Appendix E:
DEC Correspondence
May 14, 2010

Kevin Millington
New York State Department of State
Office of Coastal, Local Government and Community Sustainability
99 Washington Ave., Suite 1010
Albany, NY 12231-0001

RE: Draft Local Waterfront Revitalization Plan (LWRP) - City of Hudson
City of Hudson, Columbia County

Dear Mr. Millington:

On May 5, 2010 I received a copy of an April 30, 2010 letter addressed to you from Scenic Hudson Inc. pertaining to our March 26, 2010 comment letter on the referenced City of Hudson Draft LWRP. In this letter Scenic Hudson has requested that DOS work with DEC (Region 4 and the Hudson River Natural Estuarine Research Reserve (HRNERR) staff) to resolve the "conflicting messages" and to identify what additional information may be needed. Region 4 staff and HRNERR staff worked in partnership to provide the comments in our March letter and similarly the comments in this letter also represent a collaborated effort of both Region 4 staff and HRNERR staff.

The purpose of this letter is to clarify the comments provided in our March letter and to respond to the specific points raised by Scenic Hudson.

In their letter Scenic Hudson alleges that our March comment letter: (1) contains major internal inconsistencies; (2) incorrectly concludes that converting the causeway into a truck route would not conflict with the LWRP's goals; (3) fails to acknowledge the existence of multiple alternative routes; and (4) may create an impression that is contrary to a legal stipulation reached between Scenic Hudson and the DEC.

Prior to addressing each of these specific points, it is also important to note that our March letter inadvertently omitted the following qualifying statement from HRNERR staff:

"During my review, I focused on the LWRP's potential impacts on habitats on tidal waters of the Hudson River and the connected wetlands of North and South Bays."

It appears that the source for the noted inconsistencies in our March letter is due to the fact that Region 4 staff comments were based on a broader range of issues and took into consideration the
many other factors and goals identified in the draft LWRP as compared to the more narrow focus of the comments by HRNERR staff. This does appear to be the source of the inconsistencies identified by Scenic Hudson. Had the referenced qualifying statement been included in our March comment letter, the comments provided may not have emerged as inconsistent.

**Internal Inconsistencies**

Scenic Hudson indicates that the comments provided under the South Bay Transportation Causeway section appear to conflict with the comments included under the Hudson River Research Reserve section. More specifically Scenic Hudson states that DEC prematurely concluded that the use of the roadway through the South Bay has minimal impact as compared to the cumulative impacts associated with truck traffic on city streets.

In our SEQR review for the Freshwater Wetlands permit recently issued to O&G Industries Inc., staff did take the position that the work associated with improvements of the roadway would not have a significant adverse impact. This statement was made from the perspective of also considering the impacts of truck traffic in the residential areas of Hudson. In this context, this is a valid statement. Staff considered the “cumulative impacts” that would go well beyond potential impacts related to wetland in South Bay including, but not limited to impacts from traffic and noise, on city residents. Further, while staff did compare potential impacts of the route through the wetland in South Bay to impacts associated with the route through city streets, including potential Environmental Justice (EJ) areas, these comments were not intended to conclude that this route, or any other route for that matter, was the “preferred route”.

Scenic Hudson further indicates that before any route is identified as a “preferred route”, adequate studies must be conducted to better understand the impacts of alternatives. Staff agrees with this statement and we would welcome additional studies which would evaluate all potential routes. The South Bay area has many potential uses that could serve several different priorities within the LWRP and the community may be better suited to decide what priorities are most important. Such a decision should however be conducted while understanding that one course of action may constrain another and all proposed actions are subject to review pursuant to the Environmental Conservation Law (ECL).

With respect to the comments by HRNERR staff that the causeway truck route may conflict with restoration options and that the proposed use of the causeway could have potential negative impacts, there is no supporting evidence that use of the causeway will have a negative impact. The road/causeway has existed for many years and has seen various types and intensities of use. Until the necessary studies are completed and conclusions are made, the potential will always exist, much like any potential impact associated with any proposed project. It is important to point out that should use of the causeway occur, mitigation measures including but not necessarily limited to traffic speed, dust control, placement of culverts and other construction practices may reduce or minimize potential impacts of the use of the road and would likely be required as a result of future environmental reviews.

In response to Scenic Hudson’s statement that recommendations by HRNERR staff call into question the assertions made by Department staff pertaining to the use of the abandoned railroad grade, it was Region 4 staff’s opinion that such use would likely include mitigation measures
which would offset potential impacts. We acknowledge that such use could have the potential to place constraints on future restoration opportunities; however, without adequate studies this is unknown. Further, study of alternatives and/or mitigation may be beyond the scope of the Draft LWRP and may be more appropriate once the city begins implementing the LWRP.

**LWRP Goals**

Scenic Hudson indicates that our March letter “incorrectly” concludes that converting the causeway into a truck route would not conflict with the LWRP’s goals. This statement was meant to be broader in nature taking into consideration the goals of reconnecting the Hudson River and the waterfront land to the City by restoring transportation and pedestrian links, reconnecting hydrology and encouraging compatible residential, commercial and industrial uses within the waterfront boundary area and by supporting the revitalization efforts in the upland portions of the City.

The Draft LWRP clearly indicates that, “the City supports plans proposed by Holcim (US) and its tenant to reroute dump truck traffic from the Holcim mine in Greenport to the deep water port via the South Bay causeway. Use of the causeway will eliminate dump truck traffic through the City’s most disadvantaged and densely populated neighborhoods thereby providing significant health, safety and environmental benefits to these communities.”

As stated in our March comment letter, such goals also include restoring and maintaining the City’s historic connection to the river for shipping via the remaining deep water port, including changes to alter access to the historic port and as a result removing truck traffic from the historic and residential areas of the City as well as restoring and maintaining view sheds to and from the waterfront and the river. Given this broader scope and the noted position of the City of Hudson staff does not believe that this conclusion is incorrect.

Further, the issue that HRNERR staff was pointing out is that there are stated goals in the LWRP that in the case of South Bay may be in conflict with each other. While all the goals seem appropriate and admirable, they may not all apply to any single location or circumstance. For example, often times the goals of human access and preservation or restoration can be in conflict; especially in a waterfront situation. In the end it will be up to the community to decide what its priorities are, then work toward those goals within the required regulatory framework.

We understand and respect the fact that Scenic Hudson’s attention may be more focused on the impacts to South Bay, however staff commented on a broader view including the balancing of impacts to the entire LWRP land use area which includes a much larger area than just South Bay. Staff does not believe that such statements can be simply viewed as “incorrect” or “correct” or “right” or “wrong”. Such views are based more on the overall evaluation of various factors including potential competing priorities, differing goals, options, points of view and a broader scope.

**Alternative Routes**

Scenic Hudson indicates that DEC fails to acknowledge the existence of multiple alternative truck routes under consideration by the City of Hudson. Staff’s statement that “use of the roadway through the South Bay has minimal impact as compared to the cumulative impacts
associated with truck traffic on city streets", was not intended to discredit or ignore other possible alternative truck routes under consideration, nor was it intended to imply that there are only two choices. As previously mentioned, this statement was based on staff's recent review of the O&G Industries, Freshwater Wetland permit application to make improvements to the existing roadway through the Holcim property to be used as an alternative to trucks traveling through the City of Hudson and potential EJ neighborhoods. Staff recognize that other alternative route options exist and may in the future be studied and considered.

**Scenic Hudson/DEC Stipulation**

Scenic Hudson indicates that they are concerned that our March 26, 2010 letter may create the impression that the Freshwater Wetlands permit was an endorsement of the proposed truck route over the causeway and conflicts with the referenced stipulation. Staff do not believe that comments in our letter violate the stipulation. The stipulation was proposed by Scenic Hudson as a means to settle their appeal of the Department's decision to issue a Freshwater Wetlands permit to O&G Industries to improve portions of the existing roadway through South Bay.

The stipulation does state that the issuance of this Freshwater Wetlands permit was not, and should not be construed to be an endorsement by the Department of any particular truck route to be used by O&G Industries, Inc. To make it clear, staff was not attempting to endorse that the proposed use of the causeway through South Bay is the only or best alternative to gain access to the deepwater port. Further, staff recognizes that the existing roadway/causeway on the Holcim property to gain access to the port is currently a private road and is not a designated municipal road.

We recognize that Scenic Hudson may have different priorities and concerns than DEC staff especially regarding access to the deep water port and the use of the roadway through the South Bay, however we are confident that in the overall review of the LWRP all parties are working together to see that the best possible plan is implemented for the entire Hudson community.

I do apologize for any confusion that may have occurred as a result of our March 26, 2010 comment letter. The Draft LWRP is a very comprehensive document making commenting a challenge. I trust that this helps clear up any confusion or misunderstanding. If you have any questions or would like to discuss this further, please feel free to contact me at 518-357-2454 or mthiggin@gw.dec.state.ny.us.

Sincerely,

Michael T. Higgins
Deputy Permit Administrator

cc via email: Mayor, City of Hudson
Steve Rosenberg, Scenic Hudson

cc via email: Dan Miller, HRNERR
Jamie Malcolm, Division of Water
Rich Onuf, Regional Attorney

Region 4 Hudson LWRP DOS Letter 051410.doc
June 25, 2010

Kevin Millington
New York State Department of State
Office of Coastal, Local Government and Community Sustainability
99 Washington Ave., Suite 1010
Albany, NY 12231-0001

RE: Draft Local Waterfront Revitalization Plan (LWRP) - City of Hudson
City of Hudson, Columbia County

Dear Mr. Millington:

It has recently been brought to my attention that there is some confusion regarding some of the language contained in my May 14, 2010 letter to you on the referenced Draft LWRP. More specifically the language in question has to do with comments contained on page 2 of my May 14th letter. As you recall this letter was written to clarify comments contained in my March 26, 2010 letter.

The language in question is contained in the 4th paragraph on page 2 under the heading Internal Inconsistencies. This paragraph reads: With respect to the comments by HRNERR staff that the causeway truck route may conflict with restoration options and that the proposed use of the causeway could have potential negative impacts, there is no supporting evidence that use of the causeway will have a negative impact. The road/causeway has existed for many years and has seen various types and intensities of use. Until the necessary studies are completed and conclusions are made, the potential will always exist, much like any potential impact associated with any proposed project. It is important to point out that should use of the causeway occur, mitigation measures including but not necessarily limited to traffic speed, dust control, placement of culverts and other construction practices may reduce or minimize potential impacts of the use of the road and would likely be required as a result of future environmental reviews.

The apparent confusion more specifically pertains to the last sentence in this paragraph beginning with, “It is important to point out that should use of the causeway occur, mitigation measures...would likely be required as a result of future environmental studies”, and whether use of this causeway is currently authorized. This comment was never intended to invalidate or negate the Freshwater Wetland Permit (DEC # 4-1006-00060/00001) issued to O & G Industries Inc. on October 30, 2009 to make improvements to this road or to limit or prohibit any use of the causeway by O & G Industries, Holcim (US) or any other party authorized by the landowner.
This comment, which was provided by HRNERR staff, centered on the ultimate determination to choose a permanent and preferred route at some point in the future as the City of Hudson finalizes the LWRP. It was not meant or should not be construed to imply that the SEQR review for this action (Freshwater Wetland Permit issued to O & G Industries) is in any way invalid, insufficient or wrong. The Department stands by this permit and SEQR decision. Work associated with this permit remains authorized and the SEQR review remains valid.

It is also important to point out that we have no regulatory authority or jurisdiction over the use of the causeway by truck traffic, as such use would be considered a “continuing lawfully existing use” which is considered an “exempt” activity pursuant to 6 NYCRR Part 663 (Freshwater Wetlands Regulations).

It is unfortunate that additional confusion over language has arisen however I believe that it is important to write again to clarify this as the city progresses through its work on the LWRP. As always, should you have any questions or would like to discuss this further, please feel free to contact me at 518-357-2454 or mthiggin@gw.dec.state.ny.us.

Sincerely,

Michael T. Higgins
Deputy Permit Administrator