

MEMORANDUM FOR RECORD

DATE: June 12, 2024

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application

This document constitutes the Environmental Assessment, Public Interest Review, and Statement of Findings for the subject application.

1.0 Introduction and Overview

Information about the proposal subject to the US Army Corps of Engineers' (Corps') Section 10 Rivers and Harbors Act regulatory authority is provided in Section 1, detailed evaluation of the activity is found in Sections 2 through 11 and findings are documented in Section 12 of this memorandum. Further, summary information about the activity including administrative history of actions taken during project evaluation is attached (ORM2 Summary) and incorporated in this memorandum.

1.1 Applicant name

K. Graefe and Sons Corp.

1.2 Activity location

Hudson River at North River Shipyard, 1 Van Houten Street, Nyack, New York

1.3 Description of activity requiring permit

After-the-fact Department of the Army authorization to maintain as completed, the installation of three (3) mooring buoys in the Hudson River, in the Town of Clarkstown, Rockland County, New York. Each of the three (3) moorings consists of a single, 10-ton-stockless anchor, with sixty (60) feet of 3-inch anchor chain and one steel mooring buoy. Vessels using this facility are typically between 70 and 275 feet long and are tethered on of the mooring buoys by a line approximately 20 feet long. The resulting swing circle of vessels moored at the existing buoys is typically between 160 and 385 feet in diameter. The stated purpose of this project is to allow large vessels to be held offshore for loading, awaiting repairs or transit. The applicant states that, without available mooring buoys, individual vessels would drop and lift anchor, likely causing bottom disturbance for each mooring event.

1.3.1 Proposed avoidance and minimization measures

N/A

1.3.2 Proposed compensatory mitigation

N/A

1.4 Existing conditions and any applicable project history

Permit Number 10303 was issued to Julius Petersen, Inc. on October 17, 1977, for maintenance dredging of the facility.

Permit Number NAN-2010-00843-M2 was issued to Van Houten Holding Corporation on August 4, 2015, for bulkhead replacement and construction, pile installation and pier installation.

The three moorings are located within an area designated by the US Coast Guard as the Nyack Special Anchorage Area as designated in 33 CFR Part 110, and as shown on the official Navigation Chart #12343.

Two of the three moorings were installed by the applicant in June of 2016. The third one was installed in September of 2019. The applicant stated that they were under the impression that temporary moorings do not require a permit under Section 10 of the Rivers and Harbors Act.

There appears to have been some confusion as to whether a permit was necessary, starting with an electronic mail transmission on April 26, 2016, in which Mr. Brian Orzel of this office, advised Mr. Paul Lisella of North River Shipyard that temporary moorings within navigable waters do not require a permit under Section 10 of the Rivers and Harbors Act. In general, a temporary mooring would consist of dropping anchor for a relatively short period of time or tying up to an existing pier or other structure. A temporary mooring is not the permanent installation of an anchor, anchor chain and mooring buoy, which is what the applicant actually did. In an electronic mail transmission (email) on May 26, 2022, Ms. Alexandra Ryan of this office, stated that no permit was required for the existing moorings, as they were described as being temporary in nature. Given the above, it does not appear that the applicant knew that the moorings needed a permit from the Corps.

1.4.1 Jurisdictional Determination

Is this project supported by a jurisdictional determination? No Jurisdictional Determination

1.5 Permit authority

The proposed activity is regulated under the authority of Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403), including as extended by the Outer Continental Shelf Lands Act (43 USC 1333(e)).

2.0 Scope of review for National Environmental Policy Act (i.e., scope of analysis), Section 7 of the Endangered Species Act (i.e., action area), and Section 106 of the National Historic Preservation Act (i.e., permit area)

2.1 Determination of scope of analysis for National Environmental Policy Act (NEPA)

The scope of analysis always includes the specific activity requiring a Department of the Army permit that is located within the Corps' geographic jurisdiction. In addition, we have applied the four factors test found in 33 CFR Part 325, Appendix B to determine if there are portions of the larger project beyond the limits of the Corps' geographic jurisdiction where the federal involvement is sufficient to turn these portions of an essentially private action into a federal action.

Based on our application of the guidance in Appendix B, we have determined that the scope of analysis for this review includes only the Corps geographic jurisdiction.

Final description of scope of analysis: The area within the scope of analysis is an area within the Hudson River, encompassing the three existing moorings and the likely swing circles of vessels moored therein, is estimated to be approximately 25 acres, located approximately 1,000 feet off-shore of the North River Shipyard property. No new construction is proposed on-shore that could potentially be linked to the three moorings.

2.2 Determination of the Corps' action area for Section 7 of the Endangered Species Act (ESA)

The Corps' action area for Section 7 is the same as that for NEPA, the approximately 25-acre area within the Hudson River, surrounding the three existing moorings.

2.3 Determination of Corps' permit area for Section 106 of the National Historic Preservation Act (NHPA)

The permit area includes only those areas comprising waters of the United States that will be directly affected by the proposed work/structures. Activities outside of waters of the U.S. are not included; all three tests in 33 CFR 325, Appendix C(g)(1) have not been met.

Final description of the permit area: The Corps' permit area for NHPA is the same as that for NEPA, the approximately 25-acre area within the Hudson River, surrounding the three existing moorings.

3.0 Purpose and Need

3.1 Project purpose and need

Project purpose and need for the project as provided by the applicant and reviewed by

the Corps:

The stated purpose of this project is to allow large vessels to be held offshore for loading, awaiting repairs or transit. The applicant states that, without available mooring buoys, individual vessels would drop and lift anchor, likely causing bottom disturbance for each mooring event.

3.2 Basic project purpose

The proposed activity does not involve a discharge of dredged or fill material and is not subject to Section 404 of the Clean Water Act. Therefore, a Section 404(b)(1) Guidelines analysis will not be conducted and a description of the basic project purpose and a determination about water dependency is not required.

3.3 Overall project purpose

Overall project purpose, as determined by the Corps: To provide moorings associated with the existing North River Shipyard that would allow large vessels to be held offshore for loading, awaiting repairs or transit.

4.0 Coordination

The application was complete for processing on September 19, 2023.

Public Notice Number NAN-2022-00385-WRY, describing the proposed activity and requesting public comment, was published on September 26, 2023, with a comment period ending on October 27, 2023. An electronic version of the Public Notice was posted on USACE's New York District website (<http://www.nan.usace.army.mil>). One hundred seventy-six (176) parties were notified by email of a link to the Public Notice on USACE's New York District website. Twenty-four (24) printed copies of the Public Notice were sent by regular mail. The Public Notices were sent to the adjacent property owners as identified by the applicant, to interested members of the public, and to Federal, state and local officials or agencies included in USACE's New York District computerized public notice mailing list for New York State DEC – Region 3.

In response to numerous public notice comments, the comment period was extended to November 27, 2023.

4.1 Public Notice Results

The results of coordinating the proposal on public notice are identified below, including a summary of issues raised, any applicant response and the Corps' evaluation of concerns.

Were comments received in response to the public notice? Yes

Were comments forwarded to the applicant for response? Yes

Was a public meeting and/or hearing requested, and if so, was one conducted?

Yes, a public meeting/hearing was requested but was not held.

To all who requested a public hearing, it was explained that the purpose of a regulatory public hearing is to collect information needed to make a permit decision. Before a decision can be made on a request for a public hearing, we need to know the specific reasons as to why the commenter feels that a hearing is required in this matter, including what information or comments would be submitted at the hearing that could not be submitted in writing. Each requestor was also told that written information carries just as much weight in our decision process as those comments presented orally. In each case, the requestor did not provide any additional information that could only be articulated at a public hearing. Mostly, they appeared to want to state their previously submitted concerns in person.

Comments received in response to public notice:

Comment 1: Approximately 279 commenters stated that they are opposed to issuing a permit, as the applicant has been operating with the three moorings for seven years, alleging that the applicant knew that the moorings were illegal. They state that issuing an after-the-fact permit would set a precedent, making entities think that they can do work without a permit, but get one after-the-fact when needed.

Applicant's Response: In a letter dated December 26, 2023, the consultant for the applicant, Mr. Daniel S. Natchez of Daniel S. Natchez and Associates, Inc. stated that their allegations are without merit, as the Corps was contacted in 2016 and 2023 and based upon those communications, believed that the moorings were legal.

Corps' Evaluation: As discussed in Section 1.4 above, there appears to have been a misunderstanding as to whether a permit was required for the three moorings. Given the above, it does not appear that the applicant knew that the moorings needed a permit from the Corps, as alleged by several commenters.

Comment 2: Approximately 270 commenters stated that the applicant did not justify the necessity for or the location of the three moorings.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that the moorings are located within an area designated by the US Coast Guard as a Special Anchorage Area as shown on the official Navigation Chart #12343, an excerpt of which was included in the Corps public notice. With the existence of the Special

Anchorage Area adjacent to a commercial marine facility, it is logical that the operator would make use of such an area. He noted that, if the three moorings are not approved, vessels would still be allowed to drop anchor in the area, as it will remain a Special Anchorage Area. That would cause greater impact to the river bottom each time a vessel drops or weighs anchor and less certainty that the temporarily anchored vessels would stay in place. He noted that the applicant is in receipt of the US Coast Guard's recent safety recommendations (See Section 10.10), submitted in response to the Corps public notice, and will comply with USCG's recommendations. He asserts that, if the permit is denied, this will restrict commerce on the river.

Corps' Evaluation: In general, placing moorings within close proximity to an existing marine business, would appear to be a reasonable use of the navigable waterway. The applicant has provided information stating that the three moorings are necessary for the operation of the facility. In addition, the location of the moorings appears to be reasonable, as they are located within the Nyack Special Anchorage Area and are more than 1 mile from the Federal Navigational Channel. As discussed in Section 10.10 below, any permit issued by this office would include special conditions recommended by the USCG.

Comment 3: Approximately 266 commenters stated that the application's 30-day public comment period is inadequate.

Applicant's Response: The applicant did not directly address this comment.

Corps' Evaluation: This office extended the comment period 30 days to November 27, 2023.

Comment 4: Approximately 269 commenters stated that the information included in the public notice is incomplete and incorrect, asserting that the public notice should have included the complete submitted application.

Applicant's Response: The applicant did not directly address this comment.

Corps' Evaluation: 33 CFR Part 325.3 dictates the elements that must be included in a public notice, including "a brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments..." It does not state that the complete submitted application should be part of the public notice.

Comment 5: Approximately 269 commenters stated that the applicant should justify the use of New York State lands for their business, over the concerns of other New York stakeholders.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that

the moorings are located within an area designated as a US Coast Guard Special Anchorage Area, as discussed in Comment 2, above. He stated that the buoy placements were not an attempt to privatize public waters. Rather, he asserts that this is how the area was always used for commerce and recreation.

Corps' Evaluation: Whether a project is located on public lands of New York is not within the purview of the Corps of Engineers. In addition, 33 CFR Part 325, Appendix A, specifies that any permit issued by the Corps "...does not grant any property rights or exclusive privileges". So, if the Corps issues a permit, it will not give the permittee permission to be on lands that the state has not given it permission to be on.

Comment 6: Approximately 266 commenters stated that the moorings currently provide "free parking" for the applicant at the expense of the public.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that the moorings are located within an area designated as a US Coast Guard Special Anchorage Area, as discussed in Comment 2, above. Mr. Natchez notes that past applications with the Corps showed moorings on the drawings and aerial photographs in 2004 showed moorings, as well. Aerial photographs from 2009 showed approximately 19 moorings within the property. He asserts that the three moorings that are the subject of this application would be a reduction. He stated that the buoy placements were not an attempt to privatize public waters. Rather, he asserts that this is how the area was always used for commerce and recreation.

Corps' Evaluation: As discussed in Comment 5 above, any permit issued by the Corps of Engineers does not give permittees permission to construct a project on properties to which they do not have legal access.

Comment 7: Approximately 276 commenters stated that the moorings have an adverse effect upon aesthetics, including noise and pollution.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that the Hudson River is noted for its maritime activities, promoting commerce, indicating that the moorings are not out of character for the area. He notes that, with or without the North River Shipyard's moorings, vessels will still moor in the area, as it is located within the US Coast Guard Special Anchorage Area. He also notes that, given that much of the village is significantly above the elevation of the river, when barges are moored, they do not block any views from the hillside. He further notes that the views from the elevated hillside likely also include the Mario Cuomo Bridge and the Westchester County shoreline. He stated that mooring vessels at existing buoys is relatively quiet. He stated that the vessels normally moored at the three buoys are empty, as they are either waiting to be serviced on shore or have just been serviced and are awaiting pick up. Sometimes though, they are used to temporarily moor barges for Sound Marine (a marine contractor) that have materials on board, but in those instances

the materials are secured such that they will not fall overboard.

Corps' Evaluation: The Hudson River is a working river, with commerce regularly traversing between the Port of New York and Albany, including ships and barges. The installation and use of permanent moorings is not out of character for this portion of the river. No information has been provided by the commenters that shows that the barges are any noisier or any more polluting than any other barges that regularly use the river.

Comment 8: Approximately 276 commenters stated that the moorings cause a navigational hazard to recreational vessels, some citing a maritime accident that happened with relation to work barges associated with the construction of the new Tappan Zee Bridge a few years ago.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that the locations of the mooring buoys range from approximately 1,030 to 1,800 feet offshore and approximately 1.1 to 1.15 miles from the maritime shipping lanes, which are located further to the east. He asserts that there are sufficient water depths, typically ranging from -7 to -13 feet below mean low water, and sufficient navigational area between the moorings and the shore for recreational craft to safely navigate. He also states that, although there is no need for vessels to pass between the three moorings as they occupy a relatively small area within the river, vessels could do it, as the closest distance between moorings is approximately 648 feet. He notes that a nearby marina has more closely spaced moorings through which vessels regularly pass safely, and included photographs. He also notes that at night, the barges are lighted in accordance with USCG rules. In a letter dated May 24, 2024, Mr. Natchez submitted additional drawings, showing the likely swing circles of various barges that are typically moored at the facility and the distances between each.

Corps' Evaluation: A total of ten aerial photographs were downloaded from Google Earth, dated from August 3, 2004, to May 10, 2023. These photos show that the area immediately east of the shipyard had numerous small craft moored before 2016, which is when the two of the three moorings were installed. These photos also show that a large mooring field of small craft was continually located more than 1,000 feet south of the three moorings, both before and after 2016. The Google Earth photo from September 1, 2021, shows that the nearest mooring to the south of North River Shipyard's moorings is approximately 1,027 feet to the south. From that same photograph, the western-most of the shipyard's moorings appears to be approximately 1,000 feet from shore. When compared to the density of the small craft moorings to the south, the shipyard's moorings appear to be sufficiently distant from the other moorings and from the shore that if watercraft wish to navigate around the shipyard's moorings, there should be ample room. In addition, the moorings are located more than 1 mile west of the commercial shipping channel. It should also be noted that the United States Coast Guard, in their letter dated September 28, 2023, as discussed in Section 10.10 below, did not recommend that the permit be denied. They recommended special

conditions if a permit is issued by this office. It is recommended that those special conditions, as discussed in Section 10.10 be included in any permit issued by this office. As such, the existing moorings do not appear to constitute a hazard to navigation. It is also recommended that the newly submitted drawings, showing the likely swing circles, be attached to any permit issued by this office.

Comment 9: Approximately 273 commenters stated that the moorings are responsible for decreased property values and the deterrence of future investment in the area.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that over the last seven years, since the buoys were installed, property values in the area have actually increased in value, and provided several examples from tax rolls and from online real estate sites. He also noted that the Village of Upper Nyack has granted building permits for millions of dollars' worth of construction in the area during the same time period.

Corps' Evaluation: As discussed above, the three moorings are not out of character with the nature of a working river. It does not appear reasonable that three moorings, in an area where multiple moorings and a shipyard have already existed would by themselves, significantly affect property values.

Comment 10: Approximately 224 commenters stated that the moorings are located in habitat known to contain three endangered species, bald eagles and two species of sturgeon, asking to know what mitigation measures are being incorporated in order to protect these species.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that the main concern with regard to bald eagles is noise and that the mooring of vessels is relatively quiet. He notes that one commenter has stated that he has observed that osprey, bald eagle, great blue heron, cormorant and gulls use the barges. He stated that the moorings would not affect the two sturgeon species any more than the other moorings that currently use this area of the river. In fact, he states that if the three permanent moorings were not present, the area would be subject to the continual dropping and picking up of anchors, which would be more disruptive to the river bottom, as the area is a designated Special Anchorage Area.

Corps' Evaluation: As discussed in Section 10.1 below, this office has determined that there would be no effect to endangered species, as the three mooring anchors, chains and buoys are already in place. The applicant does not propose any new structures or work within waters.

Comment 11: Approximately 224 commenters stated that the moorings are located in front of a New York State Historical District, asking to know what mitigation measures are being incorporated in order to protect the historic district.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that the property has a long maritime history which is part of the Van Houten's Landing Historic District, asserting that the moorings at the buoys are consistent with the history and heritage of the area. He states that the use of the area by marine vessels is actually part of the reason why the district is listed on the National Register of Historic Places, as the area was used by John Van Houten as a boatyard beginning in the 1790's. He provided a further history of the boatyard, leading up to the present day.

Corps' Evaluation: As discussed in Section 10.3 below, the New York State Office of Parks, Recreation and Historic Preservation (SHPO) determined that the project would have No Adverse Effect upon the Van Houten's Landing Historic District.

Comment 12: Approximately 224 commenters recommended denial of the permit and removal of the moorings.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez noted that, if the three moorings are not approved, vessels would still be allowed to anchor in the area, as it will remain a Special Anchorage Area. That would cause greater impact to the river bottom each time a vessel drops anchor and less certainty that the temporarily anchored vessels would stay in place.

Corps' Evaluation: Removal of the moorings in advance of a permit decision would not appear to be prudent, as the moorings have already been in place beginning in 2016 and the anchors and the chains that lay on the bottom of the river have presumably already settled and been covered with sediment. To require removal of the anchors and lay of chain would likely disturb benthic habitat, only to potentially install the moorings all over again later, if a permit is issued. If the permit were to be denied and the moorings permanently removed, vessels using the facility would presumably drop their own anchors each time, disturbing the benthic habitat not only when dropping anchor, but also when retrieving the anchor. If a permit is issued by this office, it would seem that permanently leaving the anchor and chain on the bottom would have less impact upon benthic habitat than continually dropping and retrieving anchors.

Comment 13: Approximately 273 commenters requested that a public hearing be held, stating that it would provide a public forum for interested parties and regulators to fully evaluate the application.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez noted that none of the commenters stated, "with particularity the reasons for holding a public hearing", and that their requests should be rejected, per the regulations. He believes that a public hearing would only serve to reiterate what they have already provided by letter.

Corps' Evaluation: As discussed in Section 4.1 above, a public hearing does not appear to be necessary.

Comment 14: Approximately 268 commenters stated that the stated purpose used in the public notice does not align with the applicant's past usage of the moorings.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that the applicant's property has featured moorings in the past, including during the reconstruction of the Tappan Zee Bridge, and is consistent with the historic use of the property as a shipyard and boatyard. He stated that the moorings are critical to the shipyard's safe and efficient operations. The moorings allow the vessels to maintain a safe position, to the benefit of surrounding vessels and facilities. He noted that without the applicant's mooring buoys the Special Anchorage Area could still be used by boats and barges.

Corps' Evaluation: The commenters stated that the stated purpose does not align with the applicant's past usage of the moorings, but did not explain why. The stated purpose of the project appears to be valid in that vessels can temporarily moor, waiting to come ashore or waiting to be retrieved by their owners, as part of ongoing and long-term shipyard operation.

Comment 15: Two (2) commenters expressed support for the moorings, indicating that the moorings pose no navigation risk to recreational boating or to mariners in the federal navigation channel. One (1) commenter stated that he had no problem with the aesthetics of the barges, stating that birds seem to use them.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez cited their comments in support of the permit application.

Corps' Evaluation: As discussed in Comment 8 above and Section 10.10 below, the three existing moorings do not appear to constitute a hazard to navigation.

Comment 16: Ms. Jennifer Hatch, in an electronic mail transmission (email) dated October 15, 2023, stated that (a) the applicant runs a facility that is inappropriately sized to the property, and believes that the moorings are just an extension of the inappropriately sized business. (b) She mentions New York State court rulings that the applicant is allegedly defying. (c) She states that the three moorings have tethered empty barges for most of the last seven years, swinging in a large radius, with no hazard markings or safety lights. Two other commenters also state that barges have been in place almost continuously for the past seven years. (d) She indicated that the moorings are a hazard to recreational navigation. (e) She states that there is no public need for the moorings, as they are a private use on what she states is public land, constituting an adverse effect to aesthetics. She asks that the Corps consider the applicant's alleged illegal and abusive actions. She also requested a public hearing.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez answered comments (a), (c), (d) and (e). In emails on February 6, 2024, and May 9, 2024, Mr. Natchez answered comment (b). He included more details regarding comment (c) in an email dated February 6, 2024. He stated that (a) the mooring buoys are used for the purpose of having vessels temporarily moored offshore while awaiting service and after service while awaiting retrieval. (b) He provided a copy of a court order from the Supreme Court: State of New York County of Rockland K. Graefe and Sons Corp. d/b/a/ North River Shipyard and Van Houten Holding Corp., Plaintiffs, against Village of Upper Nyack, Defendant, dated December 8, 2023, which reinstates special use permits issued by the Village, allowing the shipyard to continue its operations. (c) He stated that, on average, each mooring buoy is used approximately 255 days per year. The vessels moored there are typically empty and do not carry fuel or other hazardous cargo. Occasionally, a contractor uses the moorings temporarily for transporting equipment and materials to a job site. In Comment 8 above, Mr. Natchez stated that the barges are lighted per USCG requirements. (d) Mr. Natchez addressed the navigation issues in Comment 8, above. (e) Mr. Natchez addressed the moorings versus public land in Comment 6, above.

Corps' Evaluation: (a) 33 CFR Part 325, Appendix A, specifies that "this permit does not obviate the need to obtain other Federal, state, or local authorizations required by law", meaning that if there are state or local laws that limit the size of the facility, any permit issued by this office would not override such requirements. (b) As discussed in Comment 8(a) above, a Corps permit does not obviate the need to obtain other Federal, state, or local authorizations. (c) If a permit is issued by this office, it will be for the existing installation of the three moorings, not how often they are used. It is recommended that any permit issued by this office include the requirement for lighting moored vessels per letter from USCG requirements at 33 CFR 83 and 33 CFR 110.155, as discussed in Section 10.10 below. (d) As discussed in Comment 8 above, the moorings do not appear to be a hazard to either commercial or recreational navigation. (e) As discussed in Comment 5 above, a Corps permit does not give a permittee permission to perform work where its not allowed by other jurisdictions. Aesthetics were addressed in Comment 7 above. The applicant's alleged disregard for the need for a permit is addressed in Comment 1 above. As discussed in Section 4.1 above, a public hearing does not appear to be necessary.

Comment 17: Three (3) commenters stated that the applicant recently installed a new mooring at the facility.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that the recent work on the buoys did not constitute new buoys. The applicant was maintaining the existing buoys by removing them from the water individually, cleaning them, repainting them and replacing them in the same location. There were no new buoys installed. He noted that the Corps was aware of the maintenance work.

Corps' Evaluation: It is reasonable and appropriate to maintain the existing buoys. When the recently refurbished buoy was removed from the water for maintenance, the anchor and lay of anchor chain remained in place.

Comment 18: Ms. Eileen Collins, in an email dated October 26, 2023, submitted Comments 1, 2, 4, 5, 7, 10, 11, 12, 13 and 14, as discussed above. In addition, she also stated that (a) the applicant was issued a special use permit, presumably by a local municipality, and that the applicant has been expanding beyond that permit by placing elements of their business in the waterway, including now the moorings, allegedly to avoid the reach of the Village government. (b) She believes that the issuance of a Corps permit will mute the Village's ability to regulate the operation. (c) She implies that the applicant knew that they needed a permit for the moorings but did it anyway. (d) She states that she believes that the moorings are not necessary. (e) She stated that there is a law passed in 2021 that bans oil barge anchorages, stating that it should also apply here. (f) She also mentioned a particular artist, Edward Hopper who painted a view of Hook Mountain in 1899, stating that the barges ruin that view.

Applicant's Response: In emails on February 6, 2024, and May 9, 2024, Mr. Natchez addressed Comment (a). In the email on February 6, 2024, Mr. Natchez addressed Comments (b) and (e). In the letter dated December 26, 2023, Mr. Natchez addressed Comments (c) and (d). (a) Mr. Natchez addressed Mr. Collins' comment regarding the special use permit in Comment 16, above. (b) Mr. Natchez stated that the granting or denial of the application will have no effect on the Village's ability to regulate activities on site. (c) Mr. Natchez addressed her assertion that the shipyard knew the moorings were illegal in Comment 1, above. (d) Mr. Natchez addressed the need for the moorings in Comment 2, above. (e) Mr. Natchez stated that the legislation that was passed in 2021 was aimed at the regulation of the mooring of oil tankers in the Hudson River and should have no bearing on other types of moorings. (f) Mr. Natchez did not directly address the comment about Edward Hopper.

Corps' Evaluation: (a) (b) As discussed in Comments 8(a) and 16(b) above, a Corps permit does not obviate the need to obtain other Federal, state, or local authorizations. (c) As discussed in Comment 1 above, the applicant does not appear to have known that the moorings needed a permit from the Corps. (d) As discussed in Comment 2 above, the applicant appears to have shown the need to maintain the three existing moorings. (e) There do not appear to be any regulations in place at this time that prohibit the mooring of oil barges on the Hudson River. That said, the applicant has indicated that most of the vessels to be moored at their facility would be there for maintenance and as such, would be empty. It should also be noted that in this case, the Corps of Engineers would be regulating the potential maintenance in-place, of the existing mooring structures, but not what would be moored there. (f) As discussed in Comment 7 above, the Hudson River is a working river, as it likely was back in 1899. The installation and use of permanent moorings is not out of character for this portion of

the river.

Comment 19: In a letter dated October 27, 2023, Mr. Adam Budgor submitted Comments 1, 2, 4, 5, 6, 7, 12 and 13, as discussed above. In addition, he stated that he has reviewed the overall application submitted by the applicant, including the Joint Application Form (JAF), the Federal Consistency Assessment Form (FCAF), the Essential Fish Habitat (EFH) worksheet and the Environmental Questionnaire. He pointed out a number of apparent mistakes in the text and forms of the application, including: (a) the area of the project; (b) assertions in the FCAF; (c) a mention of Jamaica Bay rather than Nyack with respect to aesthetic resources; (d) a mention of dredging at another part of the facility; (e) viable alternatives; (f) boxes and/or blanks that Mr. Budgor asserts either should have been checked or filled in on the JAF and Environmental Questionnaire; (g) that a copy of the PN was sent to the wrong address for the Village of Upper Nyack and not to enough property owners in the vicinity of the shipyard; (h) that the facility was not continuously used as a shipyard before the current applicant; (i) that a floating pier attached to the shore portion of the facility is outside of the facility perimeter and services a defunct ship that has not been moved in years; (j) that anchors don't work in mud and current; (k) that the project is in a section of wild and scenic waters; (l) that the Essential Fish Habitat (EFH) worksheet was improperly filled out; and (m) the version of the JAF in the application that they reviewed was not signed. (n) Mr. Budgor asserts that these mistakes render the application invalid. (o) He reiterated a comment about the Edward Hopper painting that was first voiced by Mr. Collins in Comment 18, above. (p) He alleges that Corps staff made some mistakes in handling this situation over the years, due to the applicant's lies. (q) He also states that the State Historic Preservation Office (SHPO) was not included in the applicant's submitted application.

Applicant's Response: In the letter dated December 26, 2023, Mr. Natchez stated that (a) the project area, listed as 45 acres in the application materials that were submitted in advance of the public notice was in error. He stated that the project area was likely closer to 0.90 acres, but was subject to interpretation. (b) Mr. Natchez countered a number of assertions by Mr. Budgor regarding how the FCAF was filled out. (c) Mr. Natchez stated that the reference to Jamaica Bay was in error, and should have said "Hudson River". He stated that the rest of the aesthetic resources discussion remains valid. (d) the dredging mentioned by Mr. Budgor is actually the subject of a separate application to the Corps and is not part of the mooring application. (e) Mr. Natchez addressed the alternatives assertion in Comment 2, above. (f) Mr. Natchez countered a number of assertions by Mr. Budgor regarding how the JAF and Environmental Questionnaire were filled out. (g) Mr. Natchez stated that the Corps application requires that public notices be sent to properties that are immediately adjacent to the project and that's what was done. He also stated that public notices were actually sent to more properties that required. (h) Mr. Natchez states that the property has historically been a shipyard, dating back to the 1700's, as memorialized in the Village of Upper Nyack's comprehensive plan and included a relevant passage from the plan. (i) Mr. Natchez

stated that the pier mentioned by Mr. Budgor is not part of the current application and is not relevant to the mooring application, as it is a temporarily float associated with the repair of a vessel. (j) Mr. Natchez stated that the current anchoring approach is more environmentally desirable than other anchoring approaches, noting that the mooring buoys have been in place and used for many years without incident. (k) Mr. Natchez notes that “Wild and Scenic Rivers” is a federal classification and that this project is not within wild and scenic rivers. (l) Mr. Natchez stated that the EFH worksheet was an old version that included proposed dredging, which should have been removed from the form, but that the rest of the form is accurate. (p) Mr. Natchez stated that the allegations that the applicant has lied during the permitting process is without merit. Mr. Natchez did not directly address comments (m), (n), (o) or (q).

Corps’ Evaluation: While it appears that Mr. Budgor is correct that mistakes were made to portions of the application by the applicant, including the project area (a); the details in the FCAF (b); text referring to Jamaica Bay (c); a reference to dredging (d) which may be part of a separate application; whether the correct boxes were checked in the JAF (f); and the filling out of the EFH form (l) were easily identified and corrected for the purposes of issuing a public notice. (e) As discussed in Comment 2 above, the applicant appears to have shown that maintaining the three existing moorings is a reasonable alternative. (g) Paper copies of the public notice were sent to the Village of Upper Nyack at the 11 Van Houten Street address given by the applicant and at 328 North Broadway, as found by this office on the Village’s web site. As neither of these paper copies were returned to this office, it is assumed that they were successfully delivered to the Village. (h) There is no requirement that the facility be continuously used as a shipyard before they apply for a permit. (i) As the float in question appears to be associated with the temporary mooring of a vessel being repaired, it is not part of the application for the three existing moorings, and may not need a permit from this office. (j) Anchors, along with a lay of chain on the bottom of the waterway, are generally effective, as long as the anchor and chain are heavy enough to secure the vessel. As Mr. Natchez states that the moorings have been in place for years without incident, these moorings appear to be appropriately sized. (k) No part of the Hudson River is located within the National Wild and Scenic Rivers System, as found at the National Wild and Scenic Rivers System web page at rivers.gov. (m) This office received a copy of the Joint Application for Permit, signed August 2, 2023. (n) A few mistakes on the application form does not render the entire application invalid. In such cases, the Corps needs to obtain the correct pertinent information from the applicant, which was done. (o) As discussed in Comment 18 above, the Hudson River is a working river and as it likely was back in 1899 when Mr. Hopper created his painting. The installation and use of permanent moorings is not out of character for this portion of the river. (p) As discussed in Comment 1 above, it does not appear that the applicant lied. It appears that there was a misunderstanding. (q) We are not sure what Mr. Budgor means by SHPO not being included in the applicant’s submitted application, but SHPO was notified of the project through the Corps’ permit process and they submitted their No Adverse Effect determination letter, as discussed in Section 10.3, below.

Comment 20: In a letter dated November 27, 2023, Mr. Richard Webster of Rupp Pfalzgraf LLC, restated all of the points in Mr. Budgor's letter of October 27, 2023 (Comment 19, above). In addition, Mr. Webster requested (a) that the public notice comment period be extended by two more weeks to allow him to review information recently obtained through the Freedom Of Information Act (FOIA). (b) Mr. Webster cited 33 CFR 110.155(l)(2) which states that the anchoring of commercial vessels, including barges, with the Port of New York is prohibited outside designated anchorage grounds except in case of emergency. (c) He states that the applicant is violating New York State law and should stop using the moorings until a permit is obtained. (d) He cites New York State Department of Environmental Conservation (NYSDEC) enforcement policy that DEC can deny applications where the applicant makes materially false or inaccurate statements, asserting that it extends to the Corps, and implying that the applicant is not trustworthy. (e) He cites the requirements of the National Environmental Policy Act (NEPA) and believes that an Environmental Impact Statement (EIS) is required, as he believes that it would be a major action with a significant effect. (f) He also asserts that the project is located in the area designated by the Hudson River Valley National Heritage Area Act of 1996, and that the moorings will significantly blemish formerly pristine views of the Hudson River.

Applicant's Response: (e) Mr. Natchez stated that it is the applicant's position that the permitting of three mooring buoys within a Federally Designated Special Anchorage Area does not require an EIS. (f) Mr. Natchez states that the Hudson River Valley National Heritage Area Act includes the entire counties of Rockland and Westchester, extending all the way to Saratoga County and includes more than just the area of the river, and does not raise the required level of regulatory review. Mr. Natchez did not directly address comments (a), (b), (c) or (d).

Corps' Evaluation: (a) The public notice comment period had already been extended 30 days at the point where Mr. Webster requested two more weeks. It did not appear to be necessary to further extend the comment period. However, he submitted additional comments on March 27, 2024, and they will be considered, as discussed in Comment 21, below. (b) 33 CFR 110.155(l)(2) states that the anchoring of commercial vessels, including barges, with the Port of New York is prohibited outside designated anchorage grounds except in case of emergency. The project is located within the Nyack Special Anchorage, as designated at 33 CFR 110.60(c)(3), which is a designated anchorage. (c) As previously discussed in this document, (Comments 8, 16 and 18) a Corps permit does not obviate the need to obtain other Federal, state, or local authorizations, including any required New York state permits. (d) As previously discussed, (Comments 1, 16, 18 and 19) the applicant does not appear to have been lying. They appear to have misunderstood. (e) This office does not agree that this project constitutes a major action that requires an EIS. 33 CFR Part 230.7(a) states that "most permits will normally require only an EA". 33 CFR Part 230.6 states that an EIS is only required for major actions. Three mooring anchors with chain would not constitute a major action. (f) The

Hudson River Valley National Heritage Area is designated at 54 USC 3201, which does not currently preclude the installation of moorings within the Hudson River.

Comment 21: In a letter dated March 27, 2024, after the expiration of the public notice comment period, Mr. Richard Webster of Rupp Pfalzgraf LLC, forwarded a copy of a Decision & Order of a lawsuit entitled “Friends of Upper Nyack Waterfront, an unincorporated association, by and through its President, Plaintiff, -against- K. Graefe and Sons Corp., d/b/a North River Shipyard, and Van Houten Holding Corp., Defendants.”, dated March 13, 2024, asserting that it holds that the Rivers and Harbors Act does not preempt New York State and local municipal authority to regulate moorings and anchoring in the Hudson River, and allows private removal of unauthorized moorings. He stated that deficiencies noted by the court mean that the Corps should not have deemed the application complete for processing. He also noted a letter signed by Rosita Miranda of this office, from April 20, 2022, stating that violations of Section 10 of the Rivers and Harbors Act can result in criminal prosecution, but the Corps would consider removal of the moorings as a satisfactory resolution, suggesting that the Corps should now compel the applicant to remove the moorings.

Corps’ Evaluation: It should be noted that the Decision & Order does not make a final decision. The matter of whether or not the moorings would be removed under the New York State provision has not yet been decided – however the matter of whether moorings in general could potentially be removed under this provision was determined in the affirmative. As stated previously in the document, any permit issued by the Corps of Engineers does not obviate the need for other Federal, State or local permits. The Corps review of the project at the time of submission was proper, including the determination that the application was complete for processing. The Corps letter sent on April 20, 2022, was an effort to obtain more information, including advising the applicant of possible permitting outcomes. It was not requiring removal of the moorings at that time.

Comment 22: In electronic mail transmissions on January 22, 2024, January 28, 2024, February 29, 2024, March 19, 2024, and April 25, 2024, the Upper Nyack Environmental Protection Fund and Mr. Adam Budgor reiterated a number of comments previously submitted during the public notice comment period which closed on November 27, 2023, including that they believe that the moorings are dangerous; that they believe that Corps should order the removal of the moorings; and they asserted shortcomings and falsehoods of the application materials. In addition, (a) Mr. Budgor believes that the applicant has received preferential treatment in that the Corps actively contacted the applicant to obtain more information needed for the public notice and to get the applicant’s responses to the public notice. He also cited an email in which Mr. Brian Orzel of this office told Mr. Natchez that his responses to the public notice comments were “adequate”. (b) He also believes that, while the Corps maintained contact with the applicant, the Corps was not responsive enough to the public notice commenters, including his organization. (c) He stated that more barges have been

attached to the moorings since the public notice was issued. (d) He believes that the public should have been notified that the applicant changed consultants from TMS Waterfront to Dan Natchez Associates and that because of that, the applicant should have been required to submit a new application. (e) He also submitted a copy of the Decision & Order document discussed in Comment 21, above.

Corps' Evaluation: (a) Corps project managers regularly coordinate with applicants, both leading up to and after the publishing of a public notice. This is not preferential treatment. It is just doing what is necessary in order to obtain the needed information. (b) Given our considerable workload, we are not always able to quickly answer all inquiries. We believe that we have been as responsive as possible to both the applicant and the interested public. (c) If a permit is issued by this office, it will be for the existing installation of the three moorings, not how often they are used or how large the vessels moored therein would be. (d) The applicant is ultimately responsible for the information submitted during the permit application process. A change in their hired consultant does not change that responsibility, nor does it require the public to be notified, nor does it require the resubmission of the application. (e) As discussed in Comment 21 above, no decision regarding whether the lawsuit will compel the applicant to remove the moorings has been reached at this time.

*** Based upon the above, the concerns of the above commenters have been adequately addressed.**

Additional discussion of submitted comments, applicant response and/or Corps' evaluation: This office conducted a site visit on July 5, 2023, as discussed in a site visit report dated July 12, 2023.

4.2 Additional issues raised by the Corps

N/A

4.3 Comments regarding activities and/or effects outside of the Corps' scope of review

N/A

5.0 Alternatives Analysis

(33 CFR Part 325 Appendix B and 40 CFR 1501, and RGL 88-13). An evaluation of alternatives is required under NEPA for all jurisdictional activities. NEPA requires discussion of a reasonable range of alternatives, including the no action alternative, and the effects of those alternatives.

5.1 Site selection/screening criteria

Criteria for evaluating alternatives as evaluated and determined by the Corps:

The purpose of the project is to provide moorings associated with the existing North River Shipyard that would allow large vessels to be held offshore for loading, awaiting repairs or transit. Alternatives would need to be within reasonable proximity to the existing shipyard and be capable of safely and securely storing the vessels.

5.2 Description of alternatives

5.2.1 No action alternative

The no action alternative would mean that the three existing moorings would be removed from the river. In that event, the applicant has noted that the area where the three moorings currently reside is within the Nyack Special Anchorage Area as designated in 33 CFR Part 110, and as shown on the official Navigation Chart #12343. As such, vessels that would otherwise use the three existing mooring structures could instead drop anchor there and would not need a permit from the Corps. As the existing moorings are frequently used, the dropping and weighing of anchors in that area would likely become frequent, likely causing frequent disruption to benthic habitat.

5.2.2 Off-site alternatives

Off-site alternative 1: Off-site alternatives do not appear to be reasonable, as they would likely locate the vessels distantly, and those off-site locations would need to be a safe and secure storage area. As the location of the existing moorings is already an approved Special Anchorage Area, it has already been determined to be a safe and secure location for mooring vessels.

Off-site alternative 2: See Off-site alternative 1.

5.2.3 On-site alternatives

On-site alternative 1 (applicant's preferred alternative): Maintain, as existing, three moorings, as described in Section 1.3, above.

On-site alternative 2: Moor all vessels at the existing piers and bulkheads at the facility or maintain less than the three existing moorings. This does not appear to be practicable, as much of the existing bulkhead space is already occupied and the applicant has stated that each mooring is occupied an average of approximately 255 days a year, meaning that they would need bulkhead or pier space for up to three barge-sized vessels as any given time.

5.3 Alternatives evaluation under NEPA

On-site alternative 1 appears to be a practicable alternative.

6.0 Evaluation for Compliance with the Section 404(b)(1) Guidelines

N/A, the proposed project is subject to only Section 10 of the Rivers and Harbors Act of 1899.

7.0 General Public Interest Review (33 CFR 320.4 and Regulatory Guidance Letter 84-09)

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest as stated at 33 CFR 320.4(a). To the extent appropriate, the public interest review below also includes consideration of additional policies as described in 33 CFR 320.4(b) through (r). The benefits which reasonably may be expected to accrue from the proposal are balanced against its reasonably foreseeable detriments.

7.1 Public interest factors review

All public interest factors have been reviewed and those that are relevant to the proposal are considered and discussed in additional detail (see Table 1):

Table 1 – Public Interest Factors						
Factor	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
1. Conservation: Mooring buoys are relatively minor in nature. Presumably, the existing associated anchors and chains have likely settled into the river sediments and a new benthic community has likely taken hold.				X		
2. Economics: The applicant would benefit financially from being able to keep the three moorings. Commenters have not substantiated their claim that the moorings will adversely affect their property values.				X		
3. Aesthetics: The Hudson River is a working river. The existing moorings are not out of character with that.				X		
4. General Environmental Concerns:				X		
5. Wetlands:	X					
6. Historic Properties:				X		
7. Fish and Wildlife Values:				X		

Table 1 – Public Interest Factors						
Factor	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
8. Flood Hazards:	X					
9. Floodplain Values:	X					
10. Land Use:	X					
11. Navigation: As discussed in the Comments section, the existing moorings have been in place beginning approximately 7 years ago, without incident and are located more than 1 mile from the navigation channel. Special Conditions recommended by USCG will be incorporated to assure that the appropriate navigation charts are updated. In addition, it should be noted that the Hudson River is designated as Route Number M-87 in the United States Marine Highway Program, an initiative designed to increase use of the navigable waterways for commerce.				X		
12. Shoreline Erosion and Accretion:	X					
13. Recreation: As discussed in the Comments section, recreational craft that utilize that portion of the river have ample room to avoid moored vessels at the facility.				X		
14. Water Supply and Conservation:	X					
15. Water Quality:	X					
16. Energy Needs:	X					
17. Safety: As discussed in the Comments section, the moorings are over 1 mile from the navigation channel and recreational craft have ample room to avoid moored vessels.				X		
18. Food and Fiber Production:	X					
19. Mineral Needs:	X					
20. Consideration of Property Ownership:				X		

Table 1 – Public Interest Factors						
Factor	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
21. Needs and Welfare of the People: As discussed in the Comments section, commenters state that visual and navigational issues associated with the moorings adversely affect them. The effects of the moorings appear to be negligible.				X		

Additional discussion of effects on factors above: N/A

7.2 Public and private need

The relative extent of the public and private need for the proposed structure or work:

The applicant has stated that the moorings are a necessary component of their shipyard business.

7.3 Resource use unresolved conflicts

If there are unresolved conflicts as to resource use, explain how the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work was considered.

There do not appear to be any reasonable alternative locations, as the area offshore of the shipyard is a USCG Special Anchorage area, an area specifically designated for safe anchorage. Trying to moor vessels elsewhere would likely cause them to be unreasonably distant from the facility.

7.4 Beneficial and/or detrimental effects on the public and private use

The extent and permanence of the beneficial and/or detrimental effects that the proposed work is likely to have on the public and private use to which the area is suited is described below:

Detrimental effects are expected to be minimal and temporary.

Beneficial effects are expected to be minimal and temporary.

Potentially detrimental effects would be to visual impacts from surrounding properties and possibly small craft navigation through the mooring field. Beneficial effects would

include economic benefit to the shipyard, reliability of the existing moorings versus anchor dropping, and less impact to benthic habitat.

7.5 Climate Change

The proposed activities within the Corps' federal control and responsibility likely will result in a negligible release of greenhouse gases into the atmosphere when compared to global greenhouse gas emissions. Greenhouse gas emissions have been shown to contribute to climate change. Aquatic resources can be sources and/or sinks of greenhouse gases. For instance, some aquatic resources sequester carbon dioxide whereas others release methane; therefore, authorized impacts to aquatic resources can result in either an increase or decrease in atmospheric greenhouse gas. These impacts are considered de minimis. Greenhouse gas emissions associated with the Corps' federal action may also occur from the combustion of fossil fuels associated with the operation of construction equipment, increases in traffic, etc. The Corps has no authority to regulate emissions that result from the combustion of fossil fuels. These are subject to federal regulations under the Clean Air Act and/or the Corporate Average Fuel Economy (CAFE) Program. Greenhouse gas emissions from the Corps' action have been weighed against national goals of energy independence, national security, and economic development and determined not contrary to the public interest.

8.0 Mitigation

(33 CFR 320.4(r), 33 CFR Part 332, and 40 CFR 1508)

8.1 Avoidance and minimization

Avoidance and Minimization: When evaluating a proposal including regulated activities in waters of the United States, consideration must be given to avoiding and minimizing effects to those waters. Avoidance and minimization are described in Section 1.3.1 above.

Describe other mitigative actions including project modifications implemented to minimize adverse project impacts? (see 33 CFR 320.4(r)(1)(i))

N/A

8.2 Compensatory mitigation requirement

Is compensatory mitigation required to offset environmental losses resulting from proposed unavoidable impacts to waters of the United States? No

Provide rationale: The impacts to the river are relatively minimal.

8.3 Type and location of compensatory mitigation

8.3.1 Mitigation bank service area

Is the impact in the service area of an approved mitigation bank? No

Does the mitigation bank have the appropriate number and resource type of credits available? N/A

8.3.2 In-lieu fee program service area

Is the impact in the service area of an approved in-lieu fee program? No

Does the in-lieu fee program have the appropriate number and resource type of credits available? N/A

8.3.3 Compensatory mitigation

Selected compensatory mitigation type/location(s) (see Table 2):

Table 2 – Mitigation Type and Location	
Mitigation bank credits	
In-lieu fee program credits	
Permittee-responsible mitigation under a watershed approach	
Permittee-responsible mitigation, on-site and in-kind	
Permittee-responsible mitigation, off-site and/or out-of-kind	

8.3.4 Mitigation hierarchy

Does the selected compensatory mitigation option deviate from the order of the options presented in 33 CFR 332.3(b)(2)-(6)? N/A

If yes, provide rationale for the deviation, including the likelihood for ecological success and sustainability, location of the compensation site relative to the impact site and their significance within the watershed, and/or the costs of the compensatory mitigation project (see 33 CFR 332.3(a)(1)):

8.3.5 Watershed approach

Does the selected compensatory mitigation option follow a watershed approach? N/A

Is the impact in a watershed with a watershed plan? N/A

Is the compensatory mitigation consistent with the watershed plan? N/A

8.4 Amount of compensatory mitigation

Rationale for required compensatory mitigation amount:

8.5 Permittee-Responsible Mitigation

For permittee-responsible mitigation identified in 8.3.3 above, the final mitigation plan must include the items described in 33 CFR 332.4(c)(2) through (c)(14) at a level of detail commensurate with the scale and scope of the impacts. As an alternative, the district engineer may determine that it would be more appropriate to address any of the items described in (c)(2) through (c)(14) as permit conditions, instead of components of a compensatory mitigation plan. Presence of sufficient information related to each of these requirements in the applicant’s mitigation plan is indicated by “Yes” in Table 3. “No” indicates absence or insufficient information in the plan, in which case, additional rationale must be provided below on how these requirements will be addressed through special conditions or why a special condition is not required:

Table 3 – Permittee-Responsible Mitigation Plan Requirements		
Requirement	Yes	No
Objectives		
Site selection		
Site protection instrument		
Baseline information		
Determination of credits		
Mitigation work plan		
Maintenance plan		
Performance standards		
Monitoring requirements		
Long-term management plan		
Adaptive management plan		
Financial assurances		
Other information: <i>Provide discussion here, if necessary.</i>		

For any “No”, provide rationale on how the subject component(s) of the compensatory mitigation plan will be addressed as special conditions or why no special conditions are required:

9.0 Consideration of Cumulative Effects

(40 CFR 1508 & RGL 84-9) Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor direct and indirect but collectively significant actions taking place over a period of time. A cumulative effects assessment should consider how the direct and indirect environmental effects caused by the proposed activity requiring DA authorization (i.e., the incremental impact of the action) contribute to the aggregate effects of past, present, and reasonably foreseeable future actions, and whether that incremental contribution is significant or not.

9.1 Identify/describe the direct and indirect effects which are caused by the proposed activity:

Direct effects would be the three existing anchors and chains laying on the bottom of the river. Indirect effects would include visual impacts of the moorings.

9.2 The geographic scope for the cumulative effects assessment is:

The Hudson River in the vicinity of Rockland County.

9.3 The temporal scope of this assessment covers:

The three moorings are already in place and have been for approximately 7 years. There would be no temporal impacts.

9.4 Describe the affected environment:

The river bottom at this location is mostly silty and organic.

9.5 Determine the environmental consequences:

The three existing mooring anchors and chains are already on the bottom and have been for approximately 7 years. Presumably, they have already settled into the river sediment and are covered to some degree by sediments. Requiring removal would cause minor disturbance to sediments. Resulting frequent anchoring would cause minor disturbance to sediments, but each occurrence would be more frequent.

9.6 Conclusions regarding cumulative impacts:

When considering the direct and indirect impacts that will result from the proposed activity, in relation to the overall direct and indirect impacts from past, present, and reasonably foreseeable future activities, the incremental contribution of the proposed activity to cumulative impacts in the area described in section 9.2, are not significant . Compensatory mitigation will not be required to offset the impacts of the proposed activity to eliminate or minimize its incremental contribution to cumulative effects within the geographic area described in Section 9.2. Mitigation required for the proposed activity is discussed in Section 8.0.

10.0 Compliance with Other Laws, Policies and Requirements

10.1 Section 7(a)(2) of the Endangered Species Act (ESA)

Refer to Section 2.2 for description of the Corps' action area for Section 7 of the ESA.

10.1.1 Lead federal agency for Section 7 of the ESA

Has another federal agency been identified as the lead agency for complying with Section 7 of the ESA with the Corps designated as a cooperating agency and has that consultation been completed? No

Identify that the lead agency, the actions taken to document compliance with Section 7 and whether those actions are sufficient to ensure the activity(s) requiring Department of the Army authorization is in compliance with Section 7 of the ESA:

N/A

10.1.2 Listed/proposed species and/or designated/proposed critical habitat

Are there listed or proposed species and/or designated critical habitat or proposed critical habitat that may be present or in the vicinity of the Corps' action area? Yes

Effect determination(s), including no effect, for all known species/habitat, and basis for determination(s): No effect. Two of the three moorings have been in place since 2016. The third was installed in 2019. No new work or structures are proposed within waters.

10.1.3 Section 7 ESA consultation

Consultation with either the National Marine Fisheries Service and/or the United States Fish and Wildlife Service was initiated and completed as required, for any determinations other than "no effect" (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation)

N/A

10.2 Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Essential Fish Habitat (EFH)

10.2.1 Lead federal agency for EFH provisions of the Magnuson-Stevens Act

Has another federal agency been identified as the lead agency for complying with the EFH provisions of the Magnuson-Stevens Act with the Corps designated as a cooperating agency and has that consultation been completed? No

Identify the agency, the actions taken to document compliance with the Magnuson-Stevens Act and whether those actions are sufficient to ensure the activity(s) requiring Department of the Army authorization is in compliance the EFH provisions.

N/A

10.2.2 Magnuson-Stevens Act

Did the proposed project require review under the Magnuson-Stevens Act? No

10.2.3 EFH species or complexes

Were EFH species or complexes considered? Yes

Effect determination and basis for that determination: No effect. Two of the three moorings have been in place since 2016. The third was installed in 2019. No new work or structures are proposed within waters

10.2.4 National Marine Fisheries Service consultation

Consultation with the National Marine Fisheries Service was initiated and completed as required (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation)

N/A

10.3 Section 106 of the NHPA

Refer to Section 2.3 for permit area determination.

10.3.1 Lead federal agency for Section 106 of the NHPA

Has another federal agency been identified as the lead federal agency for complying with Section 106 of the NHPA with the Corps designated as a cooperating agency and has that consultation been completed? No

Identify the lead agency, and whether the undertaking they consulted on included the Corps' undertaking(s). Briefly summarize actions taken by the lead federal agency.

N/A

10.3.2 Historic properties

Known historic properties present? Yes

The Van Houten's Landing Historic District (03PR06118) is listed on the National Register of Historic Places. It is located on shore and does not include the portion of the Hudson River in which the three moorings are located.

Effect determination and basis for that determination: No Adverse Effect, per a letter from the New York State Office of Parks, Recreation and Historic Preservation (SHPO), dated January 12, 2024.

10.3.3 Consultation with the appropriate agencies, tribes and/or other parties for effect determinations

The SHPO's letter dated January 12, 2024, was submitted in response to the Corps public notice dated September 26, 2023.

10.4 Tribal Trust Responsibilities

10.4.1 Tribal government-to-government consultation

Was government-to-government consultation conducted with federally-recognized tribe(s)? No

Provide a description of any consultation(s) conducted including results and how concerns were addressed. N/A

10.4.2 Other Tribal consultation

Other Tribal consultation including any discussion of Tribal Treaty rights.

N/A

10.5 Section 401 of the Clean Water Act – Water Quality Certification (WQC)

10.5.1 Section 401 WQC requirement

Is an individual Section 401 WQC required, and if so, has the certification been issued or waived?

N/A, a WQC is not required.

10.5.2 401(a)(2) Process

If the certifying authority granted an individual WQC, did the United States Environmental Protection Agency make a determination that the discharge ‘may affect’ water quality in a neighboring jurisdiction? N/A

Provide an explanation of the determination of the effect on neighboring jurisdiction. N/A

10.6 Coastal Zone Management Act (CZMA)

10.6.1 CZMA consistency concurrence

Is a CZMA consistency concurrence required, and if so, has the concurrence been issued, objected to, or presumed?

An individual CZMA consistency concurrence is required and has been issued by the appropriate agency. In a letter dated May 9, 2024, the New York State Department of State concurred with the applicant’s consistency certification.

10.7 Wild and Scenic Rivers Act

10.7.1 National Wild and Scenic River System

Is the project located in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system? No

10.8 Effects on Corps Civil Works Projects (33 USC 408)

10.8.1 Permission requirements under Section 14 of the Rivers and Harbors Act (33 USC 408)

Does the applicant also require permission under Section 14 of the Rivers and Harbors Act (33 USC 408) because the activity, in whole or in part, would alter, occupy, or use a Corps Civil Works project?

No, there are no federal projects in or near the vicinity of the proposal.

10.9 Corps Wetland Policy (33 CFR 320.4(b))

10.9.1 Wetland Impacts

Does the project propose to impact wetlands? No

10.9.2 Wetland impact public interest review

N/A

10.10 Other (as needed)

Navigation - The activity should not have any significant impacts on navigation. However, to protect the interests of the United States, it is recommended that a special permit condition be added to any DA permit issued for the subject activity in order to notify the permittee that the permitted structure or other work will have to be removed, at the permittee's expense, if the Corps determines at any time after the issuance of the permit, that the authorized work interferes with, or will interfere with, navigation or any existing or future operation of the United States.

In a letter dated September 28, 2023, the United States Coast Guard (USCG) stated that the proposed project is close to the Federal Channel, making it and construction vessels, susceptible to wake and/or surge damage. If a permit is issued for this project, USCG does not intend to place any operational limitations on commercial vessels using the adjacent waterway. USCG stated that any vessels used in conjunction with this project must comply with the Port of New York anchorage ground regulations codified at 33 CFR 110.155, including paragraph (l)(11) regarding vessels that impede or obstruct vessel movements. They requested a copy of any Corps permit issued for this project. They also requested that any permit issued by the Corps require the permittee to:

- Submit the following information, at a minimum, to the First Coast Guard District and Section New York by email D01-SMB-LNM@uscg.mil and SECTORNYWWM@uscg.mil, a minimum of 14 days before starting operations for publication in the Local Notice to Mariners:

Date of submission:

Name, phone number, and email address of project point of contact:

Company Name:

Type of Work:

Waterway and location where work will be done:

Latitude & Longitude of work area (Degrees, Minutes, Thousandths of seconds):

Work Start & Stop dates and Hours of Operation:

Equipment on scene:

Passing Arrangements / Time to move vessels to not impede navigation:

VHF Radio Channel monitored:

Disposal Site (if used):

NOAA Chart Number for the area:

SECTION IV – CHART CORRECTION:

Chart 12343 – Hudson River

Add Mooring Buoy, Chart No. 1: Q40 41° 06' 0.32" N 73° 54' 36.91" W

Add Mooring Buoy, Chart No. 1: Q40 41° 06' 3.33" N 73° 54' 25.90" W

Add Mooring Buoy, Chart No. 1: Q40 41° 05' 57.35" N 73° 54' 29.61" W

- Email a copy of the USACE Permit; as-built drawings; and NOAA Permit/Public Notice Status Report from <https://www.nauticalcharts.noaa.gov/charts/docs/charts-updates/USACE+Permit+Status+Report.pdf> to ocs.ndb@noaa.gov so that they may initiate the appropriate chart and Coast Pilot corrections.
- Check in with the Vessel Traffic Service New York watch supervisor, who can be reached at (718) 354-4088 or SECNYVTS@uscg.mil fifteen minutes prior to mobilizing vessels on scene and fifteen minutes before starting work, and upon completion, each day.

The Corps of Engineers has determined that it is reasonable and appropriate to include special conditions in any DA authorization, if issued, requiring the conditions recommended by USCG, in order to protect navigation.

10.11 Compliance Statement

The Corps has determined that it has fulfilled its responsibilities under the following laws, regulations, policies, and guidance:

Table 4 – Compliance with Federal Laws and Responsibilities		
Laws, Regulations, Policies, and Guidance	Yes	N/A
Section 7(a)(2) of the ESA	X	
EFH provisions of the Magnuson-Stevens Act	X	
Section 106 of the NHPA	X	
Tribal Trust		X
Section 401 of the Clean Water Act		X
CZMA	X	
Wild and Scenic Rivers Act		X
Section 408 - 33 USC 408	X	
Corps Wetland Policy (33 CFR 320.4(b))		X
Other: N/A		

11.0 Special Conditions

11.1 Special condition(s) requirement(s)

Are special conditions required to ensure minimal effects, ensure the authorized activity is not contrary to the public interest and/or ensure compliance of the activity with any of the laws above? Yes

If 'No', provide rationale:

11.2 Required special condition(s)

Special Condition 1: (A) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Rationale: This is a standard special condition included in any permit issued within navigable waters under Section 10 of the Rivers and Harbors Act of 1899, in order to protect the interests of the United States.

Special Condition 2: (B) The permittee shall submit the following information, at a minimum, to the First Coast Guard District and Section New York by email D01-SMB-LNM@uscg.mil and SECTORNYWWM@uscg.mil, a minimum of 14 days before starting operations for publication in the Local Notice to Mariners:

Date of submission:

Name, phone number, and email address of project point of contact:

Company Name:

Type of Work:

Waterway and location where work will be done:

Latitude & Longitude of work area (Degrees, Minutes, Thousandths of seconds):

Work Start & Stop dates and Hours of Operation:

Equipment on scene:

Passing Arrangements / Time to move vessels to not impede navigation:

VHF Radio Channel monitored:

Disposal Site (if used):

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Rationale: To protect navigation, as recommended by USCG in Section 10.10 above.

Special Condition 3: (C) The permittee shall email a copy of the USACE Permit; as-built drawings; and NOAA Permit/Public Notice Status Report from <https://www.nauticalcharts.noaa.gov/charts/docs/charts-updates/USACE+Permit+Status+Report.pdf> to ocs.ndb@noaa.gov so that they may initiate the appropriate chart and Coast Pilot corrections.

Rationale: To protect navigation, as recommended by USCG in Section 10.10 above.

Special Condition 4: (D) The permittee shall check in with the Vessel Traffic Service New York watch supervisor, who can be reached at (718) 354-4088 or SECNVTS@uscg.mil fifteen minutes prior to mobilizing vessels on scene and fifteen minutes before starting work, and upon completion, each day.

Rationale: To protect navigation, as recommended by USCG in Section 10.10 above.

Special Condition 5: (E) The permittee shall assure that any vessels used in conjunction with this project comply with the lighting requirements of the U.S. Coast Guard Inland Navigation Rules codified at 33 CFR Part 83, and the Port of New York anchorage ground regulations codified at 33 CFR Part 110.155, including paragraph (l)(11) regarding vessels that impede or obstruct vessel movements.

Rationale: To protect navigation, as recommended by USCG in Section 10.10 above.

12.0 Findings and Determinations

12.1 Section 176(c) of the Clean Air Act General Conformity Rule Review:

The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed *de minimis* levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

12.2 Presidential Executive Orders (EO)

12.2.1 EO 11988, Floodplain Management

This action is not located in a floodplain.

12.2.2 EO 12898 and EO 14008, Environmental Justice

12.2.2.1 Provide details regarding screening and mapping tools and available information utilized during the review.

The New York State Department of Environmental Conservation posted Potential Environmental Justice Areas (PEJAs) on their web site. This project is not within a PEJA.

12.2.2.2 Have disadvantaged communities been identified within the vicinity of the proposed project? No

The New York State Department of Environmental Conservation posted Potential Environmental Justice Areas (PEJAs) on their web site. This project is not within a PEJA.

12.2.2.3 What meaningful involvement efforts did the Corps take for potentially affected disadvantaged communities and other interested individuals, communities, and organizations?

N/A

12.2.2.4 Describe if resource impacts are high and adverse.

N/A

Do the impacts fall disproportionately on disadvantaged communities? No

12.2.2.5 Based upon the discussion and analysis in the preceding sections, the Corps has determined that portions of the proposed project within our federal control and responsibility would not have a disproportionately high and adverse human health or environmental effect on disadvantaged communities.

12.2.3 EO 13112, Invasive Species, as amended by EO 13751

There are no invasive species issues involved in this proposed project.

12.2.4 EO 13212 and EO 13302, Energy Supply and Availability

The proposal is not one that will increase the production, transmission, or conservation

of energy, or strengthen pipeline safety.

12.3 Findings of No Significant Impact

Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action will not have a significant impact on the quality of the human environment. Therefore, an environmental impact statement will not be required.

12.4 Public interest determination

Having reviewed and considered the information above, I find that the proposed project is not contrary to the public interest. The permit will be issued with appropriate conditions included to ensure minimal effects, ensure the authorized activity is not contrary to the public interest and/or ensure compliance of the activity with any of the authorities identified in Section 10.

PREPARED BY:

ORZEL.BRIAN.ALB
ERT.1195156758

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Date: 2024.06.05 14:19:12 -04'00'

Date: 05JUN2024

Brian A. Orzel
Project Manager
Western Section

REVIEWED BY:

Rosita Miranda Date: 2024.06.05
19:41:01 -04'00'

Date: _____

Rosita Miranda
Chief, Western Section

APPROVED BY:

Stephan A. Ryba

Date: June 12, 2024

Stephan A. Ryba
Chief, Regulatory Branch