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- ⊙ PUBLIC COMMENTS REGARDING THE CITY OF HUDSON DRAFT LOCAL WATERFRONT REVITALIZATION PLAN
- ▶ HUDSON COMMON COUNCIL, NYS DOS DIVISION OF COASTAL RESOURCES & OTHER INVOLVED AGENCIES
- ☒ SUBMITTED VIA FACSIMILE [518.828.3103] & EMAIL ON 20 JANUARY 2010

To whom it may concern:

Thank you for this opportunity to submit public comments on the most recent draft Local Waterfront Revitalization Plan for the City of Hudson. As I cannot attend tonight's public hearing, the following initial outline of my planned remarks are submitted for consideration by the City of Hudson Common Council. More extensive comments and exhibits will be submitted prior to the Division of Coastal Resources's deadline of 15 March 2010. (It is my understanding from City Clerk Tracy Delaney, per information from City Attorney Cheryl Roberts, that the City's comment deadline will also be extended to that date.)

I am writing as a private citizen with a keen interest in the future of Hudson's Waterfront. I served on the City of Hudson Comprehensive Plan Steering Committee; as the City's former Commissioner of Grants; and as an original member in 2006 of the Common Council's Waterfront Advisory Steering Committee (WASC), which set the current round of LWRP development into motion. In addition, my interest in the Waterfront and history of South Bay is likewise informed by my experience as the co-founder and for over six years Executive Director of Friends of Hudson—the lead group which challenged the St. Lawrence Cement proposal for Greenport and Hudson—which worked to secure the negative Coastal Consistency Determination of then-Secretary of State Daniels against that proposal in April 2005.

My office is in Hudson, and my home is less than 15 minutes way in the nearby Town of Taghkanic, where I am a full-time resident and property taxpayer. Like many other residents of both Hudson and the surrounding area, I have a strong interest in seeing a positive, economically-productive, and environmentally sensitive plan implemented. Unfortunately, this plan fails to meet that longstanding hope and goal, as outlined below.

Note: These comments are also submitted to reflect and amplify the public comments of over 1,000 residents, submitted in May 2007 under the rubric of the informal association Save the South Bay, regarding the unresponsive and troubling direction the draft LWRP process was taking. The current draft prepared by attorney Cheryl Roberts and consultant Paul Buckhorst (both of whom I was involved with retaining for this purpose) fails to take into account that outpouring of public concern. Indeed in many ways the draft has proceeded since then in the precise opposite direction of the public input received by the very persons charged with creating a plan responsive to residents' preferences.

- ▶ COMMENTS ARE OUTLINED ON THE FOLLOWING EIGHT PAGES.

▶ COMMENT #1:

PLAN IS NOT RESPONSIVE TO SECRETARY OF STATE'S CLEAR GUIDANCE IN KEY APRIL 2005 RULING

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 draft LWRP disregards the clear, unambiguous, and urgent instructions of then-Secretary of State Randy Daniels regarding rezoning of the Waterfront, contained in the Coastal Consistency Determination for the St. Lawrence Cement Greenport project which he issued in April 2005. (The City and NYS DOS Division of Coastal Resources are both aware of an in possession of this determination.)

The Daniels ruling 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 of State's instructions for rezoning the Waterfront included the firm recommendation that a new waterfront zone be created "immediately" for the benefit of City and County residents, and the decision outlined the manner in which that rezoning should take place with great 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 could include: 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...*

In particular, the latter "prohibited use" instructions from the Secretary of State are not merely disregarded by this draft LWRP, but flagrantly contradicted within it. This is particularly troubling, in that the logic of the April 2005 Coastal Consistency Determination was based squarely in the Secretary's finding that heavy industrial activity were not compatible with the other permitted, conditional and accessory uses outlined as part of a more economically productive, socially enjoyable and environmentally-appropriate vision for the Waterfront.

Moreover, the Secretary of State also advised that Waterfront lands currently occupied (if not fully owned by) the St. Lawrence Cement company (now called 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 draft LWRP. The Secretary stated 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.*

Rather than following these clear dicta from the Secretary of State to enable a more far-reaching and positive Waterfront plan which would protect other permitted uses likely to be impaired by heavy industrial activity, those shepherding the Hudson LWRP process have given special treatment to SLC/Holcim in making arrangements to ensure the permanent presence of such heavy

industrial activity at the Waterfront. The draft LWRP should be revised to more closely follow the Secretary of State's decision and dicta, both in letter and in spirit.

► COMMENT #2:

PLAN IGNORES & CONTRADICTS NYS DOS DIVISION OF COASTAL RESOURCES STAFF INSTRUCTIONS

New York State Department of State staff (specifically, Coastal Resources Specialist Nancy Welsh) wrote two letters to the City in 2003 during the tenure of Charlie Butterworth, then-chair of the Waterfront Committee, in response to the City's draft Local Waterfront Revitalization Plan (LWRP). Both DOS letters stated unequivocally that:

"Further industrialization of the wetlands of South Bay is not appropriate."

The entire portion of the South Bay where the old railbed is situated, including that railbed itself, is a Class I Federally designated wetland. This fact is reflected in the monetary fine and order from the N.Y.S. Department of Environmental Conservation (DEC) to remediate the area in Summer 2004, when SLC and O&G were found to have illegally bulldozed the railbed area.

This means that neither a road and a conveyor through the Bay, along the former railbed, can be allowed in that area, unless the City intends to directly contravene the twice-made instructions of the agency with oversight of its LWRP and all Coastal matters. Even if such a road were shown to have other public advantages (which can be addressed through other alternatives), the nature and designation of the area precludes it.

Moreover, there is often flooding over the precise portion of Route 9G where the access road option recommended within the current LWRP would be situated. It is also important to note that this defunct railbed is not now and has never been classified as a "road," as the press and some Hudson politicians sometimes refer to it.

In any event, the direction contemplated in this draft LWRP directly contradicts clear and unambiguous instructions of the agency overseeing its completion, without any explanation or justification of that glaring contradiction. (*Note: Ms. Welsh was present at a meeting at a 25 January 2006 meeting at the Department of State with Hudson elected officials and Waterfront Advisory Steering Committee members to map out this process; I was present at that meeting, and to my knowledge that unambiguous, twice-affirmed guidance from 2003 was never revised or rescinded.*)

► COMMENT #3:

PLAN DISREGARDS OVERWHELMING PUBLIC INPUT IN FAVOR OF NARROW PRIVATE INTERESTS

While the initial public enthusiasm for the LWRP process inspired substantial public participation, that participation became mere window-dressing as the clearly-expressed and detailed wishes of public commenters were routinely disregarded in favor of catering to narrower, private interests, such as that of SLC/Holcim and its subcontractors. For example:

- *Nearly 400 surveys collected by the Common Council's Waterfront Advisory Com-*

mittee showed that the public's top Waterfront uses were open space, recreational opportunities, access to the river, habitat restoration, and appropriate commercial development;

- *Ranked lowest on the survey were industrial uses, including transportation and storage of construction materials, trucking activity, et al.;*
- *Over 900 signatories to a petition have urged that "all legal means" be explored to eliminate the longstanding "use conflict" at the Waterfront created by the presence of heavy industry adjacent to greener, more sustainable uses.*

The forceful and clear direction of this public input was temporarily recognized by at least one key person involved in the LWRP process; but that recognition seems to have been overridden by other political figures. Consultant Paul Buckhurst of BFJ wrote in a private memorandum (obtained at some pains from Ms. Roberts via FOIL request) to the Chair and Attorney of the WASC, noted on November 29, 2006 that

"Community residents have been consistent in their desire to see the trend away from industrial uses on the waterfront, towards more residential, recreational, and arts-related uses."

BFJ likewise noted that public workshop sessions held in January 2007 workshops found that 70% of respondents do not want industrial uses to be maintained at current level or sites, and 67% wanted industrial uses phased out entirely.

Nevertheless, the plan put forth by Buckhurst's firm defeats this acknowledged public desire by legitimating the presence of a noisy, polluting, and unpermitted heavy industrial activity in the midst of walking trails, parks, and other recreational activities. For example, Mr. Buckhurst, at a public meeting held by the WASC to present this draft plan, volunteered that if sited on the east of the railroad tracks, SLC's gravel-loading operations would likely harm neighboring commercial activities. When it was pointed out the contradiction of siting the same activities to the west of the tracks with a recreational bike/walking trail through this industrial activity, he admitted that this would likely have a similarly negative impact.

Despite the clear direction of public input, a handful of individuals involved with the Waterfront Advisory Committee privately sought ways to accommodate heavy industrial activity at this site, legitimating highly disruptive and discordant uses at the Waterfront. The Committee kept this crucial determination a secret for 5-6 month, after it had already drafted three South Bay options (all favorable to SLC/Holcim's interests), thus thwarting the public's interest in having a more optimistic, positive alternative presented.

Then-Waterfront Chair Linda Mussmann in January 2007 promised members of the South Bay coalition that such an alternative option would indeed be presented, but this promise was not kept. Instead, charged with the responsibility for gathering the bulk of the public comments received on this draft, publicly refused at a later LWRP meeting to even develop a concept of what the Waterfront could look like, absent such blight. This decision was made in the face of countless heartfelt and well-informed comments by residents gathered by Save the South and submitted to the City and State, for example:

- *3rd Ward resident Leo Carlin: "Having any industrial activity [at this site] totally counters park, recreational, and cultural goals.*
- *William Zifchek, Mount Merino: "South Bay was among the landscape sites most*

- painted by the Hudson River School of artists. It should not be further degraded.”
- *1st Ward resident Michael Watts*: “Industrial use and development of the Hudson River Waterfront is a 20th Century concept, and does not fit into a progressive, environmental, ecological 21st Century future for Hudson and the surrounding area.”
 - *1st Ward resident and former Alderman Carrie Haddad*: “I do not want SLC trucking aggregate to the Hudson River to be loaded onto ships.”
 - *1st Ward resident Elsa Levisieur*: “The time has come for pollution reduction and ecological restoration.”
 - *2nd Ward resident Sam Semchenko*: “Please do not allow all of the work that went into protecting the waterfront to be negated.”
 - *Richard Krasilovsky, Livingston*: “This is getting ridiculous! The waterfront belongs to the people.”
 - *1st Ward resident Peter Barton*: “The history of abuse, blight, pollution and neglect which has characterized St. Lawrence Cement’s stewardship of their Hudson Waterfront properties should be indication enough that their disregard for the City of Hudson and the Hudson River.”
 - *Cyndy Hall of Concerned Women of Claverack*: “[We] believed this issue had finally been settled by the ruling of Randy Daniels in 2005.”
 - *Columbia County Democratic chair Ken Dow*: “A long-contested and divisive issue was put to rest. Let’s keep it there. Future plans should conform to the law and the spirit of the 2005 ruling.”
 - *Professional planner and author Norman Mintz, Claverack*: The waterfront will only get busier over the coming years. Industrial development does not fit in now, and will be especially out of place in the future.
 - *Sandra Fischer, Spencertown*: “The Hudson hosts many environmentally sensitive areas for wildlife and aquatic ecosystems. They should be protected.”
 - *Hudson native Anthony Winig*: “I would like to see St Lawrence Cement sell for a nominal sum.”
 - *Ludia Booth, Chatham*: “Please. Don’t screw this up.”

► COMMENT #4:

PLAN’S ALTERNATIVE ANALYSIS IS PERFUNCTORY AND IS BASED UPON FALSE PREMISES

The alternatives analysis of this draft LWRP regarding Waterfront truck traffic is based upon a fatally-flawed and ginned-up premise: Namely, that the Plan must contemplate 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 the urban neighborhoods currently suffering under unwanted and, in my view, unpermitted truck traffic.

The Plan reviews at great length (but not much 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 “railbed” route, despite an overt recognition that the impacts of this option have not been fully and adequately studied yet. Plan developers, consultants and certain politicians have meanwhile attempted to inflame and confuse public by suggesting that truck traffic which has plagued certain neighborhoods can only be eliminated by allowing those trucks to pass

through the wetlands of South Bay instead. However, as City officials have been repeatedly advised in public and private, it would appear to have ample power to spare residents this noxious traffic without negatively impacting the South Bay. And it would likewise appear that the City has chosen not to exercise such powers so as to present residents with a false 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.

Explaining how and why this is possible requires some detailed historical review, but it is not actually that difficult a task to accomplish—if one is not bending over backward to accommodate SLC/Holcim and its subcontractors:

- A. There are ample reasons to doubt that the use of this property for constant gravel deliveries and transport is an as-of-right use, as claimed by the company and its agents. Certainly, it has never been reviewed by the City, State or Federal agencies, even though this activity did not begin until the Summer of 2005, and has incurred significant new local impacts. SLC/Holcim cannot claim that this extensive new trucking and shipping activity to and from this site is a pre-existing or otherwise grandfathered use because such claims are directly contradicted by evidence contained in their own filings with State and Federal regulators regarding its (since abandoned) Greenport Project.

As part of that project, SLC filed applications with NYS DEC, NYS DOS and the U.S. Army Corps of Engineers, among others. These applications, especially that filed with DEC, detailed in great depth the company's existing and future traffic activity, including so-called "no-build scenarios" if the project did not go forward. Strikingly, nowhere in these extensive applications did SLC mention either existing deliveries and shipment of gravel to the waterfront, or the possibility that such activity would commence in the "no-build" scenario. In short: According to the company's own documents, this activity was not happening before the project was turned down in 2005, and the company did not project it happening once that occurred.

Yet it began in Summer 2005 with no apparent notice to any agency. SLC has never publicly presented evidence of any specific permits for the activity, relying instead on claims that the zone's industrial classification generally allows the activity without any further review. However, new activities of this kind should have required review and permits at minimum under SEQRA as they incurred new environmental impacts. The site had been essentially inactive and moribund since it was acquired in 1976-1977, with only a handful of annual deliveries of road salt for the County's use.

As such, a major change in the use of the site has taken place, and the new SLC trucking and barging activity which only began in 2005 has resulted in significant traffic and shoreline impacts. This should have triggered a review by the City and other agencies, but none has occurred. In private conversation, City attorney Cheryl Roberts acknowledged that the City would have a right to subject such activity to review, and even to order that it cease and desist once it began; but due to a lack of political will to do so, this has not occurred to date.

- B. During the adjudication of mining issues related to the Greenport project by NYS DEC Administrative Law Judge Helene Goldberger, evidence came forth during "discovery" of documents and testimony that called into question SLC's ability to mine Becraft Mountain. As this mining activity is at the root of this present controversy, this unresolved issue is of particular importance, since the Waterfront activity in dispute would not occur in the absence of the mining of Becraft.

Attorneys Jeff Baker and Marc Gerstman (then representing Friends of Hudson and HVPC, re-

spectively) assembled a timeline of the history of mining on Becraft, based on documents from Atlas Cement, St. Lawrence Cement/ICC, NYS DEC, et al. Their timeline revealed that during the period when SLC was acquiring the property from Atlas, mining permits lapsed due to a lack of communication between the companies. DEC staff later automatically but mistakenly reissued a permit to SLC in the 1980s, not realizing that the lapse had occurred, and intervenor parties argued that the permits were thus invalid.

(NOTE: The lapse identified by Baker and Gerstman was explicitly acknowledged as having occurred in Judge Goldberger's issues ruling on mining impacts, but was deferred to other parties to explore and pursue as she had already ruled against SLC's mining position on other grounds, making the issue unnecessary for her to resolve in this context).

After the demise of the Greenport project, it was the stated intention of the intervenor groups to file a motion with DEC to revoke SLC's mining permits on Becraft. It is unclear why this action was never taken, but in all likelihood it involved (1) a lack of funds on the parts of the groups, and (2) the City's hiring of several attorneys with conflicts-of-interest and loyalty in these matters which greatly constrained them in their outside representation. However, the lapsed permitting issue remains open and the entire Waterfront controversy could be mooted if that avenue were pursued successfully.

- c. Significant land title problems at the Waterfront were raised by Hudson resident Don Christensen, Friends of Hudson, and attorney Robert McClean in 2001-2002 in filings with the NYS Department of State Office of General Services Bureau of Lands Underwater. McClean was for several decades the attorney for that very agency, and privately was able to verify with staff that Christensen's claims had merit.

However, due to political pressure, the DOS Office of General Services' Bureau of Lands Underwater has never fully investigated the matter, nor has the City undertaken to ascertain the true extent of SLC/Holcim's land holdings in the South Bay area. (Naturally, SLC/Holcim has had no interest in pursuing this itself.)

This hot issue was tabled by the Pataki administration during the period when no state agency wanted to touch the matter because it was so controversial, and also because there are numerous other properties along the river that might come under scrutiny if a precedent were set in Hudson. DOS staff tried mightily to disprove Christensen's research but could not. A single, inconclusive memo was issued by DOS which partially disputed just one small portion of his research, but all the other aspects of the claim were left unaddressed.

McClean is now retired in Loudonville, but should be consulted along with Christensen by the City and DOS in their reviews of this draft LWRP's accuracy regarding land title issues. A forthright review of these issues would likely result in a very different set of considerations and decisions about the future of Hudson's Waterfront.

- d. Regarding property ownership, City attorney Cheryl Roberts (a key architect of this draft Plan), stated in a public presentation in 2006 held by the WASC, 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." The Committee, including its attorney, seem to have forgotten or discarded this correct advice, providing special treatment and consideration to St. Lawrence Cement's short-term concerns, over the clear wishes of the public and benefits of a more ambitious plan."

At some point in the process Roberts, without public explanation, reversed course and began to advocate for an opposite point of view. Her original analysis, which was free of political pressure, was correct and should be reinstated.

Similarly, and again in a public information session hosted by the WASC, Department of State Coastal Resources staff member Bonnie Devine stated 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.”

And yet again, the shapers of this current draft Plan appear to have forgotten or even rejected these instructions from the State. In failing to observe the above expert opinions, the City’s alternatives analysis regarding trucking was based on an entirely false premise—the notion that it needed to be accommodated at all.

Conclusion: Taken together, these historical facts (along with other rezoning options outlined elsewhere in these comments) expose a fatal flaw in the draft LWRP’s alternatives analysis, which consciously accepts the presence of dozens of truck trips to the Waterfront daily as a fait accompli—when those trips should not be happening at all. The Plan should be revised to spare both the Bay and Hudson’s dense urban neighborhoods from such blight.

► COMMENT #5:

A DEFINITIVE RESOLUTION TO THE SOUTH BAY ‘USE CONFLICT’ IS MORE THAN 30 YEARS OVERDUE

A Federally-funded 1977 study by the County Planning Department analyzed the South Bay area in the wake of the departure of the Atlas Cement company, whose assets were acquired by SLC/Holcim. That study stressed the importance of resolving the longstanding South Bay “use conflict,” finding that the Bay area either needed to be fully industrialized, or fully restored; a middle path was not possible. (This position was later echoed in the April 2005 Coastal Consistency Determination by Secretary of State Randy Daniels, per above.)

Instead of settling that longstanding and destructive debate, this plan perpetuates or even worsens the use conflict—with the likely result that if this draft LWRP is ratified as proposed, the Hudson Waterfront will not achieve its full potential for many decades to come, if ever.

SUBMITTED BY SAM PRATT

20 JANUARY 2010

- FURTHER COMMENTS AND DOCUMENTATION WILL BE SUBMITTED TO THE STATE (CC:D TO THE CITY) IN ADVANCE OF 15 MARCH 2010.