

UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF COLUMBIA

SIMON V. KINSELLA	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	
	:	
BUREAU OF OCEAN ENERGY MANAGEMENT;	:	Civil Action No.: 22-cv-02147-JMC
DEB HAALAND, Secretary of the Interior,	:	
U.S. DEPARTMENT OF THE INTERIOR;	:	
MICHAEL S. REGAN, Administrator, U.S.	:	
ENVIRONMENTAL PROTECTION AGENCY;	:	
:	:	
<i>Defendants,</i>	:	
:	:	
SOUTH FORK WIND LLC;	:	
LONG ISLAND POWER AUTHORITY;	:	
	:	
<i>Nominal Joinder Parties</i>	:	

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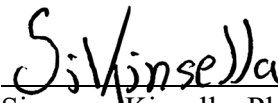
STATEMENT OF MATERIAL FACTS BY PLAINTIFF IN SUPPORT  
 OF CROSS-MOTION FOR PARTIAL SUMMARY JUDGEMENT

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I, Simon V. Kinsella, Plaintiff *Pro Se*, pursuant to LCvR 7(h)(1), respectfully submit this statement of material facts to which I contend there is no genuine issue (with linked references to the record) in support of my cross-motion for summary judgment as follows:

DATED: this 22<sup>nd</sup> day of September 2022.

Respectfully submitted,



Simon v. Kinsella, Plaintiff *Pro Se*  
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STATEMENT OF MATERIAL FACTS BY PLAINTIFF

Plaintiff's Statement of Material Facts and Supporting Evidence (Simon V. Kinsella, <i>Pro Se</i> )	Defendants' Response and Evidence												
<p>1 <b><u>South Fork Wind Transmission Distance</u></b></p> <p>South Fork Wind's Construction and Operations Plan ("COP"), Table 3.2-1. Summary of South Fork Export Cable Segments, shows, "[a]pproximate distances for each segment of South Fork Export Cable" as follows —</p> <table border="1" data-bbox="352 703 976 927"> <thead> <tr> <th>SFEC Section</th> <th>Beach Lane</th> </tr> </thead> <tbody> <tr> <td>SFEC – Offshore</td> <td>62 miles (99.9 km, 53.9 nm)</td> </tr> <tr> <td>SFEC – OCS</td> <td>58.3 miles (93.9 km, 50.7 nm)</td> </tr> <tr> <td>SFEC – NYS</td> <td>3.7 miles (6.0 km, 3.2 nm)</td> </tr> <tr> <td>SFEC – Onshore</td> <td>4.1 miles (6.6 km)</td> </tr> <tr> <td>TOTAL</td> <td>66.1 miles (106.5 km)</td> </tr> </tbody> </table> <p>(Complaint Appendix 4, at p. 1)</p> <p>South Fork Wind COP (May 2021), Table 3.2-1 (at p. 3-35, PDF p. 151)  <b>(Source Link to BOEM's record (below) -</b></p> <p><a href="https://www.boem.gov/sites/default/files/documents/renewable-energy/South-Fork-Construction-Operations-Plan.pdf">https://www.boem.gov/sites/default/files/documents/renewable-energy/South-Fork-Construction-Operations-Plan.pdf</a></p>	SFEC Section	Beach Lane	SFEC – Offshore	62 miles (99.9 km, 53.9 nm)	SFEC – OCS	58.3 miles (93.9 km, 50.7 nm)	SFEC – NYS	3.7 miles (6.0 km, 3.2 nm)	SFEC – Onshore	4.1 miles (6.6 km)	TOTAL	66.1 miles (106.5 km)	
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<p>2 <b><u>South Fork Wind Capacity</u></b></p> <p>South Fork Wind's Construction and Operations Plan ("COP"), Table 3.2-1. Summary of South Fork Export Cable Segments, shows, "[a]pproximate distances for each segment of South Fork Export Cable" as follows —</p> <p>"Under this [Proposed Action] alternative, the construction and installation, O&amp;M, and conceptual decommissioning of up to <u>15 wind turbine generators</u> (WTGs) in the <u>6- to 12-MW range</u> [emphasis added]."</p> <p>"DOI has decided to approve, with modifications, the COP for South Fork Wind adopting the Habitat Alternative. [...] DOI will allow no more than 12 turbines to be installed." (ROD, at p. 15, PDF p. 17, ¶ 1)</p> <p>Setting aside constraints at the point of inter-connection (if the East Hampton Substation is upgraded), the overall nameplate capacity of the South Fork Wind Project could be up to 168 MW (using 12 turbines of 14 MW each). This would represent (another) increase in capacity of 29% from 130 MW.</p> <p><b>(Source Link to BOEM's record (below) -</b></p> <p><a href="https://www.boem.gov/renewable-energy/state-activities/record-decision-south-fork">https://www.boem.gov/renewable-energy/state-activities/record-decision-south-fork</a></p>	

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<p>3 <b><u>2018 Comments-Letter by Plaintiff to BOEM</u></b></p> <p>On November 19, 2018, BOEM received a letter from Plaintiff informing it of the following information about the South Fork Wind Project as proposed in 2018 (quoting):</p> <p><u>"Social and Economic Recourses – 30 CFR 585.627(a)(7)</u>  <i>Employment</i></p> <p>(a) Name Capacity: 90 MW (megawatts)                  (b) Capacity Factor: 47%                  (c) Average Actual: 42.2 MW                  (d) Given: 1 MW of capacity produces 8,760 MWh per year                  Average Actual: 370,000 MWh per year (34.2 MW x 8,760 hours)                  (e) Contract Valuation: \$1,624,738,893 (NYS Comptroller, 20-year term)                  (f) Contract Valuation: \$81,236,945 per year                  (g) Price per Output: \$220 per MWh                  (h) Price per Output: 22 cents per kilowatt hour"</p> <p>(Complaint Exhibit A)  <b>Source Link to BOEM's record (below) -</b></p> <p><a href="https://downloads.regulations.gov/BOEM-2018-0010-0074/attachment_1.pdf">https://downloads.regulations.gov/BOEM-2018-0010-0074/attachment_1.pdf</a></p>	

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<p>4 The 2018 comment-letter (see #3 above) notified BOEM of the following information about the South Fork Wind Project (quoting):</p> <p>"(a) The Applicant has failed to comply with 30 CFR 585.627(a)(7) with specific regard to its potential negative impact upon employment.</p> <p>(b) The Applicant will charge approximately 22 ¢/kWh for its wind-generated electricity (please see calculation to right).</p> <p>(c) A similar wind farm, Vineyard Wind, which is just 20 miles from the Applicant's proposed South Fork Wind Farm, will charge only 6.5 ¢/kWh."</p>	
<p>5 The 2018 comment-letter (see #3 above) notified BOEM of the following information about the South Fork Wind Project (quoting):</p> <p>"The Applicant will force ratepayers living on Long Island to pay exorbitantly high electricity prices. This money is money that will not be spent within the local economy. Instead of a family eating at a local restaurant or buying new shoes for their children, this money will go overseas into the pockets of Ørsted, a foreign company."</p>	

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<p>6 The 2018 comment-letter (see #3 above) notified BOEM of the following information about the South Fork Wind Project (quoting):</p> <p><u><i>"Lower Income Groups</i></u> The Applicant has failed to comply with 30 CFR 585.627(a)(7) with specific regard to its potential negative impact upon lower income groups.</p> <p>Any increase in electricity prices will fall disproportionately on those who can least afford it. A family on a low income will have to heat or cool their home in the same way a family on a higher income will have to do, so any increase in electricity prices will represent a larger proportion of a low-income family's income than it will a higher-income family. This will cause families on lower incomes who are already hurting to suffer further more economic hardship than families on higher incomes."</p>	

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<p>7 <b><u>2021 Oral Testimony by Plaintiff before BOEM</u></b></p> <p>On February 16, 2021, BOEM heard oral testimony from the Plaintiff. BOEM uploaded the transcript of that testimony to its website. The transcript reads (at 01:18:08.430 --&gt; 01:18:21.360) as follows—</p> <p>"My name is Simon Kinsella, I support offshore wind generally, but I do not support this project. The evidence that I plan to submit by February 22 demonstrates the following and unnecessarily high price for delivered energy that is double the rate of 16.3 cents per kilowatt hour [using LIPA underestimated rate for convenience of proof] than Sunrise Wind of 8.1 cents per kilowatt hour. <u>The overall project cost of South Fork Wind is more than \$1 billion more expensive per unit of energy over 20 years, than Sunrise Wind [emphasis added].</u> These costs have been concealed from ratepayers. Today, we still do not know the total amount of capacity that will be delivered by South Fork wind, nor do we know the final price that will be passed on to ratepayers for South Fork Wind.</p> <p>This information has been hidden from us.</p> <p>The company that administered the procurement process, PSEG Long Island, awarded South Fork Wind power purchase agreement to its business partner in a noncompetitive recruitment process."</p> <p><b>Source Link to BOEM's record (below) -</b></p> <p><a href="https://downloads.regulations.gov/BOEM-2020-0066-0380/attachment_1.pdf">https://downloads.regulations.gov/BOEM-2020-0066-0380/attachment_1.pdf</a></p>	

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<p>8 See <u>2021 Oral Testimony by Plaintiff before BOEM</u> (February 16, 2021) (see #7 above). The transcript reads as follows— 444-445 01:19:12.600 --&gt; 01:19:23.490 - 01:19:28.680 “Simon Kinsella: The company that administered the procurement process, PSEG Long Island, awarded South Fork Wind power purchase agreement to its business partner in a noncompetitive recruitment process” (see 2021 Oral Testimony of Kinsella, at PDF p. 47, 444-445)</p>	
<p>9 See <u>2021 Oral Testimony by Plaintiff before BOEM</u> (February 16, 2021) (see #7 above). The transcript reads as follows— 01:19:29.640 --&gt; 01:19:48.030 "Simon Kinsella: South Fork Wind has willfully ignored overwhelming evidence of extensive and pervasive PFAS contamination that exceeds New York state regulatory standards by 100 times in the area where proposes to construct underground, its transmission infrastructure." (see 2021 Oral Testimony of Kinsella, at PDF p. 47, 446)</p>	



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<p>10 <b><u>2021 Comments-Letter by Plaintiff to BOEM</u></b></p> <p>In February 2021, BOEM received a letter from the Plaintiff in response to the Draft Environmental Impact Statement (DEIS) for the South Fork Wind Project that it subsequently uploaded to its website. The reads (in part) as follows (quoting)---</p> <p>"Since South Fork Wind began pursuing its Project in earnest in 2017, review largely has been left to the Town of East Hampton and the New York State Public Service Commission ("NYSPSC"). Over the last four years (see Legal Issues below), there has been little if any review of the Project's environmental impact, economic impact, alternatives, public interest need and purpose.</p> <p>For these reasons, I respectfully request that the documents herein listed (see Documents List below) be incorporated by reference and form part of my comments submitted to the Bureau of Ocean Energy Management ("BOEM") and that BOEM, as lead agency, conduct a broad review of the whole Project including in all respects the onshore and offshore components and "use all practicable means and measures... to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans" (<i>citing</i> "National Environmental Policy Act ("NEPA"), Section 101(a); 42 U.S.C. § 4331(a)." (Complaint Exhibit B)</p> <p><b>Source Link to BOEM's record (below) -</b></p> <p><a href="https://downloads.regulations.gov/BOEM-2020-0066-0343/attachment_1.pdf">https://downloads.regulations.gov/BOEM-2020-0066-0343/attachment_1.pdf</a></p>	

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<p>11 The 2021 Comments-Letter by Plaintiff to BOEM (February 2021), in response to Defendants' DEIS (see #10 above), reads as follows—</p> <p>"In the absence of substantial review by the NYSPSC and the Town of East Hampton, and should BOEM likewise <i>not</i> require a thorough examination of the onshore part of the Project inasmuch as the offshore part, there will be <i>no</i> review, and <i>no</i> protections will be afforded the residents of Suffolk County, and specifically, the residents of the Town of East Hampton.</p> <p>Residents living on eastern Long Island require protection from the developers (Ørsted and Eversource) and, astonishingly, from our own local and state governments. We need protection from excessive rates (see Price of Power below); the threat of further drinking-water contamination by hazardous waste (see PFAS Contamination Wainscott, NY, Report No. 3, enclosed); dangerous construction, and over-building practices (see Substation – Danger below); <u>destabilizing horizontal directional drilling beneath Wainscott Beach</u> [...]" 2021 Comments-Letter (at p. 2, ¶¶ 6-7).</p>	

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<p>12 The 2021 Comments-Letter by Plaintiff to BOEM (February 2021), in response to Defendants' DEIS (see #5 above), reads as follows—</p> <p>"If we cannot look to NEPA, then I fear that no one will take a "hard look" at issues of need, probable environmental impact, public interest and necessity; and by such neglect would permit the developers and elected officials who are working in furtherance of the developers' interests to circumvent the purpose of NEPA, NYSPSC Article VII review, circumvent judicial process, and circumvent US constitutional provisions requiring "due process of law" (<i>citing</i> "U.S. Const. Amend. XIV; N.Y. Const. Art. I, § 6") 2021 Comments-Letter (at p. 3, ¶ 2).</p>	

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<p>13 The 2021 Comments-Letter by Plaintiff to BOEM (February 2021), in response to Defendants' DEIS (see #5 above), reads as follows—</p> <p>"The New York State Public Service Commission ("NYSPSC") has proceeded in such a manner as to prohibit from inclusion into the evidentiary record any evidence, examination or cross-examination of witnesses' testimony as to the need of the South Fork Wind Farm (please see Motion to Reopen the Evidentiary Record (filed: January 13, 2021), subsequent Motion to Reopen Evidentiary Record – Supplemental Information (filed: January 29, 2021), and Motion by South Fork Wind to Strike Kinsella Testimony (filed: November 5, 2020) that was granted to the extent that the entirety of Testimony Part 2 was permanently struck from the record. This meant that all discussion of the variability of offshore wind and the reliability of the Applicant's offshore wind farm to provide electrical power to meet summer-time peak load on the South Fork of Long Island was erased entirely from the record together with a discussion of the exorbitant price of electricity from the proposed wind farm (see Price of Power below)" 2021 Comments-Letter (at p. 3-4).</p>	

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<p>14 The 2021 Comments-Letter by Plaintiff to BOEM (February 2021), in response to Defendants' DEIS (see #5 above), reads as follows—</p> <p><u>"Price of Power</u></p> <p>On March 29, 2017, the New York Office of the State Comptroller (“NYOSC”) valued the South Fork PPA at \$1,624,738,893. This valuation is based on total projected energy deliveries throughout the contract term (20 years) of 7,432,080 MWh (see Motion to Reopen Evidentiary Record – Supplemental Information (filed: January 29, 2021), <u>Exhibit K - NYS Comptroller \$1,625 Billion valuation [emphasis added][see #17 below]</u>). The price for energy from the Applicant’s proposed facility, therefore, is \$218.61/MWh or 21.9 cents per kilowatt-hour (c/kWh). This is 34% greater than what ratepayers have been told (LIPA has publicly advertised a price of 16.3 c/kWh (for its 90 MW facility). The price of 21.9 c/kWh is also nearly three times the price of energy (8.1 c/kWh) from Sunrise Wind. This extremely high price for the Applicant’s energy has been concealed from ratepayers who, in the end, will pay the price, in more ways than one.</p> <p>By comparison (on October 23, 2019), Ørsted A/S announced a power purchase agreement for Sunrise Wind with a price of only \$80.64/MWh. If the same amount of energy (i.e. 7,432,080 MWh) was purchased from Sunrise Wind instead of South Fork Wind, it would cost only \$599,322,931, which is \$1,025,415,958 less expensive".</p> <p>2021 Comments-Letter (at p. 4, ¶ 3).</p>	

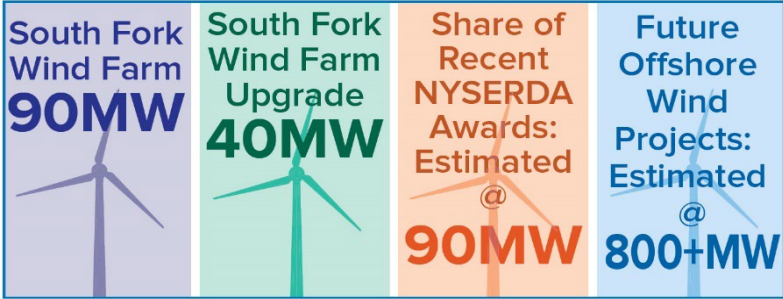
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<p>15 <b><u>LIPA's South Fork Wind Farm Fact Sheet.</u></b></p> <p>In February 2021, BOEM received the following information from Plaintiff in response to BOEM's DEIS for the South Fork Wind Project that it subsequently uploaded to its website.</p> <p>"South Fork Wind Farm Fact Sheet" published by Long Island Power Authority ("LIPA") in late 2019. It reads (at p. 3): "To compare offshore wind contracts with different timing, terms and escalations factors, the chart below provides the levelized cost of energy for each project, which includes estimates for all the amounts paid by consumers in 2018 dollars."</p> <p>The graph titled "A Developing Offshore Wind Industry" (at p. 3) reads: "Sunrise Wind (880MW) 8.0¢ (NY)"</p> <p>See Complaint Exhibit C, marked BOEM Index Exhibit #116 <b>Source Link to BOEM's record (below) -</b></p> <p><a href="https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment_39.pdf">https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment_39.pdf</a></p>	

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<p>16 LIPA's South Fork Wind Farm Fact Sheet (see #15 above), reads as follows—</p> <p style="text-align: center;"><b>Long Island's Share of Offshore Wind Energy</b>  <i>LIPA will responsibly buy offshore wind over time to meet New York's climate goals</i></p>  <p style="text-align: center;">See Complaint Exhibit C, marked BOEM Index Exhibit #116</p>	

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<p>17 <b><u>LIPA's Contract Encumbrance Request</u></b></p> <p>In February 2021, in response to the DEIS for the South Fork Wind Project, BOEM received a <u>Contract Encumbrance Request</u> completed and authorized by Long Island Power Authority in January 2017.</p> <p>Included in the document is a table "POWER PURCHASE AGREEMENT BETWEEN LIPA AND DEEPWATER WIND SOUTH FORK, LLC, ESTIMATED CONTRACT VALUE that reads (in part) as follows—</p> <p>The "Base Term Estimated Contract Value" is "<b>\$1,624,738,893.</b>" The "Projected Energy Deliveries (MWh)" per year is "371,604" MWh The total number of contract years (far left column) is 20. Total Projected Energy Deliveries over the 20 year contract term, therefore, is 7,432,080 MWh (371,604" MWh multiplied by 20 years). Average cost of power over the (20-year) contract term, therefore, is \$218.617 per MWh or <b>21.9 cents per kWh</b> (\$1,624,738,893 divided by 7,432,080 MWh).</p> <p>The Contract Encumbrance Request includes an LIPA internal email that reads: "Your choice - \$1.8B (25) or <u>\$1.6B (20)</u>. As the extension option is weak, perhaps go with 20 years." In the email, "<u>\$1.6B (20)</u>" is underlined and the words "perhaps go with 20 years" is circled (at PDF p. 5).</p> <p>(See Complaint Exhibit C, marked BOEM Index Exhibit #040) <b>Source Link to BOEM's record (below) -</b></p> <p><a href="https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_36.pdf">https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_36.pdf</a></p>	



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<p>18 <b><u>LIPA Board Memo Re: South Fork Wind Amendment</u></b></p> <p>In February 2021, in response to the DEIS for the South Fork Wind Project, BOEM received a Memorandum from LIPA CEO Thomas Falcone to the LIPA Board of Trustees on the subject of "Authorization to execute Amendment No. 1 to the Power Purchase Agreement with Deepwater Wind South Fork, LLC., dated November 14, 2018.</p> <p>The Memo reads: "The total estimated cost of Amendment No. 1 for the 20-year term is projected to be approximately \$388 million" (at p. 2, last ¶).</p> <p>(Complaint Exhibit C, marked BOEM Index Exhibit #024)</p> <p><b>Source Link to BOEM's record (below) -</b> <a href="https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_28.pdf">https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_28.pdf</a></p>	

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<p>19 <b><u>Final Environmental Impact Statement ("FEIS")</u></b></p> <p>In August 2021, BOEM issued its Final Environmental Impact Statement ("FEIS") prepared for the South Fork Wind Project's Construction and Operations Plan ("COP").</p> <p>The FEIS reads: "The South Fork Wind Farm and South Fork Export Cable Project Final Environmental Impact Statement (final EIS) assesses the <u>reasonably foreseeable impacts to physical, biological, socioeconomic, and cultural resources that could result from the construction and installation, operations and maintenance, and conceptual decommissioning of a commercial-scale wind energy project</u>, the South Fork Wind Farm and South Fork Export Cable Project (the Project), located in the area covered by BOEM Renewable Energy Lease Number OCS-A 0517, approximately 19 miles southeast of Block Island, Rhode Island, and 35 miles east of Montauk Point, New York [emphasis added].</p> <p>South Fork Wind, LLC, is proposing <u>the Project, which is designed to contribute to New York's renewable energy requirements, particularly, the state's goal of generating 9,000 megawatts of offshore wind energy by 2030</u> [emphasis added]." See FEIS (at p. i, PDF p. 5, ¶ 1, Abstract)</p> <p><b>Source Link to BOEM's record (below) -</b></p> <p><a href="https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF%20FEIS.pdf">https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF%20FEIS.pdf</a></p>	

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<p>20 BOEM's FEIS (see #19 above) reads as follows—</p> <p>"BOEM has prepared <u>the EIS following the requirements of the National Environmental Policy Act (42 USC 4321–4370f) and implementing regulations</u> [emphasis added]. This final EIS will inform BOEM in deciding whether to approve, approve with modifications, or disapprove the Project. [...] <u>BOEM's action furthers United States policy to make the Outer Continental Shelf energy resources available for development in an expeditious and orderly manner, subject to environmental safeguards (43 USC 1332(3)), including consideration of natural resources and existing ocean uses</u> [emphasis added]." (FEIS, at p. i, PDF p. 5, last ¶, Abstract)</p>	
<p>21 BOEM's FEIS (see #19 above) limits its analysis of socioeconomic resources to the "ocean economy."</p> <p>BOEM defines the <u>ocean economy</u> to be "economic activity dependent upon the ocean, such as commercial fishing and seafood processing, marine construction, commercial shipping and cargo handling facilities, ship and boat building, marine minerals, harbor and port authorities, passenger transportation, boat dealers, and ocean-related tourism and recreation (National Ocean Economics Program 2020)" (FEIS, at p. 3-157, PDF p. 209, last ¶).</p>	

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<p>22 BOEM's FEIS (see #19 above) includes an economic analysis that estimates of the project's capital expenditures ("Local CapEx with taxes") ranging from \$184.24 to \$246.81 million, and yearly operational expenditures ("Local OpEx with taxes") ranging from \$6.16 to \$12.32 million. The range depends on whether the offshore wind farm capacity is ninety megawatts (90 MW is the low estimate) or one hundred and eighty megawatts (180 MW is the high estimate). (FEIS, Tables F-10 and F-11, at p. F-17, PDF p. 587).</p>	
<p>23 BOEM's FEIS (see #19 above) limits its environmental justice analysis to "cities/towns, counties, and states where potentially affected ports or landing sites are located" (FEIS, at p. 3-168, PDF p. 220).</p>	
<p>24 BOEM's FEIS (see #19 above) limits The FEIS limits the area to "[f]ive-km zones [...] drawn around potentially affected ports or landing sites[,]" which further reduces the size of the analysis area. (FEIS at p. 3-170, PDF p. 222).</p>	
<p>25 According to BOEM's FEIS (see #19 above) the population used to assess Environmental Justice is equal to 3.9% of the total population of Suffolk County. Analysis Area "Population in 5-Km Zone" of "58,878" divided by "Total Population in Suffolk County" of "1,497,595". (FEIS, at pp. 3-168 to 3-173, PDF pp. 220-225, Table 3.5.4-1, Table 3.5.4-2, and Table 3.5.4-3)</p>	

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<p>26 BOEM's FEIS (see #19 above) does <i>not</i> identify, or discuss the overall cost of the Project that Long Island Power Authority valued (at various times)--- in Jan 2017 at \$1,624,738,893 (see #3 and #17 above), and in Nov 2018 estimated at \$2,012,738,893 (addition of \$1,624,738,893 and \$388,000,000 in #18 above).</p>	
<p>27 <b><u>BOEM's Record of Decision ("ROD")</u></b></p> <p>In November 2021, BOEM issued its Record of Decision ("ROD"), approving the Final Environmental Impact Statement ("FEIS") prepared for the South Fork Wind Project's Construction and Operations Plan ("COP"). It reads: "This ROD was prepared following the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. §§ 4321 et seq.) and 40 C.F.R. parts 1500-1508.1." Also, "This ROD addresses BOEM's action to approve the COP under section 8(p) of the Outer Continental Shelf Lands Act (OCSLA; 43 U.S.C. § 1337(p))" (at p. 1, PDF p. 3, ¶ 1)</p> <p><b>Source Link to BOEM's record (below) -</b>  <a href="https://www.boem.gov/renewable-energy/state-activities/record-decision-south-fork">https://www.boem.gov/renewable-energy/state-activities/record-decision-south-fork</a></p>	
<p>28 BOEM's ROD (see #27 above) states that—                  “The Project will contribute to New York’s renewable energy requirements, particularly the state’s goal of 9,000 MW of offshore wind energy generation by 2035.” (ROD, at p. 7, PDF p. 9, ¶ 7)</p>	

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<p>29 BOEM's ROD (see #27 above) states that—                      “The Project will contribute to New York’s renewable energy requirements, particularly the state’s goal of 9,000 MW of offshore wind energy generation by 2035.” (ROD, at p. 7, PDF p. 9, ¶ 7)</p>	
<p>30 BOEM's ROD (see #27 above) states that—                      “In addition, South Fork Wind’s goal is to fulfill its contractual commitments to Long Island Power Authority (LIPA) pursuant to a power purchase agreement executed in 2017 resulting from LIPA’s technology-neutral competitive bidding process.” (ROD, at p. 7, PDF p. 9, ¶ 7)</p>	
<p>31 BOEM's ROD (see #27 above) states that “the Proposed Project could have [...] beneficial impacts on [...] employment, and economics” (ROD at p. D-8, PDF 100, ¶ 1).</p>	
<p>32 BOEM's ROD (see #19 above) does <i>not</i> identify, or discuss the overall cost of the Project that Long Island Power Authority valued (at various times) in Jan 2017 at \$1,624,738,893 (see #3 and #17 above), or in Nov 2018 at \$2,012,738,893 (addition of \$1,624,738,893 and \$388,000,000 in #18 above).</p>	

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<p>33 <b><u>Action to Spur Domestic Clean Energy Manufacturing</u></b></p> <p>The Biden-Harris Administration's "Action to Spur Domestic Clean Energy Manufacturing" issued June 6, 2022, Authorizing Defense Production Act to Lower Energy Costs, Strengthen Power Grid, and Create Good-Paying Jobs. The White House Statement's opening sentence reads (in relevant part): "Today's clean energy technologies are a critical part of the arsenal we must harness to lower energy costs for families [...]."</p> <p><b>Source Link to The White House (below) -</b></p> <p><a href="https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/fact-sheet-president-biden-takes-bold-executive-action-to-spur-domestic-clean-energy-manufacturing/">https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/fact-sheet-president-biden-takes-bold-executive-action-to-spur-domestic-clean-energy-manufacturing/</a></p>	
<p>34 <b><u>Climate Crisis – Executive Order 14008</u></b></p> <p>The Biden-Harris Administration's "Executive Order 14008, Tackling the Climate Crisis at Home and Abroad" is referred to in BOEM's ROD (at p. D-28, PDF p. 120, last ¶).</p> <p><u>Executive Order 14008</u> reads: "We must strengthen our [...] water protections. [...] We must deliver environmental justice in communities all across America."</p> <p><b>Source Link to The White House (below) -</b></p> <p><a href="https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/">https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/</a></p>	

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<p>35 <b><u>Environmental Justice – Executive Order 12898</u></b></p> <p>BOEM summaries <u>Executive Order 12898</u> as follows—</p> <p>"Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Feb. 16, 1994) focuses federal attention on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities.”</p> <p><b>Source Link to BOEM's website (below)—</b></p> <p><a href="https://www.boem.gov/environment/regulatory-framework-and-guidelines">https://www.boem.gov/environment/regulatory-framework-and-guidelines</a></p>	
<p>36 <u>Executive Order 12898– Environmental Justice</u> reads as follows—</p> <p>"<b>1–101.</b> Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States [...]."</p> <p><b>Source Link to Federal Register / Vol. 59, No. 32 (below)—</b></p> <p><a href="https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf">https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf</a></p>	



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<p>37 <u>Executive Order 12898– Environmental Justice</u> (see #36 above) reads—</p> <p><b>"3–301.</b> Human Health and Environmental Research and Analysis.</p> <p>(a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards. [...]</p> <p>(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures."</p>	

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<p>38 <u>Executive Order 12898– Environmental Justice</u> (see #36 above) reads—</p> <p><b>"3–302.</b> Human Health and Environmental Data Collection and Analysis. To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a):</p> <p>(a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations; [...]</p> <p>(b) In connection with the development and implementation of agency strategies in section 1–103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; [...]."</p>	

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<p>39 <u>Executive Order 12898– Environmental Justice</u> (see #36 above) Memorandum to heads of departments and agencies reads as follows---</p> <p>"In the memorandum to heads of departments and agencies that accompanied Executive Order 12898, the President specifically recognized the importance of procedures under the National Environmental Policy Act (NEPA)* for identifying and addressing environmental justice concerns. The memorandum states that “each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by [NEPA].” The memorandum particularly emphasizes the importance of NEPA’s public participation process, directing that “each Federal agency shall provide opportunities for community input in the NEPA process.” Agencies are further directed to “identify potential effects and mitigation measures in consultation with affected communities, and improve the accessibility of meetings, crucial documents, and notices.”</p> <p><b>Source Link to EPA website (below)(at PDF p. 7, ¶ 2) -</b></p> <p><a href="https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf">https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf</a></p>	

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<p>40 <b><u>2019 Letter to EPA, Re: PFAS (Washington, D.C.)</u></b></p> <p>In December 2019, then Chief Wheeler of the Environmental Protection Agency ("EPA") received a letter (addressed to the EPA's Washington, D.C. Office, 1200 Pennsylvania Ave). The Plaintiff's letter, "Re: Cover-up of PFAS contamination in the interests of offshore wind developer" reads—</p> <p><i>In response to an Interrogatory/Request for Information just over two weeks ago (please see documents enclosed), Deepwater asserts that the PF AS contamination in Wainscott is "not based in fact". This reinforced my earlier suspicion that the Town of East Hampton was hiding PF AS contamination to further the interests of Deepwater. [...]</i></p> <p><i>The Interrogatory/Request for Information provided Deepwater with summaries and tables showing extensive PFAS contamination in Wainscott's drinking water together with source references that included reports from the Department of Environmental Conservation and hundreds of Suffolk County Department of Health Services laboratory test results. But despite the overwhelming evidence, Deepwater still chooses to turn a blind eye to the contamination, and in so doing, is potentially risking the health and wellbeing of local residents.</i></p> <p>(Complaint Exhibit N) <b>Source Link to Complaint Exhibit N (below) -</b></p> <p><a href="#">Exhibit N- EPA Letter &amp; Resp, PFAS &amp; SFW.pdf (wsimg.com)</a></p>	

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<p>41 The <u>2019 Letter to EPA, Re: PFAS</u> (see #40 above), continues—</p> <p><i>Deepwater's proposed construction activities would disturb approximately 10,000 tons short (US) of soil and undoubtably impact the contamination site. I believe this is why Deepwater has refused to test the soil and groundwater along its proposed cable route and why it is lying in its response to the Interrogatory/Request for Information pertaining to contamination.</i></p> <p><i>(Complaint Exhibit N)</i></p>	

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<p>42 <b><u>South Fork Wind owners admit to "diseconomies of scale"</u></b></p> <p>In February 2021, BOEM received a response to a Request for Information (“RFI”) by Ørsted A/S and Eversource (under the name of Bay State Wind, LLC) submitted by them to the New York State Energy Research and Development Authority (“NYSERDA”). BOEM received the RFI's response in Plaintiff's response to BOEM's DEIS for the South Fork Wind Project that BOEM subsequently uploaded to its website.</p> <p>In response to the RFI, Ørsted A/S and Eversource (under the name of Bay State Wind, LLC) submitted the following comments to NYSERDA—</p> <p>“The [NYSERDA] 2018 RFP [Request for Proposals] should establish a minimum capacity bid of 400 MW. As one of the key findings of the NYSERDA OSW Policy Options Paper (“Options Paper”), NYSERDA concluded that ”Small initial projects are not likely to deliver cost savings. Due to diseconomies of scale, the costs per unit of energy for projects of 100 MW and 200 MW in size are significantly higher than those for 400 MW projects. As a result, [...] costs for such smaller projects would be comparable to those of a 400 MW project despite their smaller size and energy output.”</p> <p>Complaint Exhibit C, BOEM Index Exhibit #169 (at p. 2, ¶ 4)  <b><u>Source Link to BOEM's website (below) -</u></b>  <a href="https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment_68.pdf">https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment_68.pdf</a></p>	

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<p>43 <b><u>LIPA South Fork RFP Memo</u></b></p> <p>In February 2021, BOEM received Plaintiff's comments, including a Memorandum from LIPA to the New York Office of the State Comptroller ("NYOSC") "Re: LIPA's 2015 Request for Proposals for South Fork Resources" dated January 27, 2017 ("<b>LIPA South Fork RFP Memo</b>") in response to the DEIS for the South Fork Wind Project that it subsequently uploaded to its website.</p> <p>The LIPA Memo reads: "In some instances, proposals were advanced if they were the only proposal offering a particular technology" (at p. 12, ¶ 1).</p> <p>The LIPA Memo continues: "Two other proposals (i.e., Deepwater Wind [One] [DWW100] and Fuel Cell Energy [FCE100]) were designated as Semi-Finalists because [...] they were the only proposals offering a particular technology." (NB: The square brackets are as written in the original document, and "Deepwater Wind [One] [DWW100]" refers to the 90 MW South Fork Wind Project (at p. 13, first bullet point).</p> <p>The LIPA Memo continues: "Two proposals (i.e., NextEra Energy [NEX100] and Halmar International [HAL100]) were designated because they were the only proposals offering a particular technology." (at p. 13, first bullet point). (NB: The square brackets are in the original document.)</p> <p>Complaint Exhibit C, BOEM Index Exhibit #030 <b>Source Link to BOEM's website (below) -</b></p> <p><a href="https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_49.pdf">https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_49.pdf</a></p>	

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<p>44 The LIPA South Fork RFP Memo (see #43 above) reads as follows—                      “Deepwater Wind was the only proposal offering offshore wind technology” (at p. 13, first bullet point).                      Complaint Exhibit C, BOEM Index Exhibit #030  <b>Source Link to BOEM's website (below) -</b></p>	
<p>45 The LIPA South Fork RFP Memo (see #43 above) reads as follows—                      “The initial phase of the evaluation process included logging and reviewing each proposal to confirm that it met the mandatory submission requirements set forth in the 2015 SF RFP (e.g., received on-time with proper payment and in the proper form as specified in the 2015 SF RFP) to determine proposal responsiveness as required by LIPA Procurement Guidelines Section II.B.c.(x). [...] <u>By December 2, 2015</u>, Servco [the company managing the procurement process on behalf of LIPA] received proposals from [...] Deepwater Wind (One) (DWW100) [a.k.a the South Fork Wind Project][emphasis added]” (at p. 7, last ¶).                      Complaint Exhibit C, BOEM Index Exhibit #030  <b>Source Link to BOEM's website (below) -</b></p>	



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<p>46 <b><u>South Fork RFP Evaluation Guide</u></b></p> <p>In February 2021, BOEM received Plaintiff's comments, including a South Fork Resources RFP EVALUATION GUIDE (2015) ("<b>South Fork RFP Evaluation Guide</b>") in response to the DEIS for the South Fork Wind Project that it subsequently uploaded to its website.</p> <p><i>"Mandatory Criteria</i> – The criteria in the Appendix 1 Proposal Completeness Checklist that will be evaluated to determine the Proposals' compliance to the RFP and will be used to determine whether the Proposal can be accepted. If this information is not provided at the Proposal Submittal Deadline, the Proposal will be eliminated from consideration" (South For RFP Evaluation Guide, at p. 3, PDF p. 4, ¶ 5).</p> <p>Complaint Exhibit C, BOEM Index Exhibit #43 <b>Source Link to BOEM's website (below) -</b></p> <p><a href="https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_37.pdf">https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_37.pdf</a></p>	

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<p>47 Appendix 1 of the <u>South Fork RFP Evaluation Guide</u> (see #46 above) includes the following "Mandatory (i.e. proposal deemed non-responsive if not compliant upon Proposal Submittal Date)" criteria (at pp. 11-12, PDF pp. 12-13, heading)—</p> <p><b>"3.2.3 – Pricing"</b></p> <p>"Proposed pricing(s) shall include all costs, including license and permitting fees, associated with the installation and delivery of the proposed solution.</p> <p>"Pricing must include any and all costs to fully meet the 30% NYS Certified Minority and Women Owned Business Enterprise subcontracting goals and the NYS Certified Service-Disabled Veteran-Owned Business goal of 6%."</p> <p>"Proposals must provide the pricing in standard units such as \$/kW-month for capacity and \$/MWh for energy products."</p> <p>"Proposal must provide pricing for ancillary services, if applicable."</p>	
<p>48 <b>3.2.3 – Pricing ... continued ...</b></p> <p>"Proposal must provide pricing for black start capability, if applicable."</p> <p>"Proposal must provide pricing for five and/or ten year extension, if applicable."</p> <p>"Proposals must provide the pricing for pricing options for a one-year delay in COD, as discussed in RFP Section 2.2.1."</p> <p>"Proposal must provide a line item breakdown and schedule of total costs."</p> <p>Complaint Exhibit C, BOEM Index Exhibit #043</p>	

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<p>49 Appendix 1 of the <u>South Fork RFP Evaluation Guide</u> (see #46 above) includes the following "Mandatory (i.e. proposal deemed non-responsive if not compliant upon Proposal Submittal Date)" criteria—</p> <p><b>"Resource Overview, Development Plans, Schedule, and Reporting 3.2.4 – Resource Overview"</b> (at pp. 12, PDF pp. 13)</p> <p>"Proposal must contain a description of each proposed resource solution.</p> <p>"Proposal must contain the location of any proposed facility requiring construction and/or permitting."</p> <p>"Proposal must contain a description of key features and functions of the proposed resource."</p> <p><b>"Additional Requirements"</b> (at pp. 13, PDF pp. 14)</p> <p><b>"1.2.3 – Resource Requirements"</b></p> <p>"Proposal includes resources greater than or equal to 100 kW (individually or combined)."</p> <p>"Proposals should offer a COD of May 1, 2017, May 1, 2018, or May 1, 2019. Each proposal must include pricing options for a one-year delay from the offered COD, at LIPA's option."</p> <p>Complaint Exhibit C, BOEM Index Exhibit #043</p>	

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<p>50 In February 2021, BOEM received the following information in response to the Draft Environmental Impact Statement (DEIS) for the South Fork Wind Project that it uploaded to its website in April 2021:</p> <p><i>A report published by the U.S. Dept. of Energy's National Renewable Energy Laboratory ("NREL") titled <u>Comparing Offshore Wind Energy Procurement and Project Revenue Sources Across U.S. States (marked BOEM Index Exhibit #118) Lower Income Groups.</u>, dated June 2020.</i></p> <table border="0"> <thead> <tr> <th>Offshore</th> <th>Offtake</th> <th>Contract</th> <th>Levelized</th> <th></th> </tr> <tr> <th><u>Wind Project</u></th> <th><u>Duration</u></th> <th><u>State</u></th> <th><u>Type</u></th> <th><u>Price (\$/MWh)</u></th> </tr> </thead> <tbody> <tr> <td>a. Vineyard Wind 1</td> <td>20</td> <td>MA</td> <td>PPA</td> <td>\$74.00</td> </tr> <tr> <td>b. Vineyard Wind 1</td> <td>20</td> <td>MA</td> <td>PPA</td> <td>\$65.00</td> </tr> <tr> <td>c. Revolution Wind</td> <td>20</td> <td>RI</td> <td>PPA</td> <td>\$94.43</td> </tr> <tr> <td>d. Revolution Wind</td> <td>20</td> <td>CT</td> <td>PPA</td> <td>\$99.50</td> </tr> <tr> <td>e. Revolution Wind</td> <td>20</td> <td>CT</td> <td>PPA</td> <td>\$98.43</td> </tr> <tr> <td>f. Sunrise Wind</td> <td>25</td> <td>NY</td> <td>NY OREC</td> <td>\$83.36</td> </tr> <tr> <td>g. Mayflower Wind</td> <td>20</td> <td>MA</td> <td>PPA</td> <td>\$58.47</td> </tr> <tr> <td>h. Mayflower Wind</td> <td>20</td> <td>MA</td> <td>PPA</td> <td>\$58.47</td> </tr> <tr> <td>i Avg 2020 Levelized Price (\$/MWh):</td> <td></td> <td></td> <td></td> <td>\$78.96</td> </tr> </tbody> </table> <p>Table A-2. U.S. Offshore Wind Offtake Agreements (on page 41)</p> <p><b>Source Link to BOEM's record (below) -</b></p> <p><a href="https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment_41.pdf">https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment_41.pdf</a></p>	Offshore	Offtake	Contract	Levelized		<u>Wind Project</u>	<u>Duration</u>	<u>State</u>	<u>Type</u>	<u>Price (\$/MWh)</u>	a. Vineyard Wind 1	20	MA	PPA	\$74.00	b. Vineyard Wind 1	20	MA	PPA	\$65.00	c. Revolution Wind	20	RI	PPA	\$94.43	d. Revolution Wind	20	CT	PPA	\$99.50	e. Revolution Wind	20	CT	PPA	\$98.43	f. Sunrise Wind	25	NY	NY OREC	\$83.36	g. Mayflower Wind	20	MA	PPA	\$58.47	h. Mayflower Wind	20	MA	PPA	\$58.47	i Avg 2020 Levelized Price (\$/MWh):				\$78.96	
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d. Revolution Wind	20	CT	PPA	\$99.50																																																				
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<p>51 <u>Adverse Health Effects from Exposure to PFAS</u></p> <p>PFAS chemical compounds break down slowly and build up (bioaccumulate) in people, animals, and the environment over time. According to the EPA, current peer reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to:</p> <ul style="list-style-type: none"><li>• Reproductive effects include decreased fertility or increased high blood pressure in pregnant women.</li><li>• Developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes.</li><li>• Increased risk of some cancers, including prostate, kidney, and testicular cancers.</li><li>• Reduced ability of the body's immune system to fight infections, including reduced vaccine response.</li><li>• Interference with the body's natural hormones.</li><li>• Increased cholesterol levels and/or risk of obesity.</li></ul> <p><a href="http://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas">www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas</a>.</p>	

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<p>52 <u>Overall, existing groundwater quality in the analysis area appears to be good and meets NYSDEC (2018) groundwater quality standards. However, as indicated by NYSDEC (2021a), four NYSDEC Environmental Remediation Sites are mapped near the interconnection facility (NYSDEC 2021b).</u></p> <p>Sampling and analysis at the following three sites have not confirmed or revealed elevated or significant remaining contamination: NYSDEC #152156, which served as an airport hangar for the East Hampton Airport before it was abandoned in 1991; NYSDEC #152213 (the Hortonsphere site), a gas storage facility east of the proposed interconnection facility and upgradient of the onshore SFEC route from the Hither Hills landing site; and NYSDEC #152219, a former gasoline refinery facility that predates the 1930s. These sites are therefore not a concern for the onshore SFEC route. Sampling at the fourth site, NYSDEC #152250, has indicated the presence of perfluorinated compounds. Site-related compounds have been identified in soil and groundwater within and around the site. (FEIS at p. H-23, PDF p. 655 of 1,317).</p> <p><a href="https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF%20FEIS.pdf">https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF%20FEIS.pdf</a></p>	

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Plaintiff's Statement of Material Facts and Supporting Evidence (Simon V. Kinsella, <i>Pro Se</i> )	Defendants' Response and Evidence
<p>53 <b>South Fork Wind COP (September 2018)</b></p> <p>In September 2018, then Deepwater Wind South Fork LLC (now South Fork Wind LLC) submitted to BOEM a Construction and Operations Plan (“COP”) for its proposed South Fork Wind Project.</p> <p>The COP reads—</p> <p><b>“Groundwaters</b></p> <p>Long Island is considered a sole source aquifer region, which means that groundwater is the single water supply source. Most of Long Island's drinking water is from groundwater with surface water an insignificant contributor. There are four primary formations which are layered, and make up the Long Island aquifer system: Upper Glacial Aquifer, Magothy Aquifer, Raritan Clay, and Lloyd Aquifer. The three most important Long Island aquifers are the Upper Glacial Aquifer, the Magothy Aquifer, and the Lloyd Aquifer (USGS, 2017; NYSDEC, 2017d). Most of the private groundwater wells and the wells that provide water to farms, golf courses, and industry tap the Upper Glacial Aquifer. Because the population is less dense and the threat of contamination in the aquifer is reduced, public supply wells in eastern Suffolk County also take water from the Upper Glacial Aquifer (LICAP, 2016).” (COP 2018, at p. 4-56, PDF p. 219).</p>	

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54 The South Fork Wind Project's COP (September 2018) continues— “Groundwater throughout most of eastern Suffolk County is of generally high quality (NYSDOH, 2003). All freshwater groundwater in New York State is Class GA, a source for potable water supply (NYSDOS, 2018b). With rare exceptions, potable water supplied by community water systems in Suffolk County meet all drinking water quality standards.” (COP 2018, at p. 4-56, PDF p. 219).	



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<p>55 The South Fork Wind Project's COP (September 2018) continues—</p> <p>“However, according to Suffolk County, median groundwater nitrogen levels in the Upper Glacial Aquifer have risen 40 percent to 3.58 mg/L, and the Magothy Aquifer has seen a 93 percent increase in nitrogen levels to 1.76 mg/L since 1987. While nitrogen levels are generally below the drinking water standard, there are some areas that now exceed the 10 mg/L limit. These aquifers, of course, are recharged through surface water and subsurface wastewater infiltration.</p> <p>Groundwater along the SFEC – Onshore corridor and at the SFEC – Interconnection Facility generally flows both downward and horizontally to the south, toward the Atlantic Ocean, and ranges from a depth of zero feet below ground surface (bgs) at the Beach Lane and Hither Hills landing sites to approximately 40 feet (12 m) bgs at the proposed SFEC – Interconnection Facility.</p> <p>The Beach Lane and Hither Hill landing sites are underlain by the Upper Glacial and Magothy aquifers. The area is vulnerable to saltwater intrusion from over-pumping of groundwater (Nemickas and Koszalka, 1982). Groundwater depths to the Upper Glacial Aquifer at the potential landing sites are estimated to be less than 11 feet (3.4 m) from the ground surface (USGS, 2017), but typical groundwater depths along the south coastline of eastern Suffolk County have been shown to be to depths ranging from approximately 4 to 5 feet (1.2 to 1.5 m) bgs (GZA, 2018).” (COP 2018, at p. 4-56/57, PDF p. 219-220).</p>	

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<p><b>56 <u>South Fork Wind COP (May 2021)</u></b></p> <p>In May 2021, South Fork Wind LLC (formerly Deepwater Wind South Fork LLC) submitted to BOEM a revised COP for its proposed South Fork Wind Project, the COP.</p> <p>The text describing groundwater quality in the COP dated September 2018, is identical to the COP BOEM received years later in May 2021. The "Updated" COP dated May 2021 reads as follows—</p> <p><b>“Groundwaters</b></p> <p>Long Island is considered a sole source aquifer region, which means that groundwater is the single water supply source. Most of Long Island's drinking water is from groundwater with surface water an insignificant contributor. There are four primary formations which are layered, and make up the Long Island aquifer system: Upper Glacial Aquifer, Magothy Aquifer, Raritan Clay, and Lloyd Aquifer. The three most important Long Island aquifers are the Upper Glacial Aquifer, the Magothy Aquifer, and the Lloyd Aquifer (USGS, 2017; NYSDEC, 2017d). Most of the private groundwater wells and the wells that provide water to farms, golf courses, and industry tap the Upper Glacial Aquifer. Because the population is less dense and the threat of contamination in the aquifer is reduced, public supply wells in eastern Suffolk County also take water from the Upper Glacial Aquifer (LICAP, 2016).” (COP 2018, at p. 4-56, PDF p. 219).</p>	

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<p>57 The South Fork Wind Project's COP (May 2021) continues—</p> <p>“Groundwater throughout most of eastern Suffolk County is of generally high quality (NYSDOH, 2003). All freshwater groundwater in New York State is Class GA, a source for potable water supply (NYSDOS, 2018b). With rare exceptions, potable water supplied by community water systems in Suffolk County meet all drinking water quality standards.” (COP 2018, at p. 4-56, PDF p. 219).</p>	

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<p>58 The South Fork Wind Project's COP (May 2021) continues—</p> <p>“However, according to Suffolk County, median groundwater nitrogen levels in the Upper Glacial Aquifer have risen 40 percent to 3.58 mg/L, and the Magothy Aquifer has seen a 93 percent increase in nitrogen levels to 1.76 mg/L since 1987. While nitrogen levels are generally below the drinking water standard, there are some areas that now exceed the 10 mg/L limit. These aquifers, of course, are recharged through surface water and subsurface wastewater infiltration.</p> <p>Groundwater along the SFEC – Onshore corridor and at the SFEC – Interconnection Facility generally flows both downward and horizontally to the south, toward the Atlantic Ocean, and ranges from a depth of zero feet below ground surface (bgs) at the Beach Lane and Hither Hills landing sites to approximately 40 feet (12 m) bgs at the proposed SFEC – Interconnection Facility.</p> <p>The Beach Lane and Hither Hill landing sites are underlain by the Upper Glacial and Magothy aquifers. The area is vulnerable to saltwater intrusion from over-pumping of groundwater (Nemickas and Koszalka, 1982). Groundwater depths to the Upper Glacial Aquifer at the potential landing sites are estimated to be less than 11 feet (3.4 m) from the ground surface (USGS, 2017), but typical groundwater depths along the south coastline of eastern Suffolk County have been shown to be to depths ranging from approximately 4 to 5 feet (1.2 to 1.5 m) bgs (GZA, 2018).” (COP 2018, at p. 4-56/57, PDF p. 219-220).</p>	

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<p>59 <b><u>Notice of PFAS Received by BOEM</u></b></p> <p>In February 2021, BOEM received the following maps and figures showing PFAS contamination levels and locations that it subsequently uploaded to its website:</p> <p><u>PFAS Maps of East Hampton Airport (July 2020)</u> (3 maps)                      NYSDEC Site Characterization of East Hampton Airport (by AECOM)                      (Fig 8 at PDF p. 27, Fig 7 at PDF 26, Fig 6 at PDF 25, Fig 1 at PDF 20)</p> <p><a href="#">BOEM Index Exhibit #066</a></p>	
<p>60 <u>PFAS Maps of Wainscott S&amp;G (July 2020)</u> (2 maps)                      NYSDEC Site Characterization of East Hampton Airport (by FDR)                      (Fig 7A at PDF p. 90, Fig 8 at PDF 91)</p> <p><a href="#">BOEM Index Exhibit #075</a></p>	
<p>61 <u>PFAS Maps of Wainscott S&amp;G (November 2018)</u> (3 maps)                      Hydrogeology Assessment for Wainscott Commercial Center, LLC                      (by Alpha Geoscience)                      (Fig 8 at PDF p. 40, Fig 6 at PDF 38, , Fig 7 at PDF 39)</p> <p><a href="#">BOEM Index Exhibit #078</a></p>	
<p>62 <u>PFAS Maps of Wainscott S&amp;G (January 2019)</u> (2 maps)                      Environmental Assessment for Wainscott Commercial Center, LLC                      (by Alpha Geoscience)                      (Fig 7 at PDF p. 129, Fig 3 at PDF p. 125)</p> <p><a href="#">BOEM Index Exhibit #078</a></p>	
<p>63 <u>PFAS Maps</u>– Combined NYSDEC Airport with Wainscott S&amp;G (2 maps)</p>	

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<a href="#">BOEM Index Exhibit #004</a> <a href="#">BOEM Index Exhibit #027</a>	
<p>64 <u>PFAS Heat Map of Private Drinking Water Wells in Wainscott (2019)</u>                      Based on Suffolk County Department of Health Services laboratory results  <a href="#">BOEM Index Exhibit #005</a></p>	
<p>65 <b><u>Suffolk County Department of Health Services — PFAS laboratory results.</u></b></p> <p>Suffolk County tested for PFAS contamination over 300 private drinking-water wells in Wainscott in the area where South Fork Wind has begun constructing underground high-voltage concrete transmission infrastructure.</p> <p>BOEM received SCDHS' PFAS laboratory test results (of 416-pages) in February 2021, nine months <i>before</i> approving the ROD (in Nov 2021).</p> <p>The PFAS results are summarized in the <u>PFAS Heat Map</u> (see #64 above) of Private Drinking Water Wells in Wainscott (2019).  <a href="#">BOEM Index Exhibit #166</a></p>	

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<p>66 <b><u>Suffolk County Dept of Health Services "Weekly Update - 6/15/18"</u></b></p> <p>PFC results have been received for 303 of the 336 wells sampled in Phases 1, 2, 3, &amp; 4 as follows:</p> <ul style="list-style-type: none"> <li>• Thirteen (13) wells are above the USEPA Health Advisory Level (HAL) of 70 parts per trillion.</li> <li>• One hundred and forty-six (146) wells are below the HAL. PFOS/PFOA combined concentrations in 128 of the 146 wells are less than 20 ppt; eighteen (18) of the 146 wells have detections of combined PFOS/PFOA above 20 ppt, ranging from 22 ppt to 59.3 ppt.</li> <li>• One hundred and forty-four (144) wells had no detections of PFOS/PFOA.</li> <li>• SCDHS reported the high level of contamination (791 ppt) to Supervisor Van Scoyoc in <u>June 2018</u>, along with one hundred and fifty-nine (159) other wells with detectable levels of contamination in Wainscott. Yet, the Town remained silent on the matter during the NYS Public Service Commission hearing for years (until 2021).</li> </ul> <p>67 <b><u>Suffolk County of Health Services Email to East Hampton Town Supervisor Re: PFAS Testing Results "Weekly Update - 6/15/18"</u></b>                      NYSDEC Site Characterization of East Hampton Airport (by AECOM) (Fig 8 at PDF p. 27, Fig 7 at PDF 26, Fig 6 at PDF 25, Fig 1 at PDF 20)</p> <p><a href="#">BOEM Index Exhibit #167</a></p>	

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<p>68 <b><u>Groundwater and Environmental Protection Areas</u></b> (3 maps) –</p> <ul style="list-style-type: none"> <li>• NYS Department of Environmental Conservation (“NYSDEC”) Online DECinfo Locator (GIS) - Critical Environmental Areas (at p. 1)</li> <li>• Suffolk County (February 1988), Special Groundwater Protection Area (South Fork), Critical Environmental Area (CEA) Map #6 (at p. 2)</li> <li>• Town of East Hampton (February 1988), Water Recharge Overlay District, Critical Environmental Area (CEA) (at p. 3)</li> </ul> <p><a href="#">BOEM Index Exhibit #063</a></p>	
<p>69 Well: EH-19A (GW)                      – PFOS/PFOA = 145 ppt (&gt;2016 HAL by 2.1x)</p> <p>Well: EH-19A2                      – PFOS/PFOA = 174 ppt (&gt; 2016 HAL by 2.5x)</p> <p>Well: EH-19B                      – PFOS/PFOA = 166 ppt (&gt; 2016 HAL by 2.4x)</p> <p>Well: EH-1                      – PFOS/PFOA = 162 ppt (&gt; 2016 HAL by 2.3x)</p> <p><u>PFAS Maps of East Hampton Airport (July 2020)</u> (3 maps)                      NYSDEC Site Characterization of East Hampton Airport (by AECOM)                      (Fig 8 at PDF p. 27, Fig 7 at PDF 26, Fig 6 at PDF 25, Fig 1 at PDF 20)</p> <p><a href="#">BOEM Index Exhibit #066</a></p>	



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<p>70 Well: EH-19A (soil)</p> <ul style="list-style-type: none"> <li>– PFOS=3,900 ppt</li> <li>– PFOA=180 ppt</li> <li>– PFHxS=170 ppt</li> </ul> <p>Well: EH-19B (soil)</p> <ul style="list-style-type: none"> <li>– PFOS=12,000 ppt</li> <li>– PFOA=3,800 ppt</li> <li>– PFHxS=3,800 ppt</li> </ul> <p>Well: EH-1 (soil)</p> <ul style="list-style-type: none"> <li>– PFOS=10,000 ppt</li> <li>– PFOA=180 ppt</li> <li>– PFHxS=170 ppt</li> </ul> <p><u>PFAS Maps of East Hampton Airport (July 2020)</u> (3 maps)                      NYSDEC Site Characterization of East Hampton Airport (by AECOM)                      (Fig 8 at PDF p. 27, Fig 7 at PDF 26, Fig 6 at PDF 25, Fig 1 at PDF 20)</p> <p><a href="#">BOEM Index Exhibit #066</a>                      State Superfund Program, East Hampton Airport (Site No. 152250)—  <a href="https://www.dec.ny.gov/data/DecDocs/152250/">https://www.dec.ny.gov/data/DecDocs/152250/</a></p>	

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<p>71 Well: MW5 (GW)</p> <ul style="list-style-type: none"> <li>- PFOS=877 ppt (&gt; 2022 HAL by 43,850 x)</li> <li>- PFOA=69 ppt (&gt; 2022 HAL by 17,250 x)</li> <li>- PFHxS=566 ppt</li> <li>- PFOS/PFOA=946 ppt (&gt; 2016 HAL by 13.5 x)</li> </ul> <p>Well: MW3 (GW)</p> <ul style="list-style-type: none"> <li>- PFOS=1,010 ppt (&gt; 2022 HAL by 50,500 x)</li> <li>- PFOA=28 ppt (&gt; 2022 HAL by 7,000 x)</li> <li>- PFHxS=306 ppt</li> <li>- PFOS/PFOA=1,038 ppt (&gt; 2016 HAL by 14.8 x)</li> </ul> <p>Well: MW4 (GW)</p> <ul style="list-style-type: none"> <li>- PFOS=232 ppt (&gt; 2022 HAL by 11,600 x)</li> <li>- PFOA=5.57 ppt (&gt; 2022 HAL by 1,393 x)</li> <li>- PFHxS=43.4 ppt</li> <li>- PFOS/PFOA=238 ppt (&gt; 2016 HAL by 3.4 x)</li> </ul> <p><u>PFAS Maps of Wainscott S&amp;G (July 2020) (2 maps)</u>                  NYSDEC Site Characterization of East Hampton Airport (by FDR)                  (Fig 7A at PDF p. 90, Fig 8 at PDF 91)  <a href="#">BOEM Index Exhibit #075</a>                  State Superfund Program, Wainscott Sand &amp; Gravel (Site No.152254)–  <a href="https://www.dec.ny.gov/data/DecDocs/152254/">https://www.dec.ny.gov/data/DecDocs/152254/</a></p>	

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<p>72 <b><u>East Hampton Airport designation</u></b>—</p> <p>“ <i>[A] Class 2 site that presents a significant threat to public health and/or the environment</i> ”</p> <p>Well at East Hampton Airport are upgradient within 1,000 feet of South Fork Wind's construction corridor show high levels of PFAS contamination exceeding the EPA 2016 Health Advisory Level (of 70 ppt).</p> <p><u>State Superfund Site Classification Notice for East Hampton Airport</u> (NYSDEC Site No. 152250) Dated: June 2019 Last accessed September 21, 2022</p> <p><a href="https://www.dec.ny.gov/data/DecDocs/152250/Fact%20Sheet.HW.152250.2019-06-19.East%20Hampton%20Airport%20Class%2002%20Listing.pdf">Fact Sheet.HW.152250.2019-06-19.East Hampton Airport New Class 02 Listing.pdf (ny.gov)</a></p> <p><a href="https://www.dec.ny.gov/data/DecDocs/152250/Fact%20Sheet.HW.152250.2019-06-19.East%20Hampton%20Airport%20Class%2002%20Listing.pdf">https://www.dec.ny.gov/data/DecDocs/152250/Fact%20Sheet.HW.152250.2019-06-19.East%20Hampton%20Airport%20Class%2002%20Listing.pdf</a></p>	
<p>73 <b><u>PFAS Diffusion</u></b></p> <p>Diffusion in groundwater is often ignored because diffusion rates are slow relative to advection. However, diffusion of contaminant mass into lower permeability soils or site materials such as clays, bedrock, and concrete may enhance the long-term persistence of PFAS in groundwater. For instance, at one site PFAS penetrated 12 cm into a concrete pad at a fire training area, and diffusion was a contributing process (Badel, Paxman, and Mueller 2015).</p>	

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<p><a href="#">ITRC Environmental Fate and Transport PFAS (Mar 2018) (2 maps)</a>  <a href="#">NYS Public Service Commission Case 18-T-0604 (Exhibit No. 263) - ITRC Per- and Polyfluoroalkyl Substances ("PFAS")</a>                      Initial Brief of Kinsella, January 20, 2021 (at p. 23)                      See Complaint Exhibit J  <a href="#">BOEM Index Exhibit #009</a>  <a href="#">SFW Exhibit (OWRP-3)- ITRC Environmental Fate &amp; Transport, PFAS</a></p>	
<p>74 <b><u>South Fork Wind Flawed Sampling &amp; Testing</u></b>                      In December 2021, Plaintiff filed Sixty-Day Notice of Intent to Sue.                      See Complaint Exhibit D  <a href="#">Sixty-Day Notice of Intent to Sue, Fig 5</a>  <a href="#">Sixty-Day Notice of Intent to Sue, Fig 6</a></p>	

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<p>75 <b><u>BOEM Received Notice of South Fork Wind's Environmental Survey in February 2021, but did not Consider its Findings on PFAS contamination</u></b></p> <p>In February 2021, Defendant BOEM received a copy of a "Motion to Reopen the Record" by Simon Kinsella, Plaintiff (filed on January 13, 2021, in NYSPSC Case 18-T-0604). The motion includes and email from Raymond V. Collins of Eversource (50% owner/contractor) with subject: ": RE: Upcoming South Fork Wind Field Activity." The letter and exhibits thereto provided BOEM with the following (varifiable) information that it failed to consider <i>before</i> issuing its ROD nine months later (in November 2021) —</p> <p>"As an update, our team has completed the environmental survey and site evaluation activities along the LIRR corridor as of December 30th, and is now preparing to begin the next phase of the activity throughout Town-owned rights-of-way.</p> <p>This activity is anticipated to begin as early as Wednesday, January 6th and expected to be complete within three weeks. [...]"</p>	

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<p>The email continues ...</p> <p><u>"Environmental Survey</u></p> <p>Soil &amp; Groundwater Sampling + Groundwater Monitoring Well Installations along the onshore route in Town-owned roads.</p> <ul style="list-style-type: none"> <li>• 34 borings will be performed by a Geoprobe rig</li> <li>• Work is anticipated to begin on or after January 6</li> <li>• Completion anticipated within three weeks</li> <li>• Abutters have been notified</li> <li>• Work will occur Monday through Friday between 7:00 am and 7:00 pm</li> <li>• The work will not require road closures Sampling of Existing Groundwater Monitoring Wells</li> <li>• Sampling required for inclusion in the EM&amp;CP as part of the Joint Proposal proposed Certificate Conditions</li> <li>• Sampling does not require ground disturbance – only opening of the well cover</li> <li>• The work will not require road closures</li> <li>• Work will occur Monday through Friday between 7:00 am and 7:00 pm"</li> </ul> <p><a href="#">BOEM Index Exhibit #022, Exhibit D (at PDF p. 17)</a></p> <p><a href="#">BOEM Index Exhibit #022, Exhibit E - PFAS Maps (at PDF p. 19-20)</a></p> <p><a href="#">BOEM Index Exhibit #022, Exhibit F - Well Map (at PDF p. 21)</a></p>	

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<p>76 <b><u>PFAS Contamination within Construction Site Exceeding NYS Regulation</u></b></p> <p>Well MW-4A Beach Lane (ductbank)                      PFOA = 82 ppt (2022)                      PFOA = 50 ppt (2020)                      Total PFAS = 190 ppt (2020)</p> <p>Well MW-4B Beach Lane (ductbank)                      PFOA = 15 ppt (2022)                      PFOS = 13 ppt (2022)</p> <p>Well MW-15A Wainscott NW Road (VAULT)                      PFOS at 12 ppt (2022)                      PFOS at 15 ppt (2020)                      Total PFAS at 41 ppt (2020)</p> <p><u>Town of East Hampton South Fork Monitoring Well Summary</u></p> <p>Monitoring Wells show PFAS contamination exceeding NYS regulations with South Fork Wind's construction corridor, on-site, contradicting BOEM's ROD and FEIS. See notes in table, far right column for the rows with Boring ID: MW-4A (7th row), MW-4B (9th row), MW-15A (27th row). Report dated: February 21, 2022.                      Last accessed September 21, 2022</p> <p><a href="https://ehamptonny.gov/DocumentCenter/View/11757/SFW-Monitoring-Well-summary-Feb-21-2022">https://ehamptonny.gov/DocumentCenter/View/11757/SFW-Monitoring-Well-summary-Feb-21-2022</a></p>	

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<p>77 <b><u>NYS Public Service Commission did not Consider the Project's Cost (or ratepayers)</u></b></p> <p>In February 2021, Defendant BOEM received a copy of an "Initial Brief Simon Kinsella," Plaintiff (dated January 20, 2021). The Initial Brief was filed New York State Public Service Commission Case 18-T-0604, and provides BOEM with the following (variable) information—</p> <p>Elaborating on the concept of “public need,” the Department of Public Service states that the “total cost to society” is “[a]ll encompassing”[1] that includes the cost when “a rate payer pays his or her regular electricity bill.”[2] Therefore, public need requires that the Commission take into account the total cost of such facility, including ratepayers, of which there are over one million living on eastern Long Island. Still, by its own admission, when NYS DPS recommended that “the Commission can make findings in all areas without further recommendations or modifications to the proposed Settlement Documents”[3] including “the basis of the need for the facility,”[4] the DPS Staff did not consider ratepayers – There’s no testimony in this, in our document, to the best of my recollection that addresses cost to rate payers [sic].[5]</p>	



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<p><u>Footnotes:</u></p> <p>[1] Case 18-T-0604 – NYS Department of Public Service (“NYSDPS”) Cross-Examination by Kinsella, December 7, 2020 (at p. 583, PDF p. 18, lines 18-21 and p. 584, PDF p. 19, lines 12-14)</p> <p>[2] Id. (at p. 590, PDF p. 25, line 23 through to 591, PDF p. 26, line 2)</p> <p>[3] Case 18-T-0604 – Prepared Testimony of NYSDPS, October 9, 2020 (at p. 21, PDF p. 22, lines 3-6)</p> <p>[4] Id. (at p. 13, PDF p. 14, line 15)</p> <p>[5] Case 18-T-0604 – NYSDPS Cross-Examination, supra, (at p. 595, PDF p. 30, lines 19-21)</p> <p><u>NYS Public Service Commission Case 18-T-0604</u> – NYS Department of Public Service (“NYSDPS”) Cross-Examination by Kinsella, December 7, 2020 <a href="https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BBB282D4-7CB2-4B7C-AC81-6B85F97B734B}">https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BBB282D4-7CB2-4B7C-AC81-6B85F97B734B}</a></p> <p><u>NYS Public Service Commission Case 18-T-0604</u> – Prepared Testimony of NYSDPS, October 9, 2020 <a href="https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C6BC8496-889B-492C-ACF1-D4B161536E01}">https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C6BC8496-889B-492C-ACF1-D4B161536E01}</a></p>	

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<p>78 <b><u>White House: EPA Interim PFAS Health Advisory</u></b></p> <ul style="list-style-type: none"> <li>• On June 15, 2022, the White House asserted “that every American deserves to drink clean water. But for too many communities across this country, children and families are drinking water that is contaminated with [...] dangerous chemicals.”</li> <li>• The Administration announced “new findings and actions that will help to protect Americans’ drinking water from contamination, including from “forever chemicals” like per- and polyfluoroalkyl substances [“PFAS”]. PFAS [...] can cause cancer and other severe health problems [...] [and] are considered “forever chemicals” because they are environmentally persistent, bioaccumulative, and remain in human bodies for a long time.”</li> <li>• The President’s announcement included the EPA’s “interim updated drinking water lifetime health advisories for perfluorooctanoic acid [“PFOA’] and perfluorooctane sulfonic acid [“PFOS”] that replace those issued by EPA in 2016.:</li> <li>• The updated advisory levels are based on new science that indicates that some negative health effects may occur with concentrations of PFOA or PFOS in water that are near zero [...].”</li> </ul> <p><b>Source Link to BOEM's record (below) -</b></p> <p><a href="https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/15/fact-sheet-biden-harris-administration-combating-pfas-pollution-to-safeguard-clean-drinking-water-for-all-americans/">https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/15/fact-sheet-biden-harris-administration-combating-pfas-pollution-to-safeguard-clean-drinking-water-for-all-americans/</a></p>	

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STATEMENT OF MATERIAL FACTS BY PLAINTIFF

Plaintiff's Statement of Material Facts and Supporting Evidence (Simon V. Kinsella, <i>Pro Se</i> )	Defendants' Response and Evidence
<p data-bbox="289 332 1123 370"><b>79 <u>Forever chemicals' in Suffolk's private water wells</u></b></p> <p data-bbox="352 391 1241 613">In an exposé on harmful PFAS contamination detected in private drink water wells in Suffolk County (published in Newsday), n June 15, 2022, the White House asserted “that every American deserves to drink clean water. But for too many communities across this country, children and families are drinking water that is contaminated with [...] dangerous chemicals.”</p> <p data-bbox="352 634 1241 781">1) More private wells in Wainscott (65) from which residents were ingesting water with high concentration levels of PFOA/ PFOS contaminants than anywhere else in Suffolk County, including Gabreski Airport (13);</p> <p data-bbox="352 802 1241 915">2) Wainscott had five times the number of contaminated drinking water wells (65) containing the harmful chemicals than the area near the Gabreski Airport (13);</p> <p data-bbox="352 937 1241 1083">3) Of the total number of wells in Suffolk County found to have dangerous levels of ‘forever chemicals’ (202), thirty-two percent (32%) were in Wainscott (65), downgradient from the East Hampton Airport; (Complaint Exhibit M);</p> <p data-bbox="352 1088 1241 1234"><b>Source Link to record (below) -</b> <u>See Newsday article "'Forever chemicals' found in Suffolk's private water wells since 2016, data shows" by Vera Chinese, published April 4, 2022 (last accessed September 22, 2022)</u></p> <p data-bbox="352 1255 1241 1325"><a href="http://www.newsday.com/long-island/environment/private-wells-testing-contaminants-drinking-water-pfas-v49xdvtl">www.newsday.com/long-island/environment/private-wells-testing-contaminants-drinking-water-pfas-v49xdvtl</a></p>	

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STATEMENT OF MATERIAL FACTS BY PLAINTIFF

Plaintiff's Statement of Material Facts and Supporting Evidence (Simon V. Kinsella, <i>Pro Se</i> )	Defendants' Response and Evidence
<p>80 <b><u>Forever chemicals' in Suffolk's private water wells</u></b></p> <p>On October 11, 2017, Suffolk County Department of Health Services released a Water Quality Advisory for Private-Well Owners in Area of Wainscott (“<b>Water Quality Advisory</b>”). It reads:</p> <p>"Since the East Hampton Airport indicated that it had used or stored products that may have contained PFOS and PFOA, the state requested that the Suffolk County Department of Health Services (SCDHS) sample drinking water supplies near the airport [emphasis added]. To assess the drinking water quality of properties served with private wells, SCDHS has begun a private well survey in the vicinity of the airport property [emphasis added]."</p> <p>(Complaint Exhibit C– BOEM Index #065, PDF pp. 46-47, marked in red as "Exhibit C (page 47 of 91)");</p> <p><b>Source Link to BOEM record (below) -</b></p> <p><a href="#">BOEM Index #065, PDF pp. 46-47</a></p>	

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STATEMENT OF MATERIAL FACTS BY PLAINTIFF

Plaintiff's Statement of Material Facts and Supporting Evidence (Simon V. Kinsella, <i>Pro Se</i> )	Defendants' Response and Evidence
<p>81 <b><u>"Southfork Wind Excavation Volumes for Permitting"</u></b></p> <p>On April 21, 2021 (<i>after</i> the ALJ had closed the evidentiary record), South Fork Wind uploaded to the NYS Public Service Commission's website (under NYSPSC Case 18-T-0604) "ATTACHMENT B" to Appendix H of the Joint Proposal, "Southfork Wind Excavation Volumes for Permitting," dated "Rev 10/8/2020" (two months <i>before</i> the ALJ closed the evidentiary record). Under the heading "<b>bulk tonnage</b>" it reads: "31893" (at PDF p. 5, see total at lower left corner).</p> <p>The description reads—</p> <p>"The calculations were developed based on Google earth route maps for the road and railroad portion of the project using a standard ductbank section for both the 138 and 69 kV systems. Each is assumed buried at 3 ft below grade (5 ft to bottom of excavation).</p> <p>The HDD transition joint pit (TJB) assumes a pit length of approximately 48 feet, 12 ft wide and 10 ft deep with two feet of working space on all sides for shoring. Also included is two feet of trap rock in the bottom of the pit for soil stability given its proximity to the ocean.</p> <p>A total of 9 joint pits are included using standard splice pit dimensions from Eversource. As with the TJB, two feet of working space is provided on all sides.</p> <p><b>Source Link to NYSPSC (dps.ny.gov) record (below) -</b></p> <p><a href="#">Appendix H - Final HWPWP Part 2</a></p> <p><a href="https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={96B0E633-C308-45E5-A3A4-382D0C924AFF}">https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={96B0E633-C308-45E5-A3A4-382D0C924AFF}</a></p>	

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STATEMENT OF MATERIAL FACTS BY PLAINTIFF

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<p>82 <b><u>Southfork Wind Excavation Volumes ... continued ...</u></b></p> <p>The description continues—</p> <p>"Jack and Bore volume is based on the preliminary alignment provided to Eversource during May 2020 and assumes a 48 inch diameter Hobas pipe casing.</p> <p>To account for utility crossings and splice manhole burial depth, an allowance of 5% was added to the Insitu volumes for the ductbanks, splice manholes and J&amp;B pits. In addition, a 10% bulk factor was added to the in-situ volume to account for disturbance bulking due to excavation.</p> <p>A calculation of excavated tonnage is included. Soil in the boring logs provided to date are fine to medium sand with standard penetration values ranging from loose to moderately dense. An assumed in-situ unit weight of 120 lbs per cubic foot was used for this calculation. If additional borings prove a portion of the route is underlain by clay, silt or ledge, the estimated excavation tonnage will require revision."</p> <p><b>Source Link to NYSPSC (dps.ny.gov) record (below) -</b></p> <p><a href="#">Appendix H - Final HWPWP_Part 2</a></p> <p><a href="https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={96B0E633-C308-45E5-A3A4-382D0C924AFF}">https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={96B0E633-C308-45E5-A3A4-382D0C924AFF}</a></p>	

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STATEMENT OF MATERIAL FACTS BY PLAINTIFF

Plaintiff's Statement of Material Facts and Supporting Evidence (Simon V. Kinsella, <i>Pro Se</i> )	Defendants' Response and Evidence
<p>83 <b><u>EPA FACT SHEET – PFOA &amp; PFOS Drinking Water Health Advisories</u></b></p> <p>The EPA published a Fact Sheet “PFOA &amp; PFOS Drinking Water Health Advisories” (dated November 2016). It reads—</p> <p>“EPA has established health advisories for PFOA and PFOS based on the agency’s assessment of the latest peer-reviewed science to provide drinking water system operators, and state, [...] and local officials who have the primary responsibility for overseeing these systems, with information on the health risks of these chemicals, so they can take the appropriate actions to protect their residents.”</p> <p>“How the Health Advisories were developed EPA’s health advisories are based on the best available peer-reviewed studies of the effects of PFOA and PFOS [...]. These studies indicate that exposure to PFOA and PFOS over certain levels may result in adverse health effects, including developmental effects to fetuses during pregnancy or to breastfed infants (e.g., low birth weight, accelerated puberty, skeletal variations), cancer (e.g., testicular, kidney), liver effects (e.g., tissue damage), immune effects (e.g., antibody production and immunity), thyroid effects and other effects (e.g., cholesterol changes).”</p> <p><b>Source Link to BOEM record (below)—</b></p> <p><a href="#">BOEM Index #080 (at PDF p. 2)</a></p>	

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<p>84 <b><u>NYS Department of Environmental Conservation Notification to East Hampton Town that PFOA and PFOS "are all hazardous wastes" (June 2016)</u></b></p> <p>On June 14, 2016, the New York State Department of Environmental Conservation ("DEC") notified East Hampton Airport, owned by the Town of East Hampton, that the—</p> <p>“DEC added PFOA-acid to New York State’s list of hazardous substances (6 NYCRR Section 597.3) by emergency regulation dated January 27, 2016, and added PFOA-salt, PFOS-acid, and PFOS-salt to the list by emergency regulation dated April 25, 2016, making them all hazardous wastes as defined by ECL Article 27, Title 13.”</p> <p><b>Source Link to BOEM record (below)—</b></p> <p><a href="#">BOEM Index #080 (at PDF p. 14, marked "Exhibit H (page 14 of 20)"</a></p>	



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<p>85 <b><u>NYS Department of Environmental Conservation Notification to East Hampton Town that PFOA and PFOS "are all hazardous wastes" (June 2016)</u></b>  <b>... continued ...</b></p> <p>The letter (dated June 14, 2016), to the Town of East Hampton as owners of the East Hampton Airport included an "<b>Information Bulletin</b>" titled "<b>Guidance to Fire Departments Regarding Class B Firefighting Foam Concentrates Which May Contain Hazardous Substances</b>" that reads—</p> <p>"Discontinue use of any Class B foam concentrate for training purposes due to potential environmental and public health concerns. [...] Work with the manufacturer of any foam concentrate currently in inventory to determine if it contains material classified as a hazardous substance or represents other environmental hazards. [...] Based upon that determination, comply as necessary with DEC rules and regulations regarding registration, storage, and any potential use or spill of a hazardous substance, including notification if applied at an actual incident, as well as disposal. [...] Appropriate measures should be taken to confine any Class B foam applied at an incident for vapor suppression or fire control purposes, in addition to those steps taken to confine any hazardous material the foam was applied to (often these measures will be mutually supportive). Finished foam applied to a spill should be cleaned up along with the spill itself by an appropriate party (i.e., approved clean up contractor)."</p> <p><b>Source Link to BOEM record (below)—</b></p> <p><a href="#">BOEM Index #080 (at PDF p. 20, marked "Exhibit H (page 20 of 20)"</a></p>	

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STATEMENT OF MATERIAL FACTS BY PLAINTIFF

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<p>86 <b><u>Water Quality Advisory for Private-Well Owners in Wainscott, issued October 2017</u></b></p> <p>On October 11, 2017, Suffolk County Department of Health Services (“SCDHS”) issued a Water Quality Advisory for Private-Well Owners in Area of Wainscott (“<b>Water Quality Advisory</b>”). It advises residents that some drinking-water wells within Wainscott were found to contain high levels of PFOS/PFOA contamination and that contamination in one well exceeds USEPA Drinking Water Health Advisory Level (70 ppt for combined PFOS/PFOA).</p> <p>The Water Quality Advisory, cites <u>only one potential source</u> of PFOS/PFOA contamination – <u>East Hampton Airport</u>.</p> <p>The advisory reads as follows—</p> <p>"Since the East Hampton Airport indicated that it had used or stored products that may have contained PFOS and PFOA, the state requested that the Suffolk County Department of Health Services (SCDHS) sample drinking water supplies near the airport [emphasis added]. To assess the drinking water quality of properties served with private wells, SCDHS has begun a private well survey in the vicinity of the airport property [emphasis added]."</p> <p><b>Source Link to BOEM record (below)—</b></p> <p><a href="#">BOEM Index #065 (at PDF p. 47, marked "Exhibit C (page 47 of 91)"</a></p>	

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<p>87 <b><u>PFAS Contamination within custruction corridor.</u></b> <b><u>House Fires</u></b></p> <p>Initial Hazardous Waste and Petroleum Work Plan Environmental Sampling Scope of Work (dated January, 2021)</p> <p>2.0 Summary of Fire and PFAS Research <u>2.1 Fire Reasearch</u> (at p. 2.3, PDF p. 32 of 94)</p> <p>Reads as follows—</p> <p>"As specified in the Appendix H of the Joint Settlement Agreement, soil samples collected in the Project Corridor must be analyzed for PFAS in locations where fires have occurred since 1940 based upon due diligence of historical records."</p> <p><u>2.1.2 Finds</u></p> <p>Reads as follows—</p> <p>"Stantec's newspaper research identified more than one hundred locations where fires occurred after 1940 in East Hampton, NY. Of these, <u>eight are likely to have potentially occurred within the extents the Project Corridor</u> [emphasis added]."</p> <p><b>Source Link to NYSPSC (dps.ny.gov) record (below)—</b></p> <p><a href="#">Appendix H - Final HWPWP Part 1</a></p> <p><a href="https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B9C9F7B5-3033-404C-B081-96AC996BB7D3}">https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B9C9F7B5-3033-404C-B081-96AC996BB7D3}</a></p>	

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STATEMENT OF MATERIAL FACTS BY PLAINTIFF

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<p>88 <b><u>PFAS Contamination within custruction corridor</u></b> <b><u>House Fires</u></b> <b>... coninuted ...</b></p> <p>Initial Hazardous Waste and Petroleum Work Plan Environmental Sampling Scope of Work (dated January, 2021)</p> <p>2.0 Summary of Fire and PFAS Research <u>2.1 Fire Reasearch</u> (at p. 2.4, PDF p. 33 of 94) <u>2.1.2 Finds</u> Table 1: Probable fires within the Project Corridors</p> <p>Reads as follows—</p> <p>"Fire Incident No. 2 Chimney fire on Beach Lane, Wainscott. Home of Mr. and Mrs. Dudley Wood 12-Nov-53</p> <p>Fire Incident No. 4 Mr. and Mrs. John C. Tysen's summer home on Beach Lane, Wainscott was destroyed by fire. 30-Sep-65</p> <p>Fire Incident No. 8 - Fire at a house on Wainscott-Northwest Road in Wainscott. 75 Wainscott-Northwest Road in Wainscott, close to Montauk Highway (23-Aug-07)."</p> <p><b>Source Link to NYSPSC (dps.ny.gov) record (below)—</b></p> <p><a href="#">Appendix H - Final HWPWP Part 1</a></p> <p><a href="https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B9C9F7B5-3033-404C-B081-96AC996BB7D3}">https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B9C9F7B5-3033-404C-B081-96AC996BB7D3}</a></p>	

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STATEMENT OF MATERIAL FACTS BY PLAINTIFF

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<p>88 <b><u>New York Office of the State Comptroller, Open Book Contract Valuation of \$\$2,013,198,056</u></b></p> <p>Open Book, Contract Number: C000883</p> <p><b>Source Link to OSC Open Book (osc.state.ny.us) record (below)—</b></p> <p><a href="https://wwe2.osc.state.ny.us/transparency/contracts/contracttransactions.cfm?Contract=00000000000000000000085553">https://wwe2.osc.state.ny.us/transparency/contracts/contracttransactions.cfm?Contract=00000000000000000000085553</a></p>	
<p>89 <b><u>Initial Hazardous Waste and Petroleum Work Plan (HWPWP), Part 3</u></b></p> <p>by Stantec Consulting Services Inc. for South Fork Wind LLC, "Revised April 2021"</p> <p>Under <u>Groundwater Results</u> (at p. 8, PDF p. 34) it reads—</p> <p>"PFAS were detected in samples from 20 wells; levels of PFOA and PFOS exceeded NYSDEC's Ambient Water Quality Criteria Guidance Values [...]."</p> <p>Under <u>Soil Results</u> (at p. 8, PDF p. 34) it reads—</p> <p>"PFAS were detected in 11 samples, generally at estimated concentrations below the laboratory's RL.</p> <p><b>Source Link to OSC Open Book (osc.state.ny.us) record (below)—</b></p> <p><a href="https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7F6C6BBF-6053-455D-AF06-E440FB46C63F}">https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7F6C6BBF-6053-455D-AF06-E440FB46C63F}</a></p>	

Project Management Initials: Designer: KAM Checked: Approved: ANSI B 11" x 17"  
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# PLAN

## LEGEND

- MONITORING WELL / PIEZOMETER
- SOIL BORING
- CATCH BASIN
- TAP LOCATION
- AREA OF CONCERN (AOC)

**AECOM**  
Figure: 8

IDENTIFIED AREAS  
OF CONCERN

EAST HAMPTON AIRPORT  
SITE CHARACTERIZATION REPORT  
New York State Department of Environmental Conservation  
Wainscott, Suffolk County, New York  
Project No.: 60566160 Date: September 2018

Approved: ANS B 11" x 17"  
 Checked: Designer: VAM  
 Project Management Initials: Designer: VAM  
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### LEGEND

- MONITORING WELL / PIEZOMETER
- SOIL BORING
- CATCH BASIN
- TAP LOCATION

**Notes:**

J - the analyte is an estimated quantity.

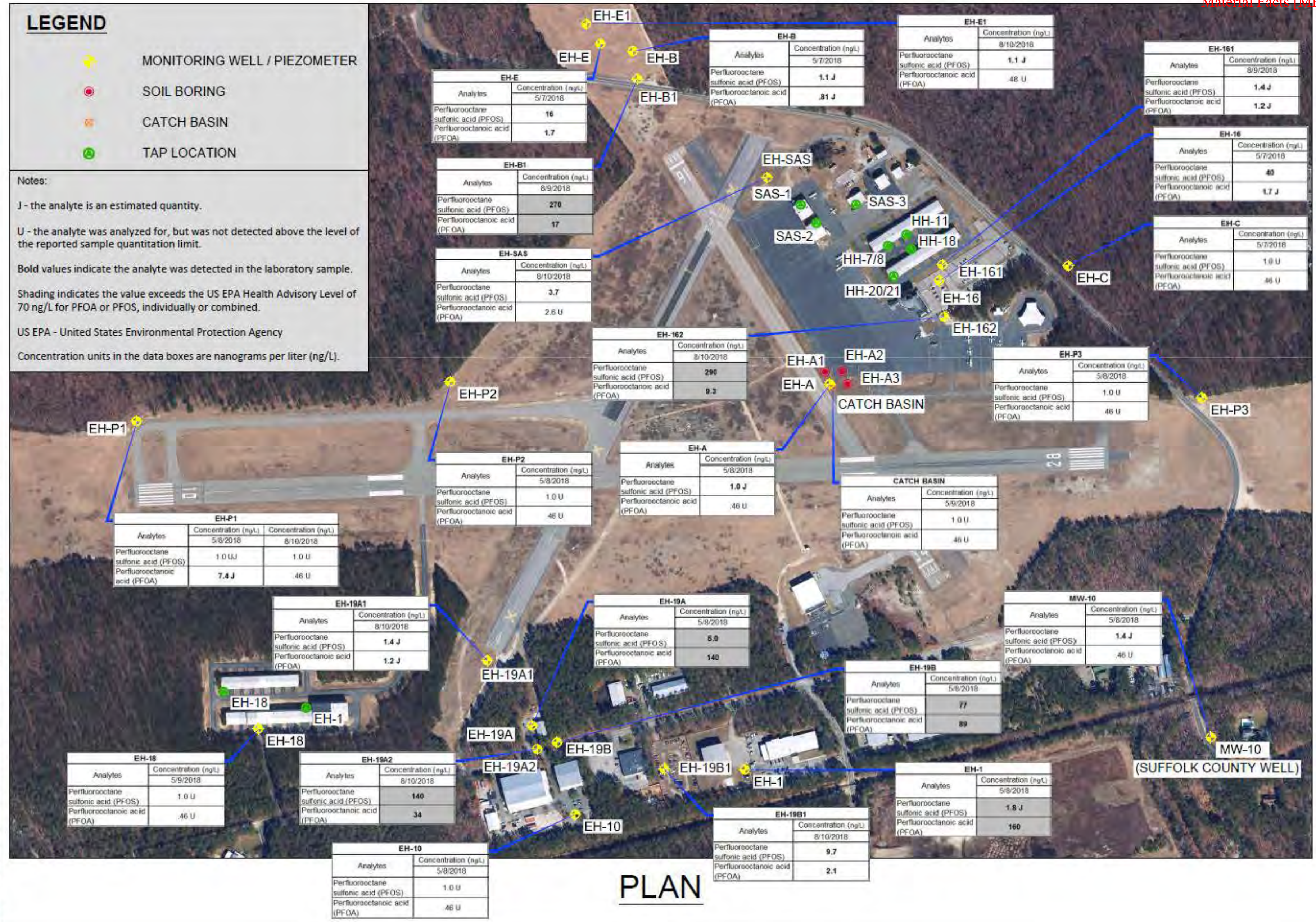
U - the analyte was analyzed for, but was not detected above the level of the reported sample quantitation limit.

**Bold values indicate the analyte was detected in the laboratory sample.**

Shading indicates the value exceeds the US EPA Health Advisory Level of 70 ng/L for PFOA or PFOS, individually or combined.

US EPA - United States Environmental Protection Agency

Concentration units in the data boxes are nanograms per liter (ng/L).



## PLAN

**AECOM**  
**Figure: 7**  
**GROUNDWATER ANALYTICAL RESULTS**  
**EAST HAMPTON AIRPORT**  
**SITE CHARACTERIZATION REPORT**  
 New York State Department of Environmental Conservation  
 Wainscott, Suffolk County, New York  
 Project No.: 60566160 Date: September 2018

### LEGEND

- MONITORING WELL / PIEZOMETER
- SOIL BORING
- CATCH BASIN
- TAP LOCATION

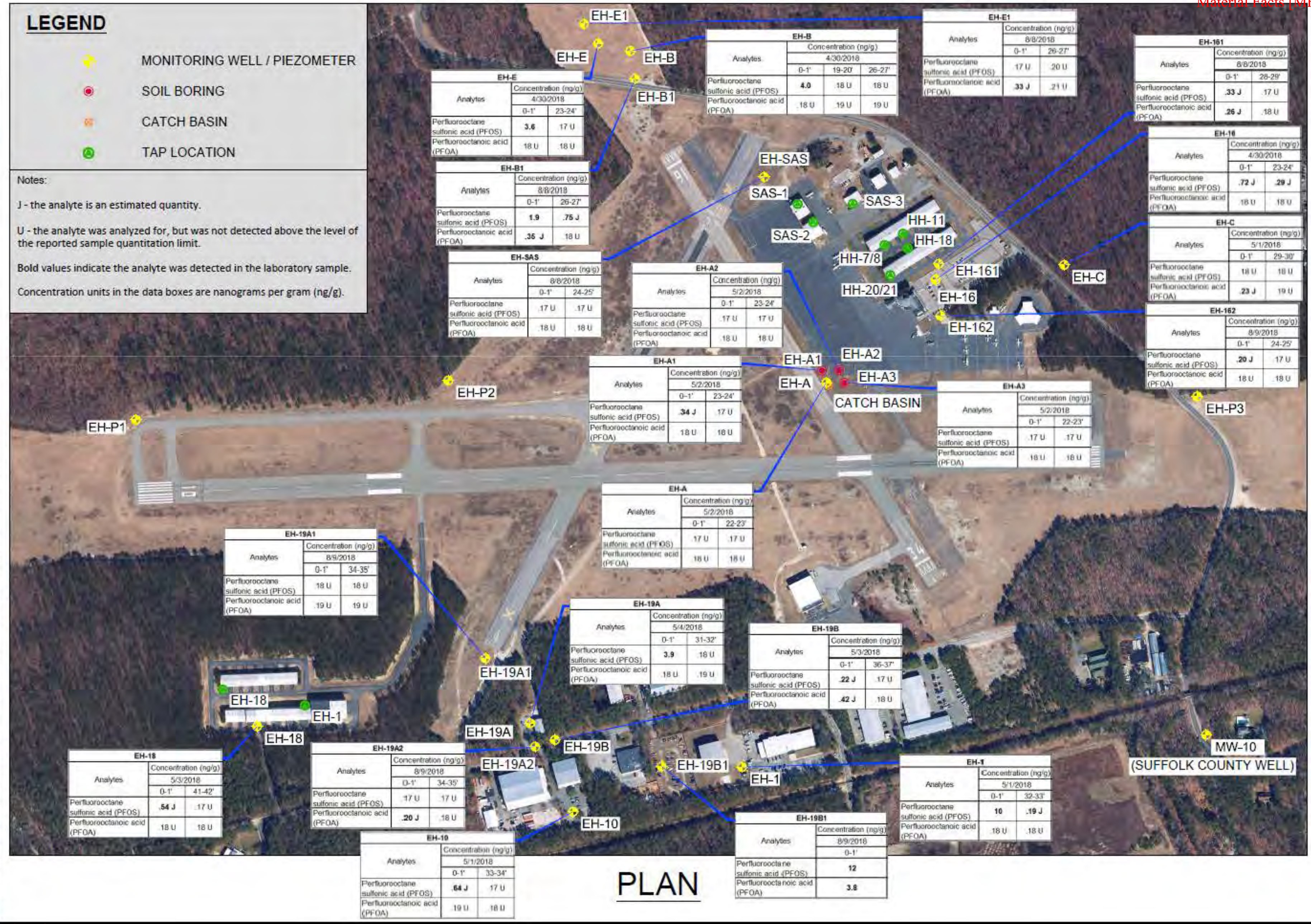
**Notes:**

J - the analyte is an estimated quantity.

U - the analyte was analyzed for, but was not detected above the level of the reported sample quantitation limit.

**Bold values indicate the analyte was detected in the laboratory sample.**

Concentration units in the data boxes are nanograms per gram (ng/g).



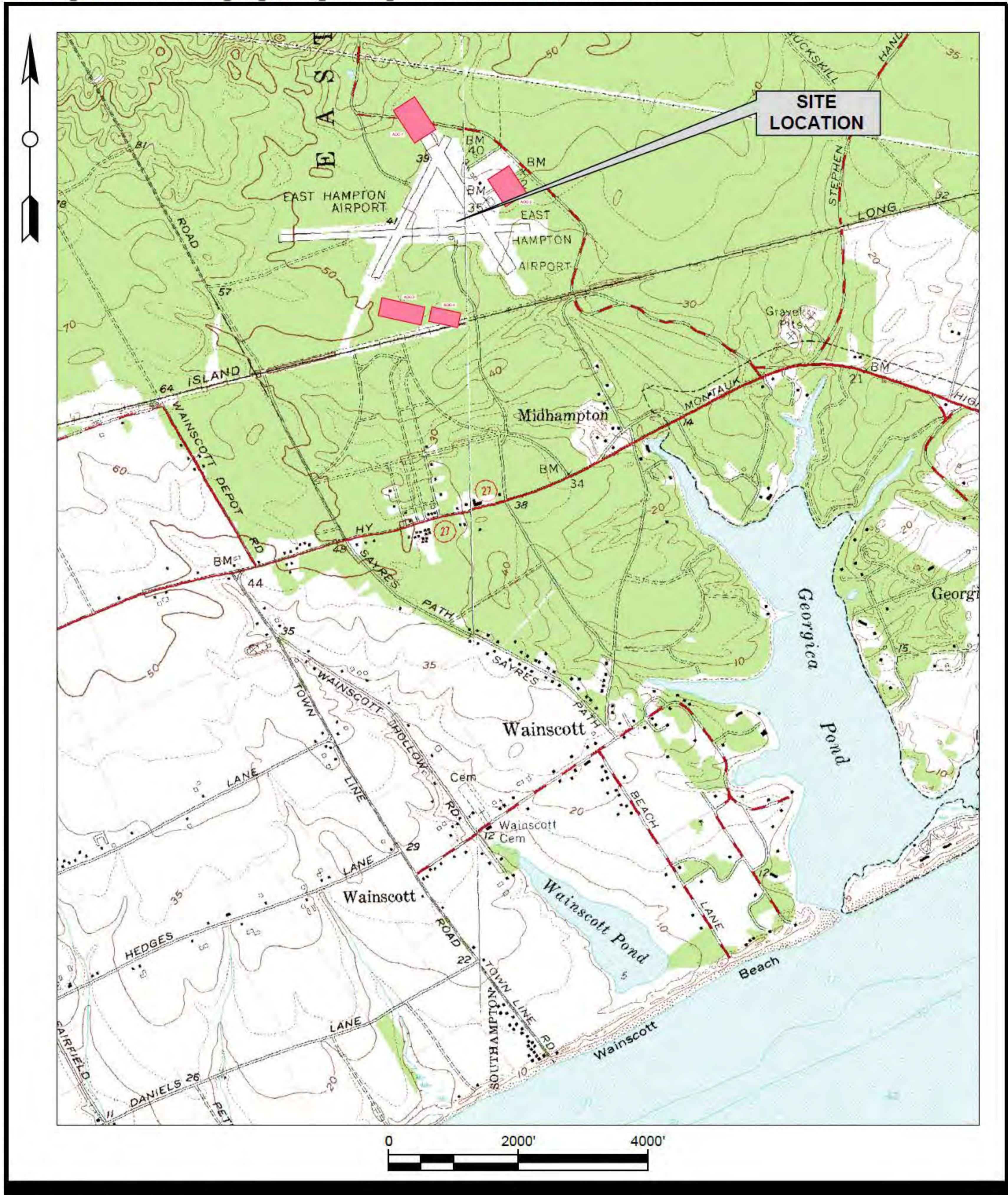
PLAN

SOIL ANALYTICAL RESULTS

EAST HAMPTON AIRPORT  
 SITE CHARACTERIZATION REPORT  
 New York State Department of Environmental Conservation  
 Wainscott, Suffolk County, New York  
 Project No.: 60566 160 Date: September 2018



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**EAST HAMPTON AIRPORT**  
**SITE CHARACTERIZATION REPORT**  
New York State Department of Environmental Conservation  
Wainscott, Suffolk County, New York  
Project No.: 60566160 Date: September 2018

**SITE LOCATION**  
**PLAN**

**AECOM**

**Figure: 1**

<b>Sample:</b>	<b>WSG-MW-6-10-0</b>
<b>Date:</b>	<b>11/6/2019</b>
<b>Depth (ft):</b>	<b>6</b>
Perfluorobutanesulfonic Acid (PFBS)	2.5
Perfluorodecanoic Acid (PFDA)	92.3
Perfluoroheptanoic Acid (PFHpA)	50
Perfluorohexanesulfonic Acid	58.9 B
Perfluorohexanoic Acid (PFHxA)	61.1
Perfluorononanoic Acid (PFNA)	<b>2850</b>
Perfluorotridcanoic Acid (PFTriA)	1.49 J
Perfluoroundecanoic Acid (PFUnA)	<b>333</b>
Perfluorooctane Sulfonic Acid (PFOS)	<b>151</b>
Perfluorooctanoic acid (PFOA)	<b>26.1</b>
<b>Total PFOA and PFOS</b>	<b>177.1</b>
<b>Total PFAS</b>	<b>3626.39</b>

<b>Sample:</b>	<b>WSG-MW-7-10-0</b>
<b>Date:</b>	<b>11/6/2019</b>
<b>Depth (ft):</b>	<b>7</b>
Perfluorobutanesulfonic Acid (PFBS)	0.23 J
Perfluorodecanoic Acid (PFDA)	0.4 EMPC
Perfluoroheptanoic Acid (PFHpA)	0.85 J
Perfluorohexanoic Acid (PFHxA)	0.76 J
Perfluorononanoic Acid (PFNA)	4.55
Perfluorooctane Sulfonic Acid (PFOS)	<b>15</b>
Perfluorooctanoic acid (PFOA)	3.9
<b>Total PFOA and PFOS</b>	<b>18.9</b>
<b>Total PFAS</b>	25.69

<b>Sample:</b>	<b>WSG-MW5-13-0</b>
<b>Date:</b>	<b>11/7/2019</b>
<b>Depth (ft):</b>	<b>13</b>
Perfluorobutanesulfonic Acid (PFBS)	4.58
Perfluoroheptanoic Acid (PFHpA)	2.95
Perfluorohexanesulfonic Acid	<b>566 B</b>
Perfluorohexanoic Acid (PFHxA)	12
Perfluorononanoic Acid (PFNA)	1.64 J
Perfluorooctane Sulfonic Acid (PFOS)	<b>877</b>
Perfluorooctanoic acid (PFOA)	<b>69.4</b>
<b>Total PFOA and PFOS</b>	<b>946.4</b>
<b>Total PFAS</b>	<b>1533.57</b>

<b>Sample:</b>	<b>WSG-MW3-10-0</b>
<b>Date:</b>	<b>11/7/2019</b>
<b>Depth (ft):</b>	<b>10</b>
Perfluorobutanesulfonic Acid (PFBS)	3.66
Perfluoroheptanoic Acid (PFHpA)	2.27
Perfluorohexanesulfonic Acid	<b>306 B</b>
Perfluorohexanoic Acid (PFHxA)	9.53
Perfluorononanoic Acid (PFNA)	2.2
Perfluorooctane Sulfonic Acid (PFOS)	<b>1010</b>
Perfluorooctanoic acid (PFOA)	<b>27.5</b>
<b>Total PFOA and PFOS</b>	<b>1037.5</b>
<b>Total PFAS</b>	<b>1361.16</b>

<b>Sample:</b>	<b>WSG-MW4-10-0</b>
<b>Date:</b>	<b>11/7/2019</b>
<b>Depth (ft):</b>	<b>10</b>
Perfluorobutanesulfonic Acid (PFBS)	2.11
Perfluoroheptanoic Acid (PFHpA)	1.09 J
Perfluorohexanesulfonic Acid	43.4 B
Perfluorohexanoic Acid (PFHxA)	5.06
Perfluorononanoic Acid (PFNA)	0.8 J
Perfluorooctane Sulfonic Acid (PFOS)	<b>232</b>
Perfluorooctanoic acid (PFOA)	5.57
<b>Total PFOA and PFOS</b>	<b>237.57</b>
<b>Total PFAS</b>	290.03

<b>Sample:</b>	<b>WSG-MW1-8-0</b>
<b>Date:</b>	<b>11/7/2019</b>
<b>Depth (ft):</b>	<b>8</b>
Perfluorobutanesulfonic Acid (PFBS)	0.91 J
Perfluorodecanoic Acid (PFDA)	0.7 J
Perfluoroheptanoic Acid (PFHpA)	3.46
Perfluorohexanesulfonic Acid	2.38 B
Perfluorohexanoic Acid (PFHxA)	4.46
Perfluorononanoic Acid (PFNA)	1.33 J
Perfluorooctane Sulfonic Acid (PFOS)	<b>11.6</b>
Perfluorooctanoic acid (PFOA)	4.87
<b>Total PFOA and PFOS</b>	<b>16.47</b>
<b>Total PFAS</b>	29.71

<b>Sample:</b>	<b>WSG-MW8-25-0</b>	<b>WSG-MW8-25-1 (DUP)</b>
<b>Date:</b>	<b>11/6/2019</b>	<b>11/6/2019</b>
<b>Depth (ft):</b>	<b>25</b>	<b>25</b>
Perfluorobutanesulfonic Acid (PFBS)	5.16	5.58
Perfluorodecanoic Acid (PFDA)	0.47 J	0.77 J
Perfluoroheptanoic Acid (PFHpA)	13.6	12.2
Perfluorohexanesulfonic Acid	26.2 B	27.4 B
Perfluorohexanoic Acid (PFHxA)	25.1	25.7
Perfluorononanoic Acid (PFNA)	4.63	3.81
Perfluorooctane Sulfonic Acid (PFOS)	<b>58.5</b>	<b>56.4</b>
Perfluorooctanoic acid (PFOA)	<b>37.5</b>	<b>34.1</b>
<b>Total PFOA and PFOS</b>	<b>96</b>	<b>90.5</b>
<b>Total PFAS</b>	171.16	165.96

<b>Sample:</b>	<b>WSG-MW2-10-0</b>
<b>Date:</b>	<b>11/6/2019</b>
<b>Depth (ft):</b>	<b>10</b>
Perfluorobutanesulfonic Acid (PFBS)	9.33
Perfluorodecanoic Acid (PFDA)	2.32
Perfluoroheptanoic Acid (PFHpA)	35
Perfluorohexanesulfonic Acid	23.9 B
Perfluorohexanoic Acid (PFHxA)	35.5
Perfluorononanoic Acid (PFNA)	58.2
Perfluorooctane Sulfonic Acid (PFOS)	<b>36.3</b>
Perfluorooctanoic acid (PFOA)	<b>47.6</b>
<b>Total PFOA and PFOS</b>	<b>83.9</b>
<b>Total PFAS</b>	248.15



- Notes:**
1. Only exceedances of the New York State PFAS Guidelines are shown.
  2. B qualifier indicates contamination was detected in the associated blank sample.
  3. EMPC (estimated maximum possible concentration) qualifier indicates that a peak is detected but did not meet all the method required criteria.
  4. J qualifier indicates the result is estimated.
  5. All results are given in ng/l.

Analyte	NYS 703.5 TOGS Class GA
<b>PFCs</b>	<b>ng/l</b>
Perfluorohexanesulfonic Acid	100
Perfluorononanoic Acid (PFNA)	100
Perfluoroundecanoic Acid (PFUnA)	100
Perfluorooctane Sulfonic Acid (PFOS)	10
Perfluorooctanoic acid (PFOA)	10
<b>Total PFOA and PFOS</b>	10
<b>Total PFAS</b>	500



**MONITORING WELL ANALYTICAL RESULTS – EXCEEDANCES ONLY**

**WAINSCOTT SAND & GRAVEL**

**FIGURE 7A**





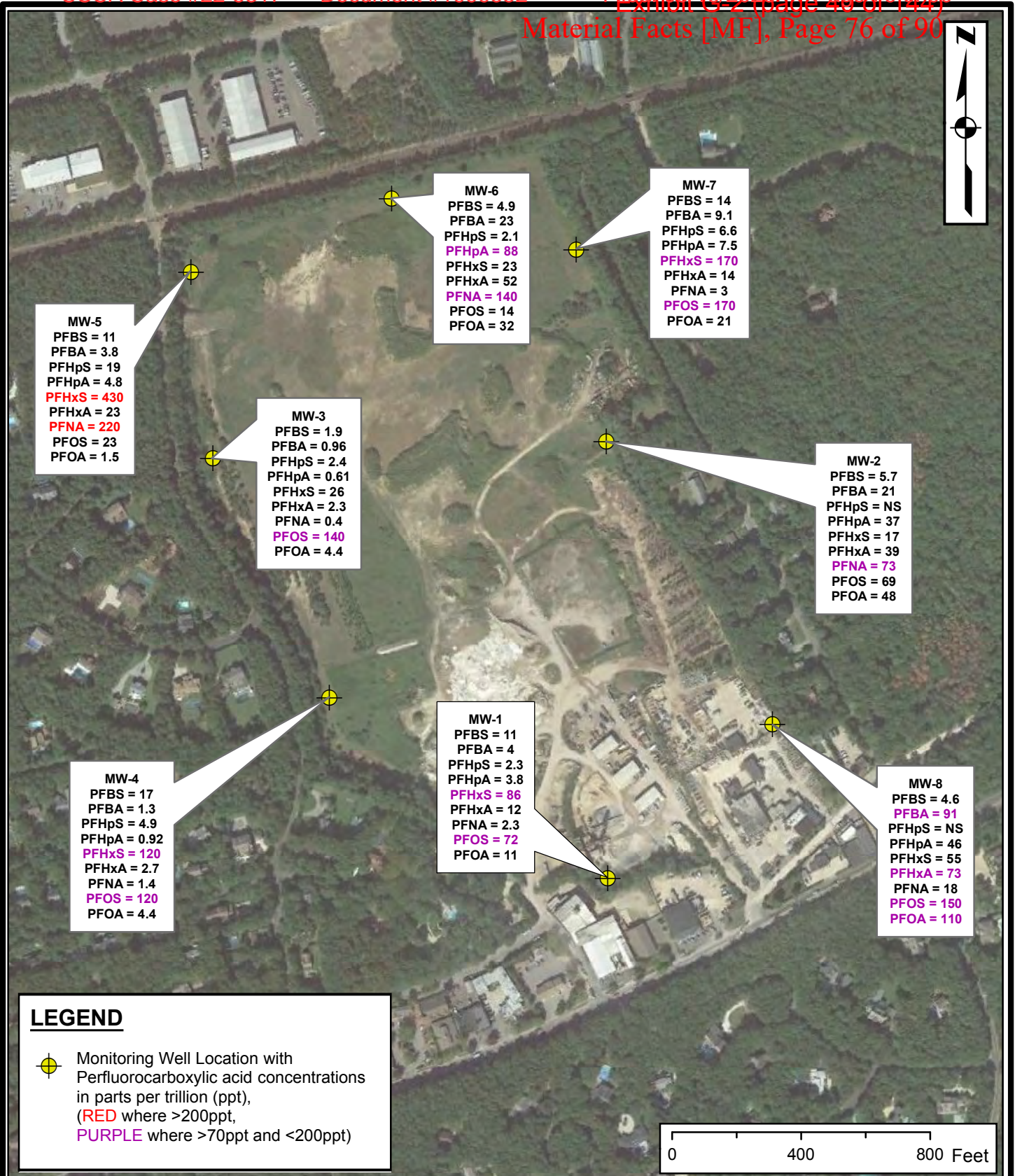
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



**GROUNDWATER CONTOURS**

**WAINSCOTT SAND & GRAVEL**

**FIGURE 8**

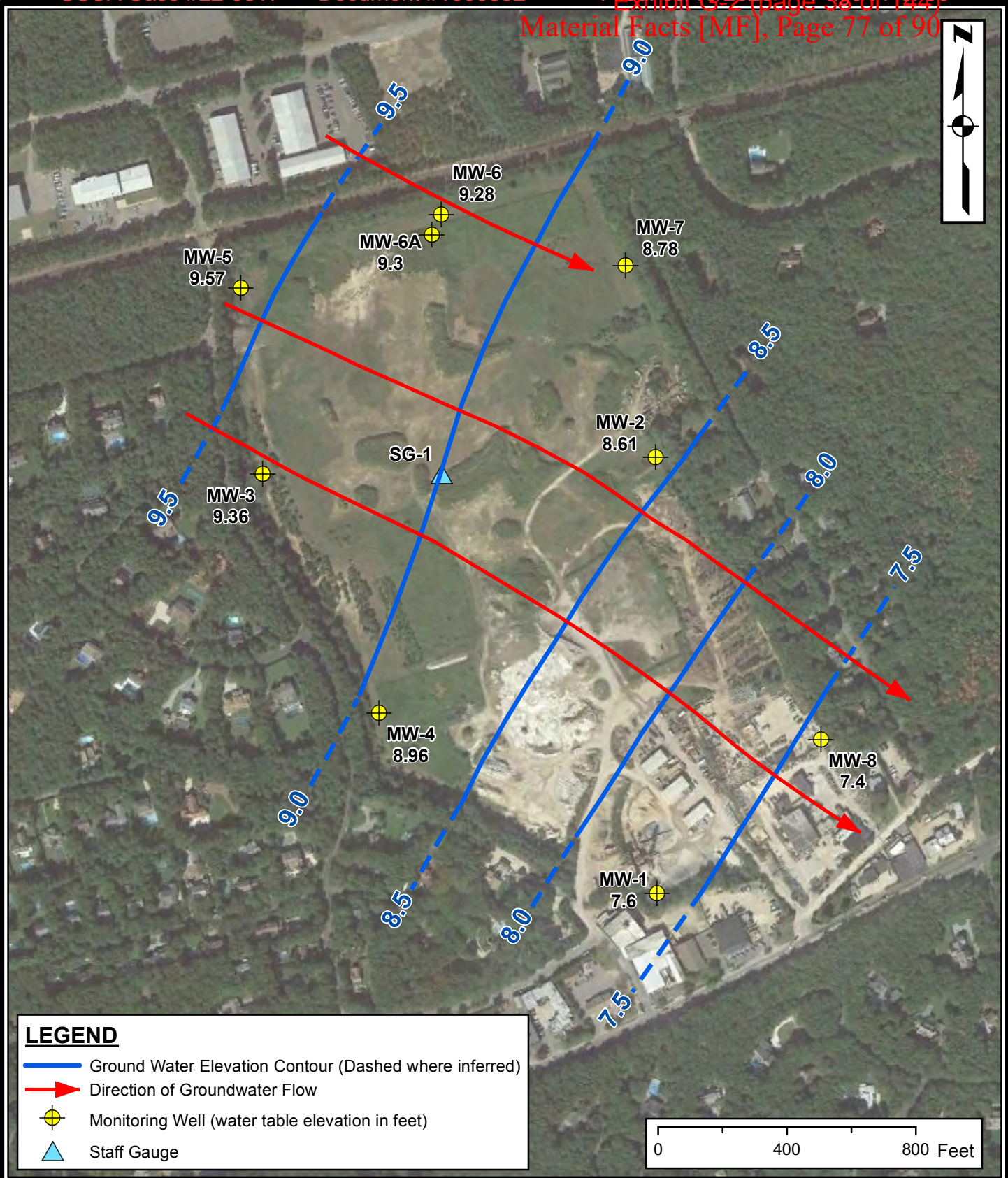


Notes:  
 -Basemap: Google Earth Imagery, October 1, 2017, accessed September 25, 2018  
 -Monitoring well and staff gauge are located by Fox Land Surveying (September 4, 2018)



**FIGURE 8**  
 PFAS Concentrations  
 6/26/2018

Wainscott Commerical Center  
 East Hampton, Suffolk County, New York

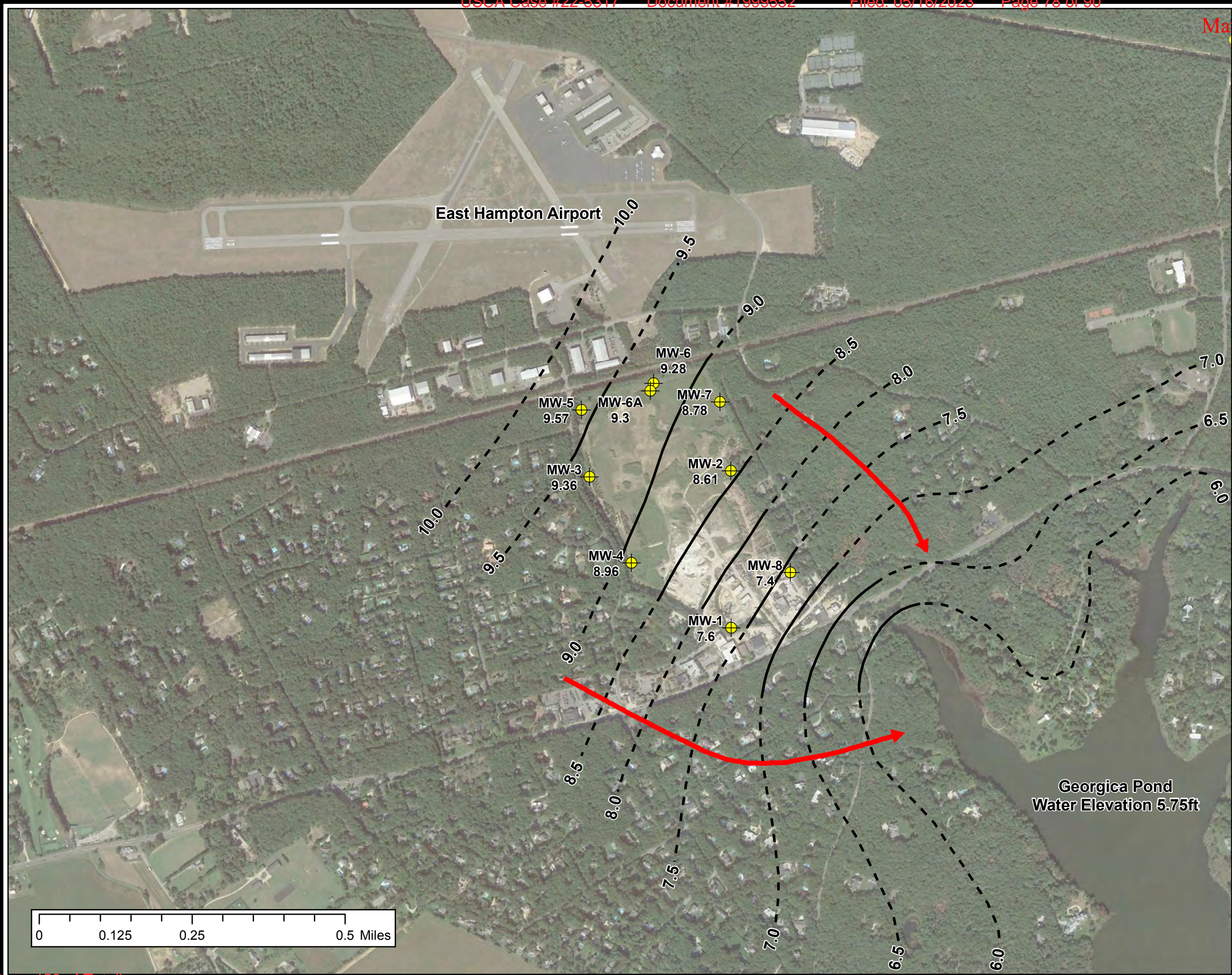


Notes:  
 -Basemap: Google Earth Imagery October 1, 2017, accessed September 25, 2018  
 -Monitoring well and staff gauge are located by Fox Land Surveying on September 14, 2018  
 -Groundwater elevations measured September 20, 2018



**FIGURE 6**  
 Water Table Contour Map  
 9/20/2018 Data

Wainscott Commerical Center  
 East Hampton, Suffolk County, New York



**Legend**

- Monitoring Well with Water Table Elevation in feet
- Groundwater Elevation Contour (dashed where inferred)
- Direction of Groundwater Flow

Notes:  
 --Basemap: Google Earth Imagery October 1, 2017, accessed September 25, 2018  
 -Monitoring well and staff gauge were located by Fox Land Surveying on September 14, 2018  
 -Groundwater elevation measured 9/20/2018  
 -Surface Water Elevation of Georgica Pond measured by USGS September 20, 2018

**FIGURE 7**  
 Regional Water Table Map

Wainscott Commercial Center  
 Regional Map  
 Suffolk County, New York  
 Proj. No. 15109



### Legend

- Monitoring Well with Water Table Elevation in feet
- Ground Water Elevation Contour (dashed where inferred)
- Ground Water Flow Direction
- Boundary of Upgradient Recharge Zone
- Boundary of Down Gradient Area
- Area of Concern for PFOA & PFOS (AECOM, 2018)

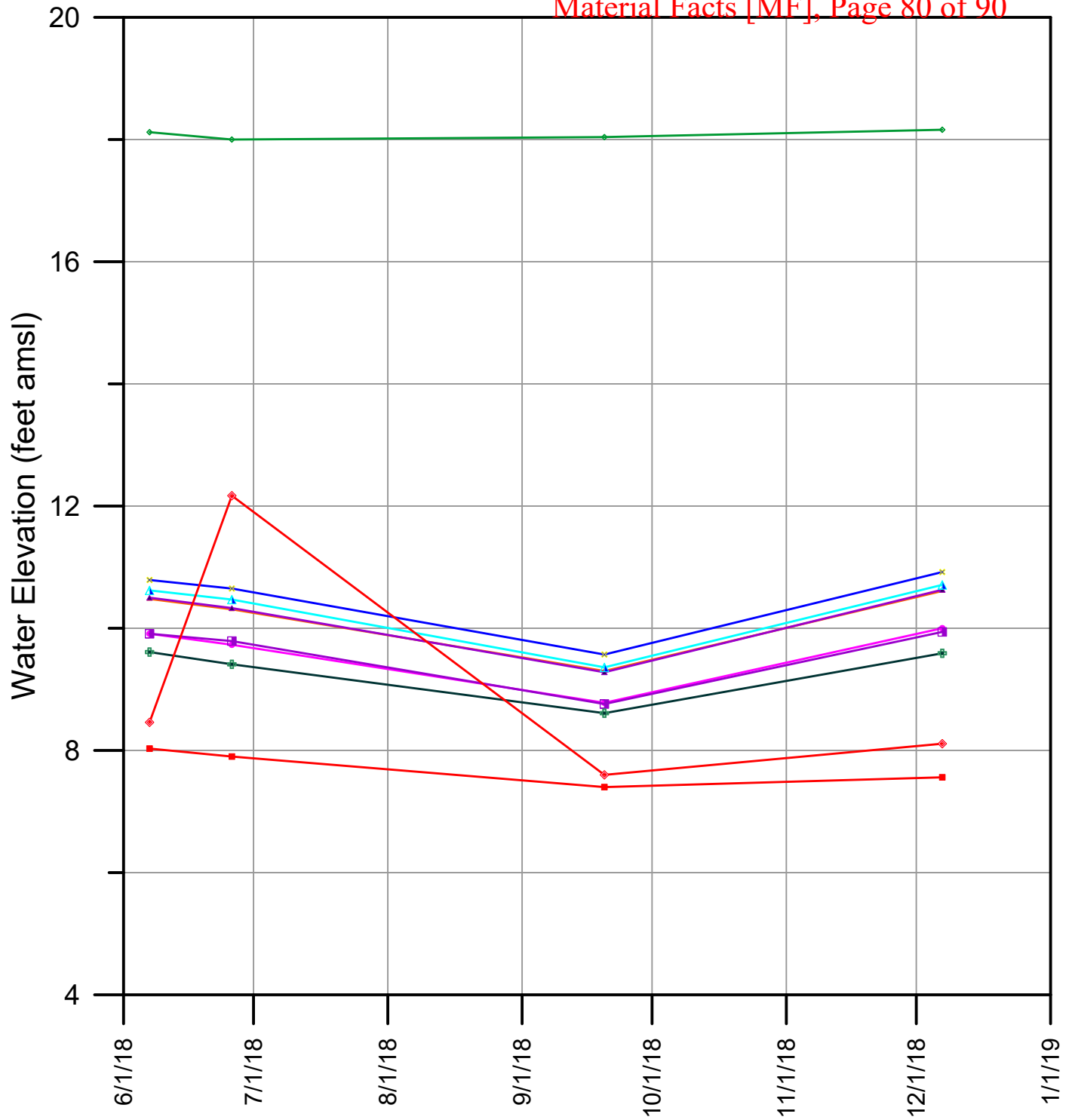
Notes:  
 -Basemap: 2016 Suffolk County 6-inch resolution natural color orthoimagery, NYS Office of Information Technology Services (ITS). Image date: March 2016.  
 -Areas of concern for PFOA & PFOS are based on the areas identified on Figure 8 of "Site Characterization Report: East Hampton Airport, Wainscott, Suffolk County, New York (AECOM, 2018).  
 -Monitoring well and staff gauge were located by Fox Land Surveying on September 14, 2018  
 -Ground water elevation based on water level measurements by Alpha on September 20, 2018.  
 -Surface Water Elevation of Georgica Pond measured by USGS September 20, 2018



**FIGURE 7**  
 Regional Water Table Map  
 with Areas of Concern for  
 PFOA and PFOS

Wainscott Commercial Center  
 Town of East Hampton  
 Suffolk County, New York

Proj. No. 17115



**LEGEND**

	MW-1		MW-6
	MW-2		MW-6A
	MW-3		MW-7
	MW-4		MW-8
	MW-5		SG-1



**FIGURE 3**  
 Wainscott Commercial Center  
 Monitoring Well Hydrographs  
 June 2018 through December 2018

Wainscott Commercial Center  
 Town of East Hampton  
 Suffolk County, New York

Proj. No. 17115



EH-19A		
Analytes	Concentration (ng/g)	
	5/4/2018	31-32'
Perfluorooctane sulfonic acid (PFOS)	3.9	.18 U
Perfluorooctanoic acid (PFOA)	.18 U	.19 U

EH-19B		
Analytes	Concentration (ng/L)	
	5/8/2018	
Perfluorooctane sulfonic acid (PFOS)	77	
Perfluorooctanoic acid (PFOA)	89	

Sample: WSG-MW5-13-0		
Site Characterization Report		
Wainscott Sand & Gravel	Date:	11/7/2019
NYSDEC Site Code 152254	Depth (ft):	13
Perfluorobutanesulfonic Acid (PFBS)	4.36	
Perfluoroheptanoic Acid (PFHpA)	2.95	
Perfluorohexanesulfonic Acid (PFHxA)	566 B	
Perfluorohexanoic Acid (PFHxA)	12	
Perfluorononanoic Acid (PFNA)	1.64 J	
Perfluorooctane Sulfonic Acid (PFOS)	877	
Perfluorooctanoic acid (PFOA)	69.4	
<b>Total PFOA and PFOS</b>	<b>946.4</b>	
<b>Total PFAS</b>	<b>1533.57</b>	

Sample: WSG-MW-6-10-0		
Site Characterization Report		
Wainscott Sand & Gravel	Date:	11/6/2019
NYSDEC Site Code 152254	Depth (ft):	6
Perfluorobutanesulfonic Acid (PFBS)	2.5	
Perfluorodecanoic Acid (PFDA)	92.3	
Perfluoroheptanoic Acid (PFHpA)	50	
Perfluorohexanesulfonic Acid (PFHxA)	58.9 B	
Perfluorohexanoic Acid (PFHxA)	61.1	
Perfluorononanoic Acid (PFNA)	2850	
Perfluorotridecanoic Acid (PFTrIA)	1.49 J	
Perfluoroundecanoic Acid (PFUnA)	333	
Perfluorooctane Sulfonic Acid (PFOS)	151	
Perfluorooctanoic acid (PFOA)	26.1	
<b>Total PFOA and PFOS</b>	<b>177.1</b>	
<b>Total PFAS</b>	<b>3626.39</b>	

EH-19A		
Analytes	Concentration (ng/L)	
	5/8/2018	
Perfluorooctane sulfonic acid (PFOS)	5.0	
Perfluorooctanoic acid (PFOA)	140	

EH-19B1		
Analytes	Concentration (ng/g)	
	8/9/2018	
Perfluorooctane sulfonic acid (PFOS)	12	
Perfluorooctanoic acid (PFOA)	3.8	

EH-19A2		
Analytes	Concentration (ng/L)	
	8/10/2018	
Perfluorooctane sulfonic acid (PFOS)	140	
Perfluorooctanoic acid (PFOA)	34	

EH-1		
Analytes	Concentration (ng/L)	
	5/8/2018	
Perfluorooctane sulfonic acid (PFOS)	1.8 J	
Perfluorooctanoic acid (PFOA)	160	

Sample: WSG-MW3-10-0		
Site Characterization Report		
Wainscott Sand & Gravel	Date:	11/7/2019
NYSDEC Site Code 152254	Depth (ft):	10
Perfluorobutanesulfonic Acid (PFBS)	3.66	
Perfluoroheptanoic Acid (PFHpA)	2.27	
Perfluorohexanesulfonic Acid	306 B	
Perfluorohexanoic Acid (PFHxA)	9.53	
Perfluorononanoic Acid (PFNA)	2.2	
Perfluorooctane Sulfonic Acid (PFOS)	1010	
Perfluorooctanoic acid (PFOA)	27.5	
<b>Total PFOA and PFOS</b>	<b>1037.5</b>	
<b>Total PFAS</b>	<b>1361.16</b>	

Sample: WSG-MW4-10-0		
Site Characterization Report		
Wainscott Sand & Gravel	Date:	11/7/2019
NYSDEC Site Code 152254	Depth (ft):	10
Perfluorobutanesulfonic Acid (PFBS)	2.11	
Perfluoroheptanoic Acid (PFHpA)	1.09 J	
Perfluorohexanesulfonic Acid	43.4 B	
Perfluorohexanoic Acid (PFHxA)	5.06	
Perfluorononanoic Acid (PFNA)	0.8 J	
Perfluorooctane Sulfonic Acid (PFOS)	232	
Perfluorooctanoic acid (PFOA)	5.57	
<b>Total PFOA and PFOS</b>	<b>237.57</b>	
<b>Total PFAS</b>	<b>290.03</b>	

Sample: WSG-S1-0-0-2-0		
Site Characterization Report		
Wainscott Sand & Gravel	Date:	11/5/2019
NYSDEC Site Code 152254	Depth (ft):	0 - 0.2 ft
Perfluorooctane Sulfonic Acid (PFOS)	0.6	
Perfluorooctanoic acid (PFOA)	0.21 U	

Sample: WSG-S1-0-5-2-0-0		
Site Characterization Report		
Wainscott Sand & Gravel	Date:	11/5/2019
NYSDEC Site Code 152254	Depth (ft):	0.5 - 2 ft
Perfluorooctane Sulfonic Acid (PFOS)	0.48 J	
Perfluorooctanoic acid (PFOA)	0.09 J	

Sample: WSG-S11-0-0-2-0		
Site Characterization Report		
Wainscott Sand & Gravel	Date:	11/5/2019
NYSDEC Site Code 152254	Depth (ft):	0 - 0.2 ft
Perfluorooctane Sulfonic Acid (PFOS)	0.79	
Perfluoroundecanoic Acid (PFUnA)	0.17 J	

Sample: WSG-S16-0-0-2-0		
Site Characterization Report		
Wainscott Sand & Gravel	Date:	11/5/2019
NYSDEC Site Code 152254	Depth (ft):	0 - 0.2 ft
Perfluorodecanoic Acid (PFDA)	0.025 J	
Perfluorooctane Sulfonic Acid (PFOS)	0.86	
Perfluoroundecanoic Acid (PFUnA)	0.078 J	

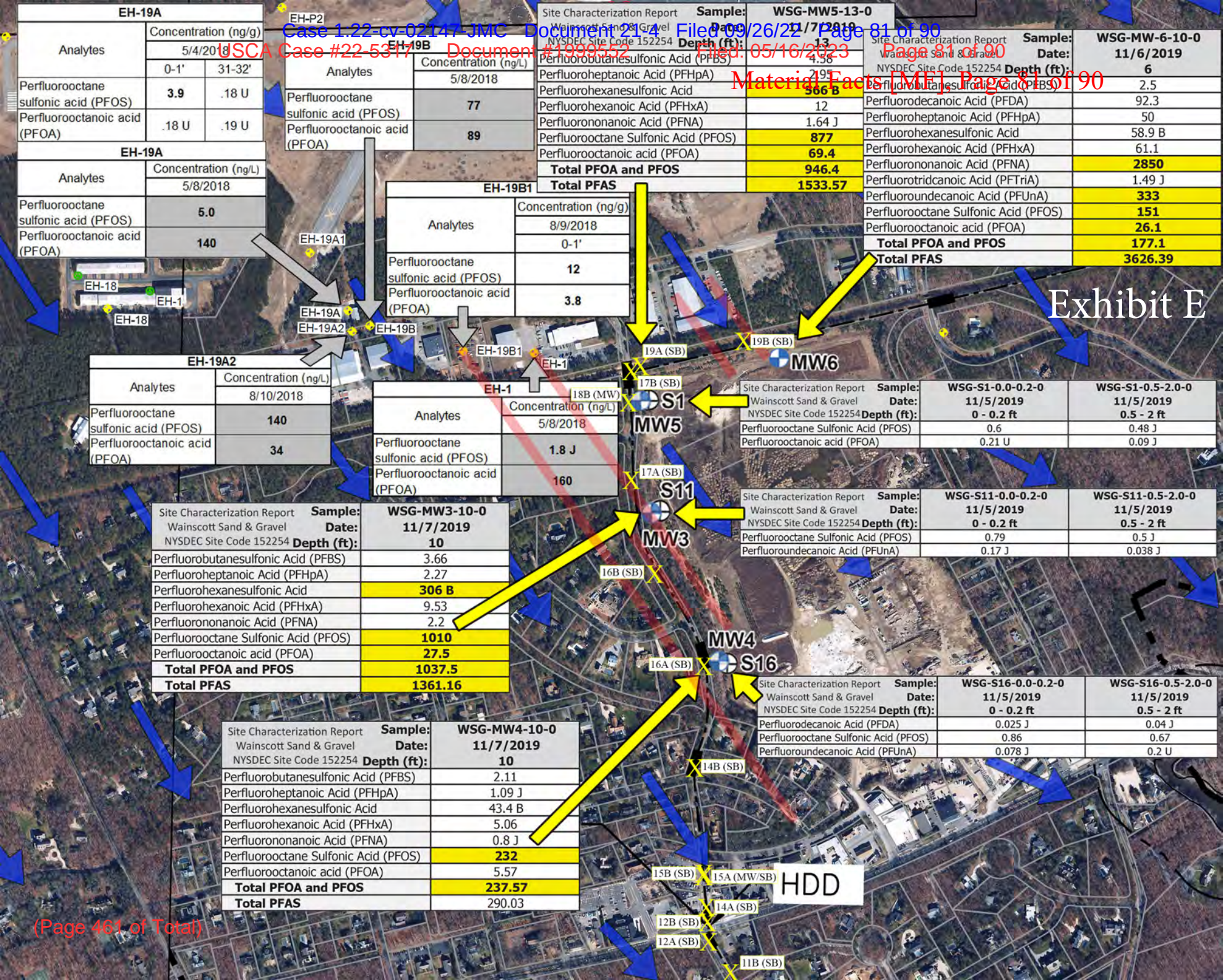


Exhibit E

**TABLE 5**  
**PFAS Soil Analytical Results - Wainscott Commercial Center**  
**Town of East Hampton, Suffolk County, New York**

Analyte	SB-1 (0-6") 12/7/2018	SB-2 (0-6") 12/7/2018	SB-2 (0-6") 12/7/2018
Perfluorodecanoic acid (PFUnA)	8.1	2.0	1.9J
Perfluorotridecanoic acid (PFTrDA)	3.8	2.3	ND <2.0

\* Draft Environmental Impact Statement (DEIS): Wainscott Commercial Center, July 2020 (p. 466 of 895)

Site Characterization Report: Wainscott Sand & Gravel  
 NYSDOG Site Code: 152254  
 (p. 84 of 631)

Sample:	WSG-S7-0.0-0.2-0
Date:	11/11/2019
Depth (ft):	0 - 0.2 ft
Perfluorotridecanoic Acid (PFTriA)	0.43
Perfluorodecanoic Acid (PFUnA)	1.06 $\mu\text{g}/\text{kg}$ (ppb)

Site Characterization Report: Wainscott Sand & Gravel  
 NYSDOG Site Code: 152254  
 (p. 84 of 631)

Sample:	WSG-S2-0.0-0.2-0
Date:	11/11/2019
Depth (ft):	0 - 0.2 ft
Perfluorotridecanoic Acid (PFTriA)	1.82 $\mu\text{g}/\text{kg}$ (ppb)
Perfluorodecanoic Acid (PFUnA)	3.84 $\mu\text{g}/\text{kg}$ (ppb)



# DECinfo Locator

Base Map: Topographical [Help](#)

Search

Tools

### DEC Information Layers

Environmental Quality Outdoor Activity

Permits and Registrations

Environmental Cleanup

Environmental Monitoring

Public Involvement

### Environmentally Sensitive Areas

Check / Uncheck all

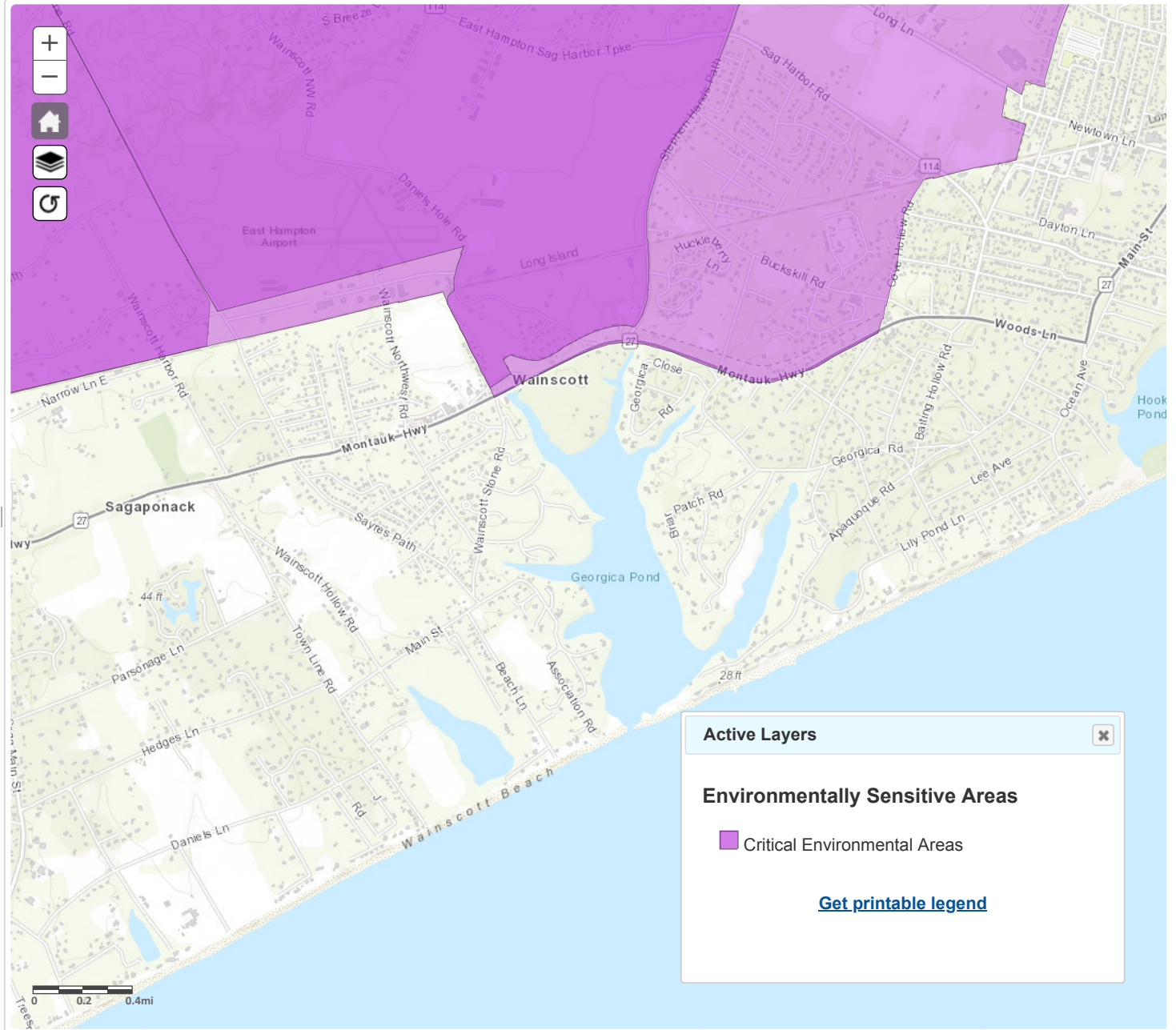
[Layer Information](#)

Critical Environmental Areas

Regulatory Tidal Wetlands Areas

Legal Information

Reference Layers



**Active Layers** ✕

**Environmentally Sensitive Areas**

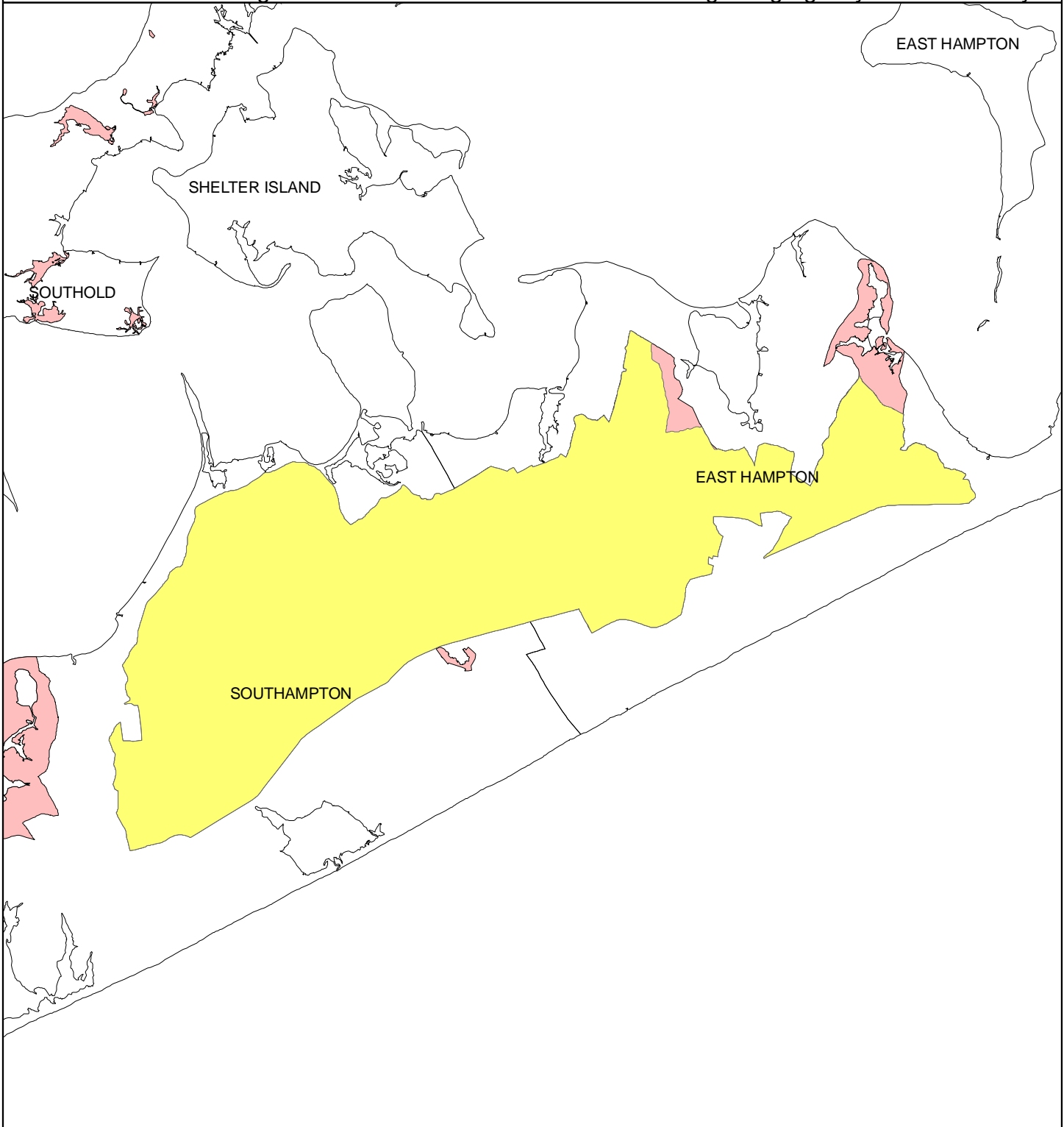
- Critical Environmental Areas

[Get printable legend](#)

# Special Groundwater Protection Area (South Fork) Critical Environmental Area (CEA) Map #6

Effective Date of Designation: 2-10-88

Designating Agency: Suffolk County

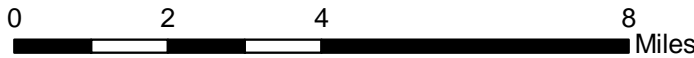


## Legend

- Special Groundwater Protection Area CEA Map #6
- Adjacent CEAs

Base Map: Town or City Boundary for NYS

Disclaimer: This map was prepared by the New York State Department of Environmental Conservation using the most current data available. It is deemed accurate but is not guaranteed. NYS DEC is not responsible for any inaccuracies in the data. Please contact the designating authority for additional information regarding legal boundary descriptions. SGPA Maps 1 through 9 represent a portion of the SGPA designated as a Critical Environmental Area.



1 inch equals 2.5 miles

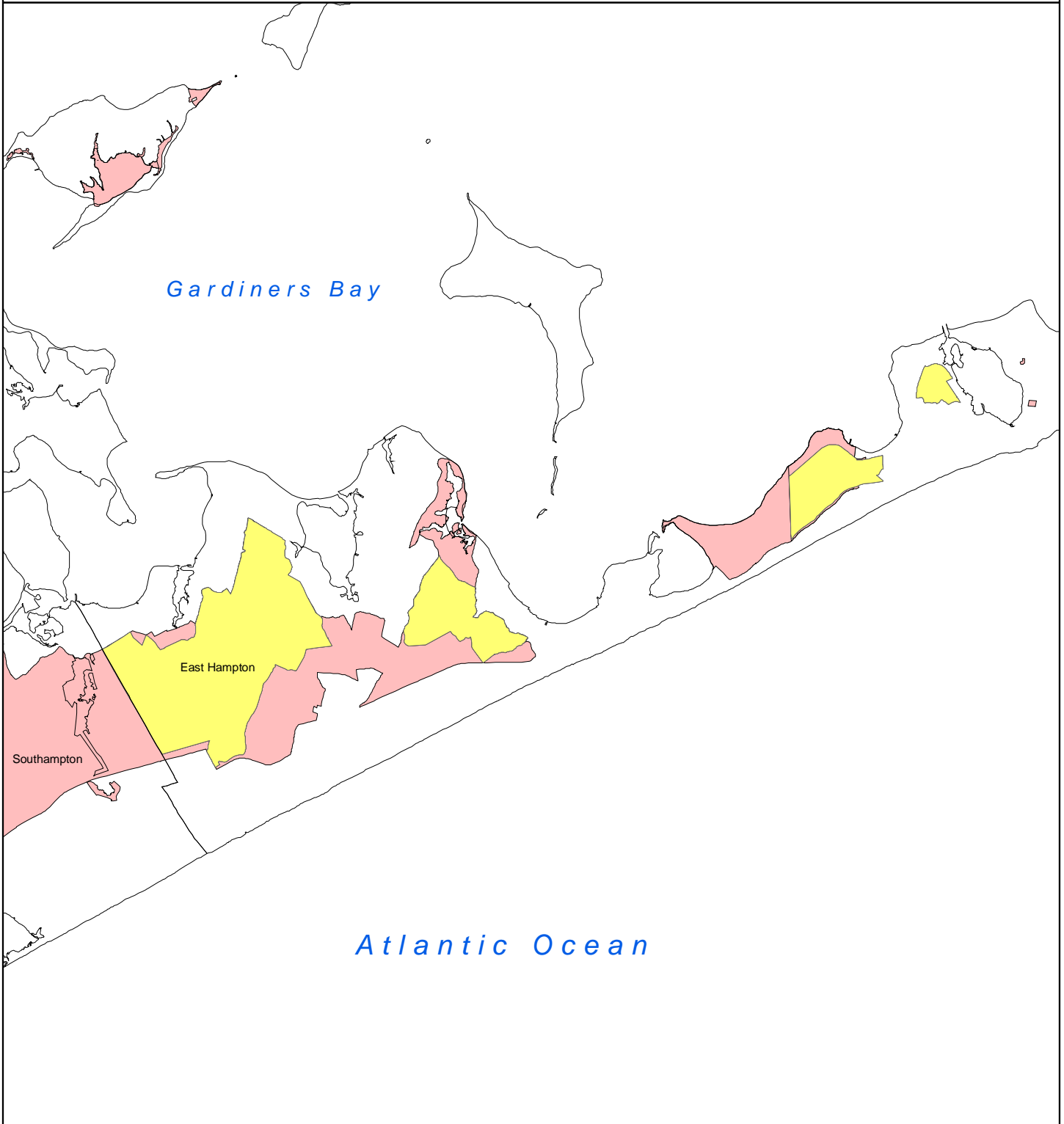
For Adjacent CEAs see maps: Accabonac Harbor, Corey Creek, Cedar Beach, Goose Creek, Mill Creek, Scallop Pondand, and Water Recharge





# Water Recharge Overlay District Critical Environmental Area (CEA)

Effective Date of Designation: 2-12-88

Designating Agency: Town of Easthampton



## Legend

-  Water Recharge Overlay District
-  Adjacent CEAs



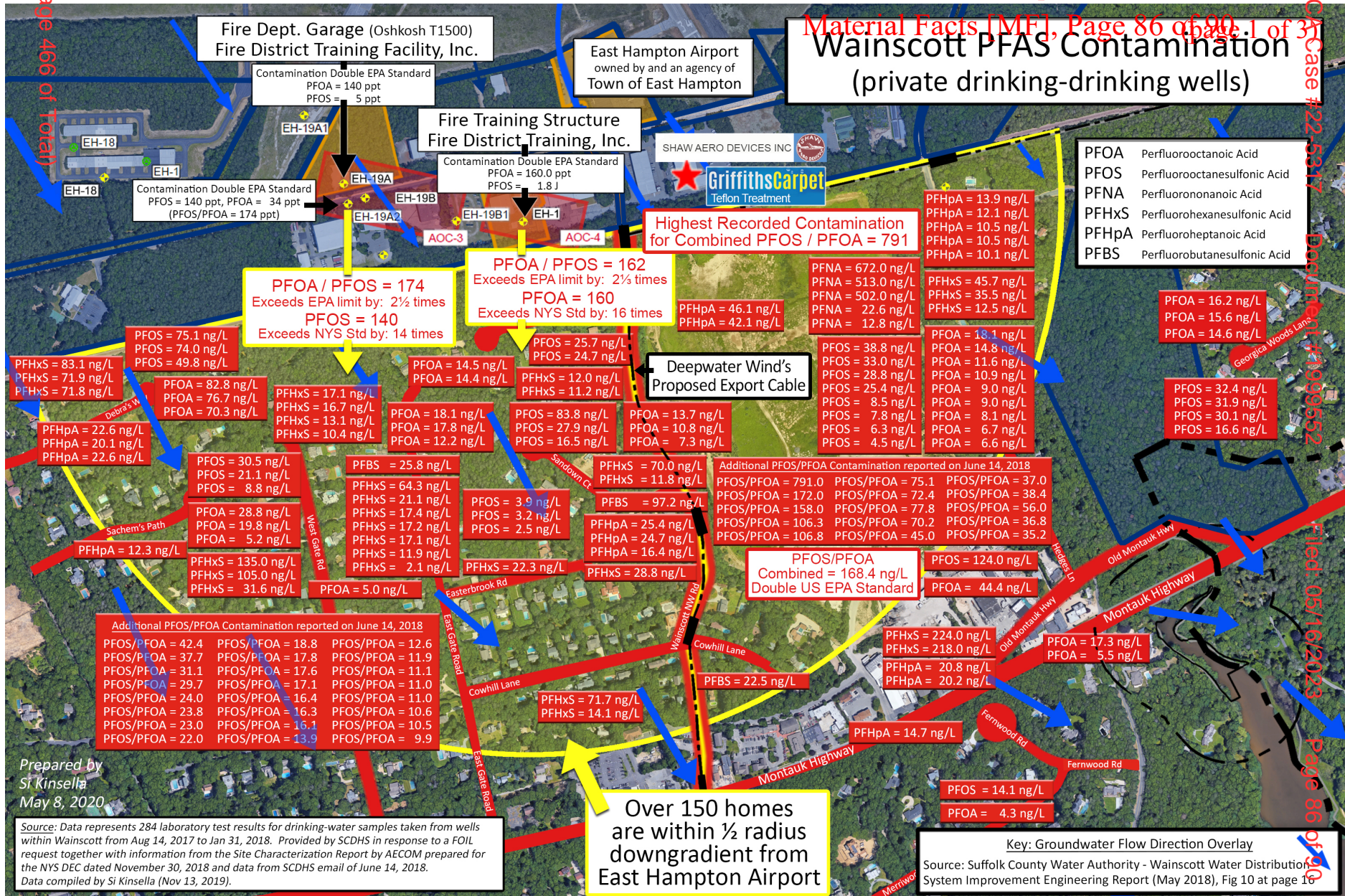
1 inch equals 3 miles



Base Map: Town or City Boundary for New York State

Disclaimer: This map was prepared by the New York State Department of Environmental Conservation using the most current data available. It is deemed accurate but is not guaranteed. NYS DEC is not responsible for any inaccuracies in the data. Please contact the designating authority for additional information regarding legal boundary descriptions. SGPA Maps 1 through 9 represent a portion of the SGPA designated as a Critical Environmental Area.

For Adjacent CEAs see maps: Hallocks Bay, Accabonac Harbor, SGPA Map #6, and SGPA Map #5 CEA



**Material Facts [MF], Page 86 of 90, 1 of 31**  
**Wainscott PFAS Contamination**  
 (private drinking-drinking wells)

- PFOA Perfluorooctanoic Acid
- PFOS Perfluorooctanesulfonic Acid
- PFNA Perfluorononanoic Acid
- PFHxS Perfluorohexanesulfonic Acid
- PFHpA Perfluoroheptanoic Acid
- PFBS Perfluorobutanesulfonic Acid

**Highest Recorded Contamination for Combined PFOS / PFOA = 791**

**PFOA / PFOS = 174**  
 Exceeds EPA limit by: 2½ times  
**PFOS = 140**  
 Exceeds NYS Std by: 14 times

**PFOA / PFOS = 162**  
 Exceeds EPA limit by: 2½ times  
**PFOA = 160**  
 Exceeds NYS Std by: 16 times

**Deepwater Wind's Proposed Export Cable**

**Additional PFOS/PFOA Contamination reported on June 14, 2018**

PFOS/PFOA = 791.0	PFOS/PFOA = 75.1	PFOS/PFOA = 37.0
PFOS/PFOA = 172.0	PFOS/PFOA = 72.4	PFOS/PFOA = 38.4
PFOS/PFOA = 158.0	PFOS/PFOA = 77.8	PFOS/PFOA = 56.0
PFOS/PFOA = 106.3	PFOS/PFOA = 70.2	PFOS/PFOA = 36.8
PFOS/PFOA = 106.8	PFOS/PFOA = 45.0	PFOS/PFOA = 35.2

**Additional PFOS/PFOA Contamination reported on June 14, 2018**

PFOS/PFOA = 42.4	PFOS/PFOA = 18.8	PFOS/PFOA = 12.6
PFOS/PFOA = 37.7	PFOS/PFOA = 17.8	PFOS/PFOA = 11.9
PFOS/PFOA = 31.1	PFOS/PFOA = 17.6	PFOS/PFOA = 11.1
PFOS/PFOA = 29.7	PFOS/PFOA = 17.1	PFOS/PFOA = 11.0
PFOS/PFOA = 24.0	PFOS/PFOA = 16.4	PFOS/PFOA = 11.0
PFOS/PFOA = 23.8	PFOS/PFOA = 16.3	PFOS/PFOA = 10.6
PFOS/PFOA = 23.0	PFOS/PFOA = 16.1	PFOS/PFOA = 10.5
PFOS/PFOA = 22.0	PFOS/PFOA = 13.9	PFOS/PFOA = 9.9

**Over 150 homes are within ½ radius downgradient from East Hampton Airport**

**Key: Groundwater Flow Direction Overlay**  
 Source: Suffolk County Water Authority - Wainscott Water Distribution System Improvement Engineering Report (May 2018), Fig 10 at page 16

Prepared by  
 Si Kinsella  
 May 8, 2020

Source: Data represents 284 laboratory test results for drinking-water samples taken from wells within Wainscott from Aug 14, 2017 to Jan 31, 2018. Provided by SCDHS in response to a FOIL request together with information from the Site Characterization Report by AECOM prepared for the NYS DEC dated November 30, 2018 and data from SCDHS email of June 14, 2018. Data compiled by Si Kinsella (Nov 13, 2019).

Case #22-5917 Document #1099652 Filed: 05/16/2023 Page 86 of 90

TITLE					
SOUTH FORK 138/69KV UNDERGROUND TRANSMISSION PLAN & PROFILE EAST HAMPTON, NY					
BY	TRC	CHKD	DED	APP	KGM
DATE	07/08/20	DATE	07/08/20	DATE	07/08/20
H-SCALE	1" = 20'	SIZE	ARCH D	FIELD BOOK & PAGES	
V-SCALE	1" = 4'	V.S.		R.DWG.	
R.E. PROJ. NUMBER		DWG. NO.	19		

South Fork Wind's plans are dated July 8, 2020. However, it did not submit the plans to the New York State Public Service Commission (NYSPPSC) until August 6, 2021. By delaying for more than a year, South Fork Wind avoided review pursuant to NYSPPSC Article VII. The plans were not subject to cross-examination, and went unchallenged.

South Fork Wind is mandated to provide an "evaluation of any known or suspected contaminated sites [...] and the expected maximum concentrations of the contaminants[.]". However, South Fork Wind carefully sampled soil at locations and depths that avoided locations of suspected PFAS contamination.

**Well: SB-17A**  
 Soil grab samples (S1 to S3, below) were combined "by mixing in a stainless-steel bowl."  
 S-1, depth = 0.5 ft  
 S-2, depth = 1.0 ft  
 S-3, depth = 1.5 ft

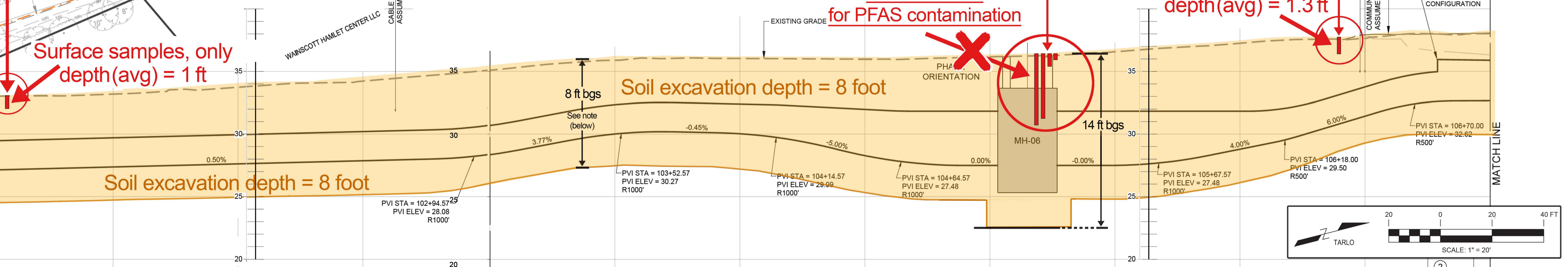
**Well: SB-18B**  
 Soil grab samples were tested for all the listed contaminants, except PFAS chemicals -  
 S-1, depth = 0.5 ft  
 S-2, depth = 1.0 ft  
 S-3, depth = 5.0 ft  
 S-4, depth = 5.5 ft

**Well: SB-17B**  
 Soil grab samples, (S1 to S3, below) were combined "by mixing in a stainless-steel bowl."  
 S-1, depth 0.0 ft  
 S-2, depth 1.0 ft  
 S-3, depth 3.0 ft

**SB-17A**  
 Surface samples, only  
 depth (avg) = 1 ft

**NOT TESTED**  
 for PFAS contamination

Surface samples, only  
 depth (avg) = 1.3 ft



Source: South Fork Wind, South Fork 138/68KV Underground Transmission Plan & Profile (pages 18 & 19), dated July 8, 2020. South Fork Wind delayed filing for more than a year before submitting the plans to the New York State Public Service Commission on August 6, 2021. These engineering drawings are dated November 5, 2021.

South Fork Wind's Article VII Certificate mandates that "samples collected must be analyzed for PFAS in locations where fires have occurred since 1940 and where other PFAS contaminated sites were identified based upon due diligence and research of historical and public records [emphasis added]." Still, in violation of its certificate conditions, South Fork Wind tested neither soil nor groundwater within 1,000 feet downgradient from a fire at 75 Wainscott NW Road identified in its Hazardous Waste and Petroleum Work Plan. Well SB-11B is located adjacent to the site of the fire. However, South Fork Wind failed to test soil from the well for PFAS contamination.

DEWATERING PLAN

August 2021

2.0 SUMMARY OF GROUNDWATER INVESTIGATIONS

2.1 TOWN ROADS

2.1.1 Areas of Potential PFAS Contaminated Sites

As specified in the Certificate, samples collected must be analyzed for PFAS in locations where fires have occurred since 1940 and where other PFAS contaminated sites were identified based upon due diligence and research of historical and public records [...]

The following fires were accounted for in the Initial HWPWP sampling program:

- One fire incident at 75 Wainscott Northwest Road.

Source: South Fork Wind's Environmental Management and Construction Plan ("EM&CP"), revised August 2021, Appendix G - Dewatering Plan (at pp. 3 - 4).

Search result  
 75 WAINSCOTT NW RD,  
 WAINSCOTT, NY, 11975  
[Zoom to](#)



The closest groundwater sample (MW-10A) tested for PFAS contamination downgradient from the fire at 75 Wainscott NW Road is 1,100 feet away.

The closest soil sample (SB-8A) tested for PFAS contamination downgradient from the fire at 75 Wainscott NW Road is over half a mile (2,747 feet) away.







Construction workers are excavating soil near 75 Wainscott NW Road (close to Montauk Highway), the site of a house fire. South Fork Wind did not test soil or groundwater for PFOA contamination before beginning construction.

Photo taken on March 21, 2022

# Case #1:22-cv-02147-JMC Complaint Appendix 2



Construction workers are excavating soil near Monitoring Well 4A, where South Fork Wind reported PFOA contamination (82 ppt) that exceeds the 2016 EPA Health Advisory Levels.

Photo taken March 14, 2022