

**HHPC WRITTEN COMMENTS
ON RXR GLEN ISLE'S PROPOSED
MIXED-USE WATERFRONT DEVELOPMENT
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

July 13, 2009

The Hempstead Harbor Protection Committee, which is comprised of the nine local governments (including the City of Glen Cove) that surround Hempstead Harbor, does not take positions for or against any project that is decided upon by our member municipalities. Our purpose in providing these written comments is to provide the City's Planning Board with an analysis of how well the Draft Environmental Impact Statement (DEIS) addresses potential impacts to the water quality of Glen Cove Creek and Hempstead Harbor; how well it addresses the public's access to these waterways; and to provide constructive suggestions that we believe will further protect these valuable resources and enhance their usage. As such, this document will only comment on those sections of the DEIS that directly or indirectly deal with water quality and public access to waterways.

Community Facilities

***OVERVIEW:** The HHPC wholeheartedly supports the inclusion of public amenities in this project. We believe that the more access and contact that the public has with our waterways, the more incentive they will have to become better stewards of this valuable resource. Many of the public amenities that are associated with this project are proposed for the Gateway Properties that are not currently under the control of the developer. Further complicating this is the fact that a Phase I environmental assessment report concluded that there is reason to believe that contamination may exist on these properties. The potential for additional remediation in this area would add another roadblock that could delay or preclude acquisition. The DEIS does not adequately address the viability and sequencing of these amenities in the event that some or all of these parcels are not acquired.*

HHPC COMMENT # 1: The largest concentration of this project's proposed public amenities is located within Block J. This includes the Turning Basin, Pratt Park pedestrian linkage, kayak and paddle boat rental, lawn amphitheatre, water plaza, a portion of the esplanade and public parking. This area is largely, if not entirely, the same as what the DEIS refers to as The Gateway Properties which are seven parcels currently owned by others and not within the control of the developer (including Windsor Fuel, Nassau Redi-Mix, Brilliant Electric and Air and an office building). The DEIS does not adequately address the impact on the public amenities, or the project as a whole, if some or all of these parcels are unable to be acquired.

RECOMMENDATIONS: The FEIS should address the viability and sequencing of the public amenities in the event that these parcels or some of them are not acquired.

Green Building Components

OVERVIEW: *The HHPC believes that the incorporation of environmental amenities into the design of buildings and other facilities can go a long way toward mitigating the adverse environmental impacts generated by the project. We are pleased that the developer, from the outset, has recognized this and has committed to incorporating green building components into the design. However, the level of commitment and the level of detail provided in the DEIS are less than we had hoped.*

HHPC COMMENT # 2: The DEIS states (on p. II-45) that the project “would contain” numerous green building strategies and components that are potentially eligible for LEED certification. Later in the same paragraph, it states that the project “would likely include” many of the design features and practices that would qualify for LEED credits. It then goes on to state that as the specific building design advances the applicant “will explore...to the extent feasible” methods to incorporate current environmentally responsible techniques, recognizing that the LEED rating systems are dynamic and changing over time. These statements are somewhat contradictory and therefore the extent to which the applicant is committed is unclear.

RECOMMENDATIONS: The FEIS should contain a list of green building components that the applicant is committed to incorporating and others that it is considering. The document should also state whether or not the applicant will seek LEED certification for any or all of the buildings and specify which buildings and which level of LEED certification they will be designed to. If the decision is made not to seek LEED certification, the document should state this and explain why. If an alternate rating system will be used, details should be provided on this rating system and which buildings will be designed around this system. With respect to EnergyStar compliance, the FEIS should specify which, if any buildings will be Energy Star-rated and what overall percentage of energy savings they will be designed to achieve as compared with constructing the same buildings to the current state and city code requirements.

HHPC COMMENT # 3: Vegetative roofs provide an aesthetically pleasing and natural way to beneficially utilize some of the stormwater that would otherwise contribute to stormwater runoff. The HHPC has long advocated the use of “green roofs” as a stormwater good management practice. While mention is made of “green roofs” as part of the design and mitigation measures, there is no definition of a “green roof” provided in the DEIS. Exhibit II-12 depicts green areas on the roofs of most of the proposed structures and labels these “roof deck open spaces”. This implies that there will be some public or private use of the space in addition to, or possibly in place of, the vegetation. It is unclear as to how much of this space is devoted to vegetation and how much is devoted to walking paths, seating or other amenities and thus it is not possible to determine the extent of mitigation that they will provide.

RECOMMENDATIONS: The proposed green roofs and roof deck open spaces should be better defined. Details should be provided as to what percentage will be devoted to vegetation and what other amenities will be included.

Soils and Topography

OVERVIEW: *The possible presence of contaminated soils in close proximity to Glen Cove Creek and Hempstead Harbor and the disturbance of them could lead to contamination of these water bodies. The HHPC feels that care must be taken during the construction process to ensure that contaminants from the soils or the contaminated soils themselves, if they exist, do not end up in our waters. The DEIS does not provide the level of detail that should be provided.*

HHPC COMMENT # 4: A description of standard sediment and erosion control measures are provided on pages III.A-14-15 and a draft Site Management Plan is found on one of the appendix disks. That draft plan states (on page 7) that a Soil Management Plan is included as Appendix 3 to the agreement but Appendix 3 is not provided (only a title page is included on one of the disks). While brief mention is made of some potential mitigation measures, the document defers details to the site plan process. The DEIS further states (at p.V-1) that "...the Site Management Plan (SMP) is not intended to address any additional remediation if hot spots are uncovered during site excavation work or to deal with portions of the site that do not meet current standards". There does not appear to be a plan to deal with newly found hot spots that require remediation.

RECOMMENDATIONS: A more thorough discussion is needed on building on the soils on the site and the safeguards that will be utilized to ensure that contaminated soils do not enter the adjacent waters, especially with regard to new "hot spots" of contamination that would not be covered by the Site Management Plan. The FEIS should also include the Soil Management Plan (Appendix 3 to the draft Site Management Plan).

HHPC COMMENT # 5: In the event that stormwater comes into contact with residual contaminants in the subsurface soils, there is a possibility that contaminants may end up in nearby surface waters (Glen Cove Creek and Hempstead Harbor) either by direct flow to these water bodies or indirect flow through groundwater. The proposed Environmental Easement and the accompanying draft Site Management Plan appear to only address the potential for groundwater contamination and soil vapor intrusion with little or no consideration for addressing surface water contamination.

RECOMMENDATIONS: The developer should commit, through the FEIS and other means, to seeking provisions in the Environmental Easement and the Site Management Plan or other legal mechanism that would allow for the protection of surface waters.

Water Resources (Stormwater)

OVERVIEW: *Stormwater has long been our number one concern as it is the most prevalent means for contaminants to enter the waterways. We feel that it is essential that the developer commit to and design to an effective level of control of stormwater to be generated by the project. While we are very pleased that the developer has committed to using vegetated (or "green") roofs, to re-using some of the stormwater for irrigation and to providing filtration for some of the stormwater prior to its discharge through the outfalls, we are disappointed that the stormwater system as a whole appears to only be*

designed to meet the minimum standard. We also feel that the developer may be hasty in assuming that the project will not be required to meet the Nassau County stormwater requirements. If the stormwater system is designed for the bare minimum or even a 2" storm, any runoff from storms exceeding that level will be discharged into the creek or the harbor. This is especially important given recent experience that seems to indicate that weather patterns are changing and we are experiencing larger rain events on a more frequent basis.

We also feel that long term maintenance of any stormwater system is essential to ensure that the systems continue to function as designed. The DEIS does state that the maintenance responsibilities will be handed by the property owners association and that a manual and maintenance schedule will be provided but there is no discussion regarding mechanisms to ensure the necessary funding for this or to methods to ensure that such maintenance is carried out.

The DEIS also does not adequately address the issue of pet wastes, which are known to contribute significant bacterial contamination to nearby waters if not properly disposed of.

HHPC COMMENT # 6: The DEIS states on p. III.C-25 that under the state's Phase II regulations, the stormwater system in this area only needs to be designed to handle a 1.2" storm. It mentions the county's 8" requirement and goes on to state that the county recognizes that this cannot always be obtained and that the county has an absolute minimum of 2". It then states that because the project does not abut a county road or tie into a county system, the county has no jurisdiction and therefore the project will be designed in accordance with NYS standards (1.2"). The applicant may be incorrect regarding the applicability of the county's stormwater requirement. The county does have jurisdiction over subdivisions and therefore the county stormwater requirements may apply in this case. In fact, the DEIS, at page I-6, points out that it is possible that subdivision approval will be required. The design of the stormwater system presented in the DEIS assumes that this is not the case.

RECOMMENDATIONS: Regardless of whether or not it is determined that the county's stormwater requirements apply, the stormwater system should be designed to meet Nassau County's 8" requirement or if this can be shown not to be feasible, then to the maximum degree feasible, not simply to the minimum that the law will require. The FEIS should clearly state the number of inches of stormwater that the system will be designed to accommodate and explain the reasons for that determination. The FEIS should also clarify whether Nassau County subdivision approval is required.

HHPC COMMENT # 7: The DEIS states that the first 1.0" of runoff from the buildings will flow to an irrigation chamber system with larger storms being diverted to infiltration basins which will be designed to handle and treat up to 2.0" with the rest discharging directly to the creek or harbor. However, at p.III.C-29, it states the possibility that if none of the soils are suitable or if the groundwater table is too high throughout the site, there will be no infiltration systems used and the water will be diverted through an overflow control pipe and discharged to the creek or harbor. It is not clear in the DEIS as to whether this discharge would flow through the Contech Stormfilters.

RECOMMENDATIONS: Better analysis is needed of the soils and water table so that a definitive analysis of stormwater mitigation can be provided in the FEIS. If the soils are found to be insufficient or the groundwater table too high to accommodate infiltration, consideration should be given to expanding the acreage of green roofs from the current 6.0 acres to a greater percentage or if possible, all 14 acres of roof surfaces or to providing additional technology for treating stormwater prior to discharging it to the adjacent waters.

HHPC COMMENT # 8: The proposed stormwater system is based largely on infiltration and yet the possibility exists that the EPA and/or DEC will require the use of engineering controls that may preclude such infiltration in certain areas. At present, the Captain's Cove parcel is precluded under the NYS DEC's Record of Decision ("ROD") from residential use. However, according to the Environmental Condition Report Section 2.2.6, the DEC has informally stated that it will consider residential use provided that certain engineering controls are utilized such as covering the existing soils with an impermeable barrier to prevent soil vapor intrusion. If such barriers are installed, it would appear to preclude infiltration of the stormwater in those areas with the barriers and thus may require direct discharge to Glen Cove Creek and Hempstead Harbor if there is not sufficient remaining space to allow for infiltration. This could significantly increase the volume of stormwater that would need to be handled by the Contech Stormfilters.

RECOMMENDATIONS: The FEIS should address how stormwater will be handled in the event that engineering controls preclude infiltration and whether the Contech Stormfilters are adequate to provide treatment. To the extent that infiltration is not feasible, the applicant should commit to filtration prior to discharge to the creek or harbor.

HHPC COMMENT # 9: The purpose of a stormwater system should not only be to quickly remove stormwater from roadways and other surfaces but to provide treatment of the runoff so that it does not contaminate groundwater or surface waters. The proposed StormTech stormwater system does not appear to incorporate any filtration system other than the filter fabric that would be placed at the bottom of the StormTech chambers used for the stormwater system. The design manual for that system shows that their system does allow for the incorporation of pre-treatment devices. While the filter fabric will provide some benefit, we do not feel that it goes far enough. The addition of pre-treatment devices would reduce the long term maintenance requirements of the StormTech chambers and allow for more convenient maintenance of the system.

RECOMMENDATIONS: To the extent possible, the StormTech stormwater system should incorporate pre-treatment devices or filters for sediment removal and typical stormwater contaminants such as nutrients, hydrocarbons, dissolved metals and bacteria. The FEIS should state that pre-treatment devices will be added to the StormTech chambers or explain why this cannot be done.

HHPC COMMENT # 10: Long term performance of the stormwater system and the removal of sediment are two important factors to consider in a stormwater system design. The StormTech website states that a sediment and maintenance plan is key to long term performance of their system and that a “treatment train” approach to isolating sediment prior to inletting the chamber systems is recommended for easy inspection and maintenance.

RECOMMENDATIONS: These and all other recommendations by StormTech for its system should be incorporated in the design of the system.

HHPC COMMENT # 11: Details regarding the design of the stormwater system such as green roofs, rain gardens, irrigation systems, catch basins, filtration devices, storm drains and outfalls are largely lacking in the DEIS. At p. III.C-26 it states that the “stormwater management plan will employ various practices to meet NYSDEC water quality design standards for total suspended solids (TSS), total Nitrogen (TN) and total phosphorous (TP) removal” and then lists several practices including green roofs and other techniques. The appendix disk contains a series of drainage area maps and documents showing calculations for units to store and recharge stormwater underground. Page III.C-31 states that there will be 8.0 acres of non-vegetated roof surfaces. Page III.C-32 makes reference to 6.0 acres of green roofs. Drawing STM-1 in the stormwater appendix is a site drawing that shows the locations of the StormTech infiltration devices, the outfalls and the Contech StormFilters that would filter stormwater prior to discharge. The stormwater appendix does not contain a narrative description of the system.

RECOMMENDATIONS: The FEIS should include a stormwater management plan with narratives that depict the proposed locations and types of stormwater structures proposed with manufacturer and model number as well as the discharge points to the creek and/or harbor. The plans for specific buildings should be included. We suggest that green roofs be included on the first buildings to be constructed so that experience with this new technology can be gleaned and if necessary, provide the basis for refinements in design for future buildings.

HHPC COMMENT # 12: The DEIS at p. III.C-46 states that the Glen Isle Property Owner’s Association will be responsible for maintenance and that manuals and schedules will be provided to them. The DEIS does not make it clear as to whether the maintenance of the stormwater system will be performed by the overall property owners association, the individual building homeowners associations or the city or a combination of these entities. We believe that it would make most sense for the overall property owners association to bear this responsibility as it would more likely ensure that no portions of the system are overlooked and there would be an economy of scale in terms of cost of maintenance. Methods for ensuring sufficient funding for the maintenance or for ensuring that maintenance is carried out were not addressed.

RECOMMENDATIONS: Since stormwater systems require regular inspection and maintenance and will function poorly or not at all if not properly maintained a mechanism for ensuring such funding and that inspection and maintenance are carried out are essential components of any maintenance plan. The FEIS should address this.

Consideration should be given to the establishment of a stormwater maintenance trust fund with such funds being provided through a portion of the rents and sales of condominium units. Consideration should also be given to the incorporation of covenants and restrictions on the property to ensure that stormwater systems are inspected, maintained, repaired and upgraded as necessary. Finally, consideration should be given to having the overall property owners association bear the responsibility for maintenance of the stormwater system.

HHPC COMMENT # 13: There are several potential sources of contamination of Glen Cove Creek besides the project itself. In the event that contamination is detected in the creek, it is important to be able to determine its source. Having an up-to-date analysis of all outfalls along the creek and their inter-connections would greatly assist this effort. The DEIS (at p. III.C-14) provides details on the storm drain system along Garvies Point Road and the Garvies Point Preserve. No details were provided for the south side of the creek. While this is not within the Glen Isle Project Area, the Conceptual Site Plan for the East Parcel which was presented as part of the PowerPoint presentation at the DEIS Public Hearing shows a possible bridge to the south side of the creek and the creation of new recreation fields.

RECOMMENDATIONS: An up-to-date baseline of existing outfalls along the creek should be provided (both above the water line and below it) along with their inter-connections (where known) and a description of any new outfalls to be constructed and existing outfalls to be decommissioned.

HHPC COMMENT # 14: The DEIS (at p.III.C-30) states that pet waste will be minimized by enforcing the city's pooper scooper ordinance. At page III.J-6, it states that pet waste stations will be strategically located along the public areas and esplanade with no further details.

RECOMMENDATIONS: The FEIS should state the number and location of pet waste stations and state who will maintain them.

HHPC COMMENT # 15: If stormwater is recharged onsite, there is a potential for contact with contaminants which may remain in the soils and thus a potential for migration into the waterways either indirectly through hydraulic groundwater flow or directly through the soils and into the water. If significant quantities of contaminated soils are found, they would likely be addressed through the federal or state superfund remediation process. While the DEIS does address existing subsurface conditions and sets forth a proposed mechanism for the various parties to come to agreement on the responsibilities for such issues, no such agreement is currently in place. Given the potential for costly remediation and the current state of the economy, it is conceivable that a situation may arise where neither party is willing or able to pay for site remediation. In that case, the very future of the proposed project could be in jeopardy. This needs to be addressed. The DEIS at p.III.B-1 discusses existing subsurface conditions and the Appendix disk contains a more detailed Environmental Condition Report. The DEIS states that the applicant and the city need to have a coordinated

approach to handle residual environmental issues at the properties and suggest that the best approach is a multi-agency agreement that includes the applicant. A Draft Site Management Plan which is included on the Appendix disk attempts to address this but it is in draft form, not complete and apparently has not been entered into.

RECOMMENDATIONS: The FEIS should address the possibility that the various parties will not be able to reach agreement on the proposed Site Management Plan or on responsibilities in the event that additional site remediation is required and discuss how this will affect the project.

HHPC COMMENT # 16: Sea Cliff, Glenwood Landing and Glen Head are currently served primarily by aging and in some cases, failing septic and cesspool systems. When these systems fail, there is a possibility of septic wastes entering Hempstead Harbor. The availability of excess capacity at the Glen Cove Wastewater Treatment Facility presents the only real viable opportunity available to these nearby communities for connecting to a local wastewater treatment facility. As such, the City and County should carefully consider how it allocates this excess capacity. The DEIS states that the county's wastewater treatment plant can handle 5.5 MGD; that the average daily flow is 3.5 MGD and the peak flow was 4.5 MGD. The addition of the 507,000 GPD to the peak flow of 4.5 MGD brings the potential peak flow to over 5.0 MGD. The document also indicates that three additional developments (The Villa at Glen Cove, the Glen Cove Mews and Lee Gray Court) will collectively utilize an additional 166,500 gallons per day of capacity. At the same time, other projects have been approved for connection including The Birches and Glen Harbor Partners. The DEIS does not provide the figures from these projects. This leaves little excess capacity for the 5.5 MGD plant.

RECOMMENDATIONS: The FEIS should more fully address the capacity issue taking into account other approved and pending hookups and what the project would do to the ability of the plant to accept future hookups from the city and other local communities.

HHPC COMMENT # 17: The DEIS (at p. II-56) states that there will be three new marinas constructed. We are pleased that the applicant states that it will adopt the HHPC's Clean Marinas program. However, while the DEIS describes the components of the program, it does not state whether there will be fueling facilities at the marinas or who will operate and maintain the marinas. At page III.J-6, it states that pump outs would be handled by portable pump out boats, which we understand to mean those operated by the Towns of Oyster Bay and North Hempstead. Because those boats primarily serve Oyster Bay Harbor and Manhasset Bay respectively, this is not the ideal solution. Since we understand that a sewer line will be extended to the area by the proposed relocated Glen Cove Angler's Club marina, it would be ideal to incorporate a pump out at that location.

RECOMMENDATIONS: The FEIS needs to specify whether the marinas will have fueling facilities, provide details including the volumes and their expected impacts, if any. The FEIS should state who will own, operate and maintain them and should address the mechanism for ensuring that the Clean Marinas program will be adopted and carried

out by the eventual owners and/or operators of the marinas. The FEIS should address the issue of installing one or more pump out facilities at the marinas.

HHPC COMMENT # 18: The proposed weir at the Turning Basin presents a possible opportunity for stormwater mitigation. The incorporation of an ultraviolet (“UV”) treatment device at the weir would assist in the control of stormwater-laden algae and bacteria flowing from the upstream Cedar Swamp Creek subwatershed through Mill Pond (Pratt Park) and into the Turning Basin, creek and ultimately harbor. Since the Turning Basin will result in less natural circulation and since this area will be used for kayaking and as the gateway to the project, cleaning the water at this point could present multiple benefits to the developer and to the residents.

RECOMMENDATIONS: The feasibility of the incorporation of an ultraviolet (“UV”) stormwater treatment device at the weir and its impacts should be explored and discussed.

Transportation

***OVERVIEW:** The City and the HHPC have long advocated opening up the city’s waterfront area to the public and to the downtown area. The developer has responded by providing for a number of public amenities as part of the project. However details appear to be lacking in the DEIS.*

HHPC COMMENT # 19: While the DEIS (at p. II-63) states that “public access to the waterfront is a central element of the proposed development...”, details are lacking on public parking locations and number of spaces, kayak offloading areas, public restrooms and other amenities that are needed to make public access a workable reality.

RECOMMENDATIONS: The FEIS needs to provide greater details on public access to the waterfront including, but not limited to public parking locations and number of spaces, kayak offloading areas and public restrooms.

Utilities

***OVERVIEW:** Part of the developer’s open space mitigation includes the removal of invasive species and the planting of wetlands vegetation. We applaud these efforts but feel that a better plan is needed for carrying out the plantings.*

HHPC COMMENT # 20: The DEIS (at p. III.D-36) states that wetland plant survivorship will be monitored annually for two years and that monitoring will cease after two years if plant survivorship reaches 85%. If 85% is not attained, monitoring will then continue until it does. It also states that the redeveloper will be responsible for re-plantings until that level is reached. Annual monitoring for two years seems to indicate that the plantings will be looked at twice. Protective fencing and bird deterrent flags and other devices could be knocked down in a storm leading to plants being eaten by wildlife, etc. To check them once a year is simply not adequate. This should be done at least

weekly during the first months and after any major storms. The monitoring can then taper off gradually.

RECOMMENDATIONS: The FEIS should state that wetland plantings will be monitored weekly and after every major wind or rain storm for the first three months, then taper off gradually.

Growth-inducing Aspects

***OVERVIEW:** What happens in one community often does affect what happens in other communities. While other multi-family facilities have been built or proposed for former industrial sites around the harbor in recent years, the density and extent of this project is unprecedented in Hempstead Harbor. While the DEIS does explain the developer's position that there is a regional need for such this project, there is no discussion of the precedent-setting nature of this project or its impacts.*

HHPC COMMENT # 21: The DEIS does not fully address the potential for precedent-setting for these types of facilities. The DEIS (at p. II-63) states that the project will satisfy a regional housing need but does not address the potential for precedent-setting

RECOMMENDATIONS: The FEIS should address the precedent-setting potential for the project and the impacts of such precedent-setting.