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Via electronic and certified mail

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Re: request to extend scoping comment period on the New York New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study from 30 days to 90 days

Dear Mr. Wisemiller and Ms. Brighton:

I am writing on behalf of Riverkeeper, Inc.—a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents—to request that the U.S. Army Corps of Engineers extend the public comment period on scoping for the New York New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study (“NYNJ HAT”) from 30 days to 90 days, provide additional public meetings throughout the substantial project area, and make publicly available additional information necessary for meaningful public comment on this project.

As you know, the New York New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study will evaluate possible structural means of reducing or preventing onshore damage from coastal storm surge and sea level rise. The Army Corps’ “initial focused array of alternatives” presents a range of options, some of which entail construction of significant, permanent in-water barriers. Riverkeeper recognizes that such permanent barriers in

the water would have significant impacts on both the New York/New Jersey Harbor ecology, as well as on tidal flow throughout the 155-mile estuarine portion of the Hudson River. The River's health depends on tidal flow and mixing in numerous ways. Riverkeeper is concerned that fixed barriers would restrict or block the migratory runs of numerous species, some of which are federally endangered or being considered for listing.

The 30 Day Window for Public Scoping Comments is Insufficiently Brief

In its recent Federal Register notice, the agency explained it would provide a 30-day public comment period on scoping considerations for the Feasibility Study, to be addressed and evaluated in the forthcoming Draft Environmental Impact Statement ("DEIS") considering potential coastal storm risk management solutions for the New York New Jersey Harbor and Tributaries Coastal Storm Risk area.¹ The agency should extend this comment period from 30 days to 90 days for several reasons.

The 30 days provided in the Federal Register notice for scoping comments from the public does not provide enough time for the public to meaningfully comment on this project. The incredibly vast and far reaching extent of the Feasibility Study area cannot possibly be adequately reviewed in the mere 30 days to be provided after the federal and state agencies' NEPA Scoping Meetings. The Feasibility Study area "encompasses approximately 2,150 square miles" including parts of various New York and New Jersey counties.² The study area also extends up the Hudson River from New York Harbor throughout the entirety of the tidal and estuarine portions to the federal lock and dam at Troy, New York, as well as up the Passaic River to the Dundee Dam and up the Hackensack River to the Oradell Reservoir.³ The project's impacts could be felt by communities in Connecticut as well.

The agencies' proposed project will have numerous significant environmental impacts throughout the entirety of this widespread study area, with potentially different and unique impacts in each ecologically diverse portion. Given this incredibly widespread and diverse study area, 30 days is an inadequate amount of time for the public to effectively investigate and identify the broad scope of potential environmental impacts the agency must consider in the Draft EIS. Allowing additional time for public comment will also ensure that a range of stakeholders with diverse knowledge of different areas and holding an array of views and concerns on an issue are included in the public involvement process.

In contrast, the U.S. Coast Guard provided an extension to its comment period for its evaluation of a similarly widespread proposal by industry to establish a large number of new anchorages for commercial vessels in the Hudson River—43 berths in 10 locations from Yonkers to Kingston, comprising more than 2,400 acres.⁴ In that case, the extended comment window—ultimately extended twice, from 90 days to a total comment period of six months—provided the public with adequate time to understand the nature and impacts of the proposal, as well as prepare

¹ See *Notice of Intent To Prepare a Tiered Environmental Impact Statement for the New York New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study*, 83 Fed. Reg. 6169 (Feb. 13, 2018).

² *Id.*

³ *Id.*

⁴ See, e.g., *Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY*, 81 Fed. Reg. 61639 (Sept. 7, 2016).

meaningful comments on the project. This extended time frame ensured that all interested and affected parties were not only aware of the proposed action, but were able to be meaningfully involved in the project development process. The NYNJ HAT Feasibility Study will potentially have an even more widespread impact than the anchorages proposal, and the comment period here should similarly give an adequate and appropriate amount of time necessary for the public to comprehend the complexity, expansiveness, and potentially significant impacts of this project.

This proposed project will have environmental impacts on every member of the public who lives in the study area (and resident plant and animal species as well). However, the federal and state agencies have not yet held any informational meetings about the proposed project with the public, nor have they announced the dates of the forthcoming NEPA Scoping Meetings, which the agencies have stated will be held in March and April 2018. The March/April window is quickly closing; thus, there will clearly be insufficient notice to the public ahead of the meetings, since March ends next week. Extending the comment period to 90 days starting after the last of numerous public meetings would consequently allow for increased public awareness and information concerning this proposed project to be disseminated to a wider audience, increasing meaningful public participation and involvement.

Public Meetings Must Be Held Throughout the Project's Entire Geographic Range

We additionally request the agencies consider holding more than two meetings on this project in a wide range of places, as the geographic locations of the NEPA Scoping Meetings will necessarily limit the members of the public who are able to attend. Any such meetings must also take into account public accessibility for the meetings, including access to public transport, timing and availability (such as holding some meetings in the evening and/or on weekends, not during business hours).

Further, holding only two scoping meetings for a proposed project that will potentially impact 2,150 square miles in at least two (and likely three) different states is not an adequate way to provide public access to information on this proposal, nor does it provide for adequate or meaningful public involvement. In order to conduct meaningful public participation, the agency should “gather input from a wide spectrum of stakeholder interests, resulting in a wide range of views and concerns and providing fair treatment, meaningful involvement and social inclusion for all people regardless of race, color, national origin, sexual orientation or income, with respect to the development, implementation, and decisions made through the public participation process.”⁵ This necessarily includes providing access for public involvement through the entire geographic range of the proposed project, and to diverse stakeholders throughout.

It is vital that local residents, community and environmental organizations, business leaders, and other federal agencies have an adequate opportunity to review and provide comments on the Feasibility Study, and to make their voices heard. It is essential that those who will be most directly impacted have a sufficient opportunity to provide their comments on the Feasibility Study scoping. Existing outreach by the agencies to potentially impacted communities across the entire project range has thus far been inadequate. Riverkeeper and its members urge the agencies

⁵ See U.S. Env'tl. Protection Agency, *Public Participation Guide* (last visited Mar. 22, 2018) <https://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation>.

to hold more than two informational meetings on this issue, and to ensure that such meetings are sited throughout the project's entire geographic range.

Insufficient Information for the Public to Meaningfully Comment on the Proposed Project

The Council on Environmental Quality implementing regulations for the National Environmental Policy Act require that the agencies “insure that environmental information is available to public . . . citizens before decisions are made and before actions are taken.”⁶ They further explain that such information provided to the public “must be of high quality.”⁷ However, the information provided to the public on this project is insufficient.

The information provided to the public thus far does not give the public the ability to provide meaningful comments on the proposed project. The agencies purport to solicit comments only on scoping for the Feasibility Study at this point in the process, despite presenting an “initial focused array of alternatives.”⁸ The agencies’ Fact Sheet and PowerPoint—the only information provided to the public on this project—offer only small, pixelated map-based renderings of potential project design alternatives, and do not adequately explain the project’s purpose and goals, nor its anticipated impacts. This meager information does not adequately apprise the public of the proposed project’s impacts on the Hudson River, stakeholders, or community members across its sweeping, 2,150 square mile range. Additionally, information provided at public meetings should necessarily address the specific impacts of the project in certain regions or geographical areas, as the widespread project will have vastly different impacts on each affected region, as different information is required where different regions will experience and different impacts from the proposed project. Information sessions should thus be tailored to the appropriate affected region.

Information necessary for the public to meaningfully comment on the “initial focused array of alternatives” must include specifics on the operation and implementation of each alternative, including, for instance, the frequency and duration of barrier closures, barrier heights, explanation of the agencies’ purported reliance on a risk-based assessment rather than a data-based assessment (as stated by Army Corps officials at the March 8, 2018, Hudson River Estuary Management Advisory Committee), and other essential information.

Without such information, the public cannot meaningfully comment on these alternatives, or the potential future environmental, social, and economic impacts of each alternative on stakeholders throughout the project area. Further, the agencies’ use of the “tiering” term to describe this project is unclear and does not align with its use as a term of art in the NEPA process.⁹ Without clarification from the agencies as to how NEPA tiering will fit in into the project development process, the public is unable to meaningfully comment on the scope of the project, or to understand what considerations have already been addressed in any higher tiered document. We

⁶ 40 C.F.R. § 1500.1(b).

⁷ *Id.*

⁸ See U.S. Army Corps of Eng’rs, *FACT SHEET - New York/New Jersey Harbor & Tributaries Focus Area Feasibility Study* (last visited Mar. 22, 2018) <http://www.nan.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/644997/fact-sheet-new-yorknew-jersey-harbor-tributaries-focus-area-feasibility-study/>.

⁹ See, e.g., 40 C.F.R. § 1502.20 (discussing tiering); *id.* at § 1508.28 (defining tiering).

request that the agencies provide a clarification of how the tiering process is being used for this project, as well as identify and direct the public to any higher tier NEPA document which is being referenced with regard to the current project.

Riverkeeper's Requests

For the above reasons, Riverkeeper requests that the agencies extend the window for the public to submit comments on the scoping for the Feasibility Study from 30 days to 90 days. Further, this 90-day comment period should begin after the last of many public information meetings. Additionally, we request that the agencies hold more than two public information meetings in a range of geographic locations throughout the project area, as this substantial project will have varied and widespread impacts throughout its 2,150 square mile range, including parts of both New York and New Jersey, and possibly also Connecticut. Finally, we request that the agencies provide additional information on the proposed project to the public sufficient to ensure meaningful involvement and comment throughout the project development process. The information provided must describe the various consequences and considerations of each potential project alternative tailored to each affected region.

Failing to make these changes will defeat NEPA's policy of "[e]ncourag[ing] and facilitat[ing] public involvement in decisions which affect the quality of the human environment"¹⁰ such as this substantial and far-reaching project.

Thank you for your consideration of these important issues essential to ensuring meaningful public involvement for the NYNJ HAT project.

Sincerely,



Paul Gallay
President and Hudson Riverkeeper

Enclosure(s): none

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¹⁰ 40 C.F.R. § 1500.2(d); *see also id.* at § 1506.6 ("public involvement").