

**II. RESPONSES TO DEIS COMMENTS**  
**DEIS Sec. IV.B · Land, Water and Ecological Resources**

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COMMENT NUMBER	COMMENT/RESPONSE
<b><u>WATERFRONT SHORELINE</u></b>	
703	<p>Having been a water oriented person living right here along the Post Road all my life, the shoreline is that. High tide, mid-tide and low, where the lands underwater are exposed. The waterfront is there. Its not a part of this debate.</p> <p>Comment noted.</p>
1612	<p>The anticipated level of use for the proposed boat launch should be clarified, given that a substantial portion of Echo Bay near the shore is a mud flat at low tide.</p>
1630	<p>The final EIS should address the anticipated level of use for the proposed boat launch, given that a substantial portion of Echo Bay near the shore is a mud flat at low tide. The EIS should specify if the boat launch is only intended for high-tide periods.</p>
PH3901	<p>The people that were endorsing this development here today, we're talking about a boat ramp, a non-motorized boat launch. They weren't from here, because anybody that's from here, and anybody that lives here, knows that that's not possible in that area.</p> <p>Non-motorized boating activity in Echo Bay from the proposed boat launch would be limited by tides.</p> <p>There are three tidal wetland zones adjacent to the Project Site, including coastal shoals, bars and flats, high marsh and a littoral zone. As defined by the NYSDEC in 6 NYCRR Section 661.4(hh)(3), coastal shoals, bars and flats, are areas covered by water at high tide, and exposed or covered by water to a maximum depth of approximately one foot at low tide.</p> <p>High marsh or salt meadow is defined as the uppermost tidal wetland zone and is usually dominated by grasses. This zone is periodically flooded by spring and storm tides and is often vegetated. Littoral zones are defined as the tidal wetlands zone and include all lands under tidal waters that are not included in any other category. The seaward boundary of the littoral zone is coincident with the 1988 NAVD minus 6-foot contour at mean low water. This equals the 1929 NGVD minus 5-foot contour upon which the project plans are based.</p>
<b><u>BUILDING CONSTRUCTION - FEMA</u></b>	
1003	<p>Working with FEMA on the Hurricane Sandy disaster relief effort, my only technical comment on the proposed project regards building construction in the flood prone</p>

## II. RESPONSES TO DEIS COMMENTS

### DEIS Sec. IV.B · Land, Water and Ecological Resources

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- area of Echo Bay. Global warming is for real, but FEMA maps only reflect current flooding conditions. Therefore it would be useful now, to avoid spiraling private flood insurance rates and possible repetitive building damages, to provide another two or three feet of freeboard above the two foot (2') freeboard already required by New Rochelle's Building Code for the building closest to the water's edge.
- 1107 The applicant should see if new flood plain levels are being set, due to Superstorm Sandy. In many areas the flood plains are being redefined. What does this mean to the site? If the building is within a foot of the new flood plain, it should consider elevating MEP equipment and/or providing floodproofing mitigation measures, such as flood doors, locating louvers above potential flood levels, providing sump pits and submersible pumps for pumping any water out, and providing electrical conduit capable of being submerged in water, etc.
- 1217 It doesn't look like the current plan takes into consideration the current FEMA  
1515 recommendations for flood plain and freeboard? This could have an impact on shoreline protection. The plans don't indicate any of the baseline mechanical systems that need to be located above the FEMA flood plain or the life safety issues that are being addressed related to flooding.
- 1610 Because the site is located within a flood zone, there is a major concern that the new development will be impacted by future storms and storm surges.
- 1627 The draft EIS notes that a substantial portion of the development site is located within a flood zone. This has been confirmed again by the recently released FEMA flood advisory maps. This is a major concern with the proposed development given the storm surge that occurred in some parts of our region as part of superstorm Sandy. The architectural drawings do not show the proposed building to be raised above grade. It would appear that a storm surge could severely damage units located in "panhandle" of the development that extends towards the water's edge. The final EIS should address this issue and identify the precautions the applicant intends to take to reduce flood risk. We note the draft EIS describes shoreline stabilization along with plantings as the only measure currently proposed. We do not believe this to be enough to prevent storm surge events, particularly given the Stephenson Brook outfall, which is also adjacent to the site.
- In January 2013, FEMA issued updated Advisory Base Flood Elevation Maps for use by communities in guiding Hurricane Sandy reconstruction efforts. These updated FEMA maps, though not yet official, are expected to be adopted by local municipalities within the next 18-24 months. The site plan for the Project has been designed to accommodate the projected 2' to 3' increase in the base flood elevation (BFE). Further, in accordance with the Code of the City of New Rochelle, Chapter 111, Building Construction, Article IV, Flood Damage Prevention, the new residential structure has been designed with the lowest floor elevated a minimum of 2' above the BFE and will utilize materials and utility equipment (if not elevated) resistant to flood damage.

## II. RESPONSES TO DEIS COMMENTS

### DEIS Sec. IV.B · Land, Water and Ecological Resources

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#### DREDGING IN ECHO BAY

PH3103

And if you open up the waterfront, what waterfront? You're talking about kayaks? That's a mudhole back there. I haven't heard anybody talking about money to dredge it out.

PH3903

I'm not sure where you guys have come as far as dredging. I know that it's a very expensive project. And I know that the people in my neighbor were very excited about the original plan, because it was going to include dredging, and it was going to restore that for us. The area down there at low tide is horrible.

The Project does not include dredging in Echo Bay. Kayak activity from the proposed non-motorized boat launch would occur when tide levels permit.

In order to prevent continued degradation of the shoreline and bay, the Project would include permanent stabilization of the dilapidated bulkheads and seawalls that armor the shoreline with a rip rap stone or concrete armor and reconstruction of the deteriorated seawalls with a concrete or timber bulkhead system.

#### NEW YORK STATE DEC REGULATION

1901

Portions of the project area are regulated pursuant to Article 25 of the Environmental Conservation Law, tidal wetlands. These areas include Littoral Zone, Coastal Shoals, Bars and Flats, and Adjacent Area, as defined in the tidal wetland Regulations 6 NYCRR Part 661. The tidal wetland adjacent area is generally defined as land immediately adjacent to a tidal wetland extending to whichever of the following limits is closest to the wetland: (i) 300 feet landward of the most landward boundary of a tidal wetland; or (ii) to the seaward edge of the closest lawfully and presently existing, functional and substantial fabricated structure which lies generally parallel to the tidal wetland landward boundary and which is a minimum of 100 feet in length (ex. road, bulkhead); (iii) to the elevation contour of 10 feet above mean sea level. DEC staff visited the site August 15, 2012 to determine if the existing bulkhead and riprap constitute a barrier as described in (ii) above. Based on the site visit and the NYSDEC Division of Fish and Wildlife guidance on functionality of structures under the tidal wetlands Act (DFW-1)2, and substantiated by the information in DEIS Appendix 3 Shoreline Assessment Report, staff have determined that the existing deteriorated bulkheads and riprap do not constitute an existing, functional and substantial fabricated structure. Therefore the Adjacent Area on the site will extend to the 10-foot contour.

Comment noted. In the DEIS, the analysis indicates that based on Section 661.4(b)(1) of the Tidal Wetland regulations, it appears the Adjacent Area to the project site would terminate at the seaward edge of the seawalls and revetments that line the majority of the northern shoreline of Echo Bay. However, the NYS DEC has determined, based on a site visit on August 15, 2012, that the existing deteriorated bulkheads and riprap do not

**II. RESPONSES TO DEIS COMMENTS**  
**DEIS Sec. IV.B · Land, Water and Ecological Resources**

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constitute an existing, functional and substantial fabricated structure. Therefore the Adjacent Area on the site will extend to the 10-foot contour. If direct wetland disturbance or Adjacent Area disturbance is proposed, a NYSDEC permit is required regardless of the size of those areas.

1902

It is not possible at this time to definitely identify the adjacent area boundary. DEC's standard for determining the 10-foot elevation is North American Vertical Datum 88 (NAVD88). However the plans are in NAVD29 which requires a 1.05 foot adjustment. The following comments are based on the adjacent area ending at approximately the 11-foot contour as shown on the plans. Based on the Drawings, dated 01/29/2013, and the plans in Appendix 3, it appears that the following actions are subject to regulation under Part 661. The column with heading 'Compatibility' refers to the classification of the action under Part 661.5(b) as "Generally Compatible" with the wetland or "Presumptively Incompatible".

Action	Jurisdictional Area	Compatibility
Bulkhead replacement, restoration, or modification or the construction of new groins, bulkheads or other shoreline stabilization structures	Littoral Zone, Coastal Shoals, Bars and Flats, and Adjacent Area	Generally compatible
Fill (including bulkhead or riprap installation, re-construction or non-functioning structure, and habitat enhancement)	Adjacent Area	Generally compatible
	Littoral Zone and Coastal Shoals, Bars and Flats	<u>Presumptively Incompatible</u>
Dredging (including habitat enhancement)	Littoral Zone, Coastal Shoals, Bars and Flats, and Adjacent Area	<u>Presumptively Incompatible</u>
Installing a floating dock(s) totaling 200 square feet or more in area	Littoral Zone and Coastal Shoals, Bars and Flats	Generally compatible
Discharge of stormwater to tidal wetlands under a State Pollutant Discharge Elimination System permit	Littoral Zone, Coastal Shoals, Bars and Flats, and Adjacent Area	Permit required - no compatibility designation

Both the DEIS Project and FEIS Project are regulated under Chapter 25 of the Environmental Conservation Law at Section 661 and would require a NYS DEC permit.

1903

The DEIS does not state for what purpose the stone building adjacent to the concrete pier is being restored. It appears this may not be a functional structure, in which case the restoration would be considered new construction and its compatibility would depend on its proposed use.

Construction of commercial and industrial use facilities, and public and semi-public buildings - requiring water access	Adjacent Area	Generally compatible
Construction of commercial and industrial use facilities, and public and semi-public buildings - not requiring water access	Adjacent Area	<u>Presumptively Incompatible</u>

**II. RESPONSES TO DEIS COMMENTS**  
**DEIS Sec. IV.B · Land, Water and Ecological Resources**

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Substantial restoration or reconstruction of existing functional structures	Littoral Zone, Coastal Shoals, Bars and Flats, and Adjacent Area	Generally compatible
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Docking or mooring facilities should establish a facility perimeter – the area including all structures and the footprint within which vessels are docked or moored. This will be a requirement of the DEC permit applications. Relocation of floating docks within an established perimeter does not require a permit.

Comment noted. Details for the rehabilitation of the stone building and docking or mooring facilities would be provided as part of the DEC permit application.

1904

Even if an action is deemed generally compatible, the project must still meet the tidal wetland Regulations’ issuance standards which include the requirement that the project:

- will not have an undue adverse impact on the present or potential value of the affected tidal wetland area or adjoining or nearby tidal wetland
- is reasonable and necessary, taking into account such factors as reasonable alternatives to the proposed regulated activity and the degree to which the activity requires water access or is water dependent

Comment noted. Details related to the wetland Regulations’ issuance standards would be provided as part of the DEC permit application.

1905

In addition, the following variances from development restrictions (Part 661.6) may be required, depending on the determination of adjacent area boundary:

- (i) The minimum setback of all hard surface driveways, roads, parking lots and similar impervious surfaces exceeding 500 square feet in size (Echo Bay Walk) as well as overhead utility line poles is 75 feet from any tidal wetland.
- (ii) Coverage by existing and new structures and other impervious surfaces of more than 20 percent of the adjacent area; coverage of 3,000 square feet or less of adjacent area on any individual lot by existing and new structures and over impervious surfaces is allowed.

DEC staff believes the ‘Echo Bay Walk’ will be capable of meeting the variance requirements.

Comment noted.

1906

DEC staff has concerns with the primary shore treatment. Although Section 661.5 (use Guidelines) indicates that construction of shoreline stabilization structures is a generally compatible use, the proposed shoreline treatment constitutes substantial fill as well as dredging. The proposed shoreline stabilization appears to cover a large area of mapped shoals and mudflats. The plan’s lack of key benchmarks such as mean high water, mean sea level, and the contours relative to mean sea level made it difficult to determine the amount of disturbance, but it appears that approximately 0.5 acre of fill, and possibly excavation, is proposed for the shoreline protection and associated ‘wetland planting shelf’. The current design may not be capable of meeting permit issuance standards unless the rip-rap is moved landward, with corresponding adjustments in the location of the ‘Echo Bay Walk’ esplanade. The proposed wetland planting shelf may offer benefits to the wetland such that the disturbance could be

## II. RESPONSES TO DEIS COMMENTS

### DEIS Sec. IV.B · Land, Water and Ecological Resources

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- permitted. Installation of vegetative screening in key locations to protect certain habitat functions may also be needed.
- Comment noted. Details related to the shoreline stabilization design and key benchmarks would be provided as part of the DEC permit application.
- 1907 DEC recommends the applicant schedule a pre-application meeting with staff to discuss these shoreline features and the permit issuance standards.
- Comment noted.
- 1908 Pursuant to Article 15 of the Environmental Conservation Law, Use & Protection of Waters, a permit is required for excavation or fill in navigable waters. A Water Quality Certification is required pursuant to Section 401 of U.S. Public Law 95-217, and 33 USC 1341 of 1977, 1984. In NYS, issuance of these federal certifications has been delegated to DEC. Based on the information provided, it appears that a Part 608 permit and Section 401 Water Quality Certification will be required for the shoreline erosion protection and the 'wetland planting shelf. As with the tidal wetland regulations, the proposal must meet permit issuance standards of reasonable and necessary and not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the state. The same concerns with the shoreline protection as are identified in the Tidal Wetlands section will apply. Any open-pile dock would not require a Protection of Waters Permit from DEC for docks and moorings. Per Part 608.4, structures are not subject to a dock permit from DEC if placed on, in or above state-owned lands under water where a lease or other appropriate conveyance of interest authorizing the use and occupancy of such lands has been obtained from the NYS Commissioner of General Services. This does not affect DEC jurisdiction over docks or mooring pursuant to tidal wetlands.
- Comment noted.
- 1909 This project will require coverage under the SPDES General Permit for Stormwater Discharges from construction Activity (GP-0-10-001). The City of New Rochelle, as a Municipal Separate Storm Sewer System (MS4), will be responsible for reviewing and approving the Stormwater Pollution Prevention Plan (SWPPP).
- Comment noted. As described in DEIS Section IV.C *Utilities*, the Stormwater Management Plan for the Project would comply with all regulations and requirements of the NYSDEC SPDES General Permit For Stormwater Discharges From Construction Activity (GP-0-10-001). As such, the proposed stormwater management design has been prepared in compliance with the requirements for a redevelopment project as outlined in Chapter 9 of the NYSDEC's New York State Stormwater Management Design Manual, dated August 2010.
- 1910 Staff have no comments on the remediation concept plan outlined in the DEIS. As indicated in the response to the Draft Scoping Document, if the project sponsor or the City intends to participate in the Brownfields Cleanup Program (BCP), then a new application for remediation of the current project area will be required. DEC

## II. RESPONSES TO DEIS COMMENTS

### DEIS Sec. IV.B · Land, Water and Ecological Resources

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strongly recommends a pre-application meeting with Division of Environmental Remediation staff prior to submitting a BCP application. If there are questions, please contact George Heitzman, Division of Environmental Remediation, at (518) 402-9662. Please note that filling, dredging, etc. which is associated with hazard material cleanup under the DEC Brownfields program is not subject to 'tidal wetlands' or 'Excavation and fill' regulations per the Environmental Remediation Program regulations 6 NYCRR part 375-1.12. Any fill or dredging in wetlands under the jurisdiction of the Army Corp of Engineers would still require a Section 401 Water Quality Certification from DEC, because this issuance is a federally-delegated authority.

Comment noted.

1911

This site is within an area of potential archeological sensitivity and near sites which are on, or are potentially eligible for inclusion on, the National or State Register of Historic Places. DEC strongly recommends submitting reports to SHPO for review; this should include the re-use of the Armory building and the restoration of the stone building adjacent to the proposed dock if the structure is greater than 50 years old. A determination of impact on cultural resources from SHPO will be a requirement of any DEC permit applications under Uniform Procedures (tidal wetlands, Protection of waters, etc).

Comment noted. The Phase 1A and 1B reports were submitted to SHPO in January, 2013 and no comments were received.