

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 1
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July 8, 2011

Mr. Charles W. Bowman
Land Use Ecological Services, Inc.
570 Expressway Drive South, Suite 2F
Medford, NY 11763

Re: RXR Glen Isle Mixed-Use Waterfront DEIS.
Feasibility of Presumptively Incompatible Project
Components Relative to Tidal Wetland Land Use Regulations
NYSDEC Application # 1-2805-00193/00001

Dear Mr. Bowman:

This letter is written in regard to certain aspects of the proposed mixed-use waterfront redevelopment project studied in the above-noted Draft Environmental Impact Statement (DEIS), specifically those activities categorized as Presumptively Incompatible Uses (PIp) in the applicable DEC natural resource-based regulations, Tidal Wetland Land Use Regulations, 6 NYCRR Part 661, (TWLUR). It is well understood that an extensive upland portion of the proposed redevelopment is beyond the jurisdiction of the TWLUR. That limit of jurisdiction has been documented in previous correspondence. Those portions of the proposed project seaward of the existing and proposed bulkheads are within the TWLUR jurisdiction and are categorized by the TWLUR in accordance with the activity's potential for negative impacts to the tidal wetlands.

Several elements of the proposed project are categorized as PIp, which carries a burden of proof for the project sponsor to demonstrate that the activity will meet the standards of permit issuance pursuant to 6 NYCRR Part 661.9(a)(b).

Over a period of years, the DEC has had extensive discussions with the project sponsor and its representatives. These discussions have affected many project revisions and enhancements to the mitigation measures for the PIp activities. The project sponsor has eliminated several significant structures and concepts from the project plan that had given the DEC cause for concern. Additionally, mitigation in the form of wetland creation, upland & in-water excavation (and removal) of mildly contaminated materials along with extensive storm water management measures will forward an overall goal of a cleaner and more vibrant Glen Cove Creek.

DEC believes a reasonable expectation exists that if the FEIS captures the changes and understandings achieved in these past meetings, as they are memorialized in the document prepared by Land Use Ecological Services, Inc., *Glen Cove Creek Mixed-Use Waterfront Redevelopment Project*, last revised June 22, 2011, the FEIS would then provide DEC with a sufficient basis to generate a Positive Findings Statement, in accordance with *State Environmental Quality Review, Decision-making and findings requirements*, 6 NYCRR Part 617.11.

DEC also anticipates that if the project is modified as noted above, and the FEIS is completed with those changes and concepts incorporated into the document, the proposed project could then reasonably be expected to achieve the standards of permit issuance contained in the *TWLUR, Standards of issuance of permits*, 6 NYCRR Part 661.9(a) & (b) and the *Use and Protection of Waters, Standards*, 6 NYCRR Part 608.8.

This letter is a preliminary statement for the purpose of offering the DEC's concurrence with the current progress of the proposed project's review. No SEQR Findings can actually be made by any involved agency until after the acceptance of the FEIS by the Lead Agency. Similarly, no final decision can be made upon the Tidal Wetlands permit application prior to the acceptance of a complete application. Two components of a complete application are the satisfaction of SEQR and the required public notice, neither of which have been formally completed as of the writing of this letter.

If you have any questions I can be reached directly at (631) 444-0361 or via email rxevans@gw.dec.state.ny.us

Sincerely,



Roger Evans

Regional Permit Administrator

cc: Mayor R. Suozzi, City of Glen Cove
L. Stemcosky, City of Glen Cove
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E. Koch, RXR Glen Isle
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