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By email delivery

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RE: New York-New Jersey Harbor & Tributaries Feasibility Study

Dear Mr. Wisemiller and Ms. Brighton:

This constitutes comments by the Town of Saugerties, Ulster County, New York, on the U. S. Army Corps of Engineers (USACE) request for public input on the range of issues to be addressed in the Environmental Impact Statement for the above-referenced Feasibility Study.

Saugerties is approximately one hundred miles upriver from New York City. The Hudson River shoreline along Saugerties lies wholly within the Hudson River estuary, and the estuary is identified in the scoping meeting documents as within the boundaries of the intended Feasibility Study. For the purpose of these comments, the Hudson River estuary above the New York City metropolitan counties is addressed as the “upstate” estuary.

First, it is necessary to continue to urge, as others are doing and as the Saugerties Town Board did by resolution on July 11, that USACE continue an open Scoping process until it becomes apparent that a full array of Scoping issues have been identified and recorded. An open Scoping session is necessary because USACE did not provide the level of detail needed to generate complete and reliable Scoping comments by the public and the agencies of interest in this matter. It is helpful to know that USACE has recently decided to keep the record open to ensure that opportunities continue for communities, organizations and interested parties to offer comments on this very complicated project.

The USACE scoping meetings were intended to comply with the National Environmental Policy Act (NEPA) by providing an opportunity for the public to offer input on the range of issues to be addressed in the Environmental Impact Statement (EIS) and Draft Feasibility Report (DFR) that ACE expects to produce from this process. USACE initially did not provide a sufficient or reliable range or framework for the issues in need of discussion; the brief overview with a series of Alternatives from which the agency would choose one to pursue was insufficient in terms of overall content and incomplete in that it included no alternatives for upriver estuary communities and no alternatives suggesting a mix of alternatives to be pursued.

Given these limitations, it is difficult for a community to adequately comment on this immense proposal. Nevertheless, the Town of Saugerties hereby offers input on the issues to be addressed as relates to the upstate estuary generally and specifically to the Town of Saugerties.

The Town also recommends Scoping issues that may have local and long-term impacts—here in Saugerties as elsewhere in the target area—that contribute to the “total environment” knowledge that President Richard Nixon, in his Executive Order creating the Environmental Protection Agency (and NEPA) in 1970 identified as essential in understanding the “intensified” “condition of our physical environment” in modern times.¹ This fifty-year-old admonition seems increasingly more relevant in this day and age. Now more than ever because of climate change, an expanded knowledge base is essential to “ensure the protection, development and enhancement of the total environment itself”—and yet there is no allusion to anything of the sort in USACE’s brief statement about the Feasibility Study.

It appears that, despite two years of study with supporting agencies, the Corps went ahead and embarked on little more than a fishing expedition for good ideas to mitigate the deleterious impacts of storm surges on one of the most difficult geographies in the world. Apparently the NYS Department of Environmental Conservation assisted in this process—although even that is not clear, and the extent of that agency’s participation seems not to have drawn upon New York State’s own experiences with storm events and surges; it is good to know that NYSDEC is now stepping up to be more of a help in this process, since much of what the state is doing to mitigate against future climate change has relevance to these proceedings.

It is unfortunate that in the planning of this public outreach USACE did not involve the principal environmental organizations in this region, principally Scenic Hudson and Riverkeeper, which have diligently worked to mitigate the harm that storm surges and sea rises bring to the lower Hudson area.

In the following analyses, the Town of Saugerties response to the issues we raise for clarification follow in *italics* in each of the discussion areas; where specific interrogatories are not given, USACE can infer from the comments what issues need to be addressed. We not only would appreciate responses to these issues but feel it incumbent upon USACE to do so. The “incumbent” part of this statements needs further

¹ (National Environmental Policy Act, Message of the President).

emphasis because the agency had already displayed its interest in stifling comments on at least one key question related to this study.

1. RELATIVE AND ACTUAL IMPORTANCE OF UPRIVER ESTUARY IN OVERALL STUDY. The NY/NJ Harbor and Tributaries Study Area identified by ACE in its July hearings consists of 2,157 square miles in total and 900-plus square miles of affected shoreline that includes the entire Hudson River Estuary. Of the 25 counties identified in this Study Area, 60% of them (10 counties) are in the estuary north of the metropolitan area. Granted, these are not the most important counties, since the New York and New Jersey metropolitan counties contain one of the highest population concentrations in the United States and would likely sustain economic, environmental, and community damages in another storm surge that are far greater than their geographic representation might suggest. It is absurd to suggest that the estuary area be given equal status to the weight given the metropolitan counties in an EIS or DER—and it is just as absurd that the upriver estuary be ignored.

The upriver estuary is a key geography in the rise of sea level and the frequency of major storm events and their consequences. The Hudson River to Albany is an international waterway and, as such, a part of the “coastal” geography as well. This part of the study area is the natural spillway for sea surges that pass through the metropolitan area—suggesting that the upriver impacts may be significantly greater than if a simple sea surge for this area alone were considered. All Planning Objectives implicitly meant for the metropolitan communities must be pursued regarding the upriver estuary communities as well. Protections created to limit the water impacts on the metropolitan area have impacts elsewhere.

A table of specific climate change vulnerabilities in seven regions of the state was created by the New York State Energy and Research Development Authority in 2011 (updated 2014).² Two of these regions are within the Hudson River upstate estuary: Region 2 (Catskill Mountains and West Hudson River Valley) and Region 5 (East Hudson and Mohawk River Valleys). The baseline climate change information for Region 2 contains temperature and precipitation levels second only to New York City in severity, meaning that this region is already hotter and wetter than the other upstate regions. (Region 5’s numbers are slightly lower, probably because the information was collected in Saratoga County; the region extends south to include more temperate Westchester County and all other east-of-Hudson counties from Washington south.) By doing nothing or limiting the attention paid to the upriver estuary, the project will likely exacerbate upriver estuary impacts greater than if this area were considered a stand-alone geography.

While it is absurd to suggest that the upriver estuary be given equal weight to the metropolitan counties in an EIS or DER, it is equally ridiculous to omit, as ACE does, any details about the upriver estuary regions at all. This omission rose to the level of insult at the Westchester County public meeting when USACE held back on just one of the more than forty questions they reviewed following the informational meeting; the official (Ms. Brighton, I believe) stood holding that one question in her hand when she

² “ClimAID: The Integrated Assessment for Effective Climate Change Adaptation Strategies in New York State”; see “Observed and Projected Climate Change in New York State: An Overview,” a report prepared by the NYS Community Risk and Resiliency Act (CRRA) Drafting Teams (Final – 12/31/15).

tried to close the discussion, and only responded when Saugerties objected that its question was not answered.

That question was:

What is planned for the upriver estuary communities?

Perhaps it was too much to ask, since it was obvious from the vague, disjointed, and rambling response that no plans are in the works and nothing specific is anticipated. It should be noted that one USACE engineer, in private discussion after the first July hearing, identified the upriver estuary dots on a page by saying the “might” mean barriers or walls on either side of a tributary outfall. This was laughable; as described these barriers would accomplish nothing, and to the engineer’s credit after some further discussion she acknowledged that the Corps really had no remedies for this part of the Study Area. Perhaps it would have been better had USACE left out the upriver estuary from its study, if that is all it has to offer in terms of mitigations.

The Corps should return to the planning table, expand the range of support agencies and advisors and the literature study, and better delineate the issues and solutions relative to surge-related impacts on the estuarial geography. Some suggestions on how to do that follow.

2. OTHER OMISSIONS. It is charitably assumed that the development of an EIS for this massive project will include a fuller explication of “existing conditions” than the page-and-a-half of large type included in the ACE’s July Power Point presentation. On a larger scale, it deserves to be mentioned that among the “Superfund and National Priorities List” examples given, the agency failed to list the Hudson River itself as a Superfund site. In addition, ACE failed to note that the Hudson River is an American Heritage River, and as such, falls within Executive Order No. 13061; ACE must address mitigations for natural resource and environmental protection, economic revitalization, *and historic and heritage preservation* in the Hudson River corridor.³ Sec. 1-(b) reasonably infers that ACE must “coordinate” any and all “Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage” that might be impacted by another storm surge.

Will “existing conditions” be fully explicated and explained, and the opportunity for Scoping comments provided on that text as well?

Will the Corps study address protections for historic, cultural and heritage impacts as well as human, environmental and natural ones?

The only “issues” that seem to be raised by USACE at its July hearings concerned shoreline-versus-water-based “walls” to hold back the water, and no substantial narrative to accompany them other than a Power Point. The issues arena was expanded in future public meetings, in response to objections to the USACE approach and the input of information concerning what New York City and others were doing or planning, but not in an organized and intelligent manner. It is difficult for a community to respond when

³ Executive Order No. 13061, Sec.1-[a]; my emphasis.

there is no indication what course the Army Corps plans to take in the Feasibility Study boundaries.

Will the EIS and DFR address and recommend mitigations for all environmental impacts on the whole of the upriver estuary, including those that are heritage-related, environmental, and related to specific population impacts? There is no hint of an intent to conform with Executive Order No. 13061—which seems clearly to contravene NEPA.

3. INADEQUACY OF SUGGESTED SCOPING REMEDIES. Upriver counties that are included within the Scope of the ACE Study are identified as containing critical infrastructure related to communications, education, electric and nuclear matters; medical infrastructure, natural gas/oil/port facilities, police/fire/emergency services, and transportation elements that must be considered in this environmental study. An abbreviated listing of sixteen “Existing Conditions” given in the ACE Power Point includes significant upriver estuary concerns, five that are shared by the upriver geography and New York City, and five that might reasonably be identified as mainly upriver.

Specific Planning Objectives of the ACE program are to reduce the risk of coastal storm damage to communities, infrastructure, societal resources, and the environment; improve “the community’s” recovery abilities in one way (“reducing the interruption in services provided by man-made and natural systems”); improve “the performance of critical infrastructure and natural features during and after coastal storms”; and restore coastal features “that have the ability to reduce coastal storm risk.”

No means for achieving these Objectives are suggested.

Does “reducing the interruption of services” imply an infusion of funding to help communities rebuild damaged or destroyed infrastructure?

In keeping with its over-the-top tone, in addressing the upriver estuary impacts will the Corps be suggesting, a la the Verrazzano Narrows solution, a retractable gate using the new Governor Mario Cuomo Tappan Zee Bridge as a support structure to keep the storm surge from penetrating the upriver estuary?

A fuller approach to this topic requires a thorough immersion in the advances made by environmental think tanks, local advocacy groups, and New York State in helping communities to plan for storm events. USACE needs to get down in the trenches and work with local communities in developing specific localized plans and processes to bring the shorelines to a status where at least the potential for mitigating impacts is possible. (See no. 5 below.)

4. ENVIRONMENTAL JUSTICE. The ACE plan envisions “walls” on Manhattan and elsewhere that are likely to impact on minority and low-income populations. The impacts on the populations affected will need to be addressed and mitigated in an EIS. Executive Order No. 12898 of NEPA reads in part:

“ . . .each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental

effects of its programs, policies, and activities on minority populations and low-income populations. . . .”⁴

Does USACE intend to follow Executive Order No. 12898 in this process?

*Will an environmental justice strategy be developed and implemented under section I-103 of the Order that encompasses all affected census-designated low-income areas in the upper estuary as well?*⁵

How will the information base be developed to ensure that environmental justice to affected low-income and minority populations will be achieved?

5. TRIBUTARY SPECIFIC REMEDIES. The dots shown on a few of the upriver communities in July represented barriers at the outfalls of tributaries; not gates. (There were significantly fewer such dots in the Westchester presentation.) The lack of information about tributary impacts underscores the profound inexperience of the Army Corps of Engineers in understanding the actual consequences of the 2012 storm surge on these and other upriver estuary communities. Nine feet of additional water rose over the estuary shorelines in that event.

Will additional studies be done to better gauge, quantify and understand the impacts on localities and local tributaries created by the storm surge of 2012?

Will the Corps provide financial assistance to upriver communities in addressing storm event and storm surge impacts?

USACE’s assistance to communities in protecting infrastructure could be funded in a federal program similar to NY Rising. The application could be extended to all critical municipal infrastructure affected—funded by the federal government like NY Rising. (Avoid NY Rising’s over-reliance on administrative oversight, however; the locals will know what is needed: use them.)

Will ACE work in an aggressive manner with communities to devise means to mitigate surges by: investing in barriers and berms to protect critical infrastructure; promoting population relocations in floodplain zones, acquiring floodplain properties, creating a range of educational programs for property owners to preventively mitigate against the damages as much as possible; providing design services and funding for wetlands and other natural environment expansion that use natural remedies to contain water surges; and directly providing a range of individual property remedies for property owners along the river?

Will ACE provide funding for berms and generators to protect sewage treatment plants located along the river?

Will ACE contribute to an expansion in the capacity of wastewater separation systems and culverts to reduce the infiltration of sewage into the river.

⁴ Executive Order No. 12898, Sec.I-101.

⁵ See NEPA I-102[b][1].

Will ACE protect drinking water resources through infrastructure retrofit remedies that prevent inflow into water supplies from storm water events?

The same rigorous approach to protecting the biota of the downriver areas should be used for upriver tidal areas. Creating sustainable shorelines is an emerging model that ACE should investigate as a means to create wetlands and shallows to absorb inundations in the upriver estuary.⁶ An expansion of the ACE goal beyond surge protection to sea rise protection should invest this thinking.

In terms of the upriver estuary, in its new report the Hudson River National Estuarine Research Reserve (HRNERR) recommends systematically measuring the “wide variety of complex and interacting physical stresses” affecting the river shorelines, and examining and employing, where appropriate, the latest in shoreline management techniques and practices to mitigate surge impacts.

Will USACE utilize this and similar resources in working out remedies for local communities?

CONCLUSION. New York’s Community Resiliency Recovery Act (2013) reliance on a science-based approach, the on-going efforts of the Hudson River Estuary Program, HRNERR’s report *Spatial Information for Designing a Shoreline* (2018), the work being done by New York City in pursuit of more manageable and long-term shoreline mitigations, and the remarkable efforts of river-based non-profits are yielding cautionary and reliable avenues for surge protection and climate change remedies that are within the realm of the possible, not the fantastical.

As far as the upriver estuary is concerned, large, pie-in-the-sky solutions are not the way to resolve this problem; we must look to the power of the small for the solutions for these communities. Here is an opportunity for USACE—that great corps of engineers that originated here on the Hudson River in the West Point Military Academy—to step up to the bar and assert its birthright by creating new science in enabling our survival in a troublesome and difficult future.⁷ ACE is to be commended for stepping up to its responsibilities under Public Law 71 of 1955, but the agency should be more aggressive and act more responsibly toward the local communities (responding to their questions is a good start), and develop realistic recommendations in a realistic context. Come back when better prepared and let’s start the conversation over; don’t become another FEMA; do it right.

Vernon Benjamin
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August 2018

C: Town Supervisor Fred Costello Jr.

⁶See <http://test3.tunedinweb.com/climate-science.shtml>.

⁷ See *Spatial Information for Designing a Shoreline*; <https://www.hrnerr.org/hudson-river-sustainable-shorelines/spatial-information-designing-shoreline>.

Town Board Members

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