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January 19, 2016

BY E-MAIL & FEDERAL EXPRESS

Mr. Thomas Scott, Chairman,
and Members of the Planning Board
City of Glen Cove
9 Glen Street
Glen Cove, New York 11542

**RE: *RXR Glen Isle Partners LLC - Waterfront Development Project
Rebuttal of Post Hearing Written Comments***

Dear Chairman Scott and Members of the Planning Board:

As you will recall, at the conclusion of the December 6, 2016 public hearing, the Planning Board voted to close the hearing on RXR Glen Isle Partners LLC's ("RXRGIP") pending applications for Phase II site plan approval and to further amend the previously-approved PUD subdivision approval. However, the Planning Board also voted to keep the record open for a period of ten (10) days to allow all interested parties the opportunity to submit written comments for the Board's consideration. On the eve of the expiration of that written comment period, the Planning Board received a number of letters, e-mails and other correspondence from persons opposed to the application, including multiple letters from the attorney who represents a number of petitioners in one of the pending Article 78 proceedings challenging a prior Planning Board approval, and an extensive letter from Dr. Ronald Abrams, who claims to be an environmental expert.

Upon our receipt of the various written comments, we forwarded them to RXRGIP's team of professional consultants who strongly disagreed with the faulty analyses and erroneous conclusions set forth therein, and requested an opportunity to rebut these comments. This rebuttal evidence is set forth below, and is grouped by topic area, and includes a representative comment or two for each topic. Please note that not all opposition comments are addressed herein, because many were previously addressed by RXRGIP and its experts at the various public meetings and hearings. Therefore, any written comments not addressed herein should not be construed as concurrence with those comments by RXRGIP or its experts.

TOPIC AREA 1. Stormwater System/Residual Contamination. "[W]ith groundwater so close to the surface, and with so many structures on top of, and penetrating beneath the surface, it is

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impossible for the developer to ensure that the existing pollution in the ground will not mix with any clean water being conveyed or treated by the proposed stormwater system."

RESPONSE: The proposed stormwater system is a horizontal / closed system, with all components specified to be water-tight, and as such, groundwater will not infiltrate into this conveyance and treatment system. Alternatively, infiltration systems, which are no longer being utilized as part of this project, are considered vertical and open systems, which could allow groundwater to mix with the stormwater. It appears that many of the comments stem from the misconception that the groundwater will be able to enter the stormwater system and mix with the treated stormwater runoff. The stormwater runoff, generated from rain hitting the site, will enter the closed / horizontal stormwater system, be treated through the various water quality devices and then discharge to the Creek. The groundwater will remain below grade and will not enter the closed / water-tight stormwater system.

Additionally, the proposed development, which will employ various water quality treatment devices as well as stormwater collection and conveyance systems and green infrastructure techniques, will enhance the water quality treatment as compared with the site today: there are no stormwater management facilities on the site today which means that all stormwater runoff either infiltrates through the ground and mixes with the groundwater or runs off, untreated, into the Creek / Harbor. By collecting the stormwater runoff at the surface of the site and conveying and treating it through the various green infrastructure practices and water quality treatment devices, less stormwater runoff will infiltrate into the ground which equates to reduced interaction with groundwater.

TOPIC AREA 2. Jellyfish structures. *"[T]here has been no public review of the new technology, and the technology itself is so new that it has little or no track record in New York." The Jellyfish technology is "very new and has been tested in only 3 states so far." "The overall impacts of this project will be to deliver to the Creek increased nitrogen and phosphorous loadings, because the applicant admits that the Jellyfish structures will only remove about half the nutrient loadings."*

RESPONSE: Several comments indicated concern over Jellyfish Filter technology and biofiltration technology and approvals of same by various agencies. The Jellyfish Filter is an approved water quality treatment device in many states and jurisdictions (including New York). The Jellyfish Filter was launched in 2007. The certification and testing process began immediately thereafter. This is not a new technology. To date, nine (9) states / jurisdictions have approved the Jellyfish Filter through their specific testing programs, however, many other states / jurisdictions, defer to other states who have testing in place, until such time as they come up with their own testing protocols. The Jellyfish vendor has indicated that there are more than 550 projects nationwide that have utilized the Jellyfish system. As indicated, New York, while it does not have its own testing agency / program, has accepted the Jellyfish as well as other filter devices based upon the evaluations and testing provided by other jurisdictions, a common practice for many states throughout the nation. As included in Appendix C, and attached again here for convenience, of the Stormwater Management Report for the project, dated 11/2016, NYSDEC has approved the use of various proprietary practices to meet water

quality treatment and pollutant loading reduction in redevelopment projects (Ref Section 9.4 of the 2015 NYS Stormwater Management Design Manual) and has indicated that to be an acceptable practice, the proprietary practice must have been evaluated and verified by one of the following third parties:

- State of Washington Technology Assessment Protocol – Ecology (TAPE);
- Technology Acceptance Reciprocity Partnership Protocol (TARP) (Primarily New Jersey Corporation for Advanced Technology); or
- State of Maryland Department of the Environment.

A copy of the State of Maryland Department of the Environment approval of the Jellyfish Filter as a standalone water quality treatment device is included in Appendix C of the Stormwater Management report for the project, dated 11/2016. Additional copies of the NYSDEC proprietary water quality device testing protocols and the referenced State of Maryland Department of the Environment approval of the Jellyfish Filter are attached.

In addition to addressing Total Suspended Solids Removal (TSS), the Jellyfish Filter also addresses nutrient removal including Total Phosphorus (TP) and Total Nitrogen (TN) removal as follows:

TP: 59% removal rate (40% required by NYSDEC)

TN: 51% removal rate (NYDEC does not have a requirement)

Consistent with the NYS Stormwater Design Manual, the project also includes various green technologies including green roofs, rain gardens (biofiltration systems) and cisterns (irrigation chambers), which are designed to reduce stormwater runoff volume and reduce pollutant loading. These green infrastructure technologies are listed in Chapter 5 of the NYS Stormwater Management Design Manual as acceptable Green Infrastructure Techniques for Runoff Reduction (Table 5.7). By utilizing multiple green infrastructure technologies and the Jellyfish Filters, the proposed stormwater management design provides pollutant removal techniques addressing nitrogen and pathogen (which are pollutants of concern for Hempstead Harbor) and exceeds the minimum NYSDEC requirements for water quality treatment and pollutant loading removal from proposed development projects.

TOPIC AREA 3. County Waiver. *"[T]he waiver of the County's 8 inch in 24 hour requirement for capturing first flush of storms should now be revisited." "The County's approval of reduced Stormwater Management level seems to have been ill-advised at best."*

RESPONSE: Several comments indicate concern that the project is not storing and treating 8" of runoff as per Nassau County's standards. To clarify, the County's 8" runoff requirement equates to a 100-year storm event and flood control on County roadways, streams or drainage facilities and not the "first flush". The term "first flush" refers to the beginning of a storm, where stormwater picks up accumulated pollutants on paved and lawn surfaces and quickly washes the pollutants off during the beginning of the storm, as compared to the middle or the end of the event. Therefore, water quality treatment requirements for stormwater runoff are based on

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capturing and treating runoff from small, frequent storm events that tend to contain higher pollutant levels. For Long Island, this equates to 1.5" rainfall event pursuant to the NYSDEC Stormwater Design Manual.

Nassau County has issued a waiver to allow for treatment of 2" of stormwater runoff from the project site because the need for flood control from large rain storms is not necessary, given that stormwater discharges from the site do not have the potential to discharge to any County roadway, stream or drainage facility. Given the discharge would be directly to Glen Cove Creek/Hempstead Harbor, stormwater discharges from the site do not have the potential to cause downstream flooding impacts to the Creek or adjacent properties. NYSDEC standards recognize this condition, and therefore require that the stormwater management facilities for properties that discharge to large water bodies are designed for **water quality treatment only** since stormwater runoff flowing off of the site would not induce flooding of the large adjacent waterbody (Glen Cove Creek and Hempstead Harbor).

Addressing 2" of runoff for this project is proper and acceptable, given the project's proximity to a tidal waterbody. The NYSDEC regulations require the drainage system to be designed for treatment of 1.5" of runoff prior to discharge to the tidal waterbody. Therefore, it must be noted that the project is treating **more** than is required per NYSDEC regulations.

TOPIC AREA 4. Sea Level Rise. *"The project should be held to a stricter standard because in the future sea level rise will flood the expensive Jellyfish devices and the entire site will fail in the next 40 years." "We urge the Planning Board to require an analysis to determine how the project will be affected if sea level rises 6 and 10 inches."*

RESPONSE: Several comments question the project's design relative to a projected 6 to 10 inch sea level rise over the next 40 years. The project has been designed such that all habitable buildings will be set a minimum of two (2) feet above the FEMA 100-year flood elevation, which varies across the site from elevation 11.0 to approximately elevation 13.0 (NAVD88). This additional two (2) feet or 24" above the 100-year storm elevation is much greater than 10", should the sea level rise 10" in this area. Given the approximately seven (7) foot differential in the daily tidal cycle along Glen Cove Creek, with Mean Low Water elevation at (-)3.9 (NAVD88) and Mean High Water elevation at (+)3.3 (NAVD88), a potential sea level rise of 10" would partially inundate some of the storm sewer outfall pipes up to the in-line valves, during high tide events. The purpose of the in-line valves is to prevent seawater from entering into the stormwater system during high water conditions, but still allow the stormwater systems to continue to function and allow the treated stormwater runoff from the project site to discharge into the creek as the tide ebbs. It is important to note that Mean Low Water is at elevation (-)3.9 (NAVD88) so for more than half of each day, the elevation of the adjacent water body is well below the proposed elevations of the stormwater outfalls. If a rain event occurs during a high tide and severe coastal storm condition causing the outfall pipes to be fully submerged, stormwater would collect in the system and pond at some localized low points on site before discharging via overland flow to the Creek (see response below regarding flooding). As soon as the tide elevation drops, the runoff and upstream stormwater system would begin to discharge to the creek.

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TOPIC AREA 5. Flooding. *“[W]hether the plan, despite the enhancements provided by the city’s consultant, could adequately address the risks cause by storm events that exceed 2 inches of rainfall.” The stormwater plan “does not include calculations of how severe this flooding will be.”*

RESPONSE: Several comments question the design of the stormwater system relative to storm events that exceed 2 inches. The stormwater system is designed to provide treatment for the 2” rainfall event, and will continue to collect and convey stormwater runoff from larger storm events. In accordance with Nassau County DPW standards, the conveyance system (piping) is designed for 4.8” of runoff, which equates to slightly less than the NYSDEC 10-year storm event. For storm events less than 5”, stormwater runoff is collected and conveyed in the storm sewer systems, with 2” of the runoff conveyed through the water quality treatment devices before discharging to the creek. During storms with greater than 5” of rainfall (which have a frequency of occurring once every ten or more years), there may be instances where stormwater may pond at some localized low points on site because the pipe systems were not designed to convey these larger storm events. The areas of localized on-site ponding during these extraordinary storm events (greater than 5”) include the biofiltration garden in Renaissance Park, several low points along the esplanade in Renaissance Park, the biofiltration garden adjacent to Building H and the biofiltration garden in Garvies Point Park (it is expected that the biofiltration gardens would temporarily pond water as this is how they are designed and function). The attached exhibits entitled Garvies Point East On-site Ponding – Storm Events >5” and Garvies Point West – On-site Ponding – Storm Events >5”, dated 1/16/2017 show the approximate worst case limits of this localized ponding for storm events greater than 5” and when the in-line check valves are in the closed position (due to an extreme coastal flooding condition where the outfall pipes are fully submerged). This localized flooding is expected to begin receding as soon as the intensity of the storm event reduces and the rate of stormwater flow is at or below the design flow of the stormwater system (5” storm). It is important to note that the water quality treatment devices will continue to treat a minimum of 2” of stormwater runoff, even during storm events that are larger than 2” or greater.

In the case of severe wind driven coastal flooding conditions (i.e., hurricane or significant nor’easter) when water from the adjacent Creek may overtop certain areas of the development site and pond at low points, it is important to note that the proposed project site has been raised as high as practicable in order to address this potential coastal flooding condition. There are several low points along the proposed esplanade where the 100-year coastal flooding condition may overtop the proposed bulkhead and /or shoreline and create areas of localized ponding on the development site including low points within Renaissance Park, Garvies Point Park and Sunset Park as well as along Crescent Park. By raising the site, the areas of proposed ponding during a coastal flooding condition have been reduced significantly on the site: more areas of the development site are prone to coastal flooding today (existing conditions) as compared with the proposed development conditions.

TOPIC AREA 6. Stormwater Maintenance. *The stormwater system’s “intensive technological installations will require “inordinate amounts of maintenance (e.g. filter replacements, chamber*

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clean-outs, etc.) at substantial cost,” and “high frequency inspections and routine cleaning or replacement of membranes and absorption elements.” “[I]t will be a challenge to properly maintain this system.”

RESPONSE: While the City of Glen Cove will be responsible for the inspection and maintenance of the stormwater facilities, the Garvies Point Homeowners Association is contractually obligated to provide the funding for such inspection and maintenance activities. Because there is a dedicated fund for the maintenance of the stormwater system on this property, a transparent and accountable process is in place to ensure that the work is completed either by City staff or through a third-party professional hired by the City to provide these services.

The Jellyfish units do not require “inordinate amounts of maintenance” and “high frequency inspections”. Rather, the initial catchment chamber can be cleaned out with a shovel or with a vactor truck, the filters are hosed off and reused and the lower chamber cleaned out with a vactor truck. Filters need to be replaced every 2 to 5 years by simply lifting, removing and replacing. It must be noted that there are no maintenance-free stormwater facilities: all stormwater facilities, whether they are Jellyfish units, sand filters, infiltration systems, detention basins, etc., require inspection and maintenance. The frequency, intensity and cost of system maintenance varies for different practices, with some requiring more intensive and more frequent maintenance than the Jellyfish filter. There is nothing unusual about the maintenance requirements for the Jellyfish.

TOPIC AREA 7. Compliance with DEC Stormwater Manual. *“The Applicant did not adequately demonstrate strict adherence to the NYS Stormwater Management Design Manual.” “Although we understand from the work session that the plan anticipates residual contamination on site, a plan that discourages infiltration seems to contradict the NYS Stormwater Manual.”*

RESPONSE: The stormwater management design meets the NYSDEC Stormwater Management Design Manual, which requires that the stormwater system be designed for treatment of a minimum of 1.5” of runoff prior to discharge to the Creek, and allows the use of media filters in redevelopment projects in order to meet the water quality requirements (reference Chapter 9 of the NYSDEC SW design Manual – 2015). Additionally, NYSDEC requires that the water quality practices:

1. Can capture and treat the full water quality volume (1.5” storm)
2. Are capable of 80% TSS (total suspended solids) removal and 40% TP (total phosphorus) removal
3. Have acceptable longevity in the field
4. Have a pretreatment mechanism

The proposed design treats a minimum of 2” of runoff (and 2.5” of runoff when the irrigation chambers are in use (approximately April through September)), which exceeds the NYSDEC minimum treatment (1.5”). As described in Chapter 5 of the NYS Stormwater Management Design Manual, use of various green infrastructure / technologies including green roofs,

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biofiltration systems, irrigation chambers (in addition to the Jellyfish units) help to reduce the runoff volume as well as reduce pollutant loading from the site. The Jellyfish units are approved by NYSDEC as an acceptable treatment device and have been rated (through the testing program) to meet 89% TSS removal (as compared with NYSDEC requirement to meet at least 80%), 59% TP (as compared with NYSDEC requirement to meet at least 40%) and 51% TN removal rates (NYSDEC does not have a requirement). As previously indicated, NYSDEC has approved the use of the Jellyfish unit by accepting the testing by other agencies, which includes both laboratory and field testing, thereby meeting the acceptable longevity requirement. The Jellyfish unit includes pretreatment & membrane filtration within the unit.

A plan that does not rely on infiltration does not contradict the NYS Stormwater Design Manual as there are several acceptable methods / practices for water quality treatment per the NYS Stormwater Design Manual (ref Chapters 3, 4, 5 and 9). As previously explained, after further review of the project by NYSDEC Division of Environmental Remediation, they recommended to incorporate a closed / horizontal stormwater system, rather than an infiltration system, due to the areas of residual soil and/or groundwater contamination on the site.

With respect to several comments regarding concern about drainage areas and which lots / parcels are part of the project site, please note that the drainage areas for this project site were established following standard protocols /methodologies. A drainage area is defined by topography and the boundaries or limits in which, theoretically, any drop of water that falls within the boundaries will eventually make its way to the point of study. For this project, several subwatershed areas were established based upon the topography, the project site as well as the locations of the proposed outfalls along the Creek. While the Ferry lot and the "Proposed Lot 6" are included in the land subdivision (due to transfer of lands and overall acquisitions), they properly are not included in the drainage areas: the Ferry Lot was previously developed by the City and has its own stormwater management facilities, and Proposed Lot 6 is an existing building and parking area which is not part of the Phase 1 or Phase 2 Redevelopment project; it is part of future Phase 3 (future Block J). When that portion of the project is proposed for redevelopment, this proposed lot (6) will be included in the drainage area (and stormwater design) of that future phase of the project. With regard to the "water and wetland areas", these areas were excluded from the calculations as there is no development proposed in these areas therefore there is no need to contain and treat runoff that falls on these natural features.

With regard several comments which expressed concern that stormwater runoff within some of the drainage areas was not being treated, that is not the case. Specifically noted in the comments were proposed land areas labeled P-DA-3a, P-DA-3b and P-DA-4a. While water quality treatment will not be addressed within these subwatershed areas, these watershed areas will be treated by the various green technologies and water quality treatment devices located within the project site. Specifically: P-DA-3a will connect to P-DA-3b via storm sewer system which crosses Garvies Point Road and both of these areas (P-DA-3a and P-DA-3b) will be conveyed through a Jellyfish unit prior to discharge to the Creek while runoff generated within P-DA-4a will ultimately drain (through storm sewer conveyance piping) to the water quality treatment device (Jellyfish unit) located in Renaissance Park.

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TOPIC AREA 8. Dredging/bulkheads. *“Any movement of [the range of pollutants in the Creek bed] by dredging, excavating or transplanting within the existing Creek bed will re-suspend the pollutants, and currents will take these contaminants to other areas of the Creek and shoreline.”* *“The disturbance of the accumulated polluted soils behind the bulkheads will release contaminants into the Creek, and no amount of silt fencing can prevent this.”*

RESPONSE: The Project will result in improved sediment quality through mitigation measures. First, contaminated sediments located within the Small Vessel Marina, relocated Angler’s Club, Low Sill Wetland at Renaissance Park, and Transient Marina will be removed during excavation/dredging and disposed of at an approved upland location. This contaminant removal represents an environmental benefit to Glen Cove Creek and Hempstead Harbor, as the construction of these marinas will reduce the quantity of contaminants that may be transported to these downstream habitats. The three proposed marinas will result in the removal of up to 21,800 ± cubic yards of potentially contaminated in-creek substrate (volume depends on depth of contamination). In addition, sediment quality is further improved with the wetland restoration components of the project, as these wetland areas will utilize clean, uncontaminated sediments as specified in the restoration specifications.

Moreover, mitigation measures have been developed to protect against the potential release of contaminated sediments into the Creek during construction and dredging activities. Potential impacts to Glen Cove Creek from dredging and construction of these marinas and wetland areas; the adoption of Best Management Practices to minimize potential impacts from the marinas and vessel use; and guidelines for sediment sampling, methodology for dredging and disposal of dredge sediments, time of year restrictions, and measures to minimize potentials for scouring and prop dredging by vessels were discussed in the DEIS (III.C-16, III.C-45 – III.C-48). Sediment sampling and Best Management Practices for dredging and marina construction were further discussed and clarified in the FEIS (II.C-39 – II.C-41).

Consistent with the prior SEQRA analyses, dredging and marina construction activities will be governed by the Dredging and Excavation Work Plan prepared to protect Glen Cove Creek water quality, including transport of sediments downstream of the project work area. The Dredging and Excavation Work Plan includes methodology for dredging, monitoring and action plan, material handling and storage protocols, and disposal of material. The Work Plan also outlines a sequence for construction, and specifies that the existing bulkheads shall not be removed until excavation/dredging and construction of new bulkheading is complete. The Dredging & Excavation Work Plan is under review by USACE, USEPA, and NYSDEC (Bureau of Habitat – Tidal Wetlands, Division of Environmental Remediation, Division of Materials Management) to ensure that this project is constructed in a manner that minimizes, to the maximum extent practicable, the potential impacts of construction on Glen Cove Creek and Hempstead Harbor.

Selection of the bulkhead type, traditional steel or open cell steel, was determined based on analysis of existing site conditions, bulkhead function, integrity and longevity of the system, and goals of the project. The bulkhead designs will undergo detailed engineering review as part of

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the building permit application process to ensure the various site constraints are adequately addressed.

TOPIC AREA 9. DEC wetland jurisdiction. *“By waiving wetland jurisdiction inland the NYSDEC is missing a critical opportunity to protect the Creek, its waters and its wetlands.”* *“[T]he proposed mitigation is not truly new and improved habitat.”*

RESPONSE: DEC has properly asserted its jurisdiction. The limit of jurisdiction depicted on the plans and confirmed in the NYSDEC letter of June 11, 2010 conforms to Article 25 of the Environmental Conservation Law (ECL) [NYCRR Part 661]. At Garvies Point and east of Captain's Cove, NYSDEC jurisdiction extends to the 9' NAVD (10' NGVD) elevation contour or to the existing bulkhead. In Captain's Cove, the limit of jurisdiction extends to the top of the slope, at approximately elevation 14' NAVD.

Habitat Creation

Throughout the DEIS and FEIS, the applicant acknowledged that an environmental impact associated with waterfront improvements will result in the loss of approximately 27,285 square feet of tidal wetlands. As mitigation for this loss, the project proposes to create **103,622** square feet of tidal wetlands.

Reconstruction of the bulkhead 18" seaward of existing for those areas west of the Ferry Terminal and at the low sill wetland will impact approximately 3,065 square feet of littoral zone (LZ) wetlands. The loss of littoral zone wetlands by bulkhead reconstruction is more than offset by the creation of 45,218 square feet of additional littoral zone and creek areas at the Angler's Club (9,000± sq. ft.) and Transient Marina (36,200± sq. ft.), where these areas are currently upland.

Construction of the Small Vessel Marina will impact approximately 24,220 square feet of tidal wetlands, including 15,380 square feet of intertidal marsh and 8,840 square feet of coastal shoal and mudflat habitats. The applicant proposes to mitigate for this loss of wetland habitats with the creation of 52,178 square feet of vegetated intertidal marsh and 6,226 square feet of high marsh, for a total of 58,404 square feet of vegetated wetlands in several locations along the project site as outlined in Table 1. Monitoring and maintenance of plant survivorship in all wetland creation and restoration areas will be conducted for five years subsequent to planting, to ensure the success of these areas.

Table 1. Comparison of wetland impacts and mitigation for the Glen Cove Creek project site.

Wetland Impacts Analysis and Proposed Mitigation						
Wetland Type	Wetland Class	Code	Existing to be Impacted	NYSDEC Mitigation Requirement	2016 Site Plans	
Vegetated Wetland ¹	Intertidal Marsh	IM	7,970	23,910	21,427	Renaissance Park low sill bulkhead area
					30,751	Upper reach Glen Cove Creek low sill bulkhead area
	High Marsh	HM	0	0	4,500	Captain's Cove slope restoration
					1,726	Upper reach Glen Cove Creek slope
	Phragmites Marsh	PM	7,410	22,230	0	
Total Veg. Wetland			15,380	46,140	58,404	
Coastal Shoal/Mudflat ¹		SM	8,840	8,840	0	
Littoral Zone ²		LZ	3,065	3,065	45,218	Angler's Club and Transient Marina – new littoral zone and creek @ existing upland
Total Wetland			27,285	58,045	103,622	

¹ Wetland impacts associated with dredging and construction of the Small Vessel Marina.

² Wetland impacts associated with construction of bulkhead 18" seaward of existing.

Wetland and buffer area restoration was reviewed extensively during the SEQRA process, with both the City of Glen Cove and the NYSDEC. The restoration plan outlined above was determined to meet the mitigation requirements set forth by NYSDEC and was accepted by the Planning Board.

TOPIC AREA 10. Supplemental EIS ("SEIS"). An SEIS is required to assess the impact of (a) "dewatering on soils and topography," (b) "groundwater contamination on the newly proposed stormwater infrastructure and the two-foot cap of clean fill required by various administrative orders," (c) "dewatering activities on water resources," and (d) "the development on herpetofauna."

RESPONSE: A lead agency may only require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from: (a) changes proposed for the project; (b) newly discovered information; or (c) a change in circumstances related to the project. See, 6 NYCRR 617.9(a)(7).

Here, none of the site improvements, including the enhanced stormwater management infrastructure, associated with RXRGIP's Phase II site plan application, represent a change in the project or a change in circumstances that may result in any new significant adverse environmental impacts. Similarly, there is no newly discovered evidence concerning significant adverse impacts. Accordingly, there is no basis for the Planning Board to require an SEIS.

RESPONSE TO (a) Dewatering on soils and topography:

The Excavation Work Plan currently under review by multiple regulatory agencies will ensure that Best Management Practices are utilized during construction activities to minimize potential impacts of dewatering on soils and topography, and to ensure that this project is constructed in a manner that minimizes, to the maximum extent practicable, the potential impacts of construction on the site and surrounding properties.

RESPONSE TO (b) Groundwater contamination on the newly proposed stormwater infrastructure and the two-foot cap of clean fill required by various administrative orders

Please refer to the response for Topic Area 1 above. The proposed stormwater system is a horizontal / closed system, with all components specified to be water-tight, and as such, groundwater will not infiltrate into this conveyance and treatment system. The project design always included a requirement to provide a clean fill cap in pervious areas. The required depth of the cap has been defined by the regulatory agencies. It is important to note that the site is being raised in elevation by installation of fill material, together with the two-foot cap of clean fill material, which, as proposed, will provide a greater separation between the existing groundwater and the ground surface than today. The installation of the two-foot cap of clean fill will be installed in accordance with the Excavation Work Plan currently under review by multiple regulatory agencies.

RESPONSE to (c) Dewatering Activities on Water Resources:

Please refer to the response for Topic Area 8 above. The Dredging and Excavation Work Plan currently under review by multiple regulatory agencies will ensure that Best Management Practices are utilized during construction activities to minimize potential impacts of dewatering on water resources, and to ensure that this project is constructed in a manner that minimizes, to the maximum extent practicable, the potential impacts of construction on Glen Cove Creek and Hempstead Harbor.

RESPONSE to (d) Development on Herpetofauna:

The DEIS and FEIS state that the ecological benefits provided by open fields and standing water habitats will be lost. The Applicant also consulted with NYNHP regarding the potential presence of listed species, including reptiles and amphibians, during the SEQRA process. NYNHP stated in their 1/6/2009 correspondence that there were no known occurrences of rare or state-listed animals on the project site or in the immediate vicinity.

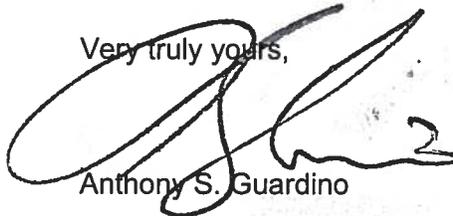
The site does not provide habitat for the two species referenced in the comment letter. Eastern spadefoot (*Scaphiopus holbrookii*) habitat consists of pine-scrub oak dunes on Long Island (NYNHP, acris.nynhp.org); it is typically associated with pine barrens vernal ponds, pitch pine-scrub oak barrens, and red cedar rocky summit habitats. None of these habitats are found in the project area or vicinity. Marbled salamander (*Ambystoma opacum*) habitat includes a variety of woodland habitats near swamps or vernal pools, as well as dry hillsides. Adults reside in upland forests and breed in vernal pools or temporary ponds. Marbled salamanders have not been observed in Nassau County according to a comprehensive survey conducted by NYSDEC for the Herp Atlas Project (<http://www.dec.ny.gov/animals/7140.html>).

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As stated on II.D-2 of the FEIS, there were no species of amphibians or reptiles observed during field investigations to document plant and bird species present on the site. No rare or state-listed herpetofauna species have been recorded on or near the project site per NYNHP. Standing water habitat that developed after remediation activities is not likely to provide habitat for significant numbers of reptiles or amphibians. Therefore, the loss of this habitat, as acknowledged and discussed in the DEIS and FEIS, is not likely to affect significant numbers of amphibians or reptiles and does not warrant additional study.

I respectfully request that the Planning Board consider the above rebuttal evidence offered by RXRGIP's expert consultants to correct the erroneous and misleading statements and other information submitted by the opposition as part of their post-hearing written comments. I also encourage the Planning Board to discuss the information set forth herein with its own independent expert consultants, who we are confident will concur with RXRGIP's experts.

Very truly yours,

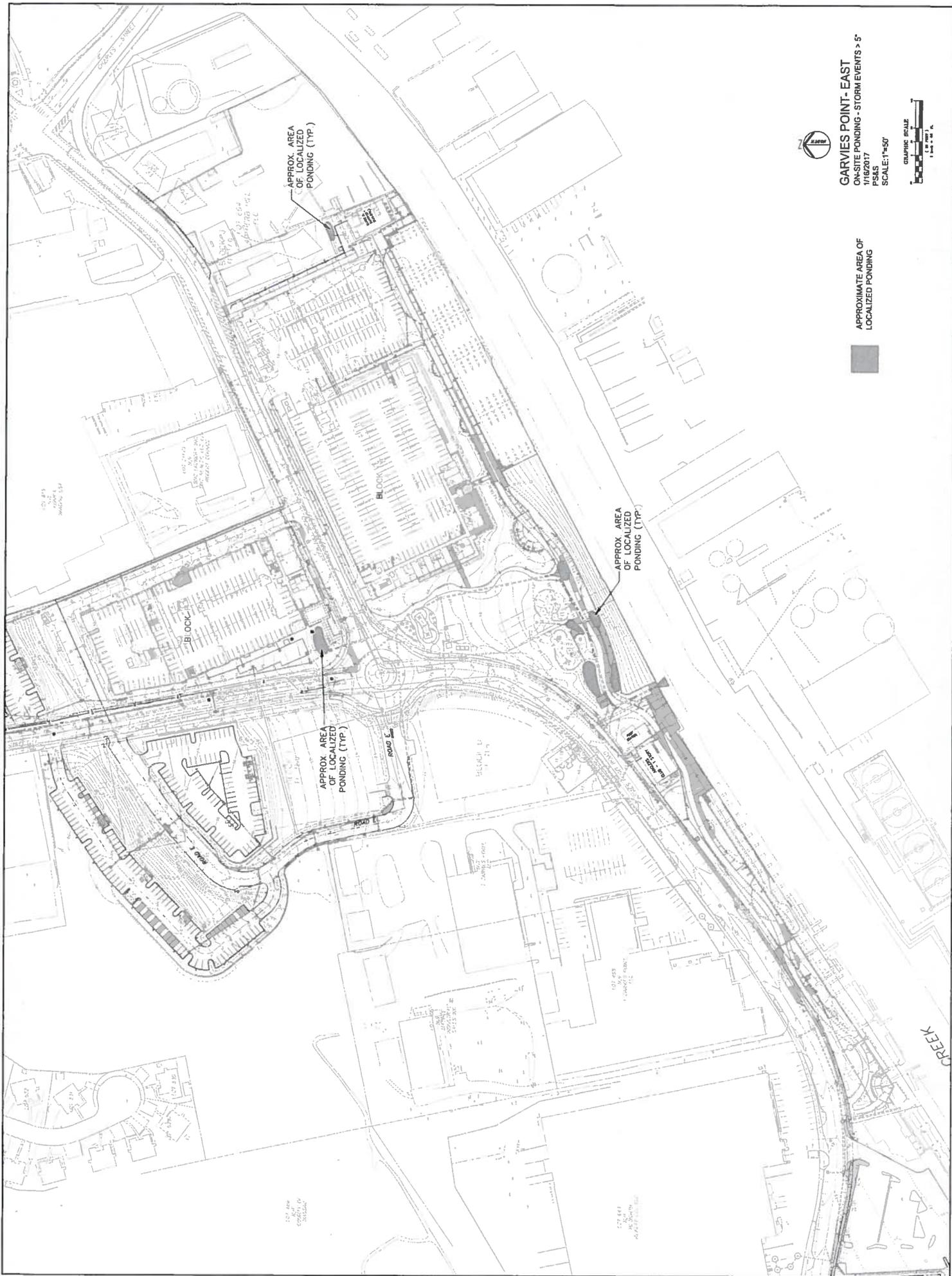


Anthony S. Guardino

Attachments

cc: Lois Stemcosky, Planning Board Secretary
Michael Zarin, Esq., Planning Board Special Counsel
Brad Schwartz, Esq., Planning Board Special Counsel

EXHIBITS

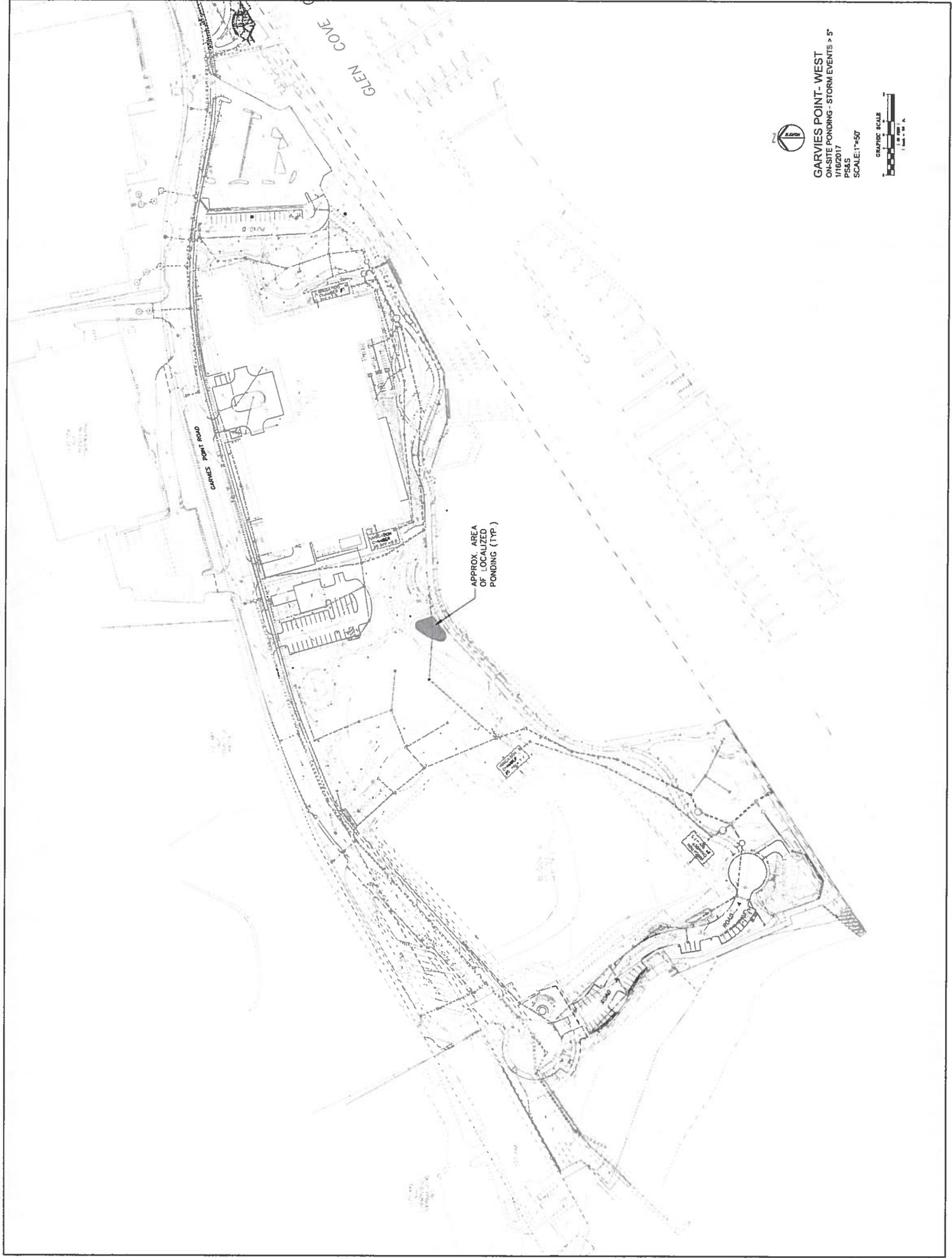


GARVIES POINT-EAST
ON-SITE PONDING - STORM EVENTS > 5"
1/16/2017
PS&S
SCALE: 1"=50'



APPROXIMATE AREA OF LOCALIZED PONDING





GARVIES POINT - WEST
ON-SITE PONDING - STORM EVENTS > 5"
11/16/2017
P.043
SCALE: 1"=50'



APPROX. AREA
OF LOCALIZED
PONDING (TYP.)



Department of Environmental Conservation

Proprietary Practices for Stormwater Management

The Department currently does not have a research unit that evaluates the monitoring results and pollutant removal efficiencies of proprietary practices (i.e. manufactured stormwater management practices) being used for post-construction stormwater management. Instead, the Department relies on established, third party stormwater management practice evaluation and verification systems such as: the State of Washington Technology Assessment Protocol - Ecology (TAPE), the Technology Acceptance Reciprocity Partnership Protocol (TARP) (primarily New Jersey Corporation for Advanced Technology), and the State of Maryland Department of the Environment.

Design professionals should refer to the 2015 NYS Stormwater Management Design Manual (Design Manual) for the requirements to use a proprietary practice for new development and redevelopment applications. Specifically, Section 3.3.2 (Criteria for Practice Addition) of the Design Manual addresses the requirements for new development, and Section 9.4 (Alternative Stormwater Management Practices/Proprietary Practices) addresses the requirements for redevelopment applications. Additional information on the use of proprietary practices is provided below.

Please be advised that 6NYCRR Part 750-2.5(d)(1) requires monitoring and analysis conducted in accordance with an issued SPDES permit to be conducted using test procedures promulgated pursuant to 40 CFR Part 136. Currently, any sampling data used to demonstrate equivalency with the Design Manual for the purposes of demonstrating compliance with the post-construction treatment requirements must use a method listed in 40CFR Part 136 which currently lists Total Suspended Solids (TSS) using EPA Method 160.2 or Standard method 2540 D). Please note that 40 CFR Part 136 does not list Suspended Sediment Concentration (SSC) as an acceptable method for analysis of TSS.

Criteria for Proprietary Practice Use - Redevelopment

The proprietary practice must be evaluated and verified by one of the third parties identified above and be listed on their webpage as meeting the required assessment protocol.

Criteria for Proprietary Practice Use - New Development

The proprietary practice must be evaluated and verified by one of the third parties identified above and be listed on their webpage as meeting the required assessment protocol. However, the documented removal efficiency of the practice must be greater than or equal to the performance criteria required in the State of New York (i.e. 80% TSS removal and 40% Phosphorus removal). The removal efficiency must be verified using at least one year of field testing and monitoring.

All proprietary practices proposed for new development are considered to be a deviation from the Department's technical standard. Please be advised that projects not subject to the requirements of a regulated, traditional land use control MS4, will be authorized to commence construction in 60 business days from the date the Department receives a complete Notice of Intent.

Proprietary practices cannot be used to address the remaining Water Quality Volume (WQv) on a new development project unless the Runoff Reduction Volume (RRv) sizing criteria has been addressed.

Criteria for Proprietary Practice Use - Pretreatment

All proprietary practices accepted for new development and/or redevelopment applications can also be used for pretreatment, provided the practice has been designed in accordance with the Design Manual.

Verified Proprietary Practices for New Development

The evaluation and verification reports/studies for following proprietary practices have been reviewed by the Department. Based on the information provided, the Department has determined that the practice is acceptable for use on new development (Note: RRV sizing criteria must be addressed first).

Practice	Manufacturer
ZPG Media Filter	Contech
Jellyfish Filter	Contech
Bayfilter	Bay Saver
FloGard Perk Filter	Old Castle Precast
Filtterra Bioretention	Contech
MWS - Linear Modular Wetland	Bio Clean Environmental Services, Inc.

To have your practice accepted for use on new development, please send a request to the following e-mail with "Proprietary Practice Acceptance - New Development" in the subject line:
Stormwater_info@dec.ny.gov. Please include the evaluation and verification reports/studies from one of the third parties listed above.



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley
Governor

Robert M. Summers, Ph.D.
Secretary

Anthony G. Brown
Lieutenant Governor

March 12, 2012

Mr. Scott Perry, CPSWQ
Managing Director
Imbrium Systems Corporation
7564 Standish Place, Suite 112
Rockville, MD 20850-2745

Dear Mr. Perry:

Thank you for your February 7, 2012 submission to the Maryland Department of the Environment (MDE) for the Jellyfish[®] Filter. Your submission presents an overview of the technology behind the Jellyfish[®] Filter and presents field test summaries. MDE has evaluated your information and offers the following:

Imbrium Systems has asked that the Jellyfish[®] Filter be classified as an Environmental Site Design (ESD) Practice. In Maryland, environmental site design (ESD) must be used to the maximum extent practicable (MEP) to reduce runoff and mimic natural hydrologic conditions. The use of ESD planning techniques and treatment practices must be exhausted before any approved structural practices may be used. In addition, these practices are designed to mimic the natural hydrologic functions of a site. Currently, MDE is developing a protocol for evaluating ESD practices; however, this is a work in progress. For these reasons, the Jellyfish[®] Filter cannot be classified as an ESD practice at this time.

Based on your independent field monitoring data, the Jellyfish[®] Filter meets the 80% Total Suspended Solids (TSS) and 40% Total Phosphorous (TP) removal rates required to be considered as a stand-alone structural practice for water quality treatment. Therefore, the Jellyfish[®] Filter may be used provided it is designed and constructed according to the specifications in the **2000 Maryland Stormwater Design Manual** (Manual). This means that all mandatory performance criteria in Chapter 3 of the Manual must be met including pretreatment equal to 25% and storage of 75% of the computed water quality design volume.

Thank you again for your submission and we look forward to working with you in the future. If there are any questions concerning these issues, please contact me or Mary Dela Dewa at 410-537-3753 or via email at mdewa@mde.state.md.us

Sincerely,

Brian S. Clevenger
Water Management Administration





Larry Hogan
 Governor

Ben Grumbles
 Secretary

Boyd Rutherford
 Lieutenant Governor

**Alternative/Innovative Technology
 List of Approved Practices (August 2015)**

Urban runoff has a great impact on the quality of Maryland's waters. Stormwater management practices help control pollution from urban runoff through various techniques that intercept, filter, and treat runoff from developed areas. The Maryland Department of the Environment (MDE) recognizes that new and innovative technologies for stormwater management are being developed, including many proprietary designs. Currently, the different practices that may be used to meet new development stormwater management requirements in Maryland are classified either as environmental site design (ESD) practices or as structural measures. MDE also has a separate process for the approval of innovative technologies that are used for retrofitting previously developed areas. A more detailed discussion of how ESD practices, structural measures, and retrofitting practices are evaluated may be found in MDE's "Environmental Site Design (ESD) and Innovative Technology", "Maryland's Stormwater Program Alternative/Innovative Technologies", and "Certification of Innovative Stormwater Management Technologies for Retrofit Applications." Please note that the use of any innovative practice or technology is subject to local jurisdictional approval.

MDE requires a formal request to be submitted to initiate the review process for alternative technologies prior to their use in Maryland. MDE's Alternative/Innovative Technology Review Checklist outlines the procedures for and the specific information that must be submitted to initiate this review. The following is a list of those practices that have been reviewed by MDE and their corresponding approval type:

Practice Name	Practice Type	Manufacturer	Approval Type	Approval Date
FocalPoint Bioretention Systems	Bioretention	ACF Environmental	MS4 Retrofit	6 /17/2015
AWD SITEDRAIN Strip 9624	Underdrain Alternative	American Wick Drain	Structural Component	4 /6 /2015
MP Eco-Grid	Reinforced Turf System	USA EcoSystems	Alternative Surface	1 /22/2015
Rotondo Bio-Filter	Bioretention System	Rotondo Env. Solutions, LLC	MS4 Retrofit	1 /9 /2015
Hydrotech Green Roofing System	Green Roof System	American Hydrotech, LLC	Alternative Surface	1 /9 /2015
Stormcrete	Permeable Pavement	Porous Technologies, LLC	Alternative Surface	12/9 /2014
Green Roof Outfitters Modular Roof System	Modular Green Roof	Green Roof Outfitters, LLC	Alternative Surface	11/20/2014
Eco-Roof	Green Roof System	Eco-Roofs, LLC	Alternative Surface	4 /18/2014
StormTank StormShield	Vault/Filter System	Brentwood Industries, Inc.	Pretreatment	3 /5 /2014
AquaLok GLU	Rainwater Harvesting	FGP Enterprises, LLC	ESD-All	1 /7 /2014
Rotondo Bio-Pod	Permeable Pavement/Vault System	Rotondo Env. Solutions, LLC	Pretreatment	1 /7 /2014

Practice Name	Practice Type	Manufacturer	Approval Type	Approval Date
Clay Brick Pavers	Permeable Pavement	The Brick Industry	Alternative Surface	8 /12/2013
CrystalClean Separator	Hydrodynamic Device	CrystalStream Technologies	Pretreatment	5 /30/2013
Aqua Bric/Bio-Pave	Interlocking Paving System	Filterra Bioretention Systems	Alternative Surface, ESD-All, Structural WQv	3 /19/2013
EZ Roll Grass and Gravel Pavers	Reinforced Turf	NDS, Inc.	Alternative Surface	3 /12/2013
COREgravel	Reinforced Turf	Core Systems	Alternative Surface	3 /12/2013
SAFL Baffle	OGS/Filter System	Upstream Technologies	Pretreatment	3 /12/2013
EcoCline Living Roof System	Green Roof	Furbish Company	Alternative Surface	2 /25/2013
Filterra Bioretention System	Bioretention	Filterra Bioretention Systems	ESD WQv Only, Structural WQv	2 /22/2013
Grasscrete	Reinforced Turf	Storm-Services, LLC	Alternative Surface	12/3 /2012
Nicolock Pavers	Permeable Paver	Nicolock Paving Stones	Alternative Surface	8 /3 /2012
AquaLok Panels	Green Roof/ Rainwater Harvesting	FGP Enterprises, LLC	Alternative Surface, ESD-All	6 /20/2012
PaveDrain	Permeable Pavement	Ernest Maier, Inc.	Alternative Surface	3 /29/2012
Modular Wetland System	Modular Wetland	Shri Agencies, LLC	Pretreatment	3 /15/2012
Jellyfish Filter	Cartridge/Membrane Filter	Imbrium Systems Corporation	Structural WQv	3 /12/2012
Floating Treatment Wetlands	Modular Wetland	BlueWing Env. Solutions	Pretreatment	3/6 /2012
StormBasin	OGS/Filter	Fabco Industries, Inc.	Pretreatment	2 /13/2012
StormSafe	Vault/Filter System	Fabco Industries, Inc.	Pretreatment	2 /13/2012
StormSack	Catch Basin Insert	Fabco Industries, Inc.	Pretreatment	2 /13/2012
PhosphoSorb Media	Filter Media	ConTech Construction	Structural WQv	11/18/2011
BaySeparator	Hydrodynamic Device	BaySaver Technologies, Inc.	Pretreatment	8 /10/2011
FlexStorm	Catch Basin Insert	Nyloplast	Pretreatment	5 /17/2011
V2B1 Hydrodynamic Separator	Hydrodynamic Device	Environment 21	Pretreatment	10/6 /2010
Flo-Gard	Inlet Filter	Kristar Enterprises, Inc.	Pretreatment	8 /19/2010
Sorbitive Media	Filtering Media	Imbrium Systems Corporation	Structural WQv	10/21/2009
Sorbitive Filter	Filter	Imbrium Systems Corporation	Structural WQv	9 /11/2009
UrbanGreen	Filter	Contech Construction Products, Inc.	Structural WQv	6 /3 /2009

Practice Name	Practice Type	Manufacturer	Approval Type	Approval Date
StormTank	Storage Tank	Brentwood Industries	Pretreatment	11/6 /2008
ADS/Hancor WQU	Hydrodynamic Device	ADS Hancor	Pretreatment	3 /25/2008
StormTech Isolator	Storage Tank	StormTech, LLC	Structural Component	11/7 /2007
No Fault/Smarte Surface	Permeable Surfaces	Human & Rohde	Alternative Surface	6 /1 /2007
Up-Flo Filter	Catch Basin Insert	Hydro International	Pretreatment	2 /6 /2007
Storm-Pure	Catch Basin Insert	Nyloplast	Pretreatment	11/20/2006
BayFilter	Cartridge Filter	BaySaver Technologies, Inc.	Structural WQv	8 /8 /2006
Aqua Filter	Cartridge Filter	AquaShield, Inc.	Structural WQv	5 /5 /2006
Aqua Swirl	Hydrodynamic Device	AquaShield, Inc.	Pretreatment	5 /5 /2006
Stormfilter	Cartridge Filter	Stormwater Management, Inc.	Structural WQv	4 /11/2005
Terre Kleen	Hydrodynamic Device	Terre Hill Concrete Products	Pretreatment	3 /28/2005
Ultra-Urban Filter	Catch Basin Insert	Abtech Industries	Pretreatment	2 /15/2005
Vortfilter	Cartridge Filter	Vortechnics, Inc.	Pretreatment	1 /8 /2005
CDS Media Filtration System	Cartridge Filter	CDS Technologies, Inc	Structural WQv	12/30/2004
FirstDefense	Hydrodynamic Device	Hydro International	Pretreatment	11/30/2004
Vortechs & Vort Sentry	Hydrodynamic Device	Vortechnics, Inc.	Pretreatment	6 /1 /2004
Downstream Defender	Hydrodynamic Device	Hydro International	Pretreatment	5 /4 /2004
Stormceptor	Hydrodynamic Device	Imbrium Systems Corporation	Pretreatment	9 /17/2003
CDS Oil / Grit Separator	Hydrodynamic Device	CDS Technologies, Inc	Pretreatment	8 /15/2003

Please contact each vendor/manufacturer for approval letters and more specific product information for each of the above-listed practices. Any formal request to MDE concerning an alternative/innovative technology should be submitted to MDE's Sediment, Stormwater, and Dam Safety Program, 1800 Washington Boulevard, Baltimore, MD 21230. If there are any questions concerning these practices, please contact the Maryland Department of the Environment, Water Management Administration at 410-537-3543 or at www.mde.maryland.gov.