

March 15, 2010

To: Common Council, City of Hudson
Re: Comments on Draft LWRP/DGEIS

Friends of Hudson welcomes the opportunity to make these comments on behalf of its members, supporters and all who enjoy what the City of Hudson and its waterfront have to offer.

This statement identifies what we consider to be the strengths and weaknesses of the draft Local Waterfront Revitalization Program and Draft Generic Environmental Impact Statement for the waterfront of the City of Hudson (Appendix I). With the support of a semi-independent citizens' LWRP Task Force initiated by FoH (Appendix II), we have tried to assist a wider community of public officials and citizens to understand the documents. Our comments are intended to highlight the issues in most urgent need of remedial attention. For a detailed discussion of the salient issues from a complementary perspective, see the Statement by the LWRP Task Force.

Our intention is to help shape a final version of the LWRP that passes two tests: consistency with the 44 state policies pertaining to waterfront development and alignment with broad community interests.

DGEIS

"[A]s part of the Hudson River Estuary Habitat Restoration Project, the U.S. Army Corps of Engineers, along with the New York State Department of Environmental Conservation and the New York State Department of State, has identified the South Bay as one of the fifteen high priority areas for restoration along the Hudson River." (DGEIS 3.3-8)

Our comments take into account the fact that LWRP and DGEIS documents produced by different river municipalities can vary according to local circumstances. There is no single model for an LWRP and DGEIS which can pass review by the relevant state agencies on the way to adoption into local law. It is also not entirely clear how a Generic Environmental Impact Statement, structured according to SEQRA, relates to the state requirements that the LWRP explicitly be organized according to the 44 policies. We merely note that this DGEIS, compared to the LWRP, makes few references to the 44 policies.

Our immediate focus is to consider this DGEIS's internal consistency with the quotation which begins this section. This draft GEIS reviews a number of alternatives to trucking aggregate (and other materials) between Becraft Mountain limestone quarries and the deep water port, both owned by Holcim. The movement of aggregate in large trucks operated by the lessee O & G currently goes through neighborhoods in the north side of Hudson along an east/west axis and then north/south along Front Street.

According to a protocol of systematic review, the document considers 6 alternatives including no change from current practice (Alternative 1) and discontinuation of O&G operations (Alternative 6). The DGEIS indicates Alternative 2 as the "'proposed action": "The LWRP supports plans proposed

by Holcim (US) and its tenant, O&G, to reroute truck traffic from the Holcim mine in Greenport, to the deep water port via the South Bay causeway.” (5-20)

With the context in mind of the South Bay’s designated status as a high priority restoration area, we have a number of observations to make:

- A “proposed action” in the name of the LWRP claims consensus . There is no consensus according to any process sanctioned by DOS guidelines or previous DOS directives denying approval to an earlier draft LWRP (Welsh 10/28/05). The privilege of "proposed action” under the LWRP is instead claimed by an unrepresentative handful of individuals including City officials and executives of Holcim and O&G (which reportedly provided \$20,000 to the City of Hudson for the drafting of the DGEIS).
- Not all trucking alternatives are included in the DGEIS, undermining the claim to systematic review. Conspicuously absent is a variant of the L&B Furniture Route alternatives which avoids objections raised by CSX to all listed options other than the “causeway” route and the so-called Long Path alternative. Whether by circumstance or by design, a variant of Alternative 3B (Alternative 3D depicted in Appendix III), has been denied consideration within the DGEIS document despite repeated requests including by Alderwoman Carrie Haddad before the Common Council on December 9 and 17, 2009 (Appendix IV). Alternative 3D would be a true public road that goes around the northeast corner of the South Bay while avoiding the objections of CSX to the listed options under 2 and 3.
- The term “causeway” suggests that there is already a grandfathered use. It is more accurate to refer to a “railroad right of way” in which the tracks were only dismantled within the last ten years. If the LWRP reflected a more balanced view of the South Bay that placed its value as an estuarine ecosystem on a par with its convenience as a delivery system for trucked aggregate, we would see an equivalent number of references to a “barrier” or “dam” impeding the free flow of water. That one change in terminology brings with it a qualitative shift of perspective which argues for an authentic program for restoration.
- In several places throughout and at the very end of the document, the DGEIS mentions the need for hydrology and wetland delineation studies. However, such studies are not considered of sufficient importance or relevance to precede, rather than follow, relative preferential judgments of the various alternatives discussed. If restoration of the South Bay were truly the high priority it is stated to be here, it would be impossible to conclude that the “causeway” option generically requires no mitigation. Such a stance indicates a static, backward looking outlook toward the South Bay, rather than one that advances a dynamic, stepwise plan of action toward an outcome established by consensus.
- The DGEIS and LWRP in their current forms repeat a pattern which the DOS identified and challenged in the Shuster draft of 2005. Once again disproportionate emphasis has been placed on current ownership at the expense of a community vision. In this cycle, there has been the even more distorting effect of the City’s negotiating the acquisition of water front land in exchange for concessions to Holcim and O&G, including the “proposed action.” What’s been displaced by the dominance of the trucking issue is a long term plan for the stepwise reintegration of the South Bay into the life of the river and the life of the City.

South Bay as a Wetland

It is not an exaggeration to say that the public discussion of the South Bay over the last several years has been monopolized by the trucking issue. The subject has exacerbated class tensions because the noise and pollution from heavy vehicles are having a disproportionate impact on the City's poorest neighborhoods. Land and hard surfaces have once again managed to relegate to the margins any in-depth considerations of the movement of water and the intrinsic value of the South Bay as a wetland ecosystem. Despite the historic opportunity that this latest LWRP process provides for a more balanced view, the bias still persists when it comes to the specifics accorded to wetland restoration versus the specifics accorded to the trucking of aggregate.

The current documents do speak repeatedly about the need for hydrological and wetland delineation studies, but these tasks are relegated to some vague time in the future. There is detailed reference to a preliminary study by Hudsonia of South Bay flora and fauna, but that study also concludes that further studies are needed. In the absence of information in present time, there is no basis for judging the relative impacts and need for mitigation of the various proposed and alternative actions contained in the DGEIS. Likewise hydrological studies must precede any contemplated restoration projects such as :

- the opening of the "causeway" barrier to increase the estuarine flow of water,
- identifying bluebelt corridors for the dispersion of storm water runoff,
- reducing flooding from rainfall events that are increasing in frequency and severity,
- optimizing conditions for the reintroduction of-diverse wetland plants to replace the extensive invasion of phragmites.

We have long argued that a restored South Bay wetland has considerable economic value to the City of Hudson not only scenically and recreationally, but also as a high functioning ecosystem with such potential benefits as its capacity to manage stormwater runoff and provide habitat for a resurgent fishing industry. Federal agencies such as the Army Corps of Engineers and NOAA offer programs and potential sources of funding from which the City of Hudson could benefit. The South Bay's status as a Class I wetland should be a starting point, not an afterthought, in a long range action plan for restoration.

Harbor Management

In Nancy Welsh's October 2005 memorandum to the City of Hudson, the incompleteness of the Harbor Management Plan (HMP) and lack of a water use map were among the reasons for the DOS's return of the LWRP for further revision. In the present draft documents, nearly 4 1/2 years later, there is no reference to creating a Harbor Management Plan as an integral part of an LWRP. Instead there is simply mention of appointing a Harbor Master to serve at the pleasure of the Mayor.

This omission is disturbing not only because it is contrary to state mandate under Article 42 but because it leaves the City without an essential tool for the regulation of the waterfront. With increasing diversity of waterfront activity, a more systematic approach to harbor management is especially needed at this time. The competition for use of limited space has already exposed dangerous bottlenecks at the Broad Street crossing.

A Harbor Management Plan would provide another consensus based approach to sorting through and integrating multiple uses of the waterfront including commercial and recreation boat traffic, passenger and commercial rail, emergency vehicles, truck, auto and pedestrian traffic. Because it would complement from a river perspective the land-oriented zoning map, a Harbor Management Plan provides an important framework for addressing a host of interrelated issues beginning with river traffic but extending to transportation on land, safety, and all surface waters and underwater lands within 1500 feet of the shoreline.

Consensus Building

As a result of comments by citizens submitted to the Common Council and coordinated review by various state and federal agencies led by the NYS Department of State, there will be further revisions of the draft documents before they are deemed ready for a local vote to adopt. How long that period is between agency and local review of public comments and ultimate adoption will be largely determined by the DOS's own assessment of whether the drafts are sufficiently aligned with the 44 policies and whether "community consensus and unified vision" (Welsh 2005) has been achieved at this juncture in the latest cycle

Because a local LWRP when voted into law preempts state and federal regulatory authority, it is critically important that the documents satisfy the criteria of alignment with state policies and establishment of community consensus. It has been 23 years since the first efforts to create an LWRP began. That length of time testifies to two conditions: 1) a unique mix of conflicting interests at work within the waterfront domain and 2) a historical pattern of avoiding consensus building approaches in favor of more traditional top-down short cuts to decision-making.

The second factor is even more predictive of failure than the first. Other communities have successfully employed consensus building approaches and have LWRPs in law to show for their efforts. While the Hudson Waterfront Steering Committee beginning in 2006 had the opportunity to follow DOS guidelines in the creation of subcommittees, it chose a more conventional management approach characterized by over-centralization of power. As a consequence, the harnessing of citizen knowledge and initiative available to the Committee was more constrained than it had to be and the displays of citizen interest evident at the earliest waterfront meetings in 2005-06 devolved into more familiar patterns of distrust and contention.

That successful citizen participation is possible in the City of Hudson is demonstrated by how the Vision Plan, now considered a foundational document for the LWRP process, was created. According to former Common Council President John Cody. "The Hudson Vision Plan Task Force was a model of community involvement and community building. More than a hundred people turned out at meetings month after month to share their vision for Hudson. The group organized into various committees—Waterfront, Beautification, Marketing and Business, Historic Preservation, Culture and Recreation. Amazing things grew out of the Vision Plan Task Force." (ccSCOOP, 1/31/09)

Despite these evident design flaws in the consensus building process itself, in particular as applied to the waterfront's knottiest issues, we note that the consultants BFJ Planning and Cheryl Roberts made conscientious efforts to gather input from a wide range of individuals and organizations, including Friends of Hudson. What was lacking was an issue-specific community decision-making process to prioritize and integrate these points of view. The point of this discussion is less

accusatory than diagnostic. If the DOS determines that some, but not other, aspects of the LWRP and DGEIS fail the citizen consistency test, there are available resources and approaches for undertaking the necessary remedial steps (Appendix VI).

Summary

We conclude our statement by summarizing our comments and recommendations for further action:”

- The Proposed zoning map is one of the advances in this latest cycle to complete an LWRP. It should be adopted regardless of the fate of the draft LWRP and DGEIS.
- A missing component that will support the Zoning is a Harbor Management Plan and Map. The LWRP is incomplete without such a Plan.
- The DGEIS is seriously flawed because it lacks internal consistency with its own premise that the South Bay is “one of the fifteen high priority areas for restoration along the Hudson River.”
- The DGEIS is incomplete because it fails to include all the proposed trucking alternatives. The omission of Alternative 3D “The South Bay Public Road” delegitimizes the DGEIS.
- The LWRP lacks a credible plan of action for the incremental restoration of the South Bay starting with wetland and hydrological studies completed before any proposed action is undertaken.
- Without such studies, there is no basis on which to make a general determination that no mitigation is required for the DGEIS’s Proposed Action as well as the various Alternatives (including Alternative 3D) that impact the South Bay wetland.
- In the event that significant sections of the LWRP and DGEIS must be redrafted, we strongly recommend that the City form task specific sub-committees. The highest priority areas for community consensus building would be harbor management, South Bay restoration, and transportation

We thank you for this opportunity to provide these comments and remain available to serve in whatever capacity we can to bring this LWRP process to completion.

Sincerely,

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President, Friends of Hudson

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Appendix I: FoH's General Orientation in the LWRP Process

Over the latest 4 1/2-year cycle to develop a Local Waterfront Revitalization Plan (LWRP), Friends of Hudson has sought to play a supporting role in creating a waterfront plan not only consistent with state policies but fully reflective of local community values.

As part of our preparation of written comments in May 2007 and now in March 2010, FoH initiated ad hoc citizen task forces to study the documents in a more comprehensive way. FoH is a proponent of community-based design, in which conflicts are most likely to be resolved when all points of view are represented and all available options worked through in a transparent, problem-solving manner. In the case of the Hudson waterfront, there is a unique set of "givens" which must be honestly and skillfully addressed. These include commercial and passenger rail running along the river, extensive and actively mined limestone quarries, a deep water port, corporate ownership of extensive acreage in the plan area including the deep water port itself as well as the limestone deposits, estuary ecosystems with a long history of deterioration, and a diverse urban population with a wide range of priorities and concerns.

Appendix II. LWRP Task Force

The Friends of Hudson statement draws from the work of a self-selected group of citizens, most of them FoH members. The FoH-initiated Task Force worked intensively as a semi-autonomous body for the five weeks before the end of the public comment period on March 15, 2010. The Task Force focused on assimilating the key documents, sharing findings with citizens and public officials at a public information meeting held on Saturday, March 6 at Space 360 in Hudson and preparing a Task Force statement with multiple signatures.

Core Group

Belinda Breese
Meg Carlon
Patrick Doyle
Elsa Levisieur
Timothy O'Connor
Michael O'Hara
Christopher Reed
Carola Soltau

Supporting Members

Susan Falzon
Chad Weckler

Appendix III: Graphic of “The South Bay Public Road” (Alternative 3D)

Appendix IV: History of Excluded Alternative 3D, “The South Bay Public Road”

The "South Bay Public Road," (a.k.a. the "Haddad Proposal," or alternative "3D") appears nowhere in either of the current draft documents, yet the proposal has been continuously debated by the public for more than a year (earliest mention in the Register Star: January, 2009, see below). If community outreach is to be taken seriously, both draft documents must be modified to acknowledge alternative 3D as the only feasible mitigating alternative to a truck route through the middle of the bay.

In 2009, between 17 February and 15 December, and on three separate occasions, discussions in Hudson's Common Council [CC] about L&B-route alternatives to a new road across the South Bay railroad right-of-way were recorded in the Council's minutes. On each occasion these mentions were also recounted in the next day's Register Star newspaper.

The commonly named "[Carrie] Haddad Proposal," is recorded in the CC minutes as having been discussed in both December sessions (December 7 & 15, 2009, see below), and was subsequently discussed in detail at the January 20, 2010 public hearing on the DLWRP/DGEIS. The only public record of the latter meeting was a story in the Register Star which reported that the same alternative was presented yet again by former Alderman Carole Osterink (see below).

Minutes of Hudson's Common Council and press reports-

- **Jan 12, 2009, Register Star.** "[Patrick Doyle] outlined his proposed path for the trucks ... running [south] alongside the building on a newly widened road until arriving the site [sic] of the former garbage dump. ... The plan would require paving and widening the existing road that runs alongside L&B ... Scalera dismissed Doyle's idea, saying that the [NYS DEC] would never allow it. But Doyle countered that the city would have to present a mitigation plan and have it rejected to know that for sure. Doyle also said the plan to create a permanent road through a wetland would likely be a much bigger issue to the DEC and the state..." [public meeting took place 1/13/09].

- **Feb 17, 2009: Review of Common Council minutes:** [discussing a potential "Restore New York" grant, Mayor Scalera discussed acquisition of the L&B property for construction of a road "alongside" the building]; "Attorney Roberts stated the acquisition of the LB property had not been mentioned as an alternative of the causeway for the transportation of the aggregate in the LWRP. She stated the alternative would be incorporated into the LWRP upon the completion of the GEIS and she stated the LWRP would not be revised at this time as a SEQRA process would be required which could lead to additional revisions" [and] "A discussion took place regarding the revision to add the causeway alternative to the Draft LWRP" (p. 131, CC minutes).

- **Aug 24, 2009 "First Ward Hudson [blog]":** "Although withdrawn as soon as it was presented, the idea of a properly constructed public road from 9G to the waterfront is what the City should be supporting in the LWRP not a private road through an ecologically sensitive wetland. A new road south of LB, along the north edge of South Bay, heading for Front Street and the grade-level crossing of the railroad tracks would be the perfect access to the river not

only for gravel trucks but for kayakers and boaters heading for the boat launch and the Power Boat Club and for visitors coming to events at the Henry Hudson Riverfront Park. As a community, we should settle for nothing less, and our LWRP should support that" (<http://firstwardhudson.blogspot.com/2009/08/lwrp.html>).

• **Dec 5, 2009, Register Star.** "Alternate ideas included creating a road through or around the old L&B furniture factory [Mayor] Scalera said Scenic Hudson's concerns are noted but the other options involve the city acquiring ownership of lands from CSX or L&B and the companies have indicated that they aren't interested. The mayor said the south bay causeway is the best option for the people of Hudson and detractors should be offering solutions not just criticism."

• **Dec 8, 2009, Register Star.** "Council members have stated unanimously that they want the truck route out of the city's neighborhoods but Haddad and others said another option to obtain and build a road through a section of the vacant L&B furniture factory needs more research. Fish said his firm did assess options to go through or around the factory and there isn't currently enough money for the city to obtain the necessary property on the northern edge of the bay. ... [Mayor] Scalera said he hopes the discussion of the LWRP at large doesn't become overly consumed with the causeway and believes a compromise can be reached when environmentalists see what can still be conserved in the south bay while allowing the development of the route. 'We'll figure out a way,' he said, 'I ask anybody who has ideas, even ones that are off the wall to provide them during this comment period.'"

• **Dec 7, 2009. Special Meeting of the Common Council [concerning the resolution to vote on the DLWRP and the DGEIS].**

"Mr. Doyle stated three options of the truck route would direct the trucks over the CSX railroad tracks and he said 'that was nixed by the railroad'. He stated the option that had been submitted by Alderman Haddad would not cross the railroad tracks and would direct the trucks to Front Street and he stated the option would allow for public access.' 'Ms. Roberts stated the option should be submitted as part of the public comment period and she stated a public hearing would be held on January 20, 2010. She stated the Council could decide to revise the GEIS after the public hearing.' 'Alderman Haddad stated at a previous meeting, Mayor Scalera had suggested the trucks run south of the former L&B Building and she said 'it just seemed to make so much sense'. Alderman Haddad demonstrated the option on the map that had been available. She said 'you can start using this road for the O & G trucks practically tomorrow' (pp. 444 -449) ..."

• **Dec 7, 2009, Meeting of the Common Council [Resolution No. 4 Accepting the City's DLWRP and DGEIS].**

"[Alderman Haddad] stated she would like to see the option she had suggested as an alternate truck route, be submitted as part of the GEIS. Alderman Haddad stated the option would offer public access, extend the land to be environmentally protected, would cross an existing grade at South Front and Broad Street and the option would maintain the integrity of the South Bay for possible future restoration projects. President Cody suggested Alderman Haddad attend the public hearing to submit her comments. A discussion took place regarding the alternate truck route as proposed by Alderman Haddad.

"Prior to voting on the resolution, Alderman Haddad said 'with my strong, strong suggestion to

include the alternate route, I say yes'.... Alderman Osterink stated the statement in the LWRP that the city supports the causeway as the alternative truck route was 'one of the flaws in this document'."

• **Dec 16, 2009, Register Star.**

"The [DLWRP/DGEIS] document was approved to be sent to the next phase of the process, a 60 day public comment period, but not before outgoing aldermen Haddad and Osterink had their say on the issues that remain unsettled about the causeway which cuts through the bay from the waterfront to Route 9G and continues on up the hill on the Greenport side to Route 9. ... Haddad, focusing only on the Hudson side of the truck route, said she had a solution that was never discussed but is an adaptation of three other proposals to drive the truck route in or around the old L&B furniture factory. 'I just wish we could include this now,' Haddad said. [CC President] Cody said it was too late to add anything to the LWRP they were passing forward Tuesday, but the purpose of the comment period is to raise issues like the ones she has. ... Mayor Richard Scalera said after the meeting that Haddad seems to have a selective memory because options to go through the L&B

property were studied extensively by the LWRP planners and deemed too expensive. ..."

• **Jan 21 2010, Register Star [Common Council public hearing, Jan 20].**

"[Former First Ward Alderman] Osterink, stood to reinforce her support for a plan that would create a new public road through the lands of the old L&B Furniture factory on the northern border of the bay. The new proposal plays off three other options originally addressed in the DGEIS to go through the factory property but avoids crossing a section of rail line. Osterink said that the option seems to get shot down because it's believed to be too expensive to buy any of the land, but she contends if it's the right solution it needs to be more exhaustively evaluated. Osterink said going through L&B would have the added benefit of creating a more accessible public road to the waterfront. ..."

• **Feb 2, 2010, Register Star.**

"Osterink, Doyle and many others support a plan to create a public road on the north side of the bay through the old L&B furniture factory property that would eliminate the need for the causeway to carry the heavy truck traffic and would also create a southern entrance to the waterfront for visitors."

• **Feb 19, 2010, Register Star.**

"Scalera also stated that O&G has said it is willing to put trusses along the causeway if a hydrology study shows that would be to the benefit of the ecosystem's water flow. [Scenic Hudson Planner Mark Wildonger] said there are still a number of solutions out there, including attempting to acquire lands on the northern edge of the bay, currently the site of the old L&B furniture factory. He said Scenic Hudson is asking that the investigations of those alternatives be given the diligence of the causeway."

• **March 10, 2010, Register Star.**

"'The process has run its course,' said Mayor Richard Scalera, in response to the idea that the comment period should be extended. 'We've done everything we needed to do to solicit public input.'"

Appendix V: Harbor Management Planning (DOS, Nancy Welsh, 10/28/05)

The Harbor Management Plan (HMP) information that has been included throughout the document is not yet complete. A significant omission is a required “water use map” that delineates different zones and types of use. A map similar to Map 10, Proposed land Uses, that delineates water use areas is along the lines of what is required. Specific issues are, for example, at Ch. 2 p.9 the LWRP refers to the “harbor management area of the City” but there is no description of this area and no accompanying map. Also, the “Harbor management Plan” section in Ch.5 p.5 references proposed water uses, sites and projects but the information does not appear anywhere in the document. 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 boar operators to large party boats and ferries to barges transporting materials. There needs to be some additional analysis of how these waters 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.

Appendix VI: Community-Based Planning and Design

In 2005-06, FoH identified three planners and designers skilled in community-based decision making as possible candidates to assist the Hudson Waterfront Steering Committee. The affiliations and publications of the individuals listed should suggest the kind of expertise that remains potentially available to the City of Hudson.

Herbert Dreiseitl

Atelier Dreiseitl - Ueberlingen, Singapore, Beijing, Portland

Co-author, *Recent Waterscapes: Planning, Building and Designing with Water*

Co-author, *Deep Immersion: The Experience of Water*

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