

PUBLIC

comments

ON THE DRAFT CITY OF HUDSON
LOCAL WATERFRONT
REVITALIZATION PLAN

SUBMITTED ELECTRONICALLY
MON. 15 MARCH 2010

TO DEPUTY SECRETARY OF STATE
GEORGE STAFFORD

COASTAL RESOURCES STAFF
KEVIN MILLINGTON
BONNIE DEVINE
AND STEVE RIDLER

COMMON COUNCIL PRESIDENT
DONALD MOORE
AND THE HUDSON ALDERMEN



Two hard copies of these comments have been provided to the Department of State; additional copies are available to the above upon request.

“THE PUBLIC AT LARGE MUST BE AFFORDED the opportunity to discuss and provide feedback on the City’s current assumption that industrial land use along the southern waterfront will be maintained into the future.

The HVP clearly indicates that the community supports an increased focus on recreational, tourism-oriented waterfront redevelopment, and recommends zoning categories that support this type of development. [...]

The zoning categories in the proposed legislation will have to be carefully crafted to ensure that desired land uses for the waterfront can be mutually advanced, and will not hinder one another. The document should be clear about any trade-offs being made, and explain the underlying rationale. Again, all potential uses and implementation techniques must be evaluated against a consensus vision of the waterfront, to see if they are compatible.”

— **DOS COASTAL RESOURCES STAFF**

Letter to the City of Hudson, 28 October 2005



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MONDAY, 15 MARCH 2010

STEERING COMMITTEE

*Hilary Hillman, Hudson; Peter Jung, Hudson;
Robert Mechling, Hudson; Carole Osterink,
Hudson; Sam Pratt, Taghkanic and Hudson.*

TO ALL RELEVANT OFFICIALS OF THE STATE OF NEW YORK AND CITY OF HUDSON:

The following remarks and documents are respectfully submitted by Save the South Bay for inclusion in the record of public comments on the City of Hudson's draft Local Waterfront Revitalization Plan (herein "DLWRP").

Save the South Bay is an informal association of residents of Hudson and other municipalities in the mid-Hudson Valley. We would like to formally request an opportunity to brief and discuss our observations and concerns with representatives the Department of State and any interested City of Hudson officials and other involved agencies at your earliest convenience.

Thank you for this opportunity to comment on the DLWRP. We look forward to a productive dialogue with all involved agencies.

Sincerely,

SAM PRATT AND PETER JUNG
on behalf of Save the South Bay

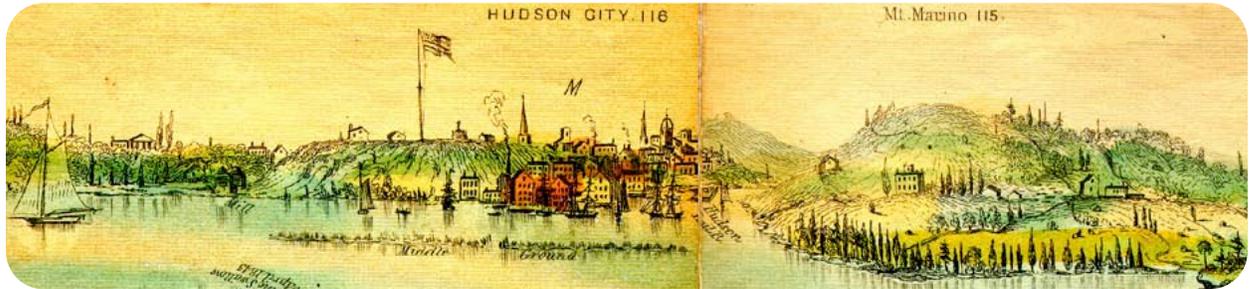
- I. *Executive Summary***
- II. *Historical Background***
 - A. 1977 Columbia County Planning Study
 - B. 1980s Octane Petroleum Proposal
 - C. 1990s South Bay Restoration Plans
 - D. 1999 Americlean Proposal
 - E. 1998-2005 SLC Greenport Proposal
 - F. Hudson LWRP Chronology
- III. *State and City Guidance***
 - A. 2003 Coastal Staff Correspondence
 - B. 2006 WASC Public Meetings
 - C. 2006 Coastal Resources Meeting
 - D. 2005 Coastal Consistency Determination
- IV. *Prior Planning Efforts***
 - A. 1995-96 Vision Plan & 2001 Comp Plan
 - B. 2001 Seeing South Bay Exhibit
 - C. 2001 Land Title Issues
 - D. 1998-2005 SLC No-Build Scenarios
- V. *Public Input***
 - A. 2000 Comprehensive Plan Survey
 - B. 2006 WASC Survey & Workshops
 - C. 2007-2010 Save the South Bay Input
- VI. *Comments of Holcim and O&G***
- VII. *Review of GEIS and Coastal Policies***
 - A. GEIS
 - B. Coastal Policies
- VII. *Corporate Responsibility***
- IX. *Miscellaneous***
- X. *Attachments (including 2010 Petition)***

SAVE THE SOUTH BAY, AN UNINCORPORATED ASSOCIATION OF RESIDENTS of Hudson and towns nearby in the Hudson Valley region, recommends that the the City's Draft Local Waterfront Revitalization Plan (DLWRP) be revisited and revised in order to:

- **Eliminate** “use conflicts” and the possibility of future controversies over such conflicts, taking into account the wrenching history over the past four decades of local controversies over industrial projects related to the southern portion of the Hudson Waterfront (as set forth in Section II. of these comments); and
- **Conform** with both written and verbal DOS Coastal Resources staff guidance from 2003, 2005, and 2006, along with the prescription for rezoning the Waterfront contained in the Secretary of State's 2005 Coastal Consistency Determination regarding the St. Lawrence Cement Greenport proposal (as set forth in Section III. of these comments); and
- **Reflect** the vision and goals developed via community consensus in the Hudson Vision Plan (HVP) and Hudson Comprehensive Plan (as set forth in Section IV. of these comments); and
- **Resolve** longstanding citizen questions about the ownership of lands formerly underwater along the southern Hudson riverfront (as also set forth in Section IV. of these comments); and
- **Address** concerns regarding the dramatic change of use and levels of operations related to aggregate deliveries and truck traffic to those same riverfront parcels since the Spring of 2005, a change which is causing the DLWRP's authors to present a false choice among flawed alternatives related to truck traffic (as further set forth in Section IV. of these comments); and
- **Correct** glaring omissions in the record of public participation in the City's LWRP process and reopen the process to further public input (as set forth in Section V. of these comments); and
- **Respect** the clear community consensus against industrial incursions into and impairment of greener, more sustainable uses of the southern portion of the Waterfront, so as to provide the highest level of recreational, economic, ecological, social, and cultural benefits to the people of Hudson and the region (as set forth in Section V. of these comments); and
- **Reject** the self-serving and misleading comments of Holcim and O&G submitted to the City regarding the draft Plan earlier this winter (as set forth in Section VI. of these comments); and
- **Incorporate** Save the South Bay's detailed comments on the GEIS and 44 Coastal Policies (as set forth in Section VII. of these comments); and
- **Investigate** the track records of corporate irresponsibility at Holcim and O&G when contemplating the accommodations demanded by those companies within the LWRP (as set forth in Section VIII. of these comments).

The submission which follows includes a number of illustrations in the body of our comments, and extensive attachments at the end.

THE CITY OF HUDSON'S WATERFRONT has been a constant source of debate and controversy over the past four decades. The history of these debates and controversies is both important background to the current DLWRP, and instructive in understanding how to correct its deficiencies.



WILLIAM WADE, FROM WADE & CROOME'S PANORAMA OF THE HUDSON RIVER FROM NEW YORK TO ALBANY (ENGRAVINGS, 1846)

A. 1977 COLUMBIA COUNTY PLANNING USE CONFLICT STUDY

In the late 1970s, Columbia County planners issued a federally-funded report called the “Columbia County Coastal Zone Management Program Second Year Study.” The study’s purpose was to devise “a land and water use management plan that would promote the sound utilization of this area’s unique resources.” The May 1977 report was drafted in the wake of the closing of the Universal Atlas plant, when Hudson and County officials were beginning to cast about for new uses of the properties abandoned by the cement industry.

The report’s introduction stated that “the careful management of the nation’s coastal areas is of major importance to the continued well being of the county, realizing that in the past these areas and their various resources have often been neglected or abused.”

A key purpose of the study was to identify so-called “conflict areas.” It was in this context that its authors devoted some space to discussion of heavy industry in the coastal zone: “Heavy industry consists of activities which generally require the movement of great quantities of raw materials for basic processing,” the report stated. And the County’s planners seemed well acquainted with the risks and downside impacts that come with heavy industrial activity:

“These operations are land extensive, meaning that there is a certain amount of sprawl associated with the operation. [...] Due to the size of these operations, their siting must be carefully evaluated. Adjacent land uses can be easily affected by noise, dust and odors while their visual presence can not be ignored. For these reasons, the siting of such industries is a critical process requiring careful study.”

Based on public input, the 1977 plan developed a two-part system for “the evaluation of uses and the priorities for the various uses.” These were divided into Conservation Objectives and Development Objectives, for example:

- **I-b:** “Distinctive geologic, natural, and scenic areas should be protected and/or enhanced.”
- **I-c:** “Important wildlife populations and their habitats should be protected and/or en-

hanced with special emphasis on rare and endangered species.”

- **I-d:** “Significant historic and cultural resources should be protected and/or enhanced.”
- **I-e:** “Areas providing substantial visual access to the River should be protected to enable maximum visual enjoyment of the River.”
- **I-f:** “Public access points to the shoreline should be protected and maintained to provide optimum recreational opportunities. Additional points should be acquired whenever feasible.”
- **I-g:** “Wetlands, flood plains, and other areas offering developmental restraints should be protected [and] recreational and educational opportunities should be encouraged.”
- **II-a:** “The existing rural character of the coastal zone should be considered when reviewing new development proposals.”
- **II-e:** “Transportation routes should be developed in a manner which enhances the coastal zone experience for travelers.”
- **II-g:** “Regional facilities should be designed and located to provide for minimum interference with existing land use activities and natural resources.”

The study culminated in a “Discussion of Use Conflicts” around the County. The report found that “where conflicts between uses arise, the objectives for coastal zone management should be consulted and allowed to influence the decision process.”

The first conflict discussed was that which gripped Hudson’s South Bay. As of the late ’70s (the report found), some felt “that the Bay has deteriorated beyond the point of reclamation and filling should continue so as to provide as usable foundation for growth in the city.” But “a differing opinion concedes that the Bay has deteriorated, but is still an important link in the river’s fish production with a potential for being an excellent outdoor education center for nearby schools. Continued destruction of the Bay would eliminate its capability for flood control which would result in damage to any development located on the site.”

In the conclusion to its 1977 report (pp. 57-58), Columbia County Planning suggested that:

“[A]n existing use in violation of standards, or a questionable use that is proposed can be compared with the general policies of the area... A comparison can also be made with existing, adjacent uses to assist the decision process. If one proposal calls for the construction of an all night diner and another the construction of a single family home, it may be helpful to note how both proposals will relate to neighboring activities. [...] The siting of such industries is a critical process requiring careful study.”

But planners stopped short of reaching any definitive decision about how to resolve the South Bay use conflict. They recommended “more technical evaluation of its resources and problems,” including “a management plan for the site.”

That evaluation and management plan for the South Bay never materialized—because around the same time, St. Lawrence Cement and its parent Holderbank (now Holcim) acquired the former Atlas properties; and then proceeded to sorely neglect the Bay for the next 30-plus years.

The company tore up and left behind large piles of railroad ties along the old railbed through the Bay. It ignored the frequent dumping of garbage and appliances along and even into wetlands. It left numerous blighting structures to rust and crumble, only later to attempt to use these ruins as bargaining chips for its failed Greenport Project (discussed below). After taking a site tour in 2001, noted wetlands and biota expert Erik Kiviat of Hudsonia reported to the DEC what he believed to be to be illegal fill in the Bay. And in Spring 2004, the company was caught illegally bulldozing a Federally-protected wetland along the railbed through the Bay, a reckless move which became the

subject of enforcement actions by the New York State Department of Environmental Conservation (DEC) and U.S. Army Corps of Engineers... But now we're getting ahead of our chronology.

B. 1980s OCTANE PETROLEUM CONTROVERSY

In the early 1980s, members of Save Hudson's Only Waterfront (SHOW) began to question the wisdom of letting the New Jersey-based Octane Petroleum company build a vast refinery at the River's edge. The Octane proposal would have entailed a refinery; some 22 storage tanks holding up to 25,000 barrels of oil; and the discharge of some 2.6 million gallons of wastewater annually into the Hudson. The project would have sprawled over 9 acres at the Waterfront, including into the river itself, 1.2 acres of which would have been landfilled.

Initially, the members of SHOW were treated shabbily. (*See Attachment II-A, An Oil Refinery in Our Backyard, Hudson Valley Magazine, December 1984.*) SHOW spokesman John Cody told a local newspaper that "the City has been unresponsive to their legitimate concerns." Hudson officials trashed the 300-member organization as "a local vocal group that wants to live in the past."

Hudson Community Development and Planning Agency (HCDPA) chairman Art Koweek proclaimed that an oil refinery would "save this city" and was "a matter of economic survival for Hudson." Koweek added that the refinery would "put out less pollution than the local hospital" and told those seeking more access to the river that they should "go out of town." Anyway, Koweek added, the Hudson is "not a recreational river."

Concerned citizens were subjected to an almost endless stream of public relations attacks and other abuse from then-HCDPA director Edmond Schorno, as well as other City leaders such as Cemetery Commissioner Mark Salomon—who pronounced himself "thoroughly disgusted" with refinery opponents, arguing that they "oppose everything" and nothing would "satisfy" those "not interested in the well-being of our local citizenry." Mayor Michael Yusko (an aspiring singer and actor) riffed on the then-ubiquitous Roloids commercial, exulting that "relief would be spelled O-C-T-A-N-E." Meanwhile, company representatives argued that "this stretch of the river is good for little else but industry."

Refinery opponents countered that amenities such as "a restaurant, park or public boating facility could generate money for the city without the same risks." They noted that Octane's initial promise of 300 jobs dropped to 146 jobs, then to 43, and then down to 32. Nevertheless, New York State development officials promised to loan \$3.6 million to the company for "job creation."

Other agencies cast a colder eye on the Octane proposal. The U.S. Fish and Wildlife Department noted that a false choice was being presented to the citizens, with no justification for "the conclusion that only two alternatives are available." The same Federal agency expressed "concern for the effect of the project on South Bay Wetlands, a sprawling marshy area that would be cut by the facility's access road." The New York State Department of State wrote to Mayor Yusko that the refinery "would have a significant adverse effect upon the neighboring historic district," into which \$12 million in public funding had been invested in the previous 15 years. DOS noted with dismay that the City appeared "ready [...] to give up on the revival." DOS also advised Hudson's Mayor that the (now-endangered) American shad was active nearby, for example using the shoals of Middle Ground Flats "for spawning and nursery grounds."

Finally in the late '80s, SHOW was vindicated as the foolhardy Octane proposal was quietly shelved—though HCDPA officials continued to act as if the project were still a viable option.

C. EARLY '90s RESTORATION STUDY

In the early 1990s, the Corps of Engineers explore the possibility of an ambitious restoration of the South Bay. But the study ended abruptly after SLC officials refused to cooperate—reportedly due to concerns over what contamination might be found once such a project got underway.

Indeed, the so-called “Lockwood Property” acquired by the City, falling between what is now the City’s Waterfront Park and the SLC dock became the subject of a April 1, 2000 DEC Inactive Hazardous Waste Disposal Report. The report found that “the initial six feet of sediment in the adjacent embayment area was saturated with contaminants,” including benzene, which was found in both soil samples and groundwater; and that “contaminants are moving into the Hudson River.” Despite various remediation projects which have occurred in the area, it can be assumed that contamination remains in the riverbed and adjacent properties, including the current Holcim dock.

Yet the hope for a South Bay restoration has survived, despite the many obstacles in its path. A June 18, 2001 letter from Vance Barr of Coastal Resources to SLC noted that “South Bay was a candidate site for habitat restoration being conducted by the NYS DEC Hudson River National Estuarine Research Reserve in cooperation with the Corps of Engineers, and others,” and urged the company to cooperate.

D. AMERICLEAN CONTROVERSY

In the late '90s, a group of 40 local residents exposed yet another foolhardy Waterfront proposal—this time, for a hazardous waste processing plant at the site of the old glue factory sitting on landfill in the remains of the former South Bay. Hudson Mayor Richard Scalera and the Columbia-Hudson Partnership applied for \$600,000 Canal Corridor grant to assist Americlean, a Canadian-based startup, in trucking all of the dry cleaning (perchloroethylene) waste from the Northeast to the Hudson waterfront. There, it would be “neutralized” with a patent-pending process the company would not disclose. Nor, as it turned out, would the company identify the location of a pilot plant where they claimed that this miracle technology had been tested.

Initially, the Americlean project was presented as a benign manufacturing project. Citizens were told that the company was in the business of producing polybags and coat hangers for the dry cleaning industry. It was only through independent research that the true nature of the proposal (perc disposal) was brought to light. After citizens shamed Mayor Scalera into bringing a representative of the company to town for what turned into a disastrous public hearing, and the highly carcinogenic qualities of “perc” became publicly known, the City and County backed out of the project.

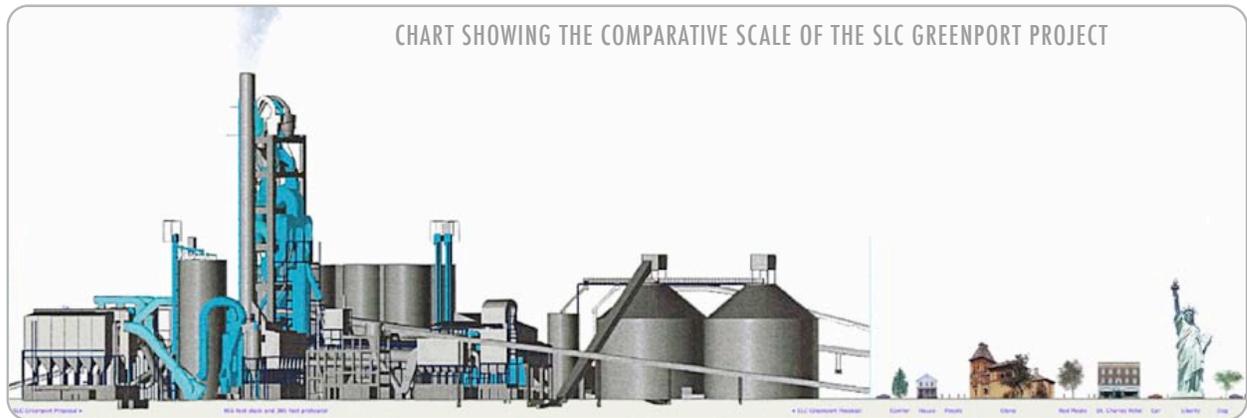
The group which had brought the reality of the Americlean project to public attention became known as Friends of Hudson.

E. ST. LAWRENCE CEMENT CONTROVERSY

Then, between September 1998 and April 2005, residents of Hudson and allies all over the Valley—along with downwind neighbors from Connecticut to Maine—mobilized to challenge the massive, coal-burning, \$300 million-dollar St. Lawrence Cement Greenport Project.

Dubbed “a new industrial city,” the vast, sprawling complex would have featured a skyscraper-sized 40-story tower and a dozen other structures between 10 and 20 stories tall atop Becraft Mountain, within a mile of the hospital, cemetery and thickly-settled neighborhoods.

From that 406-foot stack would have belched a pollution-laden plume extending as long as six miles, roughly the distance from Greenport to Philmont in a direct line. The plant would have been fueled 500 million pounds of coal annually, needed to pulverize limestone blasted from a 1,200-acre quarry nearly as large as the entire City of Hudson. “Alternative” fuels such as garbage, tires and hazardous waste could have been added to the kiln’s cauldron.



This behemoth would have been connected to the Hudson waterfront by two miles of conveyor belts, through wetlands and across three major City entrances. At the waterfront, 700-foot-long HudsonMax barges would have constantly offloaded coal, slag, and gypsum, while unloading two million tons of finished cement each year. Their wakes, fumes and noise would have endangered smaller craft on the river, and chased away residents trying to enjoy the adjacent public park. Meanwhile, back in Greenport, as many as 265 daily truck trips would have serviced the main facility. By SLC’s own admission, the plant sought permits to emit up to 20 million pounds of pollutants per year, including greenhouse gases such as nitrogen and sulfur dioxides, heavy metals and volatile organic compounds: arsenic, benzene, cadmium, chromium, lead, mercury and more. The medical staff of Columbia Memorial Hospital independently concluded that emissions of fine particulate matter (PM 10 and PM 2.5) would result in more asthma among local kids, more premature heart attacks among older residents, and higher incidences of cancer among the general population.

Worse still, SLC and its Swiss-owned parent company Holderbank—now called Holcim—had an appalling track record of fines for pollution and price-fixing violations. Whatever promises the company was making, citizens discovered that the company it had broken similar promises to other communities around the globe. (Worse, the company had used slave labor in Europe during World War II, and actively profited in South Africa during Apartheid.)

Nevertheless, the SLC proposal was widely considered to be a “done deal,” with the company having extensively lobbied the Pataki administration, Columbia County leaders, and Hudson politicians well before citizens became aware of the proposal.

Yet as in previous controversies, the supposed minority eventually became a majority, and the people prevailed. Friends of Hudson was eventually joined by more than three dozen other local, regional, statewide and national groups in opposing the project; and the 40-member group grew to over 4,000 paid members. More than 14,000 comments were submitted to the Department of

State's Division of Coastal Resources, with 87% of those comments opposed to the SLC project. In April 2005 (as will be discussed in greater detail in the remainder of these comments), Secretary of State Randy Daniels issued a negative Coastal Consistency Determination, finding that the project violated New York's 44 Coastal Policies.

The pattern in each controversy was nearly identical. At first, the press only reported the company line—with local, County and State officials dutifully toeing that line. Jobs, jobs, jobs was the mantra, plus some token assurances that all environmental rules and standards would be “met or exceeded.” The few who dared ask even basic questions were immediately branded as a “strident” and “vocal” minority. Those who only wanted their politicians and regulators to do a little due diligence were labeled CAVE People (Citizens Against Virtually Everything) with BANANA (Build Absolutely Nothing Anywhere Near Anyone) and NIMBY (Not In My Backyard) attitudes.

But over time, citizens were shown to have both mastered the smaller facts and seen the bigger picture that politicians had either overlooked or dismissed. The Hudson waterfront dodged all three bullets—Octane, Americlean, and SLC—preserving the possibility of a future revival.

F. HUDSON LWRP CHRONOLOGY

THE INITIAL INTEREST IN DEVELOPING a Local Waterfront Revitalization Plan for Hudson arose out of the Octane proposal. SHOW's leadership became aware of the Federal Coastal Zone Management Act of 1972, which had been approved by NOAA as a delegated New York State program a decade later in 1982.

Though City officials showed little or no interest in the program while Octane was still under serious consideration, SHOW's John Cody was able to begin work on a draft plan in 1987. However, despite the creation of a Hudson Waterfront Committee, the plan languished through most of the 1990s. A consultant brought in late sometime in the mid-90s, Dan Shuster, did produce several DLWRPs, but these failed to rise to a level deemed adequate by Coastal Resources staff to authorize release of the plan for public comment.

Several new waterfront chairs came and went (Craig Thorn III, Charlie Butterworth, Patrick Doyle) without significant progress being made on the document and Shuster was finally relieved of his desultory duties in the new century as feedback from Coastal Resources staff on his drafts remained negative. Though citizens periodically became energized to help finish and enact a plan, the overall public impression during this nearly 20-year period was that City officials preferred not to devote serious attention to the topic, even though the enactment of an LWRP could greatly augment the City eligibility for new Federal and State grant opportunities.

Nevertheless, the City made some limited—if painfully slow—progress on its waterfront during these two decades. Tanks from the former Best Oil storage facility were removed, and partial remediation of contamination from various sites (ranging from petroleum to creosole) at the waterfront was undertaken. The City also obtained, notably during the 2000-2001 administration of Mayor Kenneth Cranna, funding for some rudimentary waterfront amenities, including sod, a public bathroom, a bandshell/gazebo, and shoreline improvements.

On April 19th, 2005, in the course of rejecting the SLC Greenport Project, the Secretary's Coastal Consistency Determination set forth a clear set of instructions for creating a new Waterfront Zone. Rejection the company's assertions that heavy industrial activity could peacefully and coexist with public recreational activities, and recognizing the greater economic potential of less intrusive and

more compatible commercial uses, the Secretary's outline for rezoning the Waterfront included explicitly prohibitions against industrial and manufacturing activity (*see Section II, below*). The Secretary stated that this Zone should be established "immediately."

Later in 2005, Mayoral candidate Richard Tracy campaigned on a promise to finally enact an LWRP. Upon his inauguration in January 2006, Tracy disbanded the existing Waterfront Committee under the mayor's control, and the Hudson Common Council established a new Waterfront Advisory Steering Committee, or WASC. (*Note: Several current members of the Save the South Bay steering committee, including Sam Pratt, were founding members of the WASC.*) Among the initial tasks of this new committee was to meet with Coastal Resources staff; investigate the status of various waterfront-related grant programs; to select a planning consultant to help organize and draft the LWRP; and to host several public meetings to introduce the Hudson community to the key tenets of Waterfront plan development. Those two public meetings included presentations by DOS staffer Bonnie Devine, legal advisor Cheryl Roberts, and members of the WASC; citizens also participated in brainstorming workshops, and were invited to fill out surveys and submit written comments on their hopes for the Hudson Waterfront.

Privately, WASC members had extensive discussions about how best to deal with the continued presence of St. Lawrence Cement (now rebranded as Holcim US) at the waterfront—especially in light of the strong public consensus that the community would prefer not to have heavy industrial uses impair recreational, ecological and appropriate commercial activity. Numerous options were entertained, from a public-private partnership to acquire the cement company's holdings to the use of eminent domain.

However, in early 2007 the optimistic and productive direction of this rejuvenated process was thrown suddenly off-course when then-WASC chair Linda Mussmann announced that she had been meeting privately with representatives of Holcim, and had worked with planners BFJ to organize a DLWRP largely around the company's needs, demands and bargaining positions. As will be discussed in the following comments, this led to the submission of over 1,000 comments in protest of the direction the City was headed with its LWRP.

No recognition of that outpouring of concern and protest is noted in the current LWRP narrative.

THE CITY'S CURRENT DLWRP FAILS TO ADEQUATELY REFLECT the clear and prescient guidance that State officials have provided to it over recent years. In several crucial areas, the current draft blatantly takes a position starkly opposed to the State's instructions.

A. 2003 COASTAL STAFF CORRESPONDENCE

Twice during 2003, DOS Coastal Resources Specialist Nancy Welsh sent two letters to the City in 2003 in response to an earlier revision of the DLWRP. A January 31st, 2003 letter from Ms. Welsh was addressed to then-City LWRP consultant Dan Shuster, and was carbon-copied to then-Hudson Waterfront Committee chair and Superintendent of Public Works Charlie Butterworth, along with DOS staffers Stephen Ridler and Paula Marshman. (*Copies of both letters are included in this submission as Attachments III-A and III-B.*)

Both of the Welsh letters included repeated and unequivocal statements regarding industrial activity in the South Bay:

"It is not appropriate to encourage the expansion of industrial development into the wetlands of South Bay." (P. 2)

"Again, the wetlands of South Bay are not appropriate for industrial or other development." (P. 3)

Then, on August 1st of the same year, Ms. Welsh directed a virtually identical letter directly to Mr. Butterworth, again making the clear and firm statement that:

"It is not appropriate to encourage the expansion of industrial development into the wetlands of South Bay. These wetlands are protected by the laws of the United States and the State of New York." (P. 2)

The emphatic clarity and repetition of these statements demonstrate that these were not accidental or offhandedly-issued instructions. One is hard-pressed to imagine what convoluted logic or myopic vision would be necessary to misinterpret such firm and unambiguous instructions from DOS. And yet the City's current draft endorses the establishment of a new, heavy industrial haul road for some 250 truck trips per day through those South Bay wetlands. The Welsh letters voice firm admonitions not to pursue such courses of action. If such pointed staff instructions can be not just ignored, but directly contradicted, by a municipality, one would have to wonder whether such guidance carries any weight at all.

Moreover, even if the introduction of a haul road (or some other industrial activity, such as a conveyor) could be shown to have other public or social advantages, the nature and designation of this wetland area still would preclude it due to the existing Federal and State designations. The hard fact is that this option must be struck from consideration. If the City insists on seeking to accommodate discordant and hazardous truck traffic to the waterfront whose primary and highest purpose is public access to the river, it must seek other alternative methods besides the former railbed or "causeway."

We also note that more than one member of what is now the Save the South Bay was present along

with Ms. Welsh at a January 25th, 2006 meeting held at the Department of State with Hudson elected officials and WASC members to map out the LWRP process. At no time during that meeting were attendees notified by Ms. Welsh or other DOS staff that anything had changed in its stance regarding the industrialization of the wetlands of South Bay.

The entire portion of the South Bay where the former railbed—euphemistically referred to in the DLWRP as a “causeway”—is situated in a Class I Federally-designated wetland; and the railbed itself is a part of that wetland. This fact is reflected in the monetary fine and remediation order issued by DEC in Summer 2004, when SLC (now Holcim) and O&G were found to have illegally bulldozed the railbed area.

On another topic of current contention, the Welsh letters specifically note that the DLWRP at that time was “missing a Harbor Management Plan.” A subsequent section, we will address Holcim and O&G’s resistance to the inclusion of such a Plan in the LWRP.

Welsh likewise urges the City to “consider designating South Bay as a locally significant habitat using a Policy 7A [...]”; as with the matter immediately above, this same guidance has been strongly resisted by Holcim and O&G in their comments to the City on the current draft. In addition, the Welsh letters admonish Mr. Shuster that parts of his draft were

“written as if it were a document designed to guide the development of an LWRP in the future. To the contrary, this document is the LWRP, and therefore must not propose examining potential policies and recommendations, but must make explicit policy statements and recommendations.”

This same syndrome can be said to afflict many parts of the current LWRP, for example in its treatment of alternative means of handling truck traffic to and from the Waterfront. The current draft tentatively endorses a certain option, while simultaneously noting that option requires further study. This is a topic we will return to in later comments.

B. 2006 WASC ORGANIZATIONAL MEETINGS

On March 7th, 2006, Coastal Specialists Bonnie Devine and Nancy Welsh attended and made a presentation at a public, organizational meeting of the newly-formed Waterfront Advisory Steering Committee (WASC). The current DLWRP arises directly from the process set in motion by this group.

The meeting was held in the cafeteria of John L. Edwards Elementary School in Hudson, and was attended by approximately 100 residents. It included a video presentation by Coastal staffers, who then took questions from the audience. (Save the South Bay co-organizer Sam Pratt was a founding member of the WASC, and took notes on that meeting for the Committee.) Oddly, no specifics of this meeting are included in the otherwise detailed narrative of public workshops and information sessions catalogued in the DLWRP.

A pressing question for both the Committee and the general public was how the LWRP should address privately-owned or occupied waterfront parcels. The question-and-answer portion of the event presentation included this exchange:

AUDIENCE: “How much of Hudson’s waterfront is developable? Look at the park right now. Beacon and Kingston are quite large. When I go down to the park, it seems small [...]”

BONNIE DEVINE: “It’s a local decision of what the boundaries are. The waterfront bound-

aries extend into the downtown area, and make the linkage to the downtown.

NANCY WELSH: *“Even the parcels not publicly-owned are still the City’s waterfront, and you do have local tools to shape what happens on any and all parcels.”*

This meeting generated a high level of public excitement about the prospect of participating in the Waterfront planning process, so the Committee organized a prompt follow-up meeting two weeks later, on March 20th, 2006. Then-WASC legal advisor and current City Attorney Cheryl Roberts, who is a principle author of the present DLWRP, attended and made a detailed presentation about the State’s 44 Coastal Policies. (Mr. Pratt again took extensive notes on the proceedings; like the previous meeting, no details of this event are included in the LWRP’s narrative of public participation.) During that presentation, Ms. Roberts picked up the previous meeting’s topic regarding how much of the waterfront could be addressed in the plan. At that time, she stated that:

“It should not be assumed that SLC will continue to be owner of property. Across the board, don’t assume anyone will remain owners of a given parcel.”

Taken together with Ms. Welsh’s statements, it would appear the authors of the DLWRP now under consideration have forgotten this clear and important advice. The DLWRP proceeds from the exact opposite assumption—that Holcim WILL “continue to be the owner” of Waterfront property, and that the City does NOT have “local tools to shape what happens” on those parcels.

Instead, a great deal of the South Bay portion of the DLWRP has been constructed around assumptions that Holcim, not the City or the public, is the principle and indispensable stakeholder in this process. The narrow and short-term business concerns of Holcim (and their subcontractor O&G) drive both the overall scope and the finer details of how the southern portion of Hudson’s waterfront will look for generations to come.

C. 2006 COASTAL RESOURCES MEETING

On January 25th, 2006, prior to the two meetings described above, members of the WASC and several Hudson elected officials attended a meeting held at the Division of Coastal Resources. In attendance were Steve Ridler, Nancy Welsh, and Bonnie Devine. Sam Pratt’s notes of that meeting show that the following discussions occurred, among other more technical discussion of existing Waterfront grant programs, *etc.*:

- (1) *In addition to the City and DOS, the LWRP will require review by “any Federal/State agency that is likely to comment,” including “DOT, Fish & Wildlife, OGS, DEC, Ag & Markets, Empire State Development,” among others;*
- (2) *It was further noted that the Waterfront falls in an Empire Zone, and that Columbia County would likely comment to the extent the LWRP relates to County comprehensive planning;*
- (3) *The question of land title issues in the South Bay was raised as an important topic for exploration and coordination with OGS, and that the Hudson Development Corporation (HDC) may have conducted some analysis of the matter;*
- (4) *A precept was established that “planning should precede zoning,” especially given that “the previous [draft] plan was driven by what SLC wants to see, not what the public wants to see”;*
- (5) *The issue of needing enforceable noise ordinances, which the Hudson Aldermen had struggled with in the past, was raised by then-Council President Robert O’Brien;*

As in our comments at A. and B. above, Save the South Bay feels that much of this discussion appears to have gotten lost in the process of drafting the current LWRP. To the public's knowledge, little or no consultation has occurred with most (if any) of the agencies listed in (1) and (2). In particular any reaction of the U.S. Fish and Wildlife Service to the proposal to put a heavy haul road through the protected wetlands of South Bay would seem important to secure before proceeding further with that controversial idea.

We likewise see no evidence that OGS or HDC have been consulted on land title issues, which are discussed in greater depth elsewhere in these comments.

Moreover, Save the South Bay notes that like previously-rejected drafts of the LWRP, this current narrative continues to be driven largely by the agenda of SLC (now Holcim and O&G) far less than by public input. Again, this topic will be discussed more extensively elsewhere in these comments.

Lastly, it does not appear that the new zoning proposed in the DLWRP includes performance or other standards for noise, one of the primary impacts from industrial activity at the Waterfront which has the strong potential to impair neighboring uses. The establishment of such standards is a key priority of the Hudson Comprehensive Plan, again discussed in more depth elsewhere in these comments. We wish to establish here, however, that these topics were all raised with and/or by DOS staff and City officials at the outset of the current round of planning.

D. 2005 SLC COASTAL CONSISTENCY DETERMINATION

On April 19th, 2005, as noted in the narrative at I., above, then Secretary of State Randy Daniels issued extensive findings regarding the City of Hudson waterfront as part of the State's negative Coastal Consistency Determination for the St. Lawrence Cement Greenport project. That decision was the culmination of nearly seven years of public debate, agency review, and a vast outpouring of both heartfelt and highly technical public input comprising over 14,000 comments, 87% of them opposed to the project.

As you know, the New York State Secretary of State oversees and organizes the activities of the the Division of Coastal Resources, the agency responsible for final review and approval of this plan. However, the current DLWRP disregards the clear, unambiguous, and urgent instructions of the Secretary of State, whose office called almost exactly five years ago for the City to "immediately" rezone of the Waterfront. *(The City and NYS DOS Division of Coastal Resources are both aware of and in possession of this determination, but a copy of the ruling is included in these comments for the record as Attachment III-C.)*

That 2005 determination is arguably the highest-level, most definitive, and most legally-relevant document that any State agency or official has set forth regarding planning for the future of the Hudson Waterfront. The Secretary's instructions for rezoning the Waterfront included the firm recommendation that a new waterfront zone be created right away for the benefit of City and County residents. Adopting language directly from pp. 85-88 of the Hudson Vision Plan, pp. 10-11 of the Daniels decision outlined the exact manner in which that rezoning should take place with a unusual degree of specificity:

- **Permitted uses:** recreation/open space, parking, residential (2nd story and above), retail, galleries, studios, office, restaurants, museums, outdoor markets, outdoor performances, street vending, marine stores, marine fuel, boat storage.

- **Conditional uses:** *electronic transmission towers, public utility uses, transportation centers, railroad, ferry terminals.*
- **Accessory uses:** *signs, outdoor cafes.*
- **Prohibited uses:** *manufacturing, assembling, storing and processing products or facilities, outdoor storage of lumber, construction and building materials, contractor's equipment, trucks, vans, buses, retail or wholesale of vehicles or boats [...]*

The Secretary of State also specifically recommended that Waterfront lands currently occupied by the SLC (Holcim) should be secured by the City for the benefit of the people of the region, not for the industrial uses contemplated within the current DLWRP. Again specifically relying upon the Vision Plan as his model, Secretary Daniels continued to note that:

“The land now owned by SLC has good development potential for a variety of public and private uses. The City should try to secure an option on the land or should have a letter of understanding expressing its interest.”

And again, on p. 11, the Secretary stated that:

“Acquisition and redevelopment of the SLC property, as recommended by the Vision Plan, could conceivably continue the City's ongoing waterfront transformation.”

And:

*“Based on this review of Hudson's past planning and implementation activities, **it is clear the City's waterfront has been and will continue to be transformed from a private industrial waterfront to a public waterfront for boating, tourism, commercial and other compatible uses.** These uses are in direct competition with SLC's proposed industrial riverfront facilities. Given the extreme limitation on space along the Hudson waterfront, this is not a suitable location for the proposed SLC industrial facilities and uses.”*

Many citizens of Hudson and the surrounding area breathed a deep sigh of relief upon reading this ruling. Not only had a top-ranking State official foreclosed the threat posed by the Greenport Project. More than that, the State had also set forth an explicit set of guidelines for the City which, once enacted, would go a long way toward ensuring not only that such a wrenching controversy would not occur again over the Waterfront, but also that the people could finally move forward on the greener, more sustainable vision for that Waterfront which had been repeatedly sought in past controversies and planning exercises, from the Octane Petroleum fight to the Vision Plan.

In particular, the Secretary's instructions regarding “prohibited uses” instructions gave what now (dismayingly) appears to be a false sense of comfort to those taking his ruling at face value. Those instructions have been not merely disregarded by this DLWRP, but flagrantly contradicted within it. “Manufacturing, assembling, storing and processing products or facilities” and “outdoor storage” of “construction and building materials” are not merely contemplated in the plan; such activities are overtly accommodated and indeed have become the focal point of negotiation in the South Bay discussion. The entire vision for the southern portion of the Waterfront (which could be far broader and ambitious if blighting industry were phased out there) has devolved toward a limited discussion of what can be accomplished while sustaining and even bolstering Holcim's narrow interests.



This turn of events is particularly troubling considering that the logic of the April 2005 Coastal Consistency Determination was based squarely in the Secretary's finding that heavy industrial activity could *not* coexist with the other permitted, conditional and accessory uses he outlined. The Secretary went even a step further as the ruling found that by eliminating such blighting uses, more compatible and appropriate recreational, social, ecological and commercial uses and resources would flourish—and ultimately provide both more environmental and more economic benefits to the people of Hudson and the region.

It is important to note in this context that the impacts from the Holcim and O&G activities accommodated and even expanded by the current draft plan are quite similar to those rejected by Secretary Daniels in the 2005 determination. Holcim/O&G discuss shipping some 500,000 tons of aggregate annually via the Waterfront, to be stored in open, uncontained stockpiles immediately adjacent to a public park. The company has discussed with the Town of Greenport Planning Board and City of Hudson Planning Commission needing to put as many as 250 truck trips daily through the wetlands of South Bay to the River. It has been further implied by Holcim and O&G that at some point they might prefer to replace the proposed heavy haul road with a conveyor belt, another component of the Greenport project explicitly rejected by Daniels. Each of these heavy industrial activities falls under the category of “prohibited uses” inventoried in the 2005 ruling, and carries with it severe impacts that impair public access to and enjoyment of the river. Whether attempting to picnic in the neighboring public park while being subjected to dust from stockpiles or diesel exhaust from trucks and barges; or to walk along paths toward “Sandy Beach” with trucks whizzing past every 3-5 minutes; or to launch “muscle craft” (kayaks and canoes) or Sunfish with the wake

of a massive barge swamping your boat—each of these experiences is rendered far less safe and enjoyable by neighboring industrial uses.

And as will be explored in more depth elsewhere in these comments, none of this intrusive and noxious gravel activity existed at the time of the 2005 determination. No such expansion was stipulated or projected in any of the company's diverse analyses for multiple permitting agencies of either its "existing conditions" or "no-build scenario." Moreover, the dramatic expansion of traffic, pollution, noise, dust and navigation impacts from aggregate deliveries via the Waterfront (impacts which together form the basis of the company's current negotiating position vis-à-vis the DLWRP) occurred without any new Federal, State or local permitting reviews in just the past few years since the Daniels decision was handed down.

By all appearances, a large point of that sudden expansion of activity was to gin up the baseline of "existing" impacts so as to pressure the City and State to make special long-term accommodations for Holcim which it had failed to secure within the Greenport permitting process: most glaringly, expansion of its dock by 400 feet, and a heavy transport route for hundreds of thousands of tons of material quarried from Becraft Mountain.

Save the South Bay would also highlight in this context some examples of how DOS found in 2005 that such heavy industrial activity would violate various Coastal Policies. The Secretary wrote, regarding Policy 4, that SLC activity, including a conveyor, would detract from and adversely affect existing traditional and/or desired anticipated uses.

The ruling further noted that:

"The City of Hudson has been experiencing a resurgence in local investment that has helped the City in its evolving waterfront revitalization and has lead to a dramatic expansion in the development of retail uses, restaurants, arts, and recreational opportunities. This investment has spurred new jobs, has resulted in the adaptive rehabilitation of historical structures, and is fueling mixed retail and recreational uses of the waterfront. City efforts on the waterfront include recreational boating activities immediately adjacent to the proposed SLC dock and conveyor, as well as many active and passive recreational uses associated with the City parks, as identified in the 1996 Hudson Vision Plan. The proposed SLC waterfront facilities and activities would adversely affect the desired anticipated uses as expressed in the adopted comprehensive plan and the Hudson Vision Plan, they would directly conflict and compete with those uses that are in place and that are being promoted and expanded."

The ruling continued to flesh out how such heavy industrial activity would adversely affect the existing economic base of the community:

"The local economy in Columbia County has been growing steadily, with nearly a 5 percent rise in private sector jobs between 1998 and 2002. This economic growth has been fueled by real estate, retail and wholesale trade and business support services. The City of Hudson in particular has enjoyed a boom in its residential and commercial real estate market which could be threatened through the introduction of increased industrial activities affecting the quality of life. The proposed expansion and change in industrial activities on the river directly competes with the previously mentioned plans for recreational and commercial activities immediately adjacent to the proposed dock and conveyor and the current revitalization in Hudson. It could also jeopardize the possibility of tapping into the Hudson River's multi-million dollar recreational boating industry which, as noted by Hudson City Alderman Colum Riley (Riley, letter, 3/18/05) could provide much needed revenue for the City. The increased SLC industrial activities would impact the recent economic growth felt as their downtown has revitalized and may adversely affect the existing economic

base. It may also lead to diminished marketability of the planned uses, and adversely impact the tax revenues anticipated from those uses.”

DOS also found that such activity would detract from views of the water and smaller harbor area, particularly where the visual quality of the area is an important component of the area's appeal and identity:

“The presence and operation of the Hudson Max vessels, 82 feet tall pump house, a 75 feet tall conveyor-reversing structure, 56 feet tall trough conveyor system, 82 feet tall pneumatic loading system, stock piled raw materials, lighting would detract from views of the water and smaller harbor area both in the City of Hudson, and from the Village of Athens. The Village of Athens, also a small harbor area rich in maritime history, identifies ‘enjoying the view’ as one of the most important recreational activities of its residents, in its LWRP. The visual quality of this region of the Hudson River is a very important component of the area's appeal and identity, and would be negatively impacted by the introduction of the proposed riverfront industrial activities. The proposed plant, and its increased industrial use at the waterfront, would not promote activities that would make the small harbor areas of Hudson and Athens appealing to residents and tourists. The project would not enhance planned redevelopment activities, and would detract from views of the water, in an area where the visual quality of the waterfront is an important component of the area's appeal and identity. Therefore, the proposed project is inconsistent with this policy.”

The encouragement provided to Holcim in the DLWRP for expanding its dock 400 feet to the south (augmented by repetitious cheerleading for a “deep water port”) would enable the introduction of those very same HudsonMax vessels rejected by the Secretary at this same site in 2005 as incompatible with Coastal Policy and neighboring uses.

DOS likewise found that the project would violate Policy 25—intended to Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance but which contribute to the overall scenic beauty of the coastal area:

*“The proposed cement manufacturing facility, its large plume, **and the riverfront industrial facilities and activities** [emphasis added] would also be visible from and would impact scenic resources of the Hudson River which are not within a designated SASS. In particular, the proposed plant's plume, the proposed significantly expanded riverfront industrial facilities and activities would be visible from both the City of Hudson's waterfront and the Village of Athens waterfront across the River. The Athens LWRP states “enjoying the view” as the most popular recreation activity identified in a survey of its citizens. In a discussion of its scenic resources, this document states: “The River can be seen from throughout the Village at the end of most of the streets. The Hudson-Athens Lighthouse, the Rip Van Winkle Bridge, Mount Merino and the lights of Hudson, wildlife in the marshes, and the myriad types of river traffic and trains on the eastern shore provide an active and varied scene.” In recent public comment on the Greenport project, the Deputy Mayor states “the Village of Athens has concluded that the visual impact of the proposed dockside facilities, plumes and conveyor would be inconsistent with the LWRP and the Village's development objectives and priorities under coastal policies. The proposed SLC project is inconsistent in terms of scale and incompatible with the landscape..... The SLC project does not enhance the overall scenic quality of the coastal area.”*

In summary: Rather than following the Secretary's clear dicta to enable a more far-reaching and positive Waterfront plan—one which would protect beneficial permitted uses at risk of impairment by heavy industrial activity—those shepherding the LWRP process appear to have given top priority to Holcim and O&G in making arrangements that would ensure the virtually permanent presence of blighting industrial activity at the Waterfront. The DLWRP needs to be revised so as to be consistent the Secretary of State's decision and dicta, both in letter and in spirit.

E. 2005 COASTAL STAFF CORRESPONDENCE

A little more than months after the issuance of the Secretary of State's ruling on SLC, Department of State Coastal Resources staff issued its most detailed review of the City's DLWRP. The 2005 Welsh letter was sent to then-Waterfront chair and Superintendent of Public Works Charles Butterworth and copied to over thirty City elected and appointed City officials, reflecting the importance of the guidance it contained. We attach this entire 20-page document to these comments (as Attachment III-D) since it speaks so directly about how to correct the continuing problems in 2010 with the DLWRP.

►► We cannot stress strongly enough the extent to which that this Staff guidance from Nancy Welsh needs be carefully reviewed alongside the current draft. It is the only document we know of which specifically addresses both the Hudson lwrp and the firm instructions for rezoning the Waterfront contained in the Secretary's Coastal Consistency Determination. This letter proves beyond any doubt that DOS staff interpreted the Daniels decision as having a direct and crucial relationship to the lwrp. Both the planning and drafting principles espoused in the letter by DOS and the specific guidance still pertain to the current draft, with many of the contradictions, omissions and flaws identified in Welsh's letter persisting in the document now under review. ◀◀

Indeed, this letter on the 2004 version of the DLWRP so closely parallels Save the South Bay's comments on the current one that we hardly know where to begin. Below, we cite just a few of the many statements throughout this document which we consider of utmost importance to apply to the current DLWRP, especially as they pertain to compatibility issues and the need to respect community consensus:

Under "**Purpose of the Local Waterfront Revitalization Program**," Coastal staff wrote that an LWRP properly should be "based on a community vision and consensus regarding the future of its waterfront, and refines State waterfront policies to reflect local conditions and circumstances." As discussed throughout these comments, the draft at hand fails to rely upon those precepts, having ignored or dismissed clear, widespread repeatedly-submitted public input calling for a different overall direction and approach to longstanding South Bay use conflicts.

Under "**Public Participation**," Coastal staff wrote in 2005 that "There has not been sufficient community participation in the LWRP development process since the earlier drafts of Hudson's LWRP were resurrected and revised. [...] The LWRP does not adequately incorporate or address these efforts, and does not reflect a community consensus and unified vision." As of 2010, an outpouring of community input has been submitted to the City and State regarding this plan. But instead of the planners having failed to receive sufficient input, as was the case five years ago, they have chosen to disregard the community's participation. This is almost more intolerable than the previous condition. Staff also states that the City will be "required to undertake a series of public information and feedback sessions"; such sessions have indeed taken place, but as discussed in depth in the Public Input portion of the comments, (Section V.) such input has fallen on largely deaf ears.

Under "**Needed Revisions**," Coastal Staff turns its eyes upon St. Lawrence Cement (now Holcim). These comments are particularly noteworthy in that unlike previous guidance, when the fate of the Greenport Project was still unknown, they postdate the Daniels decision. As of October 2005, staff is mindful "of recent decisions by the Common Council and the Department of State and SLC's decision not to go forward with its proposed project," creating a need to reconsider and recalibrate the LWRP's core assumptions. They write that

“The LWRP should discuss potential uses of this area based on an analysis of appropriate activities for this site, given the directions established by the Hudson Vision Plan and the City’s Comprehensive Plan. It should not be assumed that SLC will continue to be the owner of the property. The LWRP needs to reflect current conditions and future goals, and not be tied to a specific owner. The City must reorient its analysis [...] and identify/analyze any desirable, potential uses and how they relate to the City’s vision for its waterfront and to its community revitalization plans. The analysis needs to articulate those uses and activities that are consistent with this vision and plans, and that might take advantage of and are appropriate for the characteristics and infrastructure present or possible. The analysis should subsequently be developed into standards for determining whether potential uses and activities are consistent with this vision and appropriate for the site, and thus consistent with the LWRP. It will be these standards, as expressed in the policy explanations, that will be used to examine any and all proposals for development in Hudson’s waterfront area.”

We could not agree more with this guidance, and are only amazed at the extent to which the current DLWRP has failed to incorporate it.

Under “Harbor Management Planning” staff notes that “there are a variety of potential uses that may compete for space in the City’s Hudson River waters—ranging from recreational kayakers to power boat operators to large party boats and ferries to barges transporting materials. There needs to be some additional analysis of how these water uses will be managed, and standards must be developed to determine what uses are and are not appropriate in the different zones. All potential uses must be evaluated against the community’s vision for the future of the waterfront.” This represents a telling rebuttal (five years ahead of time) to Holcim and O&G’s resistance to enacting a HMP and appointing a harbormaster.

Under “Community Visioning and Compatibility of Uses,” staff writes that “There is inadequate analysis of the compatibility of proposed land uses along the waterfront. [...] There is no analysis of potentially incompatible attributes of these different land uses, and no explanation for how such factors might be successfully managed in close proximity.” Once again, this problem has not been addressed in the current DLWRP, except with broad-brush, unsupported claims that industrial activity can coexist happily with public uses. Staff proceeds to refer, precisely as did Secretary Daniels, explicitly to the Hudson Vision Plan as a model “comprehensive, community-driven process” which resulted in a “waterfront concept plan” that can serve as a model for the Hudson LWRP:

“The HVP clearly outlines the suite of acceptable uses and activities envisioned for the revitalization area:

‘Permitted uses should include: recreation/open space, parking, residential (second story and above), retail, galleries, studios, office, restaurants, museums, outdoor markets, outdoor performances, street vending, marine stores, marine fuel and boat storage. Conditional uses could include: electronic transmission towers, public utility uses, transportation centers, railroad, ferry terminals. Accessory Uses should include: signs, outdoor cafes. Prohibited Uses should include: manufacturing, assembling, storing and processing products or facilities, outdoor storage of lumber, construction and building materials, contractor’s equipment, trucks, vans, buses, retail or wholesale of vehicles or boats. Building heights should be limited to 45 feet from ground elevation to ridge or parapet line.’ (HVP, pp. 85-88) [...]

The waterfront concept plan, developed for the HVP and included in the LWRP, revolves around creation of a passive waterfront park, recreational boating facilities, and mixed-use redevelopment of upland parcels, including proposed enterprises such as restaurants, gal-

leries, retail shops, museums, offices and residential space. [...] The Vision Plan also indicates that the community would like to extend this waterfront revitalization across the southern waterfront, stating that the SLC land ‘has good development potential for a variety of public and private uses. The City should try to secure an option on the land or should have a letter of understanding expressing its interest.’ (HVP, p. 89) [...] Acquisition and re-development of the SLC property, as recommended by the Vision Plan, could conceivably continue the City’s ongoing waterfront transformation.”

Coastal staff admits the possibility that in theory, “appropriately-scaled industrial, recreational and commercial land uses” might be successfully managed in close proximity,” but sounds a dubious note in cautioning that “advance planning and the development of standards would be critical in accomplishing this.” No such plans and standards are advanced by the DLWRP. Like the 2004 draft, the current LWRP “includes no compatibility analysis or discussion of management strategies for these potentially incompatible use areas.”

Staff was likewise concerned about the degree to which the 2005 draft was out of step with the community’s vision, and this problem persists in 2010:

“[T]he LWRP lacks documentation of the kind of community consensus and analysis that support the HVP, which provides detailed recommendations for Hudson’s northern waterfront, and recommends pursuing acquisition of the SLC parcel for an expansion of the proposed recreational and commercial amenities. Similar clarity should be developed through a community-based visioning and planning process regarding the future of the southern waterfront, including the SLC property, and in light of recent decisions from the Common Council, Department of State, and SLC. Such a process is essential to justify whatever land uses the municipality ultimately proposes in the LWRP. The public at large must be afforded the opportunity to discuss and provide feedback on the City’s current assumption that industrial land use along the southern waterfront will be maintained into the future. The HVP clearly indicates that the community supports an increased focus on recreational, tourism-oriented waterfront redevelopment, and recommends zoning categories that support this type of development (see HVP pp. 85-88).”

Staff closes this portion of its comments in noting again the need to establish “standards in the policy section. [...] The zoning categories in the proposed legislation will have to be carefully crafted to ensure that desired land uses for the waterfront can be mutually advanced, and will not hinder one another. The document should be clear about any trade-offs being made, and explain the underlying rationale. Again, all potential uses and implementation techniques must be evaluated against a consensus vision of the waterfront, to see if they are compatible.” This guidance, too, remains highly relevant to the current draft.

Policy Protections for Identified Resources Currently, the policies are not sufficiently linked with the identified resources in the inventory (and vice versa). For example, there is a list of historic structures presented in the inventory (pp. 24-27), but these are not included in the explanation provided under the historic resources policy (Policy 23, Ch.3 p.26), nor is any information provided about current and potential protections in place for these resources. This is similarly true for the inventory of scenic resources, and for the habitats/fish and wildlife resources, among others. Resources that are identified in the inventory are assumed to be important to the City to some degree. What needs to be added and clarified is an explanation of how important they are, and how they are being (or might be) protected (local laws, zoning, etc.). In addition, all identified important resources should be referenced (i.e., listed out completely) in the related policy section, with the related explanations.

We do not intend here to recapitulate the entirety of this 2005 staff letter, though sorely tempted to do so. Throughout those 20 pages of guidance from the State, we find point after point closely

tracking those of our group and the hundreds and hundreds of citizens who have written letters, signed cards and petitions, participated in workshops, filled out surveys, and in countless other ways sought to impress upon the City that the community consensus for the southern portion of the Waterfront. To spare the readers of these comments a nearly-verbatim reproduction of Ms. Welsh's essential text, we will simply reiterate the need for this document to be closely read by today's planners and staff so that the current draft can finally come to reflect its sound and trenchant advice.



COLORIZED POSTCARD OF SOUTH BAY, EARLY 20TH CENTURY

IN THIS SECTION, we review four five plans and studies—the Hudson Vision Plan, Hudson Comprehensive Plan, Don Christensen’s *Saving South Bay* exhibition, Christensen and Friends of Hudson’s land title research, and the “no-build scenarios” described in the record of the SLC Greenport Project’s permitting applications—which each have critical relevance to the LWRP process.

A. HUDSON VISION PLAN & COMPREHENSIVE PLAN

In 1995-1996, the Hudson Vision Plan brought hundreds of citizens together with planners from Cavendish Partners to develop consensus around the dreams, needs and challenges of the City of Hudson. Sponsored by the Hudson Opera House, the Cavendish process proved wildly popular, generating a flood of ideas and suggestions from local residents, many of whom still reminisce about the hopeful and unifying atmosphere created by the Vision Plan sessions.

However, the Vision Plan was considered a threat by some established Hudson leaders, and the effort was disbanded after Mayor Richard Scalera launched a series of personal, political attacks on then-Vision Plan chair Judith Meyer. Nevertheless, the results of the Vision Plan were published, and as seen in discussion elsewhere in these comments, some ten years later many of its precepts formed the basis for the Secretary of State’s stunning 2005 ruling on the SLC Greenport Project.

Perhaps the best window onto the Vision Plan is through the City’s Comp Plan, which used the mid-’90s effort as a jumping-off point. At the turn of this century, the City of Hudson developed and passed a new Comprehensive Plan. Even though drafted and enacted at a time (2001) when Hudson was riven by the bitter and prolonged controversy over the Greenport Proposal, and even though the planners at Saratoga Associates came under fire for their dual role as consultants to SLC, citizens steering the Comp Plan process managed to ensure that the document scrupulously avoided any mention whatsoever of the name St. Lawrence Cement. The Steering Committee (of which Sam Pratt was a member) voted to strike any discussion or accommodation of company’s demands, needs, and expectations, though Saratoga managed to insert a few such remarks into the plan’s appendices. Instead, the Comp Plan appropriately stuck to questions of long-term visioning based in community input.

Unfortunately, the same cannot be said of the current DLWRP, which is full with specific references to (and accommodation of) the demands, needs and expectations of SLC’s parent company, Holcim, and its subcontractor O&G. This approach runs contrary to longstanding Coastal Resources practice, and to everything that community participants were told at the outset of this round of LWRP development in 2006.

The City’s Comp Plan contains numerous statements which ought to help guide the development of the LWRP. For example, p. 49 recommends that the City adopt an LWRP to complement and strengthen its Comprehensive Plan:

“The LWRP also represents an ideal opportunity to rebuild the relationship between the waterfront and the remainder of Hudson. It is a powerful tool to implement the core recommendations of the 1995 Hudson Vision Plan.”

Unfortunately, the embedding of heavy industrial activity at the Waterfront that is contemplated

in the DLWRP bears little or no relationship to the “remainder of Hudson,” which since the enactment of the Comp Plan in 2001 has continued to develop in a direction antithetical to the presence of blighting, intrusive heavy industrial activity. Taken together, both the Comp Plan and the Vision Plan militate against the extraordinary accommodations and provisions made for Holcim (and by extension O&G). Moreover, a reading of the Vision Plan shows that such activity was not among the community’s goals. See, for example, the well-known Cavendish rendering from the Vision Plan of a built-out Waterfront without any such industrial uses present.

The Vision Plan is likewise touted as a key model for future Waterfront activity on p. 24 of the Comp Plan, which highlights the specific goal of connecting Warren Street with the Waterfront: “The waterfront was studied extensively in the 1996 Hudson Vision Plan sponsored by the Hudson Opera House and improvements have been recommended to enhance connections to Warren Street. These improvements should continue to be developed as Hudson’s waterfront evolves.” The permanent establishment and even encouragement of new heavy industrial activity which is contemplated in the DLWRP has no connection whatsoever with Warren Street, and would only serve to deter the strengthening of the main street-waterfront connection promoted in the City Comp Plan.

Pages 16-17 of the Comp Plan state that Plan Goal 1 is to

“PROTECT THE TRADITIONAL CHARACTER OF HUDSON’S DOWNTOWN & NEIGHBORHOODS: Design policies should encourage mixed-use development (i.e. ground level commercial/retail and residential development on upper floors) in high activity areas like Warren Street, Front Street, and the waterfront, and strongly discourage the use of variances. [...] To promote these objectives, the City should develop design policies (including policies for the waterfront) that encourage future development to incorporate these principles.”

In referring to “mixed use,” the planners plainly meant mixed residential and commercial uses, not industrial ones.

Page 21 articulates the goal of “draw[ing] visitors to Front Street and further along to the waterfront, enhancing a necessary connection between Warren Street and the waterfront,” an idea which was echoed in public comments by Bonnie Devine in the WASC’s March 2006 public organizational meeting.

Pages 51-52 of the Comp Plan recommend the creation of an “Urban Waterfront District,” one which strikingly omits any mention or support for the inclusion of industrial activity at the Waterfront:

“In its present status, both the north and south segments of Hudson’s waterfront are zoned I-1, while the central portion is zoned R-4. For all intents and purposes, the 1996 Hudson Vision Plan outlined recommendations for Hudson’s waterfront that are consistent with the goals and objectives of this comprehensive plan. However, the existing zoning districts are not consistent with these preferred future land use patterns. In an effort to promote a mixed-use waterfront environment, the City should create a new zoning district to be called the Urban Waterfront District (UWD). The general limits of the district should be the area west of the railroad tracks, north perpendicular to Warren Street and south perpendicular to Broad Street. Permitted uses should be a variety of water-dependent and water-enhanced activities such as marinas, public boat launches, restaurants, parks and residential uses. Design standards, similar to those recommended for downtown, should also be developed and incorporated for this district.”

Secretary of State Daniels relied upon this language in his April 2005 Coastal Consistency Deter-

mination for the St. Lawrence Cement project. It presumes that the City's preferred and most desirable "water-dependent" uses are those related to public access to and enjoyment of the Hudson River: "marinas, boat launches, restaurants," *et al.*

In the same section, the Comp Plan also explicitly acknowledges that blighting activities have harmed the City's two important bays. In supporting a Conservation Overlay District, the Comp Plan states that:

"Hudson's North and South Bay's are unique environmental resource areas which provide flood control, water quality, recreational, aesthetic and open space benefits to the City. [...]ong-standing activities have been permitted in the South Bay area that has significantly undermined this valuable community and environmental resource. Protection and sound management of these natural resources will ensure continuation of their associated benefits and natural values. In response, to provide for the proper use of these valuable resources to the City and its inhabitants, a conservation overlay district should be established for Hudson's North and South Bay areas. The intent of the additional control of uses imposed in by this overlay district should be an attempt to achieve compatibility between environmental quality and future development."

While the current DLWRP pays some lip service to these Comp Plan goals, it simultaneously and incongruously promotes the introduction of heavy truck traffic through the wetlands of South Bay, essentially guaranteeing the long-term presence of massive barge activity at the Waterfront. This is part of a pattern in the current draft of making compromises which may temporarily relieve its authors of the need to address difficult choices, but which in the long run will guarantee future use conflicts and community controversies.

The very next section of the Comp Plan (p. 52) addresses the need for the City to enact "Performance Standards" tied to its zoning as a tool for resolving "difficult balancing process[es]."

"The proposed design standards will address the physical design of future commercial and industrial land uses. But the less tangible elements, like noise, dust and vibrations, are not limited in the existing ordinance. Consequently, many residences and businesses alike are experiencing some negative impacts from nearby industrial operations. In an effort to reduce these negative impacts, the City should develop performance standards. Performance standards are zoning regulations that permit uses based on a particular set of operation standards rather than on a particular type of use. Performance standards can provide specific criteria limiting noise, air pollution, emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic impacts, and visual impact of a proposed use. Generally, this set of criteria allows potential developers to understand how their proposed operation may fit into Hudson and, further, provides the City with clearly documented standards by which future projects can be evaluated."

Unfortunately, the DLWRP and GEIS do nothing to achieve this clearly-stated goal of the City's Comprehensive Plan. The phrase "performance standards" appears nowhere in either document, reflecting the general intent of its authors to protect the interests of Holcim and O&G rather than to craft a vision for the Waterfront that is consistent with longstanding City goals and more recent public input. Were they to address the topic, many of the industrial activities accommodated by the plan would likely be ruled out as generating excessive "noise, air pollution, emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, waste, traffic impacts, and visual impacts." Rather than supporting standards that would protect residents, workers, businesses and visitors from these impacts, the drafts instead (astonishingly) accommodate the very activities which would generate such impacts, while placing no restrictions whatsoever on the manner in which they are to be conducted.

The appendices to the Comp Plan note that “The general theme of the Hudson Vision Plan is to provide connections among ‘core areas.’” (p. B-51). But Holcim’s industrial activity at the Waterfront does not connect with the rest of the City; indeed, the DLWRP indirectly acknowledges this incompatibility through its attempts to require screening of stockpiles and other activity at the dock. If heavy industrial use were truly compatible with neighboring uses, and were an enhancement to views of the River, it would not need to be separated in this manner.

Appendix p. B-53 once again notes that “Access to the waterfront is inadequate” and that “The Hudson Vision Plan has made specific recommendations to create links between the downtown and the waterfront. The pedestrian network throughout the majority of the City of [sic] well connected. However, as noted above, clear pedestrian connections to the waterfront are necessary.”

The nature of activity on Warren Street—which is dominated by local shopping, services and dining—has no relation whatsoever with the loading of gravel and other industrial activity. To suggest any linkage between the two would be an absurdity. Yet the avowed goals of the Vision Plan and Comprehensive Plan were to create such linkages. No meaningful dialogue between the urbane, human-scaled experience of Warren Street and the discordant, hazardous activities carried on by Holcim and O&G (which must be screened and fenced off from the public) can plausibly be argued without emptying terms such as “linkage” and “connection” of all meaning.

Appendix C of the Comp Plan summarizes community surveys which the City undertook in the Summer of 2000 in an effort to gather public input on that plan. The body of the Comp Plan repeatedly refers to and relies upon the results of this survey. As with more recent community surveys, the results of the waterfront portion of the questionnaire starkly demonstrate that Hudson residents at the turn of the Century did not welcome industrial activity at the Waterfront. These results can be found on p. 4 of the Appendix C, survey item #7 (*the full table is included as Attachment IV-A to these comments*).

The planners asked Hudson residents to “indicate whether the following uses would be good for Hudson's waterfront.” By far the least popular option was “Heavy Industry,” with 70.0% stating that such use is “a bad way to use the waterfront,” and only 8.8% rating it “one of the best ways to use the waterfront.” By contrast, the most popular option was “Parks/Recreation/Open Space,” with 76.3% rating this as “One of the best ways to use the waterfront,” and only 2.5% rating them one of the worst.

These results closely mirror those contained in more than 400 surveys gathered by the Hudson Common Council’s Waterfront Advisory Steering Committee (WASC) in 2006, results discussed elsewhere in these comments. The consistency of these results over time is particularly noteworthy, and calls into question why the authors of this DLWRP have chosen to go to such lengths to accommodate publicly unpopular options. Curiously, while the DLWRP takes some pains to detail public input received, that survey is only cursorily mentioned, with no actual inventory of the specific results provided.

Overall, we urge that the DLWRP hew more closely to the thoughtful and enduring language of the Vision and Comprehensive plans, particularly as they pertain to the configuration of the southern portion of the Waterfront.

B. SAVE THE SOUTH BAY EXHIBITION

In 2000-2001, Hudson resident Don Christensen embarked on a remarkable exploration of a question he had every time he looked out the back window of his house on Willard Place: How did Hudson's famous South Bay—once an open body of water full of schooners that was depicted repeatedly by the Hudson River School painters—become a degraded swamp and landfilled industrial wasteland?

Christensen came to Hudson in the 1980s without any intention of getting involved in local affairs. Now the threat of SLC turned this casual question into a matter of fight-or-flight urgency. Going through old deeds at the Columbia County Real Property Department, dusty files at the County Historical Society, spinning through acres of microfilm in area libraries, checking the archives of historic sites and museums, and quizzing astonished bureaucrats at agencies like the New York State



C. 1893 POSTCARD FOUND BY DON CHRISTENSEN IN THE ATTIC OF HIS WILLARD PLACE HOUSE, SHOWING THE SOUTH BAY STARTING TO DEGRADE FROM THE CUMULATIVE IMPACT OF THE RAILROAD, THE IRON WORKS, AND JONES' TRESTLE

Office of General Services, Bureau of Land Management, Division of Lands Underwater, Don unearthed the true history of the Bay. His research raised serious questions about the SLC's title to illegally-filled acres along the river, and resulted in a major exhibit at the Hudson Opera House, *Seeing South Bay*. The more than 100 images and documents in *Seeing South Bay* included old maps, deeds, newspaper articles, photographs, 19th Century artwork, and numerous other historical resources are archived online at the following URL, which is case-sensitive:

<http://www.warrenstreet.com/SouthBAY>

Images from the exhibit are interspersed throughout these comments. The exhibit included this March 2001 statement from the National Trust for Historic Preservation:

“With a mix of scenery and history unmatched anywhere else in the country, the Hudson Valley is one of America’s greatest treasures. South Bay, with Mt. Merino rising overhead, represents a significant part of that heritage. The history of this landscape vista should compel each of us to ask: What have we lost and what could we lose further?”

and cultural knowledge) was to remind residents of the area that the South Bay was not always degraded—and that it does not have to remain so. Christensen’s project established the largely-ignored South Bay as a centerpiece of Hudson’s history and legacy, and created a public desire to see as much of it restored as possible—to reverse some 150 years of neglect. It made people realize that the City had more hidden assets and broader horizons than its leaders sometimes want them to believe.

Among the many small and large revelations of the exhibit was Christensen’s exposure of how industrialist Fred Jones, one of the earlier quarriers of Becraft Mountain, manoevered Hudson officials in the late 19th Century into allowing him to put a railroad trestle through South Bay, a body of water and view which was considered practically sacred by many residents.

Jones understood that if he simply proposed the trestle outright, he would be turned down. So instead he announced that he was going to put a railroad along one of Hudson’s residential streets to move vast quantities of stone to the Waterfront.

As Jones correctly calculated, this announcement set off a firestorm of indignation and protest. After the initial hue and cry, Jones came back with a repentant attitude and a stated willingness to compromise: He’d settle instead for a railroad trestle through the Bay. Those who feared trains rolling past their doorsteps fell for his ploy, and agreed to his fake bargain.

The parallels with the present-day actions of Holcim are all too clear. Holcim, with the connivance of O&G, have steadily introduced excruciating levels of truck traffic into dense residential neighborhoods of Hudson. Now, as part of the LWRP, they are “agreeing” to relieve the City of this noxious and hazardous traffic by accepting instead a heavy haul road through the South Bay—along the exact same causeway which was built up from sediment and fill surround Jones’ trestle. Will Hudson fall for this gambit all over again?

C. LAND TITLE ISSUES

In 2001, in the course of his South Bay research, Christensen also unearthed significant land title problems at the Waterfront, working with Friends of Hudson and also former OGS attorney Robert Maclean. Maclean was for several decades the attorney for the very agency which oversees such matters, and privately was able to verify with staff that Christensen’s claims had merit. *(A copy of a Friends of Hudson news release summarizing Christensen’s findings is included as Attachment IV-B and a schematic map, Attachment IV-D, created by Friends of Hudson in consultation with Mr. Christensen in 2001, which shows the contested areas in great detail; a detail of that map appears above.)*

Commenting on behalf of Friends of Hudson in July 2001 as part of the group’s application for full party status in the DEC review of the Greenport project, attorney Jeffrey S. Baker (who since has performed legal work for some City agencies) addressed the topic as follows. Due to the importance of this matter, we reproduce below a large portion of Baker’s brief:

X. LAND OWNERSHIP ON THE HUDSON WATERFRONT

As part of its application, SLIC proposes a significant expansion of its existing dock facilities in Hudson, primarily for the purpose of being able to simultaneously handle out-going barges receiving cement and in-coming HudsonMax vessels delivering coal and other inputs. SLIC has applied to the DEC and the Army Corps of Engineers for a permit to dredge up

to 80,000 cubic yards of river bottom and to fill up 51,907 square feet for construction of its dock facilities.²² Associated with the requested dock expansion, SLC has applied to the New York State Office of General Services for a Grant for Lands Underwater. Very serious issues have arisen with respect to SLC's right to request such a grant including questions about whether it even has valid title to the land it currently occupies.

Public records indicate that SLC does not likely hold title to substantial land areas along the edge of the Hudson River where the company proposes to locate its dock operations. Because of probably unauthorized fill-in of the Hudson River by SLC and/or its predecessor companies beyond boundaries defined by State authority, the locale of the proposed dock occupies a large area of land that in all probability is held in title by the People of the State of New York. In addition, the area of the waterfront that was filled in by proper authority of the State was permitted under the express condition of maintenance in perpetuity of a sizeable dock for use by the public. SLC and its immediate predecessor company failed to comply with this condition, thereby raising the prospect of a return of these lands to the People of the State of New York. The land ownership of the waterfront area would directly affect the nature of any dock operation proposed by SLC if not raising a legal question about the actual right of the company to occupy any part of the area.

The entire area of the current lands along the Hudson River now occupied by SLC's dock is landfill in the bed of the Hudson River. The issue of title ownership concerns approximately 1,400 feet along the River's edge that comprises SLC's primary area for its current and proposed active dock use. Authority for a precisely defined fill-in of this area of the Hudson River, along with conditions for the fill-in, was granted by State Legislative Act, Chapter 195, Laws of 1855, and was reconfirmed and slightly revised in a subsequent State Legislative Act, Chapter 167, Laws of 1861. These two Legislative Acts redefined the size and conditions of a previous "Grant of Land Underwater" issue by the State Land Commissioner through Letter Patent to John L. Graham dated December 12, 1836. There is no other apparent State authorization that provides any other definition of this area of the Hudson River permitted to be filled in or any other definition of conditions accompanying any fill-in. The Legislative Acts provide: (a) precise measurements of the area of the Hudson River allowed to be filled in for use of commerce (b) the condition for the filling of the River that states "hereby required forever hereafter to keep open the slip or space now opened by them to the south of their furnace of a width of at least sixty feet, and extending back from the channel of said river at least two hundred and fifty feet, for the use of the public." The restrictions defined by these acts for permitted landfill and the maintenance of the required public dock were honored for generations. Additional, and apparently unauthorized, landfill running most of the entire length of these 1400 feet of the Hudson River as well as the closing of the public dock was carried out by SLC and/or its immediate predecessor company at some time after approximately 1915.

An in-depth research project by Friends of Hudson member Don Christensen and subsequent confirmation by Robert Maclean, Esq., former counsel to OGS have revealed the problems with SLC's existing title. That research was further confirmed by the rejection by OGS of the draft survey supplied by SLC with its application for the grant of state lands, where OGS determined that the proffered survey lacked sufficient detail and supporting information to demonstrate SLC title to the existing lands and the proper delineation of the requested grant.

In the absence of a valid survey the precise extent of the possible unauthorized fill-in of the area cannot be determined. A rough approximation of the unauthorized landfill suggests an area upwards of seven acres and possibly more. All of the area of unauthorized landfill

would be lands held in title by the People of the State of New York. Without proper title, SLC's proposed design and use of the waterfront as outlined in the EIS cannot be considered.

The evidence of unauthorized fill by SLC and its predecessors in such a substantial area raises significant questions about the nature of the fill material and the real possibility that it was filled with industrial waste causing contamination to the lands of the People of the State of New York and the Hudson River. While the Joint Permit Application to DEC and the Army Corps of Engineer contains sediment samples in the river, there are no soil samples taken of the existing dock area itself and the area that was illegally filled.

In addition to the illegal and potentially dangerous fill, SLC and its predecessor's violation of the specific conditions of the Legislative grant constitute a gross violation of the public trust. SLC was required to maintain a 60 foot wide public dock area in perpetuity. That requirement constituted an early Legislative recognition that public access to the waterfront, not just by spectators but as an active waterfront was essential to the orderly development and beneficial use by all members of the community. By failing to comply with that condition, title to all lands held by SLC associated with that condition is subject to challenge and revocation. There is well established legal precedent for revoking grants of lands underwater where the grantee has failed to comply with the conditions of the grant.

Non-compliance with the condition is not simply an academic exercise, but raises significant questions with respect to SLC's offered mitigation of a pedestrian walkway around its property so that people can view the river. Regardless of how attractive SLC attempts to make such an access area, it is an inadequate substitute for the lack of public landing that it was supposed to have maintained in the first place. Before SLC seeks to mitigate the impacts of what it intends to do, it must first restore the condition it was obligated to provide as a condition of the original grant.

Coupled with SLC's violation of its existing grant, are grave concerns regarding the requested expansion of the dock area. The Hudson River Estuary Management Action Plan issued by DEC in 1996 and the 9 NYCRR Part 2, priority use of the Hudson River is to be given to the public by use of lands still owned by the People of the State of New York and thus should preclude an extension of the grant to SLC. This is particularly relevant with the City of Hudson's plans to redevelop the waterfront and increase public access to the river.

However, apparently due to the intense controversy surrounding the Greenport Project in 2001-2002, neither the DEC nor the Office of General Services' Bureau of Lands Underwater was eager to investigate the land title issue. In addition to SLC being a political "hot potato," private feedback from persons connected with OGS indicated that the State was loathe to open the whole "lands underwater" can of worms, since there is the potential of many supposedly private property owners along the river being similarly situated atop unpermitted fill into the River, lands which could be reclaimed by the State.

As such, this key issue was tabled by the Pataki administration during the period when no state agency wanted to be first to make a move on the controversial SLC project. It was reported back to Friends of Hudson that OGS staff at one point were instructed to try to disprove Christensen's research, but found that they could not. A single, inconclusive memo was issued which partially disputed one small portion of his research, but all the other aspects of the claim were left unaddressed.

Maclean is now retired in Loudonville, but would likely be willing to address this matter again; this same suggestion was made to the WASC and Ms. Roberts several times in 2006-2007, to no

effect. Nor to our knowledge has the City or DLWRP authors undertaken other independent efforts to ascertain the true extent of Holcim's land holdings in the South Bay area, though it is rumored that the quasi-public Hudson Development Corporation (HDC) undertook some investigation of these matters in 2005-2006. And naturally, Holcim has had no interest in pursuing this itself, and has strenuously denied that it lacks clear title to these former lands underwater.

But if the State and/or City were to ascertain that the disputed riverfront acres belonged to them, rather than to Holcim, the entire complexion of the DLWRP would change. All of the compromises and accommodations of the company's demands would be transformed into a major new public opportunity. Save the South Bay thus recommends with the utmost urgency that this matter be fully investigated prior to the enactment of any LWRP for Hudson.

D. SLC NO-BUILD SCENARIOS

Between 1998 and 2005, St. Lawrence Cement (now Holcim) was required to file numerous permitting applications with local, County, State and Federal agencies as part of its failed plans to move its cement manufacturing business mostly from the west to the east side of the Hudson River.

The record contained in those applications is directly relevant to the current DLWRP in many respects—not least in assessing the nature of the aggregate deliveries, stockpiles, and related truck/barge traffic to the Waterfront. Those impacts have become a principal driver of most of the decisions, considerations and compromises contained in the plan now before the City and State as it pertains to the South Bay area.

Sometime during the summer or fall of 2005, after the defeat of its Greenport proposal, Holcim and its subcontractors began trucking large quantities of gravel to the Waterfront through the City, loading it onto barges, and shipping it out. But nowhere in the thousands of pages of submissions to local, County, State and Federal agencies did St. Lawrence Cement establish this as either an existing activity, or a likely consequence of denying the Greenport project its approvals.

The absence of such statements in their voluminous applications provides ample grounds to question whether the use of Hudson waterfront parcels for incessant gravel deliveries and transport is an as-of-right use. Holcim and O&G have vociferously and repeatedly asserted that position in recent comments on the DLWRP filed this year with the City. The current levels of activity, which rose dramatically after the issuance of the 2005 Daniels decision, have generated concern and outrage among downtown residents; yet these have never been reviewed by the City, State or Federal agencies or subject to any enforcement action, even though this activity shot up from virtually no truck trips (except for a handful of salt deliveries and pickups in winter) to dozens of daily truck trips.

Strategically, for the purposes of securing permits for the Greenport project, the company would have had every reason to establish any existing traffic to the Waterfront, and also to threaten to send hundreds of trucks weekly to the waterfront if it didn't get its new plant approved. And yet SLC did not do so. Why? For the simple reason that this daily activity was not planned and did not begin until mid-2005. It was not a grandfathered use, since the property had been inactive for so long, and it was not a permitted use (despite being in an industrial zone), since the major new traffic, noise, water quality, wetlands, barge activity and other impacts from the trucking activity had never been brought before any agencies. At the time of the drastic introduction of a new activity and new level of operations in 2005, the matter should have been brought to the City of Hudson Planning Commission and any other relevant agencies for review.

Instead, Holcim just went ahead and created a destructive new nuisance — one with significant quality of life, habitat and other environmental impacts — without seeking proper permission, safeguards and mitigations. Privately in conversations with members of the WASC, legal advisor Cheryl Roberts agreed that SLC most likely did not have the legal right to proceed in this manner; but in the absence of either local political will or committed citizens groups to mount a challenge, a potentially illegal activity proceeded unchallenged. And so we now have an unnecessary debate about how to deal with a problematic activity which shouldn't have to be tolerated at all. Either the Hudson Code Enforcement agency or DEC regulators could halt this activity tomorrow.

Holcim should not be allowed to claim that this extensive new trucking and shipping activity to and from the Waterfront is a pre-existing or otherwise grandfathered use, since such claims are directly contradicted by evidence contained in their own filings with State and Federal regulators regarding the Greenport Project. As part of that project, SLC filed applications with DEC, DOS and the Army Corps, among others which detailed in great depth the company's trucking activities and likely traffic impacts. These included both inventories of "existing conditions" and projections of so-called "no-build scenarios"—*i.e.*, what would happen if the Greenport project did not go forward.

Strikingly, nowhere in these extensive applications required by permitting agencies did SLC mention either any existing levels for delivery and shipment of gravel via the waterfront, or the possibility that such activity would commence in the "no-build" scenario. According to the company's own documents, this activity was not occurring before the project was turned down in 2005; and the company did not *foresee* it occurring in the future, if it did not secure permits for the Greenport project.

Yet that activity did begin in earnest during the Summer of 2005 with no apparent notice to any agency. Holcim has never publicly presented evidence of any specific permits for such a dramatic change in operations, relying instead on claims that the zone's industrial classification generally allows the activity without any further review.

However, drastic increases in activities or operations of this kind do require review and permits at minimum under SEQRA whenever they incur new environmental impacts. The Holcim waterfront site was essentially inactive and moribund for nearly 30 years since it was acquired in 1976-1977, again with only a handful of annual deliveries of road salt for convenience of City and County road crews. But starting in 2005, and steadily increasing to nearly intolerable levels up to the present, the company not only began daily deliveries and stockpiling of gravel to barges at the Waterfront, but also vastly increased its salt operations. (One downtown resident, having been assured by Mayor Scalera that salt deliveries were only for nearby municipalities, reported to Save the South Bay that he was awoken before dawn by a truck coming through the 1st Ward. After the trucker picked up salt at the Waterfront, he followed the truck all the way out of Columbia County to the Massachusetts turnpike.)

As such, a major change in the use of the site has taken place, without any agencies or code enforcement officers taking action to determine the level of change in activity and whether review is warranted. The new Holcim trucking and barging activity which only began in 2005 has resulted in significant local traffic and shoreline impacts. This should have triggered a review by the City and other agencies, but none has occurred. In private conversation with Sam Pratt in early 2007, City attorney Cheryl Roberts acknowledged that the City could exercise its rights to subject such activity to review, and even to order that it cease and desist; but Ms. Roberts stated that course would not be pursued to due to a lack of "political will" to take proactive measures to spare City residents these new and unwelcome impacts. Yet the unpermitted incursion of this activity is now presented as a major driving factor behind the DLWRP's cursory endorsement of the "causeway" option.

It thus seems especially cynical for the authors of the DLWRP, Mayor Scalera, and Holcim/O&G to cite well-intended and important State and Federal environmental justice (EJ) considerations in addressing trucking impacts which were within officials' power to curb and possibly even to stop altogether. Their concern seems not to be truly with protecting the well-being of affected downtown residents, but in using this ginned-up traffic as a bargaining chip—some residents describe it as blackmail—to obtain a new route through South Bay that the State had previously rejected.

ENDNOTE: There is a 19th-century precedent for such manipulation of Hudson officials to secure rights that the public had previously rejected. That precedent was discussed in a previous section of these comments concerning the 2001 exhibition at the Hudson Opera House, *Seeing South Bay*.



LATE 19TH CENTURY PAINTING OF THE SOUTH BAY, SHORTLY AFTER THE INTRODUCTION OF THE 'WATER-LEVEL' RAILROAD LINE

THE CURRENT DRAFT LOCAL WATERFRONT REVITALIZATION PLAN FOR HUDSON is unresponsive and at times even contradictory to the outpouring of public input the City has received over the past 15 years about the future of the Waterfront. We consider this to be probably the greatest shortcoming and missed opportunity of the DLWRP.

Beginning with the 1995-1996 Vision Plan, continuing with the 2000 Comp Plan, on to rounds of input received in 2006, 2007 and just recently as part of the LWRP process, citizens have routinely, specifically, forcefully and sincerely made their desire for a greener, more sustainable waterfront known to City officials and planners. The people have made it plain that public access, recreational opportunities, habitat restoration, environmental quality, and appropriate commercial development are their priorities.

The public has recognized that reshaping the Waterfront in those positive directions will confer tremendous economic, ecological and social benefits upon the City and region. Developing a sound Waterfront plan will complement the City's main street activity, spreading the rejuvenation of Hudson to a broader segment of the community, and making Hudson a regional, Statewide and even national destination. At the same time, the public has firmly rejected the discordant blight and incompatible industrial activities contemplated in this DLWRP as a hazard, nuisance and threat to residents' more forward-looking goals.

Unfortunately, these clear and optimistic public sentiments have been largely ignored, dismissed, and in some cases even erased from the current DLWRP, as follows.

A. 2000 COMPREHENSIVE PLAN SURVEYS

As noted in the previous section of these comments, the Hudson Comprehensive Plan's steering committee circulated in the Summer of 2000 an extensive community survey. The final Comp Plan relied extensively on the results of this survey, and the Secretary of State in turn relied heavily on language from the Comp Plan in drafting the April 2005 Coastal Consistency Determination regarding St. Lawrence Cement.

A portion of those surveys dealt explicitly with the community's goals for the Waterfront, with the results published on p. 4 of the Appendix C of the Comp Plan. Asked to "indicate whether the following uses would be good for Hudson's waterfront," the least popular option was "Heavy Industry," with 70.0% stating that such use is "a bad way to use the waterfront," and only 8.8% rating it "one of the best ways to use the waterfront."

Meanwhile, the most popular option was "Parks/Recreation/Open Space," with 76.3% rating this as "One of the best ways to use the waterfront," and only 2.5% rating them one of the worst. These results were consistent with the outcome of the Hudson Vision Plan's community outreach, and have been repeated with striking consistency in subsequent surveys, workshops, and public input provided by Hudson residents, as discussed in the following portions of this section.

We note that the DLWRP does not make any reference to the Comp Plan's waterfront surveys.

B. 2006 WASC SURVEYS & WORKSHOPS

Starting in March 2006, the Hudson Common Council’s Waterfront Advisory Steering Committee (WASC) began circulating a Waterfront Participation Survey among residents of Hudson. (A blank copy of the Participation Survey is included in these comments as Attachment V-A.)

The survey questions were developed by the Committee as a whole, and the form was designed by then-member Sam Pratt (now of Save the South Bay). Respondents were also encouraged to include more detailed written comments along with answering multiple-choice questions. A File-maker database was created for entering and analyzing the data collected. In addition to passing out copies of the survey to those attending public meetings, the WASC made copies available at City Hall and made special outreach to the Hudson community, such as students in the local schools, and members of the Hudson Power Boat Association. Residents of neighboring towns were also welcome to answer the survey, given that the Waterfront was considered a potential regional resource. But the bulk of responses were from Hudson residents.

According to the DLWRP’s appendices, some 390 surveys were collected. The results of the survey were consistent with the 2000 Comprehensive Plan Survey discussed above. The highest-rated activities were “Protected Habitats,” “Open Space,” and “Outdoor Performances.” The lowest-rated activities were “Heavy Manufacturing,” “Lumber Yard,” and “Trucking.” The remaining results in between flowed on a relatively even continuum between ecological, recreational, and appropriate commercial options at the top, and light and heavy industrial options at the bottom.

We call these results to the attention of the City and State for three main reasons:

- (1) Local Waterfront Revitalization Plans are supposed to arise from public input and consensus.
- (2) These results directly contradict the decision of the authors of the DLWRP to base much of the Waterfront plan around an accommodation of heavy manufacturing and trucking, two of the three lowest-rated public priorities—and priorities with a strong likelihood of impairing the public’s interest in its three top priorities.
- (3) Though the DLWRP makes mention of the *existence* of 390 community surveys, and describes that effort among the “key activities” used to “ensure that the current interests and concerns of all Hudson’s residents, city and county officials and interested organizations are reflected” in the draft, the full results themselves are never disclosed or discussed in the DLWRP. The DLWRP very briefly mention is made that “open space and parks and restoration of habitats and conservation featured at the top of the list,” and that the plan is consistent with these goals, without any acknowledgement that the plan is inconsistent with the remainder of the results.

In short, a “key” aspect of the public input gathered to form this plan has been almost entirely erased from the record. Save the South Bay can’t help but think that this omission is due to the fact that the full 2006 survey results did not support the authors’ contentions of City “support” for unpopular aspects of the plan. We therefore urge that the full results of the surveys be included in the record, addressed in the LWRP narrative, and used to bring the plan more in line with the community consensus.

Just as glaringly and inexplicably, the DLWRP erases the results of the initial meetings and workshops held by the WASC in the first half of 2006. The plan narrative makes no mention of public meetings, each attended by some 100 persons, held on March 7th and March 20th, 2006 in the auditorium of John L. Edwards Elementary School. There is no disputing that these public events oc-

curred; they were variously attended by attorney Cheryl Roberts, several DOS staffers, elected officials, and large numbers of residents, as well as reported in the local press.

Sam Pratt, then a member of the WASC, retained his notes of these meetings and notes that in addition to the matters covered in previous sections of these comments, the following occurred at the March 7th, 2006 meeting:

- i. Bonnie Devine stated that “an LWRP is a comprehensively-prepared plan for a community’s waterfront area, based on public participation.”
- ii. Nancy Welsh stated that the meeting’s “good turnout shows good commitment.”
- iii. Residents asked numerous questions and offered many suggestions during the Q & A. For example, resident Amanda Henry suggested that SLC (Holcim) remove the unsightly tower which has been rusting there for several decades. Resident Richard Cohen suggested that the City and State use eminent domain to secure the cement company property. Numerous other ideas and questions were brought forward, but are not recorded in the DLWRP.

Notes of the March 20th, 2006 meeting include the following:

- i. Presentations were made by attorney Cheryl Roberts, then-Alderwoman Carole Osterink, Joe Kenneally of the Hudson-Athens Lighthouse Society, WASC chair Linda Mussmann, and WASC member Sam Pratt.
- ii. After the presentations were made, citizens broke up into alphabetically-random brainstorming workshops of 6-10 people each, with each group choosing a spokesperson to report back on its discussions as follows. (NOTE: These are shorthand records, which have not been cleaned up for the sake of authenticity.)
 - **Group #1** (*Carole Osterink*): Want to see the return of transportation on the river, boats from Albany to NYC. Criticism of too much parking on the shoreline, both in reality and in Vision Plan. Boat Club building used to be the ferry terminal. Preserved and restored as such? Fishing: Has a possibility of generating some income, bass tournaments, more attention to fishing. Vision Plan may have reflected 10 years ago, but a lot of people weren’t here then, need to reflect that. Surveys should be translated. Lake and Pond should be within the boundary.
 - **Group #2** (*Rudy Huston*): Zone maybe should include all of Hudson. Access for fire engines down to the Waterfront. Get fire department more involved. Coordinate with Greenport on accessibility issues to South and North. Hilary Hillman: Would have more possibilities as far as moving boat clubs, ferries, recreation areas. Might result in more funding opportunities.
 - **Group #3**: (*Sam Pratt*) Access, moving over the tracks, trying to connect Promenade Hill to the water, stairs/steps; improve tidal flow into the South Bay; include North Bay; get a zoning map to look at; clam shack; expand the mixed use zoning; restoration of the habitat, Woods Hole of Hudson; Bard College field station. Grid of streets, with lots for sale? Allow mixed residential/commercial development, controlled; boat rest stop, amenities, gas; restaurant tied into train station; trees; raise 3rd Street into a causeway, more public transportation to the Waterfront.
 - **Group #4** (*Ellen Thurston*): Farmer’s market, more access, bridge over Water Street; more walking areas; Power Boat Club is foreboding because it’s not a public building, moving it might be a good thing; Where will the hotel be? Stairs from Promenade hill —disagreement. Who owns the Terrace Apartments? Promenade Park: can it be enlarged? Safety of bridge; Who owns all the property on the Waterfront? Eco-tourism in South Bay. New Waterfront Conservation Area.
 - **Group #5** (*Patrick Doyle*): Restore the history of the waterfront, restore the old docks and pedestrian bridge at the head of the embayment; get grants for combined sewer overflow, 75% of the city is blending

sewage and stormwater; hook up estuary with Stockport Creek; want to see an overlay of the zones with industrial vs. conservation. Take part of the South Bay, and create a waste system, biological waste system, so that all the overflow, that it become an engine of cleaning. But needs an ebb-and-flow study. Take out east-west railroad bed. Change the South Bay zoning via conservation overlay. Go the Estuary route, make ecotourism and scenic beauty top priority. Causeway to increase waterflow, culverts; habitat plan; institute of higher learning to replace the prison, start now to try to attract the kind of people necessary. Trail system, continuing through the waterfront. Furgary Boat—cultural community, welcome them, create more sanitary situation.

- **Group #6 (Alan Hamilton):** More conceptual conversation, about the feel of it... One of the words that came up was “organic.” Idea that this thing could grow from the inside, instead of “build it and they will come.” Need to engage the entire community. One specific idea. Create nominally-priced, seasonal rental kiosks, where just about anybody could afford to have a seasonal business (food, art, crafts). Bring in people who might not have a large amount of capital. Farmer’s market. Let people do their own thing, get more varied look and feel, as opposed to a “designed” feel.

Again, these meetings were held in March 2006, and another follow-up meeting was scheduled for April 2006. Nevertheless, the plan narrative states that the DLWRP “kick-off meeting” was held on August 31st, 2006, nearly six months after the process actually begun. We wonder why this historical revisionism has occurred, and it makes us all the more skeptical about the manner in which public input has been subjugated to the interests of two corporate interests throughout much of this plan.

C. 2007-2010 SAVE THE SOUTH BAY INPUT

As of May 18th, 2007, more than 1,000 signatures were submitted in various formats to the City and State by residents of Hudson and the surrounding area who were concerned with the direction of the DLWRP released that April.

Yet on p. 162 of the DLWRP, the authors of this plan acknowledge only that “dozens of public comments” and “some additional survey results” were “received in May 2007.” We don’t know how 1,000 people became dozens, and in any case the DLWRP does not summarize or analyze the comments received. As with the disregarded 2006 surveys and meetings inventoried above, we again have difficulty understanding this erasure of a massive outpouring of public input on a plan supposed to be driven by precisely that input. As with the 390 surveys gathered in 2006, there is little in the revisions since that date which reflects that feedback from the public. While the current draft has more details filled in, its overall intent and fundamental goals remain unchanged from the time when those 1,000-plus comments were received.

Those May 2007 comments which have been erased from the record included copies of various petitions, letters and postcards gathered by Save the South Bay in an effort to secure a more positive and ambitious plan for the Waterfront area (where State and Federal agencies have invested millions to jumpstart improvements of public access, infrastructure, and recreational opportunities). These included over 200 online petitioners, many of whom included written comments with their electronic signatures (*a copy of that petition is included in this submission as Attachment V-B*).

The 2007 public outcry against the direction of the LWRP the arose from the announcement by then-WASC chair Linda Mussmann of a highly unpopular outline for a plan which, like the current draft, sought to accommodate industrial activity in the midst of walking, biking, picnicking and boating areas. The main petition submitted stated that:

The proposed Waterfront plan does not reflect the clearly-expressed wishes of the people. We call upon the City and State to (a) allow more time for public input, and (b) develop a more forward- looking plan which showcases the full possibilities of this magnificent re-

source—focusing on public recreation, access to the river, open space, habitat restoration and appropriate commercial development—unimpaired by heavy industrial activity and blight.

The petitions gathered also included a vast array of personal testimonials, pleas, and suggestions to the City and State. These, too, have been erased from the record and largely disregarded within the process. In yet another set of petitions and cards, signatories endorsed the following request:

I support the creation of a Hudson Waterfront Zone which provides maximum public access to the river, recreational opportunities, habitat restoration and appropriate commercial development consistent with the Secretary of State's April 2005 ruling.

I oppose further degradation of Hudson South Bay. Blighting heavy industrial uses (such as a conveyor belt, overpasses, roads through wetlands, cement and gravel loading, and truck or barge traffic) cannot realistically coexist at this uniquely sensitive site with more economically- and environmentally-beneficial activities.

All legal means should be explored by public officials to remove and prevent such incompatible uses from impeding the restoration of this magnificent public resource.

Hudson resident and longtime business owner Jennifer Arenskjold, who helped to gather signatures, stated in a Save the South Bay news release (*a copy of which is included as Attachment V-C*) that “This ought to be the City of Hudson's big chance to reclaim its waterfront and make the ‘Port of Hudson’ the most inviting place on the river.”

At that time, Save the South Bay noted (per above) that nearly 400 surveys collected by the WASC showed that the public's top Waterfront uses were open space, recreational opportunities, access to the river, habitat restoration, and appropriate commercial development; while industrial uses such as the trucking and storage of construction materials ranked lowest. Residents urged that “all legal means” be explored to eliminate the longstanding “use conflict” at the Waterfront between heavy industry and greener, more sustainable uses. Yet WASC chair Linda Mussmann privately decided in Summer 2006 to accommodate heavy industrial activity at this site, legitimating highly disruptive and discordant uses at the Waterfront. It was noted that despite a verbal promise by Mussmann to have the Waterfront plan include an alternative vision for what would be possible if Holcim were no longer present in the South Bay, no such alternative was brought forth by the LWRP planners.

This round of public input also cited problems such as:

- The potential impairment by Hudson of the Athens LWRP;
- The WASC's lack of attention to land title problems for SLC operations along the river;
- Holcim's history of poor stewardship of the South Bay and “abysmal” environmental track record and the scurrilous tactics used in promoting its Greenport project;
- The Secretary of State's April 2005 package of recommendations for creating a new “Waterfront Zone” in the South Bay area which emphasized greener, more sustainable activities providing greater economic benefits to the community than heavy industry; and
- The lack of oversight of Holcim's dramatically-increased Waterfront trucking and gravel operations.

Yet three years later, most if not all of these concerns remain in the DLWRP, despite the massive amount of negative feedback from the public, necessitating their re-assertion in more recent public comments such as these. At that time, Save the South Bay spokesman Sam Pratt stated that

“Waterfront plans are supposed to be based upon a vision that serves the public’s long-term goals, not upon a defeatist attitude to short-term obstacles. Instead, the Committee’s pessimistic plan has been driven by political miscalculations, nervous lawyers, and clumsy compromises which serve no one.”

For many who have waited years or decades for a serious-minded and visionary Waterfront plan, participation in these comment periods has begun to feel like the movie Groundhog Day. That is not, however, a rationale for enacting a bad plan, just to end the cycle. It’s a reminder that if Hudson were to get its LWRP “right,” Hudson would be spared future controversies because sound planning and zoning would rule out destructive proposals such as Octane, Americlean, or SLC before they left the drawing board. And the people would have the access, recreational, social, ecological and other benefits they have craved for so long.

Now in 2010, Save the South Bay has collected another 650-plus signatures on an online petition, again accompanied by hundreds of heartfelt and detailed comments expressing concern about the direction of the DLWRP. The current petition (*which is included as Attachment X-A*), includes this statement endorsed by the signatories:

The current draft Waterfront plan for Hudson reflects neither the public input received, nor the 2005 instructions from the Secretary of State for rezoning this magnificent public resource. We call upon the City of Hudson and State of New York to:

(1) extend the public comment period; **(2) revise** the plan in a more forward-looking direction to unlock the full recreational, habitat, and commercial potential of this regional treasure; and **(3) remove** any possibility of further impairment of these resources by heavy industrial activity, nuisances and blight.

The wetlands of South Bay should not be further industrialized; and the public's access to the Hudson River should not be compromised by harsh, incompatible neighboring activities. Future generations will thank those citizens and officials who ensure that this plan is one based in long-term benefits for the many, not in the narrow, short-term concerns of a single corporation.

In addition to these petitions and attached statements, Save the South Bay has engaged hundreds of other citizens in encouraging them to send cards, notes, emails and letters to the State about the current DLWRP—comments intended to be shared with City officials as part of their record as well. Other residents are contacting their Aldermen and Hudson Common Council President directly either by phone, email or personal contact. We are not meanwhile not aware that any countervailing input has been received in any similar (or even fractional) quantity by the City and State in support of the further industrialization of the Waterfront.

Having fought off oil refineries and toxic waste proposals for the Waterfront; having participated in the Vision and Comp Plan processes; having secured a stunning ruling from the Secretary of State in 2005 to “stop the plant” which included firm guidance for rezoning the Waterfront; having participated in good faith in WASC meetings, workshops and surveys; having signed countless petitions, postcards, and written letters and emails to the State and City about multiple drafts of the LWRP, the residents of Hudson and surrounding towns are growing increasingly cynical about the role of public input in this process. Save the South Bay calls on the City and State to now restore

the public's faith to that process by putting public participation back at the center of this process.

Recent comments jointly submitted to the City of Hudson by Holcim and its trucking subcontractor O&G go a long way toward exposing their true intentions at the Waterfront.

For example, the companies assert in these comments that their industrial activities must take “precedence over all other contemplated mixed uses, such that recreational uses must ‘work around’” them.

Holcim and O&G resist any provisions which would prevent them from carrying on heavy industrial activity during nights or weekends. The lack of such provisions would make weekend events and festivals at the Waterfront nearly impossible, due to noise, dust, traffic and pollution from trucking, loading and barge activity; and could make getting a good night’s rest in the 1st and 3rd Wards of Hudson something of a challenge.

In comments on new zoning provisions, the company makes explicit their long-term goal of putting a conveyor belt through South Bay—an idea explicitly ruled out by the Secretary of State in 2005.

They likewise won’t agree to any restrictions on the “height, size or numbers” of gravel, salt or other stockpiles on their property. Nor do they wish to be subject to any site plan reviews based on its use of the waterfront, preferring to be constrained only by “market conditions.” (This attitude would essentially mean there would be no public restraints whatsoever on nuisances; aggrieved neighbors would have to pray for a recession to get relief.)

The theme of heavy industry taking precedence over public uses runs throughout the companies’ own documents. They assert that their operations should be permitted to “dominate” the port area. They denigrate low-impact development (such as riverfront restaurants) as merely “water-enhanced,” while characterizing their own activities as “water-dependent,” even though gravel, cement, etc. are often shipped by truck rather than barges.

This theme is coupled with another: the complete resistance to public oversight. Holcim and O&G say they won’t be subject to any “City-imposed operational restrictions” of their activities. They want to require the City to “remain silent” in any regulatory reviews of their “existing” gravel operations (which started in the Summer of 2005 without the City taking any enforcement action), and warns that they will “strenuously object to and oppose any requirement that they obtain zoning permits to authorize the current operations subsequent to the adoption of the LWRP and zoning.”

Similarly, they “categorically reject” and strongly resist any attempt by the City to take control of the port, and do not want the City either devising a harbor management plan or appointing a harbor master. (Imagine trying to launch a kayak or sailboat next to a massive barge, with no one to supervise when and where such vessels enter or exit the waterfront.)

In discussing the establishment of new park areas, the companies threaten that “any public recreational use/access would not be possible without our cooperation.” (In fact, were the City and State to apply some of the many tools they have for easing or ejecting Holcim off the Waterfront, the willingness to cooperate would flow in the other direction.) They furthermore oppose the imposition of a 100-foot easement along the railroad tracks, which is entirely necessary to make passage of pedestrians, bikes and vehicles possible to the southern reaches of the Waterfront.

These two companies' joint mindset is perhaps best summarized by their comment on Coastal Policy #19, in which they assert that "the business interests of Holcim and O&G must continue to be met" and "balanced" with the public and City's desires—a statement which tacitly admits there is a very real conflict between those interests. The recognition of that conflict was the precise basis of the SLC decision in 2005, one which appears to have been erased from the memory of the DLWRP's authors.

FOR THE MOST PART, THE OBJECTIONS OF SAVE THE SOUTH BAY to the DLWRP and associated GEIS are big-picture concerns. Fundamentally, we believe the LWRP process veered off-track starting in late 2006 and early 2007. We believe that correcting the cascading errors which resulted from that initial derailment will require hopping several steps back along the line. Much as we are eager to see Hudson's 23-year LWRP Odyssey ease into port, we believe that arriving at a safe and welcome destination is far more important than simply finding some harbor—even a hostile one—in which to anchor the plan.

From the moment that the shapers of these documents concluded (whether out of defeatism, exhaustion, shortsightedness, simple negligence or outright corruption) that they had to work around the narrow self-interest of a single property owner, the goal of community consensus had to be abandoned in favor of a compromised and conflicted accommodation. At that point, all the well-meaning rhetoric about the principles of Waterfront planning, all the hard-won victories over the past four decades, and all the heartfelt and imaginative public input became subjugated to the demands of a single foreign-owned corporation, Holcim.

As such, we are somewhat reluctant to attempt a line-by-line analysis of the current LWRP and the GEIS, because nearly every line related to the South Bay would require rebuttal. What we primarily suggest is that the State and City re-envision the entire document in terms of the public input, staff guidance, past precedents and historical concerns which undermine or contradict nearly every pica of the fine print of these documents. Once that has occurred, we would expect to then offer that fine-grained level of commentary. We simply don't believe the LWRP is ready for such line-by-line refinement, because its fundamental vision and assumptions are so out of sync with the community consensus. (To do so would be like asking a group of vegans to judge a barbecued rib contest, or a tribe of cannibals to discuss their favorite brand of tofu: in theory either could be done, but the concept is fundamentally flawed.)

We likewise have little doubt that any reasonably-adept attorney can find some way to make even an approach as flawed as the current DLWRP technically conform to a bloodless and abstract interpretation of the 44 policies. The point of Waterfront planning, however, is not narrowly threading the needle of compliance, but the development of true community consensus and a vision which will serve the City and State long after those involved today are forgotten.

Nevertheless, and with the foregoing caveats, we will add here some limited comments on the LWRP policy and GEIS narratives as they stand, taking the latter first. We apologize if many of these are repetitious, but that need for repetition arises from the overarching and underlying fundamental flaws of the City's DLWRP. Many of our comments on these policies are already set forth elsewhere in this submission, but we have endeavored to reference those again as much as possible.

NOTE: Both the DLWRP and GEIS documents provided in PDF format by the City were locked (secured) by their authors, which technically prevents the copying-and-pasting of relevant text from either document. This has made line-by-line commentary extremely cumbersome, unless one re-types each entire document, and does not appear to serve any useful purpose except to deter public participation. In the future, we suggest that unlocked copies be provided.

A. REVIEW OF THE GEIS

SAVE THE SOUTH BAY TAKES PARTICULAR EXCEPTION to the so-called “alternatives analysis” of truck routes contained in Chapter 5 of the Generic Environmental Impact Statement (GEIS) accompanying the DLWRP. The entire alternatives exercise is based upon a flawed premise. It is incomplete. And it is transparently perfunctory.

In reviewing this portion of the GEIS—a study which was underwritten by O&G itself—one has the distinct impression of a foregone conclusion in search of convenient arguments, rather than of any objective search for evidence to inform an objective, rational analysis. The Plan reviews at some length but in precious little depth various options for accommodating gravel and other truck traffic from Becraft Mountain to the Waterfront. It gives short shrift to alternatives other than the “causeway” (former railbed) route, despite the authors’ admission that the impacts of this option have not been fully and adequately studied yet. It advocates the selection of the causeway route, even though the impacts of this choice would require further investigation, while summarily dismissing more plausible alternatives on flimsy pretexts.

This alternatives analysis is based upon a fatally-flawed and ginned-up premise: Namely, the assumption that the DLWRP must contemplate heavy truck traffic to the Waterfront at all. **The City should instead be exploring and exercising its many options for the removal of truck traffic from both the South Bay and downtown Hudson neighborhoods** currently suffering the effects of unwanted and unpermitted truck traffic. A phony dilemma is being presented, one which pits environmental justice for downtown residents against environmental quality for the habitats of South Bay. This is something like the urban planner’s version of *Sophie’s Choice*.

(We also note that no performance standards, emergency planning, or other conditions related to this causeway route are attached to the “preferred” causeway option. The absence of limits on frequency, duration, weight and other common-sense requirements, compounded by the absence of traffic studies to determine the need for signage, stop lights, etc. all highlight how the DLWRP’s advocacy for this incompletely-studied option was a foregone conclusion based in politics and influence, not hard analysis.)

It is a stark measure of the failure of the LWRP process to date that citizens are being forced to choose between two unacceptable and avoidable options. The City has other tools and options to provide the community with both relief from truck traffic, and protection of important habitats. Plan developers, consultants and certain Hudson politicians have likewise sought to inflame and confuse public sentiment by suggesting that recently-introduced O&G truck traffic plaguing downtown neighborhoods can only be eliminated by allowing those trucks to pass through the wetlands of South Bay instead. As noted in our other comments regarding the history of the Jones railroad through the Bay (in which Hudson officials were manipulated into accepting something intolerable by the proposal of something even worse) this is a shameless bait-and-switch tactic.

However, as City officials have been repeatedly advised in public and private, Hudson would appear to have ample power to spare residents this noxious traffic without negatively impacting the South Bay. Again, as noted above (in Section II.), representatives of DOS specifically advised the WASC at the outset of this process that

“Even the parcels not publicly-owned are still the City’s waterfront, and you do have local tools to shape what happens on any and all parcels.”

Instead of taking up those “local tools,” the DLWRP offers residents with an intolerable choice between the health of the Bay and the health of residents. Instead, the City should be protecting both. Such traffic should be prevented through both the City streets and the South Bay. We therefore bridle at the necessity of commenting at all on the relative merits of the “alternatives” to the causeway, since a no-truck alternative is not included. As such, we recommend that the State and City instruct its LWRP authors to revisit the topic from scratch.

If forced at gunpoint to choose among alternatives, a pass-through via either side of the former L&B factory would probably be deemed the least offensive. In 2004, when emergency routes for Niagara Mohawk vehicles performing remediation of the Lockwood property were the subject of heated local debate, the management of L&B under pressure from the Mayor claimed that such a route was impossible. However, with L&B bankrupt, it conceivably may be more possible now to find such a route through that property. Of the options presented for Waterfront truck traffic, this is probably the least offensive, relatively speaking, though still extremely problematic. Given that the L&B property has been the beneficiary of hundreds of thousands of dollars in grant aid; since the City has various landholdings in the area to help facilitate such a route; and since (as far as is known) these do not lie in the Federal wetland area proscribed by the NYS DOS, in theory the owners of the L&B parcels ought to be accommodating of this option.

However, given the above-referenced options for eliminating such activity entirely, an L&B option ought to be considered only as a last resort.

Other points about the GEIS not covered elsewhere in these comments, or just worth reinforcing:

- **Section 2.0** purports to review the Hudson Vision Plan and Comprehensive Plan’s goals and consistency with the current documents. However, it nowhere reconciles any of the statements cited in our comments above from the Vision or Comp Plan which run directly counter to the notion of further industrializing the South Bay and impairing neighboring uses at the Waterfront with heavy, blighting industrial uses. As such, the analysis seems perfunctory, merely cherry-picking the blander and more generic elements of those plans to provide an appearance of support for the LWRP.

In addition, this cursory review of the Comp Plan nowhere mentions its firm recommendation of the adoption of “performance standards” for various land uses and activities in various zones as a crucial tool for establishing appropriate types and levels of use.

- **Page 2-20** states that much of the riverfront land in the southern portion of the Waterfront is owned by Holcim. Per our earlier comments, Save the South Bay disputes whether Holcim holds clear title to some 7-12 acres along the River and sees no evidence of investigation of these publicly-raised questions about land ownership throughout the study area.

We likewise do not believe it is realistic to assume (and certainly it has not been demonstrated in either the public process or texts of the LWRP and GEIS) that the heavy industrial activities contemplated by Holcim can be conducted “in a manner which does not interfere or overwhelm surrounding public land and water uses and is protective of the public’s health, safety and welfare.” How, for example, is someone launching a canoe, kayak or sailboat to deal with the entrance or exit of a massive barge immediately next to a boat launch, especially in the absence of schedules and oversight of port activity? How are pedestrians going to enjoy walking south to Sandy Beach and “East Jesus” with some 250 trucks whizzing past during the day? How are public concerts and other events going to be held at a park with gravel being loaded and other materials being unloaded immediately next door, or large diesel engines idling upwind? These are precisely the sort of incompatible uses identified in the Secretary of State’s 2005 Coastal

Consistency Determination, which recommended that such industrial uses be prohibited in a Waterfront Zone.

- **Page 2-21** states that “the City supports” routing O&G’s dump truck traffic over the causeway in South Bay. The basis for this claim is not explained. Who is “the City”? The Common Council has merely authorized the release of this draft; it has not as a body endorsed the causeway option, and many or most of the Alderman did not interpret authorizing that release as an endorsement of all aspects of the LWRP. Indeed, the vote to release the LWRP was not presented by the City attorney in that manner, but rather as the start of the next phase of public input. Moreover, there have been no surveys, petitions, or other significant public input received by the City supporting this option. It thus appears that the authors of the GEIS are inserting an unsupported opinion into their supposedly neutral review of the environmental impacts of the current draft.

This section (2.4) also admits that a detailed review of the environmental impacts of the causeway option was not possible, which begs the question of why resources are being devoted at this stage to analyzing options and alternatives. This admitted lack of specificity, especially as they regard impacts to Federally-protected wetlands, makes a mockery of the notion of analysis and environmental review.

- **Figure 2-8** purports to show the existing “truck route” used by O&G haulers, but does not accurately represent the actual routes taken by such vehicles. This is a symptom of the lack of specific, meaningful study of the topic at hand, as even cursory interviews of residents would have resulted in a different chart showing multiple routes.
- **Section 3.0** broadly and briefly asserts that “In all areas of adoption, analysis and implementation of the proposed LWRP is generally expected to have a positive effect on the environment.” No supporting arguments, rationale or other evidence for this sweeping statement are provided in this section, nor adequately justified in the following sections discussing specific elements and impacts of the plan.
- **Figure 3.1-5** indicates proposed locations for a “Beach Area,” “Public Marina and Mooring Area,” and “Relocated State Boat Launch” south of the Holcim dock, which the company seeks to extend by another 400 feet to accommodate larger vessels. Anyone familiar with these areas, either through walking along the existing railroad tracks or via navigation of the river, knows that it is not feasible to have successful activities of this sort at this location so long as Holcim continues its current operations, much less if the company expands them. There is neither enough room for pedestrian and vehicle access to walk or drive to the activities without encountering harsh impacts and hazards from heavy industrial activity; nor would it be safe to launch most watercraft in close proximity to large vessels (some of the ocean-going) utilized by Holcim. These locations only become suitable if heavy industrial activity were to cease at the dock.
- **p. 3.1-13** explicitly mentions Holcim’s intention to extend its dock by 400 feet. This would accommodate far larger vessels than those already docking at Hudson, incurring even more noxious and potentially hazardous impacts to recreational and appropriate commercial activity at the Waterfront. The April 2005 ruling of the Secretary of State denied prior attempts by this company’s subsidiary to expand and “modernize” its port, which appears to be a euphemism for expanding industrial activity previously rejected by the State.
- **Section 3.1** generally treats recreational and commercial uses as if they can coexist successfully with neighboring industrial uses. We note that in a public hearing conducted by the WASC in 2007, consultant Paul Buckhurst admitted that heavy vehicle traffic coming off the causeway

along the railroad tracks to turn and enter the Holcim dock area would make commercial activity impossible on those parcels adjoining the western portion of this truck route. When he then proceeded to show pedestrian paths following along the same truck route, Mr. Buckhurst could not explain how pedestrian, recreational activity could coexist where commercial activity could not. Overall, we find that though this proposal includes professional-looking maps and innocuous-sounding descriptions of such proposals, being familiar with the terrain exposes most or all of these options as likely to prove impractical and even hazardous in the real world.

- **Page 3.1-30** refers several times to the possible existence of “vested rights, if any” of existing landowners (i.e. Holcim) in the southern Waterfront area. It is difficult to imagine that planning could advance to this stage without a legal determination being made whether such vested rights do in fact pertain, and what the consequences for the LWRP would be if they do. The presence of this repeated phrase, “if any,” suggests that the analysis and proposals related to this area have been developed prematurely, in the absence of a full understanding of the ramifications of certain zoning choices. Either the LWRP proceeds from an assumption of such rights existing, or it doesn’t, and key decisions can’t be made without that crucial matter being assessed. **Page 3.3-10** repeats this language, and again begs the question of what vested rights, “if any,” may be asserted that would foil the apparent intent of the plan.
- **Page 3.1.3** refers (as do other portions of the LWRP and GEIS) to prohibitions against “manufacturing and processing” of various materials, goods and products. The term “processing” ought to be clearly defined somewhere in these documents, as it is likely that some potential owners or lessors of Waterfront parcels would seek to stretch the definition of this term as far as the Code Enforcement Officer will allow. For example, we would contend that the transportation, offloading, stockpiling, and loading of materials such as aggregate fits that definition: a material or product is being repeatedly moved, handled and stored for delivery from one site, vehicle, and/or vessel to another.
- **Page 3.2-8** describes some existing contamination issues at the Waterfront, specifically the Lockwood property. We would note that elsewhere in these comments we have noted official correspondence indicating that contamination from some Waterfront parcels was found to have migrated into the river from State-listed contaminated sites adjoining the River, as well as other expert opinions about landfill and dumping in the South Bay area. Any expansion into and/or dredging along the riverfront needs to take into account the likelihood of the presence of such obstacles to altering existing conditions.
- **Page 3.3-10** initially appears to provide some general reassurance that industrial activity in the R-C zone could become subject to review once the LWRP is adopted. However, we frankly do not have full confidence in the current local code enforcement and planning review mechanisms of the City of Hudson to ensure that the face value of these statements will be honored. The likelihood is that a burden to enforce any such LWRP consistency review would fall on citizens, who would in many cases be forced to file expensive and complex litigation (e.g. Article 78s) to uphold these provisions. We thus believe that the ongoing role of the State in ensuring such consistency and compliance be made explicit, specified in detail and where possible strengthened for the benefit of the public.
- **Page 3.4-3** addresses floodplains and flood protection. We note for the record that the “flats” of Route 9G between the entrance to Mount Merino Road proceeding north for several hundred yards are periodically prone to flooding. This would appear to be precisely the point at which the Greenport portion of Holcim’s proposed two-lane roadway from Becraft Mountain would cross 9G and join with the South Bay causeway. This crossing can be rendered hazardous and potentially unusable several times per year, but we see no provisions to ensure safety or sus-

pend deliveries to the Waterfront if this occurs. We tend to suspect that deliveries would resume through the downtown streets under such conditions.

- **Page 3.5-2** makes reference to the State-designated truck route through Hudson (which is distinct from the routes currently taken by O&G for local deliveries). Save the South Bay supports the removal of this State route from Hudson, and the re-routing of such through traffic entirely around the City via existing highways. It is surprising that such a recommendation is not included in the LWRP, given the purported concern with environmental justice issues related to the trucking activity of O&G. **Page 3.5-3** seems to wittingly or unwittingly confuse and conflate the State truck route with the local O&G route(s).

The narrative of existing trucking activity also needs to be reconciled with (and revised in light of) our comments elsewhere in this document regarding the “no-build scenarios” represented by SLC in the course of its Greenport Project permitting reviews. The GEIS assumes this activity as a longstanding and unchallengeable use, an assumption we dispute.

- **Section 3.7** mentions specifically-designated historic structures within the City, but omits mention of the City’s various historic districts. Save the South Bay steering committee member Robert Mechling recently created a detailed map of these districts, as the Hudson Preservation Commission appeared to lack such a document. (*This is included in our submission as Attachment VII-A.*)
- **Section 4.0** addresses the “no action alternative” to enacting this LWRP. Save the South Bay does not argue for no action; we suggest that additional time for public comment, dialogue with City and State officials, followed by substantial revisitation and revision of the LWRP is in order, particularly in regards to the South Bay and southern portions of the riverfront.
- Regarding **Section 5.0**, please refer to our other comments throughout this submission regarding trucking activity at the Waterfront, the incursion of new industrial activity into the wetlands of South Bay, *et al.*

B. REVIEW OF COMPLIANCE WITH 44 COASTAL POLICIES

SAVE THE SOUTH BAY’S COMMENTS on specific Coastal Policies follow below, subject to the caveats stated earlier in this section of our comments:

- **Compliance with Policy 1** (*revitalization of deteriorated waterfront areas*) refers to inclusion at the Waterfront of “limited industrial uses,” including “continued industrial or shipping operations,” and noting that “[w]hile small scale shipping and recreational boating activities can be compatible on the waterfront, shipping activity at the deep water port should not dominate the port or surrounding waterfront areas.” However, the plan does not provide specific, tangible and enforceable mitigation measures, performance standards or other guidelines for determining what is meant by “limited,” or what would constitute “domination” of the port and surrounding Waterfront areas. We note that the draft plan narrative and GEIS indicate mounting levels of aggregate deliveries between 2005 and the present, rising from essentially none to some 200,000 tons per year; and that in comments to the City on the DLWRP, Holcim and O&G indicate an interest in raising this number as high as 500,000 tons per year. But no firm limits, or even triggers for determining when a change in use would rise to the level of requiring a new review, are included which would address such dramatic changes in use, activity and operations.

The implementation of such standards are explicitly called for in the City's existing Comprehensive Plan on p. 52, as referenced elsewhere in these comments, and include this language:

"[L]ess tangible elements, like noise, dust and vibrations, are not limited in the existing ordinance. Consequently, many residences and businesses alike are experiencing some negative impacts from nearby industrial operations. In an effort to reduce these negative impacts, the City should develop performance standards. Performance standards are zoning regulations that permit uses based on a particular set of operation standards rather than on a particular type of use. Performance standards can provide specific criteria limiting noise, air pollution, emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic impacts, and visual impact of a proposed use. Generally, this set of criteria allows potential developers to understand how their proposed operation may fit into Hudson and, further, provides the City with clearly documented standards by which future projects can be evaluated."

The document needs to contain such standards in order to clarify the language related to this policy. Otherwise, that language is empty of meaning as it cannot be meaningfully interpreted or enforced.

We also reiterate in this context our comments elsewhere in this submission that we do not believe the existing truck traffic to the Waterfront is a permitted use, as it did not exist and was not projected to exist prior to the demise of the SLC Greenport Project. and should be immediately halted and subjected to a SEQR and Planning Commission Review.

- **Compliance with Policy 2** (*facilitate siting of water dependent uses and facilities on or adjacent to Coastal waters*), like many other portions of the LWRP revolves around the definition of "water-dependent uses," but this term is never defined or and no standards are set by which that term can be interpreted by either regulators or the public. As the comments of Holcim and O&G to the City make clear, these corporate interests wish to define down the term to privilege their heavy industrial activities over uses which have been clearly established by the State (e.g. in the Secretary's April 2005 Coastal Consistency Determination) and City as priority uses for the public—for example, public access to the river for recreational activities such as boating and fishing, parks, marinas, waterfront dining and shopping, marine supply, etc. This definition needs to be set forth explicitly to protect and support the water-dependent nature of these non-industrial uses.

The discussion of this Policy also makes the assertion that "stone aggregate stock piling and shipping use [...] contributes to the tax base of the City." This assertion should be struck from the plan. For we find no evidence within the plan demonstrating the level of tax contributions to the City related to this activity, which largely involves wholesale transactions exempt from sales tax, made by companies based outside of Hudson. Moreover, the properties occupied by Holcim and its predecessors within the City limits historically have been had extremely low tax assessments relative to their acreage and structures; Hudson homeowners and main street businesses currently contribute far more to the City's tax base (both per capita and overall) than these aggregate-related operations. Furthermore, the plan offers no comparative analysis of what tax benefits would accrue to the City if the parcels occupied by Holcim were converted to other uses. Therefore the assertion of this as a justification for the activities under Policy 2 is arbitrary, unfounded, and gratuitous.

In this same context, we highlight again the statement of the Secretary of State in April 2005, with emphases added:

“[County] economic growth has been fueled by real estate, retail and wholesale trade and business support services. The City of Hudson in particular has enjoyed a boom in its residential and commercial real estate market which could be threatened through the introduction of increased industrial activities affecting the quality of life. The proposed expansion and change in industrial activities on the river directly competes with the previously mentioned plans for recreational and commercial activities immediately adjacent to the proposed dock and conveyor and the current revitalization in Hudson. It could also jeopardize the possibility of tapping into the Hudson River’s multi-million dollar recreational boating industry which, as noted by Hudson City Alderman Colum Riley (Riley, letter, 3/18/05) could provide much needed revenue for the City. The increased SLC industrial activities would impact the recent economic growth felt as their downtown has revitalized and may adversely affect the existing economic base. It may also lead to diminished marketability of the planned uses, and adversely impact the tax revenues anticipated from those uses.”

We also reassert in this context the comments on Policy 1 and elsewhere in this submission regarding the failure to properly define terms (e.g. do “manufacturing processes” and “processing” encompass the moving, handling, rearranging, cleaning, stockpiling, loading, or unloading of materials?); the false assumption that heavy truck traffic must be accommodated either in the South Bay or the downtown; and the failure of the draft plan’s alternatives analysis. We likewise dispute the notion that adoption of the policy will have no effect on public health impacts such as those from air pollution, as the draft plan contemplates measures likely to increase truck traffic to the waterfront, and make it possible for much larger and more frequent barge activity generating diesel and other emissions, as well as likely increases in fugitive dust and other pollutants related to materials handling. We also note the general lack of attention to other impacts related to this use, such as runoff and stormwater management in areas where increasing quantities of aggregate and other materials are stored.

- **Compliance with Policy 4** (*small harbor area*), as with many other policies in the DLWRP, sets up use conflicts and controversies by failing to explicitly define terms or defining criteria so broadly as to provide no useful guidance for future land use decisions. For example, Policy 4 states that priority shall be given to “those traditional and/or desired uses” which are deemed “dependent on or enhanced by a location adjacent to the water.” The first half of this construction—“traditional and/or desired uses”—encompasses virtually any activity one can image. How far back can one go in claiming an activity is “traditional”? If the activity has not occurred for 20, 30, or 100 years, does this criteria still apply? How are competing “traditional” uses assessed and addressed; and what happens if a “traditional” use conflicts with a “desired” one? Furthermore, as in comments on Policy 2, by what measures and standards will regulators and other officials determine what is water-dependent and water-related? All of the language in this section needs to be cleaned up and clarified to have any useful effect.

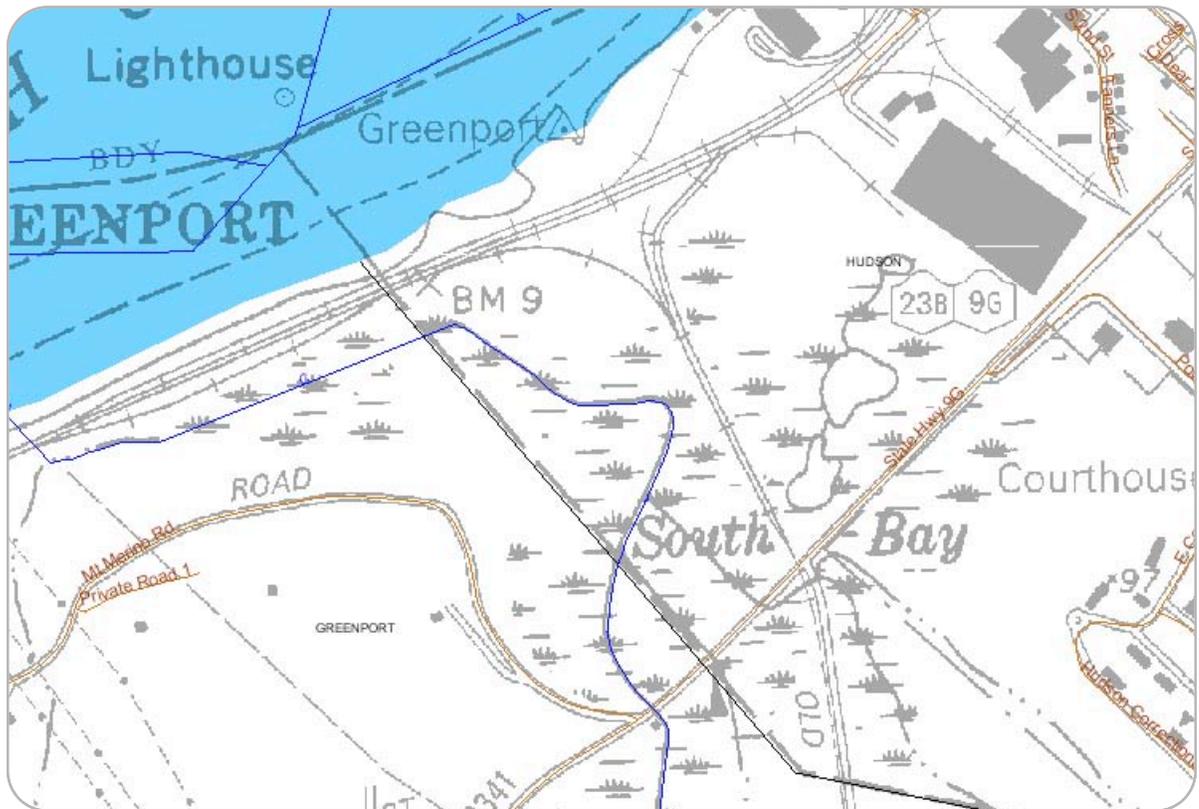
Save the South Bay also disputes the notion that existing or contemplated heavy industrial activity at the Waterfront fails to “enhance or support the continued revitalization of the City’s business core along Warren Street and the City’s existing community character,” and this position is well-supported in public input (surveys, letters, petitions, postcards, workshops, et al.) received by the State and City on the DLWRP. The authors of this plan have ignored and in some cases even erased that community consensus in order to accommodate a narrow corporate interest.

- **Compliance with Policy 5** (*concentration of development*) deals with sewer and stormwater overflow issues that have plagued Hudson for many years, and we certainly support the urgent need to address those issues to the extent they can be within this plan.

- **Compliance with Policy 7** (*protection of coastal fish and wildlife habitats*) “calls for protecting, preserving and restoring the locally significant South Bay so as to maintain its viability as habitat.” This area should be formally designated as such and protected by the City to complement existing State and Federal designations.

We strenuously object to the plan’s suggestion that a “transportation corridor” through the South Bay can be an “acceptable use.” In 2004, Holcim and O&G were caught by citizens bulldozing the wetlands of South Bay to convert the former, abandoned railbed into a haul road. Enforcement actions were necessary by the DEC and Army Corps, and fines and reclamation were ordered. If such a corridor were acceptable, no such enforcement would have been necessary.

Importantly, we also note that the former railbed itself is clearly a part of these designated wetlands, though this plan repeatedly treats it as a separate, exempt path omitted from those designated area. This assumption is patently incorrect and irresponsible. All language about modifications to this route resulting in “encroachment into” or “displacement of” abutting soils, biota, fails to recognize the route itself as part of these wetlands or distorts the nature of these designations and protections, and as such must be struck from the document and rewritten to reflect that the bed itself is part of the wetlands designation. In the same manner, the planners’ map of Natural Features (Figure 3.2-2 of the GEIS) incorrectly depicts the 260-acre designated wetland HS-2 and must be corrected. Below is the NYS DEC’s map, obtained via the State-operated website <http://www.dec.ny.gov/ismaps/ERM/viewer.htm>, showing that the wetlands are continuous across the former railbed area, not interrupted by that “causeway” as improperly depicted in the GEIS:



Furthermore, we once again note that this plan arbitrarily and capriciously arrives at conclusion about the acceptability of the “causeway” option while simultaneously acknowledging that

the option has not yet been subject to adequate study and analysis. This glaring contradiction highlights the political favoritism and rush to judgment that characterizes this aspect of the plan, a recommendation which drives and alters many other elements of the DLWRP.

For example, section 5.2.4 of the GEIS confesses the need for drainage studies to assess the potential impacts of the “causeway” option. It further admits that activities related to that option have “the potential to impact the sensitive habitat in the area.” Such considerations and risks are the precise reason that government regulates and protects wetlands; yet the DLWRP jumps ahead to the conclusion that this option is preferable under Policy 7 and others, without the benefit of either environmental assessments or even any specific plans for the option; the same section of the GEIS further notes that O&G has “not yet submitted site-specific plans to the City for review.” It likewise discloses the possibility of “encroachment into or displacement of any of the identified wetlands,” without having any studies or other data in place to assess that possibility. The plan likewise makes no attempt to address the erosion, pollution, emergency preparedness, and other impacts from hundreds of daily truck trips in this wetland area by 10- and 18-wheel trucks.

The City and State simply cannot responsibly enact an LWRP, which would have massive force of law and resulting consequences once instituted, based upon information which it openly acknowledges as speculative and incomplete. This is indeed a textbook case of the “arbitrary and capricious” language which is the basis of Article 78 actions.

- **Compliance with Policy 8** (*hazardous wastes and other pollutants affecting fish and wildlife resources*) should be strengthened to definitively prohibit any use of the waterfront to import or export hazardous waste, along with municipal wastes, tires, and other materials used as fuel or disposed of in some industrial facilities.
- **Compliance with Policy 9** (*recreational use of fish and wildlife resources*) seeks to “expand and improve” various “recreational fishing opportunities” at the Waterfront. We do not believe that this goal is enhanced (and likely will be impaired) by the continued or expanded use of the South Bay by massive barges. The plan’s support for extending the Holcim dock by 400 feet, which would likely accommodate Hudson Max barges denied that opportunity in the Secretary’s April 2005 Coastal Consistency Determination, would only worsen an existing problem. Pollution from diesel and other engines, along with wakes and other boating hazards, are an impediment to recreational fishing.
- **Compliance with Policy 10** (*commercial fishing*) misrepresents the status of commercial fishing and the American Shad. Temporary bans on shad fishing have been implemented in recent years (e.g. 2008 and 2009). And as noted by DEC Commissioner Pete Grannis in a Times-Union article dated January 14th, 2010, the State has “the proposed closing of the Hudson River to shad fishing.” (See: <http://www.timesunion.com/AspStories/story.asp?storyID=888757>) We also reiterate our comments related to recreational fishing, above, in relation to commercial fishing: Holcim’s activities at the Hudson Waterfront do not enhance, and are likely to impair, such activity.
- **Compliance with Policies 11 and 14** (*siting of structures to minimize damage from flooding and erosion, Coastal activities causing erosion [sic] and flooding*) needs to address construction of any roads and vehicle crossings. Numerous portions of the Waterfront area are not only within the 100-year floodplain, but also flood on a regular basis. See, for example, our comments on the GEIS regarding flooding along the “flats” of 9G.

- **Compliance with Policies 12, 13 and 14** (*natural erosion protection features, construction of erosion protection features, coastal activities causing erosion [sic] and flooding*) is harmed and potentially defeated by the plan's support for the "causeway" option for truck traffic through the freshwater wetlands of HS-2 in the South Bay. We once again note that the support for that option has been arbitrarily and capriciously advanced even as planners of the DLWRP acknowledge that impacts of that endorsed action (such as those to natural erosion protection) have not been adequately studied.
- **Compliance with Policy 19** (*access to public water-related recreation facilities and resources*) claims that a "primary planning goal is the provision of better access to and creation of additional public recreational and open space along the Hudson riverfront." We reiterate here our comments throughout this submission that heavy industrial activity at the Waterfront impairs, compromises, and in some cases will make impossible the achievement of this policy goal.
- **Compliance with Policy 20** (*access to publicly owned lands adjacent to the water's edge*), as has been noted in greater detail elsewhere in these comments, fails to address and incorporate longstanding citizen complaints and research indicating that 7-12 acres of the lands currently occupied by Holcim immediately abutting the River are likely illegally-filled lands formerly underwater. In addition, a law requiring the occupiers of this property to provide a public dock at the restricted location presently being used for heavy industrial activity in the middle of these parcels, has been disregarded. We believe those acres are the property of the State, and thus must be utilized for public access and public benefits, not private profit. The DLWRP and DEIS instead assume that these are private property. A thorough study needs to be conducted to resolve this matter; if demonstrated to be correct, the entire planning process needs to restart, as this document will need to be revised extensively to reflect that new public opportunity.
- **Compliance with Policy 21** (*water-related recreation*), as noted elsewhere in these comments, supports the development of "a pedestrian and bicycle trail network to enhance public access to and throughout the waterfront area." We certainly supports that goal. However, the existing plan to route pedestrians, cyclists, fishermen, and others seeking to traverse the Waterfront by foot is severely impaired by the heavy truck traffic and other industrial activity proposed near and in many cases immediately adjacent to such trails and paths. These activities are not compatible, presenting both quality-of-life problems (*e.g.* noise, dust, visual blight) and safety hazards (traffic, pollution, heavy equipment, *etc.*).
- **Compliance with Policy 22** (*provision of water-related recreation within development adjacent to the shore*) has the same flaw as the discussion of Policy 22, only in terms of water-related activities. As has been stated elsewhere in these comments, anyone who has kayaked or canoed or sailed the Hudson knows the extreme (in some cases life-threatening) hazard posed by large vessels to those operating "muscle craft" as well as smaller motorized boats. The presence of enormous barges immediately next to launches and marinas harms the goals of this policy. We note again this passage from the April 2005 Coastal Consistency Determination issued by the Secretary of State:

"Based on this review of Hudson's past planning and implementation activities, it is clear the City's waterfront has been and will continue to be transformed from a private industrial waterfront to a public waterfront for boating, tourism, commercial and other compatible uses. These uses are in direct competition with SLC's proposed industrial riverfront facilities. Given the extreme limitation on space along the Hudson waterfront, this is not a suitable location for the proposed SLC industrial facilities and uses."

The industrial activities contemplated within the current DLWRP, including the loading of hundreds of thousands of tons of aggregate per year and the provision for extension of the Holcim dock by 400 feet, bring the likely impacts of the DLWRP activities closely in line with the Waterfront activities rejected by the Secretary in relation to the Greenport Project.

- **Compliance with Policy 23** (*historic resources*) incompletely lists historic resources in the Waterfront area. As already noted, we have included in this submission a map created by Save the South Bay steering committee members Robert Mechling and Carole Osterink after learning that the City of Hudson’s Historic Preservation Commission did not have such a map in its possession. The DLWRP should be revised to reflect this crucial information.
- **Compliance with Policy 24** (*scenic resources of State significance, overall scenic quality*) notes that while “there are no scenic resources of statewide significance within the City of Hudson, the Columbia/Green [sic]North and Catskill/Olana Scenic Areas of Statewide Significance are located to the north and south of the City, respectively.” The omission of Hudson from these two close-by SASS areas has often been noted over the course of a number of recent controversies as nonsensical, given that area wedged between the two comprises visual, cultural, historic and other resources identical, equivalent or in some cases superior in value to those of the Columbia/Greene and Catskill/Olana SASSes. Many have the impression that this omission was originally due to pressure from industrial interests, rather than from any lack of importance of Hudson’s resources. We thus urge that the DOS and other agencies revise New York’s designations Scenic Areas of Statewide Significance to include Hudson in the Catskill/Olana SASS, and for this goal to be included in the Hudson LWRP.
- **Compliance with Policies 25** (*overall scenic quality*) is severely compromised by the DLWRP’s support for industrial activities discordant enough to require screening from the public to diminish unsightly views and the other scenic qualities of the Waterfront. Such screening is essential to reduce the visual impacts of stockpiles and other industrial activity; but it also diminishes or even eliminates prime views of the Hudson River and Catskills. This is an irreconcilable problem—the answer to which is to limit or eliminate entirely those industrial uses requiring such screening. Rather than address this glaring inconsistency, the plan’s discussion of Policy 25 simply inventories important views. This is not an adequate response.
- **Compliance with Policies 30, 31, and 34** (*discharge of pollutants into coastal waters, Water quality classification, Discharge of vessel wastes*) should take into account that support elsewhere in the DLWRP and GEIS for increased trucking, stockpiling and barge activity is likely to result in increases in pollutant discharges (whether permitted or accidental). This is contrary to the public interest and other stated objectives of the Coastal Program, and such the City should revise the plan in a direction which minimizes or eliminates such discharges.
- **Compliance with Policy 36** (*shipment and storage of petroleum and other hazardous wastes*) like that with Policy 8 ought to be strengthened to definitively prohibit any use of the waterfront to import or export hazardous waste, along with municipal wastes, tires, and other materials used as fuel or disposed of in some industrial facilities. The narrative should refer to all industrial uses, not just “light industrial” uses.
- **Compliance with Policy 38** (*surface water and groundwater protection*) is harmed by the plan’s advocacy for increased trucking, stockpiling and barge activity. Inadequate attention has been paid throughout the DLWRP and GEIS to stormwater runoff, discharge, spills, and other pollution impacts to the Waterfront.

- **Compliance with Policy 39** (*solid waste transport, treatment and disposal*) should be addressed in the same manner as we have described waste issues related to Policies 8 and 36. In addition, the phrase “long-term” requires definition; otherwise, the meaning of the phrase will be subject to distortion, misinterpretation and/or political influence. Similarly, the term “recycling” needs to be better-defined. We note, for example, that the cement industry likes to refer to the use of hazardous wastes, tires, garbage, et al. as “alternative fuels” and “recycling,” though most consider these absurd and inappropriate euphemisms for dangerous incineration practices.

We also strongly suggest that the restrictions placed on “railroad uses” ought to also apply to any trucking activity to the Waterfront, as the transport of such wastes through the City poses the same or even greater risks as rail transport.

- **Compliance with Policy 40** (*effluent discharge by major energy and industrial facilities*) prohibits “untreated effluent from industrial facilities into coastal waters is not permitted within the City of Hudson.” We certainly support that, and urge that similarly firm prohibitions be incorporated into other aspects of the LWRP to protect coastal waters, wetlands, et al.
- **Compliance with Policy 41** (*compliance with air quality standards*) ought to be strengthened with local performance standards, in addition to State and Federal limits, to provide protection against the degradation of air quality in the coastal area. This goal is also thwarted to some extent by the rest of the plan’s advocacy for increased industrial activity in Waterfront areas, and that contradiction needs to be reconciled within this and other policies.
- **Compliance with Policy 44** (*Coastal wetlands*) is severely compromised by the plans negligent, arbitrary and capricious support for a heavy haul road through HS-2, a designated and protected wetland. Again, the DLWRP and GEIS endorse this potential risk to those wetlands, even though the planners acknowledge that the likely impacts of taking that course of action have not been adequately studied, and no site plan applications have been brought before the City to date. We also note that when the DLWRP states that “[t]he maintenance and upgrading of existing roads and rail lines should not significantly degrade wetlands,” the abandoned, defunct former railbed through the South Bay (originally built as an elevated causeway) is not a road. It has never been designated by the City as a road, and has not been used for that purpose, except during a unique and brief emergency situation when Niagara Mohawk urgently was allowed on a special, short-term basis to remove contaminated remediation spoils from the Waterfront. Likewise, that proposed route has not been used as a railroad track for at least 30-35 years, and has been sorely neglected during that time.



SLC/HOLCIM ILLEGALLY BULLDOZING THE SOUTH BAY WETLANDS, SPRING 2004

DURING THE NEARLY SEVEN-YEAR controversy over the St. Lawrence Cement “Greenport Proposal,” the track record of SLC and its parent company Holderbank (now Holcim) was a significant factor which led many residents to come to distrust and ultimately reject the company’s claims. We continue to believe that the history of accidents, investigations, lawsuits, settlements, fines, penalties, and other matters related to corporate management are important considerations when assessing a project or crafting a plan such as the one under consideration here.

Without making a Federal case of the matter, we wish to remind the State and City that St. Lawrence Cement (now Holcim US) and its parent company Holderbank (now Holcim Ltd.) have a long and frankly atrocious record of environmental violations and anti-competitive behavior in the U.S., Europe, and around the rest of the globe. During the SLC controversy, opponents carefully and extensively documented fines and enforcement within the region at the Catskill plant; caught the company and a subcontractor illegally bulldozing the wetlands of South Bay (*see Army Corps enforcement order, Attachment VIII-A*), an action for which they were punished by DEC and the Army Corps; and showed that this pattern extended to Holcim’s global operations as well. Indeed, it was difficult to find a Holcim facility which had not had severe problems with worker accidents and even deaths, egregious pollution violations, anti-trust activity, and the like. It was even shown that during World War II, the company benefitted from the use of slave labor in Nazi-controlled countries, and likewise profited handsomely from its operations within South Africa under the Apartheid regime.

We also note that O&G has its own problems with managing its operations, some of them extremely recently. In February, a massive explosion at the Kleen Energy plant under construction in Middletown, Connecticut, killed five workers and injured more than 30 others. O&G was the principle contractor on the project, and is being sued for negligence by those injured and the families of the deceased. The State is also investigation possible criminal charges against the company. O&G was also at the center of the pay-to-play scandal which forced the resignation of Connecticut governor John Rowland, who went to jail for corruption. The company was found to be doing free personal projects for Rowland (e.g. work on his home) while also receiving major State construction contracts.

We believe that such background checks are useful yardsticks for evaluating companies, projects, and partners. The past is usually prologue; a bad actor yesterday is likely to be a bad actor tomorrow. It is entirely possible that these companies have put their history of noncompliance behind them. But when a municipality is looking to trust a company to build a causeway and run hundreds

of trucks through a sensitive wetland, or avoid pedestrians and cyclists in getting those trucks into your port facility, or to ship hundreds of thousands of tons of material on massive barges next to small boat launches, or to respect other safety rules or operation limitations on potentially discordant and even dangerous activities, we believe a hard look at issues of corporate responsibility are not merely appropriate, but essential.

ADDITIONAL RECOMMENDATIONS, OBSERVATIONS AND REMARKS not made elsewhere in this submission follow below.

A. At the outset of this drafting process, members of the WASC and public were made to understand that an LWRP is first and foremost a visioning document, arising out of public input. As Bonnie Devine noted in a March 2006 public organizational meeting (*see above*), planning is supposed to come first—zoning after. In explaining the purpose of Waterfront plans to the public, the Department of State’s website notes that:

“In partnership with the Division of Coastal Resources, a municipality develops community develops consensus regarding the future of its waterfront and refines State waterfront policies to reflect local conditions and circumstances.”

Based on our understanding of how other communities (such as Athens and Croton) have developed their own LWRPs, it is our impression that the Hudson DLWRP is unusually filled with references to specific property owners, businesses, and interests. A brief glance at a random section of the DLWRP includes references to:

- *Stageworks, a theater space near the train station;*
- *Kaz, a now-defunct manufacturer in Greenport with properties near Stageworks;*
- *Time & Space Ltd., another theater group (led by former WASC chair Linda Mussmann);*
- *Basilica Industria, an occasional performance and event space (owned by former Waterfront Chair Patrick Doyle);*
- *Dinosaur and HAVE, Inc., light manufacturers in Hudson’s former Simpsonville neighborhood*
- *Mid-Hudson Media, a branch of a Greene County cable operator;*
- *The Griffin Warehouse, an empty but stabilized building which is on the market as a possible mixed-use housing and office complex;*
- *And of course, Holcim and O&G Industries.*

While we understand the importance to discuss the Waterfront with as many “stakeholders” as possible, we find the frequent citation of specific business and organization names in the DLWRP to be both functionally problematic (in that some of these entities will not exist when future generations read the plan for guidance) and also contrary to the fundamental spirit of the planning process. The citation of such names seems to betray an authorial need to build a case or even a defense for the LWRP, rather than expressing the principles of the LWRP—and allowing conclusions and results to flow from there.

Planning and zoning are supposed to represent neutral principles, arrived at through that community consensus referred to in the Coastal Resources website. Whenever elements of the plan are tailored to specific but impermanent entities, ones which are named specifically as justifying those elements, it leaves the impression that the plan has been devised to suit those transitory entities’

requests or demands, rather than setting forth neutral ideals that the community has agreed upon.

We therefore recommend striking such proper names from the DLWRP wherever possible, and re-considering any plan elements which were derived from such parochial, short-term interests rather than community consensus.

B. We have already highlighted the need for development of clear, enforceable performance standards to ensure that permitted and conditional uses are reliably and consistently carried on in a sustainable, compatible manner, as is supported by the City of Hudson’s Comprehensive Plan. Noise, fugitive dust, air pollution, lighting, time restrictions, and other standards are all essential to ensuring that projected, approved uses are not abused and that citizens and officials alike can take action to safeguard local quality of life.

In this same context, we would further suggest that the LWRP include specific limits and prohibitions analogous to the bulk regulations assigned to zoning classifications be assigned to waterfront activities, particularly as they relate to traffic and shipping. For example, for the safety of residents, visitors and habitats alike, the City should specify that no Waterfront dock facilities will be used for the import or export of hazardous and toxic wastes. Likewise, restrictions on heavy industrial activity adjacent to parks, boat launches, and similar public amenities ought to be limited to daylight, weekday hours. Bulk shipments or offloading of materials with the potential for generating fugitive dust, pollution and other nuisances (e.g. coal, slag, gypsum, etc.) ought to be banned entirely or severely limited in terms of daily, weekly, monthly and yearly allowances. The establishment of such limits would lend credibility, meaning and genuine safeguards to the more general but often toothless language found in the plan regarding “compatibility” and “consistency.”

Likewise, such restrictions and prohibitions need to be paired with meaningful enforcement mechanisms and penalties, so as to prevent a powerful and well-funded scofflaw from wearing the City down with legal challenges or treating violations as minor nuisances, as a Maserati driver might shrug at a \$5 parking ticket.

C. Along similar lines, it may be instructive to highlight and do a close reading of the following passage from page 24 of the DLWRP narrative, found in Section II, Inventory and Analysis:

The City supports improving access to and encouraging the regulated use of the City’s one remaining deep water port for the transportation of raw materials and goods. Subject to compliance with the LWRP and its enabling legislation the City supports the continued use of the port to ship aggregate, accept and store road salt for use by local public works and transportation departments, and store coast guard buoys. The City supports these uses and future use of the dock facility for the import or export of other goods including agricultural and other products where such use and transport is compatible with adjacent land and water uses, complies with all applicable laws and is either compatible with the current owner’s operations, or is subject to control by a governmental agency should the deep water port come under the full control of the City.

The City’s support to encourage use of the port for shipments of raw materials, processed and/or finished products should in no way be construed to support a return to cement manufacturing in or within close proximity to the City of Hudson. Cement manufacturing or production activities within the waterfront boundary would not be consistent with the LWRP.

These two paragraphs in many ways exemplify the elaborate (bordering on schizophrenic) accommodations and compromises made within the DLWRP. In the passage above, it is as if the authors of the plan are wrestling with two entirely contrary impulses, and failing to pin down either one.

On the one hand, the narrative claims that “the City” (*who? The Mayor? The Common Council? The general public?*) is supporting and even encouraging the use of the Waterfront “for the transportation of raw materials and goods.” Though aggregate, salt and “agricultural products” are specified as desirable commodities for transport via the Waterfront, no specific performance standards or limitations on the types, quantities, times, or other conditions governing such use are offered.

Instead, a generalized statement that such activity should be “compatible with adjacent land and water uses,” *etc.* is appended. However, the notion of compatibility is an entirely subjective one, and the City provides no tangible guidelines for the unspecified persons or agencies charged with supervising the LWRP to follow. As part of its application for the Greenport Project, for example, SLIC argued that shipment of 2 million tons of cement via the Waterfront was compatible with neighboring parks; after nearly seven years of debate and wrenching, expensive, divisive controversy, the Secretary of State disagreed. One trusts it is not the intention of the authors of the DLWRP to subject the residents of Hudson to million-dollar regulatory battles on a regular basis; yet that would sooner or later be the outcome of this highly-generalized and subjective language.

The next paragraph is even more perplexing. While “encouraging use of the port for shipments of raw materials, processed and/or finished products,” the authors backhandedly state that this position “should in no way be construed to support a return to cement manufacturing in or within close proximity to Hudson. Cement manufacturing or production activities within the waterfront boundary would not be consistent with the LWRP.” While heartening on its face, the first sentence requires a more affirmative structure: “The City does not support a return to cement manufacturing in or within close proximity to Hudson” would be more consistent with the prior paragraph, less convoluted in its construction, and less likely to be misinterpreted or twisted if future controversies do arise. The second sentence likewise introduces an ambiguity which a corporate lawyer would drive a truck through. Would, for example, the shipment of 2 million tons of cement via the waterfront constitute a “production activity,” or would a cement manufacturer describe that as just more transportation of raw materials—an activity supported by “the City” in the previous paragraph. We encourage these statements to be tightened up, and preferably more in the direction of the April 2005 Coastal Consistency Determination.

We would further suggest that such language be extended to cover, generically, other major industrial projects of a similar nature as “a return to cement manufacturing.” There is little point in solely singling out the cement industry; it is the scope, scale and nature of the projects that is potentially devastating to the Waterfront, not the specific industry; and one can never anticipate what the next foolhardy proposal might be. As noted in Section II. of these comments, the City of Hudson has improbably endured in each of the previous three decades at least one intense controversy over a large industrial proposal. In another generation it might seem hard for anyone to believe that Hudson leaders actually welcome an oil refinery, a hazardous waste “recycling” plant, or a cement facility to town, and that thousands of ordinary citizens had to drop everything they were doing to prevent such calamities from befalling the City.

What protections, for example, would the LWRP offer in the event that Hudson and Greenport leaders were to invite New York City to use the quarries of Becraft Mountain as a giant landfill for municipal waste? It would, after all, be a lucrative use of those pits once they are voided of gravel and limestone. The “deepwater port” and extended dock would be ideal for garbage barges coming up from Manhattan, and a road or conveyor through the South Bay would further enable the transport of City waste up to Becraft. No doubt the current planners would not support such a scenario; the question is, what is in the DLWRP that would actually prevent a well-funded applicant from moving such a plan forward?

- II-A. Hudson Valley Magazine article, *An Oil Refinery in Our Backyard* (Dec. 1984)
- III-A. Letter of Coastal Resource Specialist Nancy Welsh to LWRP consultant Dan Shuster (Jan. 31st, 2003)
- III-B. Letter of Coastal Resource Specialist Nancy Welsh to Waterfront chair Charles Butterworth (Aug. 1st, 2003)
- III-C. Coastal Consistency Determination of Secretary of State Daniels (Apr. 19, 2005)
- III-D. Letter of Coastal Resource Specialist Welsh to Waterfront chair Butterworth (Oct. 28th, 2005)
- IV-A. Hudson Comprehensive Plan Community Survey, Waterfront results (Jul. 2000)
- IV-B. Friends of Hudson news release, *SLC does not hold title to dock land* (Jul. 5th, 2001)
- IV-C. Friends of Hudson map, *Land Title Problems: Hudson Waterfront and South Bay* (Jul. 2001)
- V-A. Waterfront Advisory Steering Committee, *Waterfront Participation Survey* (Mar. 2006)
- V-C. Save the South Bay e-petition, including 200-plus signatories (Mar. 17th, 2005)
- V-B. Save the South Bay news release, *Over 1,000 Signatures Submitted...* (May 21st, 2007)
- VII-A. Hudson Historic Districts map, Robert Mechling and Carole Osterink (Feb.-Mar. 2010)
- VIII-A. Letter from Chief of U.S. Army Corps Harbor Supervision and Compliance Mallery to St. Lawrence Cement attorney Thomas West (Jun. 23rd, 2004)
- X-A. Save the South Bay e-petition, including 650-plus signatories (Mar. 15th, 2010)