

Town of North Hempstead

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November 30, 2022

RE: DRAFT ENVIRONMENTAL IMPACT STATEMENT

Proposed Action: West Shore Residences
Location: 145 West Shore Road, Port Washington
S/B/L: Section 6, Block 53, Lot 1005A

The Department has reviewed the Draft Environmental Impact Statement, the transcript of the public hearing held by the Town Board, as Lead Agency, on September 28, 2022 and all of the written correspondence received during the designated comment period. What follows is a compilation of all the questions and comments deemed to be pertinent to the environmental review of the Proposed Action. As Project Sponsor, you are hereby directed to complete a Final Environmental Impact Statement in accordance with the requirements of 6 NYCRR Part 617, specifically §617.9 entitled, *Preparation and Content of Environmental Impact Statements*.

General (affecting the entire document):

- The DEIS was not adequately revised to reflect a significant change affecting the project. In a footnote, it was revealed that the Project Sponsor now relinquishes its prior claim of ownership of Tax Lot 6-53-1005.B. As a result, the Project Sponsor can no longer pursue the claim that its acreage of mostly underwater land may be transferred to the upland parcel as-of-right and can only be pursued by a variance. As this was apparently discovered just prior to submission of the DEIS, the majority of the document still refers to Lot 1005.B as being in private ownership. (TNH Planning Department)
- The DEIS did not adequately demonstrate how the Proposed Action is consistent with or advances the goals of *A Shared Vision for Port Washington Peninsula*. Provide more

detailed explanations of how the project addresses each of the five community goals as follows:

- *Walkable Community*
- *Greener Community*
- *Connected to the Waterfront*
- *Defined by Geography Not Municipal Boundaries*
- *Maintain Quality of Life*

(TNH Planning Department)

Chapter 1 – Executive Summary

- 1.2.1.6 – Required Permits and Approvals: Restore the following to the table of required approvals:
 - New York State Legislature – Alienation of Parkland

This was placed in the Final Scoping Document by the Lead Agency. It is not within the authority of the Project Sponsor to remove it. It is of no relevance whether the Project Sponsor agrees. That the possible utilization of Lot 6-53-1035 for vehicular parking for the benefit of building residents is subject to State legislative approval has been stated by the Lead Agency and affirmed by the New York State Department of Environmental Conservation in their letter of October 19, 2022. That the utilization by building residents is to be “non-exclusive” does not alter this material fact. (TNH Planning Department)

Chapter 2: Description of the Proposed Action

Additional Information (§2.1.3. Proposed Action and Project Description)

- \$5 to \$12 million to clean up the property range, is an extremely large cost spread. By now developers should have a much better cost of the cleanup range. What is that real number? (Peter Gaffney)
- The DEIS makes materially inconsistent statements, such as describing the upland portion of the property as 2.7 acres when architectural drawings show the developable lot size as closer to 2.0+/- acres; describing the “Subject Property” as including and sometimes not including lands within Lot 1035 and the strip of land between Lot 1005A and Lot 1035. (Carter Ledyard Milburn on behalf of Our Children’s Earth Foundation)
- This statement appears here and other places: “Proposed Action would involve a nominal amount (0.46± acres) of landscaping...” (underline added for emphasis.) Comment - The

above statement conflicts with statements in 2.1.3, 1.3.14, 1.2.1.2...: “Site improvements/features include a comprehensive stormwater management system, site lighting and extensive landscaping...” (underline added for emphasis). If the intent is to use one term versus the other in order to help improve the overall appeal and acceptability of sections it is intentionally inaccurate and misleading and of great concern. Regardless, text must be consistent and have no conflicting claims and assertions. Please do a word search through the documents to identify and correct these problems. (Stephen Cipot)

- Although 10 percent will be priced as workforce housing for people making up to 80 percent of the area median income which equals 17/18 units. Island Now news article had workforce housing at 25% of units at under 60K. Which is correct? (Peter Gaffney)

Public areas of the proposed action (§2.1.3. Proposed Action and Project Description)

- The DEIS states that only one slip is dedicated to the town’s emergency services and the remaining slips are “solely for the use of the upland owners”. SLC is marketing this only as a “publicly accessible marina” on their website which implies that the public can walk on their mostly private marina with the exception of one public slip. Could you please clarify this point? (Alice Chong)
- Throughout the DEIS the marina is described as public, yet all but a single slip will be reserved for building residents. Does the use of the term “public” simply mean there will be unrestricted access to a promenade (similar to Danfords Marina in Port Jefferson) or will a significant number of slips be available to truly constitute a public marina? (TNH Planning Department)

Lot 1005B (§2.1.3. Proposed Action and Project Description)

- What does footnote 1, Page 3 of Executive Summary " The proposed pier, marina, and a portion of the public promenade to be included as part of the Proposed Project are located on Section 6, Block 53, Lot 1005B of the Nassau County Land and Tax Map, which is currently titled in the Town of North Hempstead." actually mean? Does TONH lay claim to lot 1005B? If not, who does lay claim? Applicant? Nassau County? New York State? I heard that they have removed Lot 1005B in determination of subject property, such that proposed building will be on 2.04 Acre. When will a determination to the status of Lot 1005B be made? (Alice Chong)
- The amended application submitted by the Southern Land Company in July 2022 has not been made public and thus the public is unaware of the fact that Southern Land does not have ownership of Underwater Lot 1005B. Southern Land’s lawyers submitted a revised application and made the Town Board aware that they do not own Underwater Lot 1005B in their letter dated July 29, 2022, yet this has not yet been made public despite the DEIS

being accepted for public comment by the Town Board on September 1, 2022. (Alice Chong)

- Specifically, the applicant claims to have lot size as 7.17 but all but approximately two acres is underwater. The DEIS says that “the proposal is to seek a variance in order to condense the development yield for the full site acreage (7.17± acres) onto the upland portion and preserve the land under water for public use.” DEIS 2.2 Under both Residence RM, AAA and PWRC zones, density is controlled by how many units can be placed on a lot. See Town Code § 70-3.24 (PWRC); § 70-7.1 (Residence AAA), §70-69 (Residence M). “Lot” is in turn defined by Code § 70-231, as a “plot, tract, premises or parcel of land, with or without buildings or structures located thereon, as surveyed and apportioned for sale or other purpose” (emphasis added). While the word “land” is not defined in the code, its dictionary definition is “the part of the earth’s surface that is not covered by water, as opposed to the sea or the air.” Thus the area under water is not “land” and thus not included in a “lot” as defined by § 70-231. Through the DEIS, however, the application makes yield analysis and calculations as if the entire 7.17 acres constitutes a lot, which it is not. (Beacon Hill Bungalow Corporation)
- Lot 1005B: Lot 1005B is the 5.13 acre parcel of land beyond the historic mean high water mark (including underwater lands and lands between the mean and low high water marks) of tidal waters in Hempstead Harbor and identified as parcel 1005B on the Nassau County tax map. See DEIS Figure 2-2. Portions of the parcel are covered by an earth-filled pier that the applicant proposes to demolish and replace with a smaller earth-filled pier. In the Final Scope for the project the Town Board required the Applicant to “provide an explanation of how title to the underwater lands was obtained.” In DEIS section 2.2 the Applicant notes that title to the underwater lands was passed by the State of New York to a former owner, J.B. King & Co. in 1907, and that other deeds purport to have passed title to other private owners. However, the Applicant ultimately admits that there is a break in the chain of title. See DEIS at FN 4. The DEIS concludes that title therefore resides in the Town of North Hempstead, as the Town is identified as the owner of record in the last recorded title transfer prior to the break. Accepting for argument’s sake the Applicant’s legal conclusions, the Town, not the Applicant, owns lot 1005B, and the Applicant cannot develop parcel 1005B without further action by the Town that has been nowhere proposed in the list of public approvals or conditions precedent discussed in the DEIS. If the Town were to consider transferring title or leasing the parcel for the Project, it would of course need to comply with substantive and procedural requirements of applicable local and State laws, including SEQRA review and New York State Town Law provisions regarding permissive referendum. However the break in title acknowledged by the Applicant in the DEIS is not the only potential issue with title to Lot 1005B. The DEIS fails to note that the letters patent by which title passed from the State of New York to J.B. King & Co were conditional, dependent on certain criteria being met, and fails to provide any evidence that such conditions or potentially applicable requirements of New York State Public Lands Law were timely met. Specifically, the letters patent provided that “These letters patent are issued for the following purposes, to-wit: To fill in the land under water herein granted and to erect thereon docks, bulkheads, jetties and other structures of a substantial character.” See DEIS at Appendix D. The grant goes on to reserve to the people of New York “the full and free right liberty and

privilege of entering upon and using all and every part of the above-described premises in as ample a manner as they might have done had this power and authority not been given” excepting only those portions “actually occupied and covered by structures, docks or building of a substantial character and actually filled in and reclaimed from low or marsh land.” Finally, the grant makes clear that if the above referenced improvements were not made “within five years from the date of these presents this grant shall cease and determine and become null and void.” In other words, unless J.B King & Company filled land or built docks within 5 years of the date of the 1907 grant, the grant of underwater lands would have become null and void and thus reverted to the State of New York. The Applicant’s title discussion fails to mention these conditions or provide any evidence that they were timely satisfied. Thus, the initial grant may have become null and void and title to the land may rest with the State of New York. (Carter Ledyard Milburn on behalf of Our Children’s Earth Foundation)

- Five acres of the property discussed in the DEIS, Lot 1005B, is owned by the Town, not the current property owner. See DEIS, § 2.2, n.5. The following picture shows the breakdown of properties at issue:



The proposed site plan, however, calls for the proposed development’s swimming pool, among other particulars, to be located on Lot 1005B, i.e., Town’s property. See DEIS, Appx. C, p.1. There is no indication in the DEIS that Applicant will attempt to purchase Lot 1005B from Town, lease property from Town, or otherwise. Any conveyance of Town’s property will require State Legislature approval. In 10 E. Realty, LLC v Inc. Vill.

of Valley Stream, 17 AD3d 474, 476 (2d Dept 2005), the New York State Appellate Division for the Second Department (a court of binding jurisdiction for any Article 78 proceeding brought here), held “[w]here a municipality holds property for public use, it may not devote that property ‘even temporarily’ to a private use without specific authorization from the State Legislature. This public trust doctrine may restrain the [Village] from leasing the municipal parking lot at issue to the respondent.” Id.; see also *Matter of Lake George Steamboat Co. v. Blais*, 30 NY2d 48 (N.Y. 1972); *Kenny v. Board of Trustees of Inc. Vil. of Garden City*, 289 AD2d 534 (N.Y. 1972) (“It has long been the rule that a municipality, without specific legislative sanction, may not permit property acquired or held by it for public use to be wholly or partly diverted to a possession or use exclusively private”). As discussed above, any argument that Lot 1005B would be used for public use is inaccurate as Applicant’s current site plan calls for placement of the building’s swimming pool on current Lot 1005. There is no indication that such pool would be open to the public – in fact the site plan suggests it will not be as the pool is proposed to be straddled by Hempstead Harbor and the proposed building with no public access point. Further, the proposed development is short marina or altered waterfront. Like the park alienation issued discussed immediately below, Town could only convey Lot 1005B with State Legislature approval. Further, this issue requires that a new scoping document be issued because conveyance of Town property to Applicant was not contemplated by the original scoping or the DEIS. The public must have a voice as to what issues must be addressed by Applicant in connection with conveying all or a portion of Town property. In other words, the public should have a say as to what is considered by the Town Board before the public’s land is conveyed to a private for-profit developer. (Rigano on behalf of Our Children’s Earth Foundation)

Lot 1035 (§2.1.3. Proposed Action and Project Description)

- There is no record of a Park Alienation bill in the DEIS. North Hempstead Beach Park has received both federal and state funds therefore it is subject to restrictions on use and conveyance. It also had a legal obligation to obtain an alienation bill, provide substitute parkland, or obtain approval from the State Comptroller and Attorney General. The presence of Federal funding may also have required a parkland conversion process.” (pg. 12). Other violations that have occurred are that The New York State Department of Environmental Conservation considers a municipal resolution requesting parkland, a legislative action under SEQR, Act 66. The initial decision to sell, lease, convey or change the use of parkland is also part of the action subject to SEQR. Since this is a Type I, and has a significant adverse impact on the environment, it required an Environmental Impact Statement (EIS). Secondly, citizens were never given any opportunity to express their views in writing or speak at a public meeting regarding Resolution 454. This is very upsetting and violates the trust of the people who voted the past and present council members in. No mention of a hearing or a SEQR process in the DEIS. Two more ways that this proposed development will be violating the Park Alienation Bill are: (1) According to the DEIS, the developer plans to use Lot 1035 to store equipment for the building during construction for 24-30 months. (2) The loading dock of this building will have to be accessed from the park and that trucks, cars etc. must drive through the park

entrance and lot to go to a private development's the loading dock. (3) Even if resolution 454 was legal, the developer is still short on parking. As a resident, I feel the DEIS is incomplete and in addition Southern Land Corporation is not entitled to use this public land according to the NYS Handbook on Park Alienation as there is no public benefit in creating a private parking lot for a developer. (Leslye Kress)

- Granting a waiver for using a town owned auxiliary parking lot is against town law. Previous a school bus company servicing the local school districts requested use of town's parking facility. It was denied because of town law. Bus company had to find an alternative. (Peter Gaffney)
- There is no way of accessing Lot 1005A from the road (West Shore Road) without cutting through TONH park property (Lot 1035). The constant barrage of construction workers and eventually 400 residents cutting across TONH park property around the clock may very well likely be considered parkland alienation (even if the parking spots are not granted) due to the continuous trespassing of individuals residing in a private development. (Alice Chong)
- The following comments apply to the Region One Bureau of Real Property: The Description of Action for this project states "The Project Sponsor also seeks to locate 58 additional parking spaces on an adjoining Town-owned lot that is part of North Hempstead Beach Park." In 2008 the Town of North Hempstead passed Resolution No. 454-2008 granting Southern Land Company the right to construct a 58-car accessory parking lot on adjoining public parkland at North Hempstead Beach Park. Such action constitutes an alienation of parkland and can only be authorized by an act of the New York State Legislature. (NYS Department of Environmental Conservation)
- The Public Trust Doctrine prohibits the use of dedicated municipal parkland for non-park purposes absent state legislative approval...The Town has not obtained alienation authorization—which would have to come in the form of alienation legislation enacted by both chambers of the New York State Legislature and signed by the Governor. Accordingly, although Resolution 454-2008 states that the Town Board “would authorize” private development to use the Park for parking, the Town Board lacked the legal authority to do so in 2008 and still lacks that legal authority today...For similar reasons, the West Shore Residences project (the “Project”) and the Town approvals sought for the Project violate the Public Trust Doctrine. The current version of the DEIS for the Project states that the Project would be built not only on Lot 1005A, which consists of 2.04± acres controlled by the Applicant, Southern Land Company—which was owned by Scotto Brothers Realty at the time of the 2008 resolutions—and Lot 1005B, which consists of 5.13± acres owned by the Town, but also on a portion of Lot 1035—which is inside North Hempstead Beach Park. See, e.g., DEIS at 2 (“Additionally, a portion of the North Hempstead Beach Park (Section 6—Block 053—Lot 1035), which is proposed to be developed for parking, currently contains park vehicle storage/parking.”)... Undoubtedly, the use of the Park for residential parking is an integral part of the Project. The DEIS states that 58 parking spaces in the Park would be allocated for residential use and that parkland is proposed to be used for the purpose of complying with residential parking requirements....Accordingly, it is undeniable that the

58 parking spaces in the Park will be heavily used by residents, visitors, and others associated with the private residential development and by not park users. Even with those 58 spaces, there are far fewer than 2.25 spaces per unit. And the parking lot in the Park is the only surface parking lot associated with the Project.⁹ Because there will not be sufficient parking in the underground garage, and because many may prefer to park on the surface rather than descend into the garage, the 58 spots will be in high demand. That land will not be reasonably available for park patrons to park and it will be forever foreclosed from being used for any park purposes whatsoever.¹⁰ Because the 58 allocated parking spaces would be needed for the residential development, both to serve its parking needs and to satisfy a portion of the parking requirements under zoning, labeling the parking lot as “non-exclusive” or shared with the Park will not actually leave that land available for park purposes. Indeed, the alternative in the DEIS that considers (albeit very briefly) a project that does not use Lot 1035 includes only 72 units in the apartment building instead of 176 units. DEIS at 316-317 (Alternative 3). This site plan drawing from the DEIS shows the relationship of the parking lot in the Park to the residential building and illustrates that the northern end of the Park would effectively be subsumed into the residential development, in violation of the Public Trust Doctrine:



Resident and Public Access/Egress, Parking and Loading are via adjoining Town Property

In addition to the parkland taken from the Park and given to the private development for parking, the Project also entails further encroachment into the Park for non-park purposes in violation of the Public Trust Doctrine. The only way to access the residential building’s loading dock at the southern end of the building is through the Park. Thus, every moving van for every resident moving in or out of the building and every delivery or other vehicle that uses the loading dock would be transiting through the Park To borrow an image used by other residents commenting on the Project:



All of this requires state legislative approval. Just as the City of New York was not permitted to alienate a golf course in Van Cortlandt Park by temporarily closing it to build a drinking water filtration plant under the golf course, even though the treatment plant was federally mandated and the golf course was to be restored (Friends of Van Cortlandt Park), and the Village of Kings Point was not permitted to use parkland for village public works purposes (Capruso), and municipal agencies were not permitted to park police or sanitation vehicles on parkland (Chatham Green and Ackerman), and the Village of Garden City was not permitted to use parkland for housing (Kenny), the Town of North Hempstead may not grant the applicant permission to use any portion of North Hempstead Beach Park unless and until specific and explicit permission to do so has been received from the State Legislature and signed into law by the Governor in the form of alienation legislation. The 58 parking spaces in the Park and the loading dock access through the Park far exceed the “the minimal degree of alienation that is required to trigger . . . applicability [of the Public Trust Doctrine.” Brooklyn Heights Ass’n, 2011 N.Y. Misc. LEXIS 7189, at *16-17 (collecting public trust cases over the past century and observing that “The doctrine, and the minimal degree of alienation that is required to trigger its applicability, is well established.”). It is also critically important to note that the proposed seven-story, multi-family, 176-unit residential apartment building that would be shoehorned into a narrow strip of waterfront land between North Hempstead Beach Park and Hempstead Harbor is not consistent with the Port Washington Vision Plan. That plan focuses on open space open space, sustainability, and smart development consistent with surrounding areas, not on intensive, car-dependent residential development on the shores of Hempstead Harbor. The Town has recently received more than \$1,000,000 in federal funding and more than \$1,000,000 in state funding to revitalize North Hempstead Beach Park. There may also have been federal and/or state funding used for the initial development or an earlier renovation of the Park. As the Handbook on the Alienation and Conversion of Municipal Parkland explains, if state or federal funding has been allocated to a park, then additional approvals from other agencies may be required before the parkland can be alienated or converted to any other

use....The Town is plainly aware of the Public Trust Doctrine. Under “§ 2.6: Required Permits and Approvals,” the Final Scope for the DEIS states: The following approval may be necessary for certain activities proposed for adjacent Lot 1035: • New York State Legislature – Alienation of Parkland As discussed above, state legislative is indeed required for the propose non-park use of Lot 1035. But the “Required Permits and Approvals” section of the DEIS omits this required approval. There is no mention whatsoever in the DEIS of the Public Trust Doctrine, parkland alienation, or the need for prior, explicit, and specific approval by the New York State Legislature and Governor of the use of a portion of North Hempstead Beach Park for non-park (residential) purposes. (Super Law Group on behalf of Our Children’s Earth Foundation)

- Because the Town has not obtained the necessary state legislative approval for its proposed alienation of dedicated municipal parkland in North Hempstead Beach Park, we respectfully ask that the Town Board treat Town Resolution No. 454-2008 as void ab initio, vote to rescind that resolution, desist from taking any action to implement that resolution, deem the West Shore Residences Draft Environmental Impact Statement (“DEIS”) to be not adequate for purposes of public review under the State Environmental Quality Review Act (“SEQRA”) due to its inconsistency with the final scoping document, require the applicant to revise the DEIS to include alienation authorization from the New York State Legislature and Governor as a necessary approval for the project, and take no action to approve any aspect of the West Shore Residences project—which would alienate parkland—unless and until state legislative approval has been obtained and all terms and conditions in any such approval have been fully satisfied. (Super Law Group on behalf of Our Children’s Earth Foundation)
- Lot 1035: The Applicant also assumes a right to use a portion of Lot 1035. However, Lot 1035 is owned by the Town and designated on the Nassau County Tax map as Land Category “Wild, Public Conservation Lands and Public Parks” and Land Title “Town Public Parks and Recreation Areas.” In other words, Lot 1035 is public parkland. As acknowledged in the Final Scope at Section 2.6 and discussed at length in the DEIS comment letters submitted by Super Law and The Save our Shoreline Coalition (the “Alienation Comments”), public parkland cannot be dedicated to a non-public use without State Legislation. The DEIS fails to mention that State Legislation likely will be required before the Applicant could utilize any portion of Lot 1035 to satisfy parking requirements under applicable zoning as proposed. See DEIS at 1.3.6.6. Instead, the Applicant relies on 2008 resolutions passed by the Town that purport to authorize the owner of Lot 1005A to use a portion of Lot 1035 “for parking and in complying with parking requirements under any applicable zoning ordinance,” if lot 1005A were “rezoned or utilized in a manner consistent with the Port Washington Vision Plan and as such included private development with public access to the waterfront.” As pointed out in the Alienation Comments, the Town Board had no authority in the absence of State legislation to commit Town-owned parkland, which is held in trust for the public, to a private use and thus the Resolutions are null and void. Moreover, we question whether the 2008 Town Board met the procedural requirements of Town Law Section to the extent the resolutions could be construed as a disposition of Town Property, which would be subject to permissive referendum and related procedural requirements per Town Law Section 64(2) and 91. Even if the 2008 resolutions were not null and void, they say

nothing about utilizing Lot 1035 for ingress and egress to a private residential development, access to loading zones, and private lawns (see e.g. the “dog run” area on the site plan, at DEIS Appendix C, drawing A1.0) which are also contemplated under the site plan. Finally, as discussed in the land use section below, the Project is not consistent with the Vision Plan, and therefore any conditional rights created in the 2008 resolutions would fail to vest under the Project as proposed. (Ledyard Milburn on behalf of Our Children’s Earth Foundation)

- The DEIS calls for inappropriate alienation of parkland to construct a parking lot and for use as a loading dock. See Letter from Reed Super enclosed herewith. The following is a picture showing the proposed parkland alienation, requiring NYS Legislature approval:

Figure 3-22 Shadow Study: December 21



The DEIS provides that even if the New York State Legislature allows for parkland alienation to enable the parking lot to be constructed, there still would be a grossly insufficient number of parking spaces for the 176-unit building required under the zoning code forcing applicant to apply for a variance. See DEIS, § 1.3.6.6. Under code, 421 parking spaces would be required for a building as proposed, while the site plan, including park alienation only contemplates 300 parking spaces, a material deficiency. See DEIS, Appx. C, p. 1. This demonstrates two enormous problems for the proposed action that applicant has not addressed: (i) the public will obtain no benefit from parkland alienation – Applicant will need all of the parking spaces and more for its own proposed complex, and (ii) if the public is not afforded meaningful access to the parking lot, the alleged waterfront benefits contained in the DEIS will not benefit the public, but instead will only benefit Applicant’s own tenants. In addition, the above figure shows that people who park in the proposed lot will not have meaningful access to the proposed marina or waterfront without going through the building. Applicant does not disclose if the building will be open to the public so presumably it will not be. The public trust doctrine requires

the Town Board to ensure that parkland is not alienated from use for all to benefit a thirdparty for-profit developer. See 10 E. Realty, LLC, 17 AD3d 474. In addition, Applicant relies on a resolution passed by the Town Board more than a decade ago allegedly authorizing use of this area as a parking lot. To the extent that a decades-old resolution is still valid, the resolution did not authorize use of this property as a loading dock, so Applicant's proposed use exceeds the authority granted in that resolution, requiring new scoping. (Rigano on behalf of Our Children's Earth Foundation)

- The DEIS consistently bases its analyses on the usage of Town-owned land for parking and public access. SLC is using Town Resolution No. 454-2008-2 as the basis for its partial use of the Town of North Hempstead Beach Park, 175 West Shore Road, Port Washington. To our knowledge, this property is designated Parkland, and The Town has not agreed to grant access to this adjoining parcel to 145 West Shore Road, PW. It is our understanding, under New York State (NYS) law, that it is illegal to use Parkland for commercial purposes and would require NYS approval through the alienation process to do so. As such, all analyses in the DEIS that rely on the usage of Town-owned Parkland (parking, etc.) should be deemed insufficient and incomplete, and should be either removed or presented using land under which SLC either has control or has been granted use of and should NOT rely on taking Parkland away from the public for private-use parking. (Residents Forward)

Survey & Lots (§2.1.3. Proposed Action and Project Description)

- Public Roadway: Finally, historic aerial images of the site, tax maps and current conditions suggest that there is a gap between the eastern boundary of lot 1035 and the western boundary of Lot 1005A. The strip of land, which does not appear to be included in either tax lot or any separately identified tax lot, is paved and appears to connect to internal park roadways to the south of the Project site. The Applicant nowhere addresses in the DEIS why it believes it has rights to use this strip of land. To the extent the strip of land is a mapped street, there is no basis for the Applicant to assume any rights in that parcel. Further, to the extent that roadway was mapped and improved to serve as an alternative public entrance to public parkland, use of that strip of parkland for private purposes presents yet a further alienation issue, notwithstanding the 2008 Resolutions. (Carter Ledyard Milburn on behalf of Our Children's Earth Foundation)

Affordable Housing as a Public Need/Benefit (§2.2.1.1. Purpose, Need, and Benefits; §2.3. Site Remediation)

- Southern Land also claims to be helping our community by building "affordable" housing. However, the 17 "affordable" units they are will actually be available for individuals making up to \$190,000 a year so this may not even help families that are actually in need. The rest of the units are priced so high that they will simply not be affordable to the majority of people living in Port, particularly those who have reached

retirement and are on fixed incomes. For example, they will be charging over \$6,000 per month in rent for a 2-bedroom apartment. (Alan Tankoos)

- Applicant's contention that the Proposed Project will foster affordable/workforce housing should be measured against the fact that only 17 Units or 10% of the total 176 units will be so available. The Applicant is required by New York State law to provide these affordable/work force units or, alternatively pay fees to foster affordable housing. While "affordable" is often thought to target lower income residents, usually those below the median income, "affordable" in the case of the Proposed Project means affordable/workforce housing which includes persons typically not eligible for affordable housing programs. Indeed, in the context of Nassau Suffolk SMSA, persons with incomes up to \$190,000, who are not the usual beneficiaries of affordable housing, would be eligible for these Units. Thus, I submit, "Affordable" by application of these income guidelines pursuant to New York State law enacted in 2008, after the adoption of the Vision Plan in 2005, may in fact be different from than those that the authors of the Vision Plan may have considered "affordable." Please consider that there is no furnishing of increased Units of affordable housing by the Proposed Project beyond that which is already required by law. In your evaluation of the Applicant's claim that it is providing affordable housing within the context of the Vision Plan please consider whether the Applicant is aiding persons who need such housing since such Units may not actually be affordable for the lower income residents of the Town. Further consider whether that, in conjunction with the other purported benefits, these constitute a fair return for the availability of the 58 parking spaces that will allow the Applicant to comply with the requested change to Multifamily zoning, Consider also the heightened burdens on Town services as well as the diminution in Town tax revenues attributable to Applicant's PILOT Agreements. (Ernest Goetz)

Marina as a Public Need/Benefit (§2.2.1.1. Purpose, Need, and Benefits; §2.3. Site Remediation)

- SLC states that they will build a 12-foot-wide pier for the public. Not sure how they will have room to build this, but New York State Law states that the developer is required to build a public pier, therefore this is not contributing anything towards requirements for the Master Plan of the Town of North Hempstead. Glen Harbor has a pier, but it is gated off from the development. (Leslye Kress)
- SLC claims they are building a "public pier" in front of their residence and a "public walkway" around their property but they are purposefully not building enough parking spaces for their own apartment complex (i.e., only 242 out of 396 spaces which is 150 spaces short as required by town code) so that the public will have a very difficult time accessing this "public pier" and walkway. Many of the 2-bedroom units and all of the 1 bedroom units won't even have a second parking space, and there will not be parking spaces for guests on their property. This is why Southern Land is attempting to illegally appropriate our publicly owned park to convert it into additional parking spaces. A small pier and walkway that are difficult to access will not beautify the waterfront or improve

the environment of the area or enhance the public's right to use the waterfront. (Eric Schaffer)

- The developer suggests that there would be an increase in recreational/educational benefits. This not justified. There is no proof that boat slips are needed, and these slips would benefit only a very small number of residents. Kayak launching facilities also are not needed as the beach is well suited for launching of a kayak. The proposal for educational benefits is a stretch. An "educational" viewing pier paying homage to history, marine and bird life is not of significant benefit, and could be installed anywhere within North Hempstead Beach Park. Events could take place on a new pier, but the events could take place elsewhere, as they already do. (Ilse Stalis & Rosemarie Gilpin)
- SLC argues that their development plan will benefit the community by having a public Marina, public pier and promenade included in the development.
 - Q6. Can SLC explain how they have determined that there is a NEED for a public marina along Hempstead Harbor Shoreline expressed by the community? There is absolutely no mention of a NEED for a Marina in the Vision Plan documents. SLC also claims that the Marina will be public; however, the DEIS document clearly indicates that the 29 slips on the marina will be owned and operated by the upland owner and only one slip would be allocated for public use.
 - Q7. Can SLC explain in detail how the slips for any Public Marina would be allocated?
 - Q8. Who will gain a profit from this Marina?
 - Q9. Does SLC think that marine support services are required for any proposed Marina?
 - Q11. Does the Hempstead Harbor Shoreline NEED another public pier? Since 3 piers are already present within the adjacent Town Park and the proposal is to renovate them, not remove them.

(Mitchell Farms Neighborhood Association)

Site Remediation and Public Need/Benefit (§2.2.1.1. Purpose, Need, and Benefits; §2.3. Site Remediation)

- Scotto Brothers Enterprises has owned the property at 145 West Shore Road since 1986. If the underwater land – whose ownership is in question– is so seriously contaminated and a threat to health, as claimed by SLC in the DEIS, why has the Town taken no action against Scotto Brothers in thirty-six years? (Edda Ramsdell)
- Following implementation of the Proposed Action, the DEIS recites benefits from the environmental clean-up. It is my understanding that according to applicable Federal and New York State Law, the current owner of the Subject Property, as well as prior owners, users etc., are, deemed "Responsible Parties" under these environmental laws who are already obligated to remediate the Subject Property. Applicant additionally includes as benefits conversion of a "Brownfield site" but isn't this the same as the environmental

clean-up? Is the Applicant saying something further? Applicant is exaggerating the beneficial aspects of the Proposed Project by double counting them and further, not balancing them against the demonstrable detrimental impacts of the Proposed Project, including, without limitation, the negative environmental and aesthetic conditions which would result from the Proposed Action. (Ernest Goetz)

- Furthermore, the applicant's argument, throughout the DEIS, that it is pursuing an environmental cleanup and is paying \$6 million for the land shows that those arguments are a red herring. As to environmental cleanup, if, as the applicant contends, the cleanup is on privately owned property, then it is the obligation of the property to remediate its site – not the taxpayers. Nor is it appropriate to put those costs as a basis for exceeding the development plan for the area. The current owner hopes to reap \$6 million from the sale of its property, but it is not the obligation of the Town to ensure that an owner of a polluted site makes a profit on its land. (Beacon Hill Bungalow Corporation)
- The DEIS mischaracterizes site cleanup as if it were an optional, project-specific benefit rather than a legal obligation. (Carter Ledyard Milburn on behalf of Our Children's Earth Foundation)

Recreational and Educational Amenities as Public Need/Benefit (§2.2.1.1. Purpose, Need, and Benefits; §2.3. Site Remediation)

- Will the recreation/educational opportunities mentioned in the DEIS statement be available to the public or just residents of the property? (Ernest Goetz)
- In terms of recreational opportunities for the general public, it should be clear that such opportunities do not include the proposed marina, the slips of which will be available to only the 29 persons who lease same and not the general public. Indeed, the marina may have a minor adverse impact on the general public in terms of increased watercraft traffic, think of noisy jet skis, and the potential for pollution from petroleum spills and recreational boat waste. The Applicant's claim of recreational benefits to the "general public" should thus be scrutinized and its weight discounted accordingly. Also, it would seem any recreational benefits accruing from the pier and the promenade would not greatly increase access to the waterfront beyond that now afforded by the existing piers and more extensive walkways of North Hempstead Beach Park. (Leslye Kress)
- I submit that the Applicant's claimed educational benefits are minor since the proposed signage and exhibits for the educational pier and the promenade are, in my view, not significant educational resources and might indeed be duplicative of the educational materials currently readily accessible at the nearby Sand Miners' Monument to the South along West Shore Road as well as the explanatory signage identifying fauna and flora along the Hempstead Harbor Shoreline Trail; the trail begins at Bar Beach and proceeds south along the west side of the Harbor. By comparison, do the exhibits and signage provided for the Bay Walk along the shore of Manhasset Bay in Port Washington North provide any major educational benefits? Perhaps they might provide a nice finishing

touch to the pier or the promenade, but such adornments are not significant separate benefits, let alone benefits "identified as needed by the community", as claimed by the Applicant, beyond the already recited access to the waterfront. (Ernest Goetz)

Additional Permits and Approvals (§2.5. Required Permits and Approvals)

- Because it is being built in a flood zone, they are required to have a FEMA permit. I do not see that on the list of required permits and approvals. Pg. 61. (Leslye Kress)
- A number of possible permits, approvals, and necessary consultations appear to be incomplete or missing:
 - “The North Hempstead Waterfront Advisory Committee: Review of Pier and Marina.” The scope of North Hempstead Waterfront Advisory Committee responsibilities as worded actually appears to include the development of immediately adjacent shoreward areas above the shoreline. If in practice the Committee may only typically deal with Piers and Marinas that extend into waters does not square with the scope of the Committee as defined. This must be clarified with the TONH, and the DEIS revised as necessary.
 - The New York State Department of Environmental Conservation: SPDES General Permit for Stormwater Discharges for Construction Activities (GP-0-20-001); Article 25 Tidal Wetlands Permit; Section 401 Water Quality Certification; Protection of Waters Permit (Excavation & Fill in Navigable Waters; Docks, Moorings, or Platforms).
 - The DEIS importantly fails to mention the actions and items required under SEQRA, which is implemented and overseen by the NYSDEC, and includes important community input and participation. The omission is of great concern.

Has the developer looked into these and other NOAA resources and programs to determine which apply? Consultations with NOAA for at least but not limited to (as per NOAA.gov):

- Endangered Species Act, NOAA evaluates and identifies whether any areas meet the definition of critical habitat that is necessary to support the recovery of the listed species.
- The Coastal Zone Management Act (CZMA) establishes the National Coastal Zone Management Program (NCZMP), and authorized designation of National Estuarine Research Reserves (NERR). Reserves provide long-term protection of estuarine lands and waters for research, education, stewardship, and interpretation. Under the federal-state partnership of the NCZMP, states maintain and enhance public access to the coast and conserve coastal resources through planning, acquisition, and management programs. For instance, the Special Area Management Plan tool authorized by the CZMA enables States to identify a specific coastal or marine area, identify management challenges within that boundary, and conduct a public process to balance use and conservation therein.
- Section 216(a) of Executive Order 14008, signed by President Biden on January 27, 2021, directs DOI in consultation with DOC and other agencies, to produce a

report to the National Climate Task Force that recommends steps for conserving at least 30% of U.S. lands and waters by 2030. Section 216(a)(i) of EO 14008 directs NOAA, among other federal agencies, to “solicit input from state, local, Tribal, and territorial officials, agricultural and forest landowners, fishermen, and other key stakeholders in identifying strategies that will encourage broad participation in the goal of conserving 30% of our lands and waters by 2030.”

- In addition to §216(a), §216(c) of the EO requires NOAA to initiate efforts to gather stakeholder input on how to “make fisheries and protected resources more resilient to climate change, including changes in management and conservation measures, and improvements in science, monitoring, and cooperative research.” Has the developer investigated the status of Hempstead Harbor with respect to this program?
- NOAA has jurisdiction over the nation’s Navigable Waters: defined as waters that are either tidally influenced or navigable in fact. The proposed Pier and Marina would extend into Navigable Waters and interfere with boating, kayaking, crew teams and other uses. In addition, has consideration been adequately given to jet sky and other power vehicle use and safety both at and beyond the proposed Pier and Marina?
- Emergency Coastal Resilience Fund, the National Fish and Wildlife Foundation and NOAA awards millions of dollars in grants for coastal resilience projects that will increase the resilience of coastal communities.
- NOAA Coastal and Estuarine Land Conservation Program. This program is authorized as part of the Coastal Zone Management Act to protect coastal lands that are ecologically important or possess other coastal conservation values, such as historic features, scenic views, or recreational opportunities.

(Stephen Cipot)

- The DEIS indicated that to construct a Marina many regulations and permits required by NYS. The plans for this Marina may be premature and not even possible. This claim must be researched and verified. (Mitchell Farms Neighborhood Association)

Chapter 3, Section 3.1: Soils and Topography

Soils and Geotechnical Report (§3.1.2.1 Soils & Appendix G)

- Appendix G of the DEIS contains the Geotechnical Report prepared by P.W. Grosser Consulting Inc. dated February 10, 2022. Section 3 of the Report provides: “A total of eight (8) soil borings were conducted at the subject site during the geotechnical investigation.” Geotechnical Report, p. 2. The Report states: The subsurface was revealed to consist of: Dark Brown to Light Brown Sand, Fill: A layer of uncontrolled fill was encountered beneath the existing grade down to approximately 14’ below grade surface (bgs). Fill was encountered in B-8 to 25’ below grade. The findings of boring B-8 may not be representative of the fill found at the rest of the site as B-8 was located on the

concrete pier. Fill is likely to be found in the subsurface in the proximity of the warehouse on the northern side of the property and near the eastern boundary of the site (ie along the shoreline). The fill consisted of brown coarse to fine grained sands, silty sands, gravel, asphalt, and fragments of brick, wood, and concrete. The fill materials were loose to dense in terms of relative density and were classified as SP, SM, or GP in accordance with USCS. This material is considered not suitable for foundation bearing due to the material's heterogeneity. Geotechnical Report, p. 3. In other words, fourteen (14) feet of fill is present at the property that contains manmade waste material such as asphalt, brick, wood and concrete. This constitutes an illegal landfill in violation of 6 NYCRR 360-365 and Town of North Hempstead Code §§ 46-14.G(1), (3), (4), 46.14.H, and 46-14.J, among other law. Applicant presents no discussion as to how and where it will excavate/grade the soil/fill, how it will manage those soils /fill, and the process it will undertake to sample. The community is left to guess as to these important issues. (Rigano on behalf of Our Children's Earth Foundation)

Topography Survey (§3.1.2.2 Topography)

- The site-specific Topographic Survey (Scalice Land Surveying, December 2020) is inaccurate and leads to misstating the height of subject property above mean sea level (amsl) and gives a false and potentially dangerous basis for the assessment of site risk to coastal storms and flooding. The contouring is sloppy and an embarrassment, it is assumed they were developed by a program but did a person even bother to check the computer-generated contouring? Many contours do not align over even short distances, and especially do not agree with the USGS' topographic survey. The height of artificially stockpiled and mounded materials (gravel, etc.) are included and contoured as if they were topographic features which in effect appears to create a higher topographic height and larger property area amsl than the DEIS states ranges from 4 to 30 feet amsl. However, the maximum topographic height recorded by the USGS based for the natural geomorphology and topography is 20± feet amsl. (Stephen Cipot)
- The DEIS states mounded materials will be removed yet they are contoured. Contours associated with artificially mounded material must be removed, contours must be consistent, generally continual, and must make sense. Accurate topographic elevations and height above msl is essential to accurately assess the potential hazard of risk due to flooding and storms. On this, it does not appear the developer will be adding approximately 10 or so feet of fill to make up for the 10 feet height of artificially mounded material? Please explain what is going on. The DEIS presentation is not clear. (Stephen Cipot)
- Accordingly, it must be assumed that applicant intends to build on top of the 14 feet of unauthorized solid waste intending to leave such manmade waste in the subsurface immediately adjacent to Hempstead Harbor into perpetuity. This is particularly the case because the fill should have already been removed from the property in accordance with the schedule set forth in the NYSDEC Consent Order discussed below. (Rigano on behalf of Our Children's Earth Foundation)

Chapter 3, Section 3.2: Subsurface Conditions

Scope of the Environmental Site Assessments (§3.2.2.1 2020 Phase I Environmental Site Assessment and §3.2.2.2 2022 Limited Phase II Environmental Site Assessment & Appendix E)

- The subsurface conditions analysis in the DEIS is severely flawed. The DEIS relies on the usage of Town land as part of the proposed project, but the subsurface conditions section of the DEIS does not include any analysis of the Town-owned land. The Phase I Environmental Site Assessment (and Phase II) were only prepared for a portion of the project. As such, the subsurface conditions section cannot be deemed complete. The DEIS either needs to remove the Town-owned land from the proposed project or conduct a proper subsurface conditions analysis for the Town-owned land. (Residents Forward)

Limited Phase II Environmental Site Assessment (§3.2.2.2 2022 Limited Phase II Environmental Site Assessment & Appendix E)

- For residential exposure (as this is a residential building with attendant recreational uses and potential exposures, please explain why Unrestricted Use Soil Cleanup Objectives (UUSCOs) will only be utilized in “certain locations” and not throughout the site? To help adequately inform and prepare the public, all forthcoming project upcoming work plans and reports to include the project timeline, should be clearly outlined in the DEIS, including the important site-specific Health and Safety Plan. (Stephen Cipot)
- Applicant conducted a Limited Phase II Environmental Assessment. See DEIS, Appx. F. While Applicant discusses the applicability of DER-10 in its DEIS (p. 74), they did not come close to following it. Applicant did not sample for soil gas. Further, applicant only analyzed groundwater samples for some petroleum constituents and failed to sample groundwater for the full suite of constituents as DER-10 requires. Notably, the groundwater samples did not analyze for per-and polyfluoroalkyl substances (PFAS), and volatile organic chemicals (including Perc and TCE). Further, applicant’s soil and groundwater sampling were deficient as, among other things, there were not enough soil and groundwater samples taken across the site or at enough multiple depths at the same boring. All of this is problematic as Applicant admits that the property was used for sand mining operations and ship maintenance (DEIS p. 82), both of which have well documented histories of causing subsurface contamination. This is very important for the following reasons: 1. To analyze the environmental impacts, the Board and community must understand the nature and extent of hazardous constituents in the surface and subsurface in order to ensure that human health is protected. This is particularly the case because the project calls for soil excavation and groundwater dewatering without disclosure of whether all soils will be disposed offsite and where dewatered groundwater will be recharged or disposed. 2. The hazardous constituents in the subsurface at this property will discharge to Hempstead Harbor by groundwater flow and stormwater

runoff. That must be avoided, as it violates the Clean Water Act, but environmental impacts to the harbor cannot be analyzed until the nature and extent of contamination is analyzed and disclosed. This is made even more problematic because Applicant intends to not address any offsite contamination as it proposes to enter into the Brownfield program as a volunteer (see discussion above). 3. In order to consider the DEIS and Applicant's site plan, the location of remedial technology (e.g., pump and treat systems, etc.) must be anticipated as those structures may impede development in accordance with the proposed site plan. 4. In order to assess the economic viability of the project, Applicant (and the public) must understand the nature and extent of contamination at the property. It would make no sense for the Board and community to approve this project, have the Applicant conduct further sampling and have the Applicant walk away from the project after approvals are provided due to remediation cost, toxic tort liability concerns and/or CERCLA liability concerns. It is simply impossible to assess environmental impacts with this project without having comprehensive sampling conducted in compliance with DER-10. (Rigano on behalf of Our Children's Earth Foundation)

- In addition, the Phase II states that the soil and groundwater contamination identified at the property are indicative of a petroleum spill. The applicant should discuss whether the petroleum spill has been reported to NYSDEC as required by regulation. (Residents Forward)

Supplemental Phase II Environmental Site Assessment (§3.2.2.3 2022 Supplemental Phase II Environmental Site Assessment)

- Will the offshore material be included in the *Soil Material Management Plan* as indicated on Page 84? (TNH Planning Department)
- At Sampling Location SS-19 copper, lead, mercury, nickel and zinc were detected at concentrations exceeding their respective Unrestricted Use Soil Cleanup Objectives (UUSCO). Similar results were obtained at locations SS-4 and SB10. The detected concentrations of copper and mercury also exceeded their respective Restricted Residential Soil Cleanup Objectives (RRSCO). The DEIS does not adequately address whether and how these metals will be remediated. (TNH Planning Department)

NYS DEC Order on Consent (§3.2.2.4 Ongoing Remediation Activities)

- Scotto Brothers Bar Beach LLC and Bay Aggregates Corp. (together, "Consent Order Respondents") entered into an Order on Consent with NYSDEC dated November 5, 2020 admitting to violations of the Environmental Conservation Law and/or 6 NYCRR Parts 360 through 365 for the Property. The Consent Order is attached hereto. The Consent Order is significantly broader than Applicant leads the Town to believe by Applicant's statements in the DEIS. Specifically, Applicant states that the Consent Order only required the Respondents to remove the pile of construction and demolition ("C&D")

debris at the property above the surface (DEIS, p. 84). But consistent with Point 1 discussed above, the violations cited in the Consent Order include: 1. Operating a solid waste management facility without authorization in violation of ECL 27-0707 and NYCRR 360.9(a)(1) 2. Accepting waste at an unauthorized facility in violation of ECL 27-0707 and 6 NYCRR 360.9(b)(5) 3. Disposal of regulated solid waste at an unauthorized location in violation of ECL 27-0707 and 6 NYCRR 360.9(b)(3) None of those violations are limited to the pile of C&D debris referenced by Applicant in the EIS. To the contrary, these violations appear to be broad enough to include the subsurface fill discussed in Point 1. The Consent Order goes on to provide a schedule of compliance. The schedule provides that no later than May 4, 2021: Respondents shall have no solid waste material, whether processed or unprocessed, on Site. All solid waste materials must be removed from the Site to the satisfaction of the Department. If Respondents fail to dispose of waste as per this compliance schedule or need additional time due to some unavoidable circumstances, Respondents must first receive approval from the Department for the additional time period. In the DEIS, Respondents represent that they believe the solid waste violations have been cured and NYSDEC approval is imminent. See DEIS p. 84. But they simultaneously admit in the DEIS that the 14 feet of fill remains (DEIS p. 66), which is consistent with the Grosser February 2022 report discussed above. Accordingly, it appears that either: (i) Consent Order Respondents have not informed NYSDEC of the findings contained in the Grosser February 2022 report, or (ii) Consent Order Respondents are in violation of the Consent Order. The DEIS is obviously deficient and the project should not be considered by the Town unless and until all solid waste is removed from the surface and subsurface from this property. (Rigano on behalf of Our Children's Earth Foundation)

- Compliance with an existing NYS Department of Environmental Conservation Consent Order to clean up the Subject Property is neither a community benefit nor a meaningful approach to mitigate the many significant adverse environmental impacts of the project. The Applicant has touted remediation of the terrestrial portions of the Subject Property to be one of the main community benefits and impact mitigations aspects of the project. (See DEIS §3.4.4) The landowner, however, is legally obligated to “...cease the acceptance of any solid waste at the Site”, “commence removal of solid waste material, which includes unprocessed and processed materials”, and remove “no less than 100 cubic yards of waste” per week. (See NYS Department of Environmental Conservation Order on Consent for the subject property dated 11/5/20.) As such, the legally mandated cleanup can hardly be considered a benefit of the project, and it is respectfully submitted that Town Board should dismiss any suggestion that the cleanup could be a means to mitigate the significant adverse environmental impacts of the project. (SMPLI on behalf of Save our Shoreline Coalition)

More information regarding the Brownfield Cleanup Program (§3.2.3 Potential Impacts)

- The DEIS also states that the applicant will apply to the Brownfield Cleanup Program in Section 2.3, but in other places in the DEIS, the applicant says instead it will either enter the BCP or conduct remediation in accordance with applicable regulations. What actions

the applicant will take to mitigate the impacts from site contamination should be clear and consistent throughout the document. (Residents Forward)

- Applicant states that it intends to enter into the Brownfield Cleanup Program to remediate the site. DEIS, pp. 85-87. But applicant provides no contingency for the project if they are rejected from the program, which is a very real possibility. Properties are not eligible for the Brownfield Cleanup Program if the property is “the subject of an ongoing enforcement action pursuant to ECL article 27, title 7 or title 9 involving solid or hazardous waste.” 6 NYCRR 375-3.3(b)(3). The Consent Order lists violations of ECL 27-0707, which is under Title 7 of Article 27 of the ECL that involves solid waste. In fact, the caption of the Consent Order referenced in section 2 above provides “[i]n the Matter of the Violations of the New York State Environmental Conservation Law (ECL) Article 27” Applicant must disclose if they intend to proceed with this project if it is not admitted into the Brownfield Program. Notably, the Brownfield Program would provide developer with enormous state tax incentives that could reimburse Applicant for up to 40% of remedial cost and 24% of their development cost (i.e., potentially tens of millions of dollars). See <https://www.dec.ny.gov/chemical/101350.html>. To the extent Applicant is not accepted into the Brownfield Program, Applicant must: (i) confirm that it will remediate the property under a NYSDEC program (presumably Superfund – 6 NYCRR 375), and (ii) confirm that its project is still economically feasible. (Rigano on behalf of Our Children’s Earth Foundation)
- SLC states that the Port Washington Community will benefit from the remediation of the existing property with transformation of an industrial use to residential use. SLC says they will apply for Brownfield Clean-up Program (BCP) status. BCP has a tangible property tax credit tax associated with it. Therefore, this credit is funded by us the taxpayers not SLC.
 - Q1. If the site is accepted into the Brownfield Clean-up Program (BCP), what is the anticipated tax benefit to the developer?
 - Q2. The current owner has not performed any significant upkeep or remediation over the past 27yrs, yet they will be a percentage owner of the development. If there is any tax credit associated with this development, does this represent double dipping?
 - Q3. Why shouldn’t the current owner bear some responsibility for clean-up and remediation prior to any development? SLC should explain why the Town Board should rule in favor of a zoning change and thus reward the current owner’s willful neglect and contribution to the environmental harm at this site.

(Mitchell Farms Neighborhood Association)

- Further, Applicant states in the DEIS that it will enter into the Brownfield Program as “Volunteer”. DEIS, p. 86. What this means is that Applicant will have no obligation to remediate any contamination that has migrated offsite, including into Hempstead Harbor. See 6 NYCRR 375-3.8(b)(2)(i)(b). This presents two issues: i. To the extent Applicant cannot enter into the Brownfield Cleanup Program, it will be obligated to cleanup contamination that migrated from the site, including contamination that entered Hempstead Harbor – will Applicant commit to doing that or will the offsite cleanup

without Brownfield tax credits make the project not economically feasible? The DEIS does not discuss this. ii. In the unlikely event that Applicant is permitted to enter into the Brownfield Cleanup Program, who will remediate offsite? The DEIS does not discuss this. The taxpayers should not be saddled with that responsibility. (Rigano on behalf of Our Children's Earth Foundation)

Chapter 3, Section 3.3: Water Resources

Requested Additional information on Flooding (§3.3.2.3 Floodplains)

- In the DEIS statement, it is mentioned that most of the existing acreage is below mean high water; can you please explain to me how creating this new infrastructure will not be flooded? (Kristen Homeyer)
- The Town of North Hempstead zoning code, states that no building should be within 25 feet of a special hazard flood zone. (Leslye Kress)
- Flood Zone and Tidal Wetlands Development Restrictions: Moreover, these unprecedented land use changes are proposed adjacent to and to some extent, within, a special flood hazard flood area, and a tidal wetlands adjacent area. Substantial additional variances from flood related provisions in the Town Code and State regulations restricting development in tidal wetlands adjacent areas would be required. For example, Town Code 70.3.26 provides that “no building or structure shall be built within 25 feet of a Special Flood Hazard Area.” (Note that the Town’s flood development provisions expressly provide that stricter provisions in other sections of the Town Code apply (See Town Code 21-7(b) (“In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the higher standards, shall govern.”)) Yet the Applicant fails to mention this variance or explain why its proposal would meet the conditions required for approval. Similarly, NYS State Tidal Wetlands regulations impose a 75 foot setback requirement from tidal wetlands for all principle buildings in excess of 100 square feet. See 6 NYCRR 661.6(1). The DEIS must address these and other clearly applicable requirements, why a variance is warranted, and adverse impacts flowing from any such variance. Moreover, the DEIS fails to discuss adverse impacts in terms of risks to life and property associated with allowing 176 households to reside in a Special Flood Hazard Area and a Coastal High Hazard Area. (Ledyard Milburn on behalf of Our Children's Earth Foundation)

Requested Additional information on Sea Level Rise (§3.3.2.3 Floodplains)

- With respect to climate change and projected sea level rise, as we know estimates of sea level rise are bracketed by upper and lower confidence limits and cover everything between. This is because estimates depend on many changing variables and inputs that are difficult to assess and predict, such as for example future temperatures, atmospheric water vapor, cloud cover, CO2 concentrations as well as concentrations for other major greenhouse gases such CH4, SF6, HFCs PFCs, N2O, which, as noted in the DEIS have much more potent thermal heat trapping properties than CO2. Atmospheric water vapor, etc. There are complicated feedback loops that lead to the noted upper and lower ranges of sea level rise projections and sensitivity analysis are rigorously applied to determine which inputs and variables are critical. This we know. Nonetheless, importantly, New York State’s “adopted projections are as follows: 2 and 10 inches of sea level rise by the 2020s, 8 to 30 inches by the 2050s, 1 to 5 feet by the 2080s and up to 6 feet by 2100.” (Underline added for emphasis). <https://tbrnewsmedia.com/report-on-rising-sea-level-creates-difficult-questions-for-long-islands-future/> There are many sources for similar estimates, the same upper limit is calculated in this 2019 USACOE’s report. Putting things in better perspective, while we hope upper limits are not correct all estimates have tended to be far too conservative and the projected impacts are constantly being revised upwards not downwards. There are unfortunately no trustworthy estimates that project lesser impacts over time. The DEIS correctly cites the Community Risk and Resiliency Act (CRRRA), noting that sea level could rise would be a maximum of approximately 72 inches (6 feet) by the year 2100 under the “high” condition. However, the DEIS further states that this projection reflects the most extreme scenario, and that the Proposed Action would be consistent with the relevant flood zone building requirements of the Town of North Hempstead, to the greatest extent practicable. Importantly, however, as noted in previous comments, the implementation of the CRAA at this time is incomplete and at best fragmented in the Hempstead Harbor area. In this regard, the TONH is greatly urged to be wary and cautious of development of the magnitude being proposed in the DEIS. In this regard, utilizing the average global maximum rate of sea level rise, which is derived as an average from across the globe is not an adequate or accurate basis as it ignores the local historical rate of shoreline change discussed above. For example, the global average increase is particularly not accurate for Louisiana and much of the Gulf Coast which are experiencing much higher location specific rates of change. Louisiana’s gulf coast is especially sinking due to local geologic factors and geomorphology, such as the compaction and dewatering of thousands of feet of Mississippi River sediments upon which New Orleans and bayou parishes and communities sit. Let me use one personal example to elucidate the issue and need to look at site specific factors. In Terrebonne Parish, LA, a company I once worked for drilled two deep wells located less than 200 feet apart in order to exploit the same gas reservoir. Why only 200 feet apart? Because at depth the second well crossed what is termed a growth fault, where the targeted reservoir which consisted of the of the same sediments and age as the first well, was located over 1500 feet deeper than the first well. Louisiana’s gulf coast is sinking at different rates, some areas are accelerated relative to others, primarily dependent on the depth of the Gulf of Mexico’s basement and the historical deposition rates of the Mississippi River flow and sedimentation load varies over time. As another example, California’s coastal communities are on top of loosely consolidated and slightly metamorphosed greywacke

which erodes at a higher rate than say hard competent rock. Areas of its shoreline are eroding and retreating at different rates due to whether they are on top of unconsolidated sediments or on top of more resistant metamorphic sediments, as impacted by weather, rainfall, erosion from waves, coastal storms, etc. The site specific rates for California's shoreline changes are necessarily different than Long Island's, irrespective of the future impacts due to climate change. Maine's competent igneous and metamorphic "hard" competent rock coastline is much more resistant than California's or Long Islands, and will have a different calculated rate of coastal change. Long Island, which as noted, consists of soft unconsolidated sediments that are easily eroded, similarly has a locally relevant and specific current rate of shoreline change that are due to its unique geology, location and other local factors. Based on this and especially to present a better picture and basis so that the TONH Building's Department is better informed to be able to make better informed and accurate decisions with respect to development that factoring future estimates of sea level increase, as well as the site specific historical rate of coastal change for the subject property and adjacent harbor areas? NOAA's website links to a map showing general location specific rates of current sea level change as an example. NOAA also links to this website to obtain further information to help with understanding coastal risks and property development issues into the future: <https://riskybusiness.org/report/national/> As stated on the website: "Property losses from sea level rise are concentrated in specific regions of the U.S., especially on the Southeast and Atlantic coasts, where the rise is higher and the losses far greater than the national average." (Underline added for emphasis). We do need to create a better forward looking capacity for innovations to adapt to climate change. Scientists, engineers, planners, developers, politicians, insurers, lawyers and citizens must challenge themselves to think differently about near and distant threats and how to meet them. In this, FEMA and other resources are a start but they must be timely, accurate and up to date—FEMA 2009 Hazard Maps are neither up to date nor accurate. Development must take into consideration local factors. The proposed development is neither well explained nor sited with respect to storms and climate change. Calculating the local site specific rate of coastal change helps us toward more accurate planning and a better place in terms of safety and preserving property and development. To end this part of the commentary and discussion, the DEIS used a mean storm flood elevation above storm stage that is out of date and too conservative. One commenter suggested that the DEIS may have utilized newer nonpublished FEMA information? This is not clear, and in any event is suspected to be "Draft" and subject to revision in a Final report. As previously noted, the baseline necessary to assess coastal storm flooding as well as inland overland rainfall and sheet flooding—including overland flow higher topographic hills directly across West Neck Road are inadequately addressed in the DEIS. This lack necessarily results in underestimating risks and this is especially relevant over the long-term residences. (Stephen Cipot)

- The following comments apply to Sea Level Rise: The NYSDEC recommends that siting and design of the proposed project include considerations of sea level rise projections (6 NYCRR Part 490) including potential impacts to access roads and parking areas. (NYS Department of Environmental Conservation)

Groundwater Protections (§3.3.3.1 Groundwater Potential Impacts)

- Can you please explain further how groundwater will remain protected during the excavation process? (Kristen Homeyer)
- How will the building foundations be insured not to contaminate drinking water? How will this be checked/enforced? What are the consequences for the company if contamination does occur? (Kristen Homeyer)
- 3.3.2.1 Groundwater - Groundwater Contamination: According to the DEIS, eight soil borings across the subject property found depth to groundwater to range approximately 8 to 17 feet below grade surface. The DEIS also notes that the Phase I Environmental Site Assessment indicates that the groundwater flow beneath the property flows to the east to Hempstead Harbor. Earlier pages of the DEIS describing the proposed building and engineering considerations state that a “deep foundation system” is recommended to support the building foundations and floor slabs (§3.1.2.1, p. 68). No mention is made of the potential contamination to groundwater or surface water (i.e., Hempstead Harbor) that could result from construction of such a system. No details are offered as to the total depth foundation elements would have to be installed, the potential for surface and subsurface contaminants being disturbed during the installation of this system, and the potential migration of contaminants to groundwater and, because of the flow of groundwater, to Hempstead Harbor. (Coalition to Save Hempstead Harbor)

Base Flood Elevation and Groundwater/Perched Water (§3.3.3.1 Groundwater Potential Impacts & 3.3.3.3 Floodplains Potential Impacts)

- Statement 3.3.3.1 Groundwater: “Based on the shallow depth to groundwater, to mitigate against installation of building foundations and stormwater management structures reaching groundwater, said structures would be designed to meet or exceed the minimum separation distance above observed groundwater levels. The proposed stormwater management system (detailed below) includes the use of shallow concrete leaching galleys to allow for a more even distribution of stormwater recharge over a larger area as compared to conventional drywells.” Comment: Concerns regarding the adequacy of storm water management system based on the minimal information presented in the DEIS is not sufficient to assess the system under various realistic scenarios and are noted above. Moreover, the DEIS does not appear to adequately note what will happen to the contaminated perched water on the property, including perched water located below the proposed residential building. Again, cross-sections of the proposed development at several locations across the proposed development should be provided in the DEIS. No cross-sections are provided to help show how things relate at depth. Will perched water be cleaned up? Will it be pumped and treated? Will a soil vapor extraction system be necessary to prevent valuable- and semi-valuable organic compounds from entering the two subterranean building levels and into living areas? Please explain. (Stephen Cipot)

- Statement: “The Proposed Building would contain two floor levels sited below the BFE of 16 feet amsl. It is noted that these two levels would be utilized primarily for parking, as well as other residential amenities (i.e., fitness space, lobby/leasing space, pool) and support spaces (i.e., storage spaces, elevator lobby). These two levels would not be used for human habitation. In the event of an impending flooding event (i.e., a hurricane), vehicles stored within these levels would be moved to an alternate location to minimize, to the greatest extent practicable, the loss or damage of property.” “The lowest finished floor of the Proposed Building would be elevated to provide three feet of separation above its respective BFE. Same would also be elevated well above the projected sea level for the year 2100.” Comment: As noted above, these sublevels will flood, as well as the first floor during certainly hurricane storm events, but also, as noted for significant rainfall events, such as the 2021 tropical depression. And, as noted, flooding may be caused by either coastal flooding or overland sheet runoff. What is the depth to water in this area, noting that there is also a perched water zone? I find conflicting statements. Consider that most of the area to be constructed below grade appears to be only 10 amsl (not near the stated 16’). Regardless, however, if each sublevel is 10 feet in height then the lowest level would actually be at a depth of least 20’ and thus in water. The geotechnical investigation monitored groundwater levels within the soil borings. In addition, a dedicated groundwater monitoring well was installed to examine depth to groundwater and tidal influences. Depth to groundwater within the soil borings was estimated to be 8± to 17± feet bgs. Depth to water within the groundwater monitoring well was estimated to be 11± to 12± feet bgs; it was noted that groundwater levels fluctuated by approximately 1.5 feet during each 12-hour tidal cycle. Unless I am missing something, both these findings statement reported in the geotechnical survey conflict with the statement that the two subfloors as planned will not be below water even without a storm or serious rain event. Toward this, actually providing 2-dimensional cross sections through subsurface control points like boring locations and groundwater monitoring wells and through the proposed structure’s 2 sublevels, and including all pertinent information such as soil type, depth to water, perched water, contaminant detections, etc., would greatly assist a reader and help avoid confusion. These discrepancies must be corrected. Provide cross sections. Identify where building mechanicals will be located. Will it be on the first floor same as the elevator lobby? (Stephen Cipot)
- The Applicant identified but completely ignored the drainage limitations posed by “perched water conditions”. (See DEIS § 3.3.2.1 (detailing the fact that groundwater appears highest in the Western portion of the site “...indicative of a perched water conditions caused by underlying soils”). After conducting basic volumetric stormwater calculations, the Applicant determined that the “site drainage would include 248 three-foot-high leaching galleys and 202 five-foot-high leaching galleys” to provide the requisite drainage. (See DEIS § 3.3.3.2) Buried stormwater infrastructure generally requires at least 2-feet of separation between the bottom of the precast concrete structure and groundwater. As such, three- and five-foot-high leaching galleys need at least five and seven feet of clearance to groundwater, respectively, to function properly. Unfortunately, the Applicant’s conceptual drainage plan— which is notably labeled “[n]ot approved for construction” —provides no information about how the functional separation between the leaching galleys and the groundwater will be maintained. For the

benefit of the Board, and to demonstrate the dynamic nature of subsurface soil conditions on the site, we created a “heat map” from soil boring sample data that allows the user to make inferences based on how “hot/red” or “cold/blue” an area is in comparison to its surrounding data points. (The “heat map” model was created using Inverse Distance Weighting (IDW). IDW, which was originally created to aid in mineral exploration, is a type of spatial interpolation. IDW was conducted through the spatial analyst extension of ArcMap, which provides an exact and deterministic method to interpolate a continuous surface between sampling localities. Exact and deterministic refer to the fact that the algorithm will always solve for the optimum solution (exact), and given the same input, the model will always produce the same output (deterministic). Moreover, the only assumption made by the model—which is based on a standard principle of cartography—is that points closer together are more similar than those that are farther apart/ See generally, O’Sullivan, D., and D. J. Unwin. *Multivariate Data, Multidimensional Space, and Spatialization*. In *Geographic Information Analysis*, 315– 55. John Wiley & Sons Inc (2003); see also ArcMap, *How IDW Works*, available at <https://desktop.arcgis.com/en/arcmap/10.3/tools/3d-analyst-toolbox/how-idw-works.htm>. Extremely shallow perched water conditions in the map are red, whereas the other end of the color spectrum, blue, represents greater separation between the surface and groundwater. See Exhibit A.

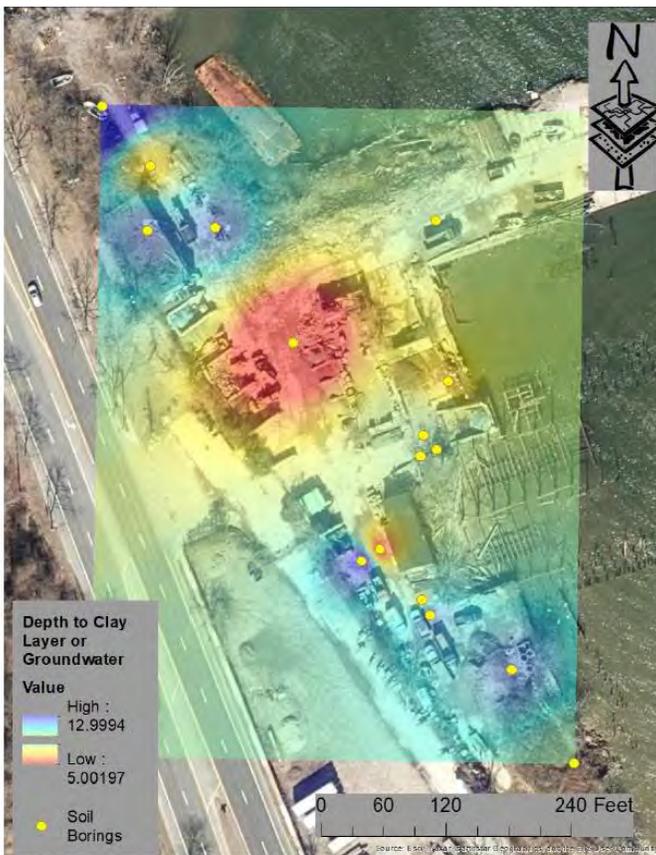


Exhibit A. A spatial model created with Inverse Distance Weighting, demonstrating subsurface drainage limitations

As one can readily observe by reviewing Exhibit A, much of the site includes a very shallow water table which is confined by relatively impermeable clay as shallow as five feet below grade. Unfortunately, the Applicant has not “[d]iscuss[ed] the impact high groundwater may have on the design of the building foundations and the stormwater system” as explicitly required by the Scoping Document.

(SMPLI on behalf of Save our Shoreline Coalition)

Fluctuating groundwater and tidal levels (§3.3.3.1 Groundwater Potential Impacts & 3.3.3.3 Floodplains Potential Impacts)

- The Applicant underrepresented the flood risk associated with fluctuating groundwater and tidal levels, particularly as climate change continues to progress and storms become more frequent and intense. After using a data logger that operated in a groundwater well for 29 days, the applicant concluded that tidal fluctuations were limited to 1.5 feet. (DEIS § 3.3.2.1) Nearby U.S. Geological Survey wells, however, demonstrate tidal fluctuations of up to seven feet. See Exhibit F (demonstrating tidal fluctuations relative to proposed design specifications).



Exhibit F. A conceptual model of observed site conditions and expected groundwater variability associated with groundwater and tidal fluctuations. The Applicant suggested that groundwater variability is 1.5 feet, however, nearby USGS wells with long-term data note 7 feet of variability.

Moreover, according to the NY State sea level rise projections, the sea levels (including those in Hempstead Harbor) will rise from 1.25-6 feet by year 2100. (See 6 NYCRR 490) Such observed variability and the expected impact of climate change is, in part, why the NYS Department of State defines substantial portions of the site to be within an “extreme risk area”, and the NYS Department of Environmental Conservation projects the entire shoreline area to be inundated after sea level rise. See Exhibit G and H, respectively.

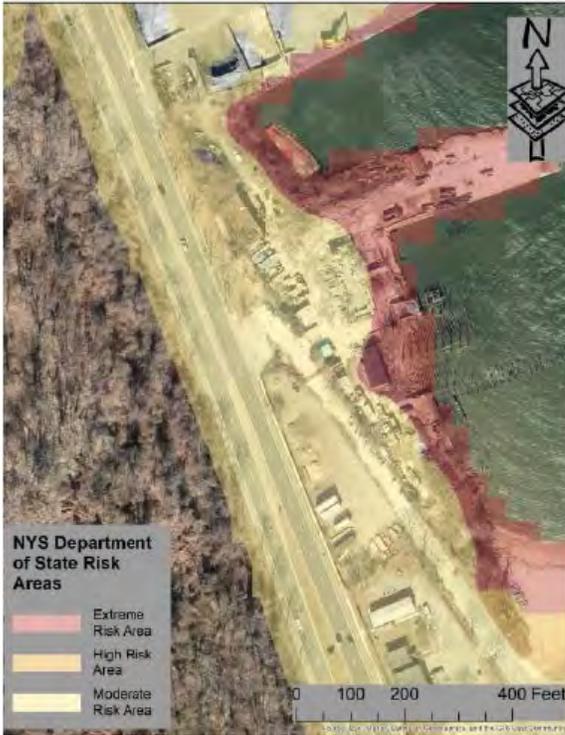


Exhibit G. A risk map jointly promulgated by the New York Department of State Coastal Management Program, the National Oceanic and Atmospheric Administration Coastal Services Center, and the Federal Emergency Management Agency.

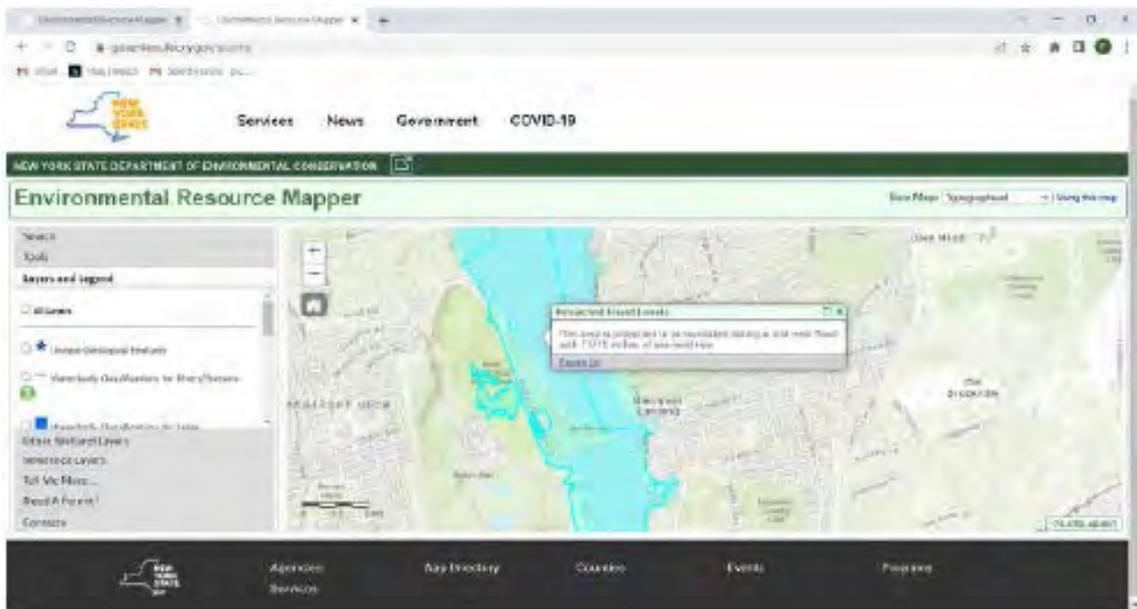


Exhibit H. A screenshot from the NYS Department of Environmental Conservation’s “Environmental Resource Mapper” recognizing the risk associated with sea level rise and flooding.

The proposed Coastal Resiliency mitigation relies primarily on multiple layers of shoreline hardening, including a large bulkhead, a 72-linear foot wave screen, and a number of other piers and bulkheads to protect the proposed marina. (DEIS § 1.3.11.) Hardening of shorelines will deflect wave energy and re-direct flooding to the unprotected portions of the North Hempstead Beach Park and the surrounding area and does not address flooding concerns associated with the perched water table. It is respectfully submitted that the Town Board should require the applicant to better elucidate plans for Coastal Resiliency, discuss the potential need for ongoing dewatering

practices, and demonstrate compliance with the Town flood zone building requirements. Additionally, the applicant should provide modeling for the impacts of this shoreline hardening on the adjacent public Town beach with respect to flooding, erosion and related damages. (<https://ecode360.com/9295502>) (SMPLI on behalf of Save our Shoreline Coalition)

Stormwater from surrounding parks (§3.3.3.2 Stormwater Potential Impacts)

- Stormwater runoff from the Hempstead Harbor Woods and uphill areas will be blocked by Southern Land’s development and will continue to go downhill into town property which will increase potential liabilities for the town. Why should we, the taxpayers, foot the bill for future lawsuits due to the ecological disaster created by Southern Land? (Email sent by multiple individuals – reference Tegwen Epstein)
- Stormwater runoff from the Hempstead Harbor Woods and uphill areas will be blocked by Southern Land’s development and will continue to go downhill into town property which will increase potential liabilities for the town. Why should we, the taxpayers, foot the bill for future lawsuits due to the ecological disaster created by Southern Land? (Email sent by multiple individuals – reference Tegwen Epstein)
- Statement Stormwater 1.3.3.2: “In addition, the Proposed Action would capture stormwater runoff to the extent practicable and utilize same for irrigation purposes, thereby offsetting some, if not all, of the Proposed Action’s irrigation demands.” (Underline added for emphasis) Comment - Significant stormwater runoff would be expected to flow toward the immediately adjacent and topographically lower Hempstead Harbor Beach parking lot area. This must be adequately explained and remediated. As part of the site specific SWPPP and architectural plans, a detailed erosion and sediment control plan, identifying the specific erosion and sediment control measures to be implemented to avoid this problem must be clearly outlined. (Stephen Cipot)
- Statement Stormwater 1.3.3.2 Mitigation (and related subsequent text (3.3.2.2, 3.3.3.2): As noted in the comments immediately above, this statement is not accurate: “No significant adverse environmental impacts to soils and topography have been identified.” As noted above, storm water runoff would be expected to flow toward the immediately adjacent and topographically lower Hempstead Harbor Beach parking lot area. (Stephen Cipot)
- The Applicant’s proposed stormwater calculations do not consider a large volume of stormwater that will enter the subject location from offsite locations. The Applicant produced basic stormwater design calculations to ascertain the storage volume required. The methodology used for calculating storage volume requires the identification of the spatial extent of the drainage area and the volume of runoff expected given the conditions of the land’s surface (i.e., the “runoff coefficients”). The NYS Stormwater Design Manual defines “drainage area” as “all land and water area from which runoff may run to a common (design) point”. (See NEW YORK STATE DEPARTMENT OF

ENVIRONMENTAL CONSERVATION, STORMWATER MANAGEMENT AND DESIGN MANUAL G-3 (2015).) The Applicant, however, identified the drainage area to consist only of the subject property and adjacent lot 1035, thereby underrepresenting the actual “drainage area”. See Exhibit B.



Exhibit B. A simplified map of observed patterns of stormwater entering the subject location from offsite. The site receives a large volume of overland (above-ground) flow from the Tilcon Property and the land area north of the Tilcon Property, as well as large volume of shallow subsurface flow (i.e., sheet flow) that enters the subject property under the road and from points north

Simply put, stormwater does not respect political boundaries—stormwater from offsite must be considered when calculating the storage volume required. Thus, the storage volume prescribed by the Applicant is drastically undercalculated given the volume of stormwater emanating from offsite. (SMPLI on behalf of Save our Shoreline Coalition)

Onsite Stormwater Facilities (§3.3.3.2 Stormwater Potential Impacts)

- Where will the proposed stormwater management system go? A town was never stated and what is the process of being added to a town's stormwater system? (Kristen Homeyer)

- DEIS Statement 1.3.2.2: “Overall, the Proposed Action would incorporate mitigation measures that would minimize, to the greatest extent feasible, the potential for significant adverse impacts associated with the remediation of the Subject Property.” The site drainage system would include 248 three-foot-high leaching galleys and 202 five-foot-high leaching galleys, with a total storage capacity of 56,128± cubic feet (cf), providing for a total of five inches of storage on the Subject Property. Comment - Drainage and storm water control systems are designed to adequately manage a specific intensity of rainfall and overland flow for a specific period of time. Capacity is not unlimited. Storm water management fails when limits are exceeded. What are the parameters and limits of the storm system, for example, how much rainfall/hour for how many hours? How much overland flow will the system handle from the adjacent topographically higher West Neck Road and higher hill across from West Neck Road? These details are lacking. Will the system control and intercept runoff from the topographically higher developer’s property to the immediately lower and adjacent TONH Hempstead Harbor Beach Park? We cannot assess the effectiveness of the storm management system without these details. (Stephen Cipot)
- Stormwater discharges from the proposed action at West Shore to Hempstead Harbor, a Class SA marine surface water whose best usages include primary and secondary contact recreation and fishing and that must be suitable for fish, shellfish, and wildlife propagation, present the potential for significant adverse environmental impacts during and after construction activities. Potential significant adverse environmental impacts include increases in soil erosion during construction, discharges of sediment-laden stormwater during construction, including sediment from Impacted Soils, and discharges of pollutants in stormwater common to construction sites and roadway surfaces, including petroleum based contaminants, nutrients, sediment, and metals, that result in the potential for decreased water quality, increased turbidity, and adverse impacts to aquatic species. The DEIS is entirely inadequate in the details, discussion, design, and proposals for mitigation measures to prevent adverse environmental impacts from stormwater runoff during and after construction at West Shore. The DEIS minimally needs to be revised to include a SWPPP and E&SCP meeting the requirements of GP-0-20-001, the Blue Book, and the 2015 SWMDM (and ultimately the 2022 SWMDM), to be protective of the environment, and to minimize the risk of adverse environmental impacts resulting from the proposed action at West Shore. (CEA Engineers on behalf of Our Children’s Earth Foundation)
- The Applicant did not Address the proposed long-term maintenance of stormwater infrastructure. Both the Town of North Hempstead Code and the NYS Stormwater Design Manual require the ongoing maintenance procedures of stormwater infrastructure to be set forth in detail. (See NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, STORMWATER MANAGEMENT AND DESIGN MANUAL (2015); see also Town of North Hempstead Code § 46A-9.) Planners are required to identify “the entity that will be responsible for long-term operation and maintenance of the stormwater management practices, identification of the mechanism(s) that will be used to ensure long-term operation and maintenance of the stormwater management practices” and “include a copy of such mechanism.” (Id. at 3-12-3-13.) The Applicant has not detailed what maintenance activities are required, what

is the cost of said activities, how often the infrastructure needs to be inspected, and what metrics will be used to monitor the effectiveness of the stormwater infrastructure. “Best Management Plans”, engineering plans and Stormwater Pollution Prevention Plans (“SWPPP”) may appear functional on paper, however, lacking planning and the deferral of responsibility is likely to cause unaddressed long-term significant adverse environmental impacts. See e.g., Exhibit I.



Exhibit I. Images from the analogous Garvies Point Development Project in Glen Cove, NY, demonstrate long-term stormwater management issues associated with developing adjacent to Hempstead Harbor. Similar to the proposed West Shore Residences project, the Garvies Point developer promised a cleanup of contamination and a “comprehensive” stormwater management system, despite limitations associated with a perched water table. The NYS Department of

Environmental Conservation allowed for contaminated groundwater to remain in place subject to a “cap” consisting only of soil. The photos below demonstrate that during storm events and concurrent high tides, the stormwater system backs up, allowing water that is presumably contaminated to bubble up to the land’s surface. Outfalls discharging directly into Glen Cove Creek (and ultimately Hempstead Harbor) are laden with sediment. Such discharge is subject to enforcement actions by the DEC and the claims under the Citizen’s suit provisions of the Clean Water Act.

Furthermore, once the site reaches “Final Site Stabilization” and the SWPPP expires, any discharge from the site becomes the responsibility of the municipality pursuant to the Municipal General Permit. As such, the Board should require as much information as possible related to the ongoing maintenance for this project prior to proceeding to the FEIS stage, especially given the potential liability for the Town of North Hempstead. (SMPLI on behalf of Save our Shoreline Coalition)

- We ask the Town to consider if the 5” analyzed in the DEIS is sufficient for onsite stormwater management due to increased threats of Hempstead Harbor surge, West Shore Road flooding and more intense storms in the wake of climate change. Hurricane Ida dumped as much as 9” in some parts of Long Island (Mongelli, Lorena. “Long Island

Roads Still Vulnerable to Flooding Despite Improvements After Sandy” Newsday 10/27/22). Residents Forward advocates for incorporating the use of green infrastructure to collect, filter and recycle stormwater. In addition, we advocate for inclusion of a living shoreline as opposed to traditional metal bulkhead as it would have less impact to surrounding properties and be more beneficial to the natural environment. (Residents Forward)

- The Applicant did not address or even acknowledge the stormwater system currently existing on site. In the Stormwater Section of the DEIS, the Applicant noted that “[n]o stormwater management infrastructure currently exists at the Subject Property...” (See DEIS § 3.4.4) Such a statement ignores that the former roadway existing onsite currently services the property by channeling stormwater towards municipal storm sewer located directly to the south at North Hempstead Beach Park. See Exhibit C. This storm sewer appears to discharge into Hempstead Harbor through an outfall visible on North Hempstead Beach Park land during low tide. See Exhibit D.

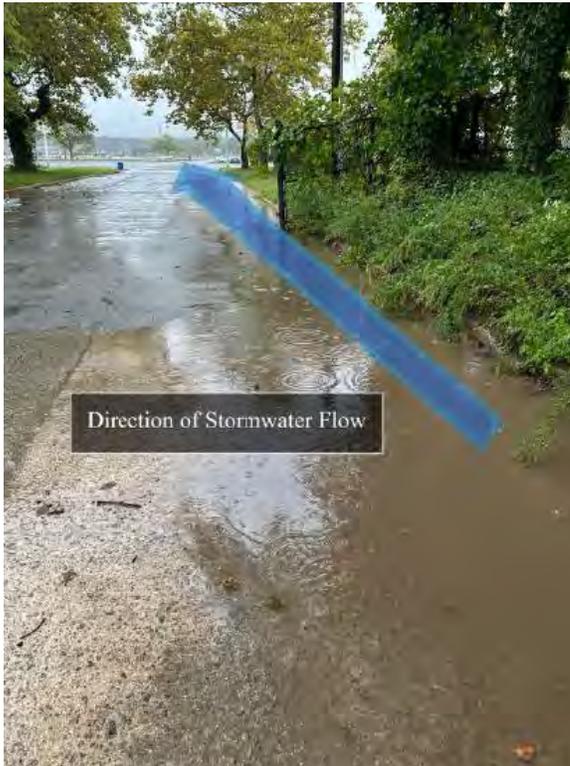


Exhibit C. The former roadway existing within the southeast portion of the site directs stormwater into a Municipal Separate Storm Sewer.



Exhibit D. The publicly owned outfall that would service the proposed development as visible during low tide.

These facts are significant because untreated stormwater overflow emanating from the site after the development is constructed will presumably be directed directly towards Hempstead Harbor. See Exhibit E.



Exhibit E. A map demonstrating the location of stormwater infrastructure proposed to be alienated. Ponding of stormwater throughout the subject property due to the perched water table is also pictured.

It is respectfully submitted that such an obvious short- and long-term adverse environmental impacts associated with stormwater must be addressed before proceeding to the Final Environmental Impact Statement phase (“FEIS”). (SMPLI on behalf of Save our Shoreline Coalition)

Projected sea level rise and storm events (§3.3.3.3 Floodplains Potential Impacts)

- The DEIS slants the report to imply that hurricanes are the only major threat. Not so, with the precedent of the 2021 event as a very recent example. For which no evacuation orders or recommendations were issued ahead of time. People were simply caught unawares. There are also coastal flooding events which would immediately overwhelm the storm water system. Rainfall totals from the 2021 event should be utilized in order to design and assess the storm water management system, as such rainfall is clearly a realistic possibility for the north shore. The DEIS must make realistic assessments and determinations. As further examples of concerns, per its website NOAA identifies 26 Climate and Weather Disasters affected New York 2010 to 2018, which is post FEMA’s 2009 Hazard Map designations. NOAA estimates that by 2050 up to \$106 billion worth of coastal property will likely be below sea level (if we continue on the current path). (Stephen Cipot)
- Figure 3-8 of the DEIS depicts the areas of the subject property that fall within specific FEMA flood zones as per the FEMA Flood Insurance Rate Map. The map indicates that portions of the property fall within FEMA Zones AE, VE, and X, with flood risks ranging from “100-year floods” to “500-year floods” (i.e., risks of flooding ranging from a 1-percent-annual-chance flood event to a 0.02-percent-annual-chance flood event). These flood-risk designations have not kept up with the frequency of recent storm events and their impact on local communities. It is widely acknowledged that the severity and

frequency of significant and property-damaging storm events will increase due to climate change and sea level rise. October 29, marks the 10-year anniversary of Superstorm Sandy, and in recent weeks and days, various media outlets have recounted the stories of devastation and loss of life caused by that storm (for which winds hitting Long Island were below hurricane status). Since Sandy, Long Island residents have been affected by at least four major storms since 2020 (see “Storms That Touched Long Island,”<https://projects.newsday.com/databases/long-island/storms/>) According to Risk Factor, an online tool by First Street Foundation, about 10% of properties along the west shore of Hempstead Harbor are currently at risk of moderate to severe flooding. Further, the DEIS includes New York State Sea Level Rise Projections for Long Island (Figure 3-5, p.102), which shows a low to high projection of 2-10 inches of sea level rise for this decade alone. (Coalition to Save Hempstead Harbor)

- As reported in the DEIS, and according to the 2009 FEMA FIRM,⁴² Panel No. 36059C0108G used for the DEIS, portions of the Subject Property are located within SFHA Zone AE and Zone VE, as well as Zone X (moderate flood hazard). FEMA states that Zone AE is subject to inundation by the 1-percent-annual-chance flood event (100-year flood); Zone VE is subject to inundation by the 1-percent-annual-chance flood event, as well as additional hazards due to storm-induced wave action;⁴³ Zone X (moderate flood hazard) is subject to inundation by the 0.2-percent-annual-chance flood event (500-year flood). Base Flood Elevations (BFEs) are also designated for Zones AE and VE. The DEIS asserts that the development’s risk to flooding is a 1% chance in 100 years. As noted, the FEMA estimate is grossly out of date. Moreover, as we know, magnitudes of storm erosion typically scale with distance from landfall, where greater impacts are observed closer to storm landfall. This is to say storm impacts are location dependent. This is another good reason why higher values for projected storm impacts and storm surge should be utilized in the DEIS, not simply an average derived from information over a large area. This is why calculating the historic site-specific rate of coastal change is of critical importance as well. I am aware of more recent post Hurricanes Sandy and Irene, United States Army Corps of Engineers (USACOE) report which appears to place the risk of future storm surge as likely being greater than estimated by 2009 FEMA. Other references may exist as well. Importantly, these references are apparently not identified in the DEIS and were not apparently reviewed and incorporated into the DEIS? Please clarify and correct the DEIS to be more accurate and realistic. (Stephen Cipot)

Impacts/Mitigations to Hempstead Harbor from facilities within the BFE (§3.3.3.3 Floodplains Potential Impacts)

- The DEIS notes that the Town of North Hempstead has not adopted specific regulations to address sea level rise, but the proposed development would be subject to the provisions of Chapter 21 of the Town Code. With respect to meeting the requirements of §21-15(B)(4) of the Town Code pertaining to developments in flood zones VE, the DEIS states that the proposed building would have two floors that are below flood elevation of 16 feet (p. 110). These two levels would be used primarily for parking but also include

amenities (such as a fitness space and pool) and support spaces (such as storage spaces and an elevator lobby). The mitigation for potential flooding would be the incorporation of breakaway exterior walls on three sides and, in the event of an impending flood, moving vehicles to an alternate location “to minimize, to the greatest extent practicable, the loss or damage of property.” Assuming the planned mitigation prevents even a minimum of loss or damage of property to the developer or prospective residents of the building, no mention is made of preventing the degradation of Hempstead Harbor if vehicles, contaminating fluids from vehicles, and other debris are released to the harbor during a storm event. (Coalition to Save Hempstead Harbor)

- And of utmost concern, the project is proposed to be built in the flood plain, not 25 feet away. Nowhere does the DEIS discuss how the variances they seek may affect the health and safety of the potential on-site residents and the community at large. Flood Plain. The DEIS states, “As previously indicated, portions of the Subject Property are located with SFHA Zones AE and VE. Under the Proposed Action, portions of the proposed residential building would be located within Zone VE, as would the entirety of the proposed promenade, pier, and marina” (§3.3.3.3, p. 108). (Coalition to Save Hempstead Harbor)

Affects of the Marina on Water Quality (§3.3.3.3 Floodplains Potential Impacts)

- Having a marina, public pier, boat slips near the beach park is a concern. What safeguards will be in place to contain any unfriendly harbor discharge of any toxic waste products ie; gas, diesel, human waste, any kind of chemicals, garbage? Please explain thoroughly. (Peter Gaffney)
- The EIS also needs to consider the pumping out of boats in the marina, the weather controls and whether or not there is gasoline filling station for these boats which would have an impact on the community. Finally, the increase in runoff into the harbor, and its effects on water quality of Hempstead Harbor, also needs to be carefully studied. (Beacon Hill Bungalow Corporation)

Chapter, Section 3.4: Ecological Resources

Existing Habitats, Vegetation, and Wildlife Inventory (§3.4.2 Existing Conditions)

- Wildlife in the area needs to be protected. A simple field survey occurring over a few hours on only a single day is an inadequate assessment of wildlife which might occur in the area. The presence of species and numbers of animals seen will change during different times of day and different seasons, and various population assessment methods must be utilized for an appropriate assessment of wildlife populations. As noted in the response from the DEC “The absence of data does not necessarily mean that rare or state-

listed species, significant natural communities, or other significant habitats do not exist on or adjacent to the proposed site. Rather, our files currently do not contain information that indicates their presence. For most sites, comprehensive field surveys have not been conducted. We cannot provide a definitive statement on the presence or absence of all rare or state-listed species or significant natural communities.” Per Appendix I, Coastal Fish and Wildlife Habitat Assessment Form a diversity of rare bird species have been seen in the area. Per the NYS Bird Breeding Atlas the block includes protected bird species, and also endangered species (peregrine falcon). The list of mammals fails to include species, such as red fox, known to be in the area. (Ilse Stalis & Rosemarie Gilpin)

- Field surveys for ecological communities, flora, and fauna of the Subject Property were undertaken by biologist David Jakim on February 17, 2021, August 10, 2022, and August 26, 2022 and by VHB biologists on July 20, 2021. The following accounts of habitats, flora, and fauna are based upon findings from these biologists and in the DEIS. An early successional old field habitat is found on the Subject Property. Successional old fields are communities dominated by forbs and grasses that occur on sites that have been previously cleared and plowed. The ecological community supports diverse trees, saplings, shrubs, forbs, and grasses early in their development. This ecological community was identified by David Jakim and in communication with Greg Edinger, Chief Ecologist of the New York Natural Heritage Program. This identification is based upon New York Natural Heritage Project’s Ecological Communities of New York State, 2014. The early successional old field habitat is a relatively short-lived community and if left undisturbed, it will succeed to a successional shrubland. Following the successional shrubland, the community will most likely succeed to a successional southern hardwood community (Greg Edinger, personal communication). Other unranked cultural ecological communities are also found on the site. This includes Mowed Lawn, Upland Cultural Communities (Unpaved Roads/Path, Paved Road/Path, and Construction/Road Maintenance Spoils), and Urban Structure Exterior (Jakim & VHB, 2022). The DEIS claims that “no significant adverse impacts [...] to plant species [...] or ecological communities are anticipated due to the removal of existing features and limited vegetation.” However, the proposed development will remove the newly found significant early successional old field habitat on the Subject Property that is not included in the DEIS. The DEIS is therefore incomplete. The removal of this habitat is a significant adverse impact to ecological resources. An additional assessment of ecological communities is called for in the DEIS.

Stands of trees cover many of the borders of the Subject Property and occur in isolated areas across the site. Box elder, black locust, and tree of heaven are the predominant tree species that are greater than 5” diameter at breast height (dbh) with 30, 14, and 10 specimens counted, respectively. Overall, 75 trees greater than 5” dbh were identified and the majority of them were native species. Secondary tree species include the native eastern cottonwood, the native black cherry, and the introduced white mulberry. Specimens of box elder, black cherry, and cottonwood exceed 12” dbh (see Appendix A-1 for a photograph of a specimen box elder tree). Box elder saplings are common across the entire site. The DEIS grossly misrepresents tree species diversity and composition. It states that “species assemblage of trees that occur at the Subject Property is limited in

number and is dominated by non-native invasive species.” The DEIS also lists Norway Maple as a predominant tree species; however, Jakim found Norway maple to be one of the least numerous trees on the site, with four specimens found. According to the DEIS, “vegetation at the Subject Property is composed of a low diversity of flora.” In addition, the DEIS asserts that the Subject Property is not a significant source of vegetated habitat or native plant diversity. These findings of floral diversity are inconsistent with findings by Jakim. Jakim and VHB found a high diversity of flora with approximately 122 species identified. Approximately 44 of these species are native and 61 are introduced and 17 were not identified to species and classified (see Appendix B-1). Many more species are anticipated to be found during surveys in late May or June. Herbaceous plants are common throughout most of the habitats at the site as is consistent with an early successional old field habitat. The most common herbaceous species observed by Jakim include common mullein, curly dock, mugwort, lambs quarters, pigweeds, evening primrose, cocklebur, field bindweed, beggar-ticks, seaside orache, seaside goldenrod, bush clovers, knotweeds, and diverse grasses.

On field surveys by Jakim on 2/17/21, 8/10/22, and 8/26/22, incidental wildlife observed was recorded. On 2/17/21, signs of a fox den were observed with footprints in the snow in one of the cracks on the concrete platform that extends into the water (see Appendix A-3 for a photograph of the fox den). Cormorants, osprey, and Monarch butterflies were observed on both 8/10/22 and 8/26/22. On these dates, 12 and 25 cormorants, respectively, were observed perched on dilapidated pilings and other structures in Hempstead Harbor. On 8/26/22, two Monarch butterflies were observed. On 8/10/22, many dozens of mating eastern cicada killers (*Sphex speciosus*) were observed (see Appendix A-2 for a photograph). Vegetation and structures on the site support diverse wildlife. Many species of birds and squirrels feed on the seeds of box elder, and box elder is also of special value to honeybees. Many of the herbaceous species found on site are of value to wildlife and pollinators, including crabapple, black cherry, poison ivy, wineberry, field bindweed, goldenrods, sunflower, American searocket, common milkweed and other species. Common milkweed is a host plant to Monarch butterflies, a species in recent decline and of conservation concern. According to the DEIS, “vegetation at the Subject Property is composed of a low diversity of flora dominated by a number of non-native/invasive species.” In addition, the DEIS asserts that the Subject Property is not a significant source of vegetated habitat or native plant diversity. These findings of floral diversity are inconsistent with findings by Jakim (see Section 3 for details and see Appendix B-1 for a floral inventory).

Predominant invasive tree species include tree of heaven and black locust. Most of these trees are early in development and have relatively low biomass as compared to box elder and cottonwood on the site. Predominant invasive vines growing on trees and structures across the site are porcelain berry (*Ampelopsis brevipedunculata*) and oriental bittersweet (*Celastrus orbiculatus*). Approximately one-third of the large tree specimens (greater than 5” dbh) on the site contain one or both of these vine species. These vines are in early stages of development and have not yet encumbered or severely affected most of the trees across the site. Honeysuckle (*Lonicera* sp.) is an invasive shrub species that is found predominantly along the perimeter of the Subject Property. Mugwort is a common

herbaceous invasive species found across the site. According to the DEIS, “the Subject Property currently serves as a source for the spread of harmful plant species to properties within the general surrounding area.” However, if managed property, it is practical to remove these harmful or invasive species. As such, they do not present a future risk of spread of harm to other portions of the Subject Property or to other locations. It is recommended that an expert invasive species management agency be employed to create an invasive species management plan and to remove invasive species across the site. The DEIS states that “the species assemblage of trees that occur at the Subject Property is limited in number and is dominated by non-native invasive species.” The DEIS also lists Norway Maple as a predominant tree species. Jakim found that the DEIS grossly misrepresented tree species diversity and composition in its findings. (David Jakim)

Appendix B-1: Plant Species at the Subject Property Observed by Jakim and VHB

<i>Scientific Name</i>	<i>Common Name</i>	<i>Native (N) or Non-Native (I)</i>	<i>Observed By</i>
Trees			
Acer negundo	box elder	N	David Jakim, VHB
Catalpa bignonioides	southern catalpa	I	David Jakim, VHB
Robinia pseudoacacia	black locust	I	David Jakim, VHB
Juglans nigra	black walnut	N	David Jakim
Morus alba	white mulberry	I	David Jakim, VHB
Fraxinus americana	white ash	N	David Jakim
Ailanthus altissima	tree-of-heaven	I	David Jakim, VHB
Populus deltoides	eastern cottonwood	N	David Jakim, VHB
Acer platanoides	norway maple	I	David Jakim, VHB
Malus sp.	crabapple	I	David Jakim, VHB
Prunus serotina	black cherry	N	David Jakim, VHB
Ficus carica	fig tree	I	David Jakim
SHRUBS & WOODY VINES			
Rosa multiflora	multiflora rose	I	David Jakim,
Rubus allegheniensis	common blackberry	N	David Jakim,
Parthenocissus			
quinquefolia virginia	creeper	N	David Jakim, VHB
Celastrus orbiculatus	Asiatic Bittersweet	I	David Jakim,
Toxicodendron radicans	poison ivy	N	David Jakim,
Hedera helix	english ivy	I	David Jakim,
Ampelopsis			
brevipedunculata porcelain	berry	I	David Jakim, VHB
Salix bebbiana	bebb's willow	N	David Jakim,
Ligustrum vulgare	european privet	I	VHB

<i>Scientific Name</i>	<i>Common Name</i>	<i>Native (N) or Non-Native (I)</i>	<i>Observed By</i>
Lonicera japonica	japanese honeysuckle	I	David Jakim,
Lonicera maackii	amur honeysuckle	I	VHB
Lonicera tatarica	tatarian honeysuckle	I	VHB
Rosa rugosa	rugosa rose	I	David Jakim,
Rubus phoenicolasius	wineberry	I	David Jakim, VHB
Smilax rotundifolia	common greenbrier	N	VHB
Vitis aestivalis	summer grape	N	VHB
HERBACEOUS PLANTS			
Cichorium intybus	chicory	I	David Jakim, VHB
Verbascum thapsus	common mullein	I	David Jakim, VHB
Ambrosia artemisiifolia	common ragweed	N	David Jakim
Rumex crispus	curly dock	I	David Jakim
Plantago lanceolata	english plantain	I	David Jakim
Bambusoideae	bamboo	I	David Jakim
Artemisia vulgaris	mugwort	I	David Jakim, VHB
Alopecurus sp.	foxtail grass	-	David Jakim, VHB
Chenopodium album	lambsquarters	I	David Jakim
Datura stramonium	jimsonweed	I	David Jakim
Amaranthus spp.	amaranth	-	David Jakim
Polygonum persicaria	redshank	N	David Jakim,
Portulaca oleracea	purslane	I	David Jakim, VHB
Oenothera biennis	common evening primrose	N	David Jakim, VHB
Xanthium strumarium	cocklebur	N	David Jakim, VHB
Convolvulus arvensis	field bindweed	I	David Jakim, VHB
Hieracium sp.	hawkweed	-	David Jakim
Ageratina altissima	white snakeroot	N	David Jakim
Bidens frondosa	beggar ticks	N	David Jakim
Taraxacum	dandelion	I	David Jakim, VHB
Lactuca spp.	lettuce	-	David Jakim
Atriplex glabriuscula	seaside orach	N	David Jakim
Melilotus albus	white sweet clover	I	David Jakim, VHB
Melilotus officinalis	yellow sweet clover	I	David Jakim, VHB
Solidago sempervirens	seaside goldenrod	N	David Jakim, VHB
Lespedeza sp.	bush clovers	-	David Jakim
Polygonum sp.	knotweed	-	David Jakim
Daucus carota	wild carrot	I	David Jakim, VHB
Rumex acetosa	garden sorrel	I	David Jakim
Erigeron canadensis	common horseweed	N	David Jakim

<i>Scientific Name</i>	<i>Common Name</i>	<i>Native (N) or Non-Native (I)</i>	<i>Observed By</i>
Medicago lupulina	black medic	I	David Jakim, VHB
Helianthus annuus	common sunflower	I	David Jakim
Alliaria petiolata	garlic mustard	I	David Jakim, VHB
Acalypha rhomboidea	three seeded mercury	N	David Jakim
Phytolacca americana	pokeweed	N	David Jakim, VHB
Anthemis cotula	mayweed	I	David Jakim
Apios americana	groundnut	N	David Jakim, VHB
Sonchus sp.	sowthistle	-	David Jakim
Agrostis stolonifera	creeping bentgrass	I	VHB
Amaranthus retroflexus	redroot amaranth	N	VHB
Ammophila breviligulata	american beach grass	N	VHB
Apocynum cannabinum	hemp dogbane	N	VHB
Asclepias syriaca	common milkweed	N	David Jakim, VHB
Cakile edentula	american searocket	N	David Jakim, VHB
Cirsium arvense	canada thistle	I	VHB
Cyperus esculentus	yellow nutsedge	N	VHB
Digitaria ischaemum	small crabgrass	I	VHB
Digitaria sanguinalis	large crabgrass	I	VHB
Echinochloa crus-galli	barnyard grass	I	VHB
Erigeron strigosus	prairie fleabane	N	VHB
Euphorbia maculata	spotted spurge	N	David Jakim, VHB
Festuca rubra	red fescue	N, I	VHB
Festuca sp.	fescue	-	VHB
Galinsoga parviflora	quickweed	I	VHB
Galinsoga quadriradiata	shaggy soldier	I	VHB
Lactuca serriola	prickly lettuce	I	VHB
Linaria vulgaris	yellow toadflax	I	VHB
Lolium sp.	ryegrass	-	VHB
Medicago sativa	alfalfa	I	VHB
Phragmites australis	common reed	I	David Jakim, VHB
Poa pratensis	kentucky bluegrass	N,	I VHB
Poa sp	bluegrass	-	VHB
Rumex obtusifolius	broadleaf dock	I	VHB
Coronilla varia	crown vetch	I	David Jakim, VHB
Setaria faberi	giant foxtail	I	VHB
Setaria viridis	green foxtail	I	VHB
Solanum nigrum	black nightshade	I	VHB
Solanum dulcamara	bittersweet nightshade	I	David Jakim, VHB
Solidago altissima	tall goldenrod	N	VHB

<i>Scientific Name</i>	<i>Common Name</i>	<i>Native (N) or Non-Native (I)</i>	<i>Observed By</i>
canadensis canada	goldenrod	N	VHB
Solidago graminifolia	grass-leaved goldenrod	N	VHB
Solidago sempervirens	seaside goldenrod	N	David Jakim, VHB
Sonchus oleraceus	annual sowthistle	I	VHB
Sorghum halepense	johnson grass	I	VHB
Trifolium repens	white clover	I	David Jakim, VHB
Verbascum blattaria	moth mullein	I	David Jakim, VHB
Xanthium strumarium	Canada cocklebur	N	David Jakim, VHB
Fallopia scandens	climbing false buckwheat	N	David Jakim
Cucurbita	squash	-	David Jakim
Yucca	yucca	-	David Jakim
Mollugo	Carpetweed	I	David Jakim
Solanum rostratum	buffalo bur	I	David Jakim

- The Applicant incorrectly argues that “...the terrestrial areas of the Subject property have poor habitat functional value”, the plant community is “dominated by a number of non-native/invasive species”, and that shoreline hardening and massive built structures would somehow be a benefit to wildlife and fisheries. In contrast, despite some unsightly debris irresponsibly dumped by the current property owner, an ecological assessment by a team of biologists reveals a rich diversity of flora and fauna:

Site Overview: Manhasset Neck exhibits extremely interesting geology shaped by the retreating glaciers around 20,000 years ago. (See Robert N. Casson, *Geohydrology and 1985 Ground-water Levels on Manhasset Neck, Long Island, New York* (1992); Wolfgang V. Swarzenski, *Hydrogeology of Northwestern Nassau and Northeastern Queens Counties, Long Island, New York* (1963).) As the glaciers retreated, they left behind glacial erratics (i.e., large and small boulders), and layers of sand, gravel, and clay. (Id.) The clay layers in particular support notable habitat features in the form of wetlands that are characterized by a perched water table. (See David Jakim, *Biodiversity Assessment and Environmental Study of the Hempstead Harbor Nature Sanctuary* (2018).) The Subject Property provides critical connectivity between a high value tidal wetland (DEIS Table 3-6.) and the adjacent Hempstead Harbor Nature Sanctuary that is best characterized as a mosaic of forested upland and wetland habitats. (See David Jakim, *Biodiversity Assessment and Environmental Study of the Hempstead Harbor Nature Sanctuary* (2018).) The Hempstead Harbor Nature Sanctuary provides one of the few remaining examples of contiguous freshwater wetlands and forested uplands along the shoreline of Hempstead Harbor. Incredibly, this ecosystem has persisted despite extensive disturbance associated with the former sand mining operations. (Id.) Notably, the freshwater wetlands existing within the Hempstead Harbor Nature Sanctuary exist at roughly the same elevation as the clay layers identified by the Applicant in the DEIS and highlighted in Exhibit A. While a portion of the subject property’s shoreline is currently hardened by makeshift retaining walls, a large portion of the shoreline contains only

unconsolidated concrete and rubble, allowing a relatively healthy interchange between the tidal wetlands and uplands. (The interface between groundwater and tidal wetlands is referred to as the hyporheic exchange. See D. Dudley Williams, The brackish water hyporheic zone: invertebrate community structure across a novel ecotone, 510 *Hydrobiologia* 153(2003).) See Exhibit J for an overview of ecological resources existing on-site and within the adjacent areas, Exhibit K for representative photos of the subject location, and Exhibit L for an aerial photo representing the shoreline structure and function.



Exhibit J. A depiction of the Hempstead Harbor Ecosystem as it currently exists. Despite extensive sand mining activities in the Hempstead Harbor Nature Sanctuary and the industrial uses of the Subject Property, connectivity between tidal wetlands and uplands remain largely intact.



Current Site and Surrounding Area Conditions

Exhibit K Representative photos of the ecological resources currently existing onsite. Image A. A native canopy comprised of boxelder maple in the foreground with Town of North Hempstead Beach Park in the distance; Image B. Black birch currently existing in the Hempstead Harbor Nature Sanctuary; Image C. Common milkweed provides important breeding habitat for monarch butterflies; Image D. Native beachgrass in the foreground with a successional oldfield in the background; Image E. Native evening primrose in bloom providing important pollinator habitat on site; Image F. Glacial

erratics (boulders) located in a oak-tulip poplar forest in Hempstead Harbor Nature Sanctuary; Image G. Despite piles of debris, shoreline functioning is very much intact; Image H. A horseshoe crab washes ashore from a thriving tidal wetland.



Exhibit L. A drone photo which demonstrates the habitat existing on site along with the potential for mixing of shallow groundwater and surface waters (i.e., hyporheic exchange). The majority of the trees visible in the photo are native box elder maples.

Flora: In contrast to the applicant’s insistence that the site is dominated by invasive plant species, our detailed site assessment reveals that the site is instead dominated by native species, including, most notably, numerous large specimens of native boxelder maples, cottonwoods, and black cherries, as well as many native herbaceous perennials such as four separate species of goldenrod and common milkweed. As such, much of the upland portion of the site are best described as “successional old field” as opposed to “unranked

cultural community”. Please refer to Appendix 1 for a detailed on-site habitat survey demonstrating the ecological structure and function of the site.

Fauna: Despite knowledge that the Hempstead Harbor ecosystem supports a remarkable diversity of rare animals, (See DEIS Appendices, Page 1035. New York State Significant Coastal Fish and Wildlife Habitat Narrative for Hempstead Harbor (noting the presence of state-listed species including 5 species listed as Endangered, 5 species listed as Threatened, and 12 species of Special Concern).) the Applicant opined that there would be “...no significant adverse impacts to local or regional ecological communities ...” and that “observed and expected terrestrial fauna is [] limited and composed primarily of bird species adapted to disturbed/developed conditions”. These conclusory statements were offered after a site-assessment that took place in July—a month that is notably quiet from a wildlife activity standpoint. (July is long after the spring bird migration and significantly prior to the fall migration. It is also too hot for most reptiles and amphibians to be present.) For the benefit of the Town Board and the community, we conducted diurnal and nocturnal surveys to ascertain the use of the site and surrounding areas by wildlife. David Jakim’s ecological site assessment is annexed hereto as Appendix 1; a detailed bird assessment from noted ornithologist Brendan Fogarty is annexed hereto as Appendix 2. The surveys captured habitat use by a diversity of wildlife including evidence of a fox den on the subject property, use of the site by monarch butterflies, and observations of many species of migrating songbirds, including two species of Greatest Conservation need in New York State. For example, on October 12, 2022, Fogarty observed a flock of yellow-rumped warblers feeding at the edge of the water on the Subject Property. Furthermore, Fogarty and Piccininni identified a NYS Threatened species—bald eagles—using the site on two separate occasions. Piccininni also observed a resident osprey—a species of Special Concern in NYS—on the ground at the Subject location during a field assessment on September 6, 2022. (Video of the osprey on the ground at the Subject Property is on file with Frank Piccininni and is available upon request.) On October 12, Fogarty noted a flyover of a Peregrine Falcon, which is considered endangered in the state. These repeated observations demonstrate that the listed species were exhibiting an “essential behavior” as defined by the NYS Endangered Species Act regulations, and that modification of the habitat will cause direct harm to a state-listed species. (6 NYCRR 189.2 (a) (finding that “[a]ny person proposing an activity or any entity with regulatory oversight over a proposed activity may request a determination from the department as to whether the proposed activity is likely to result in the take or taking of any species listed as endangered or threatened in this Part and is therefore subject to regulation under this Part. Failure to ask the department for such a determination does not remove the subject activity from the potential for regulation under this Part.”).) As such, these observations trigger the permitting requirements of the NYS Endangered Species Act and should be reported to the DEC by the Applicant in order to assess the need for an incidental take permit. (See <https://www.dec.ny.gov/animals/68645.html> (providing a helpful primer on the applicability of the NYS Endangered Species Act).) Additionally, given that the Applicant’s site-assessment took place during one of the hottest months of the year when most amphibians and reptiles are inactive, the Applicant summarily dismissed the possibility of environmental impacts to herpetofauna. Many state listed amphibian species, such as spadefoot toads (*Scaphiopus holbrookii*) and marbled salamanders

(*Ambystoma opacum*), utilize seasonal pools to breed such as those that exist within Hempstead Harbor Nature Sanctuary; they live in the surrounding upland habitat for the vast majority of the year. (Many reptiles and amphibians are fossorial (i.e., burrowers), are highly cryptic, and only appear aboveground during rainfall events corresponding with specific climatic requirements. See David A. Scott, *Ambystoma opacum* (Gravenhorst 1807), Amphibiaweb, available at <http://www.amphibiaweb.org> (last visited Dec. 17, 2016) (breeding activity takes place during rainy nights September-November). An attempt to rule out their presence at the site via casual daytime observation during the portion of the year that the salamanders live belowground can be construed as willful blindness. Cf. Frank Piccininni, *The Habitat Selection of the Marbled Salamander (Ambystoma opacum): A Site Specific Approach* (May 7, 2008) (unpublished M.S. thesis, Marshall University) (on file with author) (detailing the methods necessary to assess the presence ambystomatid salamanders at a research site.) See Exhibit M (demonstrating nearby ephemeral wetlands).

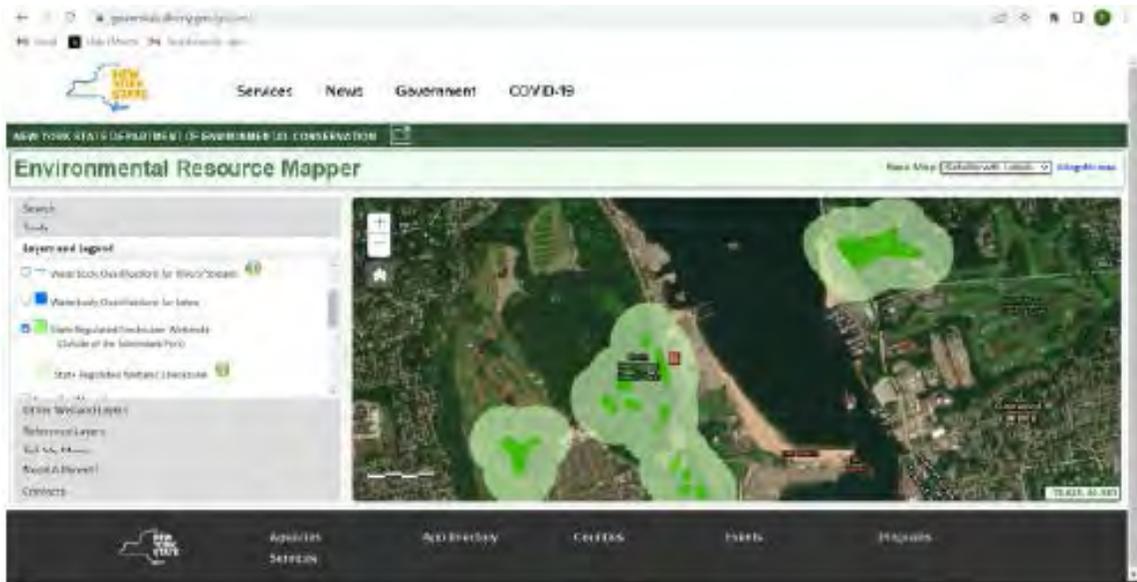


Exhibit M A map of NYS Regulated Freshwater Wetlands existing within the Hempstead Harbor Ecosystem.

The Subject property is well within the migration and dispersal ranges of these species which can travel great distances and cross roads. (Id.) Furthermore, research has revealed clear evidence of amphibian and reptile usage of the site and surrounding habitat, including the uplands and tidal wetlands. (See David Jakim, *Biodiversity Assessment and Environmental Study of the Hempstead Harbor Nature Sanctuary* (2018) (noting the presence of box turtles, which are considered of special concern); COALITION TO SAVE HEMPSTEAD HARBOR, 2015 WATER QUALITY REPORT FOR HEMPSTEAD HARBOR 3 (2012) (discussing the use of the Harbor by diamondback terrapins).) Reptiles and amphibians are highly sensitive to environmental perturbations associated with development, such as the newly proposed plans to alter hydrology, destroy potential breeding habitat, and degrade upland and tidal wetland habitat.

Regarding Tidal Wetland and NYSDEC Jurisdiction (3.4.2.3 Rare/Protected Species -Wetlands)

- A portion of this site may be landward of a substantial man-made legal structure that is greater than 100 feet long, was constructed prior to August 20, 1977, and has remained functional. Generally, NYSDEC Jurisdiction may be limited landward of the 10 foot (MSL) elevation contour on a gradual, natural slope; or landward of the topographic crest of a bluff, cliff or dune in excess of 10 feet in elevation. For the Department to determine if Tidal Wetlands Act jurisdiction is limited on any portion of this site, and to review this project, the applicant must provide the following documentation:
 - Provide two copies of a scaled, legible survey of the site dated prior to August 20, 1977 that clearly shows the structure (i.e. bulkhead, seawall, retaining wall, etc.) and confirms its length. If a survey cannot be provided that confirms these conditions, you must provide a copy of the tidal wetlands aerial photo map indicating the location of the property in question and clearly showing the structure.
 - Two copies of a cross view and site plan showing all proposed construction must accompany the survey. These plans should include an accurate contour line that existed prior to 1977 as well as a lot-coverage percentage breakdown for any tidal wetland adjacent area covered with structures/impervious surfaces compared to the total upland area.
 - If the proposal includes building cantilevered over the water, the Department will require the applicant to provide proper mitigation or eliminate these structures.

(NYS Department of Environmental Conservation)

- If it is determined that the NYSDEC has jurisdiction over the upland areas, and the applicant is unable to meet the criteria for a Letter of No Jurisdiction, the following development restrictions will apply (6 CRR-NY 661.6):
 - The minimum setback of all principal buildings and all other structures that are in excess of 100 square feet (other than boardwalks, shoreline promenades, docks, bulkheads, piers, wharves, pilings, dolphins, or boathouses and structures typically located on docks, piers or wharves) shall be 75 feet landward from the most landward edge of any tidal wetland. Provided, however, where numerous and substantially all structures which are (i) of the type-proposed-by the applicant, (ii) lawfully existing on August 20, 1977, and (iii) within 500 feet of the subject property, are located closer to the subject tidal wetland than the minimum setback required by this paragraph, placement of a structure as close as the average setback of these existing structures from the subject tidal wetland shall fulfill the requirements of this paragraph.
 - Not more than 20 percent of the adjacent area, as such term is defined in this Part, on any lot shall be covered by existing and new structures and other impervious surfaces. Provided, however, this paragraph shall not be deemed to prohibit the coverage of 3,000 square feet or less of adjacent area on any individual lot, lawfully existing on August 20, 1977, by existing and new structures and other impervious surfaces.
 - The minimum lot area for any principal building constructed within the area regulated by this Part, which minimum lot area shall include any wetland portion

and any adjacent area portion of such lot, shall be as follows: (i) 20,000 square feet where such principal building will be served by a public or community sewage disposal system; and (ii) 40,000 square feet where such principal building will not be served by a public or community sewage disposal system.

(NYS Department of Environmental Conservation)

- With Respect to Tidal Wetlands Issues Outside the City of New York, NYSDEC has jurisdiction of all lands located within 300 feet of a tidal wetland. Applicant acknowledges Hempstead Harbor is a tidal wetland. See 6 NYCRR 661.4(b)(1)(i). Applicant, though, claims NYSDEC will not assert jurisdiction over the property because it exceeds 10 feet in elevation. See 6 NYCRR 661.4(b)(1)(iii). While applicant is correct that NYSDEC’s jurisdiction is sometimes cut off upon a 10 foot elevation of a property, that does not apply here for two reasons. First, and most importantly, the only reason the property exceeds 10 feet in elevation is because there is 14 feet of fill containing asphalt, brick, wood and concrete throughout the subsurface of the site. Applicant will not get the benefit of the increased elevation caused by an illegal landfill. Second, NYSDEC’s regulation provides that jurisdiction is cutoff at the crest of the hill, not at the 10 foot elevation. See 6 NYCRR 661.4(b)(1)(iii). The topographic survey itself indicates that the crest of the increasing rise in elevation occurs in approximately the middle of the site. Accordingly, NYSDEC will have jurisdiction far within the area of which Applicant intends to build. To the extent NYSDEC has jurisdiction, NYSDEC regulations provide that no impervious structures (e.g., roads, buildings) may be constructed within the closest 75 feet of the wetland. After that first 75 feet, impervious structures may only be constructed on only 20% of the land up to 300 feet landward or to the point where NYSDEC’s jurisdiction ceases. See 6 NYCRR 661.6(a)(1), (4). Applicant does not acknowledge any of this. Instead, Applicant’s DEIS plainly assumes they will get NYSDEC’s “no jurisdiction” determination. Applicant provides no contingency (including an altered site plan) to the contrary. The DEIS does not state that Applicant has even applied for such jurisdictional determination yet. DEIS, p. 132. (Rigano on behalf of Our Children’s Earth Foundation)
- Wetlands: If the Project Sponsor is unable to obtain a *Letter of No Jurisdiction* from NYSDEC, can the Proposed Action comply with the requirements set forth in 6 NYCRR 661.6 as referenced in their letter of October 19, 2022, specifically:
 - *The minimum setback of all principal buildings and all other structures that are in excess of 100 square feet (other than boardwalks, shoreline promenades, docks, bulkheads, piers, wharves, pilings, dolphins, or boathouses and structures typically located on docks, piers or wharves) shall be 75 feet landward from the most landward edge of any tidal wetland. Provided, however, where numerous and substantially all structures which are*
 - (i) of the type-proposed-by the applicant*
 - (ii) lawfully existing on-August-20, 197-71 and*
 - (iii) within 500 feet of the subject property, are located closer to the subject tidal wetland than the minimum setback required by this paragraph, placement of a structure as close as the average setback of these existing*

structures from the subject tidal wetland shall fulfill the requirements of this paragraph.

- *Not more than 20 percent of the adjacent area, as such term is defined in this Part, on any lot shall be covered by existing and new structures and other impervious surfaces. Provided, however, this paragraph shall not be deemed to prohibit the coverage of 3,000 square feet or less of adjacent area on any individual lot, lawfully existing on August 20, 1977, by existing and new structures and other impervious surfaces.*
- *The minimum lot area for any principal building constructed within the area regulated by this Part, which minimum lot area shall include any wetland portion and any adjacent area portion of such lot, shall be as follows:*
 - (i) 20,000 square feet where such principal building will be served by a public or community sewage disposal system; and*
 - (ii) 40,000 square feet where such principal building will not be served by a public or community sewage disposal system.*

(TNH Planning Department)

Affects of the Building Features on Wildlife (3.4.3 Potential Impacts)

- Even though exterior lights are directed downward, they will impact wildlife. (Ilse Stalis & Rosemarie Gilpin)
- More noise, light and the presence of so many people 24hrs/day will likely affect the behavior of park and area animals. The proposed development may substantially interfere with nesting, breeding, and foraging of habitat for predominant species that occupy the project site. (Beacon Hill Residents Association)

Affects of Landscaping on Wildlife (3.4.3 Potential Impacts)

- Per the advice of Hempstead Harbor, how will the company be held accountable to minimize disturbance and promote environmentally friendly landscaping and avoid pesticide use? (Kristen Homeyer)
- In the executive summary the developer proposes to install non-invasive species, but per Appendix C, while some native species will be planted, the representative pallette list is mostly non-native plants, and includes invasive species. (e.g., *Euonymus fortunei*, per NC State, <https://plants.ces.ncsu.edu/plants/euonymus-fortunei/> “Climbing *Euonymus* readily escapes into native forests and has no trouble dominating medium-sized trees. Climbing *Euonymus* is listed as invasive in North Carolina and in other states of the southeast and northeast.” Per <https://www.lhprism.org/species/euonymus-fortunei> Lower Hudson Partnership for Regional Invasive Species Management states that NY Legal Status is Regulated, and NY Invasiveness Rank is high. See also Invasive Plant

Atlas <https://www.invasiveplantatlas.org/subject.html?sub=3024>) (Ilse Stalis & Rosemarie Gilpin)

- The Applicant’s plans for landscaping represents a step backwards for nature. The Applicant described their landscaping plan as a mitigation of significant adverse environmental impacts, citing a benefit of planting milkweed (*Asclepias*) species to “create potential breeding habitat for Monarch Butterfly (sic.) at the Subject Property”. (See DEIS §3.4.4) Notably, however, the site contains a thriving population of common milkweed (*Asclepias syriaca*) as well as many fallblooming perennial herbaceous plants of local genetic ecotype to fuel monarch migrations. Given this existing habitat, Jakim observed use of the Subject Property by monarch butterflies on two separate occasions. In fact, given the Applicant’s plans for extensive use of native cultivars, nonnative landscaping plants, a handful of token trees and shrubs, extensive lawn areas, hardscaping, a pool, a dog run, and other built features, the proposed landscaping appears to represent that of a prototypical Long Island development project—not ecological restoration that rises to the level of mitigation of impacts. Similarly, the benefit of removing invasive species on the site—which are few from a relative biomass standpoint—is grossly overstated. (See DEIS §3.4.4) See Appendix 1 (discussing the extent of invasive vs. native species on site). Such invasive removal work can be readily completed for a budget of \$7,000-\$15,000, which would include offsite disposal. (See <https://spadefootny.com/> (providing examples of other cost-effective invasive plant removal and revegetation projects).) Accordingly, it is respectfully submitted that the Town Board should give little weight to the proposed mitigation provided by landscaping. (SMPLI on behalf of Save our Shoreline Coalition)

Affects of the Proposed Action to Designated Coastal Fish and Wildlife Habitat (3.4.3 Potential Impacts)

- As the DEIS indicates, Hempstead Harbor is considered by the NY Department of State and Department of Environmental Conservation a designated coastal fish and wildlife habitat. Identified species include winter flounder, fluke, black sea bass, skate, herring and pollock, and shellfish. This designation did not happen overnight. It took decades of action including closing down the incinerator in Hempstead Harbor. It was only recently in 2011 that the harbor was opened to shellfishing and considered safe for recreational fishing. Since then it is heavily used by area commercial and recreational fishermen, particularly in the spring, summer and fall. This dramatic change could all be undone by the proposed construction at 145 West Shore Road. Southern Land Company acknowledged that Hempstead Harbor is considered an essential fish habitat but did not provide any suggestions or mitigation activities on how the proposed project would address this fact. Moreover, they do acknowledge that there will be several environmental impacts related to sewage treatment and storm water runoff, both of which have shown to have serious environmental impacts to fish and wildlife. In our research and programs, we have documented and presented programs with commercial and recreational fishermen who all rely on Hempstead Harbor for clean water and sustainable populations of fish and shellfish. The effects of this proposed project are direct threats to the cultural

use of the harbor. In addition the Town's own oyster sanctuary project would be endangered. (Long Island Traditions)

- Hempstead Harbor is among the most important waterfowl wintering concentration areas in New York. Any fish, wildlife, animals, or rare plants in/around Hempstead Harbor that could be affected by this large-scale project? Is there any endangered shorebirds like Piping Plovers, or Least Terns? Perhaps Audubon Society, or National Conservation Training Center (NCTC.FWS.) can aid in identifying. Shellfish seeding has been recently added to Manhasset Bay. Town of Oyster Bay has been seeding millions of oysters grown in Oyster Bay, Mill Neck Creek, and Cold Spring Harbor over several years. This is all due to the environmental cleaning that has been ongoing for years. We do not want that jeopardize by a large-scale development without major safeguards installed by the developer. (Peter Gaffney)

Affects of the Proposed Action on Birds (3.4.3 Potential Impacts)

- We are specifically concerned about the negative impact that this development will have on the population of birds in the region. The proposed building on Hempstead Harbor will be on the shoreline of a National Audubon Important Bird Area, Little Neck to Hempstead Harbor IBA, that receives a significant portion of the Atlantic Flyway bird migration traffic. The area is also a NYS Dept. of State Coastal Management Zone. Significant ebird (an international bird tracking project of Cornell Lab of Ornithology) hotspots are in the near vicinity; Sands Point Preserve with 212 species of birds observed, Garvies Point Museum and Preserve with 162 species, Hempstead Harbor trail with 124 species, Cedarmere and Bryant Preserve with 120 species. The Hempstead Harbor Mountain bike and natural and Harbor Links golf course, immediately behind the proposed site, have only been surveyed during the annual Christmas Bird Count of resident and breeding species but can be presumed to host migratory species as well. Collisions with buildings are a leading cause of bird death and decline, right behind habitat loss. With the alarming recent report citing the loss of over 3 billion birds, adding a fatal attraction on a relatively natural shoreline will only contribute to accelerating bird deaths. As there is no building on the site currently, it can be unequivocally stated that any building on this location will cause bird collision deaths. provided statistics on bird collisions with buildings. 44% of collisions are 1-3 story buildings, 55% of strikes are on 4-11 stories and only 1% on 12+ story buildings. Some of this is due to the relatively smaller number of high-rise buildings compared to low rise, but all buildings will kill birds viacollision. Low-rise suburban buildings account for a huge number of bird deaths. This includes daytime collisions caused by birds seeing reflections of sky and shrubbery and thinking the window is flyable space, and nighttime collisions caused by birds being attracted by lit windows. There are over 40 years of statistics from a study of the McCormick Center in Chicago, a low rise (3/5 story) convention center on the Chicago waterfront, similar to the Javits Center in NYC, and similarly sited like the proposed apartments on the waterfront in a migratory corridor. For the first 20 years, lights were on all the time at night and thousands of dead birds were collected. In 1999 that was changed to random windows lit and bird strike numbers plummeted, though clear evidence that it

was the lit windows attracting birds was mounting as there was a direct correlation between the windows with lighting and birds found under that specific area. While commercial building can control the amount of nighttime lighting, residential cannot, so the proposed buildings will cause nighttime collision deaths. No mention is made of utilizing bird safe glass so daytime fatal strikes are equally likely. (North Shore Audubon Society)

Expansion of Tidal Wetland as proposed mitigation (§3.4.4 Proposed Mitigation)

- Statement 1.3.4.2 Wetland Habitats, Flora, and Fauna (and related subsequent text 3.3.1.3 – 3.3.1.6, etc.: The DEIS asserts that no significant adverse impacts to ecological resources are anticipated, and the expansion of wetland area will improve the wetland functional benefits of Hempstead Harbor. Comment - There will be significant demolition of dilapidated structures in the intertidal and tidal zones, as well as significant new fill material being added, to a new pier and bulkhead. While the overall expansion of wetland and natural habitats is to be lauded, existing wetlands will be destroyed in order to be “saved” and reconstructed. Thus existing wetlands are not preserved. Moreover, any additional wetland areas created are quite small. It would also seem that Hempstead Harbor shellfish beds and marine life would be negatively impacted from silt and disturbance due to construction related activities over the anticipate minimum 30 month construction time frame as well—30 mos. if there are no delays. (Stephen Cipot)

Chapter 3: Analysis of Potential Impacts - Section 3.5: Zoning, Land Use, and Community Character

Review of Relevant Comprehensive Plans and Studies (§3.5.2.4 Relevant Comprehensive Plans and Studies)

- Land Use Policies: The Applicant’s review of land use policy documents was conclusory and inaccurate. Not one of the land use documents referenced by the Applicant recommends that the Town should allow residential development that is twice as dense as the densest residential district allowed under current zoning via a zoning amendment or a variance, particularly in this type of waterfront location and particularly on an ad hoc basis for the benefit of an individual landowner. Rather, the Vision plan, for example, recommended that the Town “explore updating residential zoning laws to address housing concerns.” See Vision Plan at 29. Nor did the Vision Plan or other policy documents recommend eliminating or reducing outdoor space requirements in multifamily development or siting high density development along the waterfront, within the flood zone, and within the immediate viewshed of Town open space resources. Given the Applicant is proposing a form of development that was not considered at all in any of the land use policy documents reviewed for the DEIS, it had no basis to conclude that the

Project would be consistent with Town land use policies. (Ledyard Milburn on behalf of Our Children's Earth Foundation)

Consistency with TONH Beach Park Master Plan Report (§3.5.2.4 Relevant Comprehensive Plans and Studies)

- North Hempstead Beach Park Master Plan has been developed over many years. It is intended to serve as a guideline for the park development next over the next four to five years with no funding from this project. (Peter Gaffney)
- As we know the TONH developed the North Hempstead Beach Park Master Plan in 2019, and nowhere does it suggest a need or desire by the community for a marina along the western shoreline of Hempstead Harbor. (Shahnaz Autz & George Autz)
- As you can see that in the Master Plan in 2016, there is no mention of a private development requested by the public. The residents of the Town of North Hempstead are requesting outdoor activities and to protect and preserve the beach and park. (Beacon Hill Residents Association)
- The proposed development's public walkway is not consistent with the Visioning Plan for North Hempstead Beach Park, ADA requirements, and required setbacks included in all waterfront zoning that currently exists within the Town of North Hempstead. The DEIS is inconclusive regarding the width of the proposed walkway. In public meetings, the applicant has stated the walkway is as narrow as 12', which is substantially less than the 24' bi-directional public promenade existing at the adjacent North Hempstead Beach Park. Based on the proposed plans, the "public walkway" is simply a path to the marina, which is not the intention of a true public promenade. In the current form, the DEIS cannot and should not be allowed to consider the pathway they included in the proposed project as a "public" amenity. (Residents Forward)

Consistency with TONH Shared Vision Plan for the Port Washington Peninsula (§3.5.2.4 Relevant Comprehensive Plans and Studies)

- Applicant cites the principles of access to the waterfront and affordable housing articulated in the Vision Plan to support the Proposed Action but, as one opposed to the Proposed Project, I can also cite other aspects of the Vision Plan, such as compatibility with existing use and zoning, potential for additional nitrate contamination of the Harbor (not from fertilizer but as the resulting product of the sewage processed from the Proposed Project) which will not be materially remediated by the proposed mussel beds, and other negative environmental impacts. All of these are triggered by or result from the Proposed Action. Most importantly, it will be remembered that the Vision Plan itself states that, in providing generally favored waterfront access, care should be taken to "ensure that it [the shoreline] is protected from being overdeveloped." Cramming 176

units in a massive seven-story multifamily structure having a density of 92 Units per acre located on the western shoreline of Hempstead Harbor is not in the spirit of the Vision Plan and constitutes "overdevelopment." The Town's own draft Waterfront Zoning for a portion of the Manhasset Bay shoreline would only allow structures of four stories. Various variances, in extraordinary numbers and effects, are required for the Proposed Project, including maximum height, minimum landscaped buffer area, minimum front yard, side yard, and rear yard setbacks, minimum plot area, minimum floor area, minimum recreational area. These are further confirmation that the Subject Property is not large enough to accommodate the bulk of the Proposed Building, not to mention the fact that the Applicant needs a further 58 parking spaces located on the separate Lot 1035 owned by the Town. All these necessary variances are departures from well-conceived building and zoning standards embodied in current Town laws which are necessitated by the Applicant's self-imposed hardships derived from its planning for the gigantic mass, density and coverage aspects of the Proposed Building. Shoehorning the Proposed Project onto a parcel of 2.69 acres is overdevelopment and thus in contravention of the Vision Plan. Approval of the Proposed Action would be remembered as a first step towards following Glen Coves' lead down the path towards the massive developments now being constructed in the Garvies Point area to the Northeast. The Applicant approvingly states in the DEIS that the Proposed Project "would be part of a larger trend toward taller, more modern residential waterfront development in this area" including the "four story Residences at Glen Harbor ... and the Garvies Point waterfront residential development in Glen Cove ... of which the most western building along the waterfront will be ten stories in height." Does the Town want the Proposed Project to be grouped with these monstrosities? Now that the Glenwood Landing LILCO plant has been demolished, will the Proposed Project replace it in memories (or rather the nightmares) of current Town residents? (Ernest A. Goetz)

- The development proposal constantly refers to the vision plan of the Port Washington peninsula from 2005, as if the proposal is in sync with the Vision Plan. However, community members, many of whom were involved in crafting the vision would strongly disagree: first the development proposal takes snippets from the shared vision plan but leaves out important segments, for example: "residents want to expand the shoreline trails and promote water-dependent and water-related uses along the waterfront, that's the part we saw in the document, here's the rest of it, yet ensure that it is protected from being overdeveloped." The last part of the statement was conveniently left out of the deis document. The proposal is for a bulky oversized building on too small a lot with inadequate parking that requires using town property in perpetuity to fulfill parking requirements. These variances include: maximum height, minimum landscaped buffer area, minimum front yard, side yard and rear yard setbacks, minimum plot area and floor area, minimum recreational area, maximum lot coverage, and parking. The variances required are so large and numerous that they could be the poster child for the term overdevelopment. (Shahnaz Autz & George Autz)
- SLC argues that their plan is in accordance with Shared Vision Plan (2005).
 - Q4. Does SLC acknowledge that the Shared Vision Plan, P. 17 under Waterfront Goals, specifically speaks against overdevelopment?

- Q5. How does this proposal not represent overdevelopment? This project depends on an excessive number of variances (including maximum height, minimum landscaped buffer area, minimum front yard, side yard, and rear yard setbacks, minimum plot area and floor area, minimum recreational area, maximum lot coverage, and parking). Many of these variance requests are also excessive in quantity, clearly outside normal accepted numbers, i.e., 10%.

(Mitchell Farms Neighborhood Association)

- In the 2005 Vision Plan, “Port Washington residents would like increased coordination and consensus among the various governmental entities. The level of coordination requested ranged from better communication paths among the entities to incorporating the entire Peninsula into the City of Port Washington. Residents feel that if there was more coordination and consolidation, then the cost of services could be reduced and the efficiency with which they are provided could be increased. Some of these services include road maintenance, public safety, and solid waste collection. In addition, community members want enhanced coordination on zoning and land use decisions. “ Define Port Washington Peninsula-wide, community-driven goals for a sustainable approach to planning. “Port Washington Peninsula residents would like to create a greener, more walkable community, with a strong quality of life, that is connected to the waterfront and defined by geographic not village boundaries.” The development will not create a greener, more walkable community and has the potential to harm the flora and animal life in the area. Define both current and long-term objectives of the Port Washington Peninsula “The current and long-term objectives defined by the community include: increased recreational opportunities, open space, a pedestrian-friendly environment, accessible waterfront with water-related, water-dependent uses, improved navigability of Manhasset Bay, revitalized downtowns, greater parking availability, and enhanced community services. “ Again, the development will reduce accessible waterfront, there will be water related and water dependent uses available to the general public at large, and any parking availability will only be for the residents of the development, not the general public. As you can see the vision plan of 2005, does not state that a private development is part of its plan. What is stated is that there should be more accessible waterfront and more water related activities. (Beacon Hill Residents Association)

Consistency with 1989 TONH Master Plan (§3.5.2.4 Relevant Comprehensive Plans and Studies)

- “Land Use and Zoning: The Town Master Plan’s Generalized Land Use map depicts the Subject Property in an industrial area immediately surrounded by other industrial and open space. This map also shows the surrounding area containing a mix of low-density residential, transportation/utilities (which appears to be the landfill) and vacant lands.” There is no residential development by this proposed action and therefore aesthetically it does not fit in with the environment. (Leslye Kress)

- “The major goals outlined in the Land Use and Zoning section of the Town Master Plan are as follows. Maintain the small-scale, suburban character of North Hempstead. › Preserve open space and protect natural, cultural, and historic resources. › Ensure that new development on vacant or underdeveloped land is in keeping with existing neighborhood character. › Maintain a proper balance between land uses so that the Town’s population is adequately served by a sound employment base and sufficient services. The Environment: › Protect the quality of the groundwater supply. › Protect the quantity of the groundwater supply through conservation and aquifer recharge. › Limit the density and types of development located directly in areas identified as Special Groundwater Protection Areas (SGPA’s). › Incorporate the elements of a coastal zone management plan in land use decision making. › Continue to work with county, regional and state officials on regional environmental issues. › Ensure that there will be no net loss in the number of tidal/freshwater wetlands. › Discourage development activities that have significant adverse impacts on air quality.” A large apartment building does not seem to fit the master plan. (Leslye Kress)

Other Plan & Reports for inclusion (§3.5.2.4 Relevant Comprehensive Plans and Studies)

- During the past two years, the New York State Department of Environmental Conservation has worked with Nassau County to develop two comprehensive environmental plans for the whole county to protect surface waters by reducing the flow of nitrogen from land. The Nassau County Subwatersheds plan (https://www.dec.ny.gov/docs/water_pdf/ncreportnitrogen2020.pdf) was published in 2020. The Nassau County Nine Element Plan will be published by the end of the year (<https://www.nassaucountyny.gov/5373/Nassau-County-9E-Plan>). As author of both plans, I am intimately familiar with their contents. As stated above, this project will send 50,000 gallons of sewage per day to Hempstead Bay or Manhasset Bay, both of which are severely impaired as described above (Figure 3) and as classified by NYSDEC’s New York State Section 303(d) List of Impaired/TMDL Waters which lists both water bodies as impaired. For this reason, the Nassau County Subwatersheds plan called for a 20 – 28% reduction in nitrogen loading to Hempstead Bay while the Nassau County Nine Element Plan called for a 29% reduction in nitrogen loading to Hempstead Bay. Similarly, the Nassau County Subwatersheds plan called for a 36-42% reduction in nitrogen loading to Manhasset Bay while the Nassau County Nine Element Plan called for a 39% reduction in nitrogen loading to Manhasset Bay. The science behind these plans was very clear and comprehensive and the precise reductions are required to achieve specific water quality improvements in these ecosystems. In direct contrast to these plans, the West Shore Residences project will send 50,000 gallons of sewage to one of these estuaries and even post-treatment, the effluent from this project will discharge more than 1,500 pounds of nitrogen per year. (Christopher Gobler on behalf of Our Children’s Earth Foundation)

Consistency with New York State Department of State Coastal Management Program (§3.5.2.5 New York State Department of State Coastal Management Program)

- The Long Island Coastal Conservation and Management Plan's (LICCMP) basic premise is "Successful redevelopment is a process that begins with redevelopment strategies that are tailored to the needs of the community. These strategies clearly define the steps in turning a brownfield or other site into a new use that benefits the community and the region" (LICCMP, p. 16). It should be noted that the DEIS failed to use LICCMP to evaluate the proposed project, contrary to the Scoping Document directives. The DEIS states, "... the Proposed Action would improve community character along the West Shore Road corridor through the reinvigoration of the Subject Property." CSHH would argue that the proposed "reinvigoration" is contrary to the character of a community that defines itself by protecting and preserving the natural resources of the harbor. This proposed project is the opposite of LICCMP's objective for redevelopment to be "tailored to the needs of the community." (Coalition to Save Hempstead Harbor)
- The Scoping Document requires that the project: "Assess the consistency of the Proposed Action with the policies of the Long Island Sound Coastal Management Program." The DEIS does not study the Long Island Sound Coastal Management Program (LISCMP) or the policies it contains. (The LISCMP can be found here: <https://dos.ny.gov/system/files/documents/2020/02/liscmp.pdf>) It does evaluate the NYSDOS's State Coastal Policies, but those two planning documents and their policies are not the same. State Coastal Policies are generic, and apply to any coastal region in the state. The LISCMP is specific, mentioning specific sites on the Sound and in the Town of North Hempstead. The lack of discussion of the action's consistency with the LISCMP is a serious flaw in the DEIS. The omission means that the DEIS does not meet the minimum requirements outlined in the Scoping Document, and should not have been accepted as complete. What are the policies outlined in the LISCMP? How is the proposed action consistent with those policies, or is it not consistent? This DEIS is supposed to answer those questions, and it doesn't, which means it is impossible to assess the impacts of this project on the LISCMP's policies. (George M. Janes & Associates on behalf of Our Children's Earth Foundation)
- The DEIS omits required information and fails to sufficiently address or ignores issues raised in the comment letters submitted by Barker Aggregates, Tilcon and Buchanan Marine during the public scoping process for the DEIS. The three comment letters dated respectively March 22, 2021 and March 23, 2021 are enclosed and incorporated in their entirety herein as comments on the deficiencies in the DEIS. Regarding the alternatives considered in the DEIS, the DEIS fails to evaluate as an alternative rehabilitation and continued use for aggregate transshipment to meet needs identified by the Long Island Sound Coastal Management Program ("LISCMP") recommendations for the "Working Coast". This alternative is a feasible alternative and has previously been proposed to the Town, including in December 20, 2016. The DEIS further ignores or fails to sufficiently address regional freight management plan needs, limited barge transshipment facilities on Long Island and potential greenhouse gas impacts resulting from interference or displacement of potential uses for additional aggregate barge transshipment or other water-based transshipment facilities as an alternative. As discussed further in the

enclosed Barker Aggregates letter, barge terminal facilities on Long Island are limited and already at or near maximum capacity. Interference or displacement of the operations of any one of these facilities would have significant regional adverse impacts on traffic, air emissions, greenhouse gases, health and the regional economy. The environmental benefit of barging versus carrying the same material by truck on the New York City and Long Island's roadways are enormous. Reduced, impaired or eliminated transshipment capacity or hours of operation at the Port Washington facility will undoubtedly increase costs of projects and heavyduty truck air emissions. The United States Department of Transportation, Maritime Administration, has published an overview comparison of the environmental impacts of shifting from barge to truck or rail traffic (attached to the enclosed Barker Aggregates letter). The comparison shows that shifting the cargo of just one barge load to trucking is the equivalent of 70 tractor trailers and results in dramatically higher greenhouse gas emissions. The DEIS fails to address this issue and the potential impacts of not just one but multiple barge loads shifting to trucking due to potential interference, displacement and reduced hours resulting from the proposed large residential development at this location next to the Port Washington Aggregates Transshipment Facility. The DEIS does not provide sufficient information or analysis to assess the greenhouse gas impacts resulting from the West Shore Residences Project and alternatives such as rehabilitation and continued use for aggregate transshipment by barge at this location. The DEIS further ignores or fails to sufficiently address issues at to the LISCMP findings, including specific findings relating to aggregate transshipment, such as the following for example: "Nassau and Suffolk counties still produce a significant volume of sand and gravel to serve the needs of Long Island, but the overall volume of material has decreased. Stone must be imported. Barges are the principal means to transport stone from quarries to north shore bays and harbors. Transshipment points for stone imports in the region are: Port Chester, Hutchinson River, Hempstead Harbor, Glen Cove, and Port Jefferson. Maintaining transshipment points along the Long Island Sound shoreline is necessary to ensure that aggregates can be easily imported and, if necessary although unlikely, exported from the region." The DEIS ignores or fails to sufficiently address LISCMP policies to protect existing water-dependent uses such as the following for example: "10.1 Protect existing water-dependent uses. A void actions which would displace, adversely impact, or interfere with existing water dependent uses." "10.5 Minimize adverse impacts of new and expanding water-dependent uses, provide for their safe operation and maintain regionally important uses Maintain regionally important aggregate transshipment facilities." Further, LISCMP findings relating to recreational boating marinas suggest that the marina, as proposed for the West Shore Residences Project, is not likely to be economically viable over the long term: "Most successful marinas are large and diversified, selling, servicing, and storing boats. In successful marinas, over 50 percent of gross revenues can be attributed to support services related to marinas. An increasing number of small, individual, or family owned and operated marinas and boat yards are converting to corporate owned and operated businesses to better survive ... Site new and expand existing marinas, yacht clubs, boat yards, and other boating facilities where there is: adequate upland for support facilities and services; sufficient waterside and landside access; appropriate nearshore depth to minimize dredging " Moreover, to the extent the proposed marina is simply ancillary to the primary residential use of a waterfront parcel, the marina use will not serve to classify the

primary proposed residential use as a water-dependent use for purposes of LISCMP consistency. A 2007 New York State Department of State Consistency Determination, F2007-34, regarding an application to the U.S. Army Corps of Engineers for replacement of bulkheads and fixed piers associated with a residential property on Seatuck Creek in the Town of Brookhaven found that: "The explanation of policy for Policy 2 includes a list of water-dependent uses and facilities. This definition is included in Policy 2 of the CMP. In an August 1, 2007, Mr. Gary Haight of this Department indicated that a dock, built as an accessory structure to a primarily residential use is not considered to be water dependent. Uses involved in the sea/land transfer of goods (including docks) are considered to be water dependent. In that letter it was also noted that a riparian landowner may exercise his/her riparian right to safely reach navigable water that is reasonable and necessary. From the submitted information it appears that the upland owner currently is exercising his/her riparian right by the presence of the existing docking structure and the proposed addition of a second structure is unnecessary." The DEIS states the West Shore Residences Project is a "water-enhanced use", but water enhanced uses are defined in the LISCMP as "primarily recreational, cultural, retail, or entertainment uses." The West Shore Residences Project is a primarily residential use. In addition, the LISCMP also states that "water-enhanced uses" should not "displace or interfere with water dependent uses". As previously indicated, the West Shore Residences Project will displace or interfere with the water-dependent use of aggregate transshipment. The DEIS further ignores or fails to sufficiently address issues as to the underlying state patent, a restricted beneficial use grant, which limits use of the property to piers, wharves, docks and structures related to marine commerce. Residential development is inconsistent with the underlying patent. The DEIS ignores or fails to sufficiently address issues as to the Hempstead Harbor Management Plan ("HHMP") which identifies the Aggregate Transshipment Facility Barge Mooring Area and Port Washington Sand and Gravel operations including the Tilcon facility and Bay Aggregates facility as regionally important water dependent industrial uses and recommends examining the appropriateness of residential zoning. The HHMP and Figure Map 3-6 (attached to the enclosed Tilcon Jetter) identifies the Aggregate Transshipment Facility, Barge Mooring Area and Port Washington Waterfront Sand and Gravel Operations including both the Tilcon facility and the Bay Aggregates facility. The HHMP explicitly states that "[i]n general, on a regional basis, existing water-dependent uses (e.g., aggregate shipment) are threatened with displacement by uses that do not require a waterfront location" like the proposed West Shore Residences. The HHMP recommends that "[t]he Town of North Hempstead also is encouraged to examine the appropriateness of the current residential zoning of the parcel on which the aggregate trans-shipment facility is situated on the west side of the harbor. Residential zoning of this property makes it difficult to redevelop this property in the future with water-dependent uses." In other words, the Town of North Hempstead should be examining whether to provide for aggregate transshipment at 145 West Shore Road, not rezoning to allow more residential development, and the DEIS should but fails to consider this alternative. For all the foregoing reasons, the DEIS is deficient. (Fogel & Brown on behalf of Barker Aggregates, Buchanan Marine, and Tilcon New York)

Required Variances (§3.5.3.1 Land Use and Zoning Potential Impacts)

- I am not opposed to development or rezoning of the site and would be open for the entire area including the abutting parcels at Tilcon and Buchachanan Marine to be rezoned together to prevent spot rezoning, such as what the representative of Beacon Hill Colony mentioned at the September 28, 2022 public hearing for the DEIS. I think it should only be rezoned and developed with strict requirements with a maximum lot coverage of 35% (maybe granting a little more with allowing for a public access walkway) and a maximum of three stories with a maximum height of 40-ft to 45-ft (with the additional height above 30-ft being allocated for non-living areas on the ground level such as an enclosed garage or storage areas) so in instances of flooding the damages would be limited. (Scott Trimarchi)
- The attached table below shows the numerous violations to our zoning codes for this proposed development:

Comparison of Waterfront Multiple-Unit Residences Zoning Requirements to Southern Land's Proposal						
This development is not allowed under Waterfront Zoning requirements as the entire site is a FEMA designated flood zone: "No building or structure shall be built within 25 feet of a Special Flood Hazard Area." (§70-3.26D).						
	Units	Values		Variance Between Requirement and Proposal		
		Requirement	Southern Land's Proposal	Amount	Percentage	
Maximum Height	Feet	26	69.75	44	168%	Greater than maximum
Minimum Plot Area or Density	SF/Unit	7,500	504	(6,996)	(93%)	Less than minimum
Maximum Lot Coverage	%	12%	64.23%	52%	435%	Greater than maximum
Minimum Front Area	Feet	35	0.02	(35)	(100%)	Less than minimum
Minimum Side Yard	Feet	35	6.35	(29)	(82%)	Less than minimum
Minimum Rear Yard	Feet	35	0.17	(35)	(100%)	Less than minimum

Comparison of Multiple Residence (RM) Zoning Requirements to Southern Land's Proposal						
	Units	Values		Variance Between Requirement and Proposal		
		Requirement	Southern Land's Proposal	Amount	Percentage	
Maximum Height	Feet	45	69.75	25	55%	Greater than maximum
Minimum Plot Area or Density	SF/Unit	1,500	504	(996)	(66%)	Less than minimum
Minimum Buffer Area	Feet	10	6.53	(3)	(35%)	Less than minimum
Minimum Parking Requirements	Spaces	428	300	(128)	(30%)	Less than minimum
Maximum Lot Coverage	%	35%	64.23%	29%	84%	Greater than maximum
Minimum Front Area	Feet	25	0.02	(25)	(100%)	Less than minimum
Minimum Side Yard	Feet	20	6.35	(14)	(68%)	Less than minimum
Minimum Rear Yard	Feet	20	0.17	(20)	(99%)	Less than minimum
Minimum Recreational Area	SF/Unit	100	N/A (<100)	N/A	N/A	Less than minimum
Minimum Floor Area	SF/Unit	600	N/A (<600)	N/A	N/A	Less than minimum

(Source: Alice Chong)

- Section 70-71 of the Town Code provides that for a RM zoning, “[t]he lot coverage shall not exceed 35% of the lot area, with a minimum distance between front and rear walls of 50 feet and 20 feet between building end walls.” The current site plan guts these requirements. The site plan calls for development of 64.23% of the lot (vs. 35% required) with virtually no front yard (0.2 feet vs, 20 feet required), no side yard (6.35 feet vs feet

20 feet required) and no rear yard (0.17 feet vs. 20 feet required). Granting these requested variances would establish a dangerous precedent for the Town and essentially allow land use in the Town to be subject to Article 78 proceedings for future denials of similar projects on arbitrary and capricious grounds. The DEIS does not discuss alternatives that would require less than the ten (10) variances that are required. Applicant should do so in supportable form. (Rigano on behalf of Our Children's Earth Foundation)

- The number of zoning variances required to build this project is a red flag in and of itself. Zoning regulations are created to protect the community from chaotic, inappropriate, and dangerous development. Southern Land Company requests a zoning change from the existing R-AAA district of residential single-family housing units to the Multiple Residence (RM) zoning district. Under the current R-AAA zoning, only four single-family houses could be built. But even if a change to Multiple Residence zoning were allowed, a significant number of additional zoning variances would be needed. Here is a summary provided in the DEIS, p.165. Note the asterisks at the ends of each line in the chart indicating a "variance will be required." Many of the "Provided" figures are stunning departures from the "Requirements." The proposed development's maximum lot coverage alone is nearly double the limit; the minimum front, side, and rear setbacks are extraordinarily deficient. Zoning codes are designed and developed to protect the community character and, most importantly, to protect the community from hazards. In this case, the project's height is 5 stories above ground level vs. the maximum 2 stories; lot coverage is 64.23% vs. the required maximum of 12%; the setback distance of the front yard is 0.02 feet (about 1/4 of an inch) vs. 35 feet. (Coalition to Save Hempstead Harbor)
- If the Applicant were simply proposing to rezone the lot from a low density residential use – R-AAA -- to the highest density residential use permitted under the current Town Code – RM multifamily – the proposal would already be a substantial departure from existing waterfront zoning and usage in the immediate vicinity. See EAF Part 3. However the Applicant goes much further, seeking numerous substantial bulk and other variances from the RM zoning, which, in combined effect would allow development of a residential density over twice as dense as RM Zoning allows – a density that does not exist in the Code or in practice within the Town of North Hempstead. Specifically, in comparison to RM requirements, the Applicant proposes to increase height by 50 percent, to substantially reduce and in some cases effectively eliminate required setbacks, to nearly double permitted lot coverage, to triple density by reducing minimum lot area by two thirds, to reduce outdoor space requirements (to unspecified levels), and to substantially reduce required parking. See DEIS Table 3-13 This would be a drastic departure from existing land use. (To the extent the Applicant argues that this proposal would be comparable to two larger developments (Amsterdam at Harbor View and Harborside) developed under the Town's Planned Unit Development ("PUD") provisions, the Applicant misstates the facts. PUD developments allow higher density typically in exchange for creation of open space within other sections of the same development site. Here, the Applicant proposes not only more density but also less open space per resident than would be required under the applicable RM Zoning and would also reduce

opportunities for open space/ service of existing open space on adjacent Town owned parkland (Lot 1035). (Ledyard Milburn on behalf of Our Children's Earth Foundation)

Bulk and Dimensional Requirements (§3.5.3.1 Land Use and Zoning Potential Impacts):

- Table 3-13 – Bulk and Dimensional Requirements of the RM Zoning District: It is disingenuous to portray the building as having only five stories. The building as proposed would consist of seven floors, five residential and two indoor parking levels. At best, this could be classified as six stories with a walk-out basement. The zoning regulations allow up to four levels: three fully above grade and a basement level that is partially exposed. The determination as to whether a partially exposed level qualifies as a basement is based on the exact elevations of the final building plan. Considering the high elevation of groundwater under the site it will be difficult, though still possible, to lower the bottom level enough to qualify as a basement. The table should be revised to indicate that at least six, if not seven, stories are proposed. (TNH Planning Department)
- The Final Scoping Document required the study area to be described in terms of building bulk, massing, height, and density. The DEIS did not provide this analysis but only a general understanding of how the project would fit in the study area. How does this project compare to the other multiple-family developments located within the study area with regard to the listed zoning parameters? (TNH Planning Department)

Surrounding Zoning (§3.5.3.1 Land Use and Zoning Potential Impacts):

- Functionally this is an industrial zone. The subject property is one of three adjacent properties with all three having similar appearance and function. If the zoning change is approved and the development is approved by the town board, this would create a precedent setting change for this localized industrial area along the waterfront. If the development is allowed, then each of the remaining 2 adjacent properties would now become much more attractive to a large developer. A path to future development of this industrial area will have been laid down. The Town Board should recognize that changing the zoning will incentivize future development of this section of the shoreline. (Shahnaz Autz & George Autz)

Surrounding Land Uses (§3.5.3.1 Land Use and Zoning Potential Impacts):

- There are no grocery stores, no Target, and no restaurants on West Shore Road [to support a multi-family development]. (Maria Rhode)
- This misplaced and unnecessary development won't take away the empty storefronts in Port. Residents in the proposed building are much more likely to use a four-lane highway

to Roslyn, or shop the Miracle mile. Who wants to navigate overcrowded Main Street and risk a parking fine of \$115? (Hilary Himpler)

- Since the Tilcon property to the North of the Subject Property will remain an industrial use, this diminishes the overall benefit derived from the lessening the industrial character of the shoreline to be effectuated through the Proposed Action. The conversion of this smaller and less intensely used Subject Property from industrial use while the larger and more intense industrial use of the Tilcon property remains on the shoreline should not be considered a transformational change. This is especially so considering its replacement is the massive 92 acre per Unit bulk of the Proposed Project. (Ernest A. Goetz)
- Conversion from industrial to residential use and "affordable" housing, Applicant has identified certain other "public benefits which would satisfy identified needs of the community" such as a "reactivation of the east side of the Port Washington Peninsula". Applicant does not explain how "reactivation" is different from the environmental cleanup and multi-family housing benefits already discussed above, or from the recreational benefits, to be discussed below, which Applicant attributes to the marina, educational pier and promenade. Is "activation" something different? Or is its inclusion here exaggeration and double counting by the Applicant? (Ernest A. Goetz)
- As per table 3-12, the proposed increase in wetlands of approximately ¼ acre is a trivial amount of land, and the increase is not of sufficient size to benefit the harbor waterways. (Ilse Stalis & Rosemarie Gilpin)

Impacts to Community Character (§3.5.3.2 Community Character Potential Impacts)

- SLC states that their goal is to maintain their small-scale suburban character of the town. Pg. 171. I do not believe that a 176-unit, that is 95 feet high is small or in line with the character of Port Washington. SLC compares 145 West Shore Road to Glen Harbor, a condo in Glenwood Landing. These two land areas are like each other. 145 West Shore Road is on a 2-acre piece of land adjoining a public park, with no sea wall, and asking to build 176 apartments, 95 feet high. Glen Harbor is not in a residential area, and it is on 5 1/2 acres of land. It is also bulkheaded and only has 48 condos and three stories high. Glen Harbor did not ask for an IDA tax abatement. (Leslye Kress)
- The existing structures are a living reminder of the historic industrial uses along the Hempstead Harbor waterfront and are consistent with the existing character of this portion of the waterfront as represented by the adjoining industrial Tilcon property to the North. The Proposed Building, with its massive bulk of 92 units per acre, is not consistent with the Vision Plan and, in fact, constitutes "overdevelopment" warned of in the Vision Plan which would contribute to the alarming trend of high-rise waterfront development along both sides of Hempstead Harbor. (Ernest A. Goetz,)
- The proposed project is a radical change in the developmental plan of this area, which is Residence A to the north of Beacon Hill Colony and Residence AAA to the south. There

are no buildings of this density and height along West Shore Road. The proposed project would put 171 apartments in a little over two acres of land. By contrast, Beacon Hill Colony consists of 41 separate homes on 7½ acres of land. (Beacon Hill Bungalow Corporation)

- The multiple variances needed indicate that this building is out of character for the Town of North Hempstead. The developer suggests that other buildings of similar height are in the area, but the Amsterdam / Harborside is only six stories, is not on the shoreline, and is removed from the roadway and behind vegetation. The proposed development is completely out of character with the surrounding community in terms of structure and function. All other housing in the surrounding area is hidden from view along the west shore road corridor. None of the other housing obstructs open water views that are present. 145 West Shore Road will be the only one. (Shahnaz Autz & George Autz)
- In regard to Community Character, the DEIS states, “The first goal set forth in this section is to maintain the small-scale suburban character of the Town....The proposed development is not smallscale.... The proposed type of land use (high-density residential), while not in keeping with the traditional suburban development pattern as envisioned in the Town Master Plan, addresses the changing demographics within the Town and County, and takes advantage of the Subject Property’s unique location on the waterfront” (p. 171). The DEIS describes the proposed project as “supporting a housing type that is responsive to larger real estate trends toward an increasing, cross-generational demand for “surban” communities, or communities that provide a mix between suburban living and urban amenities including access to public transportation and downtown centers.” Whether the community should transform to a “surban” character should be decided by the affected community, not imposed by a developer who has an economic interest in supporting that outcome. While environmental, zoning, and legal experts may weigh in on the long list of requirements this project must meet in order to go forward, the concept of community character is the area where the public’s voice must be given the greatest weight. It is the area that encompasses the public’s collective values and future vision for the community. At the public hearing held by the Town of North Hempstead on Sept. 28, 2022, the community spoke loud and clear that this proposed project does not fit their idea of community character. (Coalition to Save Hempstead Harbor)

Chapter 3, Section 3.6: Traffic and Transportation

Traffic counts during a pandemic (§3.6.2.4 Existing Traffic Volume Data)

- SLC’s traffic studies are fundamentally flawed as they were conducted in the summer of 2021, when Covid 19 lockdown was in force and schools and summer camps were closed. They are incredibly underestimated. (Edda Ramsdell)

- The traffic study conducted by SLC is fundamentally flawed as it is over a year old and was completed during summer without school traffic and when traffic patterns were light due to COVID. (Michelle Bagnato)
- Their traffic study is deficient as it was done during the pandemic. (Leslye Kress)
- Went onto SLC website, they say that the traffic pattern will only be one vehicle every two minutes. That is 30 vehicles every hour according to them. I strongly question that. I was unable to find out if that was done over a 24-hour period, or one hour during covid, over 6 hours during the day, or was it during the summer time? SLC has not been on Main Street or the Boulevard during the rush hour. It would be interesting to see if we got only an additional 30 cars during rush hour. (Maria Rhode)
- The traffic analysis was done for only a few days in June, and time periods did not include the end of the school day, when vehicular and pedestrian traffic is markedly increased. In June colleges typically have ended their year and local schools are nearing the end of the year, and traffic levels may not reflect what happens during times when local schools and universities are in session. (Ilse Stalis & Rosemarie Gilpin)
- Several transportation experts predict Long Island could emerge from COVID with even more traffic congestion. Work from home could increase weekday backups on local roads. Long Island Rail Road riders who retreated to their cars amid fears of crowded trains may continue to drive. And surging levels of online shopping may become the new normal, keeping many more delivery trucks on the roads. Source: Newsday article dated April 8, 2021: "On the long road back from COVID-19, experts say driving on LI will be tough."
 - "The demands on the roads are likely to be higher than they were pre-pandemic, even with an increase in work from home, if people switch from transit to driving," said Sam Schwartz, a transportation engineer and former New York City traffic commissioner. "Long Island will see worse traffic over the next couple of years."
 - The levels of traffic are going to either remain the same or go higher," said Marc Herbst, executive director of the Long Island Contractors' Association. "The peak-hour traffic will not be at a set period. It's maybe longer, different durations," he said. "The travel patterns will not be the traditional east-west."
 - More Long Islanders working from home could reduce highway rush hour traffic but amplify congestion at other times and places, Herbst said. It also could mean more drivers on main streets and in strip mall parking lots during the workday.
 - Motor Vehicles data. Nassau and Suffolk counties had 2,457,000 vehicle registrations in effect at the end of 2020, a 5% increase over the 2,336,000 in 2019.
 - "Our curbs are just flooded with boxes and boxes and boxes," said State Sen. Todd Kaminsky (D-Long Beach), who sits on the Senate's Transportation Committee. "Our municipalities can't even keep up with it." Kaminsky expects the online shopping, and extra commercial traffic, to stick around. "The sprinter van traffic is going to continue," Kaminsky said. "I don't think that's going anywhere."

Southern Land Company's traffic study is fundamentally flawed because it is over a year old and completed during the summer without school traffic and when traffic was light due to COVID

- Southern Land Company does not adjust for delays as a result of school traffic as this study was conducted in June 2021
- Southern Land Company attempts to adjust for COVID but applies different adjustment factors that are inconsistent in the AM peak hour and PM peak hour (Pg. 1,109 of DEIS appendices.). Southern Land Company also does not take into consideration the increased traffic throughout the day (not just during peak hours) as a result of working from home.
- Southern Land Company inaccurately states that parking is not permitted on Longview Road (Pg. 177 of DEIS.). Parking is allowed on Longview with only the exception of snow days as it is designated an emergency snow route. This has significant implications regarding traffic patterns because (1) there is significant delay when the roads are narrowed down to one lane for both directions and (2) this increases traffic to be directed to side streets (i.e., Beverly Road, Hampton Road, Bedford Road, Stratford Road and Hillcrest Road).
- Southern Land Company states that the use of the marina and public walkway will be minimal and does not account for this traffic in its analysis. They also do not specify the impact to weekend traffic. "The trips for the boat slips are seasonal and relatively small (two to six trips) during the peak hours on weekdays and are not reflected in the analysis." (Pg. 188 of DEIS)
- Southern Land Company claims that the development will only generate 63 and 77 more trips in the AM and PM peak hours. However, no study has been done to see how the increased number of cars would affect the congested intersections of Beacon Hill Road and Port Boulevard and the intersection of Old Northern Boulevard, and Roslyn Road.

Further development on West Shore Road. would erode an already untenable traffic load on the three access and egress routes to Port Washington alone. Beacon Hill Road, Longview Road and the side streets were not designed to support the volume of traffic, weights of semis trucks and busses, and is already very dangerous for pedestrians and children walking to school.

		AM Peak	PM Peak	Saturday Midday Peak
West to East				
Longview Entry	PWB (N/S) to LV	390	346	291
Longview Exit	LV to WSR/SR/BHR	171	216	172
	Difference	219	130	119
Beacon Hill Rd Entry	PWB (N/S) to BHR	286	401	292
Beacon Hill Rd Exit	BHR to WSR/LV/WSR	394	512	339
	Difference	(108)	(111)	(47)
Total Entry		676	747	583
Total Exit		565	728	511
	Difference	111	19	72
East to West				
Longview Entry	WSR to LV	274	154	151
Longview Exit	LV to PWB (N/S)	95	14	34
	Difference	179	140	117
Beacon Hill Rd Entry	WSR to BHR	392	292	283
Beacon Hill Rd Exit	BHR to PWB (N/S)	335	365	270
	Difference	57	(73)	13
Total Entry		666	446	434
Total Exit		430	379	304
	Difference	236	67	130

WSR = West Shore Road. LV = Longview Road. PWB = Port Washington Blvd. N/S = North/South.
Source: Pg. 181 of DEIS.

- Significantly **more drivers enter Longview Road to head East** to West Shore Road versus Beacon Hill Road in the AM Peak hour (and is generally evenly split in the PM Peak and Saturday Midday Peak hours). The traffic patterns suggest **many drivers use the side roads to cut back** onto Beacon Hill Road.
- There are significantly more cars are entering Longview than exiting which implies that the **study is likely missing** the cars exiting from Beverly to Port Washington Blvd.



145

(Beacon Hill Residents Association)

Speed Counts (§3.6.2.4 Existing Traffic Volume Data)

- The number of cars is not the only issue regarding traffic on West Shore Road. Excessive speed of vehicles is currently very common, and the issue of increased numbers of speeding vehicles in the area does not seem to be addressed. (Ilse Stalis & Rosemarie Gilpin)

Crash History (§3.6.2.5 Crash History)

- 3.6.2.5 - Crash History (page 182) & 3.6.3.11 Conclusions (page 200): The DEIS provided a history of crashes in the study area but did not adequately address or describe how this crash history is relevant. Based on the traffic counts for the ‘No-Build’ and ‘Build’ scenarios, is the crash history significant? (TNH Planning Department)

Existing Public Transportation (§3.6.2.6 Public Transportation)

- 3.6.2.6 - Public Transportation (Page 185): The DEIS states that there are no transit routes operating along West Shore Road near the Subject Property. However, the Nassau Inter-County Express does, in fact, operate a Port Washington Shuttle between Roslyn and Port Washington that passes the subject property with a stop on West Shore Road at Fairway Drive. (TNH Planning Department)

Appendix J (§3.6.3.5 Level of Service Analysis)

- Appendix J - Traffic Impact and Parking Analysis Report: The aerials on Page 13 (Old Northern Boulevard & Main Street/Tower Place) and Page 15 (Port Washington Boulevard & Main Street) do not show all of the streets and relevant driveways. Provide images with the southbound Hendrick's Tavern driveway and westbound Mertz Plaza approach clearly visible. (TNH Planning Department)
- Appendix J - Traffic Impact and Parking Analysis Report: Page 26 references a “well developed access plan”. Identify and describe the element of this plan that will provide counter measures to hinder increases in the level of accident occurrence. (TNH Planning Department)
- Appendix J - Traffic Impact and Parking Analysis Report: Regarding Table 5 and explanation on page 41: Although the LOS delay is 4 seconds more in the build scenario versus the no-build, it is still 98.4 seconds. There should be mitigation proposed to reduce the delays in the northbound movement. (TNH Planning Department)

Estimated Vehicles/Trips (§3.6.3.5 Level of Service Analysis)

- The proposed building would be located in a remote location, where it is extremely unlikely that residents will walk to any location and will only be utilizing automobiles for travel. Estimated trips are based on ITE standards for estimating traffic, but applicability of ITE estimates to this particular remote location is not explained. Did travel estimates take into account delivery (e.g., FedEx, Amazon) and service vehicles? Did travel estimates take into account school busses? It is likely that residents will be taking multiple trips for multiple activities (e.g. 2 trips (in and out) for athletic workout, 2 trips (in and out) for work, 2 trips (in and out) for dinner and/or evening activity). (Ilse Stalis & Rosemarie Gilpin)
- Considering the remote location, are estimates of the number of parking spaces needed accurate? Do these take into account parking for service staff and trades people? Will residents be hiring outside cleaning services? (Ilse Stalis & Rosemarie Gilpin)

Impacts on the Beacon Hill Residential Neighborhood (§3.6.3.5 Level of Service Analysis)

- Their traffic study does not account for the traffic making a right turn on the offshoot of the West side of Longview Road and assumes cars just disappear in the neighborhood. Traffic on Main Street, Port Washington Blvd. and other roads is already untenable and this development will make matters significantly worse. (Email sent by multiple individuals – reference Tegwen Epstein)
- The DEIS does not include information about emissions, noise and safety on impacted “shortcut” roads from West Shore Road to Port Blvd., including Longview, Bedford, Stratford, Hampton, Crescent, Summit and Orchard Farm Roads. In 1995, The Town of North Hempstead Board retained Eschbacher and Associates to conduct a traffic study in the Beacon Hill section of Port Washington. It was reported that approx. 12,000 cars a day travel Beacon Hill Road / West Shore Road and 3,000 cars a day travel on Longview Road. Since 1995 the volume of traffic has significantly increased due to additional vehicles from new residents and delivery trucks, not to mention the threat of numerous tractor trailers barreling down Beacon Hill Road, largely unenforced by traffic police, despite posted signs prohibiting tractor trailers. (Edda Ramsdell)
- There is parking on Longview Road, a major cut through street from Beacon Hill Road to Port Washington Boulevard. The DEIS states there is no parking on that road. There is no report about the traffic at the intersections of West Shore Road and Roslyn Road and Beacon Hill Road and Main Street. (Leslye Kress)
- The Draft Environmental Impact Statement is extremely deficient in not addressing safety conditions on Longview Road and Beacon Hill Road, and not having a crash history analysis on Longview Road at all. Therefore, it has not considered current hazardous conditions, to which any addition of traffic could be unacceptable. What we all need to understand is what are the current safety conditions on the roads to be most affected by the proposed project, and particularly in the Beacon Hill area - Beacon Hill and Longview Roads- being used as the main arterial routes in and out of Town from and to the east. Even without any SLC project, in current conditions, which have only worsened over more recent years, the traffic patterns need to be relooked at with a holistic, objective expert in safety, considering the design and use of the roads, and accidents experiences. I have recently looked at accident reports on the road I live on, and on Pt. Blvd. at the intersection with Longview Rd. and found the accident rate to exceed 7 per year (and 7 this year, with only 2/3 of the year complete), including residents being struck by cars as they enter or exit their driveways, sideswipes/collisions of cars traveling in opposite and same directions (trying to move around each other in narrow road), swerving onto grass and knocking over street sign, stationary cars at stop sign being struck, loss of control due to icy road condition, and, collisions due to failure to stop at stop signs or maintain sufficient distance following other cars. This is an unacceptable rate, and any additional burden will only aggravate an already unsafe situation. In addition, both pedestrians and bicyclers also use the road, with no shoulders or sidewalks. Some time ago, an independent expert concluded that there was a need to redesign traffic flow due to undue burdens on road design. In particular, Longview Road, originally an old Cow Neck cow path, is narrow, winding and, hilly, with dangerous

limited visibility, and no sidewalks, being used as a cut-through main artery for traffic (aggravated by Google/Ways/GPS guidance), but not designed to bear such traffic, resulting in hazardous conditions. In addition, cars simply do not obey the posted speed limit and this fact must be recognized for safety purposes. After the road had been previously designed to be one way to address the safety issues, the restriction was changed with a change of politicians without any contrary expert support that I am aware of. Objective expert advice must underpin any Town Board decision. This issue needs to be revisited with an independent traffic safety expert, with no ties to SLC or any particular constituent in this matter, whether in the past, currently, or currently contemplated in the future. SLC should pay for the study and a committee of various constituents including representatives of key impacted roads should be involved with the selection and factors considered, in a transparent and equitable way, in light of current conditions, for a fair outcome for all. (Nancy Lanis)

- When it states in the traffic study “Longview Road does not allow on-street parking”, that is an outright lie. Parking is prohibited only during a Snow Emergency. (Scott W. Winter)
- I know this has been brought to the attention of the TONH, however the study NEVER commented on a specific impact of the Beacon Hill/Monfort Hill Communities. There is ONE sidewalk in the area. This begins on Beacon Hill Road, changes from the north side of the street to the south of the street at the FIRST intersection of traffic from the proposed West Shore Residences There is NO crosswalk, there are no other sidewalks in the area, however, students 7-12 are required to walk to school based on the requirements of the PWSB. This absolutely is a problem that cannot be touched. Taxpayers will NOT pay more for additional buses, and the district certainly will not change the mile requirement for busing. (Pam Monfort)
- There are only three roads to enter or leave Port Washington: West Shore Road, Port Washington Boulevard or Plandome Road. Traffic congestion on the peninsula has increased especially on Beacon Hill Road, Longview Road and West Shore Road.
 - The industrial park has gained many tenants, including Huntington Bus Company, which has two bus storage sites.
 - Most residents living off West Shore Road reside in The Harbor View Development, The Amsterdam, The John Bean Townhouses, as well as two new apartment buildings, two new hotels, and a townhouse development in Roslyn Village.
 - In 1995, The Town Board asked Eschbacher and Associates to conduct a traffic study in the Beacon Hill section of Port Washington. It was reported that approx. 12,000 cars a day travel Beacon Hill Road / West Shore Road and 3,000 cars a day travel on Longview Road but the volume of traffic has increased due to additional traffic from new tenants, residents and delivery trucks amongst others
 - No traffic light can be installed at the entrance to the proposed development at 145 West Shore Road, Nassau County. Residents at John Bean Townhouses, attempted to get a traffic light installed at their entrance and were told there cannot be a traffic light as it was not part of an intersection.

- An additional 350-400 cars would greatly increase traffic and increase the number of accidents on West Shore Road. Making a left hand turn out of this development would be difficult as traffic is traveling at 45-50 miles per hour.
- A dangerous alternative would be for residents in this development to only make a right-hand turn and use Longview Road, Beacon Drive, Crescent Road, and Summit Road as a turn around to return to Beacon Hill Road.
- Traffic would be increased greatly by UPS, Amazon, and FedEx trucks delivering packages to 350 residents at the development.
- As more people go back to the office, parking at the train station may become a big issue. Very few people will opt for the shuttle to the train station. The Amsterdam tried it and it failed.

(Beacon Hill Residents Association)

Impacts to the Beacon Hill Colony (§3.6.3.5 Level of Service Analysis)

- Beacon Hill Colony has two entrance/exits along West Shore Road. We had asked that these entrances and exits be studied and the Scoping Document indicates that they would be, along with potential mitigation measures which might be required. See Scoping Document at 44 (“The additional traffic on West Shore Road is likely to have a significant impact on Beacon Hill Colony. Currently, at certain times of the day, it is difficult to exit the upper and lower entries of Beacon Hill Colony. The impact on traffic entering and exiting Beacon Hill Colony needs to be studied.” But the DEIS does not consider or study the impact of our entrances or exits and has no discussions of any potential mitigation measures for the increase traffic. The impact on Beacon Hill Colony, along with mitigation measures, needs to be part of the final EIS. (Beacon Hill Bungalow Corporation)

Marina Parking (§3.6.3.6 Parking)

- Project requires many variances and falls short on vehicle parking by 186+ spaces. Even if the Town grants a waiver to use the Town’s 58 parking spots, it still falls way short of 128+ parking spaces. The Final Scope provided does not take into consideration boat trailers. Why not? Both residents and public will need conservatively additional 20+ lengthy parking spaces. According to Town conversation(s) fifty(50) feet is an appropriate length for vehicle(s) and boat trailer(s). That calculation should be included in the insufficient parking spaces. Conservatively parking variances should be 226 possibly more. (Peter Gaffney)
- The Project Sponsor is seeking permission to locate 58 additional surface spaces on an adjoining Town-owned lot that is part of North Hempstead Beach Park. The total of 300 parking spaces would be considerably short of the 428 required by the zoning code for a building of this size. This is unacceptable. Permission must not be granted, the assumed right would set a precedent that must not be established. The sponsor must not be allowed to utilize North Hempstead Beach Park and other TONH Property for permanent private

resident parking, neither regularly nor intermittently. Denial must include the parking and storage of boats and boat trailers related to the developer's proposed marina. This is because at 20-30 boat slips (of various size) are proposed for which there does not appear to be adequate boat trailer and related storage space located on the developer's property. No boat slip mooring sizes are provided, however, assuming a vehicle and trailer can be at least 40-50 feet, if not more for larger boats, there is definitely not sufficient vehicle and boat trailer space to be parked and stored on the developer's property. Without knowing mooring capabilities and capacity we cannot comment on the impact of boats frequenting the marina and traversing the harbor—what is the maximum size of boats the marina will accommodate, how many large size boats? What about jet skis, will they be allowed at the marina? What are the safety implications for kayakers, high school and private crew teams, and Hempstead Harbor Beach recreational swimmers who all utilize the immediate area? The safety of all users must be assured. Safety first, period. The Draft EIS fails to address these important details and must do so. (Stephen Cipot)

Beach Parking (§3.6.3.6 Parking)

- Parking will be affected many days, when the beach park is very crowded - national holidays, Project Independence, concerts, fairs/festivals, concerts, tournaments and Kidstock etc. (Peter Gaffney)

Bicycle and Pedestrian Accommodations (§3.6.3.7 Site Access and Internal Circulation)

- While it is true that there are no signed or shared bicycle routes along West Shore Road, there is significant use of the roadway by cyclists. The developer has not taken into account how much cyclists utilize West Shore Road and this development will pose a significant safety hazard for cyclists. The lack of separated, safe cycling lanes is a deterrent for use of this roadway by some cyclists, which also suggests that residents will not be cycling to other destinations, but will be utilizing automobiles. (Ilse Stalis & Rosemarie Gilpin)
- The proposal that the sidewalk along West Shore Road exists and will be retained to encourage bicycle use by residents is inconsistent with safe practices and NYDOT standards (see <https://www.dot.ny.gov/display/programs/bicycle/faq>, where DOT states that “Sidewalks are for pedestrians. Cyclists on sidewalks can cause conflicts with pedestrians...” (Ilse Stalis & Rosemarie Gilpin)
- Many members of the Beacon Hill Colony use Hempstead Harbor Park for recreation. Unfortunately, the current three uses between us generates much traffic in and out, which makes traveling by foot or bicycle hazardous. Given that the site will increase trips and out of 145 West Shore Road, the impact on pedestrians and cyclists should be studied and considered as part of the EIS. (Beacon Hill Bungalow Corporation)

Pedestrian Accommodations on the Proposed Promenade (§3.6.3.7 Site Access and Internal Circulation)

- In connecting a 500 foot-long promenade to Hempstead Beach Park, renters and anyone can enjoy easy access to the beach and facilities. This is a safety issue. How many people can the public pier hold? During these events will alcohol be served? Security? Having unchecked access as no security is problematic. (Peter Gaffney)
- Another claim by the SLC is that they are building a promenade for the community. There are many concerns about the construction and the details of this promenade.
 - Q13. What is the proposed length of the promenade? The length of this promenade is not clear; in one page of the DEIS document, it is 1500 feet and in the Port Washington News (9-16-22) it is about 700 feet. What is the narrowest point along the proposed “promenade” walkway?
 - Q14. Does this narrowest point present a safety hazard since there will be pedestrian traffic in both directions?
 - Q15. Are there any safety measures necessary for overcrowding and congestion at community events? Ex. Memorial Weekend Fireworks Display.

(Mitchell Farms Neighborhood Association)

- The DEIS “a total of 378 new residents is projected” for the completed project. DEIS at 2. This does not include persons present to use the marina, which is said to be open to the public, and other public areas. The DEIS contains no discussion of the impacts that such a large number of people would have on Beacon Hill Colony, and its current problem of many persons now trespassing onto its colony. Beacon Hill Colony is an open, non-gated community, which may have to change if this project is developed. The final EIS needs to study the impact on Beacon Hill Colony and discuss what mitigation measures may be required. Beacon Hill Colony is likely to require additional costs, its members need to understand the expense being imposed on them. (Beacon Hill Bungalow Corporation)

Public Transportation/Shuttle (§3.6.3.7 Site Access and Internal Circulation)

- If the residents, have a car, they are going to use their car. It is only natural. They might want to stop at the store on the way home or meet someone for dinner, whatever. Parking at the station before covid was big problem, how much bigger will it be when we get back to a more normal schedule and our population has grown. (Maria Rhode)
- The developer proposes use of a shuttle, but there is no guarantee that a shuttle would meet the need of residents, or that residents would use the shuttle. If only one resident uses the shuttle, there is no improvement on numbers of vehicles, and potentially

increased negative consequences as the shuttle would probably be larger than a passenger car and have worse gas mileage. (Ilse Stalis & Rosemarie Gilpin)

- The DEIS contains assumptions about parking at the Port Washington LIRR train station/terminal that focus on the use of mass transit during the Pandemic. Hence, this section is lacking in a comprehensive analysis of the impact of the proposed project in the build year. It is recommended that this section be amended to include analysis of LIRR infrastructure using pre-Pandemic parking demand and the forecasted demand for LIRR service to both Penn Station and Grand Central Madison. (Residents Forward)
- 3.6.3.7 - Site Access and Internal Circulation: Public Transportation (Page 198): While the Port Washington station is the closest rail stop, providing shuttle service to the Roslyn station would also be beneficial to residents. Having access to the Oyster Bay Branch would provide additional service to stations along the Main Line of the LIRR, as well as the business and shopping district in Roslyn village. (TNH Planning Department)

Impacts of the Marina on Recreational Boating (§3.6.3.10 Impacts of Marina on Boat Traffic/Mooring Infrastructure)

- Many boaters tenants and public have personal watercraft (Jet Skis). How will the applicant and town prevent the jet skis turning right and heading to park and beach? This dangerous action(s) will happen if not 100% prevented. Kayak launch is close by. How will kayakers operate safely with all types of boating activity so close? How will the property owners prevent small boats, personal watercraft (Jet Skis etc.) from entering the NH Beach Park? (Peter Gaffney)
- The Scoping Document accepted our suggestion that the impacts on our community be studied with respect to boat traffic and persons. See Scoping Document at 34, 44. Unfortunately, the impact has not been studied. The DEIS indicate that there would be 29 boat slips “capable of accommodating boats of varying sizes.” DEIS at 3. The study, the DEIS, however, makes no study of how this will impact the water by Beacon Hill Colony, at which we presently have a community beach and numerous kayakers. Given that the nature of this upscale project means it is likely that many of these boats will be large yachts, the impact could be particularly significant. These yachts are likely to pass through our moored boats, kayak lanes and swimming areas. Measuring against the marina on the other side or the harbor is not meaningful as there is no indication that the proposed slips would be comparable. The use will have a significant effect on us which has not been studied or discussed. (Beacon Hill Bungalow Corporation)

Impacts of the Marina on Marine Industrial Uses (§3.6.3.10 Impacts of Marina on Boat Traffic/Mooring Infrastructure)

- Tilcon, a company next to 145 West Shore Road, has stated that a marina would interfere with their commercial business and that the water is zoned marine industrial from a land grant from 1907. (Leslye Kress)
- The Scoping Document accepted our suggestion that the impacts on our community be studied with respect to boat traffic and persons. See Scoping Document at 34, 44. Unfortunately, the impact has not been studied. The DEIS indicate that there would be 29 boat slips “capable of accommodating boats of varying sizes.” DEIS at 3. The study, the DEIS, however, makes no study of how this will impact the water by Beacon Hill Colony, at which we presently have a community beach and numerous kayakers. Given that the nature of this upscale project means it is likely that many of these boats will be large yachts, the impact could be particularly significant. These yachts are likely to pass through our moored boats, kayak lanes and swimming areas. Measuring against the marina on the other side or the harbor is not meaningful as there is no indication that the proposed slips would be comparable. The use will have a significant effect on us which has not been studied or discussed. The EIS also needs to consider the pumping out of boats in the marina, the weather controls and whether or not there is gasoline filling station for these boats which would have an impact on the community. Finally, the increase in runoff into the harbor, and its effects on water quality of Hempstead Harbor, also needs to be carefully studied. The DEIS “a total of 378 new residents is projected” for the completed project. DEIS at 2. This does not include persons present to use the marina, which is said to be open to the public, and other public areas. The DEIS contains no discussion of the impacts that such a large number of people would have on Beacon Hill Colony, and its current problem of many persons now trespassing onto its colony. Beacon Hill Colony is an open, non-gated community, which may have to change if this project is developed. The final EIS needs to study the impact on Beacon Hill Colony and discuss what mitigation measures may be required. Beacon Hill Colony is likely to require additional costs, its members need to understand the expense being imposed on them. (Beacon Hill Bungalow Corporation)

Traffic Lights as Potential Mitigation (§3.6.4 Proposed Mitigation)

- No traffic light can be installed at the entrance to the proposed development at 145 West Shore Road. Residents at John Bean Townhouses, attempted to get a traffic light installed at their entrance and were told by Nassau County there cannot be a traffic light as it was not part of an intersection. 145 West Shore Road is not located at an intersection. (Edda Ramsdell)
- Who has to pay for another traffic light, if needed? (Maria Rhode)
- This letter is in reference to the proposed development at 145 West Shore Road. As we have communicated in the past to Supervisor Bosworth, the Village of Flower Hill is

concerned that the increased traffic these new apartments will generate, will have an adverse effect on the Flower Hill residents at John Bean Court. John Bean Court is maintained as a Homeowners Association (HOA) supported by the owners of the 33 residences there. The Village of Flower Hill has been working with Nassau County and Legislator Delia DiRiggi-Whitton and the County Attorney since 2020 to provide a traffic signal at the intersection of John Bean Court and West Shore Road. West Shore Road has seen a great deal of commercial development over the past few years, and as a result traffic has substantially increased. It is extremely difficult for residents and school buses to enter and exit John Bean Court because of the volume and speed of traffic on West Shore Road. Since the future development of 145 West Shore Road will add significant increase in traffic and cause the drivers who enter and exit John Bean Court more difficulty and danger, the Village of Flower Hill objects to this development until the Town of North Hempstead is able to work with Nassau County to install the requested traffic signal at that intersection to John Bean Court. (Village of Flower Hill)

Chapter 3, Section 3.7: Community Facilities and Services

Community Facilities and Utilities Costs/Financials (§3.7.2 Potential Impacts)

- Any impact affects should include financials on North Hempstead local services, surrounding area(s), PW School District, Police, Fire, ambulatory, and utilities serving 145 West Shore Road. (Peter Gaffney)
- The DEIS does not mention the price of sewer and water infrastructure. It is also does not state who will be paying for this infrastructure. (Leslye Kress)

Availability with the Port Washington Water Pollution Control District & Sewage Disposal (§3.7.2.2 Sewage Disposal)

- Please note that as the District has previously indicated in our acknowledgement letter regarding the SEQ RA review dated February 1, 2021, attached, that the practicality and/or feasibility of the proposed connection to the PWWPCD collection system is questionable and may also be cost-prohibitive. Since that February 1, 2022, correspondence, the District has completed our evaluation of the "Request for Sewer Availability" from the Developer to accept the flows from the proposed West Shore Residences Development. The results of this evaluation were presented to the Developer at a meeting held at the District on May 17, 2022. There are significant improvements to the existing infrastructure required to accept the flow from the proposed development. The Developer would be responsible for all the costs incurred by the District to perform these improvements. A preliminary cost of \$17 to \$18 million dollars has been estimated for these improvements. The Developer indicated that they also intended to review other options for the proposed development's sanitary treatment. Please be advised that the

District has not received any correspondence from the developer regarding the request of an "Out-of-District" connection since the meeting on May 17, 2022. The August 2022 DEIS is a bit misleading and inconsistent on sewage disposal and did not include or reference this evaluation by the District or the District February 1, 2021 letter. The DEIS, in various locations, indicated that they were looking into connecting to District, Nassau County or other treatment systems, however other locations in the DEIS specifically indicated that the development sanitary sewer will be connected to the District as an "Out-of-District" connection. (Port Washington Water Pollution Control District)

- Southern Land claims that discussions with the Port Washington Water District and Port Washington Water Pollution Control District are ongoing but this response is wholly deficient. The wastewater connection alone will cost upwards of \$17 million yet Southern Land does not state whether they will pay for these costs so the taxpayers of North Hempstead may end up being liable. (Email sent by multiple individuals – reference Tegwen Epstein)
- Applicant has not identified how it will connect to a sewage district, the process of the connection, the cost of the connection, who will pay the cost, among other deficiencies. To connect, Applicant will need to rip up potentially miles of road impacting traffic and the environment. The cost of the connection will be millions of dollars. The DEIS is deficient as none of this is addressed. See Comments of Dr. Christopher Gobler. (Rigano on behalf of Our Children’s Earth Foundation)
- Septic: As 145 West Shore Road is not served by a sewer hookup, the scoping document, at 3.7(1) required that the DEIS provided “complete projection of anticipated flow rates adjusted for different possible bedroom configurations and including wastewater from any swimming pools, laundry facilities or plumbing fixtures in common-area spaces.” The applicant was further required to “describe all proposed sewer infrastructure including any pumping stations and offsite piping and manholes. Provide an assessment of the capacity of the District treatment plant and street conveyance systems. Identify any required expansions and upgrades.” None of this has been done. See DEIS 1.3.7.1. The DEIS does not even identify to which sewer system the project would be connected to, let alone provide what the infrastructure would be required nor the other data requested in the scoping document. Section 3.7(1) of the Scoping Document further required the applicant to “[a]ssess the potential for a new service connection to potentially be shared by adjacent properties including the Beach Park to the south and the Beacon Hill Bungalow Colony to the north.” This has not been done. (Beacon Hill Bungalow Corporation)
- Statement 1.3.3.1 Groundwater, and related subsequent text: “Because the Proposed Building would not directly utilize groundwater beneath the Subject Property for any reason, for potable and sewage purposes, the Proposed Action to result in significant adverse impacts to groundwater is substantially limited.” Comment - While it is true the Port Washington potable water supply comes from wells located near the LIE, this is because excessive pumping of original supply wells located farther in the peninsula resulted in saltwater intrusion and the fouling of those well. The water supply was subsequently relocated to where the aquifer has a thicker fresh water bearing zone, and

away from areas threatened by saltwater intrusion. The fact remains coastal areas throughout LI are experiencing saltwater intrusion. Relying on water sources away from the coast slows saltwater intrusion, it does not reverse or remedy it. Once impacted coastal potable water sources are gone forever. The impact of increased pumping due to the proposed development for all uses, potable, sewage, landscaping, marina, etc., have not been calculated and estimated on the aquifer. And while not anticipated to be “significant” should be estimated to back up the DEIS’ assertion. Further to this, what additional increased cone of depression will result in Port Washington’s water supply well(s) by the daily flow generated by the proposed new development? (Stephen Cipot)

- I am concerned that if this project is approved, the wastewater that will emanate from that structure be diverted to the Roslyn wastewater system that pipes it to the Cedar Creek facility on the south shore where it will be treated and disposed of in the Atlantic Ocean. You don't even mention the Roslyn facility in your DEIS. (Jane Thomas)
- What is it going to cost our community to hook up the treatment plant? Is there another alternative? (Maria Rhode)
- Treating wastewater and rendering it fit for discharge into our surrounding waters is difficult, very expensive, and getting more expensive every day, as we learn more about how chemical toxins impact our health even at parts per billion and parts per trillion, and wastewater treatment facilities struggle to try to remove these toxins from the water. The folks who manage our wastewater are doing the best they can with the money they have, but it has become something of a losing battle. A giant apartment building produces a lot of this toxic wastewater. The DEIS for 145 Shore Road predicts that the residents of the apartments will produce about 45-50,000 gallons of wastewater per day. And yet, given the gigantic potential impact of this environmental problem, the developers haven't figured out how they're going to handle it. The Draft Environmental Impact Statement conveniently ignores what is arguably one of the biggest environmental impacts of the whole project. There are no water pollution control facilities nearby, so the treatment and disposal of this massive amount of water will require significant infrastructure. Where will 50,000 gallons of wastewater go every day? What new sewer lines will need to be constructed? Who will pay for them? Which community will bear the burden of noisy, disruptive construction of new sewer lines? These questions remain unanswered in what is, by any standard, a grossly incomplete environmental impact statement. (Doug Wood)
- The PWWPCD is one of the oldest sewer systems on Long Island and uses a gravity fed Orbel activated sludge process to remove solids, rag, sand and on summer days reaches an optimum removal of 85-90% nitrogen (N) from the sludge. The clarified filtrate wastewater is then released to Manhasset Bay within NYS defined total N/waste limits. PW, parts of the Villages of Baxter Estates, Flower Hill, all of PW North and Manorhaven (on contract with their own pumping station) are residential customers. Pall Corp/KISS and St. Francis Hospital are commercial customers. The SLC project is in an area not served by the PWWPCD. PW is besieged by groundwater nitrates and excessive nitrogen releases due to stormwater run-off. New and aging septic infrastructure does not control N waste to the extent possible with sewer treatment and in fact, contributes to the Total N Load. Conversion to sewer treatment from septic treatment needs to be

prioritized and completed on the PW peninsula well before accepting 378 or 400 new customers who are not even in the district. Equalization fees to convert to the sewer system are extremely high and should be addressed at all government levels as part of climate change legislation and budget. The DEIS is once again deficient in not providing substantially more information on mitigation of environmental impacts well beyond their inadequate stormwater recapture plan. (Beacon Hill Residents Association)

- The DEIS entirely lacks the information and details for the Planning Board and the public to ascertain the sanitary sewage mitigation measures that are proposed for use at West Shore, their adequacy in preventing adverse environmental impacts, and their impact on the POTW that ultimately would receive sanitary sewage flows from West Shore. (CEA Engineers on behalf of Our Children's Earth Foundation)
- According to the Draft Environmental Impact Statement (DEIS) for the West Shore Residences, this project will generate 50,000 gallons of sewage each day. This is a gross estimate as the DEIS states "The proposed bedroom mix would generate slightly less total sewage than the potential alternative two-bedroom scenario and slightly more than the potential alternative one-bedroom scenario". The DEIS does not state where this sewage will be discharged. It is stated in the DEIS that "Under the Proposed Action, it is proposed that the residential building will connect to either the Port Washington Water Pollution Control District (WPCD), Nassau County Sewer District or another local sewer district." A declaration of precisely where the 50,000 gallons of sewage will be sent is critical. Most sewage treatment plants treat sewage to an effluent level of 10 mg N per liter. For example, according to NYSDEC SPEDES data, the Port Washington plant discharges 10 mg N per liter. This project, therefore will be generating 7,500 pounds of nitrogen annually pre-treatment, and will discharge more than 1,500 pounds of nitrogen to the environment annually after being treated. The issue of which sewage treatment this project will connect to will dictate where roads will be need to be excavated to lay new sewer lines, the level of treatment the sewage will receive and even the ultimate location of the sewage discharge. The Port Washington Water Pollution Control District plant is more than three miles away from the proposed project. The next two closest plants are Great Neck Water Pollution Control District and the Glen Cove sewage treatment plant, which are located across major water bodies (Hempstead Bay and Manhasset Bay, respectively) and are six and nine miles away, respectively. Distance matters, as roads will be to be excavated to install miles of pipe and the cost for a miles of sewer pipe will be millions of dollars which will be in addition to pump stations that need to be constructed to transport the sewage. While the Port Washington plant might make the most sense to connect to for this project, none of the regions already connected to this plant are close to the proposed project. The Port Washington Water Pollution Control District serves more than 28,000 residents and businesses in the greater Port Washington area, including the Village of Port Washington North, and portions of the Villages of Flower Hill and Baxter Estates. In addition, under the terms of an outside contract, the District treats the sewage collected by the Village of Manorhaven which the village conveys to the District via their sewage pumping station. The two major non-residential users in the District are Pall Corporation and St. Francis Hospital. None of the regions are close to the proposed project at 145 West Shore Road. This means extensive piping will need to be installed. The DEIS did not solidify an agreement with this plant suggesting

that perhaps this plant is at capacity or is, for some other reason, not willing to accept sewage from the proposed project. Beyond disruption of the streets of Port Washington associated with plumbing this project, the question of where will the sewage go is critical. Different plants discharge to different water bodies. While the Port Washington Water Pollution Control District Plant and Great Neck sewage treatment plants discharge to Manhasset Bay, the Glen Cove plant discharges to Hempstead Bay and Harbor. The environmental impacts of this project on surface water cannot begin to be determined until the precise water body what will receive its sewage is known. And while the 50,000 gallons of sewage per day from this project will be treated, it will not eliminate the nitrogen from the discharge. The Port Washington Water Pollution Control District Plant discharges 10 milligrams of nitrogen per liter, a level that is more than 20-times greater than the surface waters of Manhasset Bay and Hempstead Harbor, assuring this discharge will stimulate the growth of algae and toxic algae (Figures 1-3) and contribute toward hypoxia (Figure 3).



Figure 3. Water quality impairments observed across Long Island during months of June through September 2022. Hempstead Harbor and Manhasset Bay experienced dozens of fish kills, toxic algal blooms, and chronic hypoxia during this period.

(Christopher Gobler on behalf of Our Children’s Earth Foundation)

- The DEIS indicates that the proposed 176-unit building will generate between 45,000-50,000 gallons per day of wastewater that will require professional treatment by a pollution-control facility. The site is currently not connected to any public water or public sewer systems. In the DEIS, the Applicant states that the proposed development’s wastewater will be sent to Port Washington, Glen Cove, or a Nassau County wastewater treatment facility and that the development will be connected to a public water supply system. However, no feasibility analysis has been conducted by the Applicant, no

wastewater treatment facility has indicated that it would be amenable to the receipt of such a volume of wastewater, no public water supplier has agreed to provide the necessary water, nor have any technical feasibility analyses been conducted regarding the three aforesaid alternatives to determine if they would accept this projected volume of wastewater, and whether it would be feasible for the necessary connections to be made to the alternatives listed for sewer and water based on existing capital plans and budgets. As the DEIS analysis assumes that the Water and Sewer Districts will make those connections without providing any documentation to support that assumption, moving forward without a plan is reckless. ...Because there is no commitment from the Port Washington Water or Sewer Districts to provide a connection, the EIS should also analyze the impact to the environment if the development had to provide their own water supply and on-site sewer systems (ie. Aquifer and nitrogen/phosphorus discharges to Hempstead Harbor). (Residents Forward)

- 3.7.2.2 - Sewage Disposal: The Final Scoping Document required the following items to be addressed in detail:
 - *Fully describe all proposed sewer infrastructure including any pumping stations and offsite piping manholes.*
 - *Provide an assessment of the capacity of the District treatment plant and street conveyance systems and identification of any required expansion and upgrades.*
 - *The potential for a new service connection to potentially be shared by adjacent propose including the Beach Park to the south and the Beacon Hill Bungalow Colony to the north.*

While it is understood that a detailed design would not have been completed at this stage, it was expected that a schematic plan would be ready for evaluation. Instead, the document indicates that the method of sewage disposal is still unknown, only stating that the preferred plan includes building a force main and pumping station in the hope of connecting to a public sewer district (Port Washington, Nassau County or “another local district”, whatever that may mean). Correspondence received from the Port Washington Water Pollution Control District indicates a high level of concern with the feasibility of establishing a sewer connection. This is not an issue that can be deferred until later in the process. Not having a viable means of sewage disposal would render the Town unable to complete the environmental review or to consider the site as suitable for multi-family use. (TNH Planning Department)

Availability with the Port Washington Water District & Water Supply (§3.7.2.3 Water Supply)

- Scoping Document 3.7(2) required that water impacts be studied. This is of particular concern to Beacon Hill Colony as it served by the same water tower, and any shortfall is likely to impact the Beacon Hell Colony community members. But DEIS 1.3.7.2 does not require the items demanded I the Scoping Document, indeed, the DEIS states, “Discussions are ongoing with the PWWD regarding the analyses performed by the Applicant, the infrastructure required, and the measures needed to secure a letter of water availability.” The applicant needs to identify if there is sufficient water, and what

measures would be needed, as well as any impacts on Beacon Hill Colony from its water usage. (Beacon Hill Bungalow Corporation)

- As the DEIS analysis assumes that the Water and Sewer Districts will make those connections without providing any documentation to support that assumption, moving forward without a plan is reckless. In addition, the DEIS does not include any analysis on the effect the development will have on the aquifer. It is well known and documented that the aquifers are already being over pumped and the quality of the groundwater in Long Island is deteriorating from contamination, as well as from the inland movement of the saltwater/freshwater interface. This is the reason New York State embarked on a \$6M Groundwater Sustainability Study currently being conducted by the United States Geological Survey. The additional pumping that would be required according to the DEIS (51,315 gallons per day/18,729,975 gallons per year) represents approximately 1% of the Port Washington Water District (PWWD) total. The effect the additional pumping (residential drinking, washing, and cleaning, fire suppression, pool, marina, landscaping, etc.) will have on the already overtaxed public water system must be analyzed, and those impacts documented in the DEIS. This is especially important because in 2016 LI water districts were asked by the DEC to reduce peak season water use by 15% due to concerns of saltwater intrusion, contaminant plume migration, salt water up coning and competing demands. In addition, the PWWD announced stringent water conservation measures in 2021 to reduce irrigation by 20%. Because there is no commitment from the Port Washington Water or Sewer Districts to provide a connection, the EIS should also analyze the impact to the environment if the development had to provide their own water supply and on-site sewer systems (ie. Aquifer and nitrogen/phosphorus discharges to Hempstead Harbor). (Residents Forward)
- 3.7.2.3 - Water Supply: The Final Scoping Document required the following items to be addressed in detail:
 - *Assess the capacity of the District to service the projected demand. Identify any potential new infrastructure or facility upgrades that may be required.*
 - *There is currently a moratorium in effect for new water service connections to enable the District to fully evaluate the impacts and possible treatment methods of 1,4-Dioxane. Discuss any impacts the moratorium may have on the execution of the Proposed Action.*

As of this date, the analysis of the required infrastructure, associated costs and related impacts is still missing. We understand that the Project Sponsor is awaiting information from the water district, but The Town will be unable to complete the environmental review until this is provided. (TNH Planning Department)

Conservation Efforts of the Port Washington Water District (§3.7.2.3 Water Supply)

- Many people spoke at the meeting of September 28, 2022 regarding our water shortage concerns. What about the future? Sea water is already creeping in on our peninsula. I know we are connected to the county wells. I read in the newspaper that Suffolk, as well as Queens were trying to tap in on our wells. Where are going to get water from when

the wells get dangerously low. The City gets water from upstate New York and they have been running a shortage. (Maria Rhode)

- Residents are restricted to watering lawns on odd or even days and only after 3 AM. Given everything I've read, studied, and learned in over 40 years of living in Port Washington, this is a giant mistake. This is a peninsula. We get our water from aquifers. There are 3: the upper glacial, the Magothy and the Lloyd. We have saltwater intrusion on the first two and, theoretically, not supposed to tap into Lloyd, but the district has. (Scott W. Winter)
- In the DEIS, SLC estimates an additional use of 18.1 million gals. For 378 new residents. PW has achieved a 1.1% reduction in water use from 2018-2020 with water conservation measures. New build will increase usage by 1.4% and would wipe out all conservation gains over the past several years.
 - All of Long Island is currently in a state declared drought, so water conservation is extremely important.
 - Groundwater/drinking water conservation has been practiced in PW for several generations with even/odd watering days and district goals to cut back usage yearly, especially in the summer. This year the PW water district has requested a 20% reduction in water usage.

(Beacon Hill Residents Association)

- Sustainability of the Water Supply The proposed project's projected water demand is 51,315 gallons per day (§3.7.2.3, p. 207). The estimated demand for water includes use by all residential units within the building, as well as building amenities, facilities, and irrigation. In earlier pages of the DEIS, a reference is made to the Nassau County groundwater report (2005). The DEIS states that "Despite the increase in water usage, the report notes that there is no threat of running out of available groundwater for water supply purposes, as recharge to the groundwater exceeds the amount of water withdrawn" (§3.3.2.1, p. 95). At §3.7.3 Proposed Mitigations, the DEIS states: "No significant adverse impacts to community facilities and utilities have been identified. Therefore, no mitigation measures proposed, beyond what is outlined above. The Proposed Action is expected to benefit community facilities with respect to increased tax revenues that would be generated by the new improvements..." (p. 212). CSHH's long-time concern with respect to new high-density developments has had to do with the adequacy of the drinking water supply. Water districts often give the approval for new connections based on whether there is physical/engineering capacity to pump the water—NOT on consideration of whether the water supply is adequate or whether over-pumpage could result in salt water intrusion or increased pollution risk to the aquifer. (Notably, the Port Washington Water District has not to date provided a letter of water availability to Southern Land Company; see §3.7.2.3, p. 208.) Long Island has one source of potable water, which means extreme precautions must be observed to protect the entire supply. CSHH has commissioned a water-sustainability report, "Water Supply Sustainability for Hempstead Harbor Communities" (<https://coalitiontosavehempsteadharbor.org/wp-content/uploads/Water-Sustainability-Report-102122.pdf>). This report has been thoroughly researched by Professor Sarah Meyland, MS, JD, who is a well-known expert

on the status of Long Island's sole source aquifer. The report investigates the potential impact on local water suppliers of the many multiunit development projects proposed or partially completed along the Hempstead Harbor shoreline, including the projected impact from West Shore Residences. Despite the Department of Environmental Conservation's (DEC) 2016 directive to all water suppliers to reduce peak water demand by 15%, most local water districts failed to even get close to achieving that reduction. In some instances, water use increased. The data collected for this analysis covered three years from 2018 to 2020 and therefore does not include the hot, dry weather events over this past summer, which highlighted the fragility of our local water supply. (See the section below on "Port Washington Water District and Impact of West Shore Residences.") Response to DEIS Statement Referencing Nassau County Groundwater Report. Before addressing the specific impacts of the West Shore Residences on the water supply, it is necessary to highlight the statement from the DEIS above (p. 95) that references the 2005 "Nassau County Groundwater Monitoring Program, 2000-2003" report. According to Professor Meyland, the report presents only a small portion of the total picture of groundwater conditions in Nassau County. Page i of the Executive Summary of the Nassau County Groundwater Monitoring Program report states: "In addition to describing the groundwater monitoring program and presenting the raw data in tabular summaries and graphical representations, the report briefly describes how the County's groundwater system functions, and how weather patterns, along with public water supply pumping and other variables, can have a profound effect on the groundwater system. The report points out that many variables have an influence on the groundwater system and must be considered collectively when assessing the overall behavior of the system" [emphasis added, but see Nassau County Department of Public Works (DPW), 2005, p. i]. Professor Meyland explains that: "...to compare the relationship between recharge and public water supply pumpage as being equal factors in determining the health of the Long Island aquifer system, is to mislead readers into an incorrect understanding of how the groundwater system works and responds to change. To portray to the public that as long as public water supply pumpage does not exceed recharge means that the groundwater system and water supply are not at risk is flatly wrong. The DEIS statement is incorrect as a matter of science." The DPW report (2005, p. i) also notes in the same Executive Summary that "Annual water demand during both 2001 (203 mgd) and 2002 (200 mgd) [the time-frame of the study] significantly exceeded the annual long-term average of 185 mgd." This is noteworthy because the 185 million gallons per day (MGD) withdrawal level is what the NYS DEC defines as the upper limit of safe withdrawal levels for Nassau County. More recently, the NYS DEC reported that, during the years 2013 – 2019, groundwater withdrawals in Nassau County exceeded the 185 MGD level, 4 out of 7 years and the average withdrawals over the 7 years was 186 MGD. (State of the Aquifer, 2019 update, Long Island Commission for Aquifer Protection, p. 14) Thus, over pumping the groundwater system in Nassau County continues. Thus, new water demand should be discouraged rather than accommodated. Public water supply pumpage should be reduced and not allowed to grow further." Port Washington Water District and Impact of West Shore Residences. The Port Washington Water District, like other water districts around Long Island, had to address peak water demand this past summer not only during a drought, but also with three of nine wells offline due to the presence of 1,4-dioxane. The water district therefore required Port Washington residents

to reduce irrigation usage by 20%. Washington WD's annual water demand was 1,324,795 million gallons (the second highest among water districts around Hempstead Harbor). Peak pumpage (May – September 2012) was 743,878 million gallons, representing 56.1% of total annual pumpage. Over the most recent three years for which water-use statistics were available at publication of CSHH's "Water Supply Sustainability for Hempstead Harbor Communities," Port Washington's average peak pumpage for 2018-2020 was 735.704 million gallons, representing only a 1.1% reduction from 2012 peak pumpage—not the 15% reduction called for by DEC. (See "Water Supply Sustainability for Hempstead Harbor Communities," Tables 4 and 5 (<https://coalitiontosavehempsteadharbor.org/wp-content/uploads/Water-Sustainability-Report-102122.pdf>)). West Shore Residences would put further strain on the Port Washington Water District to meet DEC's peak season water use reduction and actually negate the small reduction the water district was able to achieve. A summary of the impact of West Shore Residences on water demand for Port Washington Water District is provided below based on projections in the DEIS. Our fragile aquifer does not have unlimited supply. And as salt-water intrusion and emerging new contaminants force water districts to take wells offline, meeting water demand for even current residential and business use will become increasingly difficult. There is no mitigation for water demand created by West Shore Residences—not because, as the Southern Land Company claims, there is no impact and therefore no mitigation necessary. On the contrary, there is no mitigation possible that can ensure our adequate drinking water supply. According to Professor Meyland, "The risk as stated in the DEIS is not one of 'running out of water.' The risk is to the type of water the aquifers will hold. There will always be water in the aquifers of Long Island. The real question is whether that water will be drinkable or not without expensive efforts to make it drinkable again." See also Appendix 1 attached, describing how the groundwater system on Long Island works. (Coalition to Save Hempstead Harbor)

Remediation Requirements of the Port Washington Water District (§3.7.2.3 Water Supply)

- Further, as was noted at the public hearing on 9/28/2022, SLC has yet to secure a commitment from the already cost-strapped, capacity-limited, conservation-intent, and in 1-4 Dioxane and PFOS/PFAS remediation-deferral Port Washington Water District to supply 50,000+ new, additional gallons per day of potable water, while the DEIS lacks a plan, cost, or designated agency to handle an estimated 55,000+ gallons per day of resulting wastewater. PWWD would have to engineer additional potable water supply and remediation infrastructure, bear the capital expense, and expand its water pumping to supply new demand at 145, at the same time it is begging, demanding its residents conserve by at least 20%. If PWWD was actually able and willing to supply the SLC project's potable water demand, doing so would require PW Water Pollution Control District to install and operate miles of force main, following a selection and design phase -- assuming the chosen facility could accept the new volume of effluent, which no remediation agency or SLC's DEIS even mentions or confirms. As it stands, PWWD pays per gallon for the cost of 1-4 Dioxane and PFOS/PFAS remediation -- the capital costs of which the Town recently permitted PWWD to bond out at \$38 million -- yet may

soon run out of adequate aquifer supply capacity, and may have to seek alternatives, like an interconnect to upstate water supply mains on the Queens-Nassau border to secure clean drinking water, at even higher capital, supply and operating costs yet to be determined. There are three dormant southern Nassau interconnects, but there is no existing northern Queens-Nassau interconnect that could supply the North Shore water districts, including Lakeville-Manhasset and PWWD. Any development requiring an additional 50,000+ gallons per day of new water pumping and remediation would push PWWD in the direction of having to source upstate water, sooner, via a new interconnect, at a capital cost estimated to be in the scores of millions of dollars, over a timeframe of several years. (Bob Mann)

- The PWWD is currently dealing with the contaminant 1,4-dioxane, spending millions of tax dollars to eliminate this chemical known to cause cancer. Other chemicals, from PFAS to pesticides, from motor fuels and industrial solvents to pharmaceuticals, are slowly making their way down into our aquifers. In the case of 1,4-dioxane and PFAS, levels in the parts-per-billion and parts-per-trillion range in drinking water can cause harm to humans. These chemicals are found in the everyday items people use, from myriad cleaning products and laundry detergents to personal care and cosmetic products. All of these chemicals go down drains every day, increasing the burden on water providers. Any remediation will only be able to reduce the amount of chemical contaminants. In fact, the EPA is moving to a higher standard for public health protection in regards to some chemicals, including those already found in our drinking water. People in apartment buildings use just as much water as people in single family homes, and according to the DEIS, the hundreds of residents of the proposed building will use 45,000 gallons of fresh water every day, while another 4,500 gallons of fresh water will be used for irrigation. I note here that the DEIS is conflicted on this point. In one section it promises to capture and use rainwater (wishful thinking) for irrigation, but in other places it estimates using thousands of gallons a day to keep the landscape green. The would-be developers of the property at 145 West Shore Road have or are anticipating the receipt of a water availability letter from the Port Washington Water District. But it will not address the existential issue: will we have enough water? The developers promised the DEIS would analyze "the capabilities of the district to accommodate this demand," but there is no such analysis in the DEIS. Recently the Port Water District has been engaged in an aggressive public education campaign urging residents to conserve water. How is building a large apartment complex with sinks, toilets, bathtubs, showers and washing machines helping to conserve our fresh water supply? It's not. It is actually jeopardizing the drinking water of the entire peninsula. On Long Island we have the highest per person rate of water use of any coastal region from North Carolina to Montauk. Port Washington is no exception. (Patti Wood)
- US EPA has recently come out to protect underground sources of drinking water from underground injection (UIC). A statement of protection needs from the applicant sponsor needs to address drinking water protection. (Peter Gaffney)
- DEIS is deficient on describing impacts of building on water supply, especially in light of additional AOP process for remediation of 1,4 dioxane and nitrates which will not be completed until 2023. Village of Sands Point recently announced several of their wells

also will require additional contaminant treatment to be in compliance with NYS Laws for potable water. (Beacon Hill Residents Association)

Impacts to the Port Washington Fire Department (§3.7.2.4 Fire Protection and EMS)

- Please note that the DEIS did not directly assess for adverse impact on the Fire Medic Services, which could be significant in a building of 370 residents, most of whom are expected to be seniors. Section 3.7.1.3 Port Washington Fire Department. In this 1 1/4 page section, the DEIS presents information provided by the PW Fire Dept. Services (including EMS) relative to fire protection services offered in the area, and number of fire, rescue, and EMS over the past few years. No analysis is presented with regard to the impact of this development on the PWFD. There is no information with regard to if it is safe for our volunteer PWFD to provide the coverage this proposed development would require. (Mary Houlihan)
- Section 3.7. Port Washington Fire Department. The DEIS presents information provided by the PW Fire Dept. Services (including EMS) relative to fire protection services offered in the area, and number of fire, rescue and EMS over the past few years. The DEIS says that less than one additional volunteer is needed to cover the proposed 378 residents. It seems there should be a safety analysis as to whether the PWFD Fire Medic service has the manpower resources to handle a new residence that caters to seniors. With the presence of the Amsterdam and the Harbor View already in town, PWFD medics are already in demand. Medics and other members of PWFD are already spread thin. Please have an evaluation conducted before making additional commitments, and risking the safety of the PWFD and the current residents of Port Washington. Also, with regard to the parking of fire trucks and response equipment, the DEIS indicates that this equipment would park on the grounds of North Hempstead Town Park. Shouldn't the development have more parking area for fire responders? (Mary Houlihan)

Impacts to the Port Washington Police Department (§3.7.2.5 Police Protection)

- Will Port Washington have to build an auxiliary police station or ambulance depot? I do know that they are at present very busy. (Maria Rhode)

Impacts to the Port Washington School District (§3.7.2.6 Port Washington Union Free School District)

- 3.7.2.6 - Port Washington Union Free School District: The Final Scoping Document required the following items to be addressed in detail:
 - Obtain future enrollment projections absent the Proposed Action from the School District and/or the applicable Board of Cooperative Education Services.

- *Project any changes to future enrollment resulting from the Proposed Action for at least three different bedroom configurations (the mix of one-, two- and three-bedroom units). Empirical data shall be used to supplement published references where possible.*
- *Project any additional facilities, vehicles, staffing or other forms of capacity that may be needed to accommodate additional enrollment resulting from the Proposed Action.*

The first two were not provided and the third may be inaccurate. We acknowledge that the Project Sponsor is still awaiting information from the school district, but a vague statement that the *projected-generated enrollment increase is well within the range of typical annual enrollment fluctuations that the district experiences* does not constitute a projection of future enrollment absent the project as was required.

It is not acceptable to claim that an analysis of alternative bedroom counts is not feasible simply because the Project Sponsor chose to utilize a study that did not use bedroom counts as the index. The Project Sponsor was directed to *utilize empirical data to supplement published references* specifically for this reason. The projection of site-generated enrollment is inextricably linked to the number of two- and three-bedroom units. Utilizing an aggregate ratio of 0.08 students/100 units devoid of any context or any indication as to whether the “randomly selected” 14 case studies are a representative sample is of no validity.

The conclusion that the school district will not experience any significant impacts or require additional capacity or staffing might ultimately prove to be accurate but cannot be substantiated at this point with the deficiencies in the methodology used to calculate projected enrollment increases. (TNH Planning Department)

Cost per Student Analysis for the Port Washington School District (§3.7.2.6 Port Washington Union Free School District)

- The number presented was a \$26,000 per pupil 'fee', times 16-18 students, though that estimate does not account for what grade, what school, and actual incremental costs for actual incremental students, which could be dramatically different, inclusive of costs of busing (virtually assured), any special requirements, outplacement and/or mandate costs, and the continuing, actual cost of any upside volumes and related impacts. (Robert W. Mann)
- In addition, based on actual, highly detailed NYSED school district cost figures for 2020, the claimed funding impact cost per student cited by Applicant is a highly marginal measure, not a full-allocated cost per student. A more realistic, but still not fully-allocated cost per student is four times the rate and dollar cost per student the Applicant uses. Even that does not include the impact of transportation, the requirement for which from Applicant's location to any Port Washington UFSD school is absolute. In addition,

Applicant's claimed cost impact ignores the cost impacts of any required special education, or BOCES, or private school education costs which are mandated to be funded by the district. (Bob Mann)

- A news article reported that Southern Land targeted older adults with “empty nests” and towards “elder millennials” who are single or newly married. Then why is Southern Land providing Port Washington School District with an upfront payment between \$500,000 to \$1 million? (Peter Gaffney)
- Southern Land Company claims it will be “gifting” \$1 million to Port Washington schools and “paying \$26,000 per student, for every student in the building” (Dustin Downey, Southern Land Company’s Chief Investment Officer. Newsday article dated July 19, 2022.) but this amount:
 - (1) Is significantly less than the \$32,000 (Estimate based on \$174.8 million proposed budget for 2022-23 (per portnet.org) for 5,531 students (per nces.ed.gov for 2020-21). that Port Washington will actually spend for every student per year based on the 2022-23 school budget;
 - (2) Will only fund 14 kids for about 2 years (or for 100 kids less than 4 months) based on the current spending rate; and
 - (3) Is essentially being funded from the property taxes that they are not going to pay under the PILOT program with the IDA.

(Alice Chong)

Estimated number of students Analysis for the Port Washington School District (§3.7.2.6 Port Washington Union Free School District)

- SLC believes that only 14 school-aged children will live in this 176-unit apartment building (i.e., only 7 families with 2 school-aged children). I believe this is grossly underestimated particularly since Census.gov estimates that children under 18 represent over 26% of Port Washington's general population. In the Stony Brook University study that SLC cites to get to their estimate of 14 school-aged children, they use an apartment building in Glen Cove that consists of mostly studio and 1-bedroom apartments (i.e., over 80% of the total apartment stock) whereas SLC's development is mostly two- and three-bedrooms. Furthermore, most of the apartment buildings cited in the study are in Suffolk County which are not comparable. (Michelle Bagnato)
- The SLC study estimates 14 children will be added to the school district. I believe it needs to be compared to the Avalon in Great Neck, where it was estimated seven children will be added, but after move-in, 70 children were added to that district. (Morgann Graubard)
- Southern Land is citing an irrelevant research paper from Stony Brook which surveyed apartment buildings that are 55+ communities, buildings that are primarily in Suffolk county and building that are in poorly rated school districts. (AlanTankoos)

- I find selection bias in the Stony Brook University study of school age children at multi-family developments cited by Applicant and its expert as 'comparables.' These claimed 'comps' are all significantly further out on Long Island, with poorer commuting access to New York City, in lower performing "C+", "B-", "B", "B+", and "A-" rated school districts (per Niche ratings, used to guide real estate buyers). Thus all are less accessible and less desirable school districts than the close-in to New York City "A+" rated Port Washington UFSD. Port Washington is a comparatively desirable place to live, with frequent, single-seat LIRR service to Penn Station and Grand Central Terminal, and Port Washington UFSD is a comparatively more sought-after "A+" school district that parents select for its superior K-12 schools, even though it is an expensive place to live. So, Port Washington is not a 'comp', Port Washington UFSD is not a 'comp', and the cited impact and costs are not 'comps'. There are other "A+" rated districts locally, including Great Neck, Roslyn, Manhasset, Herricks, and North Shore, which Applicant and its experts did not cite as 'comps'. In fact, Port Washington's locational desirability and relatively high prevailing income are among the reasons Applicant believes it can charge relatively high rents to live in its development, while stating that its 'affordable apartments' would be available to those with incomes of 'up to \$190,000 annually', at yet-unstated rental rates. Unraveling Applicant's 'comps', Port Washington's superior location and superior school district desirability argue for a much higher ratio of school-age children to apartments and occupants than the 0.08 Applicant uses. Using Applicant's 'comps', the highest "B" rated school district has a ratio of 0.27 (more than three times Applicant's claim of 0.08 for Port Washington), and the highest, but much further out on the island and thus and less accessible "A-" districts have ratios of between 0.16 and 0.18 (twice or more Applicant's claimed ratio). A realistic close-in "A+" district ratio number might be 0.40-, or five-times Applicant's estimate, which mirrors the actual ratio of school age children to local population -- 40%. (Bob Mann)
- Southern Land believes that only 14 school-aged children will live in this 176-unit apartment building with approximately 400 residents. I believe this is grossly underestimated particularly since Census.gov estimates that children under 18 represent over 26% of Port Washington's general population which would imply 100 additional children attending Port's Schools. To keep their numbers intentionally low, Southern Land is citing an irrelevant research paper from Stony Brook University which surveyed apartment buildings that are 55+ communities, buildings that are primarily in Suffolk County and buildings that are in poorly rated school districts. I believe our school system will be inadequately funded to handle an influx of new students. (Bob Mann)
- What about the projection of an increase of only 14 students to the school system? What kind of math has 176 apartments housing so few children in a school district that is rated among the highest in the state? (Scott W. Winter)
- SLC believes that only 14 school-aged children will live in this 176-unit apartment building (i.e., only 7 families with 2 school-aged children). (Pg. 24 of DEIS.) This is likely grossly underestimated given that Census.gov estimates that children under 18 represent over 26% of Port Washington's general population, which would imply approximately 100 new children based on Southern Land Company's estimate of 378 residents for the building. As a real estate developer, Southern Land Company should

understand the importance of location, school zones and “55+” communities. All of the apartment buildings included in this report are not comparable and thus if the population of the residents reflects the rest of Port Washington, there could be an additional 100 children in Port’s schools.

Southern Land Company relies on a white paper report published by Stony Brook University to estimate the number of school-aged children but this report is not applicable to Port Washington for several reasons.

	Apartment Complex	City	County	Zillow/ GreatSchools Rating (1)	Total # of Units	Students Per Unit
Nassau County	Avalon at Glen Cove	Glen Cove	Nassau	NA/5/4	367	0.09
	Avalon Garden City	Garden City	Nassau	5/3/4	204	0.06
	Avalon Westbury	Westbury	Nassau	5/3/4	3,298	0.12
	One Third Avenue	Mineola	Nassau	NA/NA/4	2,960	0.05
	The Allure Mineola	Mineola	Nassau	NA/NA/4	2,000	0.03
	The Cornerstone at Farmingdale	Farmingdale	Nassau	2/3/6	NA	0.07
	The Jefferson at Farmingdale	Farmingdale	Nassau	2/3/6	NA	0.04
	145 West Shore Road	Port Washington	Nassau	7/7/6	176	
Suffolk County	Fairfield Knolls at Port Jefferson	Port Jeff. Station	Suffolk	NA/4/5		0.01
	Providence on the Park	Islip Terrace	Suffolk	7/4/7		0.00
	The Reserve at the Boulevard	Yaphank	Suffolk	2/4/5		0.10
	Enclave at Charles Pond	Coram	Suffolk	2/4/5		0.17
	Fairfield at Broadway Knolls	Holbrook	Suffolk	2/7/7		NA
	Medford Pond	Medford	Suffolk	NA/NA/5		0.27
	New Village at Patchogue	Patchogue	Suffolk	2/6/5		0.07
	The Point at Pine Ridge	Coram	Suffolk	2/4/5		0.16
Avalon Huntington	Huntington Station	Suffolk	4/4/5		0.18	
Average Applied by Southern Land Company:						0.09

The schools that are zoned for the apartment buildings in the study are extremely poorly rated and some do not even have an elementary school listed.

More than half of the apartments analyzed in the report are located in Suffolk County which are not comparable to Port Washington.

The closest apartment complex which is in Glen Cove mostly consists of studios and 1-bedrooms (versus mostly 2- and 3-bedrooms in SLC’s building) and thus is not comparable.

This study includes “55+” apartment buildings which are not comparable as these are specifically for residents that are ages 55 and over.

Southern Land applies the overall average to the number of apartments to derive their estimate of 14 children.

(Alice Chong)

- With regards to the School System: SLC claims that there would be only 14 students added to our schools.
 - Q16. How is this data collected and what is the guarantee that the numbers presented by a firm hired by the developer are correct? Since this does not represent senior housing and there are many 2–3-bedroom units proposed, how can SLC justify such a low number? We feel that this number is grossly underestimated.
 - On SLC website, you discuss Patchogue as an example of growth, yet they have had 48 students for a 219 Unit development. This is 40% above 176 Unit. Using this example, the estimate for 145 West Shore Rd is at least 29 students. The data from Patchogue on your website says your estimate is off by over 100%. Q17. What is the process by which these data are verified? The number of students is a significant issue for our school system. The one time million-dollar donation to the school board does not consider the long-term consequences to class size and additional infrastructure cost with a substantial number of added students. The Port Washington families pay very high taxes for our school district, and we look to the Town Board to ensure the quality of our schools and our children’s education.

(Mitchell Farms Neighborhood Association)

Chapter 3, Section 3.8: Noise

Baseline Noise Measurement (§3.8.3.1 Noise Measurement Results)

- Page 216 Section 3.8.3.1. Noise Measurement Results: This applicant's DEIS reports that noise level measurement was done at one on-site location (Monitor 3; See Figure 3-19). Monitor 3 measured noise level at the NW corner of the site, by the Bay Aggregate industrial entrance gate to 145 West Shore Rd, and adjacent to Tilcon's industrial property at 145 West Shore Rd. Measurements were taken one day between 10:00 am and 1:00 pm. (and again at night) This measured Mobil/Transportation sources of noise, from vehicles entering and exiting this industrial site, and from the roadway. This day peak hour decibel equivalent was 67.4. The DEIS used this data as their noise baseline for Mobile Source Assessment. Page 219, Section 3.8.4.2 Stationary Source Assessment " The existing noise level measured at the Subject Property is over 65 dBA. The Proposed Project is expected to result in a reduction of noise levels at the Subject Property as compared to existing conditions..... there would be no significant adverse noise impact from stationary sources." DEIS Data Omission: No noise monitoring was conducted at a Stationary Source location, nor at the southern end of this site. The Mobil/Transportation Noise Assessment data (67.4 decibels) was used. Noise monitor No. 2 was placed at the adjacent NE end of the Town of North Hempstead Beach Park for the same period; the peak hour equivalent noise level there was 51.0 decibels, significantly less than the 67.4 level used by this DEIS. Therefore, please consider that additional, more relevant Stationary Source noise measurement data is needed before this applicant can conclude that no significant adverse noise impact from stationary sources will occur for the people enjoying the Town of North Hempstead Beach Park. (Mary Houlihan)

Impacts to Beacon Hill Colony (§3.8. Potential Impacts)

- The scoping document required noise receptors at certain locations, including at the entrance of Beacon Hill Colony. See Scoping Document 3.8. Yet there is no indication that that receptor was included. The DEIS is unclear as to the noise impact on Beacon Hill Colony, both after and during construction. (Beacon Hill Bungalow Corporation)

Chapter 3, Section 3.10 Light Deprivation and Shadows

- The shade study suggests there is no significant impact. However, the developer selected certain time periods, and ignores the impact of shade at the start of day. Shade will impact areas to the west, including roadways which will have prolonged icing. (Ise Stalis & Rosemarie Gilpin)

- The Shadow Study included in the DEIS is incomplete. There are no figures in the DEIS that show the extent of shadows that would be cast onto Hempstead Harbor. Without this forecast, there is no evidence to support any claims made by SLC, including the statement that “the shadows would have a minimal impact”. Considering the height of the proposed building, and its proposed location along the waterfront, the DEIS provides no proof that significant shadows will not be created during certain times of the day. Historically, any structure built where there was no preexisting structure has created significant shadows and, therefore, significant impacts to marine life and the adjacent parks and preserves. The DEIS is required to include an accurate analysis of the shadows that will be created by the proposed construction, and the appropriate measures that will be introduced to offset the enduring adverse impacts arising from the permanent shadows that will be created. (Residents Forward)

Chapter 3, Section 3.11: Coastal Resiliency

Additional Regulatory Framework (§3.11.1 Regulatory Framework)

- If Applicant is approved, what storm hardening will be required, and have FEMA, EPA, or Army Corps of Engineers been contacted to express their opinions on the proposal? In light of the proposal’s shoreline location, it would seem appropriate for the Town to involve FEMA, EPA, and the Army Corps of Engineers early-on, prior to any comment on the DEIS, especially given discussion of the Corps constructing flood barriers at entrees to the Sound, which would intensify water rise and flooding to the East, including the subject location. (Robert W. Mann, Jr.)
- Because of the environmental sensitivity, a USACE permit, or letter of permission should be required. The DEIS should provide specifics involving excavation, any dredging and fill material into the harbor. DEIS must include details on placement of structures, or activities that can destroy the soil below. Building in this sensitive environment, quality of land fill must be approved, detailed and documented. (Peter Gaffney)

HAT Feasibility Study (§3.11.3 Potential Impacts)

- The section of West Shore Road that includes 145 West Shore Road was specifically targeted in a just released report put out by The U.S. Army Corps of Engineers and a number of other state and federal agencies including the DEC. That section is marked as recommending "Induced Flooding Features". As this report just came out a few days ago it is necessarily not considered in the Draft Environmental Impact Statement from Southern Land Company. The report is titled: Draft Integrated Feasibility Report and Tier 1 Environmental Impact Statement NEW YORK-NEW JERSEY HARBOR AND TRIBUTARIES COASTAL STORM RISK MANAGEMENT FEASIBILITY STUDY The study underlying the report represents a tremendous effort put forth to find ways to

provide coastal storm risk management to the Study Area and was ordered in the aftermath of hurricane Sandy. Moving forward we will want to be in step with whatever larger measures are being put in place to protect us from future hurricane Sandy's. The current plans for 145 West Shore Road have the potential to make it difficult to enact these measures thus putting us all at greater risk. Therefore the DEIS should include statements showing us that this report was carefully considered. (Andrew Shaffer)

- NEW YORK-NEW JERSEY HARBOR AND TRIBUTARIES COASTAL STORM RISK MANAGEMENT FEASIBILITY STUDY released yesterday by the Army Corps of Engineers and various state and Fed agencies including the DEC. 145 West Shore Road appears to be identified on the map as "Induced Flooding Features". Presumably this was not taken into account by the DEIS for the 145 West Shore Rd location. https://www.nan.usace.army.mil/Portals/37/NYNJHATS%20Draft%20Integrated%20Feasibility%20Report%20Tier%201%20EIS.pdf?fbclid=IwAR1_e3oodKt1em5RTH5npqfc28Oj0b7fZo3pHKUEPK1eayox7um1Ecaf45A . (Edda Ramsdell)
- Cross LI sound storm barrier implications as discussed by the USACOE and NYC: The USACOE1 has been actively developing and presenting an alternative to protect New York City with constructing a “cross LI sound storm barrier” located the Throgs Neck Bridge. If plans come to fruition the barrier will negatively impact and completely alter storm dynamics and the impacts to Hempstead Harbor, as the large amount of water that would flow through Long Island Sound at Throgs Neck would be prevented and back up into the bays east of Throgs Neck. The potential impacts are not discussed in the DEIS. All the potential key impacts pertaining to safety, the environment, impacts due to coastal flooding and rainfall, as well as financial impacts down the road must be detailed and fully and accurately presented in the DEIS. The DEIS must accurately and adequately address this concerns relating to safety and preservation of property over the long term. (Stephen Cipot)

Emergency Planning (§3.11.3 Potential Impacts)

- There are two roads to enter or leave the Port Washington peninsula, West Shore Road and Port Washington Boulevard. SLC proposes to build on a location that is a FEMA /DEC designated Wave Action Zone, requiring evacuation in a crisis flood or major storm. [What is the plan] to evacuate 145 during a hurricane or even a major storm, such as the one that occurred here July 15th, 2022, flooding West Shore Rd. and backing up traffic from there, down Beacon Hill Road, to Port Blvd. (Edda Ramsdell)
- The fact that when it does flood, all residents must move their cars. How would this be handled and where do these people go? (Leslye Kress)
- Area has been designated by the DEC as a wave action zone. Any moderate to severe storm will require all people and vehicles to evacuate safely. Since the proposed 2-story parking structure is partially below grade. In an evacuation, a timely well-detailed,

vehicle safety strategy must be developed and approved prior by North Hempstead Town. (Peter Gaffney)

- Moreover, the development is located directly on the coast without any protective setback, no dune buffer, no natural mitigation, no sea walls, groins, or other means to provide protection from coastal flooding. Therefore, once the two subfloors and the 1st floor flood, all garaged cars and building electrical and all mechanical systems will be destroyed, including elevators, heating, and cooling. □ Where will residents evacuate to in the event of a storm? Where will all the parked cars be located to when evacuated for storm preparation? How long will it take to rebuild and repair destroyed and damaged building electrical, mechanical systems, especially after a catastrophic emergency impacts a larger area? Who will be responsible for repeatedly replacing and repairing the marina due to storm damage, TONH? (Stephen Cipot)
- Furthermore, the DEIS states, “In the event of an impending flooding event (i.e., a hurricane), vehicles stored within these [underground] levels would be moved to an alternate location to minimize, to the greatest extent practicable, the loss or damage of property.” Where will these cars be moved? There is no above ground parking area that can accommodate 242 cars, even if Lot 1035 is resolved in favor of Southern Land Company. What permits will be required if the cars must be moved to North Hempstead Beach Park? (Coalition to Save Hempstead Harbor)

Bulkheads (§3.11.3 Potential Impacts)

- Coastal resiliency is dependent not only on square footage of tidal areas, but on the length of shorelines. Bulkheads and wave screens change the effect and direction of water energy, which leads to movement of sand and gravel, and can lead to alterations of nearby beach coastlines as well as undermining of the bulkhead. The developer estimates that the project would expose approximately 6391 sq ft of tidal areas, which is approximately 0.15 acres, not a large area. As water levels rise and storm intensity increases we must ensure increased coastal resiliency, protect shorelines of Hempstead Harbor, and not add residential buildings to vulnerable areas. (Ilse Stalis & Rosemarie Gilpin)
- The proximity of the project to the Beacon Hill Colony adjacent is not addressed, nor are there any potential impacts examined. Beacon Hill Colony is a small community of frame structures that were built over several decades. What unifies them is the equal setback from the shoreline, with a small bulkhead that protects the shoreline. The proposed project would have a minimal setback from the shoreline and a hardened bulkhead. Without a larger setback similar to the Beacon Hill Colony, the adjacent shorelines will be severely damaged. In addition, the proposed hardened bulkhead will actually accelerate erosion along the shoreline, a process that has been analyzed by various state and federal agencies. (Long Island Traditions)

- I also feel that the waterfront should be designed with sustainability and future environmental conditions in mind and instead of building bulkheads to separate the water from land I would recommend to the developer to build a living shoreline such as what is indicated in the North Hempstead Beach Park Master Plan Dated January 2019 and included in a figure below:



(Scott M. Trimarchi)

- The proposed building is located in a DEC/FEMA designated wave action VE High Risk Coastal High Hazard Area (CHHA). Structures within the CHHA have a 26% chance of flooding during the life of a standard 30-yr mortgage. Bulk-heading will likely increase erosion in downstream areas, especially during severe storms. (Beacon Hill Residents Association)
- Shoreline hardening will destroy the site’s ecological structure and function. The Applicant found that “[w]ith respect to permanent impacts to wetlands habitats (sic.) and resident fauna of the Subject Property and Hempstead Harbor, the primary impact of the Proposed Action would be a net increase in tidal wetland habitat” due to the removal and replacement of the “earth-filled pier that extends eastward from the Subject Property”. (See DEIS §3.4.3.1- §3.4.4) This statement completely ignores the well-established fact that the construction of a massive building, a bulkhead, a wave shield, a private marina, upland paving, installation of compacted lawn areas, and shoreline hardening in general will have long-term and significant adverse impacts on the health of Hempstead Harbor. (See DEIS Appendices, Page 1035. New York State Significant Coastal Fish and Wildlife Habitat Narrative for Hempstead Harbor (finding that “shorelines structures, such as docks, piers, bulkheads, or revetments” lead to the loss of valuable habitat area); Rachel K. Gittman et al., *Ecological Consequences of Shoreline Hardening: A Meta- Analysis*, 66 *Bioscience* 763 (2016) (finding that “seawalls supported 23% lower biodiversity and 45% fewer organisms than natural shorelines”); Frank Piccininni & Kristin Perret, *SMPIL Comments on the Long Island Nitrogen Action Plan*, 36 *NY ENVTL LAWYER* 41, 41-43 (“the deleterious impacts of human land use on the natural system include increased runoff of nutrients and pollutants into fresh and salt water, reduced quality and

quantity of groundwater, the destruction of critical wildlife habitat, a reduction in the flood-buffering capacity, and a substantial decrease of carbon sequestration”); Mark S. Peterson and Michael R. Lower, Implications of cumulative impacts to estuarine and marine habitat quality for fish and invertebrate resources, 17, 4 Reviews in Fisheries Science 1064 (2009) (“...bulkheads and levees eliminate or significantly reduce access to intertidal marsh habitat...”); Derick B. Booth and C. Rhett Jackson, Urbanization of aquatic systems: degradation thresholds, stormwater detections, and the limits of mitigation 33 J. OF THE AMERICAN WATER RESOURCES ASS’N 1077 (1997) It is respectfully submitted that the Town Board is legally obligated to take a hard look at the significant adverse environmental impacts associated with the plans for extensive shoreline hardening and excavation; such information should be provided by the Applicant before proceeding to a FEIS. See Exhibit O (providing an illustration of the anticipated impacts of shoreline hardening on the Hempstead Harbor Ecosystem).



Exhibit O. A depiction of the Hempstead Harbor Ecosystem post development. The massive array of built structures will destroy existing habitats and cut off any meaningful connectivity between Hempstead Harbor and the Hempstead Harbor Nature Sanctuary.

(SMPLI on behalf of Save our Shoreline Coalition)

Regarding Shoreline Change Rate (§3.11.3 Potential Impacts)

- Comment - Not mentioned in the DEIS though recommended is the Calculation of the local or site-specific Shoreline Change Rate: The term is defined by NOAA. Long Island including its shoreline are in constant flux. Long Island is an unconsolidated relatively recent feature created by glacial deposits on top of Cretaceous age coastal plain sediments. Long Island’s geology consists of glacial moraines and outwash, its two end moraines are unconsolidated deposits roughly parallel to Cretaceous coastal plain sediments, and the outwash is composed of loose sand, gravel, silt, boulders, as well. This

is to say, Long Island is only composed of soft incompetent loose soil that easily erodes, not competent rock. Long Island erodes from every rainfall and storm, bit by bit each day. Even without accounting the impacts of sea level rise and climate change Long Island is eroding into the ocean. As a helpful simple analysis what is the calculated shoreline change rate (or shoreline retreat rate) for the subject property and adjacent Hempstead Harbor areas? This simple analysis has not been factored into the DEIS. For example, the northward most portion of Hempstead Harbor Beach Park located closest to the proposed development exhibits severe beach erosion and shoreline retreat and is blocked off from beachgoers. Notwithstanding, for example of having the benefit of updated Final FEMA hazard maps (post Sandy, Irene, and the 2021 tropical depression), the shoreline change rate is a relatively simple exercise. It can also be calculated on historical overflight photographs taken by the US Federal Government that cover every square inch of the United States. Say use 40-year intervals back to say 1880 to the present. The approach is recommended on the NOAA website for assessing changing coastlines. Toward this effort DEIS authors certainly know that the USGS has excellent aerial photographic coverage from at least 1937 to 1980 that are available here: <https://www.usgs.gov/centers/eros/science/usgs-eros-archive-aerial-photography-aerial-photo-mosaics> The USGS may have prior more extensive coverage because the region was developed and studied for a long period of time. Information to assess Hempstead Harbor's shorelines prior to the photographic overflights might be obtained through local and historical data and records. And after 1980 information is based on satellite imagery as well as local sources. The USGS has utilized aerial photographs for various LI areas from as far back as 1913. In addition, The USGS conducts baseline and storm response photography missions to document and understand the changes in vulnerability of the Nation's coasts to extreme storms, including for Hurricane Sandy after landfall. These valuable resources should be consulted, utilized and referenced in the DEIS. What is the calculated current Shoreline Change Rate? This rate of change is the minimum baseline that should be used to assess future risk. Climate change impacts would necessarily be in addition to this rate. (Stephen Cipot)

Chapter 3, Section 3.12: Greenhouse Gas Emissions

- The DEIS does not include quantification or analysis of Greenhouse gas emissions, noise or any discussion of mitigation or alternatives. The elimination of Barker Aggregates, LTD, the current tenant at 145 West Shore Road, would result in the shifting of dry cargo. Quoting from a letter sent to the Town in 2021, by Barker Aggregates, and with their permission, "One (1) inland barge compared to trucking is the equivalent of seventy (70) tractor trailers, increasing Greenhouse gas emissions approximately ten-fold per ton mile and skyrocketing related injuries and fatalities. * Harmful emissions and noise threaten the long-term health of our children and ourselves. (Edda Ramsdell)
- 3.12.1.3 Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement; 3.12.1.4 Cleaner Greener Long Island Regional Sustainability Plan; 3.12.3.2 Consistency with Relevant Plans and Regulations: The EIS will discuss energy use and GHG emissions. Comment: GHC emissions and the above

are noted in the DEIS, however, it is curious that the proposed development does not apparently include a maximum of solar panels to generate energy, nor does it consider geothermal energy for heating and cooling, in order to reduce the overall GHG energy footprint of the building and marina. Does the developer care to explain why not? Because development is planned as a large long-term residential structure anticipated energy and the use of fossil fuels conflicts with current NYS guidance and policy. In addition, 3.12.3.3 Conclusion states “Operations of the Proposed Action would contribute to the GHG emissions mostly by combustion of fossil fuels for the HVAC and hot water systems on-site, and by the incremental mobile vehicle trips generated by the Proposed Project. During construction, it is estimated that the Proposed Project could contribute as much as the equivalent of 16 to 20 years of operational GHG emissions.” Construction that results in 16 to 20 years of GHG emissions is not a small amount, nor is the amount to be subsequently generated by the normal operation of the heating and cooling systems. These will result in net increases of GHG emissions that will continue to increase with time. Is the developer aware that per NYS All Electric Building Act no new gas hookups would be allowed on Long Island if implemented? And if not implements is a viable goal? As it is gas is to be phased out for new construction. Toward this maximizing solar panels and geothermal energy would help offset the GHG footprint created by the development. Regardless, if the developer is really concerned about GHG emissions then maximized solar and geothermal energy should be thoroughly compared and vetted. Can the developer comment on these considerations and conflicts? (Stephen Cipot)

- 3.12.2.1 - Table 3-32: Provide an analysis of whether the Proposed Action will be a potentially significant source of HFCs (hydrofluorocarbons). The project will include a substantial number of air conditioning and refrigeration units yet no estimate of these emissions has been provided. (TNH Planning Department)
- 3.12.3 - Direct GHG Emissions:
 - Natural gas is the only fuel proposed for powering the project’s HVAC systems. Could alternative energy sources, like air or ground source heat pumps or solar water heaters be utilized instead?
 - A shuttle will provide a rideshare service to the LIRR station for residents with an annual direct GHG emissions 66 MT CO₂e. Could this be mitigated by using electric vehicles?

(TNH Planning Department)

- 3.12.3.2 - Consistency with Relevant Plans and Regulations:
 - NYS CLCPA- The 40 kW per day solar array will be used to power the common areas and the parking lots. Provide information and details on where this array will be located, how much surface area will be covered, what percentage of the energy demand it will provide and how much energy will be saved. Is there an opportunity for a larger system to offset more GHG emissions and further reduce energy consumption?
 - Would electric vehicle charging stations be provided in either the resident or public parking areas?

(TNH Planning Department)

- 3.12.4- Proposed Mitigation
 - Information was only provided for certain high-efficiency appliances (furnaces, water heaters, ovens). Provide additional information and details on lighting efficiency (i.e., utilizing LED fixtures and bulbs), and the use of Energy Star-rated appliances and other potential energy-saving measures (windows, insulation, ‘smart’ lighting, Building Energy Management Systems (BEMS), WaterSense fixtures, etc.).
 - Recycling is discussed in summary fashion, but there is no substantive evaluation of methods to reduce organic waste emissions, including transportation to landfill or combustion facilities. Is on-site composting a feasible option?
 - What actions could be taken to mitigate the construction emissions and estimated reductions in MT CO₂e? While a qualitative assessment of the approximate emissions is discussed, efficient construction activities are never described.
 - Using water efficient landscaping was briefly mentioned but the DEIS did not address the following directive from the Final Scoping Document: “*compare the estimated impact of the proposed development to a typical planted area of the same size on: Carbon sequestration of the soil, Albedo, Heat absorption, Water retention.*”
 - Provide more information on how the project could mitigate the use of natural gas for HVAC systems or a future alternative that would lower the GHG emissions.
 - What is the estimate of volume of GHG emissions reduction (or energy reduction) by the 40 kW/day solar array or any of the other mitigation measures?

(TNH Planning Department)

Chapter 3, Section 3.13 Use and Conservation of Energy

- As more research studies are conducted, the dangers and negative environmental consequences of natural gas are becoming clearer. This will not be an environmentally friendly building. ((Ilse Stalis & Rosemarie Gilpin))
- 3.13.1.1 - NYS Energy Conservation Code: the updated 2020 version should have been utilized instead of the referenced 2018 code. (TNH Planning Department)
- 3.13.3.1 – Construction: This section does not provide any estimate of anticipated energy demand during the construction phase. (TNH Planning Department)
- 3.13.3.2 – Operation:
 - It is unknown at this time whether PSEG or National Grid will provide service for the project as their letters of service availability are “pending” according to the

DEIS. This issue will have to be reconciled before environmental review can be concluded.

- Provide a reason as to why the project would not seek LEED certification.
- As stated in the previous section, include a quantified estimate as to how much energy will be saved by implementation of the proposed conservation plan.

(TNH Planning Department)

- 3.13.4 - Proposed Mitigation: It is not sufficient to simply conclude in summary fashion that the Proposed Action “*will not result in significant adverse energy impacts*” and, therefore, no mitigation is proposed. As detailed above, a number of mitigation strategies are available and must be considered. (TNH Planning Department)

Chapter 3, Section 3.14: Aesthetics and Cultural Resources

General (affecting the entire section)

- The new building would be most prominently visible from the TNH Beach Park and from Harry Tappan Beach across the Harbor. In determining the impacts to public use and enjoyment, discuss any impacts on the viewpoint from the beaches using the following criteria:
 - The view is readily accessible to the public.
 - The view is panoramic, expansive, or relatively unobstructed.
 - The view contributes to the visual environment of each facility.

(TNH Planning Department)

- Viewer sensitivity (or public concern) for the scenic quality of the beaches is informed by the activity a viewer is engaged in at the time something is visible. Provide viewer sensitivity considerations for:
 - Beachgoers, since the subject property would be prominently visible from two beaches. Provide a comparison to the current experience for people spending a day at the beach and looking at the building more closely and for a longer period of time.
 - Residents are a highly sensitive viewer group because their exposure is long-term and their interests in the view are considered to relate to both the visual quality and the character of the area. While the view of building is not as prominent from West Shore Road, how would view sensitivity be affected for residents in the area?

(TNH Planning Department)

Foliage (3.14.3.1 Aesthetics)

- Base photography: Leaves on the trees - All photographs that appear in this section of the DEIS show the area with leaves on the trees. For photographs used to demonstrate the existing character of the area or where leaves are immaterial to visibility, leaf-on conditions are not an issue. It is not acceptable, however, to assess the visibility of the project while there are leaves on the trees and those leaves impact visibility. All analysis for SEQR must use reasonable worst-case assumptions so that impacts are not understated. For assessing visibility and impacts on visual resources, this means leaf-off, no snow conditions. Simply, leaves impact visibility, and photographs used to demonstrate visibility or visual impacts should have been taken during leaf-off conditions. (George M. Janes & Associates on behalf of Our Children's Earth Foundation)
- The review of visual impacts includes "before" and "after" views of the Subject Property from surrounding vantage points – all of which are shown during the foliated months (the actual season was not identified). Would the new building also not be visible from these locations from the late Autumn to early Spring? (TNH Planning Department)

Vantage Point Assessment (3.14.3.1 Aesthetics)

- Returning to Applicant's vantage point analysis, the view from North Hempstead Beach Park (Vantage Point 4) is also deceptive. It is from the area adjacent to the ball fields which is at least two tenths (.2) of a mile distant from the Subject Property's border. The improvements to the north of the beach park, as set forth in the latest iteration of the North Hempstead Beach Park Master Plan, in addition to the newly proposed restaurant, are either on or close to the southern border of the Subject Property and, consequently, rather than the Vantage Point 4 View, will be dwarfed by the 92 Unit per acre mass of the 95 foot high Proposed Building. I suggest that the Applicant be required to provide an additional revised Vantage Point analysis from the South as well as a new Vantage Point Analysis of views of the Proposed Building from the west of the Proposed Project and from the east from the public pier and promenade. In the process Applicant should clarify whether the promenade is intended to circle the Proposed Building. Unless these additional vantage points are provided, I contend that Applicant has not complied with the Section 70-219 D. (S) provisions of the Town Code applicable to site plan approvals. (Ernest A. Goetz)
- The Vantage Points - The Scoping Document identifies five vantage points for study. Three of them are discussed below.
Vantage point 1: Vantage point 1 shows the view from the Beacon Hill Bungalow Colony to the project. This is the view published in the DEIS demonstrating there is no visibility. This view may be quite different in the winter when there are no leaves on the trees. But more than just leaves on the trees, why did the applicant take the photograph from this location? It is the applicant's responsibility to find a location where the project would be visible at or near the location as instructed in the Scope of Work. It is likely that that

action would be visible further down West Shore Road, closer to the project. Additionally, the project is certainly visible from the beach and pier at the shoreline of the Bungalow Colony. The following photograph was taken on October 27, 2022 from the pier off the Bungalow Colony looking south toward the proposed project



Photograph of view from the Bungalow Colony pier, taken October 27

My office created a 3D model of the largest building of the proposed action, and rendered it as an architectural massing model at its proposed height and location, and produced the following photo simulation of this view from the pier located on the beach side of the Bungalow Colony:



Photosimulation of the view from the Bungalow Colony pier showing a massing model

The project will be clearly visible from this location and other locations along the shoreline. Again, it is the preparer's responsibility, using the Final Scope of Work as a guide, to find a location which represents reasonable worst case visibility from the resource being studied. Stating there is no visibility from this vantage point is a serious error.

Vantage point 4 - Vantage point 4 is North Hempstead Beach Park, a 60 acre park directly to the south of the proposed action. By all accounts, North Hempstead Beach Park is valued both for the recreational activities found there and the ½ mile of sandy beach it contains. (<https://www.northhempsteadny.gov/North-Hempstead-Beach-Park>) The location the applicant chose to demonstrate the visual quality of this resource, and the project’s impact on it, is the following viewpoint:



Reproduction of vantage point 4

The selection of this view to assess the impact on this aesthetic resource reflects poor decision-making; it shows the far side of an empty parking lot, which captures none of the positive visual qualities that caused the Lead Agency to identify it as a resource to be studied. In fact, this viewpoint makes the park itself seem unappealing. There are times when the best visibility of an action are in places that do not have good visual qualities, and a choice needs to be made between visibility and visual quality, but that was not the case for this vantage point. If the photograph had just been taken ~200 feet to the east, on the beach, the visual quality of the place would be vastly better and the view to the project would have been clear. The following photograph was taken from beach at North Hempstead Beach Park, looking toward the site. It is taken from Bar Beach, which is further south than the viewpoint that appears in the DEIS, but it clearly shows the quality of the place.



Photograph from Bar Beach taken October 27, 2022

My office created a photosimulation showing the same photograph along with an architectural massing model of the main building of the proposed project.



Photosimulation of photograph from Bar Beach showing a massing model

It is the preparer's responsibility to find at least one viewpoint—and for large resources with different characteristics, like this park, perhaps more than one—that show reasonable worst case conditions so that impacts can be disclosed, assessed and mitigated. The preparer chose to show how the project would appear from the far side of the parking lot instead and not the beach. While we can't know why this decision was made, we can say that the project's impact on the view from the beach is far different than it is from the parking lot simply due to the difference in the quality of the view from those areas. The applicant is correct in saying that the current dilapidated conditions of the site are not attractive. At most distances, however, the poor site conditions are not apparent, because of its low and/or narrow profile. The proposed building is nearly 70

feet tall,5 and is more visible than the current conditions simply because of its size. It also has a transformative quality in terms of the scale it introduces to the beach.

Vantage point 5 - Vantage point 5 is the view from Harry Tappen Beach, which is located across Hempstead Harbor from the proposed action. The preparer created what appears to be a photosimulation using this photograph. A reproduction of that image appears below. There are number of issues with this image.



Reproduction of DEIS simulation from vantage point 5

First, note that the color of the photograph has changed from existing conditions to proposed conditions. The preparer layered on a mist or a slightly opaque screen on the simulation that does not exist in the existing conditions photograph, giving it a slightly foggy look. This is a technique used in photo editing software that diminishes contrast and blends objects together making not only the action but everything in the photograph appear less pronounced. The only change visible in a photosimulation should be changes due to the action itself.



Vantage Point 5: View from Harry Tappen Beach—Proposed

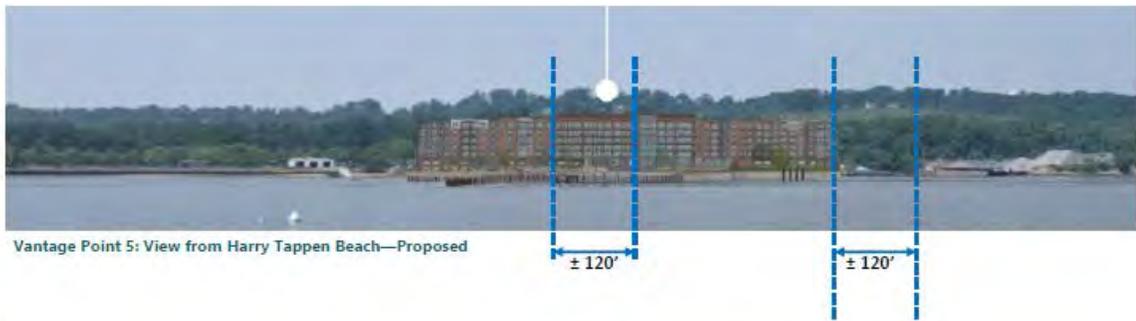


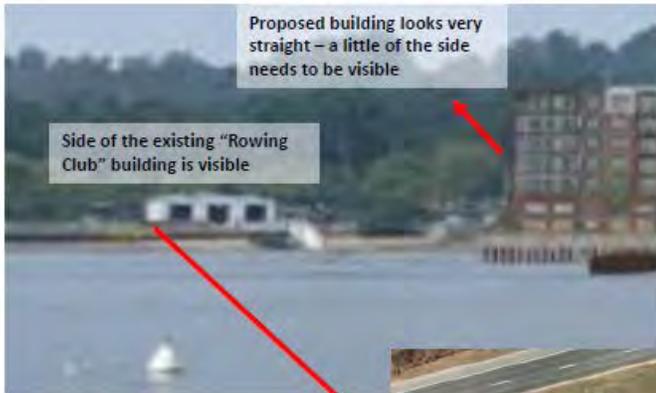
Proposed image is washed out when compared to existing conditions image. There is less contrast and saturation in proposed image. Overall, there is a foggy appearance resulting everything to blend in more.

Second, the simulation only includes the main building and the associated piers. It omits buildings to the south that are a part of this action. The following plan is found in Appendix N of the DEIS. It has been reoriented to match the orientation of the image above. The buildings circled in red on the plan below should be visible from this viewpoint. They are not, because they have not been included as part of the project studied in this visual simulation. Further, the clearing of the site for parking has also been left out of the simulation. At least some vegetation located directly to the south of the project will be cleared and become part of a proposed parking lot (inscribed with the red rectangle.) No change is shown on the ground that will be disturbed, which is omitting part of the proposed action.

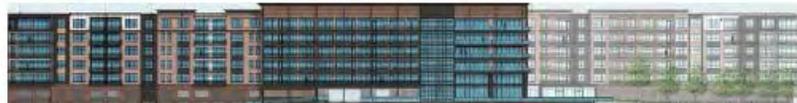


Finally, and most seriously, this simulation does not show the proposed building at the right size, with the right shading or the correct perspective. It was created by combing an image of an elevation view of the proposed project with the photograph using image processing software. The size and location was determined by the operator using judgement and not camera matching. As a result, this is an artist interpretation of how this project may appear from this location using images as media, but it is not a photosimulation. Artist interpretations are acceptable under SEQR and the Scoping Document, but they still must accurately show the project as proposed. One reason photosimulations are typically used is because they are verifiably accurate, since they involve producing a 3D digital model of the proposed action, and then rendering it using a camera set up to exactly mimic the location and lens of the camera used to take the photograph. (More detail on this process can be found starting on page 12 here: <http://www.georgejanes.com/PDF/TechnicalMethods/TechnicalMethods002-Photosimulation.pdf>) This technique not only correctly locates the building at its proper size, but it introduces elements like perspective and shading that represents the time of day that the photograph was taken. Not only does the image used in vantage point 5 not have proper perspective or shading, it shows the action too far to the south. The attached attempts to show this mismatch graphically, but the eye can easily see that the plan above shows that the proposed building is quite close to the neighboring property to the north, while the proposed conditions image shows a sizable gap.





Vantage Point 5: View from Harry Tappen Beach—Proposed



West_Shore_Residences_DEIS_Appendices – West Elevation

Except for the texture, the proposed building rendering in Vantage Point 5 is identical to DEIS Appendices –West Elevation. Since Vantage Point 5 is a photograph, we should be seeing some perspective not a flat elevation



Vantage Point 5: View from Harry Tappen Beach—Proposed overlay with West Elevation

The viewer can flip to the previous slide to see that the images are identical, except for the texture

I do not know if a simulation that accurately showed the project from this location would lead to a different finding of impacts, but the Lead Agency and the public shouldn't have to guess. The DEIS should include accurate information that discloses the project's impact on the required resources and the image for vantage point 5 does not do this. The Lead Agency should not use these materials in its decision-making. (George M. Janes & Associates on behalf of Our Children's Earth Foundation)

Lighting Assessment (3.14.3.1 Aesthetics)

- Lighting - The Scoping Document requires the DEIS to: "Discuss potential lighting impacts based on the proposed lighting plan, including an analysis of how the project meets the standards for light fixtures set forth in the Town Code, and considering the ambient light levels in the surrounding area." Section 3.14.3.1 discusses the lighting proposed, and references the conceptual lighting plan located in the Appendix. The discussion of lighting is limited to the projects compliance with section § 70-217 of the Town of North Hempstead Code, and how the project's design is compliant with the code. While code compliance is a necessary disclosure required by the Scoping Document, the DEIS does not attempt to discuss "potential lighting impacts" outside code compliance. A project can be designed to be code complaint yet still have significant lighting impacts, especially in waterfront areas where once dark areas are transformed and light can travel long distances across water. To demonstrate potential lighting impacts, the applicant could have performed a night simulation that showed ambient light in the area that exists now, and light that would be created by the action. While such analysis not common, it is most often performed in waterfront areas where light pollution from new development can trespass long distances across water and be amplified by reflections off the water. The following is an example of a nighttime photosimulation showing light from a proposed development on the Hudson River that was included in a DEIS.



Nighttime simulation included in Hudson Landing DGEIS (2005)

The applicant should produce information that demonstrates the project's lighting impacts in a manner that considers, "the ambient light levels of the in the surrounding area," as required by the Scoping Document. A nighttime photosimulation would be one way to assess, disclose and mitigate lighting impacts that include ambient lighting. There may be other ways to assess such impacts, but simply omitting the disclosure and discussion of such impacts does not meet the requirement of the Scoping Document. (George M. Janes & Associates on behalf of Our Children's Earth Foundation)

Impacts to Aesthetics (3.14.3.1 Aesthetics)

- Applicant admits that the aesthetics of the "Subject Property would be altered considerably upon implementation of the Proposed Project". I agree; the aesthetics would be altered but not in a good way. As a long-term Port Washington resident who resides in the Primary Study Area, I think that the existing gritty waterfront structures and pier, if cleaned up somewhat, would arguably be aesthetically preferable to the aesthetics of the Proposed Project, which results in an extraordinary high yield of 92 Units per acre, an incredibly dense result. On the other hand, the existing structures are a living reminder of the historic industrial uses along the Hempstead Harbor waterfront and are consistent with the existing character of this portion of the waterfront as represented by the adjoining industrial Tilcon property to the North. The Proposed Building, with its massive bulk of 92 Units per acre, is not consistent with the Vision Plan and, in fact, constitutes "overdevelopment" warned of in the Vision Plan which would contribute to the alarming trend of high-rise waterfront development along both sides of Hempstead Harbor. In my opinion, the Proposed Project is not aesthetically satisfactory or in character with the suburban style of the Port Washington community. Admittedly the Applicant has designed a pleasing enough looking modern multifamily building, but all the "high end materials", "visual breaks along the building facades", "increased visual

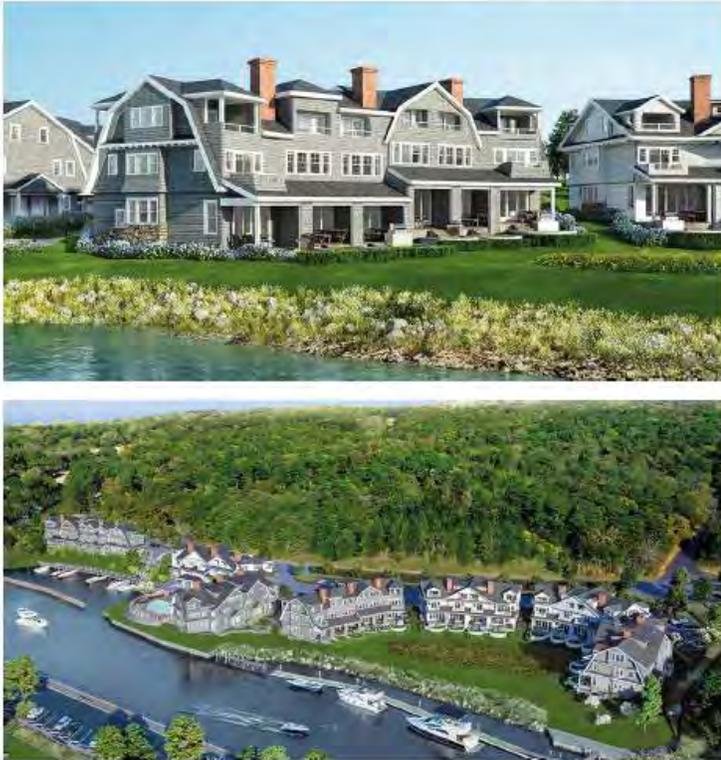
interest and architectural appeal" cannot alter the massive size of the Proposed Building on the undersized site of the Subject Property. (Ernest A. Goetz)

- Applicant argues that the Proposed Project is esthetically consistent with other structures located in the Primary Study Area in that the Amsterdam at Harborside and the Harborview Homes at Harborside, multistory buildings, are located there. However, these structures are not directly on the Harbor's shoreline and do not block visual access to Hempstead Harbor. Indeed, while these two structures contain the word "harbor" in their names, such is a misnomer since neither of these structures are near the Hempstead Harbor shoreline let alone situated there. Applicant's view of the Amsterdam from Fairway Drive (Vantage Point 3) is deceptive. Fairway Drive is perpendicular to West Shore Road and is considerably less traveled than West Shore Road. It is difficult to see the Amsterdam from West Shore Road. In fact, it can barely be glimpsed from West Shore Road (and only then from south of Fairway Drive). The Amsterdam's building hardly peeks into view above the reddish dome of Archangel Michael Greek Orthodox Church, which is situated closer to West Shore Road. It should also be noted that both these multi-story structures were developed in accordance with the Town's specialized zones for same, which contain their own robust restrictions and protections. (Ernest A. Goetz)
- Being a boater, I have been able to observe some other developments that I feel have done a good job at preserving the local aesthetics of the community and waterfront. With Port Washington being a community with a lot of colonial style homes I feel shingle-style construction would blend in nicely. Below are the names and photos of those projects. As you can see those projects are not over three stories and blend in with their surrounding community architecture. I also feel that there should be provisions for a continuous 8' wide public access walkway along the waterfront required to grant this rezoning to allow the local community to have access to the waterfront and to expand our shoreline trail. (Scott M. Trimarchi)

Greenwich Landing: 88 S Water Street, Greenwich CT 06830



The Hamptons Boathouses - Old Boathouse Lane South, Hampton Bays, NY 11946



- The Proposed Action would be a substantial departure from the visual character of the surrounding community. In the immediate vicinity are a waterfront cooperative community of 1-and 2-story frame dwellings, a large public park, a nature preserve, and one remaining industrial site which has no structures. Nothing within sight of the subject property has more than a 2-story structure. A 7-story building would be a stark contrast. Many comments received in the petition opposing this apartment judged the building as maiming the view, its height, size, it didn't fit with the environment around it, and it certainly would ruin their experience enjoying nature and their view even driving by. (Beacon Hill Residents Association)

Chapter 3, Section 3.15 Fiscal and Economic Impacts

General (affecting the entire section)

- The breakdown of future tax revenues to be paid to each tax collecting entity should be provided under both a PILOT program and without. (TNH Planning Department)
- The Executive Summary references a real property tax estimate prepared by Koeppl Martone & Leistman, LLC that was previously submitted. This document was not included in the revised DEIS. Was this report updated to reflect the current design

proposal of 80 one-bedroom, 82 two-bedroom and 14 three-bedroom units? Does the DEIS reflect this revision? (TNH Planning Department)

Projected Population Growth (§3.15 Existing Conditions)

- The Port Washington (PW) peninsula covers 11.15 sq. miles of land and, without Sands Point Village, current population density (PD) is effectively pushed to the center of PW on 6.92 sq miles land. Using redistricting data for D-6, PD of PW far exceeds that of Town of North Hempstead and Nassau County even before considering addition of SLC project. PW experienced substantial growth between 2010 and 2020 with >3,400 multiresident housing units counted in 2015 under current zoning codes; zoning changes approved to permit many more on Manhasset Bay west side of PWP with more 2-family units in Manorhaven and everywhere throughout PW. In a limited land mass, PW cannot continue to support more people/housing without excessive stress to quality of life, human health, infrastructure, more pollution. (Beacon Hill Residents Association)
- The statement on page 294 states that the population is only 15,808 in Port Washington. This is false as Port Washington and Sands Point have a population of over 40,000 in the peninsula. All those residents would be affected by this development - infrastructure, schools, traffic, and parking at the train station. (Leslye Kress)

Regarding PILOT (§ 3.15.3.2 Payment of Liew of Taxes)

- Unlike regular individual homeowners who have to pay their fair share of (a) property taxes, (b) sales taxes on all construction materials, and (c) recording taxes for a mortgage, Southern Land Company is expecting at least a \$29 million tax break (PILOTs) to help offset costs associated with constructing their private apartment building:
 - Reduction of \$29 million in property taxes over the next 20 years (at a minimum) Page 298 of the Draft Environmental Impact Statement (DEIS) for the West Shore Road project dated August 2022 prepared for Southern Land Company.;
 - No sales taxes on construction materials; and
 - No recording taxes for their mortgage (1.05% of the total mortgage). Per www.nassaucountyny.gov for commercial properties and multi-family dwellings.

The additional stress on our schools, roads, fire department, police department, water supply, waste management and all other public services will not be adequately funded due to the drastically reduced taxes for Southern Land Company.

In order to obtain their tax breaks (PILOTs) with Nassau County's IDA, Southern Land Company has included several purported benefits in their Draft Environmental Impact Statement:

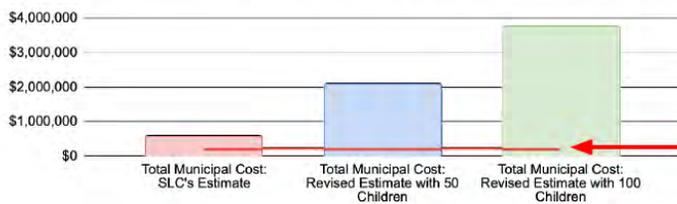
Purposed Benefits	Reality
Affordable Housing	<ul style="list-style-type: none"> ● Of 176 units, only 17 units will be designated as “affordable” and the remaining units will not be affordable for the average Port Washington family. SLC estimates that their renters will need \$243,000 of household income per year to afford a 2-bedroom apartment (pg. 302 of DEIS) even though the median household income for current Port Washington and Town of North Hempstead residents is \$142,000 and \$125,000, respectively (pg. 294 of DEIS). ● Furthermore, “affordable” housing is a misnomer as it is available for households with income at or below 130% the median income of Long Island, or \$190,000. Pg. 52 of DEIS. Median family income for Nassau-Suffolk, NY HUD Metro FMR area is \$146,400 for 2022 (per www.huduser.gov).
Job Creation	<ul style="list-style-type: none"> ● Only 9 low paying jobs will be created long-term (<\$35,000 per person per year). \$311,582 of labor income for 9 people is less than \$35,000 per person per year (pg. 301 of DEIS). This is significantly under the WIC income threshold of \$51,000 for a family of 4 for 2022-23.
“Public” Amenities	<ul style="list-style-type: none"> ● SLC claims they are building a “public” marina and pier in front of their residence and a “public” walkway around their own building. However, 29 out of the 30 boat slips will be private.(Pg. 20 of DEIS. “The proposed marina comprises approximately 30 slips that would be solely for the use of the upland owners (with the exception that one slip will be dedicated to Town emergency service provider use). Furthermore, SLC is purposefully not building enough parking spaces for their own apartment complex (i.e., only 242 out of 396 spaces which is 150 parking spaces short as required by town code. Pg. 19 of DEIS.) and claiming that outdoor parking will be available to the public to access the pier even though these spaces will primarily be used by their residents and visitors.

SLC estimates that the municipal cost of the residents in their building will only be approximately \$580k based on 14 students in Port schools. However, if the student population is even half of the current mix of Port Washington based on U.S. census data, the municipal costs may dwarf the PILOT amount.

Estimated Municipal Cost			
	Southern Land ⁽¹⁾	Updated Analysis Based on Census Data	
		Half of Current % 50	Current % 100
Total Students	14		
Per Capita Cost	\$5,884		
Total PWUSD Cost	\$128,608	\$1,643,185	\$3,286,371
Town and County Costs ⁽³⁾	\$454,324	\$454,324	\$454,324
Total Municipal Costs	\$582,932	\$2,097,509	\$3,740,695

SLC excludes personnel costs and capital outlays. The revised figure assumes that **additional teachers will need to be hired** and **additional infrastructure** will need to be purchased **to support students**. Furthermore, the updated analysis does not assume that state aid will be increased as this is not yet in the budget.

Comparison of PILOT Revenue Versus Municipal Costs for 2025

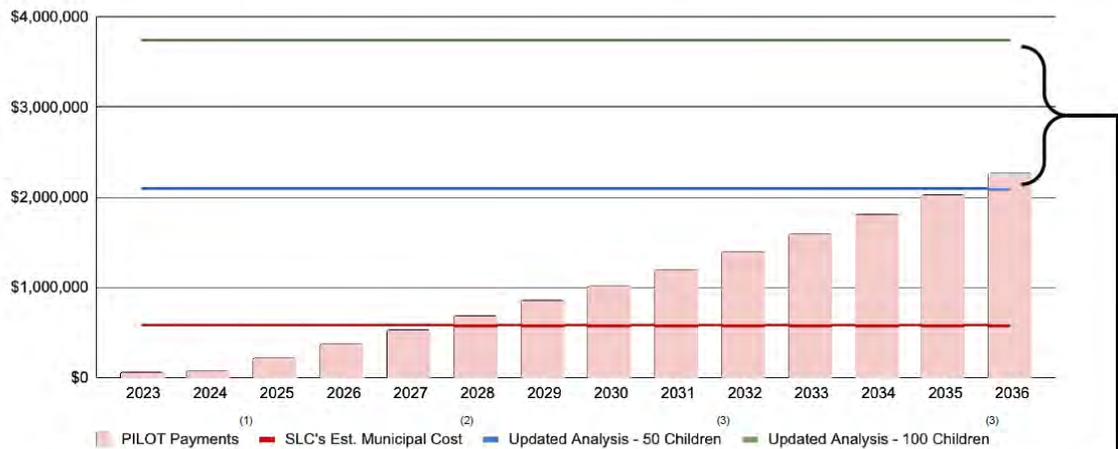


The PILOT (payment in lieu of taxes) that Southern Land Company expects to pay is **only ~\$220k⁽⁴⁾**. This is significantly lower than the potential **\$2.1 to \$3.7 million of municipal costs** which will in turn be **borne by the rest of the taxpayers of North Hempstead**.

(1) Pg. 300 of DEIS.
 (2) Estimate based on \$174.8 million proposed budget for 2022-23 (per portnet.org) for 5,531 students (per nces.ed.gov for 2020-21).
 (3) Assumption for general taxes held constant for the purposes of this analysis.
 (4) Pg. 298 of DEIS.

Based on a higher student count that reflects Port Washington's current census data, existing taxpayers will likely be subsidizing Southern Land Company's municipal costs for next decade or more.

Comparison of PILOT Revenue Versus Municipal Costs



The existing taxpayers of the Town of North Hempstead and property owners in Port Washington will suffer higher taxes potentially for the next decade or more due to Southern Land Company's residents

(1) Pg. 298 of DEIS.
 (2) Pg. 300 of DEIS.
 (3) See prior page.

The residents of the Town of North Hempstead will be funding the profits of Southern Land Company for decades to come.

Southern Land Company	Existing Residents of the Town of North Hempstead
<ul style="list-style-type: none"> • SLC will only pay ~\$400⁽¹⁾ in <u>property taxes per unit</u> during the first 2 years with gradual increases over 20 years pursuant to the negotiated tax schedule (PILOT). 	<ul style="list-style-type: none"> • <u>Property taxes will go up</u> for the existing residents of North Hempstead to fund the shortfall and <u>home values will decrease</u>.
<ul style="list-style-type: none"> • SLC will collect approximately <u>\$11 million in rent</u>⁽²⁾ per year. 	<ul style="list-style-type: none"> • <u>Rents will go up</u> throughout the community due to the pricing pressures and because higher property taxes will be passed through to renters.
<ul style="list-style-type: none"> • The property will be worth <u>over \$830 million</u>⁽³⁾ upon completion. 	<ul style="list-style-type: none"> • The community will have <u>no equity stake</u> for helping to fund this project and Southern Land Company's profits.
<ul style="list-style-type: none"> • SLC can request an extension for their property tax cut from 20 years to <u>40 years</u> for adding more "affordable" housing. 	<ul style="list-style-type: none"> • Homeowners will be funding rent for "affordable" housing which is available for households making nearly <u>\$200,000 per year</u>⁽⁴⁾ rather than targeting assistance for households in actual need.
<p>(1) Pg. 298 of DEIS. Approximately \$71,000 per year for 176 units. (2) Pg. 302 of DEIS. (3) Pg. 299 of DEIS (4) Pg. 52 of DEIS. Median family income for Nassau-Suffolk, NY HUD Metro FMR area is \$146,400 for 2022 (per www.huduser.gov).</p>	

In January 2021, Nassau County Comptroller Jack Schnirman released an audit of Nassau County IDA which showed that tax cuts given to private companies were not providing adequate benefits to the taxpaying public due to incompetence, fraud and embezzlement (Information from various Newsday articles).

Failure to Increase Employment	<ul style="list-style-type: none"> • 69% of the projects reviewed had not achieved their employment goals in 1 or more years. • Employment goals were limited (zero to 13 full time jobs) in almost half of the projects tested, representing tax revenue of \$112.8 million being abated.
Incompetent Business Practices	<ul style="list-style-type: none"> • No evidence was found that the IDA calculated or identified the estimated cost benefit ratios for proposed projects. • The reports for 18 projects did not show the impact of tax abatement to affected jurisdictions, including Nassau County, towns, school districts and/or other municipalities. • The reports for 30% of the projects reviewed were prepared after the public hearing, which impacts an informed decision-making process; and the timeframe for report preparation for 45% of the projects reviewed could not be determined. • 87% of the advertising funds targeted Nassau County, instead of outside the county.
Improper Control of Cash Flow	<ul style="list-style-type: none"> • The Nassau County was missing \$7.6 million of PILOT payments which was only recovered after the Comptroller conducted an investigation. • The IDA failed to disburse funds to the taxing jurisdictions in a timely manner (30 days to 16 months to complete the recapture process).
Evidence of Potential Fraud and Embezzlement	<ul style="list-style-type: none"> • A consultant was paid \$556,250 to attract cyber companies to the Nassau County, including one in which he was a partner. No new companies moved to the county. • An existing public relations firm was used to "flow through" \$375,000 in funds for ads. • Termination payments of \$350,000, were given in 2018 to 5 Nassau County IDA staff members who were not terminated. • A former Nassau County IDA officer may have violated the Code of Ethics by residing in a Mineola IDA project in 2018. • Nassau County IDA Board members paid for a \$1,600 holiday dinner by using mileage reimbursement funds without written Board approval.

Many developers for projects within North Hempstead have been seeking tax breaks from Nassau County IDA. However, it is unclear whether these tax cuts which are shouldered

by the rest of the general taxpaying public in North Hempstead have been thoroughly vetted to determine if the goal of creating jobs and affordable housing has been satisfied.

Morgan Parc in Mineola	Westbury Apartments	The Amsterdam
<ul style="list-style-type: none"> Lalezarian Properties has asked for a 10-year extension of their tax breaks in exchange for an increase in the number of affordable units from 27 to 40 (increase of 13 units). Affordable housing is available to people with incomes equal to 80% of Long Island median income which ranges from \$66,450 for 1 person and \$125,300 for a household of 8. The building has created 19 low-paying jobs (average salary of about \$35,000). The company received 20 years of tax savings by the IDA in 2015. The company has saved \$439,200 so far or about 50% in 2019 and 2020. 	<ul style="list-style-type: none"> Two developers have asked for tax breaks to build apartment buildings near the LIRR station: <ul style="list-style-type: none"> Omstein Fetner's 18-unit development: is requesting a 17 year tax abatement for 3 units below market. Terwilliger & Bartone's 58-unit development is requesting a 20 year tax abatement for 7 units below market. 	<ul style="list-style-type: none"> The Amsterdam in Port Washington, an upscale retirement community, has received assistance from Nassau County IDA several times after filing for bankruptcy protection twice in 7 years: <ul style="list-style-type: none"> In 2007, a 25-year tax break. In 2015, \$550,000 of additional tax breaks. In 2021, \$41 million in taxable bonds, \$127 million in tax-exempt bonds to restructure its existing debt and \$1.3 million break for its mortgage recording tax.

According to Marsha Silverman, Glen Cove City Councilwoman, a misconception about tax breaks (PILOTs) is that a project cannot be done without giving a developer tax breaks for 20 years. Even without the tax breaks, Southern Land Company is expected to pay less than \$3 million (i.e., equivalent to ~\$3,200 in property taxes for a \$1 million house).⁽¹⁾

An appropriate cost/benefit analysis needs to be conducted to accurately assess the true costs to our public resources since this will ultimately be borne by the existing taxpayers of North Hempstead.

(1) Pg. 299 of DEIS. Southern Land Company expects to pay less than \$3 million of taxes on their property worth over \$830 million even without a PILOT agreement starting in 2023 and beyond.

(Alice Chong)

- What are the real numbers that Southern land/ Scotto family is actually presenting to Nassau IDA? Property sponsors/ owners looking/expecting to secure other environmental funding? That number needs to be provided to the Town prior to Town's acceptance to proceed. What if Nassau County IDA tax incentives, reduced construction costs or environmental funding is denied the project? What is the response from the applicant/ sponsor answer to NCIDA reduction or denies this project? (Peter Gaffney)
- In exchange for the "public" pier and walkway, SLC is requesting a \$29 million property tax abatement and this cost will be borne by existing residents of Port Washington and Town of North Hempstead. In the case of the recent Garvies Point development in Glen Cove, the tax deferral agreement between the developer and the IDA was extended to a total of 40 years and the property taxes for the existing residents of Glen Cove increased substantially due to this project. (Michelle Bagnato)

Why — if demand for its proposed \$6000 per month rental luxury housing is as strong as SLC claims (refuted by twice-bankrupt Amsterdam and under-utilized KYC replacement) — does SLC demand subsidies, abatements, and offer agencies and utilities lowball estimates and inducements against what will clearly be far higher real infrastructure, operating cost, and other fiscal impacts? (Bob Mann)

- The DEIS was supposed to study tax impacts. Because Beacon Hill Colony is generally assessed as apartment use. Comparable units are generally assume to rent for far less than the units anticipated at 145 West Shore Road. This means that the general assessment for Beacon Hill Colony is likely to increase significantly based on the project. The tax impact on Beacon Hill Colony should be fully studied in the final EIS. (Beacon Hill Bungalow Corporation)
- Southern Land is requesting a \$29 million property tax abatement over 20 years (at a minimum). Any excess municipal cost due to this luxury development above any proposed tax payments (PILOTs) will be borne by the existing taxpayers of the Town of North Hempstead. To keep their municipal cost estimates low in the DEIS, Southern Land assumed that only 14 school-aged children will reside in their 176-unit apartment building based on an irrelevant research report which surveyed apartment buildings that are primarily in Suffolk county, buildings that are 55+ communities and buildings in poorly rated school districts. Based on the current population mix in Port Washington, there may be 100 children living in this apartment building which will strain our school system. As a result, the true municipal cost to the Town of North Hempstead will likely dwarf the PILOT payments made by Southern Land for years to come. If this project is approved, the residents of the Town of North Hempstead will suffer higher property taxes and will be funding Southern Land's profits over the next generation. (Beacon Hill Residents Association)

Regarding Job-creation (§3.15.3.5 Job Creation)

- Southern Land also claims that they will be creating jobs but the reality is that they will only be creating 9 jobs in the long term and the pay will be so low (according to the developer's own numbers in the Draft EIS) that these individuals will need to be on food stamps. (AlanTankoos)

Chapter 6. Growth-Inducing Aspects

- If extreme zoning variances are allowed, developers will evade the protective intention of our zoning laws and open the floodgates to mega-projects to follow on Hempstead Harbor. (Jerald H. Tedeschi)
- I hereby provide questions and comments regarding the above proposed development and its potential impacts not only in District 5 where development is proposed, but throughout the Town of North Hempstead (TONH) because approving a 7-story building that consists of 5 stories above ground level (agl) 95 feet tall conflicts with TONH Building Code that limits structures to 3 stories agl. This in itself threatens to upend future building throughout the TONH. (Stephen J. Cipot)

- At DEIS 1.6 the applicant states that as “there are no other parcels located along West Shore Road in the vicinity of the Subject Property that are zoned for multi-family development.” From this the applicant concludes that the “granting of one individual request for change of zone would not have a growth-inducing impact on the area with regard to additional residential development.” But the applicant has it backwards. The rezoning of 144 West Shore Road would create a precedent that would have to be considered for the Buchanan Marine and Tilcon properties, which are adjacent to the site. The applicant, in effect, asks the Town to engage in spot zoning. (2“Spot zoning is the singling out of a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners.” Star Prop.) Any rezoning of the subject parcel needs to be a part of a comprehensive plan and cannot be unique to the applicant. In this regard, as that Buchanan Marine and Tilcon properties are similar in nature to the subject parcel, and clearly would be subject to a rezoning based on the change of zone that applicant seeks, analysis of a conversion of these properties needs to be considered as party of the study. Given that the subject property is smaller than the adjacent properties, applicant’s proposal would likely lead to there is likely to three similar 7 story apartments and over three times the anticipated population density set forth in the DEIS. This is a major change in the comprehensive planning for this portion of Port Washington, and it has not been studied by the DEIS. (Beacon Hill Bungalow Corporation)

Chapter 7: Analysis of Alternatives

- The Final Scoping Document required a full assessment and evaluation of four alternative development scenarios addressing all of the relevant topic areas listed under §3.0: *Analysis of Potential Impacts*. Although a comparative table showing some of the parameters is provided, the alternatives analysis primarily consists of a dismissive statement that a development alternative should only be considered if it is sufficiently profitable to the Project Sponsor. That is followed by relatively detailed demonstrations of how each alternative scenario is insufficiently profitable and therefore there is no need for further evaluation.

The Lead Agency must consider the significant challenges of developing in a floodplain adjacent to a tidal wetland, extending utilities and infrastructure - particularly a sewer connection – and the fact that the project as presented represents a 300% exceedance of the allowable density for the zoning district sought by the Project Sponsor and a 175% exceedance of the permitted number of floors, among other factors. Approval of the project at the proposed scale is far from a certainty. Therefore, the evaluation of alternatives cannot be summarily dismissed or treated in cursory fashion. The Lead Agency has the obligation to seriously consider that the development of alternative scenarios may be necessary and requires the information and data to properly do so. (TNH Planning Department)

- Table 7-1 – Comparison of Alternatives: remove the word “existing” from the column heading for Alternative 4 and add it to the column heading for Alternative 2 as the site is presently zoned Residence-AAA. It is noted correctly on the previous page. (TNH Planning Department)
- Basically, the implications and potential impacts (positive and negative) are only presented for Proposed Development Alternative 5. Except for the “No Action Alternative,” each Alternative is apparently also based on the fanciful idea that development is coupled with maximums allowed for 7.17 acres, notwithstanding that only 2.69 acres is above MHW, the remaining 4.48 acres are submerged. Alternatives must be realistically revised to state that development and associated maximum allowable limits (e.g. number of parking spaces, residences, other structures, etc.), and pertains solely to what is feasible for building on dry land, the 2.69 upland acres. (Unless the developer is proposing an intent to offer residents the ability to make friends with Sponge Bob Square Pants and his friends.) The asserted so-called right to develop up to five stories agl versus existing code limit of 3 stories cannot be based on a so-called right to develop property the developer does not own, especially not based on the flooded acres of Hempstead Harbor and other land not owned by the developer. This is a false and disingenuous way to pack development onto a limited area and circumvent TONH Building Code and must be denied so as not to set a dangerous precedent throughout the TONH. (Stephen Cipot)
- In the DEIS, Southern Land claims that pursuing “Alternative 2: Development under Residence-AAA zoning” is not feasible as it includes the estimated environmental clean-up of \$9 million in the break-even cost analysis (i.e., \$2.25mm for each residence). However, this is intellectually disingenuous since Southern Land in its current proposal assumes that this environmental clean-up cost will be paid by New York State taxpayers via the NYSDEC Brownfield Cleanup Program. In other words, Tennessee-based Southern Land expects New York State taxpayers to foot the bill to clean up the adjacent property in front of their private, luxury high rise development and makes all the alternatives look worse by adding more costs that they never intended to pay in their own proposal. (Alice Chong)
- It states in the DEIS that the only alternative they want is to redo to multiple residence. They state that if they are allowed to build 4 houses, it would not be viable as the houses would be in Al flood zone and homeowners would not be able to get flood insurance. Why would the building be able to get flood insurance as it is in a flood zone? (Leslye Kress)
- The DEIS outlines 5 possible Alternatives per the [Table 7-1 of the DEIS], and recommends Alternative 5 for development by asserting that the maximum allowable density for ‘Multiple Residence’ zoning is 29 units/acre based on the total project area of 7.17 acres. The developer believes a basis of 7.17 acres appropriate and supported as follows: “It is the intention of the Project Sponsor to apply the yield for the full 7.17 acres, but concentrate development on only the upland portion of the parcel, essentially an internal transfer of development rights. A transfer of rights is believed to have been granted by the State of New York to the original property owner: State of New York to

the current property owner's predecessor, J.B. King & Co., under Letters-Patent dated December 7, 1907." I cannot comment on the actual legality or worthiness of said transfer of rights. Other reviewers so qualified should weigh in on the terminology and assumed applicability. As the applicant states 2.04± acres is actually controlled by the Applicant, whereas the remaining 5.13 acres are not owned by the applicant. Moreover, the large portion in Hempstead Harbor are 100% flooded. That acreage is not owned by the developer but by the TONH, therefore, the developer cannot "internally" transfer rights for property it does not own. The property owner boldly asserts said right without adequately offering justification and basis. What is the basis, cite NYS property law, local property law, etc.? How has the precedent subsequently held up in court in other areas? What is the history of case law, etc.? Does it apply to property submerged by waters of the state as asserted here? I thought Hempstead Harbor and its waters are overseen by NYS, the TONH, and Nassau County as the officiating jurisdictions. TONH has been an official jurisdiction since at least 1784, did NYS even have the authority to issue such a broad Letter of Patent being claimed? On this, developer claims: "While the underwater land is in private ownership, the Applicant is not proposing to construct any part of the building over water or to reclaim/fill any submerged land. Instead, the proposal is to seek a variance in order to condense the development yield for the full site acreage (7.17± acres) onto the upland portion and preserve the land under water for public use. The use of the underwater land is proposed to be for a public marina and pier." The onus must be on the Development Sponsor to support and prove such bold assertions and so-called "rights." Please do so. The actual facts in this case not boldness and not broad wishful assertion may well change everything and make much of what follows moot. (Stephen Cipot)

- In this regard, although the applicant was instructed to study six alternatives, including rezoning to Planned Waterfront Residential Community ("PWRC"), our zoning. The Town Board rezoned Beacon Hill Colony from Residence AAA (like the subject parcel) to the then newly created Planned Waterfront Community zone. The zone was carefully crafted to balance development and the waterfront. It clearly was intended to extend to the area south of Beacon Hill Colony as those areas were developed. While the DEIS complains that the applicant does not believe that it is economically feasible for it to develop the land, nevertheless, no serious effort is made to set forth the impacts of rezoning to PWRC. Respectfully, although the applicant may not wish to pursue such alternatives does not alleviate it of the need to carefully present those alternatives. The final EIS should have a full study of alternative development of the six alternatives, including the PWRC. (Beacon Hill Bungalow Corporation)
- Alternatives: The Applicant's alternatives analysis is incomplete, in some cases overstates the benefits of the Project, and in other cases fails to acknowledge the degree to which alternatives would mitigate adverse impacts (in part by failing to acknowledge the existence of those impacts as discussed above and in comments of others). Most fundamentally, the DEIS concludes that not a single alternative is "reasonable" "because these alternatives would not be financially viable for or meet the objectives and capabilities of the Applicant. However, it provides no evidence supporting this conclusion. Moreover, in reaching such conclusion, it would seem to violate SEQRA by not seriously entertaining any reasonable alternatives. Yet many of the alternatives would

substantially reduce adverse impacts, such as impacts to land use. (Carter Ledyard Milburn on behalf of Our Children's Earth Foundation)

- Applicant discusses various alternatives in the EIS and concludes that certain of them are not economically feasible. Applicant provides no analysis or methodology for its self-serving conclusions. Applicant should be required to disclose its analysis and methodology, which should be supported by documentation and scrutinized. To say this waterfront property could not have an economically viable use other than a 176 multi-family apartment complex property does not pass the smell test. (Rigano on behalf of Our Children's Earth Foundation)
- In my letter of March 19, 2021 to Commissioner Levine, I raised the issue of what the relevant lot size was for purposes of zoning. Specifically, the applicant claims to have lot size as 7.17 but all but approximately two acres is underwater. The DEIS says that "the proposal is to seek a variance in order to condense the development yield for the full site acreage (7.17± acres) onto the upland portion and preserve the land under water for public use." DEIS 2.2 Under both Residence RM, AAA and PWRC zones, density is controlled by how many units can be placed on a lot. See Town Code § 70-3.24 (PWRC); § 70-7.1 (Residence AAA), §70-69 (Residence M). "Lot" is in turn defined by Code § 70-231, as a "plot, tract, premises or parcel of land, with or without buildings or structures located thereon, as surveyed and apportioned for sale or other purpose" (emphasis added). While the word "land" is not defined in the code, its dictionary definition is "the part of the earth's surface that is not covered by water, as opposed to the sea or the air." Thus the area under water is not "land" and thus not included in a "lot" as defined by § 70-231. Through the DEIS, however, the application makes yield analysis and calculations as if the entire 7.17 acres constitutes a lot, which it is not. The final EIS should set for the exact variances that will be required as part of this process. That would include, if the parcel were rezoned to Residence RM, and the required variance under § 70-69. Moreover, all comparisons and yield analysis must be analyzed on the actual yield that could be built on the lot (i.e. the land) and not the area underwater. (Beacon Hill Bungalow Corporation)
- The final EIS should set for the exact variances that will be required as part of this process. That would include, if the parcel were rezoned to Residence RM, and the required variance under § 70-69. Moreover, all comparisons and yield analysis must be analyzed on the actual yield that could be built on the lot (i.e. the land) and not the area underwater. (Beacon Hill Bungalow Corporation)
- Moreover, to the extent the Applicant suggests that no clean up would happen if the property were developed with another alternative, that suggestion ignores the clear enforcement obligations that attach to the land regardless. Similarly, the Applicant concludes without evidence that other benefits like a public walkway by the water, would not or could not occur under any other alternative. (Carter Ledyard Milburn on behalf of Our Children's Earth Foundation)
- As to the appropriateness of alternatives presented, at least one alternative, and possibly others, seems deliberately designed to overstate adverse impacts to minimize impacts

caused by the Project. For example, the R-AAA alternative appears to unnecessarily place structures within the Special Flood Hazard Areas. Specifically, front yard setbacks, particularly at the north end of the property, are much more extensive than required. By locating these structures within the SFHAs the Applicant sets itself up to dismiss the alternative as “infeasible.” Similarly, the extensive front yard setbacks increase the paved surfaces beyond what would be required if the Applicant had located the structures further from the flood hazard areas. Thus the decrease in impervious surfaces associated with the R-AAA alternative is understated. (Carter Ledyard Milburn on behalf of Our Children’s Earth Foundation)