

**CITY OF HUDSON PLANNING BOARD  
DATED NOVEMBER 18, 2021**

**RESOLUTION TO ADOPT A DETERMINATION OF SIGNIFICANCE  
POSITIVE DECLARATION**

WHEREAS, the applicant, A. Colarusso and Son, Inc. (the “Applicant”), has applied for a conditional use permit for commercial dock operations (the “Project”) on property located at 175 South Front Street in the City of Hudson, on a 116-acre parcel identified as SBL 109.15-1-1 which is located within or abuts the Core-Riverfront Zoning District, the Recreational Conservation District, the Residential Special Commercial District and the Industrial District (the “Property”); and

WHEREAS, the Project is depicted on a site plan entitled, “Hudson Dock Site-Plan for On-Site Operations” dated June 4, 2019, and revised through January 21, 2020, prepared by Patrick Prendergast, P.E. (the “Site Plan”); and

WHEREAS, prior to December 2016, the applicant undertook repairs to the Property, which pursuant to Section 325-17.1(D) of the Zoning Law, triggered an Order to Remedy issued by the City of Hudson Code Enforcement Officer on January 24, 2017 which required the applicant to apply for a conditional use permit; and

WHEREAS, in accordance with Section 325-17.1(D) of the Zoning Law, the Project encompasses all aspects of the proposed dock operations on the Property including transportation to and from the dock; and

WHEREAS, pursuant to Section 325-17.1(D)(1) of the Zoning Law, dock operations consisting of the shipment of goods and raw materials is a use allowed by a conditional use permit issued by the Planning Board; and

WHEREAS, on July 27, 2020, the Planning Board classified the Project as a Type I action under the State Environmental Quality Review Act (“SEQRA”) and declared its intent to serve as lead agency in a coordinated review of the Project, to which no other agency has objected; and

WHEREAS, the applicant has submitted a Full Environmental Assessment Form (“EAF”) dated October 20, 2019, last submitted under cover letter dated December 10, 2019, pursuant to SEQRA, which has been reviewed and modified by the Planning Board as part of its review of the Project; and

WHEREAS, the Planning Board has reviewed the EAF provided and all available information concerning the potential impacts of the proposed project and found that the Planning Board has sufficient information on which to base a determination of significance; and

WHEREAS, the Planning Board has considered the criteria contained in 6 NYCRR § 617.7 and thoroughly analyzed all identified relevant areas of environmental concern; and

WHEREAS, on November 12, 2009, the City of Hudson accepted a Draft Generic Environmental Impact Statement (“DGEIS”) on the on the proposed Local Waterfront Revitalization Program, which included consideration of waterfront uses including a dock operation; and

WHEREAS, the DGEIS incorporated a detailed analysis of potential environmental impacts from a proposal by O & G Industries, Inc. to construct a truck route from its mining operations located in Greenport to Hudson’s deep water port, through the South Bay Causeway, and identified the South Bay Causeway Truck Route as the preferred truck route through the City, as opposed to the continued use of an existing truck route through City neighborhoods, and analyzed five alternatives to the South Bay Causeway Truck Route; and

WHEREAS, on September 26, 2011, the City of Hudson accepted a Final Generic Environmental Impact Statement (“FGEIS”) on the proposed Local Waterfront Revitalization Program, including a dock operation, and which was the basis for the adoption of zoning amendments including the requirement for a conditional use permit for dock operations at the Property and a zoning map amendment creating the CR District; and

WHEREAS, on October 27, 2011, the City of Hudson adopted a Findings Statement finding that that the adoption of the LWRP, zoning amendments, and zoning map amendment: 1) would have predominantly beneficial impacts on the natural and man-made environment and the social and economic conditions of the City of Hudson, compared to the Industrial zoning that had defined the Property prior to the adoption of the LWRP; 2) that the then-current truck route in 2011 through and along City streets used by O & G to transport mined materials via truck to the port from the Holcim mine unfairly burdened low and minority communities in the City of Hudson with adverse environmental impacts from the truck traffic; 3) that use of the Private Road for the transport of mined material to the port was already occurring, subject to and not in violation of permits obtained from the New York State Department of Environmental Conservation and the Army Corps of Engineers and that such use avoided some and had the potential to eliminate all of the current environmental justice issues associated with the current route used by trucks destined for the port; 4) that in accordance with the DEC’s policy which demands environmental justice for all communities and calls for improving the environment in communities, specifically minority and low-income communities, and addressing disproportionate adverse environmental impacts that may exist in those communities, the Lead Agency supported O&G’s activity (in conformance with existing permits issued by the New York State Department of Environmental Conservation and US Army Corps of Engineers) to re-route the mining traffic through the South Bay or an alternative route as developed in the FGEIS; 5) that upon enactment of the proposed zoning, such use of the causeway could become subject to the conditional use zoning provisions of the proposed zoning amendments and could be subject to preparation of a Supplemental EIS (“SEIS”) which will assist the Planning Commission in determining whether the action can be approved and if so whether and to what

extent mitigation measures and conditions are necessary to address any potential adverse environmental impacts; and 6) that reasonable and feasible mitigation measures, including but not limited to the imposition of permit requirements including landscape screening, hours of operation, and limitations on truck idling, in conjunction with enforcement of the City's existing applicable code provisions, could address the kinds of potential project or site specific adverse environmental impacts to visual, cultural or natural resources, or from noise described in the FGEIS generally and that, specifically, an SEIS could be necessary to more fully evaluate the potential impacts from future projects related to or use of the port or causeway or future commercial or industrial land uses; and

WHEREAS, In August 2012, the Department of State designated the South Bay Creek and Marsh a Significant Coastal Fish and Wildlife Habitat, thereby requiring all projects within the designated district, including the Proposed Action, to conform with the 44 (forty-four) Policies enumerated in the DoS Coastal Management Program "State Coastal Policies." The designation also indicates a "habitat impairment test must be met for any activity that is subject to consistency review . . . under applicable local laws contained in an approved local waterfront revitalization program."

**NOW THEREFORE BE IT RESOLVED, that the Planning Board hereby concludes that the Project includes the potential for at least one significant adverse environmental impact, as set forth in Parts 2 and 3 of the EAF, and that the Applicant is directed to prepare a Supplemental Draft Environmental Impact Statement in accordance with the requirements of 6 NYCRR § § 617.9 and 617.12.**

**BE IT FURTHER RESOLVED, that scoping will be conducted and the applicant is directed to submit a draft scope to the Planning Board in accordance with 6 NYCRR § 617.8 on or before January 10, 2022.**

**BE IT FURTHER RESOLVED, that the Planning Board intends to hold a public hearing on the draft scope, to be scheduled at a future date and time.**

**BE IT FURTHER RESOLVED, that the Planning Board Secretary is authorized and directed to file this positive declaration with the City Clerk, all involved and interested agencies, the Mayor, the Applicant, the Environmental Notice Bulletin, and any person who has requested a copy.**

Introduced:

Seconded:

Approved: \_\_\_\_\_

Stephen Steim, Chairperson

- \_\_\_\_\_ Stephen Steim, Chairperson
- \_\_\_\_\_ Larry Bowne
- \_\_\_\_\_ John Cody
- \_\_\_\_\_ Theresa Joyner
- \_\_\_\_\_ Laura Margolis
- \_\_\_\_\_ Eugen Shetsky
- \_\_\_\_\_ Clark Wieman

Involvement and Interested Agencies

NYS Department of Environmental Conservation

NYS Office of General Services

NYS Department of Transportation

NYS Department of State

Executive Director of the Hudson Community Development and Planning Agency

DRAFT

# **PART 3 SUPPORTING INFORMATION**

EVALUATION OF THE MAGNITUDE AND IMPORTANCE OF PROJECT IMPACTS

for

## **A. Colarusso and Son Inc. Commercial Dock Operations**

**City of Hudson,  
Columbia County, New York**

November 18, 2021

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*Prepared by:*

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## A. PROJECT DESCRIPTION

A. Colarusso & Son, Inc., on behalf of Colarusso Ventures, LLC (the “Applicant”), is seeking a conditional use permit (the “CUP”) from the City of Hudson Planning Board for commercial dock operations located at 175 South Front Street, Hudson (the “Proposed Action” or “Project”). The dock operations occupy a 116-acre parcel<sup>1</sup> identified as SBL 109.15-1-1 and pass thru and / or abut the Core-Riverfront Zoning District, the Recreational Conservation District, the Residential Special Commercial District and the Industrial District (the “Property”). Additionally, the dock operations utilize a combination of public roads and a private road (the “Private Road”)<sup>2</sup>, located on a causeway in the South Bay, a Significant Coastal Fish and Wildlife Habitat. The dock operations include the transport and unloading of materials from trucks, stockpiling, and loading of materials onto and from barges in the Hudson River. The Property forms the eastern bank of the Hudson River along its full length.

The Proposed Action assumes a volume of 284 truck trips per day, seven days per week, year-round, or 103,660 truck trips per year (though that figure itself requires further study, as it is predicated less on truck volume than it is on barge-loading capacity). This assumption represents a 195% increase in annual truck trips as compared to the values considered in the 2009 DGEIS.<sup>3</sup>

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<sup>1</sup> Although identified as part of the applicant’s property, a portion of the Property is claimed to be owned by the City of Hudson. The issue of ownership of this land is not at issue in this application and this decision has no bearing on title.

<sup>2</sup> In various documents, this road is referred to by various terms, including “haul road,” “private road,” and “south bay causeway truck route”. The terms are used by the Applicant and the public interchangeably, and City documents use all three terms.

<sup>3</sup> Chapter 5 of the City of Hudson Local Waterfront Revitalization Program (LWRP) Draft Generic Environmental Impact Statement (DGEIS) dated November 12, 2009 considered impacts that would result from the “O&G South Bay Causeway Truck Route.” In the analysis of the then-proposed route, the DGEIS included the following statistics on usage of the route:

- DGEIS Section 5.2.5 (p. 5-14): “O&G currently makes approximately 80 roundtrips per day (Monday through Friday) or approximately 400 round trips per week during the barge shipping season.”
- DGEIS Section 5.2.1 (p. 5-5): “Aggregate shipments are generally seasonal from approximately March to December. This is a function of weather conditions and ice flow.”

The barge shipping season of March through December contains a total of 306 days or approximately 44 weeks. Therefore, the DGEIS considered 17,600 trucks per year (400 trucks per week \* 44 weeks per year) or 35,200 trips per year.

The Applicant has submitted a Traffic Evaluation, dated July 9, 2020 and updated October 30, 2020, for the Proposed Action including trip generation quantities for the amount of truckloads involved in the dock operations. The maximum condition in the Traffic Evaluation is stated to be 142 trucks per day or 284 trips per day. The Applicant operates year-round, 7 days per week, therefore, the Applicant is proposing a maximum of 51,830 trucks per year (142 trucks per day \* 365 days per year) or 103,660 trips per year. This equates to an approximately 195% increase

A repair made to the existing bulkhead on the Property has triggered the need for a CUP for dock operations and is included as part of the scope of review. Pursuant to the Supreme Court's decision in Colarusso vs Hudson (Index No. 17-906091), the City's code Section 325-17, and the LWRP Findings Statement (September 2011), this SEQRA review of the application for the CUP for commercial dock operations is inclusive of ingress to and egress from the dock component of the Property. A separate application for widening, paving and relocating the existing two-way, one-lane Private Road on the existing causeway through the South Bay (on 1314 acres with 8.8 acres of disturbance) has undergone a separate SEQRA review, with the Town of Greenport serving as lead agency. The modifications to the Private Road are not being considered as part of this SEQR action, and no significant alterations to the existing Private Road, including both grade crossings at local and state highways as well as across the CSX railroad tracks at Broad Street, are considered by the Planning Board to be included in this SEQRA review. The Planning Board will, however, review modifications to the existing Private Road as part of its own Code review subsequent to the Greenport SEQR findings.

In 2009, the City of Hudson adopted a Draft Generic Environmental Impact Statement ("DGEIS") on the City's proposed Local Waterfront Revitalization Program, which included consideration of waterfront uses including a dock operation and a proposal by O & G Industries, Inc. to construct a truck route from its mining operations located in Greenport to Hudson's deep water port, through the South Bay Causeway, and identified the South Bay Causeway Truck Route ("SBC Truck Route") as the preferred route through the City. The City also analyzed alternatives as part of the DGEIS process.

On September 26, 2011, the City of Hudson accepted a Final Generic Environmental Impact Statement ("FGEIS") which was the basis for the adoption of zoning amendments including the requirement for a CUP for dock operations at the Property and a zoning map amendment creating the CR District.

The City adopted a Findings Statement on October 27, 2011. In both the Findings Statement and the LWRP itself, the City no longer designated the South Bay Causeway truck route to be the "preferred" alternative route to existing traffic on city streets, but instead envisioned a two-phased approach to addressing what the Findings Statement calls "this transportation problem" (page 11), indicating that "the only possible alternative to the causeway ... is a new route around the current LB property," which was largely vacant in 2011. The LB property is now a mixed-use hub of offices, shops, warehousing, and public amenities (including a brew pub), which the Planning Board needs to review as to whether it is still appropriate for a truck route.

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in total annual truck trips as compared to the quantity considered by the 2009 DGEIS [% Change = (103,660 trips per year - 35,200 trips per year) / (35,200 trips per year) \* 100 = 195%].

The Findings Statement, among other things, found that the adoption of the LWRP, zoning amendments, and zoning map amendment: 1) would have predominantly beneficial impacts on the natural and man-made environment and the social and economic conditions of the City of Hudson, compared to the Industrial zoning that had defined the Property prior to the adoption of the LWRP; 2) that the then-current truck route in 2011 through and along City streets used by O & G to transport mined materials via truck to the port from the Holcim mine unfairly burdened low and minority communities in the City of Hudson with adverse environmental impacts from the truck traffic; 3) that use of the Private Road for the transport of mined material to the port was already occurring, subject to and not in violation of permits obtained from the New York State Department of Environmental Conservation and the Army Corps of Engineers and that such use avoided some and had the potential to eliminate all of the current environmental justice issues associated with the current route used by trucks destined for the port; 4) that in accordance with the DEC's policy which demands environmental justice for all communities and calls for improving the environment in communities, specifically minority and low-income communities, and addressing disproportionate adverse environmental impacts that may exist in those communities, the Lead Agency supported O&G's activity (in conformance with existing permits issued by the New York State Department of Environmental Conservation and US Army Corps of Engineers) to re-route the mining traffic through the South Bay or an alternative route as developed in the FGEIS; 5) that upon enactment of the proposed zoning, such use of the causeway could become subject to the conditional use zoning provisions of the proposed zoning amendments and could be subject to preparation of a Supplemental EIS ("SEIS") which will assist the Planning Commission in determining whether the action can be approved and if so whether and to what extent mitigation measures and conditions are necessary to address any potential adverse environmental impacts; and 6) that reasonable and feasible mitigation measures, including but not limited to the imposition of permit requirements including landscape screening, hours of operation, and limitations on truck idling, in conjunction with enforcement of the City's existing applicable code provisions, could address the kinds of potential project or site specific adverse environmental impacts to visual, cultural or natural resources, or from noise described in the FGEIS generally and that, specifically, an SEIS could be necessary to more fully evaluate the potential impacts from future projects related to or use of the port or causeway or future commercial or industrial land uses.

In August 2012, the Department of State designated the South Bay Creek and Marsh a Significant Coastal Fish and Wildlife Habitat, thereby requiring all projects within the designated district, including the Proposed Action, to conform with the 44 (forty-four) Policies enumerated in the DOS Coastal Management Program "State Coastal Policies." The designation also indicates a "habitat impairment test must be met for any activity that is subject to consistency review ... under applicable local laws contained in an approved local waterfront revitalization program."

Ten years have now passed since the City adopted its Findings Statement and a triggering event has occurred that requires the Planning Board to reconsider the dock operations, including the

Private Road as part of the CUP application. The City's Findings Statement specifically identified the possibility that the conditional use permit review "may be subject to the preparation of a Supplemental EIS" to determine whether and to what extent mitigation measures are necessary to address potential adverse impacts including but not limited to landscape screening, hours of operations, and limitations on truck idling. For the reasons set forth below, the Planning Board is requiring an SEIS for the Project.

**B. DETAILED INFORMATION IN RESPONSE TO PART 2 OF SEQRA FULL EAF**

The following information provides a detailed discussion of the potential impacts identified in Part 2 of the FEAF that were listed as moderate to large, in support of Part 3 of the FEAF. This document is organized according to the question numbers in Part 2.

**1. Impacts on Land**

No moderate to large adverse impacts to land were identified. The Proposed Action does not involve construction on, or physical alteration of, the land surface of the proposed site other than the repair to the bulkhead, which has already been completed (See more specific discussion in Question 3). The Board has confirmed that the Property is not within an official designated Coastal Erosion Hazard Area.

**2. Impacts on Geological Features**

No moderate to large impacts to geological features were identified. The Proposed Action will not result in the modification or destruction of, or inhibit access to, any unique or unusual landforms on the site (e.g., cliffs, dunes, minerals, fossils, caves).

**3. Impacts on Surface Water**

The Planning Board identified potentially moderate to large impacts to surface water under items d. and i. on Part 2 of the FEAF. Specifically, the Proposed Action was triggered by the Applicant constructing a new rip rap revetment and bulkhead on the banks of the Hudson River. The Planning Board has determined that potential impacts to the water quality of the Hudson River or other water bodies downstream of the site of the proposed action would have been identified as moderate to large if the Board were reviewing the action prior to construction of the revetment and bulkhead.<sup>4</sup>

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<sup>4</sup> Since the NYS Department of Environmental Conservation (DEC) and United States Army Corps of Engineers previously issued permits for this work and the construction itself has been completed, the Planning Board finds that analysis of the potential construction phase impacts resulting from the revetment and bulkhead work is a moot issue. Furthermore, while review of these items of work are considered moot, they have resulted in the need for the Applicant to apply to the Planning Board for a CUP under the City Code for the continuation of dock operations.

The site of the Proposed Action includes a portion of the South Bay Creek and Marsh Coastal Fish and Wildlife Habitat (DEC Wetland HS-2) (the "South Bay"). The designation indicates that "[d]isturbance and impacts in this habitat are the result of past filling of a previously open embayment, construction of an earthen causeway that bisects Hudson South Bay Marsh, and upland runoff. Impacts associated with past industrial and transportation development have resulted in reduced tidal influence throughout the habitat." The continuation of dock operations will utilize an existing two-way, one-lane private road which passes through the South Bay and no improvements or modifications (e.g. widening, paving, regrading, replacement of drainage facilities, etc.) to the private road are proposed by the Applicant as part of the Proposed Action. The Planning Board considered impacts to the South Bay as a result of the continued usage of the two-way, one-lane private road by trucks in its existing state and has determined that the Proposed Action may result in significant impacts to the South Bay from the possibility of oil leaks and sediment entering the wetlands and may need to be evaluated for conformance with the 44 (forty-four) Policies enumerated in the DoS Coastal Management Program "State Coastal Policies." The road is unpaved and in its current condition has the possibility to generate dust and sediment laden stormwater, potentially containing fuel and motor oil, which could enter into the wetlands via overland flow. This is especially true given the applicant's proposal to increase the annual number of truck trips by up to 195% from trips studied in the 2009 DGEIS.

Finally, the Board requested engineering documentation of the structural integrity and hydraulic capacity of the culverts that pass under the existing private road in order to analyze the impact from maintaining and updating the existing drainage pipes. To date, the Applicant has failed to provide such documentation. In the absence of documentation demonstrating that the culverts are sound and adequate, the Board must find that the project has the potential to result in a significant adverse impact to the identified surface water resources.

#### **4. Impacts on Groundwater**

No moderate to large impacts to groundwater were identified. The Proposed Action will not result in new or additional use of groundwater and does not have the potential to introduce contaminants to groundwater or an aquifer.

#### **5. Impacts on Flooding**

The Planning Board identified potentially moderate to large impacts to flooding under items a. through c. on the FEAF, Part 2. Specifically, the Proposed Action involves development within a designated floodway, 100-year floodplain, and 500-year floodplain, identified on the Federal Emergency Management Agency (FEMA) Flood

Insurance Rate Map (FIRM), Community Panel 361512 0001 C of the City of Hudson as Zone AE (100 year) and Zone X (500 year).

Flooding could do extensive damage to the dock operations and introduce contaminants into the surface water, including the potential for aggregate moving equipment, aggregate stockpiles and materials to be swept away. Rapid flooding could also endanger health and safety of operational staff. More moderate flooding could have significant impact on the Private Road, with existing culverts' ability to handle flood waters in question.<sup>5</sup>

The Planning Board has determined that the proposed dock operations at the dock itself will not require modification of existing drainage, but has identified the use of the Private Road, and the culverts handling water flow between water bodies on both sides of the Private Road, to be an area of significant concern.

The following is excerpted from Section II.B.5.b. of the "City of Hudson Local Waterfront Revitalization Program" (LWRP):

*"The 100-year flood elevation ranges from about 14 feet above sea level close to the river to about 25 feet at the base of the escarpments in North and South Bays. This means that during a 100-year flood, the following areas would be flooded: North and South Bay wetlands, ... the industries along Water Street and South Front street ... ."*

The LWRP also cites Chapter 148 of the City's code, which requires that development must either be built above the base flood elevations or contain flood protection devices to this height. FEMA's Flood Insurance Rate Map (FRIM) Panel 361512 0001 C establishes the base flood elevation at the project site as 12 feet above sea level. The entirety of the Project site west of the railroad tracks ranges from sea level to 10 feet above sea level according to the site plan submitted by the Applicant, therefore it can be concluded that the site will be inundated during a 100-year flood.

Of particular concern is climate-related increase in flood frequency, duration and volumes. The EPA has analyzed climate change impacts on flooding:

*"Increases and decreases in the frequency and magnitude of river flood events vary by region. Floods have generally become **larger across parts of the***

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<sup>5</sup> Although the Town of Greenport determined that the expansion of the haul road (including paving and stormwater improvements) would not result in a significant impact on flooding on July 25, 2017, the Town's review did not include an analysis of the impacts of stormwater pollutants entering the wetlands and surface waters from flooding in the current, unpaved surface of the road.

**Northeast** and Midwest and smaller in the West, southern Appalachia, and northern Michigan. **Large floods have become more frequent across the Northeast, Pacific Northwest, and parts of the northern Great Plains, and less frequent in the Southwest and the Rockies.**" (emphasis added)<sup>6</sup>

The Environmental Defense Fund has found major increase in rain volumes in the Northeast U.S.

*"...observations over the last 60 years indicate that over the United States, the amount of water falling in heavy rain events has increased substantially, and an astonishing 71 percent over portions of the mid-Atlantic and northeastern U.S."*<sup>7</sup>

The term 100-year flood is coming under increased scrutiny. A Princeton and Stevens Institute study found that these floods, with theoretical 1% chance of happening each year, will likely arrive far more frequently, as often as annually in the Northeast US.<sup>8</sup>

The Planning Board has determined that the dock is subject to both tidal storm surges as well as potential flood water in the event of heavy upstream rains and needs additional information to analyze the potential impacts from flooding, including the release of contaminants including motor oil and fuel oil into the floodwaters.

As discussed above, the Board requested engineering documentation of the structural integrity and hydraulic capacity of the culverts that pass under the existing private road. To date, the Applicant has failed to provide such documentation. In the absence of documentation demonstrating that the culverts are sound and adequate, the Board must find that the Project has the potential to result in a significant adverse impact to flooding.

The Board notes that a development permit under Chapter 148 may also be required as part of the Proposed Action.

The Environmental Impact Statement should accurately depict flood risk and risk management, and mitigation. These include a documentation of culverts' age and condition, their ability to function in tidal flows and flood management, and ability to sustain a dramatic increase in truck traffic.

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<sup>6</sup> EPA <https://www.epa.gov/climate-indicators/weather-climate>

<sup>7</sup> Environmental Defense Fund <https://www.edf.org/blog/2016/09/01/we-just-had-five-1000-year-floods-less-year-whats-going>

<sup>8</sup> "Climate change exacerbates hurricane flood hazards along US Atlantic and Gulf Coasts in spatially varying patterns," Nature Communication 10, Article 3785, 2019

## 6. Impacts on Air

The Project will not result in moderate to large impacts on air. No air permits will be needed for the construction or operation of the project. There will be an increase in fossil fuel consumption by heavy machinery during the construction period, however, the Board has determined that the increase in vehicular and equipment emissions are minor and temporary and are not anticipated to have any measurable impact on local air quality.

## 7. Impacts on Plants and Animals

The Planning Board has identified a potentially large impact on plants and animals, under items a. through d., f and g on the FEAF, Part 2. The Project site contains three designated significant natural communities: The Hudson River estuary, a significant natural community; the South Bay, a Significant Coastal Fish and Wildlife Habitat; and a Freshwater subtidal aquatic bed. The South Bay designation indicates that “[d]isturbance and impacts in this habitat are the result of past filling of a previously open embayment, construction of an earthen causeway that bisects Hudson South Bay Marsh, and upland runoff. Impacts associated with past industrial and transportation development have resulted in reduced tidal influence throughout the habitat, and in particular north of the causeway where an invasive strain of the common reed (*Phragmites australis*) is dominant.”<sup>9</sup>

The Planning Board corrected several of the applicant’s answers in FEAF Part 1, Question E.2—particularly sub-questions m, n, o, and p—to fully list the great number of flora and fauna living in the project area.

The Department of State South Bay designation notes that “[a]ny activity that would substantially degrade water quality, increase turbidity or sedimentation, alter flows, temperature or water depths at South Bay habitat could result in significant impairment of the habitat. All species may be affected by water pollution, such as chemical contamination (including food chain effects resulting from bioaccumulation), oil spills, excessive turbidity or sediment loading, nonpoint source runoff, and waste disposal.

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<sup>9</sup> The Department of State South Bay designation also notes that “[a]ny activity that would substantially degrade water quality, increase turbidity or sedimentation, alter flows, temperature or water depths at South Bay habitat could result in significant impairment of the habitat. All species may be affected by water pollution, such as chemical contamination (including food chain effects resulting from bioaccumulation), oil spills, excessive turbidity or sediment loading, nonpoint source runoff, and waste disposal. Discharges of sewage or stormwater runoff containing sediments or chemical pollutants (including fertilizers, herbicides and/or insecticides) may result in adverse impacts on the habitat area. Spills of oil or other hazardous substances are an especially significant threat to this area, because the biological activity of tidal flats is concentrated at the soil surface, much of which may be directly exposed to these pollutants.”

Discharges of sewage or stormwater runoff containing sediments or chemical pollutants (including fertilizers, herbicides and/or insecticides) may result in adverse impacts on the habitat area. Spills of oil or other hazardous substances are an especially significant threat to this area, because the biological activity of tidal flats is concentrated at the soil surface, much of which may be directly exposed to these pollutants.”

The Proposed Action represents a presumed 195% increase in truck trips per year above that which was studied by the City of Hudson in the DGEIS and FGEIS, and the Planning Board finds that this significant increase in truck trips alone has the potential to result in a significant adverse impact on plants and animals. As noted above, the Board requested engineering documentation of the structural integrity and hydraulic capacity of the culverts that pass under the existing private road. To date, the Applicant has failed to provide such documentation. In the absence of documentation demonstrating that the culverts are sound and adequate, the Board must find that the Project has the potential to result in a significant adverse impact to plants and animals.

In 2009, the City found that most of the natural resources had been previously disturbed by activities associated with the cement industry, waste dumps, fill, abandoned buildings, and other industrial and commercial uses, but that a diverse flora and fauna remained in the area. This was recently confirmed by Norbert Quenzer, a senior ecologist, who submitted a supplemental report to the Planning Board dated February 3, 2021, regarding ecological communities and species at or in the vicinity of the site. In this report, Mr. Quenzer notes that a Peregrine falcon was observed nesting on the project site in the summer of 2020. The falcon nest was located on the existing silo adjacent to the Hudson River. The New York State Department of Environmental Conservation (“DEC”) is aware of the discovery and the Planning Board is awaiting its determination about the impact of commercial dock operations on the falcons, which is listed by DEC as an endangered species in New York. As we await guidance from DEC, the Board has identified the potential for a moderate to large impact on an endangered species.

The Department of State South Bay designation notes that “[a] habitat impairment test must be met for any activity that is subject to consistency review ... under applicable local laws contained in an approved local waterfront revitalization program” and that, specifically, “land and water uses or development shall not be undertaken if such actions would ... significantly impair the viability of a habitat.”

The Planning Board acknowledges that SEQRA has been completed by the Town of Greenport on a proposal to expand the Private Road and continues to express its concerns about the impact of the expansion on the South Bay, which the Planning Board will address as part of a separate Conditional Use Permit review under the City Zoning Code for the proposed expansion of the Private Road. Although the Town of Greenport

determined that the expansion of the haul road (including paving and stormwater improvements) would not result in a significant adverse impact on Plants and Animals on July 25, 2017, the Town's review did not include an analysis of the impacts from use of the current, unpaved surface of the road. The Hudson Planning Board finds that the Proposed Action may result in significant impacts to the South Bay from the possibility of oil leaks and sediment entering the wetlands, which provides an important habitat. The road is unpaved and in its current condition has the possibility to generate dust and sediment laden stormwater, potentially containing fuel and motor oil, which could enter into the wetlands via overland flow. This is especially true given the Applicant's proposal to increase the annual number of truck trips by up to the presumed 195% from trips studied in the 2009 DGEIS.

The Greenport Planning Board also found that proposed development restrictions and a limited easement area would protect the natural resources moving forward. The Hudson Planning Board has reviewed the "development restrictions", which are included as a restrictive covenant in the deed to the property, enforceable by the prior owner of the property. As the prior owner of the property has no interests in the area and no incentive to monitor the activities of the applicant, the Planning Board finds that this is insufficient mitigation of potential impacts from use of the Private Road.

The Board also considered impacts on plants and animals from the use of herbicides or pesticides on the Project site; however, the Applicant has provided written confirmation that it will not use herbicides or pesticides anywhere on the dock or along the Private Road. The Planning Board notes that were this to change, plants and animals in the three designated significant natural communities contained in the Project site would experience moderate to large impacts. We note here that a condition of a future CUP would have to include that no herbicides or pesticides be used in the Project site.

**8. Impacts on Agricultural Resources**

No significant impacts to agricultural resources were identified. The Project area is not within a certified agricultural district and does not contain any active agricultural land.

**9. Impacts on Aesthetic Resources**

The Board has identified the potential for significant adverse impacts on aesthetic resources for two reasons. First, the applicant is proposing a presumed 195% increase in annual truck traffic over that studied in the 2009 DGEIS, with attendant impacts from dust, vibration and noise, and second, because the area and its aesthetic resources has been evolving since the 2009 DGEIS.

The Project will impact the views from the Henry Hudson Waterfront Park, the Hudson Athens Lighthouse, Promenade Hill Park, the Village of Athens, Brandow Point in Athens,

Cohotate Preserve in Athens and Middle Ground Flats. Large piles of aggregate, heavy machinery and trucks and dust detract from the views from these locations. The Proposed Action stands in sharp contrast to the surrounding land uses, which are characterized primarily by recreational, commercial, and cultural uses.

The Planning Board has also identified a potential moderate-to-large impact on users of the Hudson River, itself a scenic and aesthetic resource, due to visual impacts on the landward views on those using the Hudson River for recreational boating. Section 325.17.F of the Zoning Law requires the Planning Board to “consider the quality and extent of views from the adjacent public streets through the property to the water as well as the design and relationship of development to the waterfront as viewed from the water.” While the Applicant has proposed landscape screening to mitigate aesthetic impacts of views from land looking out to the water, to date, the Applicant has not addressed mitigations for waterfront views from the water.

In evaluating the scale, context and magnitude of the proposed Project, the Board has determined that the potential impact of the dock operations on local aesthetic resources is large. The magnitude, duration, likelihood and importance of impacts to aesthetic resources as a result of the Proposed Action is significant and adverse.

#### **10. Impacts on Historic and Archeological Resources**

The Planning Board identified potential moderate-to-large impacts to buildings and districts listed on and eligible for listing on the National and State Register of Historic Places, finding that the Proposed Action would result in the introduction of visual elements which are out of character with the immediate vicinity of the Project site, specifically the presumed 195% increase in truck traffic. Since the 2009 DGEIS, additional historic resources have been studied and deemed eligible for listing on the State and National Registers of Historic Places.

The Project site contains one eligible structure – the New York & New England Cement & Lime Company Lower Mill Cement Storage Building (aka former salt storage building), and is within 1,000 feet of the following structures and district which are either listed, or have been determined to be eligible for listing, on the State and National Registers of Historic Places: eligible Hudson and Boston Railroad Shop (aka Dunn Warehouse), eligible Railway Steel Spring Foundry & Sand House (aka Basilica), eligible Hudson Station (aka Amtrak Station), listed South Bay Mill (aka The Wick), and the Hudson Historic District. The listed Hudson-Athens Lighthouse is approximately 1,800 feet southwest of the southern end of the dock bulkhead. Additionally, the Project site is located on the Hudson River, adjacent to the Henry Hudson Waterfront Park, and is within 1,000 feet of the former KAZ property. The Proposed Action stands in sharp

contrast to the surrounding land uses, which are characterized primarily by recreational, commercial, and cultural uses.

As noted in Part 1 of the FEAF and in Section 9, above, the Project site is located in a culturally and historically significant area with the following officially designated and publicly accessible federal, state, or local scenic or aesthetic resources within five miles of the site: Village of Athens, Hudson River, Empire State Trail, Greenport Conservation Area, Hudson-Athens Lighthouse, Olana and its view shed, Rip Van Winkle Bridge, Cedar Grove and the Bronson House.

While the New York State Historic Preservation Office (SHPO) concluded that “our office has no concerns with potential impacts to historic resources resulting from the continued use of the commercial [dock]” in a letter dated September 29, 2020, the Planning Board has applied its local knowledge of the Project site and resources in its review under SEQRA in determining that the Project has the potential to significantly impact historic resources.

As part of the Proposed Action, the Applicant will increase the annual truck trips by a presumed 195% over what was reviewed in the DGEIS. These trucks will be filled with aggregate materials and, as noted elsewhere in this document, will result in the generation of noise, odor, and dust. On the dock, aggregate will be offloaded from trucks, temporarily stockpiled, and then loaded onto barges using a loader and conveyor. It is unknown whether these actions, and the increase in trucking in particular, will result in any direct impacts to historic structures or archeological resources due to vibration or other mechanisms.

The Planning Board finds that in addition to the noise, odor, and dust discussed elsewhere in this document, the proposed truck traffic, aggregate stockpiles, and dock operations will result in adverse impacts to the enjoyment, interpretation, and preservation of the historic resources listed above. Furthermore, the Planning Board finds that the presence of these elements, which are out of character with the area around the Project site, may result in divestment and degradation of eligible and listed historic resources. The truck traffic that results from the Proposed Action will also result in congesting and / or inhibiting pedestrians, bicyclists, and passenger vehicles from reaching these historic and recreational sites.

In evaluating the scale, context and magnitude of the Proposed Action, the Board has determined that the potential impact of the dock operations on historic and archeological resources is large. The magnitude, duration, likelihood and importance of impacts to historic and archeological resources as a result of the Proposed Action is significant and adverse.

## 11. Impacts on Open Space and Recreation

The Planning Board identified potentially moderate-to-large impacts to open space and recreation.

The project site is south of Henry Hudson Waterfront Park and Promenade Hill Park and north of two riverfront parcels commonly referred to as the “4.4 acre parcel.” These informally-used open spaces are accessed by traveling over the Property. The Hudson community currently utilizes these areas for a variety of recreational uses.

Although the dock use has historically co-existed with the park, the Planning Board finds that the presumed 195% increase in annual truck trips has the potential for adverse impacts on recreational uses. Additional truck traffic with its attendant dust, noise, odors, and vibrations has the potential to adversely impact use of the 4.4 acre parcel and use and enjoyment of Henry Hudson Waterfront Park and other recreational spots along the Hudson River.

Further, the Planning Board finds that the Proposed Action has the potential to impact open spaces, namely, the South Bay. The South Bay, as well as the Private Road which passes through it, have been identified by the City’s 1996 Vision Plan and 2002 Comprehensive Plan as a potential future open space and recreation resource. The Applicant has not adequately considered and addressed impacts to the future use of these areas as part of the Project. The DGEIS considered the possibility of a pedestrian easement of the South Bay causeway, or a conservation easement over the remainder of the South Bay, neither of which have been included as mitigation as part of the Proposed Action.

The Proposed Action may result in an impairment of natural functions, or “ecosystem services”, provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat. The site of the Proposed Action includes a portion of the South Bay (DEC Wetland HS-2). The continuation of dock operations will utilize an existing two-way, one-lane private road which passes through the South Bay and no improvements or modifications (e.g. widening, paving, regrading, replacement of drainage facilities, etc.) to the Private Road are proposed as part of the Proposed Action. Portions of the Applicant’s property are subject to a private deed restriction which prohibits disturbance of land, but this deed restriction does not provide permanent protection as it may be modified in writing, may not be enforced by the City or any identified conservation organizations, and does not include the minimum requirements needed for meaningful preservation, including baseline data and monitoring requirements. The Planning Board notes that surveys, communications and other instruments supplied by the Applicant to the City make erroneous reference to a Conservation Easement, but should instead refer to a private deed restriction.

In evaluating the scale, context and magnitude of the Proposed Action, the Board has determined that the potential impact of the dock operations on open space and recreational resources may be large and must be further evaluated.

**12. Impacts on Critical Environmental Areas**

From the New York State Department of Environmental Conservation (DEC) website, only one site in Columbia County has been designated as a Critical Environmental Area (CEA): Town of Greenport Source Water.

As the area under review under this application is outside the DEC-designated CEA, there will be no impacts to CEAs as a result of the Proposed Action.

**13. Impacts on Transportation**

The Planning Board has evaluated the scale and context of the Project and has determined that the potential impacts to the existing transportation system would be large in magnitude, duration and importance. The Board notes that Hudson's pressing Environmental Justice concerns are extensively cited in the DGEIS, LWRP, Findings Statement and elsewhere in Hudson planning documents, and have been cited as a basis for this Application. While Hudson Code directs the Planning Board to include environmental impacts of dock operations on the transportation system and causeway Private Road, this Application for a CUP for dock operations does not include alterations to the existing Private Road, including both grade crossings at local and state highways as well as across the CSX railroad tracks at Broad Street. Approval of the CUP for commercial dock operations would only remove the non-conforming use status of the dock operations.

The Planning Board considered public input in evaluating the potential benefit of removing trucks from Hudson streets, which could be long-lasting and significant if, prospectively during a separate City code CUP review process of causeway road, the Applicant confirms trucks will no longer use city streets. As the City has no direct authority over the State truck route, this would eliminate truck traffic on Front Street north of the dock, and Columbia Street south of 3rd Street.

The Board notes that the existing one-lane, two-way Private Road is currently being utilized for exclusively one-way traffic by the Applicant. In doing so, the Applicant has operated counter to the LWRP's goal of addressing Environmental Justice concerns in 2011 by redirecting gravel truck traffic to the causeway Private Road.

As the LWRP stated in 2011, "[i]n the long term..., the City supports rerouting commercial traffic destined for the waterfront onto a new access road and views use of

the causeway by commercial vehicles as a temporary measure to **immediately** eliminate truck traffic traversing residential neighborhoods.” (emphasis added) LWRP P.62.

Although the 2009 DGEIS analyzed potential truck routes using 2007 truck data and identified potential adverse environmental impacts and mitigations for consideration, it acknowledged that “the analysis provided ... is not intended to replace a future detailed site specific SEQRA review.” DGEIS p. 2-21; 2-24.

As indicated in the DGEIS, in 2009, O & G made approximately 80 round trips or 160 total trips per day, Monday through Friday, or approximately 400 round trips per week during the shipping season (March through December, 44 weeks x 400 trucks per week is 35,200 trips March through December). DGEIS 3.5-2.<sup>10</sup> This is the best data available prior to the 2011 LWRP and related rezoning.

The Applicant has submitted a subsequent Traffic Study (Creighton Manning, “Traffic Evaluation, Colarusso Gate to Gate Truck Route” No. 115-337, July 9, 2020) that has been reviewed by the Planning Board and its engineering consultant, Barton & Loguidice, D.P.C. and revised by Creighton Manning on October 30, 2020.

The Traffic Study evaluated the impacts from 284 truck trips per day, or 103,606 trips per year. The Planning Board notes that this figure was derived from barge capacity and does not fully reflect actual truck traffic since the Applicant purchased the dock site in 2014, nor does it account for possible expanded barge capacity. A proposal to expand Hudson River barge moorage in Germantown may change this calculation of truck trips. The Germantown barge moorage application specifically cites Colarusso gravel shipments.<sup>11</sup> An SEIS should fill significant discrepancies and gaps in data, for both Planning Board deliberations and public understanding of the Application.

Furthermore, the Planning Board acknowledges the Applicant’s contention that local jurisdictions have no authority to regulate truck traffic, and therefore has not committed to a maximum number of trips per day. Given a number of variables yet to be clarified, the total volume of traffic associated with commercial dock operations has not been adequately quantified to date.

The increase in traffic may have an adverse impact on existing transit. The Proposed Action is located in close proximity to Hudson’s Amtrak station, which is New York

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<sup>10</sup> Aggregate shipment at the port was 183,458 tons in 2007, which included use by ACS and O&G DGEIS p. 5-5. Assuming 18-wheel trucks with a capacity of 35 ton per truck were used to transport the aggregate from March through December, this represents approximately 5,242 truckloads per year between all parties using the dock, or 10,484 trips per year.

<sup>11</sup> Hannigan Gilson, Roger, “Threat of barges parked in Hudson River again making waves,” Times Union, April 26, 2021.

State's third busiest train station. There are currently 23 train crossings daily including Amtrak and freight rail. A truck mishap on the train tracks at the Broad Street crossing could have devastating consequences.

Pedestrians and bicycles also share Broad Street with trucks heading to and from the Project site access to the Henry Hudson Park. An increase in truck traffic on shared streets negatively impacts those choosing non-motorized modes of transportation at the waterfront, deterring less energy-intensive and polluting modes of travel.

The increased truck traffic also increases the likelihood of fuel and motor oil spills, which could pollute surface water and significant habitats along the Private Road.

The Planning Board has determined that increased truck traffic related to the proposed intensification of use of may be a significant contributor to potential impacts on Aesthetic Resources, Historic and Archeological Resources, Open Space and Recreation, Energy, Consistency with Community Plans and Consistency with Community Character. In this same vein, reductions in surface shipments by truck would proportionately reduce potential impacts on these SEQRA categories.

The Applicant has not sufficiently demonstrated mitigation of impacts from the 195% increase in truck traffic. This demonstration is contingent upon accurate depiction of the expected maximum and percent increase.

The Planning Board notes that the SEIS should confirm truck and barge volumes, an essential benchmark for the Planning Board to assess potential mitigations of traffic impacts, and whether mitigation of impacts of truck traffic associated with the Proposed Action is in fact possible. Project alternatives should include potential alternate modes of shipment that take into account the development of the district since the DGEIS, and potential alternative access points to the dock.

#### **14. Impacts on Energy**

The Planning Board has identified moderate to large impacts on energy after evaluating the scale, context and magnitude of the Project. The likelihood and duration of this impact are directly correlated with the 195% increase in annual truck trips.

The Proposed Action has no impact on energy transmission or supply, will not require more than 2500 MW-hrs of electricity per year, or involve heating and/or cooling of more than 100,000 square feet of building area.

However, the energy intensity of the Proposed Action is proportionate to the planned intensification of use and aggregate shipments. Energy usage will be proportionate to truck volume.

In addition to fuel use of truck transport, intensification of dock use would contribute to energy usage of dock equipment, including aggregate conveyor(s), as well as tugboats transporting barge shipments.

Further environmental analysis should produce quantification of energy use. Project alternatives should include modes of mitigating energy use and impacts.

#### **15. Impacts on Noise, Odor, and Light**

The Planning Board identified potentially moderate to large impacts on noise, odor and light due to noises above the levels established by local regulation, routine odors for more than one hour per day, light shining onto adjoining properties and creating sky-glow brighter than existing area conditions, and generating dust from the transport, unloading, and loading of aggregate materials, from the Proposed Action, which includes a 195% increase in annual truck traffic from the levels studied in the 2009 DGEIS.

Per the City of Hudson Zoning Code Attachment 1, the Core Riverfront (C-R) and Recreational Conservation (R-C) zoning districts are included on the "Schedule of Bulk and Area Regulations for **Residential** Districts" (emphasis added). The City of Hudson Noise Control Code (Chapter 210 of the City Code) establishes a base noise level of 55 dB(A), or A-weighted decibels, in residential zones during the hours of 7:00 a.m. and 10:00 p.m. and 45 dB(A) during the hours of 10:00 p.m. and 7:00 a.m. Additionally, the Noise Control Code establishes that noise is deemed unreasonable if it exceeds the ambient sound level by five dB(A). The Applicant retained Griggs-Land Consulting Geologists and Engineers, P.C. to complete a Noise Impact Assessment of the dock operations in October 2019. Separate sound levels were measured during no operations ("ambient" conditions) and with operations at three different locations along the north, south, and eastern property lines. These measurements, as tabulated in the October 29, 2019 Noise Impact Assessment, resulted in ambient sound levels between 51 and 54 dB(A) and operational sound levels of 56 dB(A). The sound measurement worksheets appended to the Assessment also note the following operationally generated noises which exceed the measured equivalent continuous sound level (Leq), or time-average sound level of 56 dB(A):

- At location A-1 on the northern property line, dumping material into the conveyor hopper was measured at approximately 60 dB(A);
- At location A-2 on the eastern property line, loader movements were measured in the "high 50s [dB(A) to] low 60s [dB(A)]"; and
- At location A-2 on the eastern property line, trucks entering the site were measured at approximately 60 dB(A).

The three specific measurements listed above all exceed the ambient sound level (i.e. 51 to 54 dB(A)) by greater than 5 dB(A) which the Code defines as unreasonable. Further, the equivalent continuous sound level measured during operations (i.e. 56 dB(A)) exceeds the base level of 55 dB(A) established by the Code as noted above.

As part of the Proposed Action, the Applicant assumes a maximum of 284 one-way truck trips to and from dock parcel on a daily basis. Based upon a 12 hour day, this equates to approximately 12 trucks entering the dock parcel and 12 trucks exiting the dock parcel each hour. The exhaust from the trucks along with other equipment used on site (e.g. loader, generator, etc.) will result in odors throughout the day which will be experienced by users of adjacent properties on South Front Street, visitors to the Henry Hudson Riverfront Park, and pedestrians and bicyclists accessing the same.

Regarding lighting, the Applicant proposes to maintain eight (8) exterior lights on the property that are either pole mounted or mounted to the silo on the western Property line. The Proposed Action will also result in light from tugboats moored at the dock's bulkhead overnight. Photos 1 and 2, below, depict lights from a tugboat moored at the dock on the night of April 20, 2021 at just after midnight. Both photos were taken from a location approximately 1,300 feet away on Allen Street. Photo 2 was captured using a zoom lens on the same occasion.



Photo 1: View from Allen Street toward dock just after midnight on April 20, 2021.



**Photo 2: View from Allen Street toward dock just after midnight on April 20, 2021 taken with zoom lens.**

As illustrated in the photos, lighting from tugboats used in the dock operations will shine onto adjoining properties and result in sky-glow brighter than area conditions.

Under the “other impacts” section of Part 2 of the FEAF, the Board considered impacts resulting from the generation of dust and particulate matter during transport of aggregate material including trucks delivering material to the site, unloading, stockpiling, loading, and other operations. The Project narrative submitted by the Applicant and revised through March 2020 includes a list of best management practices (BMPs) to control dust on site including using an onsite water truck to “spray down the internal road, working areas, piles and loading operations in order to manage dust on dry days when dust appears.” The Applicant also uses a street sweeper to assist with dust control. As part of the Proposed Action, the Applicant has proposed to repave deteriorated areas of the working area to mitigate concerns with dust control. While these BMPs assist with the control of dust, numerous accounts of large dust clouds emanating from the dock parcel as well as the Private Road through the South Bay have been reported. Photo 3, below shows one such instance.



**Photo 3: Southerly view showing dust generated by dock-bound truck leaving the private road and entering South Front Street.**

In evaluating the scale, context and magnitude of the proposed Project, the Board has determined that the potential impact of the Proposed Action on noise, odor, and light is large. The magnitude, duration, likelihood and importance of impacts to noise, odor, and light as a result of the Proposed Action is significant and adverse.

#### **16. Impacts on Human Health**

The Planning Board has identified the potential for the Proposed Action to impact human health from exposure to new or existing sources of contaminants with specific emphasis on exhaust from vehicles and equipment used in and dust generated by the intensification of dock operations. During detailed review of the Project record and in reviewing guidance from the DEC, subsequent questions “a” through “l” on Part 2 of the FEAF were all answered no or small impact may occur. The Planning Board has therefore determined that none of the potential impacts to human health identified rise to the level of significant or adverse.

#### **17. Consistency with Community Plans**

The Proposed Action may result in a large impact on community plans.

The Planning Board has identified the following community plans as relevant to the Proposed Action: the Vision Plan (1996), the Comprehensive Plan (2002), the Local Waterfront Revitalization Plan (“LWRP,” 2011), the Zoning Law (particularly as amended in 2011), and the City’s Downtown Revitalization Initiative Strategic Investment Plan

("DRI," 2017). SEQRA requires the consideration of land use components that may be different from, or in sharp contrast to, current surrounding land use patterns and whether the action is inconsistent with local land use plans or zoning regulations. The Planning Board acknowledges that the City of Hudson included dock operations at the deep water port in the Core Riverfront Zoning, subject to a Conditional Use Permit as "compatible with the overall goals and policies of the LWRP." DGEIS 3.1-24. However, more than ten years have passed since the City adopted the LWRP and the Planning Board must consider whether the proposed intensification of operations at the Dock is consistent with community plans.

Section 325-17.1D of the Zoning Law provides that continued use of a dock operation is permitted as a conditional use, as such use existed as of the effective date of LL 5-2011. As indicated in the DGEIS, in 2009, the date of the last available data before the adoption of the Zoning Law, O & G made approximately 80 round trips per day, Monday through Friday, or approximately 400 round trips per week during the shipping season. DGEIS 3.5-2. Any significant increase in intensity is in contravention of the plain language of the zoning law, which limits the operation to that which existed in 2011. The Planning Board therefore finds that the Proposed Action will result in a significant adverse impact on community plans.

Further, the Board has reviewed the SEQRA handbook for guidance on reviewing consistency with community plans. Section F requires that the Board consider project surroundings within 1500 feet, asking whether the current and future intensity of use differs from surrounding uses, including the Hudson River, South Bay, Riverfront Park, Hudson's 4.4 acres to the south, the Basilica, historic assets (Amtrak station, historic districts, Dunn), and the KAZ site which has recently been purchased and is being considered for redevelopment. The Planning Board finds that the proposed intensification of the industrial use is in sharp contrast with the mixed-use development existing at the waterfront.

Section G of the SEQRA Handbook requires that the Board consider whether the project will make it easier for other land uses to move into the area in the future, whether the project promotes economic growth, and whether the project is in an underused area that could be the target of future development. Question 17 directs the Planning Board to consider whether the Proposed Action is consistent with the vision and goals of the identified community plans, specifically whether the intensity of the proposed project is similar or different from surrounding uses, whether it will generate new or more traffic, and whether it is consistent with overall scale and intensity of the surroundings.

The Planning Board finds that the increased truck traffic, with its attendant impacts on dust, noise and vibration, will make it more difficult for mixed residential and commercial uses to move into the area in the future. The Planning Board also finds that

the intensification of the use is inconsistent with the City's 1995-1996 Vision Plan, continuing with the 2000 Comprehensive Plan and LWRP, in which city residents have made clear their desire for a greener, more sustainable waterfront. Public access, recreational opportunities, habitat restoration, environmental quality, and appropriate commercial development are consistently listed as top priorities.

The Vision Plan 1995-96 promotes the goal of enhancing the quality of life in Hudson. It makes recommendations redeveloping the underutilized waterfront, promoting business development and visual improvements in the city center, and increasing the number and quality of recreational opportunities.

The City's 2002 Comprehensive Plan provides that the number one goal is to "Protect the Traditional Character of Hudson's Downtown & Neighborhoods." Design policies should encourage mixed-use development in high activity areas like Warren Street, Front Street, and the waterfront. The City intends to initiate a new Comprehensive Planning process as soon as 2022.

In a 2005 Coastal Consistency Determination, Secretary of State Randy Daniels recommended that a new waterfront zone be created right away for the benefit of City and County residents. (p 10-11). Adopting language directly from pp. 85-88 of the Hudson Vision Plan, then Secretary of State Daniels' decision outlined the exact manner in which that rezoning should take place with an unusual degree of specificity. He noted:

"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.

The LWRP sought to create "a vision which will serve the City and the State long after those involved today are forgotten" (p. 338). Although the LWRP includes the continuation of uses at the deep port, it does not support a significant intensification of the use. The 2009 DGEIS for the LWRP was based on significantly less truck traffic, and seasonal use, and the zoning adopted pursuant to the LWRP specifically authorizes the use as it existed in 2011.

The Hudson Vision Plan, Comprehensive Plan, the 2005 Secretary of State's Coastal Consistency determination on the St. Lawrence proposal, and Department of State guidance on the draft LWRP call for the City to enact a plan that zones out incompatible, industrial uses at the Waterfront.

Even the recent Downtown Revitalization Initiative application, which recognizes the Applicant's dock operations, notes that "Recent organic, entrepreneurial development of the BRIDGE District have primed Hudson for the inevitable next phase of its

revitalization which includes re-imagining the waterfront for expanded public use and enjoyment.”

Based on the discussion above, the Planning Board finds that the Proposed Action has the potential to result in a significant adverse impact on community plans.

#### **18. Consistency with Community Character**

The Planning Board has evaluated the scale and context of the Project and has determined that it may result in a significant adverse impact on community character.

In 2017, the Town of Greenport Planning Board determined that the “existing Hudson waterfront area consists of a combination of recreational, commercial, mass transportation, and light industrial uses that have co-existed for decades.” Since the DGEIS was reviewed in 2009, and since the Greenport Planning Board made this finding in 2017, the area around the Project Site has been improved with additional mixed-use development by mixed-use waterfront-orientated hospitality, entertainment, and retail (such as the Basilica special events venue) that is inconsistent with increased industrial use. Apart from the current application, no new industrially-oriented land uses have been developed or considered during the last several years. Transport of bulk construction materials is currently an anomalous use in the neighborhood.

The City was also the winner of the State’s Downtown Revitalization Initiative program in 2017 to allow the city to attract additional private investment in the waterfront. There has been renewed interest in the existing cultural and historic resources in the area, and the Train Station, Storage Shed and Basilica have all been determined eligible for listing on the National Register of Historic Places subsequent to the DGEIS in 2009.

The Planning Board has determined that significant adverse impacts are likely to occur and that these impacts will be of considerable magnitude and duration.

Based on the changes in the community over the past decade and the proposed intensification of the industrial use, the Planning Board finds that there is the potential for a significant adverse impact on Community Character. The Planning Board notes that the impacts include potential benefits to Community Character, particularly if the proposed Project results in aggregate-laden trucks no longer running on City streets in the 2nd and 4th Wards. However, the Board again notes that the applicant has not demonstrated why they have to use the truck route going through Hudson given the existence of their private two-way road. The Planning Board considered public input in evaluating this potential benefit, which could be long-lasting and significant.

The Planning Board notes that the SEIS should address: 1) mitigation for visual impacts, see §325.17.1.F; 2) mitigation for impacts to views from the water, see §325.17.1.D and

3) mitigation for potential impacts to the orderly development of adjacent properties, see LWRP Policies 2 and 4.

Finally, the Planning Board notes that “In Village of Chestnut Ridge v. Town of Ramapo, 45 AD3d 74 (2d Dept.2007), the court observed that, “[t]he power to define community character is a unique prerogative of a municipality acting in its governmental capacity.” It was further stated that it is the municipality’s responsibility to define their own character through the use of zoning and planning powers. As set forth above, the Proposed Action is inconsistent with the community character without adequate further mitigation.

**C. SUMMARY**

The Planning Board intends for the SEQRA review of the Application to be based firmly upon the comprehensive efforts of the 2011 Local Waterfront Revitalization Program and Findings Statement, including the DGEIS and FGEIS documents that preceded its enactment and of course the subsequent provisions of the Code passed into law as a result of the local adoption of the LWRP.

Both the LWRP and the Findings Statement assume that site-specific proposals within the Waterfront district would require a Supplemental Environmental Impact Statement. Ten years have now passed since the City adopted its Findings Statement and a triggering event has occurred that requires the Planning Board to reconsider the dock operations, including the Private Road as part of the CUP application.

Notwithstanding the specific impacts identified above, and by no means excluding any one of them individually or severally, the Planning Board believes that the SEIS needs to focus on the significant changes that have occurred in the Waterfront district since the 2011 adoption of the LWRP and the proposed increase in intensity of operations at the Property.