



CITY OF KINGSTON
BROWNFIELD OPPORTUNITY AREA STEP 3
Final Implementation Plan | Appendix B
December 2015

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PROJECT TEAM

New York Department of State
City of Kingston

Perkins+Will

SCAPE / LANDSCAPE ARCHITECTURE

Nautilus International Development Consulting

Jones Lang LaSalle

URS Corporation

Watts Architecture & Engineering

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KINGSTON CONSERVATION ADVISORY COUNCIL

BOA Implementation Plan Review

Kingston Conservation Advisory Council

November 23, 2015

General Comments

1. We like the idea of layered defense to adapt to rising waters.
2. Hudson Riverport has many good ideas for reclaiming and protecting the wetlands and waterfront, as well as cleaning up brownfields. But, the many developments in flood prone areas seem short sighted. Take rising sea levels into all construction recommendations.
3. Be sure that softened shorelines that accommodate and absorb water are considered as highly as hardened shorelines.
4. Flipable board walks and hard edges could cause more water elsewhere so great detail must be had in researching and reviewing this option.
5. Couple wildlife habitat enhancement with built environment at Kingston Point to remain low impact.
6. Development should be consistent with the anticipated life of the facility.

1. Specific Recommendations (only from Volumes 1 and 2)

- a. Plan should use most up to date information/data available. Examples not used:
 - i. Tidal Rondout Creek Watershed Management Plan
 - ii. Habitat Summary <http://www.kingston-ny.gov/content/8399/8491/8495/10452/10485.aspx>
 - iii. NYS Sea Level Rise Projections based on Community Risk and Resiliency Act, issued 10/30/2015, which are based on ClimAid
- b. Be sure to use consistent language when referring to the area: “shoreline”, “waterfront” and “riverfront” seem to all be used interchangeably
- c. The ability of natural habitats and resources to protect from erosion versus flooding should be stated with caution: small fringing wetlands will not protect from flooding
- d. The role of the jetty to the lighthouse and the trolley causeway in protecting the wetlands/habitats should be mentioned. They act to absorb energy and could be built up to keep up with sea level rise so wetlands could be more protected.
- e. Be sure to mention that Kingston is on the tidal Hudson River Estuary and that the Rondout Creek is tidal, recognizing that both waterfronts are affected by the watersheds and the ocean.
- f. The health and welfare of the public should be foremost, so be wary to downplay the effects of sea level rise on such. Also, there seems to be some inconsistency on how seriously the Plan takes sea level rise into effect.

- g. When mentioning particular locations (Steelhouse, Millens, etc.) use street addresses or parcel numbers as locations will be constant but landowners/business names will change.
 - h. When referencing the Rondout Creek, be consistent on how to refer to it; use the Rondout Creek, not Rondout Creek-throughout document
 - i. Maps that include floodplains should include permanent inundation areas and sea level rise
 - j. No mention is made of rowing clubs either as potential or established, for spectators/tourism
2. Volume I
- a. P. 8 last bullet, land us should read land use
 - b. P. 8 paragraph 2, be consistent on use of Phase 1 vs. Phase One term , also page 112 and elsewhere
 - c. P. 11 #6 add Host or Encourage at beginning of sentence for consistency
 - d. p. 13 What does “regional” playground mean? Attracts those beyond the neighborhood?
 - e. p. 14 Adaptive Edge flooding concerns seem to disregard the fact that Zone 1 also has flooding concerns
 - f. p 20 Period missing at end of paragraph 1
 - g. p 22 reference to Public meeting that needs to be held is now dated (and on p. 23, 27)
 - h. p 23 Ponckhockie resident should likely read “residents” as more than one were likely involved
 - i. p 23 last sentence should read “this section provides”
 - j. p 29 Figure 4.1 has Kingston’s location way too far north, more like at the level of Albany
 - k. p 29 this paragraph is unclear, should be more explicit about permanent inundation from sea level rise and temporary flooding from a variety of causes including upland rainfall, high tides and storm surge.
 - l. P 34 also list that this area is located within the NYSDOS Significant Coastal Fish and Wildlife Habitat, might refer to Habitat Summary <http://www.kingston-ny.gov/content/8399/8491/8495/10452/10485.aspx>
 - m. p 36 Kingston Beach should read Kingston Point Beach
 - n. p 38 mentions Town of Kingston’s watershed, should be City
 - o. p 39 figure 4.12 Rondout is spelled wrong in watershed delineation , also, page 47 second line
 - p. p. 41 references Village of Kingston as part of creation of city, p 40 uses Town of Kingston
 - q. p 42, second to last paragraph has no ending.
 - r. P. 45 check accuracy of citation, might be ANNALS OF THE NEW YORK ACADEMY OF SCIENCES not AIA

- s. P 46 Watershed boundaries don't seem right. See Milone and MacBroom Tidal Rondout Creek Watershed Management Plan figures 1-1, 2-1 and 2-2
- t. P 47 figure 4.23 label needs word "sea"
- u. P. 47 Citation of sources is confusing. Are these "sources" (not source) or can there be more clarification as to if this is using the Planning for Rising Waters document and noting the sources within that. Use prime sources, not Kingston Flooding Task Force Report if using data from a separate prime source. Also refer to brand new NYS projections from 10/30/15.
- v. P 48-51 figures 4.24-4.27 , need to cite the source- ClimaAID? NYS Sea Level Rise Task Force Report?
- w. P 53, categorization is from good to poor, which is based on engineering, but poorly engineered may also be great for habitat value
- x. P 54 should differentiate between shoreline properties and the actual shoreline (boundary between land and water)
- y. P 54 double check, illustration is rock filled timber, not rip-rap
- z. Pg 59 Town of Kingston is used to label City of Kingston, also on p 63 Figure 4.36
- aa. P 61 should citation also include DOS for Critical habitat
- bb. P 74 and 75, why wouldn't Rondout Gardens and Spring Brook Village be part of these lists, or does this not include affordable housing?
- cc. Pg 79 references route 9, shouldn't that be 9W? also, JCPenney has vacated their location
- dd. P 80, first two Key Takeaways redundant from Key Takeaways on page 71
- ee. P 82 this references 6 hotels/motels in Kingston. There are 2 hotels in Kingston-on Washington Avenue, the Best Western Plus and Super 8. All others are in the Town of Ulster. P 83. The locations of the other two hotels is inaccurate. Those are in the Town of Ulster.
- ff. P. 86 The 7 track rail yard is in town of Ulster, isn't it? Just north of Kingston border.
- gg. P. 89 What about the parking lot at Kingston Point Park, by the Softball Fields. There are probably 50 spots there. This lot needs maintenance to manage regular flooding.
- hh. P 90 Kingston Greenline line 2 separate Valley and section
- ii. P 93 shows a pink dot for a marina at the site of the Lighthouse, also at the southern side of Island Dock there is no marina>however, there is at least one marina to the North of Island Dock. Also the marinas at HRMM and the docks at Mariners. Kingston City Marina.
- jj. Pg 94, and 95 KOSCO should be all caps, Kingston City Marina Dot should be on Kingston side of Creek, not on Esopus
- kk. P 97 use either waste water treatment plant or sewage treatment plant, to be consistent, also page 109

- ll. P 98 This would be a good location to reference the Milone and MacBroome Tidal Rondout Creek Watershed Management Plan and its role in managing storm water and the watershed.
 - mm. P 98 last sentence in Marine Infrastructure assessment is incomplete.
 - nn. Pg 998, East Strand, line 4, Implementation “of”
 - oo. P 105 need to include Tidal Rondout Creek Watershed Management Plan, even in draft form; also Planning for Rising Waters
 - pp. P 108 add to current initiatives Rondout Creek Tidal Watershed Management Plan
 - qq. P 109 under Kingston Greenline, don’t use our, use the study area
 - rr. P 110 Kingston Point Upgrades, also a new shower and changing building, with accompanying landscaping has been built at Kingston Point Beach
 - ss. P 112 second paragraph line 4 add Up to Clean Up
 - tt. P 116 Constraint for Block Park/Island Dock is existing use. Block Park is a public recreational space that also hosts organized softball leagues 5 nights a week from May-September in addition to the pavilion rentals and passive recreation
 - uu. P 141 the map shows a “regional dog park” to the North of Delaware. For the past few years, there has been a dog park at Kingston Point, already in existence, on the south side of Delaware.
3. Volume 2
- a. Map on page 9 shows BMX and Softball fields at KPP but maps on p 141 of Volume 1 not consistent with amenities
 - b. P. 16 caption spells Rondout incorrectly
 - c. P 21 5. The waterfront belongs “to” everyone
 - d. P 42 “Reef Streets”?
 - e. P 45-adaptive edge
 - i. low pH is a plus for marine systems, this is riverine
 - ii. eelgrass is marine, do you mean to say water celery?
 - iii. for freshwater mussel is this referencing zebra mussels? These are invasive
 - iv. riffle construction –implies moving water/stream
 - v. what is meant by “Hudson River Estuary Program”- does this imply part of the HREP Restoration Plan?
 - f. How does a deployable floodwall keep water from flooding around the edge of the structure?
 - g. P 52- restoring flow to the Island Dock inner channel would allow waters to outflow more rapidly, however, since the Rondout is tidal, it would also allow for more water to inflow, and with the narrow channel, could cause scouring and erosion
 - h. P 52. We recommend you use 2060 and 36” as much of the area of the BOA is projected to be inundated. This is downplayed on most existing buildings. Some buildings would be within inundation zone, not just periodic flooding.

- i. P 55 Small fringing wetlands may not be adequately sufficient for protection from storm surge
- j. P 56 uphill flooding could instead say runoff of storm water from uphill that causes downhill flooding
- k. P 57 Protect: Existing wetlands “are” habitat for fish and wildlife; Green Buffer Zone is good idea
- l. P 58 under Step 2, there are recommendations that the Flooding Task Force will need to review key locations... the Flooding Task force is no longer a functioning entity
- m. P 59 figure 6.39 is an interesting, though seemingly expensive idea in which drainage would also need to be worked out
- n. P 70 wouldn’t Millens be located on the east or south side of East Strand Street, not the north as stated here?
- o. P 74 small boats might say instead “canal” boats; might also mention the use of Island Dock for concrete block manufacturing; there is no mention of P & T Surplus, which is also on this site
- p. P 75 didn’t other maps also show a second pedestrian bridge from another location to the west, like at Ravine?
- q. P 76 should floor line on the last sentence read flood line? And what happens when Island Dock is permanently inundated?
- r. P 90 in paragraph 2, where it states “most likely will be inundated with flood waters”, it should instead, or also state “ permanently inundated from rising sea levels.
- s. P 90 Land Use Control vs. Institutional, wouldn’t zoning be a Land Use?
- t. P 90 This assumes the Revitalizing Hudson Riverfronts was written for Kingston while it was actually written in cooperation with Kingston, about the region. Also, this is not a “plan” but rather a guidance document.
- u. Be sure to emphasize that the health and welfare of the public should be foremost, including protection from contamination and flooding.
- v. P 92 KLPC, shouldn’t that be HLPC (see also p. 115)
- w. P 94 add Rondout Creek Watershed Management Plan to In Progress
- x. P 112 – might note that Steelhouse is an example of designing to accommodate flooding, i.e. use of concrete floor, raised utilities, etc.
- y. P 118- might want to suggest LEED *or its* equivalent, as there are several other standards that may be just as effective. Like Green Globes
- z. It is good that (p 124-134) choices are described and pros and cons, as well as the evaluation matrix for local management structures. This shows comprehensive review.
- aa. P 126 Kingston Chamber of Commerce is Ulster County Chamber of Commerce

RIVERKEEPER



November 23, 2015

Sent via US Mail and Email

Mr. Gregg Swanzey

Office of Economic Development and Strategic Partnerships

420 Broadway

Kingston, NY 12401

gswanzey@kingston-ny.gov

**Re: Public Comments on Proposed City of Kingston Brownfield Opportunity Area
Step 3 Implementation Plan and Generic Environmental Impact Statement**

Dear Mr. Swanzey:

Please accept the following comments on behalf of Riverkeeper, Inc. (“Riverkeeper”) and its approximately 55,000 members regarding the City of Kingston’s above-referenced proposed Brownfield Opportunity Area Step 3 Implementation Plan and Generic Environmental Impact Statement (“BOA Plan”).

Riverkeeper is a member supported, not-for-profit organization dedicated to protecting and restoring the Hudson River Estuary. For 15 years, Riverkeeper has regularly patrolled the Rondout Creek estuary as part of monthly boat patrols of the Hudson River. Since 2008, we have sampled water quality monthly in the tidal Rondout Creek, and since 2012, working in partnership with community scientists, we have sampled water quality throughout the greater Rondout-Walkill watershed. During monthly patrols, Riverkeeper’s on-board lab serves as the platform for this community science effort, and we receive samples from the public for these ongoing inquiries while docked on the Rondout at the Hudson River Maritime Museum.

Riverkeeper helped catalyze the creation of in 2015, and continues to closely advise, the Wallkill River Watershed Alliance, a new citizen group devoted to protection and restoration of the Rondout Creek's largest tributary; and Riverkeeper works actively with conservation advisory councils representing Rondout Creek towns (Wawarsing, Rochester, Marbletown and Rosendale) to promote restoration and protection of the Rondout Creek upstream of Kingston. Riverkeeper has maintained satellite office space on the Rondout Creek at the museum and is currently planning to expand office and lab space at the museum. Riverkeeper contributed to the City of Kingston's draft Tidal Rondout Creek Watershed Management Plan, and recently commented on the Department of Environmental Conservation's proposed state Superfund cleanup of the Millens scrap yard, one of the properties slated for redevelopment as part of the BOA Plan vision.

Riverkeeper is a stakeholder in the Rondout Creek and its waterfront, as a matter of our mission and our programmatic work summarized above. We appreciate the opportunity to comment on Kingston's Hudson River Port vision described in the BOA Plan.

When considering shoreline developments, Riverkeeper generally supports public access, water-dependent uses, and specific measures to not only minimize and mitigate impacts of development –notably, stormwater runoff – but wherever and whenever possible, to improve water quality and restore aquatic and shoreline habitats. This should be particularly a focus for the Rondout Creek, a significant estuarine habitat with a history of industrial activity, pollution, shoreline filling, channelization, and contaminated sediment.

Redevelopment plans for 192 acres of waterfront on the Rondout Creek, the largest tributary of the tidal Hudson River, are largely in line with our principles, and we applaud the city's effort to create a vibrant and environmentally sensitive development plan for Kingston. Riverkeeper fully agrees with the City that the City-led SEQRA process in connection with the Implementation Plan for the Kingston Riverport Brownfield Opportunity Area (BOA Plan) will require all parties to maximize access to technical assistance, grant funding and financing incentives to redevelop brownfield sites in order to protect public, recreational and water-related or water-dependent commercial access to the waterfront (BOA Plan Vol. 1 at 7). The City as lead agency has initiated and must now complete a transparent, collaborative process for interested parties and involved agencies such as the Department of Environmental Conservation

(the Department or NYSDEC). The SEQRA process going forward must ensure that significant adverse environmental impacts are identified and avoided where possible, or otherwise mitigated to the maximum extent practicable by incorporating mitigative measures which can be identified as practicable, taking into a consideration the balancing of social and economic interests as required by SEQRA.

1. The GEIS Must Be Supplemented With Respect to Water Quality Impacts from Brownfield Redevelopments on a Site-Specific and Case-by-Case Basis.

As the City’s Notice of Complete Application (NOCA) explains, future projects are “proposed to be located on former brownfields, and implementation of the BOA Plan may result in the exposure of existing sources of contaminants. With the exception of Block Park, each of the Strategic Sites includes some level of known environmental concern. Additional environmental study or remediation planning may be required to determine the nature and extent of clean up necessary to allow the preferred redevelopment scenarios.” (NOCA at 3). While the Draft BOA Plan represents a significant step forward towards a Generic EIS, the water quality issues involved in the proposed brownfield and waterfront redevelopment will require additional, integrated and cumulative analyses via one or more Supplemental Environmental Impacts Statements (SEISs). Contamination along the Kingston waterfront includes heavy metals, dissolved inorganic pollutants, persistent organic pollutants, PCBs, volatile organic compounds (VOCs), and semi-volatile organic compounds (SVOCs) (*see, e.g.,* BOA Plan Vol. III at 19). While Riverkeeper agrees with the City that “[a]ny such contamination is capable of remediation and [are] not an obstacle to redevelopment” (*id.*), such remediation must not be permitted to adversely impact the physical, chemical or biological parameters of water quality of the Rondout Creek and the Hudson River, or to violate the water quality standards and effluent limitations which protect those waters.

Hazardous waste discharges from the subject brownfield areas (via groundwater, discrete point sources, or runoff associated with construction) must be addressed by the New York State Department of Environmental Conservation (the Department or NYSDEC herein)

and the City via the SEQRA process consistent with generally applicable and duly promulgated water quality standards and effluent controls (6 NYCRR § 375-1.8; ECL § 8-0109). For its part, Department must, in connection with brownfield remediations, apply and ensure compliance with the most protective water quality standards, including broad narrative and use protection water quality standards (*see United States v. Akzo Coatings of Am.*, 949 F.2d 1409, 1443 [6th Cir. 1991]). The Department is already taking important steps to incorporate the necessary Clean Water Act effluent limitations and water quality standards with respect to construction-phase stormwater controls (including structural best management practices) from the Millens Scrapyard Interim Remedial Measure (*see* Appendix to these comments, with Exhibits A through E thereto). The SEQRA process, in turn, should address the cumulative water quality impacts of the overall water front redevelopment project, taking into consideration the impacts of both hazardous and conventional pollutants.

To that end, the SEQRA process for the Kingston Riverport should be informed by the Department's data, determinations and directives with respect to the inactive hazardous waste sites which are included in the overall development area. For example, the Department has also required extensive sediment sampling and characterization at the shoreline of the inactive hazardous waste site (the former manufactured gas plant) which lies between the Millens site and Rondout Creek (*see* Appendix, November 16, 2015 Letter to Dan Shapley, Riverkeeper Water Quality Program Manager from Kevin Carpenter, P.E., NYSDEC). Supplements to the GEIS must include information such as the data obtained from such sediment characterizations and other investigations in order for the SEQRA process going forward to ensure that an adaptive management approach is applied with respect to overall project cumulative impacts and the identification and minimization thereof. Best management practices and other effluent limitations for the respective brownfield redevelopment sites must complement each other and should function together as an effective, integrated overall strategy to avoid or minimize water quality impacts to Rondout Creek and the Hudson River.

The Department's actions with respect to the Millens Scrapyard Interim Remedial Measure and the City's GEIS for the BOA Plan represent important first steps in this regard, and

Supplements to the GEIS will address each aspect of the project going forward.¹ Nonetheless, the GEIS itself requires additional focus on cumulative brownfield redevelopment impacts as a threshold matter (*see* 6 NYCRR § 617.10[e]). The GEIS should recognize, account for and address the fact that the Hudson River is listed as impaired for fish consumption from contaminated sediment, and ensure that each aspect and phase of the proposed Kingston Riverport’s development going forward is conditioned so as to not contribute to the impaired status of the Hudson River. Such an approach would be required in order to even make the threshold GEIS finding that “implementation of the BOA Plan will result in significantly adverse impacts that cannot be mitigated.” (Notice of Complete Application at 3, BOA Plan Vol III at 57).

2. The GEIS Will Require Supplementation With Respect to a Variety of Additional Department Approvals Regarding Water Quality.

Going forward from the GEIS Phase, the BOA Plan will require a more refined focus on all categories of water quality impacts for SEQRA purposes (*see* BOA Plan Vol. 1 at 18). As the BOA Plan explains:

All development actions taking place after the adoption of this BOA Plan and Generic EIS will still be subject to the SEQRA process on a site specific basis. Nothing contained in this document supplants the necessity of adequate environmental review of future actions. However, this BOA Plan will be a resource that can be used to facilitate the review under SEQRA of future development actions (BOA Plan Vol. III at 57).

¹ As Volume III of the BOA Plan explains with respect to the Millens site, “once the Interim Remedial Measure is complete, NYSDEC will determine if any additional remedial actions are needed. If it is decided that additional cleanup action is needed, the project will proceed to designing and performing cleanup to address identified contamination issues.” Thereafter, NYSDEC may reclassify the Millens site or remove it completely from the New York State Inactive Hazardous Waste Site Registry (BOA Plan Vol. III at 53-54).

Stormwater, which the BOA Plan does include among its introductory impact categories (BOA Plan Vol. 1 at 18), is one of many facets of the significant adverse water quality impacts to be both addressed consistent with Clean Water Act (CWA), Article 17 of the Environmental Conservation Law (ECL) and state water quality standards. Stormwater impacts must also be minimized as practicable per SEQRA.

For purposes of the present procedural posture of the BOA program, a GEIS is an appropriate vehicle for SEQRA compliance, but the GEIS must include specific findings recognizing the need to augment the GEIS with more specific supplemental EISs “to reflect site-specific impacts from future projects that could not be adequately addressed in the GEIS at this time.”(BOA Plan Vol. III at 9; *see also* 6 NYCRR § 617.10[c]).

The City has accordingly properly identified the need for project segment-specific, iterative supplements to the GEIS, and the final GEIS must reflect that need for further environmental review for impacts that cannot now be adequately addressed via the GEIS (*see Price v. County of Westchester*, 225 A.D.2d 217, 223 [3d Dep't 1996]; *Matter of O'Brien-Dailey v Town of Lyonsdale*, 26 Misc. 3d 1228[A] [N.Y. Sup. Ct. 2009]). SEQRA consequently provides that “[a] supplement to the final generic EIS must be prepared if the subsequent proposed action was not addressed or was not adequately addressed in the generic EIS and the subsequent action may have one or more significant adverse environmental impacts.” (6 NYCRR § 617.10[d][4] [emphasis supplied]).

The GEIS and proposed Supplemental EISs must address, among other things, a statement and evaluation of the potential significant adverse environmental impacts (including impacts to the physical, chemical and biological parameters of water quality) at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence, and also identify applicable and significant reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts (6 NYCRR § 617.9[b][5]). As noted, and as the BOA Plan documents recognize, the principal impacts at issue will be water quality impacts. New York State’s Water Quality Standards provide the benchmark for impact assessment of long-term, short term, cumulative and project-segment-specific impacts via the SEQRA process.

New York State’s water quality standards are provisions of State and federal law, which define the quality goals of a water body or some portion of it, by (1) designating the use or uses (known in New York State as “best usages”) to be made of the water, (2) by setting criteria (numerical or narrative) necessary to protect the uses, and (3) “by incorporating an antidegradation policy designed to prevent the gradual deterioration of the quality of the water body.” (*Niagara Mohawk Power Corp. v. State Dep’t of Env’tl. Conservation*, 82 N.Y.2d 191, 194 [1993]; *see also Islander E. Pipeline Co., LLC v. Conn. Dep’t of Env’tl. Prot.*, 482 F.3d 79, 120-21 [2d Cir. 2006]).

The New York State Legislature declared the Hudson River estuary to be “of statewide and national importance as a habitat for marine, anadromous, catadromous, riverine and freshwater fish species” (ECL § 11-0306). The river’s biological populations are “of vital importance to the ecology and the economy of the state and to the recreational and commercial needs of the people of New York State and neighboring states,” and the fishery provides “outstanding commercial and recreational value” (*id.*).

Rondout Creek south of the site is a Class C water body, the best usages of which include fishing and primary contact recreation. The draft Tidal Rondout Creek Watershed Management Plan recommends a change in classification for the tidal Rondout Creek, from Class C to Class B. The best usages of Class B waters include primary contact recreation, such as swimming. The Hudson River is classified as a Class A water body. The best usages of Class A waters are a source of water supply for drinking, culinary, or food processing purposes; primary and secondary contact recreation; and fishing. The Hudson River is used as a source of drinking water, with the Port Ewen drinking water intake located approximately 2.3 mi downstream from the confluence of Rondout Creek and the Hudson River.

Shoreline structures and fill placement will be subject to Protection of Waters Permit requirements under ECL Article 15, while the aspects of the project which require Army Corps of Engineers CWA Section 404 permits (watercourse and wetlands and dredge and fill) will be subject to the State’s Section 401 water quality certification authority. A state coastal wetlands permit will also be required. Such examples are offered by way of example and not of limitation. Supplemental EISs on a site-specific basis will allow both the City and the Department (an involved agency) to require additional controls beyond those required by the

Department's permit programs as appropriate (see, e.g., *Long Island Contractors' Ass'n v. Town of Riverhead*, 17 A.D.3d 590, 593 [2d Dep't 2005]; *Schenectady Chemical, Inc. v Flacke*, 82 A.D.2d 460, 462-63 [3d Dep't 1981]).

One or more supplemental EISs must address the cumulative impacts of all such activities, and the initial GEIS should broadly address applicable water quality standards (including Class A [Hudson River] and Class C [Rondout Creek] best usages) which will provide for the coordinated compliance of all aspects of the project with applicable water quality management goals and discharge restrictions (see 6 NYCRR § 617.10[e]).

Supplements to the GEIS should also address concerns with respect to integrating and expediting the project segment specific approvals required for the overall project. For example, Riverkeeper agrees with the BOA Plan's conclusion that an individual construction stormwater (SPDES) permit will be required (BOA Plan Vol. 1 at 19), and that such a permit must holistically address the cumulative impacts of the various construction projects which together comprise the common plan for development reflected in the BOA Plan. As the BOA Plan explains, Individual Stormwater Pollution Prevention Plans (SWPPP) will be required for coverage under the NYSDEC State Pollutant Discharge Elimination System (SPDES) General Permit (GP-0-15-002) for the treatment and management of Stormwater Discharges from Construction Activities associated with development of the Project (BOA Vol. III at 54). While SPDES requirements typically only apply to projects which disturb one acre or more of land (with certain acreages of land disturbance, including clearing, grading and excavation, see 40 CFR § 122.26[b][14][x] and/or [b][15][i] or [ii]; 6 NYCRR § 750-1.21[b][2]), the discrete, phased projects which comprise the BOA Plan are all part of a "a larger common plan of development or sale that will ultimately disturb one or more acres of land" (see GP-0-15-002 at 1).²

As a condition of compliance with SEQRA, the BOA Plan should also include the requirement that all aspects of the overall project include site-specific green infrastructure measures to allow for the infiltration and treatment of operational-phase stormwater, with

² Direct discharges of construction stormwater to the Rondout Creek Significant Coastal Fish and Wildlife Habitats is another consideration which favors the issuance of an individual SPDES stormwater permit (6 NYCRR § 750-1.21[e][1][viii][a]). The combined size of the entire discharge associated with the BOA Plan cannot be properly authorized under a general permit (see, e.g., 6 NYCRR § 750-1.21[e][1][viii][b]).

priority given to green infrastructure projects that will reduce flows to the combined sewers, thereby reducing the number and severity of combined sewer overflow events. Such measures serve to protect both water quality and to mitigate flood risks, as described in detail in the BOA Plan.³ Similar and additional measures contained in the attached June 2015 NRDC Report (Appendix, Exhibit E) on Green Infrastructure Measures. The project-wide application of site-specific green infrastructure measures via the SEQRA process would also be consistent with the recommendations Nos. 8 and 11 of the Kingston Tidal Waterfront Flooding Task Force (*see* BOA Plan Appendix at 52) and serve to address the concerns raised with respect to flooding in the City’s long-form Environmental Assessment Form (*see id.* at 92).

3. Supplemental EISs Should Be Required Going Forward In Order to Assess Impacts to Significant Coastal Fish and Wildlife Habitat and to Threatened and Endangered Species and Species of Special Concern.

The Hudson River up to the federal dam in Troy has also been designated as essential fish habitat (“EFH”) by the National Marine Fisheries Service (“NMFS”). The Rondout Creek, from its mouth at the Hudson to the dam at Eddyville, is also state-designated significant coastal fish and wildlife habitat. Any activity that would substantially degrade water quality, increase turbidity or sedimentation, alter flows, temperature or water depths in the SCFWH would result in significant impairment of the habitat (*see* New York State Department of State Rondout Creek Coastal Fish and Wildlife Rating Form [Revised Aug. 15, 2012] at 3, available at <http://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html#hudson> [last visited

³ For example, the East Strand Analysis concludes that the existing stormwater drainage systems in the East Strand Street area are inadequate to prevent localized “nuisance flooding” from storm runoff from upstream tributary areas (10 year rainfall event or less), due to both inadequate capacity and low elevations on East Strand Street (BOA Plan Vol. III at 35). Overall, in the light of the high level of precipitation in Ulster County, the BOA Plan has also observed that “strategies should be implemented to capture rain water and increase permeable surfaces to reduce strains on infrastructure and the potential of contaminates [sic] washing into the creek.” (BOA Plan Vol. 1 at 42).

11/22/15]). Construction of shoreline structures, or elimination, disturbance, or alteration of riparian areas, wetlands, littoral zones, or mudflats by excavation, filling, or bulkheading could also result in the direct loss of valuable habitat (*id.*).

The Sleightsburgh Marsh, which is located at the mouth of Rondout Creek, is a critical aspect of the Rondout SCFWH designation. These wetlands provide productive feeding areas for a variety of waterfowl species during spring (March-April) and fall (mid-September-early December) migrations as well as habitat for shorebirds, wading birds and songbirds (*id.*).

Bald eagles, which are listed by the Department as a State “threatened” species pursuant 6 NYCRR Part 182, have been observed fishing in the river around Sleightsburg Marsh, and osprey congregate at the mouth of Rondout Creek where clear water and shallows offer prime foraging during spring migrations (*id.*). Significant natural communities located in the vicinity of the site include freshwater tidal marsh and intertidal shore within the Rondout Creek mouth and Hudson River, which provide habitat for New York State threatened Pied-billed Grebe; and New York State endangered plant species including American waterwort, Large Twayblade, and also the Hudson River Water Nymph (NYSDEC Environmental Resources Mapper, 2013)

4. The GEIS May Require Supplementation in Order to Address the Community Risk and Resiliency Act.

Riverkeeper applauds and support the BOA Plan’s emphasis on resiliency with respect to sea-level rise, storm surges and flooding. Structures placed in the floodway inevitably raise the base flood elevation. Poorly planned and short-sighted creation of impervious surfaces along waterways can exacerbate both stormwater pollution and flooding. The BOA Plan includes multiple approaches to properly plan for sea-level rise, storm surges and flooding (*see, e.g.*, BOA Plan Vol. at 29; NOCA at 2). On September 22, 2014, Governor Cuomo signed bill A06558/S06617-B, the Community Risk and Resiliency Act (CRRA), the purpose of which is to ensure that, among other things, state funding and permits take into consideration the effects of climate risk and extreme-weather events. The CRRA will apply to certain applications and permits no later than January 1, 2017. In the permitting context, the Department will be considering sea-level rise, storm surge and flooding when issuing permits such as the ECL Article 15 Protection of Waters Permits and Tidal Wetlands Permits which would be required for the project. Riverkeeper understands that the Department will be issuing implementing

regulations for the CRRA next year. The resiliency aspects of the BOA Plan should be re-evaluated in the light of the CRRA regulations going forward, and the GEIS should be supplemented as the City and/or the Department deem necessary in that regard.

5. **Reconsider parkland swap, preserving Block Park for athletic fields and Island Dock for passive recreation.**

SEQRA requires the City to consider environmental impacts and to strike a balance between social and economic goals and concerns about the environment, which is turn broadly defined to include "land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character" (*see Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 414, [1986], *citing* ECL § 8-0105[6]; 6 NYCRR § 617.2 [k] [emphasis supplied]). In connection with the action proposed by the BOA Plan, the City proposes selling Block Park, and possibly using proceeds to fund the purchase of Island Dock for parkland. In general, Riverkeeper opposes alienation and swapping of parkland, such as is envisioned in the BOA Plan. While making Island Dock a park is a worthy goal, its creation should not come at the expense of Block Park, nor should athletic fields necessarily be a focus of park development on Island Dock, described accurately in the BOA Plan as “uniquely scenic undeveloped land” where passive recreation and recreational water access are more appropriate uses. Block Park is plainly a significant aspect of the existing community and neighborhood character of the Kingston Waterfront, and the loss of Block Park would equally plainly represent an avoidable, undue and significant adverse environmental impact to the Kingston Waterfront.

Moreover, swapping out Block Park (an existing feature of the community and the natural resources at issue) for Island Dock would not constitute mitigation for impacts, even if such an action were truly unavoidable. The comparison made in the plan, that swapping a 7-acre park for a 17-acre park is a net increase in publicly owned land, is misleading; in fact, such a swap would result in a net loss of seven acres of open space on the Rondout. Further, the BOA Plan is misleading in suggesting that Block Park is “relatively more upland” than Island Dock Park, when both properties are identified as having “extreme” risk to flooding. (*see* DEC

presentation DEC, http://www.dec.ny.gov/docs/administration_pdf/kingstonplan2.pdf). Since both properties are vulnerable to flooding even under current conditions, and will become more susceptible under accepted sea-level rise scenarios, encouraging the construction of 538,000 square feet of mixed use space on this parcel should be reconsidered. Even if structures are built to accommodate future flooding, they will displace floodwaters, worsening conditions elsewhere on the waterfront. Accordingly, the significant, undue, and utterly avoidable impacts of selling Block Park in connection with the BOA Plan would affect both the human community and the natural environment for purposes of SEQRA. Alternative funding should be identified for preserving Island Dock, while preserving Block Park as a gateway to expanded waterfront parkland.

Thank you for considering Riverkeeper's comments.



Dan Shapley

Water Quality Program Manager

Mark L. Lucas, Esq., Senior Counsel

Hudson River Program

SCENIC HUDSON

Scenic Hudson, Inc.

One Civic Center Plaza, Suite 200
Poughkeepsie, NY 12601-3156
Tel: 845 473 4440
Fax: 845 473 0740
email: info@scenichudson.org
www.scenichudson.org



November 23, 2015

By email

Mr. Gregg H. Swanzey
Director of Economic Development
City of Kingston
420 Broadway
Kingston, NY 12401
Subject: One Dutchess Avenue

Dear Mr. Swanzey:

Scenic Hudson has been an active participant in the development of the *Kingston Brown Field Opportunity Area Plan*, now called the *Hudson Riverport Implementation Plan* (HRIP). We have provided comments based on our waterfront-planning guide, *Revitalizing Hudson Riverfronts* (RHR), and the findings of the *Kingston Sea Level Rise Taskforce Recommendations*, both of which were conducted in partnership with the City, to ensure the redevelopment of the Rondout sets a high bar for riverfront communities in the Hudson Valley.

Scenic Hudson has reviewed the four sections of the HRIP, and is pleased that the recommendations in both RHR and SLR Taskforce have been well integrated throughout the plan. HRIP goes into exhaustive detail on the existing conditions, presents a compelling vision, and lays the groundwork for high-quality redevelopment. Importantly, the phasing of the plan projects a reasonable timeline for implementation.

Our main concerns with the plan are the length, nearly 500 pages in total, and the tendency for Volume II to use urban design and landscape jargon when talking about the vision. While it is good that the plan is comprehensive and includes detailed accounts of the public process used in its development, the recommendations get buried in the length of the plan. This could hamper developers' or community members' ability to fully grasp the plan and work towards its implementation. The design heavy jargon represents a similar impediment. While the phrasing is typical for design professionals describing projects, it can be difficult for the public to comprehend.

Scenic Hudson has two recommends for the City of Kingston that could help rectify these issues. First, the City should provide a brief, one paragraph description of each volume on the City's webpage where the plan is posted to help direct developers and community members through the document. Second, the City should do a final read through of Volume II to clarify the visioning language and make it more accessible to the public.

Scenic Hudson appreciates substantial work the City of Kingston, its staff, community members, stakeholders and the consultant, Perkins + Will, have put into crafting this implementation plan. We believe Kingston is demonstrating leadership among HV communities on waterfront revitalization and sea level rise resiliency with the Hudson Riverport Implementation Plan.

Thank you for your consideration.

Sincerely yours

Peter Barnard, AICP
Urban Designer

KEVIN MCEVOY

Kingston Brownfield Opportunity Area Comments Kevin McEvoy 11-23-15

I generally found favor with the Kingston Brownfield Opportunity Area Step 3 plan but did note four key areas for comment:

1. Park Alienation: The document includes in its preferred alternative, the sale of Block Park to a private developer. Text elsewhere refers to a PUD (planned unit development) based on the Hudson Landing guidelines as a precedent. This constitutes alienation of parkland, which has serious legal and community ramifications and should not be undertaken lightly. There is no substantive discussion in the document concerning alienating parkland and case law on the public trust doctrine. Island Dock which is proposed as a part of the land swap for Block Park appears to have more potential for adverse affects due to sea level rise than Block Park which may any proposed land swap a poor choice. Regarding Island Dock, the Tidal Flooding Task Force recommended to “ Evaluate whether it is desirable to use this area as a protective waterfront buffer. Conduct a cost-benefit analysis to determine whether remediation and fortification of the island is a feasible alternative over the long term.”

2. Tidal Flooding Task Force Consistency: A hotel proposed at or near the Millens site was not considered by the Tidal Flooding Task Force which recommended to evaluate the potential for developing a public greenway here and to work with the Trolley Museum, to develop a long-term strategy for elevating or relocating the railway and to consider elevating East Strand and North Street to maintain connections to Kingston Point and beyond.

3. Historic Resources & Design Standards:

a. Newark Lime & Cement Manufacturing : The document appears to ignore the significance of the former Newark Lime & Cement Manufacturing (NLCM) properties proposing to replace part or all of the site including the NLCM works and office building, a concrete structure dated 1868 with a parking lot and some undefined redevelopment in Phase 3. Instead the archeology at the site needs protection and the historic building should be adaptively reused with flood resiliency incorporated into its design. It appears excluded from the discussion of the KOSCO assemblage although it was part of the KOSCO property.

b. Former Temple Emanuel: Text in two sections appears to refer to the former Temple Emanuel Synagogue as a church.

c. Review Board: A new architectural review board is proposed in the document, the function of which should be reviewed for consistency and overlap with the existing Historic Landmarks Preservation Commission, NYS certified local government program, NYS Heritage Area program and DOS Coastal policies including those described in the LWRP.

4. Supplemental SEQRA (SEIS): The discussion regarding Supplemental SEQRA review needs more clarification especially as to how address the above issues.

Thank you for considering these comments.

Kevin McEvoy
254 Delaware Ave
Kingston NY 12401