firm, will security personnel be aboard the barges while at the assigned anchorages? Will these security personnel be adequately trained to respond to any threat or oil spill?
   c. Will security be provided around the clock, seven days a week?
   d. Will the subcontracted security firm be bonded to cover any costs to local and state governments, as well as private individuals for any negligence attributed to failure to its responsibilities?
   e. Who will monitor this subcontracted security firm?
   f. Who will address any issues or concerns local residents or town officials may have with security safety and other issues with such barges?
   g. If there is an immediate danger of a fire or potential explosion, how will residents in the affected communities be warned of such? Will there be a warning system in place that will warn residents to take cover or immediately leave the area?

Regarding oil spills and any issues with the fuel barges:

1. What federal, state and local programs are in place to address any oil spillage or major catastrophe?
2. Will local and county emergency responders be adequately trained to address any major oil spill? According to a report in Scenic Hudson, the (Mid-Hudson) region lacks adequate safeguards to respond to explosions or spills.
3. In what conditions will these barges be? Who will inspect and monitor these barges? Have any of these barges been cited by the USCG or state inspectors for violations in the past?
4. What company will be operating these barges? Does this company have any previous violations with environmental issues?

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5. What plans are in effect if a hurricane or other major storm would create hazardous conditions in the Hudson River, similar to the effects generated by Hurricane Irene, August 27-28, 2011?

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**POLICY 38 -** THE QUALITY AND QUANTITY OF SURFACE WATER AND GROUNDWATER SUPPLIES, WILL BE CONSERVED AND PROTECTED, PARTICULARLY WHERE SUCH WATERS CONSTITUTE THE PRIMARY OR SOLE SOURCE OF WATER SUPPLY.

Both surface and groundwater are the sources of drinking water in the Town and therefore must be protected. The Hudson River is already the source of water for the Rhinebeck Water District, which includes the Village of Rhinebeck, the hamlet of Rhinecliff and some limited portions of the Town. A high level of water treatment and sewage treatment will be maintained. The River should be protected as a water supply to meet unknown future demands. [Emphasis added.]

**WAC Comments**

As previously stated, the Village of Rhinebeck Water treatment plant. serves 5300 people through 1706 accounts. The total water produced in 2015 was 159 million gallons. The daily average of water treated and pumped into the distribution system is 436,000 gallons per day. The highest single day was August 10, 2015 at 679,000 gallons. The amount of water delivered to customers was 123 million gallons. Total water not billed but accounted for was 15 million gallons. This leaves an unaccounted total of 21 million gallons. 31 Any accidental or terrorist induced spillage of oil in the waters north or south of the water treatment plant would present an unreasonable health burden and financial hardship on the residents and commercial businesses that rely on this river-treated water. Several accidents and spills around the country clearly show that crude oil – especially unrefined Bakken crude oil - cannot be recovered or cleaned up if it is spilled into a fast and tidal moving water body like the Hudson. Should this happen, the oil sludge could enter the water treatment facility and permanently ruin the operating machinery.

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**POLICY 39 -** THE TRANSPORT, STORAGE, TREATMENT AND DISPOSAL OF SOLID WASTES, PARTICULARLY HAZARDOUS WASTES, WITHIN COASTAL AREAS WILL BE CONDUCTED IN SUCH A MANNER SO AS TO PROTECT GROUNDWATER AND SURFACE WATER SUPPLIES, SIGNIFICANT FISH AND WILDLIFE HABITATS, RECREATION AREAS, IMPORTANT AGRICULTURAL LANDS AND SCENIC RESOURCES.

The definitions of terms "solid wastes" and "solid wastes management facilities" are taken from New York's Solid Waste Management Act (Environmental Conservation Law, Article 27). Solid wastes include sludge from air or water pollution control facilities, demolition and construction debris and industrial and commercial and agricultural wastes, as well as unused biocides, paints, lubricants, fuels, etc., which may become more solid than liquid.

WAC Comments

The CAB/WAC has concerns over how bilge slops will be handled by the tugboats and barges. Who or what agency will be in charge of monitoring any accidental or illegal discharge of bilge slops?

The State of New York, with the approval of the Environmental Protection Agency, has established a No-Discharge Zone (NDZ) in the waters of the Hudson River. The NDZ extends from the Battery in Manhattan, New York to the federal dam at Troy, New York. Within the NDZ, discharge of sewage, whether treated or untreated, from all vessels is prohibited. 32

According to U. S. Code of Federal Regulations (40 CFR 140.1), all vessels using inland waterways of the United States are subject to the following:

(a) Sewage means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes;
(b) Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping;
(c) Marine sanitation device includes any equipment for installation onboard a vessel and which is designed to receive, retain, treat, or discharge sewage and any process to treat such sewage;
(d) Vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on waters of the United States;

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POLICY 44 - PRESERVE AND PROTECT TIDAL AND FRESHWATER WETLANDS AND PRESERVE THE BENEFITS DERIVED FROM THESE AREAS.

Freshwater wetlands affected by tides are among the Town's most significant scenic and biological resources. These wetlands, found in the natural and railroad-created coves of the Town, support a variety of vegetation types and wildlife habitats. Cove areas from north to south within the Town are: Mandara South Cove, Matambeson Cove, Clifton Point Cove, Astor Cove, Slate Dock Cove North, Slate Dove Middle, Long Cove, Cattail Cove, Stream Cove, Suckley

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Cove and Vanderburgh Cove. Of the several natural coves in the Town, Vanderburgh, Suckley, and Astor Coves are considered the most ecologically significant.

Vanderburgh Cove, together with Suckley Cove and adjacent shallows areas, has been designated a Significant Coastal Fish and Wildlife Habitat by the NYS Department of State and a Significant Natural Area by the Dutchess County Environmental Management Council (EMC). It is important to spawning and feeding fish, migrating ducks and as an osprey feeding area. It is used by resting marsh wrens and by herons and egrets in late summer. [Emphasis added.]

Astor Cove, also named a Significant Natural Area by the EMC, supports extensive fish and birdlife. It is unique because of its stand of wild rice and as a valuable feeding area for ducks. [Emphasis added.]

WAC Comments

At the Kingston hub, between Port Ewen and Rhinecliff, for example, the shorelines are sparsely developed, night time is dark, peaceful and quiet. Crude oil barges and ships, anchoring at any of the three identified areas, would be required to employ bright and identifiable deck lighting throughout the nighttime hours, as well as in fog or in climate weather. At nighttime, the sound of generators on barges would be heard in homes near the shores. The mandated navigational and warning lights that must be light and maintained, along with the generator noise could have adverse effects on migratory birds, using the Atlantic Coastal Waterways via the Hudson River. Nesting eagles and other birds would certainly be affected within the areas of the three proposed anchorage grounds in the Hudson River.

The use of the Hudson River Valley for the purpose of anchoring oil-laden barges could very well cause mass destruction to the river ecosystem through pollution and traffic. After decades of cleaning the river and its shorelines, as well as educating the public about the importance of the river’s health, some of its original glory has been restored and it has once again become a draw for tourism and local businesses, as well as a source of pride and activity for residents. The CAB/WAC strongly urges that the United States Coast Guard deny granting permission for using the Hudson River as a storage depot - an off shore parking lot - for oil barges in the designated areas. As stated by John Lipscomb, a Riverkeeper patrol boat captain and manager of its Water Quality Sampling Program in the Kingston Daily Freeman, “We have spent decades cleaning up the river and we are getting there. We are trying to help the river and we should not put the river at risk for a catastrophic crude oil spill.”