Appendix C:
O&G Correspondence
June 2, 2010

Mr. Donald A. Moore, President
Hudson Common Council
City Hall
540 Warren Street
Hudson, NY 12534

RE: Draft LWRP and Draft GEIS

Dear Mr. Moore:

We want to thank you for taking the time to meet with us on March 18, 2010, at the suggestion of Mayor Scalera, and the follow-up meeting on April 12, 2010 to discuss your comment letter dated March 15, 2010 on the above-referenced planning documents. It is not clear whether your letter was drafted as a “concerned citizen” or in your official capacity as president of the Common Council. O&G and Holcim (US) Inc., whose property is the most heavily impacted by the proposed land use changes, are entitled to receive a fair and impartial hearing of their concerns. Rather than being “divisive” towards the proposed zoning as it relates to the conduct of our waterfront operations and the use of the South Bay Causeway, our comments on the proposed zoning changes are intended to raise legitimate and very real concerns about the impact of those changes on the long-term economic viability of our business operations and the ability to develop a viable truck traffic alternative to the existing State truck route.

As we indicated, O&G and Holcim have continuously and publicly supported the general policies stated in the Draft Local Waterfront Revitalization Plan (the “Plan”) and have offered our cooperation and commitment to the City during the formulation of the Plan. We have indicated in a number of instances our willingness to provide public access to the waterfront (using both the South Bay causeway and a portion of the waterfront parcel) and stated our intention to donate the land designated by the Plan for development into the South Bay Riverside Park. We think you would agree that both of these actions/commitments will go a very long way to achieving some of the most important land use goals of the Plan.

However, we have significant investment backed expectations pertaining to the continuous use of the deep water port for shipping stone aggregate. Our position that the commercial/industrial waterfront operations, which stand at the pinnacle of the hierarchy of favored water-dependent uses in the State’s Waterfront Revitalization Law, should not be completely subject to the regulatory whim of the local planning board, and that our access to the waterfront over private land historically used as a transportation corridor, should not be severely restricted is not an unreasonable one. Our proposal can provide and protect the public amenities and benefits so greatly desired while at the same time continue and enhance our contribution to Hudson’s economy and the tax base. It is critical that a proper balance be achieved in the way the City regulates O&G conduct of its operations on the waterfront for transporting aggregate and other goods. As we pointed out repeatedly during the
planning sessions, continued use of the deep water port for shipment of aggregate and other goods has been demonstrated elsewhere to be perfectly compatible with adjacent recreational use of the waterfront.

In order to have a better understanding and level of confidence of the balance that is sought, it was suggested during the March 18th meeting that we identify a list of possible improvements or actions that we might offer or clarify our stated intentions with respect to how we should be regulated going forward. Please note that this list is not exhaustive but is offered to further our discussion. Additionally, please understand that it is not intended as additional comment on the above-referenced documents as the comment period has closed.

1. Although we believe that the dock is sufficiently isolated from residential areas so as not to present a noise or visual impact on the community, Holcim and O&G are not necessarily opposed to having the hours of operation on the waterfront regulated, provided that limitation pertains only to land-based operations, i.e. to the transport to and stockpiling of aggregate at the dock and to barge loading activities, but not to barge movements, and provided that the limitation is not more restrictive than the current City ordinance pertaining to other uses (7:00 am – 10:00 pm). We can not agree to an attempt by the City of Hudson to regulate the actual movement of barges on the water and the actual mooring of any barge. These are elements of interstate commerce, and the timing of barge operations must be governed by tidal cycles. In addition, as we discussed during our meeting, Hudson has not prepared a harbor management study to support a harbor management plan, and we have very serious doubts that a competent harbor management study would conclude that a harbor management plan is necessary for Hudson's dock area;

2. In an effort to promote and expedite the City’s intention to establish the Recreational-Conservation District in South Bay area, Holcim previously stated that it would consider, and O&G has indicated that it would concur in, conveying title or a conservation easement covering all or a portion of the South Bay parcel, except for the South Bay causeway, to the City or a non-governmental conservation organization. However, we need to be assured that we will be able to use the causeway to transport aggregate by truck to the dock as of right and because we have no knowledge of the historic use or condition of the South Bay, or the composition of the waste or fill material dumped into it by the City or third parties, if title (as opposed to a conservation easement) is conveyed, we will have to deed the property “as is where is”. This transfer may also be subject to a subdivision application to the Hudson Planning Board, a proceeding to which we have no objection;

3. O&G, which exercises operational control over the property, has agreed to provide public access across the South Bay Causeway when it is not in use for the transport of aggregate to the waterfront, essentially during weekends and holidays which are the times of highest demand for recreational access to the waterfront. O&G will explore with the City and/or an NGO possible funding sources for any Causeway upgrade that may be required in order to make it suitable and available for public/private use and to limit liability, such as paving the entire length of the causeway;

4. O&G, which has operational control of the dock, will cooperate with the City, to the greatest extent practicable, with respect to any planned major event where public access is desirable across the causeway or on the waterfront. For example, O&G coordinated barge loading activities in 2009 with the planned mooring of The Tug Pegasus and The Waterfront Museum at the waterfront parcel to accommodate public viewing and access on a weekday; and
5. O&G agrees to contribute cash or in-kind services to upgrade the existing culvert system beneath the causeway if it is determined by a qualified expert, following a study of the hydrology and habitat values, that such an upgrade would be an improvement to the overall health of South Bay and will promote habitat diversity. In addition to this donation or in-kind service, O&G will contribute up to ten-thousand dollars ($10,000) to be used towards a special study or restoration project specifically for South Bay.

We trust this letter addresses the concerns stated in your March 15, 2010 letter and clarifies our position with you. We look forward to continuing our dialogue.

Respectfully submitted,

Donald W. Stever
Attorney for Holcim (US), Inc.

Kenneth J. Faroni
Director of Planning & Permits
O & G Industries, Inc.