

Access to the Hudson River in the Village of Castleton-on-Hudson



The Unmatched View of the Hudson River from Riverfront Park

Just 10 miles southeast of Albany, New York, the Village of Castleton-on-Hudson in Southwest Rensselaer County is blessed by geography; it is located on the east bank of the Hudson River. Its streets are lined with Craftsman houses, and Main Street (the Village's downtown) is a little city of tall buildings and Victorian homes. It has a proud history. Unfortunately, downtown in the 21st Century has come to mean vacant, torn down and derelict buildings, few businesses, and no access to the Hudson River.

While it is true that all of upstate New York's 19th Century industrial villages on the Hudson and Mohawk Rivers suffered economic decline in the last third of the 20th Century, many have been able to take advantage of opportunities to rebound. Castleton-on-Hudson has not been in this group, capitalizing on the Village's many assets. Instead, it has developed a culture that is resigned to the inevitable decline of the community. Leaders have been powerless to counter this dystopian view, have been unable to provide a positive vision, and have been satisfied to tread water, or to lose only a little ground over time.

The wake-up call came in late 2014, when the anchor of Main Street – a Stewart's Shop – closed after 40 years. In March 2016, new leadership was elected in the Village, and they were re-elected in March 2018. Over the past two years, the Village's culture has started to change from defeatist to optimistic. Here is a list of some initiatives:

- The Castleton-on-Hudson Farmers' and Artisans' Market (COHFAM) will start its third season on June 1, and ended its second season with the September 1st and 15th COHFAM being part

- of the Hudson River Ramble;
- the Castleton-on-Hudson Community Garden (COHCG) is also beginning its third season, after productive and rewarding summers in 2016 and 2017;
 - on South Main Street, the derelict 15-17 and 45 have been demolished (it is sad to lose old buildings, but unfortunately, irresponsible landlords had allowed them to decay into hazards);
 - a vacant lot, 2 Green Avenue, that was to be auctioned in a tax sale has instead been transferred by the County to the Village. This parcel is next to the Village-owned, historic Noyes Engine House at 4 Green Avenue and will be used in future re-development of that under-utilized site;
 - the Village Facebook page has 1600 followers (as of April 2018) and the ninth improved issue of the Castletonian newsletter (Summer 2018) is in progress;
 - the Village website www.castleton-on-hudson.org has much new content in the About and Community sections;
 - the Castleton-on-Hudson Main Street Association (COHMSA) was born in 2017 as a non-governmental entity with membership from the Village and Main Street's catchment area. COHMSA is fundraising for a nautical flagpole, has achieved 5013c status, completed several Main Street clean-up efforts, and hosted Main Street Day on September 9. In 2018, they will kick-off the Main Street Mile on April 21 and are planning Castleton-on-Tap in June and the second Main Street Day in September;
 - Repair Cafe in the Village has been held six times since Summer 2017, with the next date scheduled for April 14 at the Village Hall;
 - a Girl Scout Silver Award project, "River Rest" was installed at the entrance to Riverfront Park, and funds were raised to donate to the Anchor (food pantry);
 - the Boy Scouts are working on Eagle Scout projects at Schermerhorn Park;
 - a local natural history study group did a plant survey at Riverfront Park in September 2017;
 - a second 5K run was held in 2017, benefiting the Leukemia Society (the first is the long-standing Clove Run);
 - Veteran's banners are planned for telephone poles throughout the

Village;

- a historical marker has been installed at Mountain View Cemetery (in collaboration with the Town of Schodack and cemetery board);
- the Village will participate in Riverkeeper Sweep on May 5, 2018 (this is our third Sweep, and it is at Riverfront Park this year);
- NYSDEC/the Estuary awarded the Village a “Trees for Tribs” grant for the Vlockie Kill (at Schermerhorn Park / AKA The Brickyard), invasive species were removed and native species were planted in Fall 2017;
- and the reason the new leadership was elected – Stewart’s closing -- is resolved with The Store opening in February 2017. The owner has a second business, the Castleton Diner and Hardware Store, slated to open in 2018. There is a “buzz” on Main Street. See Chris Churchill’s Times Union story here:

<http://www.timesunion.com/local/article/Churchill-Castleton-on-Hudson-rises-from-the-dead-12185700.php>

What has been done in 24 months with the help of new investment and dedicated volunteers is a source of pride, but River access is the one item that remains elusive, and unfortunately, it is also the single most critical element needed for the Village’s long-term economic success.

There is no public access to the Hudson River in the Village of Castleton-on-Hudson, despite the Hudson being navigable-in-law. “The majority rule, the general rule in New York, applies the trust doctrine at waters which are navigable in fact, to all tidal waters, and to the lands under tidal waters” (Atkinson, 1996, “On the Wrong Side of the Railroad Tracks: Public Access to the Hudson River,” *Pace Environmental Law Review*, Volume 13 Issue 2, p. 769-770).

According to NYSDEC (1991 & 2011), the public right of navigation is rooted in English common law and has been recognized by New York courts for more than 200 years (Public Rights of Navigation and Fishing, Section III.A). “The inalienable right of the general public to use coastal and navigable waters is the essence of the public trust doctrine... The public trust doctrine applies to the public's right to access the Hudson River” (Atkinson, p. 767).

Every community on the east bank of the Hudson between Rensselaer and New York City has public access to the river; to name just a few nearby, there are grade-level crossings in Stuyvesant, Germantown, and Tivoli. We are not seeking vehicular access in the Village of Castleton-on-Hudson, just access by

foot. A successful outcome for the “Open the Gate” (see below) campaign would go a long way toward achieving equity between Castleton-on-Hudson and neighboring communities.



Conflicting Official Messages from NYS and Amtrak

In 1994, Village leadership foolishly agreed to close the only public access point to the Hudson River at Scott Avenue (150) and Main Street (9J), in exchange for a piece of land to make the future Riverfront Park, and within a year, a pedestrian tunnel or bridge under or over the railroad tracks to access it.

Unfortunately, what should have been a boon for the struggling Village turned out to be another death knell. The State did indeed transfer ownership of Riverfront Park to the Village, but then Amtrak and NYSDOT put up a fence blocking access over the tracks to the shore. Now, 24 years later, the overpass remains just a plan in a dusty file drawer, and the only access is (allegedly) illegal, by squeezing through the fence.

In the Village of Castleton-on-Hudson / Town of Schodack LWRP (1995), Policy 20 is based on the New York State Coastal Management Policy 20 and concerns access to the Hudson River:

“Access to the publicly-owned foreshore and to land immediately adjacent to the foreshore or the water's edge that are publicly-owned

shall be provided, and it shall be provided in a manner compatible with adjoining uses. Such lands shall be retained in public ownership.

Explanation of policy: In addition to active recreation facilities, access to the publicly- owned land of the coast should be provided, where appropriate, for numerous activities and pursuits which require only minimal facilities for their enjoyment. Access would provide for walking along the waterfront or to a vantage point from which to view the water. Activities requiring access would include bicycling, birdwatching, photography, nature study, beachcombing, fishing and hunting” (Section III-21).

Access to the Village-owned land on the Hudson River would spark small business on Main Street, and enrich the lives of residents and tourists alike. In 2014, Chris Churchill wrote in the *Times Union*,

“When I asked about river access, Janke offered to show me the hidden (and unauthorized) way. We slid through a gap in an iron fence, darted over the railroad tracks and made our way to a spot that Janke described as excellent for catching striped bass. There was garbage and glass at our feet, but the views up and down the water were inspiring. If the Village could only take better advantage of this, I thought, all those storefronts might not be empty. It seems so obvious: In Castleton-on-Hudson, shouldn't it be easier to get from Castleton to the Hudson? The river that made the Village could remake its future” (*More than Just a Store Set to Close in Castleton*, 24 October 2014).

It is our steadfast belief that access to the Hudson River within the Village is the right of residents and visitors, and an essential ingredient in Castleton-on-Hudson’s revitalization. Securing access does not necessarily require a significant infusion of capital, as has been asserted since 1994, when the grade-level crossing at Scott Avenue and Main Street was closed and a pedestrian bridge was promised. While a pedestrian overpass would be nice, the cost is prohibitive, and given the presence of gates and signals, is also unnecessary. The immediate solution is very simple: Open the Gate and allow people to walk across to Riverfront Park and the River. As Mr. Churchill noted, some people do this already, during striper season especially. However, we cannot promote this option, and besides, there is no way to fit a kayak through the gap in the fence.

“Improving public access turns the public face to the river and provides a

plan to enjoy the river for what it offers today and tomorrow. Ready access to quiet spots where one can picnic, fish, or kayak, are precious, these functions are maximized when they do not provide the only access. Concern for public access is not new. Protection of access is embodied in the public trust doctrine, a tradition of law reaching into antiquity. The right to use a healthy river is implicit in the trust doctrine and measures that deny public use, through the removal of access or through the pollution of the river, are highly suspect under established principles of law” (Atkinson, 1996, p. 833).

Two options for access across the tracks have been explored:

Option A. The Pedestrian Overpass, Scott Avenue & Main Street

In a 1994 order, Administrative Law Judge Bernard Heller wrote,

“Castleton will acquire a parcel of land which is separated from the main area of Castleton by the Conrail tracks; to reach that property it is now necessary to transverse the Scott Avenue crossing. The property, formerly used for commercial purposes, is now vacant. And will be purchased by Castleton with the financial assistance of the Department. The land will be made into a park for which Castleton residents will have access by means of a pedestrian underpass. When this project is completed, a permanent barricade will be erected to close the Scott Avenue crossing.”



Pedestrian Overpass Drawing from NYSDOT

Throughout the rest of the 1990s and into the 21st Century, the Village and NYSDOT discussed various alternatives for safe, ADA compliant Hudson River access. In 2009, NYSDOT determined that

the best option was not an underpass, but instead the

alternative of a pedestrian overpass, and they created plans for the project.

Judge Heller wrote in the 1994 decision, “The Department also agreed to make Federal matching funds available to reimburse Castleton for the purchase of the Williams property, for the removal of the building now situated on that property, for the construction of a pedestrian underpass connecting Castleton and this property and for the construction of fencing where appropriate.” In 2016, the estimate for the cost of the pedestrian overpass was \$3M, but NYSDOT insisted the agency had no funds for it. They have also indicated they would be willing to build it, if funding could be secured.

The Village’s unsuccessful proposal for the NYS Downtown Revitalization Initiative (DRI) for 2016 had the pedestrian overpass as its centerpiece. The 2016 NYSDOT Passenger & Freight Rail Assistance Program grant was specifically for the pedestrian bridge (also not funded). In 2017, the DRI was revised to include a new option for access, “Open the Gate.” (The second DRI was not chosen for funding.)

Option B. Open the Gate, Scott Avenue & Main Street:

Pragmatism drives this second alternative for river access within the Village. Investors on Main Street, including Scott Dobson, owner of The Store and diner, have told us that they want public access to the Hudson River. This conforms to our own vision for what it will take to fully revitalize Castleton-on-Hudson.



This re-envisioned plan for Hudson River access within the Village is very simple. Entitled

Open the Gate, it would allow people to walk across to Riverfront Park and the shore.

Judge Heller

wrote in the 1994 decision, “Until that work [the underpass] is completed it is necessary to maintain access to the crossing. A chain link fence will be constructed along the Eastern side of the Conrail right-of-way, standing approximately between the northern and southern boundaries of the riverfront property to be acquired by Castleton, and fitted with a gate at the Scott Avenue grade crossing; the gate will be under the control of Castleton officials, and access will be afforded to those whose duties require their presence on this property, to close the crossing prior to the completion of this project would be impractical.”

There are already signals and gates at the Scott Avenue / Main Street crossing, as will be noted below. However, in exploring less costly alternatives to the pedestrian overpass, one option for a pedestrian crossing gate is a magnetic gate, shown here:

<https://www.youtube.com/watch?v=BiqivySF0jM>

The company, Magnetic Autocontrol, has a fuzzy estimate of the cost of two gates (one from the street side, one from the park side) for the Scott Avenue / Main Street crossing to range from \$216,240 to just under \$1M. Philadelphia has six of these gates and the cost was closer to \$1M each.

Castleton-on-Hudson’s total annual budget is only \$1M, with the largest share devoted to Village water and wastewater treatment services; there are no funds for pedestrian overpasses, magnetic gates, or for the cost of a legal battle. We are out of options, except for advocacy and eventually, civil disobedience.

The Village would be perfectly happy if NYSDOT and Amtrak / CSX would simply allow us to “Open the Gate.” We do not need an iconic pedestrian bridge or fancy magnetic gates. From when it was an open vehicular

grade-level crossing, signals and a simple barrier that closes with an approaching train are still in operation there, beyond the barrier fence that was installed in the late '90s. It should be noted that the two nearby **open but private** grade-level vehicular crossings, one at the Castleton Boat Club and one at Hudson River Foods have the exact same kind of signaling as the closed crossing to Riverfront Park.

We have taken the following steps in an effort to gain access to the Village- owned Riverfront Park:

The Pedestrian Overpass:

- Mayor Bob Schmidt & Trustee Gina Giuliano met with NYSDOT in April 2016 about the Overpass. They verbally said “no” to funding the pedestrian bridge. This is when they quoted \$3M, said they would build it if we could find the money, and threatened to take us to court and permanently close the crossing (at present there is an “illegal” gap in the fence, and DPW can open the gates to perform routine maintenance);
- the Overpass was the centerpiece of our (unsuccessful) DRI application in 2016. It was also included as an option for access in our (also unsuccessful) 2017 DRI;
- in August 2016, Trustee Giuliano wrote to Governor Cuomo, Senator Marchione, and Congressman Tonko about the Overpass. No response was received. (See below for more information about Congressman Tonko);
- in November 2016, we applied to NYSDOT’s Passenger & Freight Rail Assistance Grant (also unsuccessful). In preparing the application, we had extensive conversations with the Northeast Region head of Amtrak, Bill Hollister. Amtrak verbally expressed support for the pedestrian bridge, but was unwilling to write a letter of support for the grant.

Open the Gate:

- In November 2016, the Mayor Bob & Trustee Gina met with the Capital Region Economic Development Council / Empire State Development staff to debrief on the 2016 Downtown Revitalization Initiative (DRI) and emphasized the importance of River access. The

subject was discussed again with them in June 2017, before the DRI application deadline. In Fall 2017, after debriefing about the 2017 DRI, they visited Riverfront Park;

- the Albany Business Review & Times Union conducted interviews about the 2017 DRI, and access was discussed;
- Open the Gate was included as an option for access in our 2017 DRI;
- Bob Schmidt has taken the consultant for the RLT/Estuary grant, the photographer for the Greenway's Ramble, Rensselaer County legislators and ESD staff to tour Riverfront Park;
- in July 2017, Paul Gallay, the president of Riverkeeper, was contacted for advice and help on waging the access battle. The response was immediate and positive, and Richard Webster, the head of legal emailed that they had discussed and made inquiries, and suggested we reach out to Scenic Hudson. Subsequently, at a Riverkeeper event at Basilica Hudson, they agreed to write a letter of support to the Governor's secretaries for transportation and the environment (have to follow up);
- a follow-up request was made to Bill Hollister at Amtrak to slow northbound trains to the speed of southbound trains traveling through the village (no response);
- in November 2017, the Village and COHMSA had a clean up day at Riverfront Park, where it was cleared of brush and some trees;
- Congressman Tonko visited Castleton-on-Hudson in February 2018 to tour water facilities, and he stopped briefly at the gates to Riverfront Park. His reaction toward Open the Gate was favorable, and materials will be shared with his staff;
- we are part of the Rensselaer Land Trust's Estuary-funded study of river access. The report will be released in April 2018. Forty-four sites in Rensselaer County were identified, seventeen were designated as high-priority, and three were selected as locations for an architectural sketch. Castleton-on-Hudson's Riverfront Park was one of the high-priority sites, and was chosen for an architectural sketch;
- in March 2018, Amtrak submitted a proposal to NYS Department of State to install fencing and/or gates on the river's edge in Rhinecliff, Tivoli, Germantown, Stockport and Stuyvesant. It is surmised,

although the plan is sketchy at best, that the plan does not appear to propose closing existing vehicular crossings in these communities, but the Village of Castleton-on-Hudson is a cautionary tale for our neighboring River towns to the south. Germantown is holding an Earth Day rally about River access, and is encouraging other communities to do the same. The Village of Castleton-on-Hudson will join this effort and host a rally at the locked gates to Riverfront Park on April 22;

- Riverfront Park will be the site for the Village’s third Riverkeeper Sweep on May 5, 2018;
- petitions and buttons for Open the Gate have been available at the Castleton-on-Hudson Farmer’s and Artisan’s Market (COHAM), Repair Café, The Store, the library, and at Main Street Day, and will be available Summer 2018. There is also an online version. We have more than 450 signatures at this point. The online petition: <https://www.ipetitions.com/petition/open-the-gate-2>



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RENSSELAER COUNTY
 HUDSON RIVER ACCESS PLAN

CASTLETON-ON-HUDSON RIVERFRONT PARK CONCEPT PLANNING PLACES February 2018 Figure - 2

RLT Estuary funded study COH sketch

SITE ID #3: CASTLETON-ON-HUDSON RIVERFRONT PARK

VILLAGE OF CASTLETON-ON-HUDSON

Site Overview: This is a publicly owned, undeveloped parcel of land located at the northern end of the Village. The Village has a very strong desire to develop the property into a public park but the AMTRAK line and previous agreements are currently limiting access to all but those who go to the site to maintain it. (Milepoint 2.5)

Top Issues:

- 1) **Visibility:** The site was encircled by vegetation but in November of 2017 the Village organized a clean-up and clearing effort which significantly opened-up visibility.
- 2) **Current Use:** Vacant land
- 3) **Vulnerability:** The shoreline is hardened with a concrete wall and large stones/concrete.
- 4) **Safety:** This site is currently undeveloped and illegal to access except for maintenance-related efforts.
- 5) **Accessibility:** The site is not currently open to the public.

Top Opportunities:

- 1) **Offerings:** The site has water access on the north, west, and south sides. It is relatively flat and open and easily redeveloped as a park site.
- 2) **Nearest Existing Access Sites:** The site is 3.5 miles south of Papscahee Island Nature Preserve South and 1.0 mile north of Schodack Island State Park.
- 3) **Development:** The Village is ready to develop the site as a park but first needs to get public access across the existing railroad tracks.

Priority: ●●●●

Recommendation: *This is a high-priority development location. In Once the accessibility issue has been resolved, which is a major issue, redevelopment of the site should be a quick and somewhat easy undertaking as the Village is leading the effort and the project champion and the site is mostly paved - minimizing natural features and environmental concerns.*



Photo Provided by Village of Castleton-on-Hudson

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SITE DETAILS



Access to the property is legally restricted. The site used to provide a boat launch to the Hudson River and was an active boat repair business.



A fence, and no trespassing sign discourage accessing the site despite a large NYS EPF Grant sign labeling it a park. A gap left in the fence and paved crossing over the tracks are existing on the site.



The views from the parcel are fantastic and somewhat unique. Since the property juts out into the river it almost feels like you are on a boat while standing at the rivers edge.



The site has a hardened shoreline made up of large stones and broken concrete pieces. Vegetation covers most of the shoreline.



The northwestern corner of the property is hardened with a concrete wall that rises above the land by a few feet on the shoreline side.



The site was formerly a business and thus much of it is paved/impervious.
Note: Consultant Team was escorted onto the site by Village officials for an official viewing of the property.

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RLT Estuary funded study of river access COH p. 2