

III.C Natural Features

C. Natural Features

Comment III.C-1:

This construction will incorporate new features, including state of the art cooling systems, advanced storm and water filtration systems, water saving fixtures and green roofs.

(Michael Carriere, Rep. of District Council 9, Painters and Allied Trades, Public Hearing, 4/29/2008, Page 38)

Response III.C-1:

Comment noted.

Comment III.C-2:

The Final Scoping Document for this project required the applicants (SFC) to explain in detail their plans for “green measures” to be used in building the projects. (See Scope Section Utilities 3.H). The resulting DEIS analysis does not begin to address the need for 21st century sustainable building and energy practices. “Energy Star” appliances and gray water collection are not sufficient for a city that has been enrolled by its current mayor in the U.S. Conference of Mayor’s Climate Protection Agreement through which we are committed to lowering Yonkers’ carbon footprint by 2012. The building practices assumed to be acceptable in this DEIS will contribute to an increase in the carbon load, not a decrease.

(Aileen Kilcommon, Yonkers Rowing and Paddling Club, Letter, 5/19/2008)

Response III.C-2:

Comment noted. Page III.H-25 of the DEIS addresses the energy efficiency measures that the Applicant will pursue in its projects. The Applicant proposes to build the Project to a standard adequate to make it eligible for LEED certification. While the Applicant proposes to build the Project to a standard adequate to make it eligible for LEED certification, this may not apply to the parking garages because most LEED standards focus on building components related to human occupancy. The “Mall” or LEED for Retail is currently undergoing a Pilot program because of the unique nature of the retail environment and the different types of spaces that retailers need for the distinctive product lines. LEED for Retail is expected to launch sometime this year and when it does, and when the Applicant knows the nature of the types of retailers, the Applicant will investigate compliance at that time. For further description, see Response LA-15.

Comment III.C-3:

What U. S. Green Building Council LEED standard (Leadership in Energy and Environmental Design) does SFC plan to achieve with the Mall construction?

(Aileen Kilcommon, Yonkers Rowing and Paddling Club, Letter, 5/19/2008)

Response III.C-3:

The “Mall” or LEED for Retail is currently undergoing a Pilot program because of the unique nature of the retail environment and the different types of spaces that retailers need for the distinctive product lines. LEED for Retail is expected to launch sometime this year and when it

does, and when the Applicant knows the nature of the types of retailers, the Applicant will investigate compliance at that time.

Comment III.C-4:

The 25 story towers on Parcels H&I are just too tall because it is environmentally unsound to build height along a major waterway.

(Aileen Kilcommon, Yonkers Rowing and Paddling Club, Letter, 5/19/2008)

Response III.C-4:

Building taller buildings will allow the creation of more open space along the waterfront than would be possible by building the same number of residential units in shorter buildings. For a discussion of flooding concerns, see Responses III.C-6, III.C-11.

Comment III.C-5:

The 25 story towers on Parcels H&I are just too tall because this is the Atlantic Flyway for millions of migrating birds and they will be endangered by these structures.

(Aileen Kilcommon, Yonkers Rowing and Paddling Club, Letter, 5/19/2008)

Response III.C-5:

The migration of birds is a continent-wide and world-wide phenomenon. The Hudson River Valley is a portion of the migrating route called the Atlantic Flyway wherein certain species of birds travel from northern breeding grounds to southern wintering areas in the fall and visa versa in the spring. In North America, peak migration periods occur between March and May in the spring and between August and October in the fall. Contrary to popular notions of the Atlantic Flyway and other migratory flyways, bird migration does not occur in a concentrated route. There is much overlap amongst flyways and most species use more than one flyway during any migration period. Over the continental landmasses, the application of such a term is somewhat misleading, as songbird migration overland occurs along a broad front with little evidence to support a concentration of birds along a particular geographic feature or route such as the Hudson River. The concept of a flyway for land birds is only considered appropriate in certain geographical locations, such as along the narrow parts of Central America and Mexico, but even these land mass areas are hundreds of miles in width.

Physiology and feeding behavior are important factors as to when birds migrate during the day or night. Birds that are able to feed on the wing, such as swallows and swifts, tend to travel by day and feed while migrating. Songbirds require daylight in order to forage for food, and largely migrate at night. Waterfowl can feed by either day or night, and their migration patterns occur at either time. As for the physiology of birds, cooler temperatures and less turbulent air at night offers an advantage to night-time migrants because daytime temperatures can cause overheating and loss of body water. Nocturnal migration also has an advantage by reducing the risk of predation.

The altitude at which the various birds migrate is highly variable amongst the species and depends upon the location, geography, season, time of day and weather conditions. Nocturnal migrants tend to travel at higher elevations than diurnal migrants where very low migration to the Earth is almost non-existent at night. When experiencing headwinds, birds tend to use the lower altitudes where they encounter lower wind velocities. Birds tend to migrate at higher altitudes in the fall as compared to the spring. Geese and ducks fly at higher altitudes than raptors, shorebirds and songbirds.

Any preference for using higher altitudes does not necessarily indicate that low-rise structures do not pose risks and that all high-rise structures (i.e., buildings, towers, light houses, etc.) are particularly hazardous for migrating birds. A large proportion of migrating birds affected by human-built structures are song birds due to their propensity to migrate at lower flight altitudes and at night (especially after midnight when birds begin to descend for their peak migration altitudes). Birds rely heavily on vision during nocturnal migration and artificial lights appear to interfere with their ability to see the landscape clearly. Hence, birds are affected by moving vehicles and human-built structures on nights of overcast and during inclement weather conditions. However, the vast majority of nocturnal migration occurs in weather that provides the ideal conditions of calm, light or following winds with little cloud cover and good visibility, both prior to the time of departure and during the actual flight. The number of migrating birds is always greater after a storm has passed and the front has moved through to create the favorable conditions for migration.

The most effective measure to reduce mortality from building collisions is to turn out the lights at night during the migration season and to make the glass more visible from the outside (tinted or non-reflective glass). Many of the tallest buildings in New York City, such as the Empire State Building, have implemented such measures to the extent possible. Where lights are required for the safety of air traffic, the use of flashing white lights (i.e., strobe lights) tends to reduce the incident of impacts and danger to migrating birds.

As presented in the DEIS on Pages III.B-28 and 29, all lighting will meet the minimum requirements established by the IESNA (Illuminating Engineering Society of North America). Trespass and light pollution will be minimized with the use of Nema 3, Nema 4 and Nema 5 light distributions patterns which will control the placement of light in the horizontal plane. In addition, pole heights and lamp wattages will be professionally coordinated to reduce glare while providing proper illumination values. Light pollution will be minimized with the use of cut-off light fixtures, which will be dark sky compliant. All lighting will have high efficiency lamps and luminaries with photocells to provide automatic switching between dusk and dawn. The esplanade along the Hudson River will use light bollards on the water side of the esplanade to illuminate the esplanade with design parameters of (0.2 to 0.5 foot-candles-avg., 6:1 avg./min.). The water side of the bollard will be dark to prevent trespass light and light pollution on to the water.

The use of internal lights by the residents of Palisades Point will generally be extinguished from midnight to dawn as this is the prime period during which most people sleep. Street lights that have shielded covers on them to prevent the upward radiation of light and direct the light downward is a standard method and an effective means to illuminate the streets and sidewalks.

To the extent allowed by the FAA, lights that are used to meet FAA requirements will be white strobe lights.

The proposed Palisades Point building represents a very minor element within the overall migratory path of birds. With the implementation of the measures described herein, the effect of buildings on migrating birds will be minimized to the extent practicable.

Comment III.C-6:

The 25 story towers on Parcels H&I are just too tall because with water levels predicted to rise by as much as 3 meters (9') over the next 75 years, it is unwise building practice to build tall structures so close to the water!

(Aileen Kilcommon, Yonkers Rowing and Paddling Club, Letter, 5/19/2008)

Response III.C-6:

Comment noted. All habitable structures at Palisades Point will have the lowest habitable floors at elevations situated one foot above the 100-year flood elevation. Regarding the FEMA designations for the Palisades Point site, see Response III.C-11.

Comment III.C-7:

Part of the "open" space [at Parcels H&I] that is being claimed as an enhancement for the city will actually be paved as a turnaround for the public parking (and will probably, in no time, be extra parking itself.) There is not enough GREEN space. This is all paved in one way or another except for a bit of lawn and trees.

(Aileen Kilcommon, Yonkers Rowing and Paddling Club, Letter, 5/19/2008)

Response III.C-7:

Comment noted. The existing Sculpture Garden (± 0.6 acres) will remain on site after the development. In addition, approximately one acre of lawn between the towers and the river will be created as green open space. (See page II-32 of the DEIS.) Additionally the roofs of the parking garages will contain landscaped green rooftop gardens and approximately half of the roof area of the two residential towers (± 0.75 acres) will be vegetated open space as well. Finally, a waterfront esplanade will run the entire length of the site and will incorporate the design guidelines established by Westchester County for the County River Walk. The landscaped island of the site between the two proposed residential buildings was included as green space, the roadways were not included in this calculation, refer also to Exhibit II-12 of this FEIS.

Comment III.C-8:

The mature trees and the green parkland that will be taken for the Cacace Center are a serious loss to the air quality of the downtown. Are replacement trees and open space planned for the downtown? What is the parkland replacement plan?

(Aileen Kilcommon, Yonkers Rowing and Paddling Club, Letter, 5/19/2008)

Response III.C-8:

Enhanced landscaping and new tree plantings in Waring Park are an important element of design for the Cacace Center site. Exhibit II-12 of the DEIS shows the site plan for the Cacace Center site. Page III.J-24 and III.J-25 of the DEIS summarize the parkland replacement plan.

Comment III.C-9:

Also, a lot of the friendly green roofs are going to be environmentally friendly. Thank you. I am in support of it.

(Eddie George, Iron Workers District Council, Public Hearing, 4/29/2008, Page 192)

Response III.C-9:

Comment noted.

Comment III.C-10:

Considering that Yonkers is part of a county-long greenbelt, these looming towers threaten to be an ecological disaster. Think of all the flocks of migrating birds that will die when they crash into the sides of these buildings. Think of looking out your window and seeing birds crashing into them.

(Barrymorre Scherer, Public Hearing, 5/13/2008, Page 2)

Response III.C-10:

See Response III.C-5.

Comment III.C-11:

H and I are in the floodway. They are in the floodway. The only permitted use is a lawn.

(Barbara Howard, Public Hearing, 5/13/2008, Page 62)

Response III.C-11:

The FEMA Flood Insurance Rate Map Community Panel Number 36119C0317F, dated September 28, 2007, indicates that the Palisades Park project is located within Zone X and Zone AE.

Zone AE refers to areas subject to inundation by the 1-percent-annual chance flood event. Zone X refers to areas that have a 0.2% probability of flooding every year. There is no floodway located along the Hudson River.

Comment III.C-12:

I propose a moratorium on river housing. Do not approve of the two 25 story towers because the affects of global warming means our sea levels are rising, and you are going to approve of such a project of putting all those people down there where their investments and their lives are going to be put in danger?

(Terry Nagai, Resident, Public Hearing, 5/13/2008, Page 265)

Response III.C-12:

The lowest residential floors will be at least one foot above the 100-year flood elevation of the Hudson River. The FEMA Flood Maps for the city of Yonkers were updated in 2007. All proposed construction of Palisades Point will be in accordance with all applicable codes and regulations. See also response III.C-21.

Comment III.C-13:

Please present data on shadow studies in relation to the Hudson River, i.e., what effect will the height of the buildings have on river temperatures because of decreased sunlight as the buildings cast their shadows on the river, and how this will affect plant and fish life in the river.

(Joan Jennings, E-mail, 5/30/2008)

Response III.C-13:

As presented in Section 4 on Page III.B-11 in the DEIS a series of shadow studies have also been prepared for Palisades Point for four analysis days: March 21—the vernal equinox, which is equivalent to September 21—the autumnal equinox, May 6—the midpoint between the equinox and the longest day of the year, June 21, and December 21—the shortest day of the year (refer to Exhibits III.B-3a through d). These studies illustrate potential maximum shadow impacts at three points in time during the day: 9:00 AM, Noon and 3:00 PM—as well as the solar path from west to east on which the shadows are expected to travel through the day. Generally the shadows projecting from the proposed buildings at Palisades Point would move from northwest at 9:00 AM, to the north by Noon, and northeast by 3:00 PM. The distance the shadows would project on the summer solstice is relatively short and shadows would fall only on upland areas in close proximity to the development site. During the winter solstice (December 21), the shadows would be longer than at any other time of the year. The limited time the shadows from Palisades Point are situated over the waters of the Hudson River will have no effect on water temperatures as the water is constantly moving and will not remain in the shadow long enough to cause any changes in temperature. Similarly, the short term shadow effect on the plant and fish resources will also have a negligible affect on the growth and survival of these organisms. The plants and animals are readily capable of surviving a few hours of shade that will result from the buildings and are commonly found in habitats that are subject to much longer periods of shade.

Comment III.C-14:

Riverkeeper advocates a similar approach for contaminated groundwater. Total remediation is the goal, at least to the fullest extent practicable. The contaminants discovered in groundwater

testing pose grave risks to human health and must be abated to protect human health and to prevent contaminants from leaching into the Hudson and Saw Mill River.

(Andrew Rafter, Legal Intern, Riverkeeper, Letter, 5/30/2008)

Response III.C-14:

As presented on Page III.C-18 “Although the groundwater elevations appear to coincide with the channel bottom elevations of the Saw Mill River, most of the groundwater flow is directed toward sections of the river that are piped, thereby preventing a pathway connection. In addition, a preliminary groundwater modeling study indicates that the flow of groundwater is very limited in volume, and therefore, the groundwater to surface water pathway is determined to be an incomplete exposure pathway for any potential leaching into the Hudson and Saw Mill Rivers.” In order to address the potential for impacts upon human health the following discussion is provided on Page III.D-27 “The Applicant entered into a Brownfield Cleanup Agreement (BCA), as a Volunteer, with the New York State Department of Environmental Conservation on December 12, 2006, to investigate and remediate the River Park Center site. Various remedial investigative activities were completed in August and September, 2007, in accordance with a NYSDEC approved Remedial Investigation Work Plan. Additional groundwater and soil samples are currently being taken to further delineate potential impacts in accordance with the request of the NYSDEC. Once the investigation is complete, a Remedial Investigation Report (RIR), which summarizes the finding of the investigation, will be submitted to the NYSDEC for approval. Based on the RIR findings, a Remedial Action Work Plan (RAWP) will be developed for the site and submitted to the NYSDEC for their approval. The RAWP will set forth the required remedial measures.” As such, the Applicant is coordinating with the NYSDEC to incorporate the appropriate measures to address the existing contaminated groundwater conditions for the project. As the information for the RIR and RAWP becomes available, the plan will be made available for public comment.

Comment III.C-15:

Riverkeeper expects a “compliance plus” policy from SFC to ensure that more than the bare minimum of compliance is adhered to in this delicate environment along the shores of the river. This applies to all aspects of the project, from ensuring that construction waste and exposed topsoil does not enter the water, to ensuring that water-oriented construction activities such as the canoe/kayak launch are constructed in the most responsible manner possible.

(Andrew Rafter, Legal Intern, Riverkeeper, Letter, 5/30/2008)

Response III.C-15:

As presented on Page III.D-28 of the DEIS: “During construction of the Project, the potential for soil erosion and sedimentation will be controlled through the use of temporary soil erosion and sediment control measures. These measures will be designed and installed in accordance with New York Guidelines for Urban Erosion and Sediment Control, dated October 2005, published by New York State Environmental Protection Division of Water and Chapter 56, Article XIII of the City Code. An approved Soil Erosion and Sediment Control Plan will minimize downstream erosion by controlling runoff at its source, minimizing runoff from disturbed areas and de-concentrating storm water runoff. Temporary and permanent stabilization methods will be

implemented before construction begins and will be continuously modified throughout construction to provide the best methods for stormwater management and pollution prevention.”

The city, state and federal review and permitting agencies will review the project design for compliance with the applicable laws and regulations. The approved Soil Erosion and Sediment Control Plans will be strictly adhered to ensure that there will be no release of construction wastes and topsoil from entering the Saw Mill River and Hudson River. In addition, the proposed canoe/kayak launch facility will be constructed in accordance with NYSDEC and USACE permit requirements that are directed towards protecting fisheries resources and any hazards to navigation.

Comment III.C-16:

The Green Task Force and Westchester Disable, and the Office of the Aging should be consulted when planning the landscaping and general construction

(Patricia McDow, City Council Member, City of Yonkers, Letter, 5/30/2008)

Response III.C-16:

Comment noted. The goals and objectives of each referenced group will be considered when planning the landscape and general construction. The Project Team will coordinate with key members of the groups, as part of the preparation of detailed site plans.

Comment III.C-17:

Many of the local merchants lost their inventory as a result of the flood last year. What precautions will be put in place to prevent this from re-occurring.

(Patricia McDow, City Council Member, City of Yonkers, Letter, 5/30/2008)

Response III.C-17:

The conceptual engineering design of the daylighting and the SFC project has been reviewed as part of the DEIS and will continue to be refined and will be subject to review and approval by City Departments and regulatory agencies. As discussed in the drainage studies included in the DEIS, the daylighting of the Saw Mill River will not impact the existing flooding conditions upstream or downstream of the Project. The daylighting will alter the alignment of the River through the River Park Center Project but is not expected to increase the flow volumes in downstream sections. In accordance with the DEIS Scope, the Applicant undertook a complete inventory of the condition of the existing underground portion of the Saw Mill River, downstream of the project. The results of this investigation is included in Appendix 3.B of the DEIS. The Applicant and the City are not responsible for conditions on other private property. For a detailed discussion of stormwater impacts, see Chapter III.D of the DEIS and this FEIS.

Comment III.C-18:

Our recommendation is that an oversight process for the project needs to include a mechanism to review the technical details of the final engineering and habitat/landscape plan, the final stormwater management plan and construction management details (erosion and sediment control), and elements of the plan related to the water quality (specifically addressing and fecal coliform). This review, independent of the development team, should occur prior to the submission of the plan to the US Army Corps of Engineers for permitting. This oversight can take many forms and is often incorporated by way of a Technical Advisory Committee (TAC). In any event, the oversight needs to confirm the scientific details, make sure it addresses regional species, and must be done by professionals whose primary profession is rooted in the particular science, (for example, someone whose “practice” is habitat restoration, not someone who is primarily a landscape architect). The DEIS doesn’t yet have the detail for this level of review.

(Ann-Marie Mitroff, Director of River Programs, Saw Mill River Coalition, Letter, 5/30/2008)

Response III.C-18:

The Applicant will utilize the services of professional engineers, landscape architects and consultants to formalize the final engineering, habitat/landscape, stormwater management, soil erosion/sediment control and construction plans for the project. The Saw Mill River Coalition will have the opportunity to review these plans, confirm the scientific details and provide input and comments during the various public comment periods offered by the City of Yonkers, NYSDEC and USACE as part of the permit coordination and review process.

Comment III.C-19:

Some sections only mention the common names and others both common and scientific. Case in point is the occurrence of the rapidly dwindling American Bittersweet (reference is to *Celastrus scandens* on page III.C-10 and 11). I would like to (actually) see the plants listed in the DEIS as I have yet to find an American bittersweet plant – probably the one found was the Asiatic bittersweet (*Celastrus orbiculatus*-an invasive species). Disappointing is the lack of herbaceous species altogether (except one mentioned as mugwort). It would be highly unlikely that the recorded sections of the Saw Mill River would only provide habitat to tree species. The report also omits the almost certain occurrence of the Snapping turtle. The proposed ‘rip-rap’ straight jacket of the future stream bed is not much different from the existing condition, but I am certain that improvements could be proposed.”

(Ann-Marie Mitroff, Director of River Programs, Saw Mill River Coalition, Letter, 5/30/2008)

Response III.C-19:

The format for the DEIS was to indicate both the common and scientific name at the first mention of a plant or animal and to provide only the common name at each subsequent mention of that plant or animal. However, this format was not followed in Section C.1(i)(1) and (2) on the bottom of Page III.C-11 and the top of Page III.C-12. A format correction, by reference, will be made for these two sections and for the appropriate *Celastrus* species. Other herbaceous species that were listed in the riparian corridor of the Saw Mill River at the project site included knotweed (*Polygonum cuspidatum*), pokeweed (*Phytolacca americana*), and goldenrod (*Solidago* spp.). The DEIS documents the identification of other plant species, besides tree species, along

the Saw Mill River including multiflora rose (*Rosa multiflora*), fox grape (*Vitis labrusca*), poison ivy (*Rhus radicans*), curled dock (*Rumex crispus*), and blackberry (*Rubus allegheniensis*). While the snapping turtle (*Chelydra serpentina*) has a low potential to be found along the Saw Mill River, it will be added to the species list.

Further information on the proposed rehabilitation of the Saw Mill River is presented in the DEIS on pages III.C-3 and C-4. Although some riprap will be used, it is not the sole element to be used to rehabilitate the stream corridor. Depending upon the section of the river to be rehabilitated (Upper River, Rapids and Pond areas), a combination of naturalized stone and riprap will be placed for the river bottom and lower banks located below the 10-year flood elevation. The banks between the 10- and 100-year flood elevations will be stabilized using a combination of "hard-scape", live branch cuttings through boulders/rip-rap/geotextile baskets and live plantings through live fascine bundles, as conditions and access requirements allow. A naturalized boulder stream bed with numerous small spillways/waterfalls will allow for a grade change as the stream flows through the site. The naturalized boulder stream bed will allow for areas for fish to rest in the flowing waters. All spillways/waterfalls proposed for the rehabilitation of the Saw Mill River will not hinder the upstream migration of fish species.

The stream bed design will incorporate soil bioengineering systems in conjunction with structural measures to provide permanent protection, enhance aesthetics and create an environmentally acceptable improvement.

Comment III.C-20:

The 3-year quality monitoring study conducted by Manhattan College for Groundwork will begin in June 2008 and follows on a 1-year study conducted in 2007. We have established a Technical Advisory Committee (TAC) that includes the City of Yonkers and McLaren Engineering (along with others). We recommend that the information from the on-going study and any water quality improvement plan be incorporated into the SFC project.

(Ann-Marie Mitroff, Director of River Programs, Saw Mill River Coalition, Letter, 5/30/2008)

Response III.C-20:

As indicated by the commenter, a 3-year water study was initiated in June 2008 and is on-going. As the information from the on-going water-quality study becomes available, it will be incorporated into the SFC project and subsequent permit applications.

Comment III.C-21:

In SFC Phase I Draft Environmental Impact Statement (www.sfcvonkers.com/deis) there is not one mention of the terms "Global Warming" or "Climate Change."

(Aaron Lindenbaum, Letter, Not Dated)

Response III.C-21:

The Scoping Outline of Issues to be Addressed in the DEIS adopted by the City Council of the City of Yonkers by resolution at its meeting of March 27, 2007 does not include Global Warming or Climate Change as topics to be addressed in the DEIS.

Comment III.C-22:

In the EIS at IIC-24 (Natural Features) it is stated that Flood is the outgoing tide. Is it not correct that the Flood tide is actually the incoming tide?

(Robert Walters, Yonkers Green Policy Task Force, Letter, Not Dated)

Response III.C-22:

The noted comment is located on Page III, C-24, paragraph 2. The flood tide is the incoming tide and the ebb tide is the outgoing tide.

Comment III.C-23:

Has the effect of light pollution on migrating birds been researched?

(Molly Roffman, Letter, 5/30/2008)

Response III.C-23:

A discussion of effects on bird migration patterns is presented in Response III.C-5.

Comment III.C-24:

Appendix 1.B of the DEIS, entitled "Response to NYS Coastal Policies," outlines 13 policies that some Local Waterfront Revitalization Programs have adopted. As the city does not have an approved LWRP, the 44 State Coastal Policies are the enforceable policies of the CMP for the area(s) where the activities are proposed. Therefore, the DEIS needs to adequately address the consistency of the project in conjunction with the 44 State Coastal Policies, not the 13 policies. Please note that in addition to the policy statements, the project must be evaluated for consistency with the CMP policy standards and conditions included as policy explanations. This is important because the policies are implemented, in large part, through the policy explanations. The 44 policies are located on our website at www.nyswaterfronts.com. Please note, that while only two of the four components described in the DEIS, Palisades Point and Larkin Plaza, are located within the State Coastal boundary area, all four components are considered "the proposed project" and must be considered and analyzed as to their consistency with the CMP policy standards and conditions.

(Bonnie Devine, Coastal Resource Specialist, NYS Dept. of State, Letter, 5/29/2008)

Response III.C-24:

A comprehensive response to the 44 Coastal Policies is included in FEIS Appendix F.

Comment III.C-25:

The DEIS needs to clearly demonstrate that the proposed action would not impair the significant habitat and is consistent with Policy 7 of the CMP. If this cannot be demonstrated, alternatives to eliminate these impacts need to be identified and analyzed.

(Bonnie Devine, Coastal Resource Specialist, NYS Dept. of State, Letter, 5/29/2008)

Response III.C-25:

Policy 7 of the New York State Department of State (NYS DOS) Coastal Management Program (CMP) for Fish and Wildlife address the need for project to comply with the following: "Significant coastal fish and wildlife habitats will be protected, preserved, and where practical, restored so as to maintain their viability as habitats."

Policy 7 goes on to note that "Habitat protection is recognized as fundamental to assuring the survival of fish and wildlife populations. Certain habitats are particularly critical to the maintenance of a given population and, therefore, merit special protection. Such habitats exhibit one or more of the following characteristics:

- (a) are essential to the survival of a large portion of a particular fish or wildlife population (e.g. feeding grounds, nursery areas);
- (b) support populations of rare and endangered species;
- (c) are found at a very low frequency within a coastal region;
- (d) support fish and wildlife populations having significant commercial and/or recreational value; and
- (e) would be difficult or impossible to replace."

To comply with Policy 7, a detailed Essential Fish Habitat (EFH) evaluation is provided in the DEIS on Pages III.C-30 through III.C.40. Also included in the EFH evaluation is a discussion on the shortnose sturgeon (*Acipenser brevirostrum*), a state and federally listed endangered species. The response to NYS Coastal Policy 7 that is provided in Appendix 1.B of the DEIS will be supplemented with the EFH evaluation to demonstrate compliance. See Appendix F of this FEIS.

Comment III.C-26:

During the last 25 years, 4 flood control projects have been constructed along the length of the river under the auspices of the Army Corps of Engineers. Have they given their approval of the daylighting concept?

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-26:

The proposed daylighting of the Saw Mill River will be submitted to the Army Corps of Engineers, NYSDEC, and all appropriate agencies for approval of proposed design. The following approvals are required:

- US Army Corps of Engineer, Section 404 Permit (Waters of the United States) This will include submitting a New York State DEC/USACE Joint Application Form.
- New York State Department of Environmental Protection's Pollution Discharge Elimination System (SPDES) for Discharges for Construction Activities, General Permit No. GP-0-08-01
- City of Yonkers Site Plan Approval and related construction permits.

Comment III.C-27:

Daylighting requires Article 15 permit Stream Diversion Permit from NYSDEC. Statement that "on January 7, 2007 the NYSDEC Fish & Wildlife Division expressed concern over the river flow being diverted for this purpose." Explain the concern and what form it was in. Was this a letter? If so, is it available? What is the status of their concern? "The applicant contends that the short-term impacts are overcome by long-term benefits because the debris often blocks the river flow in this river." Are there discrepancies between the applicant and the findings of NYSDEC?

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-27:

NYSDEC made verbal comments at a meeting on January 7, 2008. Since the meeting, it has been clarified in writing that an Article 15 Stream Diversion Permit is not required for the River Park Center Site but will be required for the Larkin Plaza project. (See Appendix 3.C of the DEIS.) NYSDEC did express verbal concerns at the meeting about the river being diverted for cleaning. However, SFC and its consultants explained that unless cleaning occurs, river flow will be detrimentally impacting causing a much greater impact to aquatic life than during temporary cleaning events. Therefore, as noted above, SFC and its consultants contend the short term impacts caused by temporary, short term diversion to perform cleaning functions are outweighed by the benefits from cleaning the river to eliminate debris from obstructing river flow.

Comment III.C-28:

III-C-7-8 I. d. Storm Water, Erosion, and Sediment Impacts & Pollution Prevention, Soil Erosion and Sediment Control III-& The first four paragraphs of this section are convoluted and it unclear what permits are required from NYSDEC. The section first states that because the project disturbs more than an acre of land, NYS stormwater management laws apply. Then it states NYSDEC conditions for which complying with the ten and hundred year criteria do not apply, specifically no increase in impervious area or changes to hydrology that increase the discharge rate. In the description of the daylighting of the River Park Center applicant discusses impervious acreage and stormwater discharge and treatment measured, they do not specifically state whether they must comply with. Applicant should specifically state all permits and

programs they must apply for and any conditions that need to be met. Does this project conform to the technical standards for stormwater quantity and quality controls for the NYS Stormwater Management design Manual??

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-28:

The proposed project will be in conformance with the New York State Department of Environmental Protection's (NYSDEC) Pollution Discharge Elimination System (SPEDES) for Discharges for Construction Activities, General Permit No. GP-0-08-01 (General Permit). Site design and subsequent permitting requires conformance with the technical standards for a stormwater quantity and quality controls presented in the New York State Stormwater Management Design Manual. The final SWPPP will be submitted to the NYSDEC prior to the start of construction in accordance with the Notice of Intent (NOI) requirements for Permit No. GP-0-08-001. The statements with respect to the 10- and 100- year criteria is in accordance with Chapter 4 of the New York State Stormwater Management Design Manual.

Comment III.C-29:

III-C-8

I. d (2) Storm Water, Erosion, and Sediment Impacts & Pollution Prevention, Soil Erosion and Sediment Control

Daylight Project I-Larkin Plaza should be Delighting Project II- Larkin Plaza

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-29:

Comment noted.

Comment III.C-30:

III-C-9

I. e Maintenance of Stormwater Management Measures

2nd line, "... decrease in capacity to of the underground portions... [Eliminate to or of]

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-30:

Comment noted.

Comment III.C-31:

III-C-15

I.k (I) Protection of Waters Permit

Appears to be an edit note that can be removed.

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-31:

Comment noted.

Comment III.C-32:

As a condition of approval the NYSDEC can approve the manner and extent to which the channel is changed, limit the amount of material removed, and designate the area where material may be removed. Can the applicant elaborate whether there has been any discussion of changes or conditions imposed on approval?

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-32:

An Article 15 permit Stream Diversion Permit from NYSDEC is not required for the daylighting and reconstruction of the Saw Mill River. The Applicant will comply with all conditions imposed for the work by the by the approving agencies.

Comment III.C-33:

III-C-16

I.k (I) Protection of Waters Permit

Applicant states the projects must receive water permit form the Army Corps of Engineers. The environmental issues associated with that permit and how this application meets those requirements should be discussed. Discuss the overall time frame for permitting and construction.

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-33:

The environmental issues are addressed within the DEIS and FEIS. The Applicant will initiate the permitting process concurrent with the Site Plan Approval by the City of Yonkers. All permits will be obtained prior to the start of the work associated with the respective permits.

Comment III.C-34:

III-C-18 2. (a) Post-Development Stormwater Runoff "To the extent possible, the drainage from the developed site will be conveyed by new separate storm drains and discharged to the Saw Mill

River... " First, what does to the extent possible mean in terms of compliance with NYSDEC and will the discharge be going into the Saw Mill River?

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-34:

The extent possible refers to portions of the Cacace Government Center that drains toward Broadway and which cannot be diverted to the Saw Mill River.

All construction associated with the proposed project will be in conformance with the New York State Department of Environmental Protection's (NYSDEC) Pollution Discharge Elimination System (SPEDES) for Discharges for Construction Activities, General Permit No. GP-0-08-01 (General Permit). Drainage design will be in conformance with the technical standards for a stormwater quantity and quality controls presented in the New York State Stormwater Management Design Manual. The final SWPPP will be submitted to the NYSDEC prior to the start of construction in accordance with the Notice of Intent (NOI) requirements for Permit No. GP-0-08-001.

Comment III.C-35:

III-C-35

4. (a) Floodplain [Palisades Point]

Confirm no wetlands will be disturbed

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-35:

The effort to document the existing environmental resources for the Palisades Point project area included an evaluation for the presence/absence of wetlands. The results of the investigation noted that there are no wetlands located at the Palisades Point project area.

Comment III.C-36:

III-C-40

4. (g) Summary [Palisades Point]

Will there be any permits required from, for example, NYSDEC or ACOE, similar to the discussion at the River Park Center section.

(Colleen Roche, AICP, Senior Planner, City of Yonkers, E-mail, 5/20/2008)

Response III.C-36:

Pursuant to 33 CFR Parts 320 through 330, the U.S. Army Corps of Engineers (USACE) requires a permit for any structure or work affecting waters of the United States. There are two key federal acts the USACE manages: Section 10 of the Rivers and Harbors Act (Section 10) which authorizes the placement of structures and dredging activities in navigable waterways (i.e., waters subject to the ebb and flood of the tides); and Section 404 of the Clean Water Act (Section 404) which regulates the placement of fill material (i.e., riprap) into navigable waterways. The Palisades Point project is located within the tidal range of the Hudson River and

proposed construction activities in the Hudson River (i.e., a kayak/canoe launch and shoreline stabilization) will require review and approval by the USACE. The New York State Department of Environmental Conservation (NYSDEC) regulations that pertain to these activities are N.Y.C.R.R. Part 608 - Use and Protection of Waters.

Comment III.C-37:

Clarify the studies undertaken to determine the extent of a rat population at the Project sites (in particular the River Park Center site).

Clarify how the construction of River Park Center will disrupt the rat population, including the construction of the new channel for the Saw Mill River and the daylighting improvements.

Clarify whether a rat removal program will be required.

Clarify mitigation measures should a rat removal program be required and the environmental impacts of said mitigation measures.

(Debra S. Cohen, Esq., Attorney, C.H. Martin, Letter, 5/30/2008)

Response III.C-37:

As the City of Yonkers is an urban area, it is assumed that rats may be present. The preferred habitat for the rat is likely the areas of the Saw Mill River that are currently covered over that limit the access to humans. Prior to construction activities, a rat trapping and eradication program will be implemented to carefully remove the rats that are in the construction area. The trapping program will continue until rats are no longer endemic to the construction area. Also during the construction period, potential food sources that are attractions for rats will be carefully managed to limit the reintroduction of rats into the area. As part of the site construction process, fencing will be erected around the perimeter of the Project site to delineate active construction areas and discourage entrance by the public.

Comment III.C-38:

(21) III.C, p. 12

The DEIS states, "This open area is fenced off from public access due to unsafe ground conditions that are likely the result of past building demolition and site filling/re-grading activities."

Clarify the nature of the unsafe ground conditions that presently exist and how the Project will be impacted by and/or mitigate them.

(Debra S. Cohen, Esq., Attorney, C.H. Martin, Letter, 5/30/2008)

Response III.C-38:

The area is fenced off as a public safety measure as it contains unmanaged rubble and debris that constitute trip and fall hazards for the general public. These hazards will be removed during implementation of the River Park Center project.

Comment III.C-39:

- 1) How will aquatic and riverine species, flora and fauna, in the Saw Mill and Hudson rivers be impacted by the Phase 1 construction? Give a breakdown by species in each river habitat and project site, including fish, amphibians, birds, insects, mammals, plants, etc.
- 2) How will aquatic and riverine species, flora and fauna, in the Saw Mill and Hudson rivers be impacted by the completed Phase 1 projects? Give a breakdown by species and location in each river habitat and project site, including fish, amphibians, birds, insects, mammals, plants, etc.

(Deirdre Hoare, Resident, Letter, 5/30/2008)

Response III.C-39:

The aquatic and riverine species located within the Saw Mill River that are in the proposed footprint of the River Park Center will be temporarily displaced during the Phase I construction activities. Most of the existing vegetation will need to be removed during this construction period and subsequently replaced with native vegetation in accordance with the proposed landscaping plans for the uplands (River Park Center and Palisades Point) and Saw Mill River. The proposed diversion of the Saw Mill River during the construction period will result in a minimal loss of aquatic species (amphibians, invertebrates and fish) that are not able to relocate with the river's diversion. Birds, reptiles and mammals will be able to relocate to upstream and downstream locations during this construction period. It is noted that this is an unavoidable, but temporary impact of the Proposed Action.

Once all construction activities are completed, the portion of the Saw Mill River by River Park Center will be able to support the species that currently reside there. There will be water quality improvements due to the enhanced management of stormwater generated from the site as compared to the existing conditions, however, the water quality from upstream sources will remain unchanged.

The only construction activities proposed within the Hudson River are the placement of riprap, or other shoreline stabilization measures as required, and the construction of outfalls and a canoe/kayak launching area. These construction activities are minor in nature and the only aquatic organisms that will be impacted are the benthic community composed of benthic invertebrates (such as clams, crustaceans and worms) and aquatic insect larvae that are in the immediate footprint of the proposed riprap, or other shoreline stabilization measures. There will be no significant adverse construction related impacts to amphibians, mammals, reptiles and birds.

After the initial placement of the supplemental riprap, or other shoreline stabilization measures as required, for the Palisades Point project, colonization by epibenthic prey species is anticipated to occur quickly by larval recruitment and immigration of mobile demersal and pelagic species from adjacent areas. The epibenthic community that will be established on the perimeter of the riprap, or other shoreline stabilization measures as required, (i.e., barnacles, tunicates and mussels) will in turn provide habitat and enhanced food resources for any juvenile fish, including all listed EFH species that utilize the waters at the project site. EFH fish prey species, including grass shrimp (*Palaemonetes* spp.), silversides, and mummichogs will be able to utilize the

interstitial spaces between the riprap, or other shoreline stabilization measures as required, as habitat and also provide an enhanced food resource for the listed EFH species.

Comment III.C-40:

The DEIS states that the project must be consistent with policies 12 and 12.1 of the NY State Coastal Management Program when, in fact, they should comply with the visual policies 24 and 25.

(Gail Averill, President, Park Hill Land Conservancy, Inc., Letter, 5/30/2008)

Response III.C-40:

For a comprehensive review of all State Coastal Policies, see Appendix F of this FEIS.

Comment III.C-41:

The shadows cast for much of the day by 25 story buildings next to the river will have an unspecified impact on the river ecology.

(Gail Averill, President, Park Hill Land Conservancy, Inc., Letter, 5/30/2008)

Response III.C-41:

See Response III.C-13.

Comment III.C-42:

Some reliable studies predict that river water levels will rise as much as 9 feet over the next 75 years. If this should happen the height and density of this building is unwarranted and it could become necessary for Metro North to raise track levels. No provision is made for this possibility.

(Gail Averill, President, Park Hill Land Conservancy, Inc., Letter, 5/30/2008)

Response III.C-42:

See Response III.C-12.

Comment III.C-43:

9. Rip-Rap. Why is this necessary? Why can we not have a naturalized shoreline; natural materials are better at holding soil! This is the quick and dirty method. It is UGLY.

(Board of Directors, Yonkers Committee for Smart Development, Letter, 5/30/2008)

Response III.C-43:

The placement of riprap for shoreline stabilization is an accepted method for reducing erosion. Riprap is also particularly suited to protecting the shoreline of the Hudson River because it withstands the dynamic conditions presented by the river. In addition, the riprap will provide habitat and food resources for fish species; see Response III.C-39.

Comment III.C-44:

f. Open Space (II-31, C) indicates a total of about 3 acres of new open space at the River Park Center. It appears to include the ballpark, which was specifically said to NOT be the case at the City Council meeting with Nanette Bourne. Which is it? Does the 3 acres include the ballpark, or is the Public Plaza a total of 3 acres? This does not seem plausible.

(Board of Directors, Yonkers Committee for Smart Development, Letter, 5/30/2008)

Response III.C-44:

See Exhibit II-12 of this FEIS and Response III.A-133.

Comment III.C-45:

11. This is the Atlantic Flyway for millions of migrating birds and they will be endangered by these structures. Has an analysis of this potential problem been undertaken as part of the wildlife studies?

(Board of Directors, Yonkers Committee for Smart Development, Letter, 5/30/2008)

Response III.C-45:

See Response III.C-5.

Comment III.C-46:

Also, how does the project relate to FEMA projected flood zones with proximity to the two rivers? High tide marks will almost certainly rise with the rising sea levels projected with global warming, and if planning does not take this into consideration, we will be left the same kinds of disasters that are befalling many parts of the world that share coastline with tidal rivers.

(Taffy Lee Williams, Resident, Letter, 5/30/2008)

Response III.C-46:

A review of the FEMA Flood Insurance Rate Map Number 36119C0317F, dated September 28, 2007 shows that a portion of the River Park Center project is located within Zone X and Zone AE. Larkin Plaza is not located in a FEMA Flood zone. The Palisades Park project is located within Zone X and Zone AE.

Zone AE refers to areas subject to inundation by the 1-percent-annual chance flood event (Also known as the "100-year floodplain").

Zone X refers to areas that have a 0.2% probability of flooding every year (also known as the "500-year floodplain").

Design of Palisades Point will be in accordance with all applicable regulations with respect to flood elevations and building floor elevations.

Comment III.C-47:

The Saw Mill and Hudson Rivers both support onshore and aquatic life but unfortunately will become casualties here. Projects that have leave no undeveloped zones whatsoever cast out the natural world, while existing habitats are mercilessly obliterated. Brownfield zones adjacent to the two rivers should be restored to a natural state to create truly healthy environments as well as buffer against flooding. These will be the only viable areas for the natural world and should be made a larger part of the project.

(Taffy Lee Williams, Resident, Letter, 5/30/2008)

Response III.C-47:

During the construction period there will be short term impacts to the existing resources of the Saw Mill and Hudson Rivers. However, after construction activities are completed, there will be enhanced resources and habitat for aquatic life. The area of River Park Center has been subject to major disturbance throughout the last 150+ years. The enhanced watercourses will provide a more natural condition than exists today; see Response III.C-39.

Comment III.C-48:

7. Recycling bins strategically placed in public (such as on the train platforms today) help to remind, encourage, and facilitate recycling 24/7. Will SFC make recycling a commonplace design feature throughout Yonkers?

(Margaret Setterholm, Resident, E-mail, 5/30/2008)

Response III.C-48:

Yes, it is part of environmental sustainability.

Comment III.C-49:

As the landowner adjacent to the proposed Palisades Point development, ASR is concerned that the DEIS fails to consider the potential for flooding of the 25-story towers. Such flooding could threaten human life and property, and potentially result in release of contaminants (i.e., from fuel tanks or other storage in lower levels of the towers) that could impact ASR's employees and/or operations.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-49:

Palisades Point will be designed to meet or exceed all applicable building and flood prevention codes and regulations.

Comment III.C-50:

As an initial matter, the DEIS starts from the false premise that the 100-year flood elevation is the pertinent benchmark for study. With the established threat of global sea level rise and changing precipitation patterns, the 100-year flood elevation no longer provides a sufficient safety margin for determining the impacts of near-future flood events.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-50:

The FEMA Flood Maps for the City of Yonkers were updated in 2007. The 100 year flood elevation is the accepted regulatory standard. Palisades Point will be designed to meet or exceed all applicable building and flood prevention codes and regulations. See also Response III.C-12, III.C-21.

Comment III.C-51:

Moreover, all of these items displace existing volumes of soil, which soil currently provides stormwater and flood surge storage capacity on the Palisades Point site. When flood waters rise in this area, they would need somewhere else to go - and could contribute to flooding at ASR's sugar refinery. In addition, the Palisades Point structures could increase sheet flow runoff into the Hudson River during storm events.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-51:

The Hudson River in Yonkers is tidal and accordingly any displacement of storage capacity on the site is measured relative to the "storage capacity" of the Atlantic Ocean. As a result, the impact on other properties of any change in the storage capacity of the site is insignificant. The NYSDEC recognizes this condition in Chapter 4 of the Stormwater Management Design Manual where they state that Stream Channel Protection Volume, Overbank Flood Control and Extreme Flood Control Criteria can be waived if a site discharges into a tidal water. The proposed stormwater management program for Palisades Point will result in less sheet flow runoff than currently exists as there are currently no engineering mechanisms in place to control the flow of water off the undeveloped site.

Comment III.C-52:

Much of the mitigation for the creation of significant new impervious surface is "mitigated" through the "daylighting" of the Saw Mill River, especially at Larkin Plaza. The DEIS states in several places, including at page III.C-8, that the "daylighting" of the River here "is expected to reduce impervious surfaces by 35%." However, this assumption is faulty because, as the DEIS also recognizes, the Applicant has no control over the daylighting of the River at Larkin Plaza. The Applicant cannot use speculative mitigation outside of its control in an effort to offset the massive amount of new impervious surfaces being created throughout the Project area.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-52:

The calculations of impervious area at River Park Center and Larkin Plaza were made independent of each other. Impact and mitigation were also considered separately from both.

Comment III.C-53:

Regardless, the Applicant contends there will be no stormwater quality impacts on the River or its species from the River Park Center because the project will incorporate "the latest stormwater treatment" prior to discharge. (III.C-8.) Because the DEIS includes no description of what this "latest treatment" might be, the statement allows no informed consideration of the Project's impacts on stormwater.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-53:

All stormwater treatment devices at River Park Center will comply with Chapters 5 and 9 of the New York State Stormwater Management Design Manual. This will be a significant improvement over the current condition.

Comment III.C-54:

Importantly, the Larkin Plaza "daylighting" proposal, even if it does go forward, cannot be considered in a vacuum from a stormwater perspective. When a part of a project is part of a "larger common plan of development," and is situated less than 1/4 mile from other project components, it cannot be considered as a separate site from a stormwater perspective. (See NYSDEC Stormwater Manual at 17-18.) Thus, regardless of the amount of new pervious area that might be created at Larkin Plaza if that part of the Project did go forward, the Applicant cannot ignore the significant impervious surfaces it created elsewhere on the Project sites. The Larkin Plaza portion of the Project, if it does go forward, therefore cannot achieve "water quality requirements" simply by reducing impervious area (III.C-8); rather it must employ "standard" stormwater quality control measures required by the Stormwater Manual.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-54:

If Larkin Plaza goes forward, the reduction of impervious area on that site will obviate any requirement for water quality treatment. Section 9.3.2. of the New York State Stormwater Management Design Manual states that the Water Quality Treatment Objective can be achieved if a plan proposes a reduction of impervious cover by a minimum of 25% of the existing total site impervious area. A reduction in site imperviousness will reduce the volume of stormwater runoff, thereby satisfying criteria for both water quality and quantity.

Comment III.C-55:

The DEIS contends that there are no existing known flooding conditions on any part of the Project sites. (III.C-9.) The DEIS bases that assertion on interviews of two City officials, and observations made "of the River at the River Park Center site" after a Nor'easter in April 2007. (III.C-9 to C-10.) However, whatever these two City officials may have experienced, members of the public who commented during the public hearing identified existing flooding conditions as occurring within the Project study area. Moreover, observations made on one part of the vast Project area (from Elm Street to Ann Street only) has no bearing on what is occurring elsewhere on the Project area. For example, where the River is constricted in the Flume beneath Larkin Plaza, there is no discussion of whether streets or properties were flooded during the same 7-inch rainfall; the severe erosion described in the Flume study could make such an occurrence likely. In fact, the DEIS recognizes that the Saw Mill River in other parts of Yonkers e.g., Nepera Park) did suffer from severe inundation (III.C-9 to C-10).

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-55:

Comment noted. The information regarding known flooding conditions was only for general reference, and is not used in the analysis of drainage conditions.

Comment III.C-56:

The DEIS concludes that the River Park Center site is not a contributor of such contaminants - and its redevelopment would thus not exacerbate the problems - because the sampling showed no discernable "trend" and because the Saw Mill River "receives little direct surface stormwater sheet flow runoff from the River Park Center Site" that could be contributing to this problem. (Id.) This is incorrect. According to the DEIS at page III.D-3, "stormwater runoff from approximately 4.36 acres of this area currently drains directly to the Saw Mill River by overland flow" (emphasis added). This inconsistency undermines the conclusion that redevelopment of the River Park Center site would not mobilize additional contaminants in the Saw Mill River.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-56:

The contaminants present at the River Park Center site are principally in subsurface soils. The site investigation demonstrated that these contaminants are not impacting the Saw Mill River. The Project will include a stormwater management system to control runoff during and after construction. In addition, the River Park Center site is in the Brownfield Cleanup Program and both subsurface and surface soils will be remediated under the approved Remedial Action Work Plan.

Comment III.C-57:

The DEIS does not explain which contaminants are not of "ecological concern," or why. In any event, the DEIS fails to consider that the vast amount of new stormwater flow that will be redirected from the combined sewer system into the Saw Mill River could increase scouring of the river bottom and mobilization of sediment - sediment that contains such a significant amount of contaminants that NYSDEC has listed it as a § 303(d) impaired water body. However, the DEIS fails to undertake any analysis of this potential impact on ecology.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-57:

Section III.D of the DEIS addresses the management of post-construction stormwater flows. As presented in that section, the proposed stormwater management systems will not increase the scouring of the river bottom and the mobilization of sediment as suggested in the comment. The impaired nature of the Saw Mill River is primarily from upstream sources that are beyond the control of the Applicant.

A detailed investigation of the Project sites and the surrounding areas was undertaken to provide an understanding of the surface runoff patterns on and adjacent to the Project sites (see DEIS Exhibits III.D-6 through III.D-12). Based on the building program for the Project, an analysis of the proposed stormwater runoff conditions was performed to determine the impact of the Project on the existing City combined sewer system and to the Saw Mill River. To the extent possible, the drainage from the developed sites will be conveyed by new separate storm drains and discharged to the Saw Mill River to reduce the runoff to the City combined sewer system. A description of the impact of the Project on the stormwater runoff is provided DEIS Exhibits III.D-13 through III.D-15.

When considering the Project discharge combined with the upstream flow from the Saw Mill River, there will only be an increase of approximately 19cfs during a 100-year storm. This nominal increase (1% +/-) will result in less than 0.1 foot change to the water surface elevation and less than 0.1 feet per second change in the Saw Mill River flow downstream of the Project (See DEIS Appendix 3.C). This is not anticipated to cause or exacerbate scouring.

Comment III.C-58:

The DEIS never recognizes that not only is the Hudson River a Tidal Wetland, but the land 300 feet adjacent to it is, barring some intervening "cut-off," regulated as tidal wetland "adjacent area" by the New York State Department of Environmental Conservation ("NYSDEC"). (See 6 N.Y.C.R.R. § 661.4(b)(1)(i).) Consequently, the DEIS fails to identify or analyze the ecological compatibility of putting two 25-story buildings, with associated impervious surfaces, within adjacent area to tidal wetlands in one of the Atlantic seaboard's most important fisheries. This fishery in the "vicinity of Palisades Point" is inhabited by federally endangered species such as the short nose sturgeon and the Atlantic Sturgeon (a candidate species). (III.C-26.)

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-58:

The reach of the Hudson River south of the Tappan Zee Bridge is a Tidal Wetland. However, neither the Palisades Point site nor adjacent properties support any tidal wetland vegetation. Therefore, the statement in the DEIS “there are no tidal wetlands on or adjacent to the Palisades Point site” is accurate. As set forth in 6 N.Y.C.R.R. § 661.2(f), “some areas possess the physical characteristics of littoral zones or coastal shoals, bars or flats but do not function biologically as tidal wetlands. Such areas have generally been heavily impacted by pollution, sedimentation or other artificial disturbance, exhibit little primary productivity, and are populated by few benthic organisms. Such areas require identification on a case-by-case basis and when so identified should no longer be treated as tidal wetlands under this Part.” In the Applicant’s opinion, the Palisades Point site does not “function biologically as tidal wetlands” and therefore should not be treated as tidal wetlands under the regulations.

With regard to the fishery in the vicinity of the site, the DEIS states that “any in-water construction activities will be first coordinated with NMFS and NYSDEC in relation to any required stormwater and Article 15 activities to determine if mitigation measures or seasonal timing restriction are needed to protect... fish resources” (DEIS Page III.C-26). It is further stated on DEIS Page III.C-35 that “the proposed shoreline rehabilitation and upland development would not have an adverse effect on these aquatic resources as the stormwater to be generated from Palisades Point will be treated through new treatment systems that would meet NYSDEC requirements, an improvement over the existing condition.”

With regard to the shortnose sturgeon, the DEIS states that “due to the salinity concentrations at the Palisades Point project site, and the documented historic range of the shortnose sturgeon, there is a low potential for shortnose sturgeons to be found in the vicinity of Palisades Point. With the breeding areas of shortnose sturgeon being in the upper Hudson River, there is no potential to impact upon breeding areas. When conditions (salinity and time of year) are within the range for the shortnose sturgeon to survive at the Palisades Point project site (i.e., high concentrations of fresh water flow (flood event) in the Hudson River that drives back the salt wedge) they may potentially be found for a short period of time at the project site. However, due to the normal range of salinity concentrations at the project site, and the historic range of the shortnose sturgeon, there is a low potential for shortnose sturgeon to be found in the vicinity of the Palisades Point project site.” “Once water related construction activities are completed, including the placement of new riprap to rejuvenate the shoreline and the construction of the canoe/kayak launch area, the substrate in the Hudson River waters fronting Palisades Point will continue to provide the food resources that are preferred by the shortnose sturgeon. The proposed construction of Palisades Point is therefore not likely to jeopardize the shortnose sturgeon or result in the destruction or adverse modification of its critical habitat” See DEIS Pages III.C-38 and 39.

Comment III.C-59:

The DEIS downplays facts and avoids serious analysis of Essential Fish Habitat ("EFH") issues. For example, the DEIS states the Palisades Point site has been designated as EFH for "several species," when in fact the National Marine Fisheries Service has listed more than a dozen species as EFH species in this area. (III.C-31 to C-32.) The DEIS concludes that certain of these species

- such as the winter flounder - will not actually lay eggs in the Palisades Point area because of the river bottom is too muddy. However, there is nothing in the DEIS to suggest that the Applicant performed any type of empirical study of the river bottom around the entire site or to the north where the Saw Mill River enters from Larkin Plaza. Likewise, the DEIS asserts that striped bass will not be affected by Palisades Point because they tend to "concentrate in interpier areas," and there are none on this site. Neither of these conclusions is based on empirical, first-hand observation.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-59:

The number of EFH species listed by NMFS is 13 (see DEIS Table III.C-4). As stated in the DEIS, "the Palisades Point project site is not suitable for demersal egg laying fish such as the winter flounder. Winter flounder typically deposit eggs over a sandy substrate at depths of 6 to 240 feet. The predominant time frame for winter flounder to lay their eggs starts in January. The bottom of the Palisades Point project area is very soft mud predominantly composed of silts and clays with little sand. This sediment is easily resuspended due to tidal influences and/or wind or waves created by watercraft on the Hudson River. This results in covering of any demersal eggs and ultimately the non-recruitment of the winter flounder. Due to the silty/clay substrate, the Palisades Point project site is generally not deemed as preferred habitat for larvae and egg life stages of winter flounder" See DEIS Page III.C-36.

The Applicant did not conduct an empirical sediment grain size analysis of the river bottom in the project area. Although not detailed in the DEIS, the Applicant relied upon a published USACE Public Notice (NAN-2007-50-WSC) dated August 17, 2007 for a proposed maintenance dredging project to be conducted by American Sugar Refining, Inc. in the Hudson River. As presented in the Public Notice, the grain size characteristics of ASR's dredged material are 0.8% sand, 56.7% silt and 42.5% clay. This is indicative of a very soft mud. The Public Notice also states that "the purpose of this proposed annual maintenance dredging is to continue to maintain sufficient water depths for the continued safe navigation of cargo vessels that unload raw sugar from ocean going ships and barges." It should be noted that the maritime operations of ASR can resuspend sediments resulting in the covering of any demersal EFH species eggs in the vicinity of the Palisades Point site. It is also common for dredging operations to release sediments into the water column that can also result in the covering of demersal eggs.

The DEIS also discusses the habitat preference for young-of-the-year striped bass, makes specific observations regarding the conditions present at Palisades Point and its surroundings and then presents a conclusion on that basis. The full statement from the DEIS (Page III.C-37) is as follows: "Striped bass tend to concentrate in interpier areas, especially the young-of-the-year that over winter in the Hudson River. The existing adjacent pile supported structures to the north and south of the Palisades Point project site provides an extensive inter-pier habitat favorable for the striped bass. The proposed Project will not affect the existing inter-pier habitat favored by over wintering striped bass and EFH species."

Comment III.C-60:

The DEIS also concludes that the proposed "supplemental riprap" will mitigate any potential impacts by "provid[ing] new vertical structures that will in turn provide a larger surface area for encrusting organisms, thus providing an enhanced food source for many EFH species." (III.C-39.) Once again, the DEIS does not identify which "EFH" species would purportedly be so benefited.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-60:

After the initial placement of the supplemental riprap, or other shoreline stabilization measures as required, colonization by epibenthic prey species is anticipated to occur quickly by larval recruitment and immigration of mobile demersal and pelagic species from adjacent areas. The epibenthic community that will be established on the perimeter of the riprap, or other shoreline stabilization measures as required, (i.e., barnacles, tunicates and mussels) will in turn provide habitat and enhanced food resources for any juvenile fish, including all listed EFH species, that utilize the waters at the project site. EFH fish prey species, including grass shrimp (*Palaemonetes* spp.), silversides, and mummichogs will be able to utilize the interstitial spaces between the riprap, or other shoreline stabilization measures as required, as habitat and also provide an enhanced food resource for the listed EFH species.

Comment III.C-61:

More importantly, the DEIS does not abide by the Scope requirement that in this Chapter the Applicant provide details of "square feet and linear feet of stream modification [and] construction methods used." (Scope at 14.) The DEIS fails to indicate how many square feet or linear feet of riprap would be installed at Palisades Point or what specific construction methods (e.g., barge placement, silt screens, coffer dams, etc.) would be used to install this new revetment. The DEIS similarly fails to address whether the year-long shadows cast upon the new rip-rap by two 25-story buildings would have any effect on this supposed mitigation "food source."

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-61:

The existing riprap located along the northern end of the site is approximately 600 feet in length and extends up to 6 feet above the mean high water (MHW) line at an average slope of 1:3. The revetment was recently constructed and is well graded, fairly tightly paced and rests at a stable slope. The toe of the revetment extends to approximately 5 feet below mean low water (MLW). The existing riprap along the southern end of the project site is approximately 650 feet in length and extends 2 to 4 feet above the MHW elevation. The existing slope along the southern end generally varies between 1:2 and 1:2.5. Some of the riprap shoreline along the southern end is experiencing erosion and is proposed to be rejuvenated with approximately 1,500 cubic yards of riprap, or other shoreline stabilization measures as required, to match the height and condition of

the northern end of the project site. The current condition along the southern shoreline is also currently subject to some erosion.

In order to place the proposed 1,500 cubic yards of riprap, or other shoreline stabilization measures as required, a combination of cranes and front-end loaders will be used to carefully place the new riprap, or other shoreline stabilization measures as required, into the proper location.

As presented in Section 4 on Page III.B-11 in the DEIS a series of shadow studies have also been prepared for Palisades Point for four analysis days: March 21—the vernal equinox, which is equivalent to September 21—the autumnal equinox, May 6—the midpoint between the equinox and the longest day of the year, June 21, and December 21—the shortest day of the year (refer to DEIS Exhibits III.B-3a through d). These studies illustrate potential shadow impacts at three points in time during the day: 9:00 AM, Noon and 3:00 PM—as well as the solar path from west to east on which the shadows are expected to travel through the day. Generally the shadows projecting from the proposed buildings at Palisades Point would move from northwest at 9:00 AM, to the north by Noon, and northeast by 3:00 PM. The distance the shadows would project on the summer solstice is relatively short and shadows would fall only on uplands in close proximity to the development site. During the winter solstice (December 21), the shadows would be longer than at any other time of the year. The limited time the shadows from Palisades Point are situated over the riprapped, or other otherwise stabilized, shoreline will have a negligible affect on the growth and survival of the encrusting organisms. These animals are readily capable of surviving a few hours of shade that will result from the buildings and are commonly found in habitats that are subject to much longer periods of shade.

Comment III.C-62:

Finally, the DEIS states that because the proposed construction at Palisades Point will be "local in scope" it follows that there will be "no direct regional impacts" to fish species. (III.C-37.) However, impacts on "Essential Fish Habitat" of endangered and threatened species can have far-reaching impacts well beyond the immediate area of a particular backhoe, pile driver or front end loader; this is precisely what makes Essential Fish Habitat "essential." Yet the DEIS devotes two sentences to this critical topic. (Id.)

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-62:

The statement that the construction activities will be "local in scope" and that there will be "no direct regional impacts" to EFH resources is accurate. Shoreline stabilization has a minimal impact to primarily the benthic community within the direct footprint of the construction activity and is the National Marine Fisheries Service (NMFS) recognizes such activity as having only a localized short-term impact to the food resources for fish species. Moreover, once the construction activities are completed, the riprap or other shoreline stabilization measures themselves will become habitat for encrusting organisms that will provide a food resource for EFH species. EFH fish prey species, including grass shrimp (*Palaemonetes* spp.), silversides, and mummichogs will be able to utilize the interstitial spaces between the riprap, or other shoreline

stabilization measures as required, as habitat and also provide an enhanced food resource for the listed EFH species.

Comment III.C-63:

While the Applicant purports to provide a "Response to NYS Coastal Policies" in Appendix LB of the DEIS, even a cursory review demonstrates that this is much too superficial to constitute an adequate response. The State of New York has 44 distinct "Coastal Policies," each with numerous sub-parts, ranging from "Development Policies" to "Fish and Wildlife Policies" to "Flooding and Erosion," "Water and Air Resources," and "Wetlands," to name only a few major topics. The purported "Response" addresses a grand total of 12 -less than one-third of those adopted by the State. The few policies the "Response" does claim to analyze are not the "NYS Coastal Policies" at all- they are policies from the draft Yonkers LWRP. Even these responses are cursory and, in many cases, irrelevant to the Policy allegedly being addressed.

(Daniel Riesel, Esq., Sive, Paget & Riesel, P.C., American Sugar Refining, Inc., Letter, 5/30/2008)

Response III.C-63:

Comment noted. The State Coastal Policies are addressed in Appendix F of this FEIS. The LWRP is a draft document. In the event that the LWRP were to be adopted prior to the conclusion of the SEQRA process, this SEQRA analyses would be revised to determine the consistency of the Proposed Project with the LWRP.