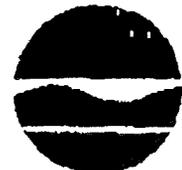


**New York State Department of Environmental Conservation
Division of Environmental Permits, Region One**

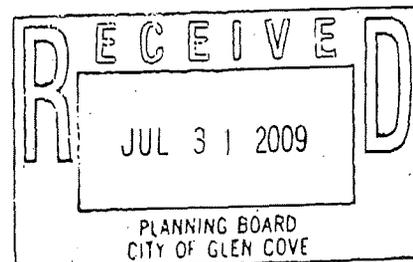
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Alexander B. Grannis
Commissioner

July 31, 2009

Ms. Lois Stemcosky,
Planning Board Secretary
City of Glen Cove Planning Board
9 Glen Street
Glen Cove, NY 11542



Re: Comments on Draft Environmental Impact Statement
RXR Glen Isle Partners, LLC
Proposed Mixed-Use Waterfront Redevelopment

Dear Ms. Stemcosky:

The New York State Department of Environmental Conservation (Department) has received and reviewed the RXR Glen Isle Mixed-Use Waterfront Development Draft Environmental Impact Statement (DEIS). The Department welcomes the opportunity to participate in the review of the DEIS for this important project. There are many facets of the Department's jurisdiction and interest in the project. This letter focuses on the status of remediation efforts on the various properties comprising the 56 acre site and the effects the project may have upon, Greenhouse Gas emissions (GHG), air resources and wetland resources (tidal and fresh). Comments on the GHG, wetland and air issues were developed by Region One staff and comments relating to remediation efforts were generated by the New York State Department of Environmental Conservation, Division of Environmental Remediation (DER) in Albany.

Due to the complexity of the project and site, the DEIS should acknowledge the various New York State Department of Environmental Conservation Divisions and distinguish their respective roles, including the Division of Environmental Permits (DEP), Division of Fish, Wildlife & Marine Resources - Marine Habitat Protection (MHP), Division of Solid and Hazardous Materials (DS&HM), Division of Environmental Remediation (DER), Division of Air Resources (DAR), Division of Water (DOW), Bureau of Habitat (BOH).

Comments Relating to Tidal Wetlands

A large portion of the project's upland area was previously determined to be outside the jurisdiction of 6NYCRR Part 661, Tidal Wetlands Land Use Regulations (TWLUR), due to either the elevation (> 10' above MSL) or the existence of jurisdiction-limiting bulkheads and roads that were in place prior to the implementation of the noted regulations. Upland areas that may remain within the jurisdiction of the TWLUR include portions of the properties known as the Angler's Club and Gladsky's. While these two properties are not proposed as sites for intensive coverage with structures and paving, it still is important for the DEIS to clearly illustrate those areas subject to the TWLUR, and those that are not.

The overall configuration of the proposed project will include residential and commercial components as well as land uses requiring water access and others that do not. The DEIS should acknowledge that the TWLUR specifically distinguishes between the compatibility of residential and commercial uses in regulated tidal wetlands and adjacent areas. Similarly the compatibility of commercial facilities requiring water access (e.g., a marina) is specifically distinguished from those that do not (e.g., a restaurant). Proposed development strategies should specifically consider the compatibility of any use proposed within areas regulated under Part 661.

The closest freshwater wetland is the Mill Pond, east of the new connector highway. Although not in the project area per se, it must be determined if any aspect of the proposed project is within the 100' adjacent area (AA) regulated pursuant to 6NYCRR Part 663, Freshwater Wetland Permit Requirement Regulations (FWWR).

Based on the project plans and information provided it's not possible to determine definitively which of the proposed project activities will occur within NYSDEC Tidal Wetland jurisdiction. However, the Use Guidelines contained in the TWLUR have 57 different use categories and the exclusion of many of the uses from table III.C-2 (Page III.C-36) does not accurately depict other applicable categories. From the information that has been provided in the DEIS it appears the table is missing a number of potentially relevant regulated use categories as provided in 661.5(b). We note the following additional categories (at a minimum) that may apply :

Use	Use Category
(9) Establish plantings.	This use is generally compatible (permit required) in tidal wetlands. No permit is necessary in the adjacent area.
(15) Construction of open pile catwalks and docks more than four feet in width; or constructing more than one open pile catwalk and/or dock greater than four feet in width for any principal building	This use is presumptively incompatible in vegetated marsh areas and generally compatible (permit required) in shoals, mud flats, littoral zone and adjacent areas.
(27) Dredging	This use is presumptively incompatible in all regulated tidal and adjacent areas.
(30) Filling	This use is presumptively incompatible in all regulated tidal wetland areas and generally compatible (permit required) in adjacent areas.
(31) Disposal of dredged material	This use is incompatible in vegetated marsh areas, presumptively incompatible in shoals, mud flats, littoral zone and generally compatible (permit required) in adjacent areas.
(41) Installation of underground electric, sewer, water, or other utilities where such installation will involve restoration of existing ground elevation [other than activities covered by Item 40].	This use is generally compatible (permit required) in all regulated tidal and adjacent areas.

(43) Installation of a dry well, retention basin, filter, open swale or pond	This use is presumptively incompatible in all regulated tidal wetland areas and generally compatible (permit required) in adjacent areas.
(44) new discharge of any pollutant requiring a SPDES permit pursuant to the environmental conservation law and complying with the requirements of the issuance of such a permit.	This use requires a permit in all regulated tidal wetlands and adjacent areas.
(45) Installation of a sewage disposal septic tank, cesspool, leach field or seepage pit and discharge of any pollutant into such facilities not requiring a SPDES permit pursuant to article 17 of the environmental conservation law	This use is presumptively incompatible in all regulated tidal wetland areas and generally compatible (permit required) in adjacent areas.
(46) Construction of single family dwellings and multiple family dwellings.	This use is presumptively incompatible in all regulated tidal wetland areas and generally compatible (permit required) in adjacent areas.
(48) Construction of commercial and industrial use facilities not requiring water access and public or semi-public buildings not requiring water access; and undertaking commercial and industrial use activities not requiring water access.	This use is presumptively incompatible in all regulated tidal and adjacent areas.
(49) Construction of accessory structures or facilities for any use listed in items 46 and 47, [other than accessory structures or facilities covered by item 50] or covered specifically in this list.	This use is presumptively incompatible in all regulated tidal wetland areas and generally compatible (permit required) in adjacent areas.
(51) Construction of accessory structures or facilities for any use listed in item 48.	This use is presumptively incompatible in all regulated tidal and adjacent areas.
(57) Any type of regulated activity not specifically listed in this chart and any subdivision of land.	This use requires a permit in all regulated tidal wetlands and adjacent areas.

The project's open space and recreational use proposal includes several expansive lawn areas and public amenities including observation piers, boardwalks, parking areas, amphitheaters, and a café and restaurant. Where waterfront amenities occur in regulated tidal wetland or regulated adjacent areas, they will require Part 661 permits from the NYSDEC. Overwater structures may also require Part 608 permits as well as Water Quality Certifications. Although sufficient detail is not provided for an assessment of the proposed amenities, the applicant will need to meet use and development requirements, maintain adequate buffer areas and minimize adverse impacts to natural resources.

The DEIS describes numerous areas along the Glen Cove Creek and Hempstead Harbor where activities regulated under the TWLUR will occur. The document does not contain the specificity that the Department would require for review of a permit application for these activities so our responses will also be generalized.

Dredging existing open water areas and excavating upland areas to expand the Glen Cove Creek

Before feasibility of any proposed dredging project can be assessed, site-specific sediment contaminant analysis, including separate analyses of the material to be dredged and the material to remain as the exposed bottom after dredging, will need to be provided. In addition, proposed dredging to create new underwater lands or to create new depths in excess of those that have legally existed within the last twenty years, is deemed to be a presumptively incompatible activity under Part 661 regulations, regardless of whether the dredging is proposed in an existing wetland or a regulated adjacent area. The applicant shall have the burden of overcoming the presumption of incompatibility.

Tidal Weir and Turning Basin, pages III C-16-19

Over the course of our meetings and conversations with the project sponsor the Department staff has come to understand the importance of the turning basin/weir complex to the project sponsor. However, the DEIS raises questions that are not satisfactorily answered with regard to the potential for negative impacts to the upper reach of the Glen Cove Creek.

Page III C-18 discusses the potential for the basin to become a deposition basin for the Mill Pond outfall, without offering assurance for proper preventative maintenance after construction. Also mentioned are possible impacts to finfish and crustaceans; stratification of the water column, decreased circulation, temperature and salinity changes, decreased oxygen and sediment redox.

The potentiality of these negative impacts is not clearly articulated. Additionally, the mitigation efforts to prevent the negative impacts are vague.

By definition, a turning basin is an open area at the end of a canal or narrow waterway to allow boats to turn around. However, it is clear that boats large enough to require a turning basin will not be able to access the proposed "turning basin" once the tidal weir is constructed. More than 90% of the time, the tidal connection to the turning basin will be completely blocked. The remaining 8% of the time, the weir will be covered by an average of approximately six inches of water, or less. The project description indicates that fish passage will be possible 8% of the time but does not clarify boat access. It seems apparent that this proposed "turning basin" cannot function as proposed but the applicant should clarify the issue of boat access. In addition, any structure lying below the water surface part of the time has the potential to create a navigation hazard. How will this hazard be mitigated?

Constructing a new tidal weir at the proposed location will significantly alter an existing area of tidal wetlands. The statement that the area upstream of the proposed weir "contains no natural wetland communities" (Page III.C-18) is inaccurate. The TWLUR recognizes and regulates several wetland zones, including the coastal shoals and mud flats found at this project site. The suggestion that the area upstream of the proposed weir will also act as a secondary sedimentation basin for runoff entering the creek will further limit the proposed habitat value of the area for marine resources, such as finfish and invertebrates. Although the DEIS suggests turbidity in the upstream area may be reduced due to the reduced tidal flushing, turbidity and sedimentation associated with storm events may be exacerbated in the basin.

As noted previously, before the feasibility of any proposed dredging project can be assessed, site-specific sediment contaminant analysis, including separate analyses of the material to be dredged and the material to remain as the exposed bottom after dredging, will need to be provided. This includes the areas of upland that will be excavated to become new Glen Cove Creek bottom. Dredging associated with the turning basin includes dredging of the Gateway property, which hasn't been adequately investigated.

What standards will be employed to ascertain the success of the weir/turning basin aspect of the project? If over time unacceptable negative impacts develop due to the placement of the weir, what are the contingencies, can the weir be removed? If so, who will be responsible for the removal?

Whose responsibility will it be to conduct the maintenance necessary to preclude the potential adverse impacts noted in the DEIS?

Given the speculative outcomes forecast for the placement of the weir and construction of the turning basin area, the Department suggests that an appropriate modeling software program be applied to the proposed changes. As it is described and supported in the document it would be difficult for the Department to make a positive determination with regard to the standards of permit issuance.

Large Boat Marina Page ILC-18 & 35

The DEIS does not make a compelling argument for the placement of the large boat marina in one of the few remaining intertidal marsh areas on the creek. As proposed the large boat marina will necessitate the relocation of 8,520 sq ft of intertidal wetland. The project sponsor needs to justify this site disturbance.

Relocation and creation of vegetated marsh areas are less successful and generally exhibit reduced values and functions than existing, naturally occurring marshes. The proposal to recreate a marsh in a location landward of a low-sill bulkhead will further reduce the values associated with the restored marsh since it will be physically separated by the bulkhead from adjacent communities. Access to and from the site will be restricted for a variety of organisms. Efforts should be taken to avoid and minimize impacted marsh areas rather than proposing to relocate and restore new marsh areas. Relocating proposed marina areas should be more fully evaluated. The proposed "intertidal wetland salvage" would require a permit under Part 661. Applicable Use categories regulating this activity may include 9, 27, 30, and 57. Monitoring and maintenance of plant survivorship is generally required for a minimum period of five years.

The DEIS should explore alternatives to placement of the large boat marina in this existing marsh.

Small Boat Marina, Renaissance Park Cut-Back and Intertidal Wetland Relocation

Similar to other areas of proposed dredging, before feasibility of any proposed dredging or excavation project can be assessed, site-specific sediment contaminant analysis, including separate analyses of the material to be dredged and the material to remain as the exposed bottom after dredging, will need to be provided.

Detailed site plans including a planting plan and elevations, will be required for a complete evaluation of the project with regard to the TWLUR.

Captain's Cove Intertidal Marsh and Shoals and Mudflats, pages III.D-33

The Department does not have any conceptual objection to the restoration (conversion of shoals and mudflats to intertidal marsh) of 17,500 sq ft of intertidal marsh, nor the adjacent slope restoration and planting described in the DEIS. However, the information in the DEIS falls short of providing the Department with sufficient information to determine if the proposal meets the standards of permit issuance of the TWLUR. Additionally, the success and value of these transformed wetlands must be weighed if the project sponsor intends to apply this effort towards mitigation of other negative impacts on the site, such as the relocation of the intertidal marsh at the proposed large boat marina site. The information provided in the DEIS does not allow such a determination of value or chance of success.

The DEIS notes impacts, including disturbance and turbidity, from the construction of the proposed walkways and observation pier. However long-term impacts associated with authorization of the structure (e.g., shading, loss of habitat, impacts to water sediment transport) should also be discussed.

Bulkhead Removal and Beach Expansion at Garvies Point.

The feasibility of the proposed placement of sand landward of the delineated tidal wetland at Garvies Point Beach will depend on the volume of sand, slope, proposed grade changes and proximity to delineated tidal wetland areas. Placement of sand in areas immediately landward of vegetated wetlands can result in excessive sedimentation and adverse impacts to the existing wetlands. The DEIS should address the sediment control measures that would be in place during construction and post-construction. Removal of the bulkhead and regrading the material to a height less than 10' MSL will cause that area to return to the jurisdiction of the TWLUR to the point where the 10' contour resumes.

Stormwater Conditions

Pages V-4 & V-5 discuss stormwater filtration as mitigation for other impacts the project may have. If the improved stormwater management is to be considered mitigation the requirements of the TWLUR will need to be satisfied.

Stormwater management systems for structures, driveways and paved areas that are designed and constructed in or adjacent to regulated tidal wetlands or that have outflows discharging into regulated tidal wetlands may be subject to the permitting requirements of the TWLUR. In addition to developmental restrictions for structures, driveways, roads, parking areas etc., Part 661 regulates the installation of drywells, retention basins, filters, swales, ponds and any new discharge of any pollutant requiring a SPDES permit. Applicable restrictions under TWLUR for installation of stormwater control structures may include setback requirements, minimum vertical separation from groundwater and runoff containment requirements.

The proposed retention and treatment of stormwater will be designed to allow for collection and discharge of up to the first two inches of rainfall. Stormwater runoff in excess of 2" will be directed into the downstream sewer conveyance system. However, the DEIS also states that if soils are not permeable or groundwater elevations are too high, the infiltration systems may be removed from the design and the stormwater will be conveyed from the irrigation chamber to the

trunk sewer line and will ultimately discharge to the adjacent tidal water bodies (Page III.C-29). If soil permeability or depth to groundwater precludes the use of the proposed infiltrator or Rainstore units, alternative methods of treatment should be more fully explored.

Although the DEIS identifies the Glen Cove Creek as SB-Saline Surface Waters, it does not appear that the Hempstead Harbor waters have been considered. Paragraph 661.6(a)(3) of the TWLUR reads thus:

(3) Any substantial increase in surface water runoff to tidal waters classified SA, as defined in section 701.5 of this Title, or to any other surface waters which are within 1,000 feet of any SA waters and are adjacent or tributary to such SA waters, shall be prevented from directly running into any such waters by the utilization of sufficient runoff control measures, including but not limited to the installation of dry wells, retention basins, filters, open swales or ponds. Any such dry well, retention basin, filter, open swale or pond to be constructed in order to prevent direct surface water runoff to said SA and other surface waters shall be designed and constructed to handle the water runoff produced on the project site by a five-year storm.

The DEIS should consider whether or not this paragraph will apply.

The DEIS correctly notes that the project will need coverage under a NYSDEC SPDES General Permit for Stormwater Discharges. To obtain coverage the project sponsor will be required to file a Notice of Intent and prepare a Stormwater Pollution Prevention Plan (SWPP) for construction activities and post-development activities. If the stormwater management system is located primarily on the Glen Isle property who will have responsibility for its long-term maintenance?

Greenhouse Gas Emissions and Air Quality, Sections III.G & X.

The DEIS should update page III.G-8 to reflect the newly released NYSDEC Guidance, *Assessing Energy Use and Greenhouse Gas Emissions in Environmental Impact Statements* which is now available to the public (http://www.dec.ny.gov/docs/administration_pdf/eisghgpolicy.pdf).

The Department recognizes that the nature of the proposed project lends itself to a design that helps reduce GHG emissions. The clustering of living units, the reliance on mass transit (ferry, bus, bus-to-rail) and the energy conservation measures cited in Sections III & X, [such as "green building" components and the seeking of Leadership in Energy and Environmental Design (LEED) certification], all contribute to the mitigation of energy use, thereby reducing the emission of greenhouse gases.

The DEIS goes into some detail on the construction aspects of air quality. The DEIS also indicates that "energy components of the Proposed Action would be provided by either the Long Island Power Authority ("LIPA") or KeySpan." In Section X, Page X-1 it is stated that "Heat and hot water will likely be fueled by natural gas, which is cleaner burning and more efficient."

The DEIS does not appear to address the boilers that will be required to generate this heat and hot water. The DEIS should address the air permitting and GHG aspects of this power generation. The identification of this source is germane to both GHG considerations and whether or not Art. 19 permits are required.

Comments prepared by the New York State Department of Environmental Conservation, Division of Environmental Remediation (DER).

1. The Captain's Cove Condominiums Site remains a Class 2 Inactive Hazardous Waste Site. The Record of Decision (ROD) for this site limits future use to commercial. Although the City has raised the issue of changing the acceptable future use to restricted residential through a ROD change or an Explanation of Significant Differences (ESD), the City has made no submission to the DEC to accomplish this change. The property cannot be developed for occupancy for any use until the deed restrictions required in the ROD are filed. The control of the property cannot be transferred to another entity until all the requirements of the Consent Order have been satisfied. It is also DER's position that the DEIS cannot be finalized until all properties are eligible to be developed as described in the DEIS.
2. The Li Tungsten Site continues to be on the EPA's National Priorities List (NPL) as well as on the Registry of Inactive Hazardous Waste Site. Although EPA has indicated that three of the four parcels comprising the site are suitable for residential development if proper institutional controls are implemented, these controls are yet to be formalized. As such, those parcels cannot, as of yet, be developed. The fourth parcel continues to be commercial use only although the USEPA is considering a change to this usage as requested by the City.
3. Other properties within the project are described differently in various sections of the DEIS. Only the Gladsky Site which is in the Environment Restoration Program (ERP) is in a regulatory program for remediating environmental conditions on the site. The Doxey, Angler's Club, Gateway and Pump Station parcels are not in a program (ERP, Brownfield, or Superfund). Applications have not been received for admission to the Brownfield Cleanup Program (BCP) for any sites in the project area and applications are not being approved for the ERP as there are no funds available in that Program. References that the environmental cleanup of these parcels will be addressed through the BCP and/or ERP must be clarified and be consistent through the document. It should be clear to all who read the document that although the developer may apply for admission to the BCP for certain parcels, no applications have been made, and no assurance can be given that admission of any of these sites will occur. The documents currently imply just the opposite to the casual reader.
4. Throughout the document and several of the appendices, there are references to a "multi-agency accord" or "multi-agency agreement" to address environmental conditions on the properties. The language referring to this document has been very carefully structured to be correct in the absolute. However, a person not privy to facts surrounding the "multi-agency accord" would assume that the various agencies have been actively involved in developing such a document. DER is not aware that any of the mentioned agencies is planning to sign such a document. None have been involved in developing one. DER, specifically, has stated to the City and the developer, prior to the release of the DEIS, that it had no intention of signing such a document. The DEIS should be revised to reflect that although the developer may want such a document, no agreement has been signed or agreed to by any of the agencies. As it appears that all the sections relating to environmental conditions refer back to this document, all of these sections need to be revised to provide the public with the factual information which cannot be misconstrued. The environmental conditions on the various parcels will be addressed through the

programs they are in, or are eligible to participate in. If a parcel is not eligible for a program, all work is the responsibility of the property owner.

5. Appendix G is the Draft Site Management Plan. Although this document is listed as draft, it gives a clear implication that the DEC has reviewed the document. It is recommended that a watermark be added to each page as follows, "DRAFT- not submitted to NYSDEC." As this document refers to a "multi-agency agreement," no detailed review was made of this document. Additionally, this document can only be reviewed relative to the ROD (or ESD) and the Environmental Easement (or deed restrictions) associated with the Site Management Plan. This document does not stand on its own.
6. The DEIS indicates that the NYS Department of Health (NYSDOH) has to "certify compliance with public health and safety" with respect to the environmental remediation of properties. NYSDOH does not administer any regulatory programs with respect to remediation of sites but works through the NYSDEC to assure that actions are protective of public health.

Comments Summary:

- The document should identify the different Divisions within the New York State Department of Environmental Conservation that will be involved in the distinct aspects of each phase of the project.
- All requirements of the Division of Environmental Remediation must be met.
- Upland areas of TWLUR jurisdiction/non-jurisdiction should be determined.
- All areas that are to be dredged or excavated to create open water must be sampled in accordance with the requirements of the Division of Environmental Remediation, the Division of Solid and Hazardous Materials and Office of Marine Habitat Protection. The remaining underlying soils must also be characterized in all testing, so assure that contaminated soils are not left exposed to the marine environment.
- Pages I-5 & 6
The summary of required approvals should be revised to include Art. 19, Air Pollution Control (or explain why Art. 19 does not apply), Art. 15, Long Island Well (dewatering), SPDES General Permit for Stormwater Discharges (not "SPDES permit").
- Pages III.C-16-19
The turning basin and weir complex needs comprehensive documentation, perhaps computer modeling, to demonstrate its viability. Both upland areas and wetland areas must be sampled down to include the materials that will remain exposed in addition to any requirements by other agencies.
- Page III.D-33 & 34
The large boat marina section requires a more thorough explanation of why this sensitive site must be disturbed, taking into account reasonable alternatives.
Small boat marina and Renaissance Park Cut-backs and Wetland relocation will need detailed plans to demonstrate the proposals can meet the standards of permit issuance.

- Stormwater Management

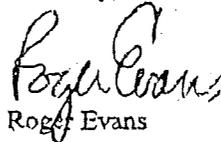
The DEIS should address the requirements of NYSDEC SPDES General Permit for Stormwater Discharges (GP-02-01) and the intent of the TWLUR. If the project sponsor intends to utilize the stormwater management as mitigation the benefits to the environment must be clearly demonstrable.

- Greenhouse Gases & Air Quality

The DEIS should be updated to reflect the recently issued NYSDEC policy guidance. The DEIS should identify the source of the heat and hot water for the proposed project for permitting and GHG considerations.

Should you have any questions I can be reached directly at (631) 444-0361 or at the above address.

Sincerely,



Roger Evans

Regional Permit Administrator

cc: P.A. Scully, NYSDEC
D. McReynolds, NYSDEC
K. Graulich, NYSDEC
J. Yavonditsee, NYSDEC
M. Genece, NYSDEC