SIMON V. KINSELLA
EMAIL: P.O. BOX 792
SI@OSWSOUTHFORK.INFO WAINSCOTT, N. Y. 11975 M (631) 903-9154

July 6, 2022

FOIA Officer Ashley Rychak
Bureau of Ocean Energy Management
45600 Woodland Road,
Sterling, Virginia 20166

Send via email to –
BOEMFOIA@boem.gov
and via FOIAonline.gov
DOI-BOEM-2022-004796

Expedited FOIA Request
Re: South Fork Wind LLC

Dear Officer Rychak:

Pursuant to the Freedom of Information Act ("FOIA"), I hereby request a copy of any "record" as defined under 5 U.S.C. § 552(f)(2) of the U.S. Department of the Interior, Bureau of Ocean Energy Management ("BOEM") from December 1, 2021, through to BOEM's response to this request regarding South Fork Wind LLC, specifically, such records *limited to* –

1) Records generated by a certified scientific laboratory performing analysis to determine concentration levels of per- and polyfluoroalkyl substance ("PFAS") contaminants in soil or groundwater taken from within or near the onshore South Fork Export Cable ("SFEC") route. Such PFAS contaminants (perfluorinated compounds) include but are not limited to perfluorooctanoic acid ("PFOA"), perfluorooctane sulfonic acid ("PFOS"), perfluorobutane sulfonate ("PFBS"), and GenX chemicals. The onshore SFEC route refers to the construction corridor from the mean high-water mark at the beach at Beach Lane in Wainscott to (and including) the interconnection facility in the Town of East Hampton, Suffolk County, NY.

2) Records generated for designing or performing on-site soil or groundwater sampling for the said testing (referred to in paragraph 1 above), such as sampling plans, bore/well locations, maps, and borehole/well logs.

In the interests of expediency, I am *not* requesting records of responsible officers' correspondence, solely PFAS contamination laboratory test results, sampling plans, bore logs, etc., according to the (above) request. Please see the certified statement requesting expedited processing (attached) according to 43 C.F.R. § 2.20(a)(1).

I am willing to pay fees up to $200. Please contact me if fees exceed $200 for prior approval (contact information below).

Please note that there is no current litigation to which I am a party involving any of the aforementioned Federal agencies.

If you have any questions, please contact me via email (si@oswsouthfork.info) or mobile phone (+1-631-903-9154). Thank you in advance for your cooperation.

Sincerely yours,

Simon V. Kinsella
Dated July 6, 2022

C/c: Todd Kim, Esq.
U.S. Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Sent via FedEx and email
Email: webcontentmgr.enrd@usdoj.gov

Office of Government Information Services (OGIS)

Sent via facsimile and email
Email: ogis@nara.gov

Request Confirmation

Request Information

Tracking Number	DOI-BOEM-2022-004796
Requester Name	Under Agency Review
Submitted Date	07/06/2022
Request Phase	Submitted
Description	Expedited FOIA Request Re: South Fork Wind LLC ¶ Please see the original letter (attached). ¶ FOIA Officer Ashley Rychak ¶ Bureau of Ocean Energy Management ¶ 45600 Woodland Road ¶ Sterling, Virginia 20166 ¶ BOEMFOIA@boem.gov ¶ and via FOIAonline.gov ¶ Dear Officer Rychak: ¶ Pursuant to the Freedom of Information Act (“FOIA”), I hereby request a copy of any “record” as defined under 5 U.S.C. § 552(f)(2) of the U.S. Department of the Interior, Bureau of Ocean Energy Management (“BOEM”) from December 1, 2021, through to BOEM’s response to this request regarding South Fork Wind LLC, specifically, such records limited to– ¶ –– 1) Records generated by a certified scientific laboratory performing analysis to determine concentration levels of per- and polyfluoroalkyl substance (“PFAS”) contaminants in soil or groundwater taken from within or near the onshore South Fork Export Cable (“SFEC”) route. Such PFAS contaminants (perfluorinated compounds) include but are not limited to perfluorooctanoic acid (“PFOA”), perfluorooctane sulfonic acid (“PFOS”), perfluorobutane sulfonate (“PFBS”), and GenX chemicals. The onshore SFEC route refers to the construction corridor from the mean high-water mark at the beach at Beach Lane in Wainscott to (and including) the interconnection facility in the Town of East Hampton, Suffolk County, NY. ¶ –– 2) Records generated for designing or performing on-site soil or groundwater sampling for the said testing (referred to in paragraph 1 above), such as sampling plans, bore/well locations, maps, and borehole/well logs. ¶ In the interests of expediency, I am not requesting records of responsible officers’ correspondence, solely PFAS contamination laboratory test results, sampling plans, bore logs, etc., according to the (above) request. Please see the certified statement requesting expedited processing (attached) according to 43 C.F.R. § 2.20(a)(1). ¶ I am willing to pay fees up to $200. Please contact me if fees exceed $200 for prior approval (contact information below). ¶ Please note that there is no current litigation to which I am a party involving any of the aforementioned Federal agencies. ¶ If you have any questions, please contact me via email (si@oswsouthfork.info) or mobile phone (+1-631-903-9154). Thank you in advance for your cooperation. ¶ Sincerely yours, Simon V. Kinsella ¶ Dated July 6, 2022 ¶ C/c: Todd Kim, Esq. ¶ U.S. Assistant Attorney General U.S. Department of Justice ¶ Environment and Natural Resources Division Law and Policy Section 950 Pennsylvania Avenue, N.W. Washington, DC 20530-0001 ¶ Sent via FedEx and email Email: webcontentmgr.enrd@usdoj.gov ¶ Office of Government Information Services (OGIS) ¶ Sent via facsimile and email Email: ogis@nara.gov

SIMON V. KINSELLA
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Sterling, Virginia 20166

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DOI-BOEM-2022-004796

Re: Certificate Requesting
Expedited Processing of FOIA

Dear Officer Rychak:

In August 2021, the U.S. Department of the Interior, Bureau of Ocean Energy Management ("BOEM") released a Final Environmental Impact Statement ("FEIS") for the South Fork Wind Farm and South Fork Export Cable Project (the "Project"). On November 24, 2021, BOEM issued its record of decision ("ROD") on the FEIS approving the Project's Construction and Operations Plan ("COP"). BOEM's action approving the Project permitted South Fork Wind to proceed with construction. South Fork Wind LLC ("South Fork Wind" or "SFW") (formerly Deepwater Wind South Fork LLC) commenced onshore construction in February 2022.

BOEM approved the Project in the knowledge of existing per- and polyfluoroalkyl substance ("PFAS") contamination of soil and groundwater. Now, the Project poses a risk to public health and the environment.

In a break from prior practice, South Fork Wind refuses to disclose PFAS contamination test results of soil and groundwater samples taken earlier this year. SFW would have no reason to conceal from the public these test results if contamination levels were within Federal and State limits. BOEM's failure to expedite the (attached) Freedom of Information Act ("FOIA") request reasonably poses an imminent threat to the physical safety of individuals living in Wainscott. Residents of Wainscott have a right to know the extent to which the Project BOEM approved is a threat to our health when substantive evidence gives cause to believe that contamination poses a significant risk to public health.

Residents' exposure to dangerous PFAS contamination is not limited to drinking water from taps but also includes irrigation of local crops and people swimming and sailing in Georgica Pond, among other exposure pathways. The construction of concrete duct banks and large concrete vaults will also prolong, exacerbate and alter the cause of existing PFAS

contamination in groundwater. No Federal or State agency has taken existing onshore PFAS contamination seriously. BOEM's environmental review failed to address such environmental contamination, leaving the responsibility to protect our health and that of our community to us.

Therefore, there is an urgency to inform the public, specifically those living in Wainscott, about the levels of PFAS contamination along South Fork Wind's construction corridor, the approval of which constitutes an actual Federal Government action.

Since 2017, I have been engaged full-time in disseminating information via email to my community in Wainscott and residents living in the Town of East Hampton. Currently, one thousand and ninety-eight (1,098) people are on my regular email list. I am the *only* source of independent information regarding South Fork Wind (the only two local newspapers depend on significant advertising revenue from SFW and cannot be considered independent).

On February 23, 2021, nine months *before* approving the Project, BOEM received a comments letter containing clear substantive evidence of, *inter alia*, the nature, pervasiveness, and extent of PFAS contamination (see Exhibit A – BOEM Index of Documents). The contamination adversely impacted our sole source aquifer used for drinking water, irrigation, etc., and represents a risk to public health. The New York State Department of Environmental Conservation ("NYSDEC") classifies the source of contamination (at East Hampton Airport) as "a significant threat to public health and/or the environment."[1] East Hampton Airport is adjacent and upgradient from the SFEC route.

The comments letter includes (sworn) testimony, briefs, and over one hundred and fifty exhibits, many of which concern PFAS contamination along the Project's proposed onshore construction corridor that runs through the residential neighborhood of Wainscott. Specifically, the exhibits on PFAS contamination include the following (links provided below) –

PFAS Zone - onshore route decided *after* PFAS detection (1 p)	BOEM Exhibit #006
PFAS Contamination of Onshore Corridor (satellite map) (2 p)	BOEM Exhibit #004
PFAS Contamination Heat Map of Onshore Cable Route (1 p)	BOEM Exhibit #005
PFAS release within 500 ft of SFEC route (surface runoff) (2 p)	BOEM Exhibit #007
Testimony 1-1, PFAS Contamination (Sep 9, 2020) (37 p)	BOEM Exhibit #061
Testimony 1-1, Ex C- Report No 3 - PFAS Contamination (91 p)	BOEM Exhibit #065
Testimony 1-2, PFAS Contamination (Oct 9, 2020) (11 p)	BOEM Exhibit #094
Testimony, Rebuttal (Oct 30, 2020) (13 p)	BOEM Exhibit #162

[1] See Fact Sheet.HW.152250.2019-06-19.East Hampton Airport Class 02 Listing.pdf (avaiable at dec.ny.gov, clcik here) (at p. 1, ¶ 1, last sentence).

Initial Brief of Kinsella (Jan 20, 2021) (34 p) ..... BOEM Exhibit #009
Reply Brief of Kinsella and Exhibits (Feb 3, 2021) (29 p) ..... BOEM Exhibit #011
Motion to Reopen Record by Kinsella (Jan 13, 2021) (21 p) ..... BOEM Exhibit #022

PFOS and PFOA contamination of soil and groundwater *within* and around SFW's construction corridor exceeds the Environmental Protection Agency ("EPA") Health Advisory Level ("HAL") and New York State ("NYS") Maximum Contamination Levels ("MCL").

The EPA warns that exposure to PFAS contamination, specifically perfluorooctanoic acid ("PFOA") and perfluorooctane sulfonic acid ("PFOS"), may cause "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)." See BOEM Exhibit #080 (click here) - PFAS Info EPA (FACT SHEET, PFOA & PFOS Drinking Water, Health Advisories), ATSDR NYSDEC ToxFAQ.

BOEM asserts that its "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" (1978, as amended in 1986 and 2005)("NEPA").

According to NEPA, "Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies [including BOEM][…] shall […] include in every recommendation or report on proposals for […] actions […] a detailed statement […] on – (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided […][and] (iii) alternatives […]." (NEPA, 42 U.S.C. § 4332, Sec. 102).

However, BOEM did *not* take a "hard look" into environmental contamination along the proposed SFEC route from which South Fork Wind plans to excavate over 30,000 tons of material containing PFAS contamination. Instead, BOEM looked the other way and concluded the following— "Overall, existing groundwater quality in the analysis area appears to be good and meets NYSDEC (2018) groundwater quality standards" (FEIS at p. H-23, PDF 655, ¶ 2). Here, BOEM refers to outdated groundwater standards instead of current drinking water standards applicable to a sole-source aquifer used for drinking water.

`The FEIS is over one thousand three hundred (1,317) pages and contains *only one* reference to PFAS contamination. It reads – "Sampling at the fourth site […] has indicated the presence of perfluorinated compounds. Site-related compounds have been identified in soil and

groundwater within […] the site" (at p. H-23, PDF 655, ¶ 2, last sentence). BOEM buries deep within the FEIS (on page 655), a two-sentence reference to PFAS contamination that poses a severe risk to human health and the environment.

On June 15, 2022, the White House proclaimed 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." The statement continues: "Today, the […] Administration is announcing 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 are considered "forever chemicals" because they are environmentally persistent, bioaccumulative, and remain in human bodies for a long time. […] 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 [emphasis added]."[2]

The New York State Public Service Commission ("NYSPSC") and SFW received clear substantive evidence of existing PFAS contamination at least as early as January 2020. However, the NYSPSC did *not* require SFW, and SFW did not volunteer, to test soil or groundwater from *within* its construction corridor. Despite motions seeking to include such testing in the (narrowly-limited) environmental review, the NYSPSC denied intervenor-parties' rights to examine and cross-examine witnesses on such evidence. The NYSPSC hearing lasted two years until the evidentiary record closed on December 8, 2020. On December 23, 2020, SFW tested soil or groundwater from its construction corridor for the first time – fifteen days *after* the NYSPSC hearing had concluded. By delaying testing for PFAS contamination, SFW avoided environmental review of *any* PFAS contamination test results of soil or groundwater from *within* its construction corridor. BOEM, too, ignored existing PFAS contamination.

SFW disclosed its initial PFAS contamination results (for the sampling it undertook during December 2020 and January 2021). The initial testing showed existing PFAS contamination *within* the construction corridor that exceeds the NYS MCL, and (2022) testing showed that PFAS contamination exceeds the 2016 EPA HAL. The supporting documentation also showed that SFW sampled soil and groundwater at locations and depths designed to *avoid* detecting PFAS contamination. For example, SFW sampled soil (for PFAS testing) from the shallow surface (less than 18 inches deep) at many locations (see Fig 5, click here). In contrast, PFAS contamination would likely be near or in groundwater at the bottom of the planned

[2] See www.whitehouse.gov/briefing-room/statements-releases/2022/06/15/fact-sheet-biden-harris-administration-combatting-pfas-pollution-to-safeguard-clean-drinking-water-for-all-americans/

excavation up to fourteen feet (see Fig 7, click here, and Fig 8, click here). SFW did *not* test soil at the bottom of its planned excavation, thereby avoiding detecting PFAS contamination (see Fig 6, click here).

BOEM received detailed information on South Fork Wind's flawed testing methodology. See Sixty-day Notice of Intent to Sue dated December 18, 2021 (marked as Exhibit B, click here), and (sworn) letter-testimony "URGENT: South Fork Wind, Imminent Risk to Public Health" dated March 11, 2022 (marked as Exhibit C, click here), also available at www.oswSouthFork.info.

In January/February 2022, South Fork Wind tested soil and groundwater for a second time, but to date, it has refused to disclose the laboratory test results and supporting documentation. SFW has a history of avoiding environmental review and a poor record of reporting PFAS contamination.

Sadly, *no* federal, state or local government agency has acted responsibly and transparently concerning our health, safety, and environment. Therefore, we have no option but to look into these matters ourselves *before* SFW causes further environmental damage. Given that PFAS contamination poses a risk to human health, residents living in Wainscott have no other legal remedy other than to demand that BOEM disclose records according to the (attached) FOIA request on an expedited basis. Time is of the essence.

Federal and state agencies have deprived citizens living in Wainscott, N.Y., of life, liberty, and property without due process of law. As Justice Mathews, speaking for the Court in *Hurtado v. California*, declared— ''Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by our constitutional law upon the action of the governments, both state and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government.''[3]

NEPA mandates that "[p]rior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has […] special

[3] *Hurtado v. California*, 110 U.S. 516, 528, 532, 536 (1884)

expertise with respect to any environmental impact involved." Further, such statements and comments "shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code [FOIA][emphasis added]" (42 U.S.C. § 4332, Sec. 102(2)(C)).

BOEM admits that "perfluorinated compounds […] have been identified in soil and groundwater within […] the site" (FEIS, *supra*). Such PFAS contamination falls within the definition of "any environmental impact involved" for which the responsible officer(s) "shall consult with and obtain the comments" of Federal agencies such as the EPA, the Centers for Disease Control and Prevention, the U.S. Agency for Toxic Substances and Disease Registry, *et cetera*. BOEM failed to consult with Federal agencies, and has likewise failed to discuss with *any* reasoned elaboration known existing onshore PFAS contamination.

Below are two examples illustrating the inherent risk to human health that BOEM should have addressed but has not—

(1) Fraudulent Environmental Assessment Form

On April 21, 2022, the East Hampton Town Board voted to grant Supervisor Van Scoyoc authority to grant SFW a license (available online here) to use a parcel of land at the southern end of Stephen Hand's Path (with Suffolk County Tax Map or "SCTM" #0300-193-02-004.00). The Town Board also approved "a Negative Declaration pursuant to SEQRA with regard to the proposed license" based on an Environmental Assessment Form ("EAF") that "has been prepared for the Town Board" (although the Town Board disclosed neither the license nor the EAF before voting despite a request). See Town Board Resolution #2022-551 and EAF (available online here). The parcel is within 100 feet of two freshwater wetlands ("EH-27" and "EH-28") and 400 feet (upstream) of Georgica Pond (map available here).

However, the parcel (#0300-193-02-004.00) referred to in the Town Board resolution is a mile away from the EAF parcel (#0300-180-01-008.13). Also, the person who completed and signed the EAF on behalf of "South Fork Wind" is the same person who signed on behalf of the Town of East Hampton – Supervisor Peter Van Scoyoc. The EAF was completed, signed, reviewed, and approved by the same person within hours before the Town Board meeting without *any* environmental review whatsoever.

The State Environmental Quality Review Act ("SEQRA") requires that the applicant, South Fork Wind, complete Part 1 of the EAF and that the "reviewer" complete EAF Parts 2 and 3 on behalf of the lead agency (the Town). The reviewer must be impartial

and independent and act in the public interest. Still, residents do *not* know who Supervisor Van Scoyoc was representing when he signed on behalf of the Town and the developer. Irregularities such as the Town Board resolution based on a fraudulent SEQRA Environmental Assessment Form are characteristic of the degree to which the Project has been subject to environmental review.

(2) Treatment PFAS contaminated material

In January 2021, SFW submitted the following sworn testimony (to the NYSPSC) –

"[…] SFW is unlikely to encounter any PFAS contamination during construction of the SFEC due to the fact that it is not performing any excavation in areas where PFAS has been released, […] and also because most of the excavation will take place above the water table [emphasis added]" (available at PSC DMM 254 here at p. 17). See SFW's transition vault filled with groundwater (photo taken April 18, 2022, available online, click here).

Contrary to the (above) testimony, photographs (taken on May 15, 2022) clearly show South Fork Wind treating PFAS-contaminated soil and groundwater at a facility in the Town of East Hampton.

Photo A (click here) shows four frac tanks with a total capacity of 75,000 gallons. The white frac tank (far right) is the largest (21,357 gallons). Immediately to its left is a Granular Activated Carbon ("GAC") filter for removing PFAS chemicals. Photo B (click here) is a closeup of the GAC filter. The label reads: "Wet activated carbon removes oxygen from [the] air." Zoom in and take note of the muddy water to the left. Photo C (click here) shows the GAC filter connected to the frac tank via a pump (and a valve resting on wooden blocks). Zoom in to where the hose connects to the GAC filter (halfway up the righthand side of the filter). Muddy water is directly underneath the connection point but nowhere else in the immediate vicinity. Underneath the valve (on blocks), water is pooling directly underneath the connection point. Note the stick that looks like it's been recently used to poke inside a tank (it's still half wet). Finally, look at the frac tank immediately to the right. Although the secondary containment (the black plastic sheet) is compromised (a severe issue), it is not so compromised as to allow all the water to drain. In contrast to the wet containment area around the GAC filter, the containment area next to it is dry. Likewise, there is no water around the other frac tanks (in Photo A).

Muddy water exists only around the GAC filter, indicating that South Fork Wind has recently used the filter to treat PFAS contamination. The photos were taken between 4 and 5 PM, and it didn't rain that day. However, rainwater would have also been around the other frac tanks if it had rained, but the other containment areas in the photos are dry. Also, rainfall would not explain why water is selectively pooling immediately underneath the points where the hoses connect to the GAC filter and the valve. Finally, rainwater doesn't contain mud. How did the muddy water get there if no one used the GAC filter? South Fork Wind is treating excavated material containing PFAS contamination that it (erroneously) claimed was "irrelevant to this [NYSPSC] proceeding" (see Motion to Strike Testimony, at p. 1, click here).

On the contrary, PFAS contamination is very relevant. SFW's Horizontal Directional Drilling Landfall Installation Plan and Profile Drawings show similar frac tanks (click here) in a row on Beach Lane (see complete HDD Plan and Profile Drawings, click here, at p. 17). The frac tanks are to treat groundwater from drilling a borehole at the southern end of Beach Lane for its transmission cable half a mile long. SFW's PFAS contamination testing on Beach Lane shows that PFOA contamination of groundwater (82 ppt) exceeds the 2016 EPA HAL (70 ppt combined PFOS/PFOA) and the 2022 Interim Health Advisory (0.004 ppt) by 20,500 times. See South Fork Wind – Monitoring Well Summary (Well MW-4A, available online, click here)[4] and U.S. EPA Drinking Water Health Advisories for PFAS Fact Sheet for Communities, issued June 15, 2022 (at p. 2, available at epa.gov, click here).

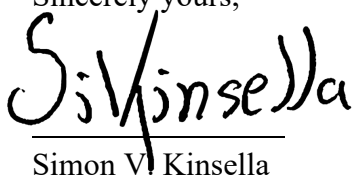
As a matter of urgency, I request that BOEM provide copies of laboratory test results and documentation supporting test results for PFAS contamination in Wainscott according to the (attached) FOIA request so that I may disseminate the information to my community. BOEM's action to approve the Project poses an imminent risk to human health. According to NEPA, BOEM is statutorily mandated to take a "hard look" and undertake a substantive environmental review that includes existing onshore PFAS contamination, failure of which BOEM denies me, my family, and my community due process of law.

Thank you in advance for your cooperation.

[4] The South Fork Wind – Monitoring Well Summary, dated February 21, 2022, has not been varified against test result from an authorized laboratory. South Fork Wind has refused to disclose such reports, sampling plans, bore/well logs, etc. The information is incomplete.

Please note that there is no litigation involving any of the aforementioned Federal agencies to which I am a party. If you have any questions, please contact me via email (si@oswsouthfork.info) or mobile phone (+1-631-903-9154).

Sincerely yours,



Simon V. Kinsella
Dated: July 6, 2022

C/c: Todd Kim, Esq.
U.S. Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Sent via FedEx and email
Email: webcontentmgr.enrd@usdoj.gov

Office of Government Information Services (OGIS)

Sent via facsimile and email
Email: ogis@nara.gov

STATE OF NEW YORK
COUNTY OF SUFFOLK

Simon V. Kinsella, being duly sworn, says under penalty of perjury:

I am a resident of Wainscott, Town of East Hampton, State of New York. The content of this certificate (of seven pages) requesting expedited processing of my FOIA request of July 5, 2022, is true to the best of my knowledge, information, and belief.

Simon V. Kinsella
Dated; July 6, 2022

Sworn to before me this
6th day of July 2022

Notary Public

STATE OF NOTARY PUBLIC NEW YORK

Robert DeStefano
Notary Public, State of New York
No. 01DE6321944
Qualified in Suffolk County
Commission Expires March 30th, 2023

On February 23, 2021, the Bureau of Ocean Energy Management (BOEM) received the following comments and exhibits on the Draft Environmental Impact Statement (DEIS) for the South Fork Wind Project –

- Comments by Kinsella on South Fork Wind DEIS Feb 22, 2021
- List of Documents Submitted to BOEM Feb 22, 2021
- Initial Brief on South Fork Wind Project Jan 20, 2021
- Reply Brief on South Fork Wind Project Feb 3, 2021
- Demand Letter to LIPA Re: Public Authorities Control Board (PACB) Feb 19, 2021
- Motion to Reopen Record (PFAS Test Results) Jan 13, 2021
- Motion to Reopen the Record, Supplemental Info (Purpose and Need) Jan 29, 2021
- Motion to Strike Testimony by South Fork Wind Nov 5, 2020
- Motion to Strike Testimony, Response Nov 16, 2020
- Testimony Part 1-1 – PFAS Contamination Sep 9, 2020
- Testimony Part 1-2 – PFAS Contamination Oct 9, 2020
- Testimony Part 2 – Public Interest & Price Oct 9, 2020
- Testimony Part 3 – Rebuttal, Conflicts, PFAS, 2018 OSW Master Plan Oct 30, 2020
- Wind Wake Effect (research papers)
- Wind Data, OSW Output vs Demand (spreadsheets, charts, tables, spec's, etc.)

BOEM posted the following comments on its website on February 23, 2021 (available at https://www.regulations.gov/comment/BOEM-2020-0066-0343) –

- Comments by Kinsella on South Fork Wind DEIS Feb 22, 2021

BOEM posted the following comments on its website on April 14, 2021 (available at https://www.regulations.gov/comment/BOEM-2020-0066-0384) –

- Wind Wake Effect (research papers)
- Wind Data, OSW Output vs Demand (spreadsheets, charts, tables, spec's, etc.)

BOEM also posted the following comments on April 14, 2021 (available at https://www.regulations.gov/comment/BOEM-2020-0066-0385) –

- Documents Submitted to BOEM List by Kinsella(spreadsheet) Feb 22, 2021
- Documents Submitted to BOEM List by Kinsella (pdf) Feb 22, 2021
- Initial Brief on South Fork Wind Project Jan 20, 2021
- Reply Brief on South Fork Wind Project Feb 3, 2021
- Demand Letter to LIPA Re: Public Authorities Control Board (PACB) Feb 19, 2021
- Motion to Reopen the Record (PFAS Test Results) Jan 13, 2021
- Motion to Reopen the Record, Supplemental Info (Purpose and Need) Jan 29, 2021
- Motion to Strike Testimony by South Fork Wind Nov 5, 2020
- Motion to Strike Testimony, Response Nov 16, 2020
- Wind Data (Excel Spreadsheets, Charts, Tables, Spec's, etc.)

BOEM also posted the following comments on April 14, 2021 (available at https://www.regulations.gov/comment/BOEM-2020-0066-0386) –

- Testimony Part 1-1 – PFAS Contamination Sep 9, 2020
- Testimony Part 1-2 – PFAS Contamination Oct 9, 2020

BOEM also posted the following comments on April 14, 2021 (available at https://www.regulations.gov/comment/BOEM-2020-0066-0387) –

- Testimony Part 2 – Public Interest & Price Oct 9, 2020
- Testimony Part 3 – Rebuttal, Conflicts, PFAS, 2018 OSW Master Plan Oct 30, 2020

Documents are available for download, click on "Exhibit #000" (see below).

BOEM – Comments on South Fork Wind DEIS (BOEM-2020-0066-0343)

- South Fork Wind, DEIS Comments by Kinsella (Feb 22, 2021) ..... Exhibit #001
- List of Documents Submitted to BOEM (spreadsheet) ..... Exhibit #002
- List of Documents Submitted to BOEM (pdf) ..... Exhibit #003
- PFAS Contamination of Onshore Construction Corridor (satellite map) ..... Exhibit #004
- PFAS Contamination Heat Map of Onshore Cable Route ..... Exhibit #005
- PFAS Zone - onshore cable route decided *after* PFAS detection ..... Exhibit #006
- PFAS release within 500 feet of SFEC route (surface runoff) ..... Exhibit #007
- Electrical Transmission Fires - Bridgehampton & East Hampton ..... Exhibit #008

Initial Brief on South Fork Wind Project, January 20, 2021

- Initial Brief by Simon V. Kinsella (Jan 20, 2021) ..... Exhibit #009
- Exhibit A – See Motion to Reopen Record ..... (see Exhibits #021-028)
- Exhibit B - Joint Proposal Signatories ..... Exhibit #010

Reply Brief on South Fork Wind Project, February 3, 2021

- Reply Brief & Exhibits by Simon V. Kinsella (Feb 3, 2021) ..... Exhibit #011
- Reply Brief (only) by Simon V. Kinsella (Feb 3, 2021) ..... Exhibit #012
- Exhibit 1 -WESC DWW EF Outage Rate ..... Exhibit #013
- Exhibit 2 -WESC SF RFP Load Cycle Analysis ..... Exhibit #014
- Exhibit 3 -DWW EF Outage Rate Analysis ..... Exhibit #015

LIPA Demand Letter Re: PACB Approval, February 2021

• South Fork Wind Not Approved by PACB (note, undated)	Exhibit #016
• Demand Letter Re: PACB Approval to LIPA (Feb 19, 2021)	Exhibit #017
• Exhibit (a) - NYS Comptroller FOIL Request Appeal (Feb 5, 2020)	Exhibit #018
• Exhibit (b) - Supp Resp by PSEGLI to IRSK29 PPA Amend (Oct 8 20)	Exhibit #019
• Exhibit (c) - PSEG LI SF RFP Update PPA Amend (Sep 30, 2020)	Exhibit #020

Motion to Reopen Record, January 13, 2021

• Motion to Reopen Record by Simon V. Kinsella (Jan 13, 2021)	Exhibit #021
• Motion to Reopen Record (incl. Exhibits D, E, & F)	Exhibit #022
• Exhibit A - Kinsella vs NYS Comptroller index 904100-19	Exhibit #023
• Exhibit B - LIPA Amendment No 1 (Nov 14, 2018)	Exhibit #024
• Exhibit C - IRSK 01 SFW Resp Re PFAS	Exhibit #025
• Exhibit D - SFW Environmental Survey (Jan 4, 2021)	Exhibit #026
• Exhibit E - PFAS Contamination map	Exhibit #027
• Exhibit F - Survey Well Locations (Google Map)	Exhibit #028

Motion to Reopen the Record, Supplemental Information, January 29, 2021

• Motion to Reopen Record, Supplemental by Kinsella (Jan 29, 2021)	Exhibit #029
• Exhibit A - LIPA Memo Re: South Fork RFP	Exhibit #030
• Exhibit B - PSEG Long Is South Fork RFP Webex (Jul 2015)	Exhibit #031
• Exhibit C - PSEGLI South Fork RFP, Exec. Comm. (Apr 2016)	Exhibit #032
• Exhibit D -Report on Load Shifting Effect	Exhibit #033
• Exhibit E - Report on Load Cycle Analysis	Exhibit #034
• Exhibit F - Report on Wind Outage Rate	Exhibit #035
• Exhibit G - Wind Outage Analysis	Exhibit #036

- Exhibit H -Report on Potential Interferences ..... Exhibit #037
- Exhibit I - Load Reduction Final Selection ..... Exhibit #038
- Exhibit J - South Fork RFP Clarifying Questions ..... Exhibit #039
- Exhibit K - NYS Comptroller 1625 billion valuation ..... Exhibit #040
- Exhibit L - LIPA Resp to FOIL Appeal Kinsella ..... Exhibit #041
- Exhibit M - LIPA Cover Letter to FOIL Resp Kinsella ..... Exhibit #042
- Exhibit N - PSEG Long Is Evaluation Guide ..... Exhibit #043
- Exhibit O - South Fork RFP Proposal Receipt Log ..... Exhibit #044
- Exhibit P - South Fork RFP PPA Matrix – Final ..... Exhibit #045
- Exhibit Q - Avoided Transmission Cost Ph II Rev7 ..... Exhibit #046
- Exhibit R - Avoided Transmission Cost Ph III Rev10 ..... Exhibit #047
- Exhibit S - LIPA South Fork Wind Fact Sheet (Oct 2019) ..... Exhibit #048

Motion to Strike Testimony by South Fork Wind, Nov 5, 2020

- Motion to Strike Testimony by South Fork Wind (Nov 5, 2020) ..... Exhibit #049
- Response, Motion to Strike Testimony by Kinsella (Nov 16, 2020) ..... Exhibit #050
- Opposition, Motion to Strike Testimony - Resp Bjurlof ..... Exhibit #051
- Opposition, Motion to Strike Testimony - Resp CPW ..... Exhibit #052
- Opposition, Motion to Strike Testimony - Resp Gruber ..... Exhibit #053
- Opposition, Motion to Strike Testimony - Resp LICFA ..... Exhibit #054
- Opposition, Motion to Strike Testimony - Resp Cohen ..... Exhibit #055
- Opposition, Motion to Strike Testimony - Resp Cirlin ..... Exhibit #056
- Opposition, Motion to Strike Testimony - Resp Neil Faber ..... Exhibit #057
- Opposition, Motion to Strike Testimony - Resp Mahoney M ..... Exhibit #058

• Opposition, Motion to Strike Testimony - Resp Mahoney P	Exhibit #059
• Ruling, Motion to Strike Testimony by ALJ Belsito (Nov 24, 2020)	Exhibit #060

Testimony Part 1-1 - PFAS Contamination, September 2020

• Testimony 1-1, PFAS Contamination by Kinsella (Sep 9, 2020)	Exhibit #061
• Affidavit of Simon V. Kinsella (Sep 9, 2020)	Exhibit #062
• Exhibit A - Groundwater Water Recharge CEA SASS	Exhibit #063
• Exhibit B - PFAS Heat Map	Exhibit #064
• Exhibit C - Report No 3 - PFAS Contamination	Exhibit #065
• Exhibit D-1 - DEC- SC East Hampton Airport App A	Exhibit #066
• Exhibit D-2 - DEC- SC East Hampton Airport App B	Exhibit #067
• Exhibit D-3 - DEC- SC East Hampton Airport App C	Exhibit #068
• Exhibit D-4 - DEC- SC East Hampton Airport App D	Exhibit #069
• Exhibit D-5 - DEC- SC East Hampton Airport App E-1	Exhibit #070
• Exhibit D-9 - DEC- SC East Hampton Airport App F	Exhibit #071
• Exhibit D-6 - DEC- SC East Hampton Airport App E-2	Exhibit #072
• Exhibit D-7 - DEC- SC East Hampton Airport App E-3	Exhibit #073
• Exhibit D-8 - DEC- SC East Hampton Airport App E-4	Exhibit #074
• Exhibit E - DEC - SC Wainscott Sand & Gravel (Jul 2020)	Exhibit #075

• Exhibit F - Town v Village NYSED 2-20-cv-01787	Exhibit #076
• Exhibit G-1 DEIS Wainscott Comm Center (Jul 2020)	Exhibit #077
• Exhibit G-2 DEIS Wainscott Comm Center (Jul 2020)	Exhibit #078
• Exhibit G-3 DEIS Wainscott Comm Center (Jul 2020)	Exhibit #079
• Exhibit H - PFAS Info EPA ATSDR NYSDEC ToxFAQ	Exhibit #080
• Exhibit I-1 - NYSPSC Art VII Case 10-T-0154 DEC Letter	Exhibit #081
• Exhibit I-2 - NYSPSC Staff Proposal Re- Findings	Exhibit #082
• Exhibit J - USEPA PFAS Action Plan (Feb 2020)	Exhibit #083
• Exhibit K - PFAS Contamination Zone	Exhibit #084
• Exhibit L - Wainscott S&G Superfund Designation	Exhibit #085
• Exhibit M – Google Earth - Wells EH-1 to S1	Exhibit #086
• Exhibit N - IR SK 03 to 10 (Jan 2, 2020)	Exhibit #087
• Exhibit P - EPA Interim Recomm's for PFAS GW (Dec 2019)	Exhibit #088
• Exhibit Q - ASTSWMO - PFC Remediation	Exhibit #089
• Exhibit R - MA - PFAS Standard (Dec 2019)	Exhibit #090
• Exhibit O - West Gate Tunnel - PFAS AFR	Exhibit #091
• Exhibit - Shaw Aero	Exhibit #092
• Exhibit - Griffiths Carpet	Exhibit #093

Testimony Part 1-2 - PFAS Contamination, October 2020

• Testimony 1-2 - PFAS Contamination by Kinsella (Oct 9, 2020)	Exhibit #094
• Exhibit 1-1A - NYSDEC PFAS Remediation (Jan 23, 2020)	Exhibit #095
• Exhibit 1-2B - DEC SC Wainscott S G (July 2020)	Exhibit #096
• Exhibit 1-2C - PFAS Heat Map	Exhibit #097

- Exhibit 1-2D- Testimony Pt 1-1 – PFAS (Sep 9, 2020) ..... Exhibit #098

Testimony Part 2 – Public Interest & Price

- Public Interest Price (Oct 9, 2020) ..... Exhibit #099
- Affidavit by Kinsella Notary (Oct 9, 2020) ..... Exhibit #100
- Exhibit 01 - Kinsella vs NYS Comptroller 904100-19 ..... Exhibit #101
- Exhibit 02 - South Fork RFP (Jun 24, 2015) ..... Exhibit #102
- Exhibit 03 - Power Purchase Agreement (Feb 2017) ..... Exhibit #103
- Exhibit 04 - PPA Amendment No 1 (Nov 14, 2018) ..... Exhibit #104
- Exhibit 05 - PSEGLI Resp IR SK 29 - PPA Amendment ..... Exhibit #105
- Exhibit 06 - OAG to Kinsella PPA Price Table ..... Exhibit #106
- Exhibit 07 - IR SK 32 Resp by PSEG Long Is (Sep 2020) ..... Exhibit #107
- Exhibit 08 - IR SK 32 - Email Chain (Sep 4, 2020) ..... Exhibit #108
- Exhibit 09 - Motion to Compel PSEG Long Is IR SK 32 ..... Exhibit #109
  - Exhibit A - South Fork RFP (Jun 24, 2015) ..... Exhibit #110
  - Exhibit B - IR SK 32 ..... Exhibit #111
  - Exhibit C - IR SK 32 - Response by PSEG LI (Sep 3, 2020) ..... Exhibit #112
  - Exhibit D - IR SK 32 - Email Chain btw SK PSEGLI (Sep 3, 2020) ..... Exhibit #113
  - Exhibit E - Kinsella vs NYS OSC - Decision index 904100-19 ..... Exhibit #114
  - Exhibit F - NYSERDA OSW Report Sunrise Equinor (Oct 2019) ..... Exhibit #115
  - Exhibit G - LIPA Press Release - Price 16.3 ..... Exhibit #116
  - Exhibit H - PPA - LIPA Deepwater OSC LIPA ..... Exhibit #117
  - Exhibit I - NREL Comparing Offshore Wind Energy (Jun 2020) ..... Exhibit #118
  - Exhibit J - IR SK 29 - PSEGLI Response - Amend 1 40MW ..... Exhibit #119

- Exhibit K - US DOE 2018 OSW Technologies Mkt Rpt (Aug 2019)	Exhibit #120
- Exhibit L - Fig 32 - OSW Mkt Report Adj Strike Prices (Aug 2019)	Exhibit #121
- Exhibit M - LIPA Approval of PPA for Offshore Wind DR-0014	Exhibit #122
- Exhibit N - Orsted AS - 2018 Annual Report (193 pages)	Exhibit #123
- Exhibit O - Orsted AS - 2019 Annual Report (183 pages)	Exhibit #124
- Exhibit P - NJ Awards Grant WSJ (Oct 3, 2008)	Exhibit #125
- Exhibit Q - Maryland - US Wind Skipjack (Mar 17, 2017)	Exhibit #126
- Exhibit R - NJ BPU OSW Evaluation Report (Oct 2008)	Exhibit #127
- Exhibit S - IR SK 19 - PSEGLI Conflicts of Interest	Exhibit #128
- Exhibit T - IR SK 19 - PSEGLI Response (Mar 13, 2020)	Exhibit #129
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- Exhibit II - 2020-0444 Response	Exhibit #132
- Exhibit III - C000883 Deepwater Wind VRQ 1-26-17	Exhibit #133
- Exhibit IV - C000884 - EH Energy Storage VRQ 5-23-17	Exhibit #134
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- Exhibit VI - C000885 Montauk Energy Storage VRQ 5-23-17	Exhibit #136
- Exhibit VII - VR for C000883-6015200_Redacted	Exhibit #137
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- Exhibit IX - VR for C000885-6015200_Redacted	Exhibit #139
- Exhibit X - OSC FOIL Request 2020-0444 VRQ (Aug 24, 2020)	Exhibit #140
- Exhibit XI - Siemens Gamesa SG 8.0-167 DD – Spec's	Exhibit #141
- Exhibit XII - OSW Power VOID - Deepwater Wind Slide (2015)	Exhibit #142

- Exhibit XIII - PSEG LI - Bridgehampton Fire (Jan 24, 2020)	Exhibit #143
- Exhibit M - LIPA Approval of PPA for Offshore Wind DR-0014	Exhibit #144
• Exhibit 11 - WTG - Ørsted Selects Siemens Gamesa	Exhibit #145
• Exhibit 12 - Wind Data Summary 44008 44017 BUZM3	Exhibit #146
- Exhibit 12a - 44008 - Wind Data 2015 10-min	Exhibit #147
- Exhibit 12b - 44008 - Wind Data 2016 10-min	Exhibit #148
- Exhibit 12c - 44008 - Wind Data 2017 10-min	Exhibit #149
- Exhibit 12d - 44017 - Wind Data 2015 10-min	Exhibit #150
- Exhibit 12e - 44017 - Wind Data 2016 10-min	Exhibit #151
- Exhibit 12f - 44017 - Wind Data 2017 10-min	Exhibit #152
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- Exhibit 12i - BUZM3 - Wind Data 2016 10-min	Exhibit #155
- Exhibit 12j - BUZM3 - Wind Data 2017 10-min	Exhibit #156
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- Exhibit 12l - BUZM3 - Wind Data 2019 10-min	Exhibit #158
- Exhibit 12m - NOAA Weather Data TEMP	Exhibit #159
- Exhibit 12m - South Fork Weather Data	Exhibit #160
• Exhibit 13 - Transmission Fire E Hampton Feb 2016	Exhibit #161

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• Testimony, Rebuttal (Oct 30, 2020)	Exhibit #162
• Affidavit Notary (Oct 30, 2020)	Exhibit #163
• Exhibit 3-1 - IR SK 29 - PSEGLI Supp Resp (Oct 8, 2020)	Exhibit #164

- Exhibit 3-2 - PFAS Heat Map Wainscott S G PFAS ..... Exhibit #165
- Exhibit 3-3 - SCDHS PFAS Lab Reports (416 pages) ..... Exhibit #166
- Exhibit 3-4 - Email SCDHS to Town Supervisor ..... Exhibit #167
- Exhibit 3-5 - Rigano Presentation on DEC SC Report ..... Exhibit #168
- Exhibit 3-6 - NYSERDA OSW RFI 2018 Ørsted Eversource ..... Exhibit #169
- Exhibit 3-7 - NYSERDA OSW Policy Options Paper (Jan 29, 2018) ..... Exhibit #170
- Exhibit 3-8 - LIPA Evaluation Newsday by Harrington ..... Exhibit #171

Wind Wake Effect

- Journal of Geophysical Research Atmospheres, Archer, *et al* (2016) ..... Exhibit #172
- A Numerical Study of Wind-Turbine Wakes, Archer, *et al* (2017) ..... Exhibit #173
- Study: Wind Wakes off NE US Atlantic Coast, Archer (2019) ..... Exhibit #174
- OSW Farm Micrometeorological Impacts, Siedersleben, *et al* (2018) ..... Exhibit #175
- Offshore Wind Farm in German Bight (May 2017) ..... Exhibit #176
- Offshore Wind Farms in German Bight pan ..... Exhibit #177
- Offshore Wind Farms in German Bight zoom ..... Exhibit #178
- First in situ evidence of wakes in far field of OSW Farms (Jan 2018) ..... Exhibit #179
- Wind Wake (figures and heat maps) ..... Exhibit #180

Wind Data (spreadsheet, charts, tables, specifications, etc.)

- Avg Max Temp - BH Montauk NOAA Weather Data (2000-2020) ..... Exhibit #181
- Block Island Wind Farm BIWF Capacity (2017-2020) ..... Exhibit #182
- Climate Temperature East Hampton, Weather Atlas ..... Exhibit #183
- Offshore Wind Speed per Month per Hour, NOAA (44008 & 44017) ..... Exhibit #184
- SF Supply Risk - Demand vs Supply (PSEGLI/NOAA data) (2016) ..... Exhibit #185
- Power Curves (Haliade-X, Vestas, Siemens-Gamesa SG8 & SG10) ..... Exhibit #186

• POWER OFF Freq - NOAA 44017 (2016, 18), 44008 (2015) (charts)	Exhibit #187
• POWER OFF Freq - NOAA Station 44017 (stack chart) (2016)	Exhibit #188
• POWER OFF Freq - NOAA Station 44017 (xls) (2018)	Exhibit #189
• South Fork Hourly Electrical Demand (PSEGLI Resp. IR HIFI-02)	Exhibit #190
• South Fork Peak Demand vs OSW Supply (chart) (May- Aug 2016)	Exhibit #191
• South Fork Peak Demand vs Wind Output 132 MW (charts) (2016)	Exhibit #192
• SF Avg. Temp. & OSW Speed NOAA 44008 & 44017 (2000-2020)	Exhibit #193
• OSW Farm Output 132 MW SG 8 Power Curve, NOAA 44017 (2016)	Exhibit #194
• Siemens Gamesa SG 8.0-167 DD – Specifications (2020)	Exhibit #195
• South Fork – Demand vs OSW Supply (data) (2016)	Exhibit #196
• South Fork – Demand vs OSW Supply (data) (May-Aug 2016)	Exhibit #197
• South Fork Load (2016-2018) & Avg. Temp (charts) (2000-2020)	Exhibit #198
• Wind Data Summary – NOAA 44008, 44017 & BUZM3	Exhibit #199

Miscellaneous

• CPW v Town of E Hampton - Complaint index 601847-2021	Exhibit #200
• PFAS - Wainscott Sand & Gravel NYS DEC SC Report	Exhibit #201
• POWER OFF Freq. - NOAA 44017 (2016, 2018) 44008 (2015)	Exhibit #202
• POWER OFF Freq. - NOAA 44017 (2016 Stack Chart)	Exhibit #203
• SF Demand vs OSW Supply (May- Aug 2016)	Exhibit #204
• SF Demand 2016 vs Expected SF Output 132 MW	Exhibit #205
• SF Temp. (avg. 2000-20) OSW Speed NOAA 44008, & 44017	Exhibit #206
• South Fork Electrical Load (2016-2018) Avg Temp (2000-2020)	Exhibit #207

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Party Intervenors (via email only)
New York State Public Service Commission
Case 18-T-0604

Re: 60-day Notice of Intent to Sue

Dear Secretary Haaland, Secretary Raimondo, Secretary Wormuth, Director Lefton, Administrator Spinrad, Acting Assistant Secretary Pinkham, State Attorneys General, Chief Morin, Mr. Hardy, and Ms. Wilson, U.S. Assistant Attorneys General, and Mr. Singer:

On November 24, 2021, the U.S. Department of the Interior (DOI) "decided to approve, with modifications, the COP [Construction and Operations Plan] for South Fork Wind[.]"[1]

"The Secretary delegated to BOEM [Bureau of Ocean Energy Management] the authority to approve a COP. Final regulations implementing this authority were promulgated by BOEM's predecessor agency, the Minerals Management Service (MMS), on April 29, 2009 (81 Fed. Reg. 19638). These regulations prescribe BOEM's responsibility for determining whether to approve, approve with modifications, or disapprove South Fork Wind's COP."[2]

By granting South Fork Wind LLC (formerly Deepwater Wind South Fork LLC) (the "Applicant") approval, BOEM acted prematurely in violation of statutory and regulatory requirements enacted to protect our nation's environmental and natural resources, its people, and its industries. BOEM approved the Applicant's Construction and Operations Plan ("COP") based on errors in fact and law.

Please require the Applicant to correct the false information contained in its COP and rectify omissions of fact. When the Applicant has provided BOEM with more accurate information, please correct the violations of law committed by federal agencies.

The Sixty-day Notice of Intent to Sue focuses on –

1. An established pattern of the Applicant dodging and circumventing the issue of existing environmental contamination from (prior) releases of hazardous waste into soil and groundwater throughout the proposed onshore construction corridor through a residential neighborhood;
2. Violations of federal anti-trust provisions, including the Sherman Antitrust Act of 1890;
3. Violations of the Endangered Species Act by the United States of America, its departments, and agencies have endangered marine mammals such as the North Atlantic Right Whale that live in the same area where the Applicant proposes building an offshore wind farm.

Should these statutory and regulatory violations not be remedied within the next sixty (60) days, residents of eastern Long Island will file suit pursuant to the citizens' suit provisions of the Outer Continental Shelf Lands Act, and Endangered Species Act (as well

[1] See Record of Decision, South Fork Wind Farm and South Fork Export Cable Project Construction and Operations Plan dated November 24, 2021, Section 5.1 (at p. 15)

[2] *Id.* (at p. 5-6)

as other relevant statutes) to require BOEM, its departments, and federal agencies comply with their legal obligations.

The South Fork Wind Project

The Applicant proposes building an offshore wind farm – the South Fork Wind Farm ("SFWF") – comprising no more than twelve (12) wind turbine generators ("WTG") on Cox's Ledge in Renewable Energy Lease Number OCS-A 0517. Cox's Ledge is in the Atlantic Ocean, approximately 35 miles east of Montauk Point off Long Island. The Applicant proposes to connect each WTG with a high-voltage alternative current (HVAC) submarine cable inter-array that will then link to an offshore substation ("OSS").

The Project includes a sixty-mile-long new transmission system – the South Fork Export Cable ("SFEC") – connecting the offshore wind farm and offshore substation to a new onshore substation ("Interconnection Facility"). The Applicant plans to use a one-hundred-and-thirty-eight (138) kilovolt HVAC single-circuit cable(s) as its SFEC.

The Interconnection Facility is designed to receive electrical energy over the SFEC from the SFWF and facilitate a connection to LIPA's East Hampton Substation to deliver electrical energy to the mainland electric grid in East Hampton, New York.

The Project includes an onshore operation and maintenance facility.

PFAS - "a significant threat to public health and the environment."[3]

On October 11, 2017, Suffolk County Department of Health Services ("SCDHS") issued a Water Quality Advisory for Private-Well Owners in Area of Wainscott. The advisory warned residents living in the vicinity of East Hampton Airport that "PFOS and PFOA have been detected in some of the private wells that have been tested so far [and that] One private well had PFOS and PFOA detected above the USEPA lifetime health advisory level of 0.07 ppb." EPA's health advisory levels are established to protect even the most sensitive populations, including fetuses during pregnancy and breastfed babies, against potential adverse health effects." At the time, over ninety percent of residents relied on private wells for *all* their drinking-water and freshwater needs. It was reported on the front page of all the local newspapers. East Hampton Airport is upgradient and adjacent to South Fork Wind proposed construction corridor (see Fig 1 overleaf).

[3] New York State Department of Environmental Conservation ("NYSDEC") State Superfund Site Classification Notice, Inactive Hazardous Waste Disposal Site Program for East Hampton Airport, dated June 2019.

Fig. 1

Remediation Sites (1 of 2)

Remediation Program: State Superfund Program

Site Name: East Hampton Airport
Site Code: 152250
Site Class: 02

Online Database: Link (click on link)

Document Folder: No Link Available.

Environmental Cleanup and Brownfields

Zoom to

Remediation Parcels (2 of 2)

Remediation Program: State Superfund Program
Site Code: 152250
Site Class: 02

(click on link)
Remediation Parcel Database Record: Site Record

Zoom to

Remediation Parcels (1 of 2)

Remediation Program: State Superfund Program
Site Code: 152250
Site Class: 02

(click on link)
Remediation Parcel Database Record: Site Record

Zoom to

Remediation Sites (1 of 2)

Remediation Program: State Superfund Program

Site Name: East Hampton Aire
Site Code: 152156
Site Class: C

(click on link)
Online Database: Link

Document Folder: Link. Zoom to
Environmental Cleanup and Brownfields

Zoom to

Remediation Parcels (2 of 2)

Remediation Program: State Superfund Program
Site Code: 152156
Site Class: C

(click on link)
Remediation Parcel Database Record: Site Record

East Hampton Airport

South Fork Wind Construction Corridor
Underground Transmission Infrastructure (HVAV 138 kV)

Wainscott Sand & Gravel
Wainscott Commercial Center, Inc.

Remediation Parcels (2 of 2)

Remediation Program: State Superfund Program
Site Code: 152250
Site Class: 02

(click on link)
Remediation Parcel Database Record: Site Record

Zoom to

Remediation Sites

Remediation Program: State Superfund Program

Site Name: Wainscott Sand and Gravel
Site Code: 152254
Site Class: N*

Online Database: Link (click on link)

Document Folder: Link (click on link)

Environmental Cleanup and Brownfields

Zoom to

Environmental Cleanup

Check / Uncheck all

Layer Information

Remediation Parcels

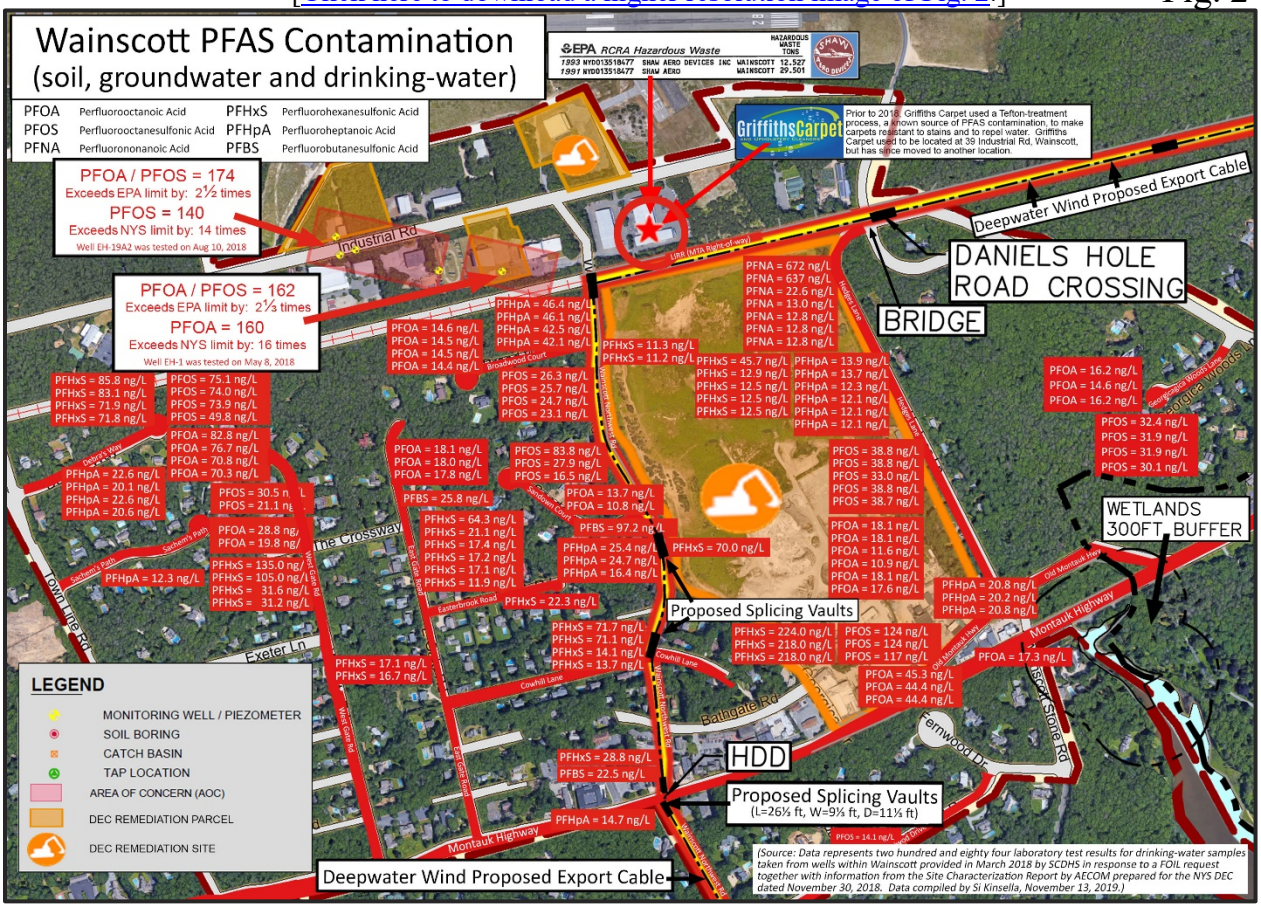
Remediation Sites

Zone of 2,000 feet outward from Route A Cable Corridor

Compiled by Si Kinsela, November, 2019
Source: GISServices.DEC.NY.gov/gis/dil/

By June 2018, SCDHS had tested two hundred and ninety-seven (297) private drinking-water wells surrounding South Fork Wind's proposed construction corridor. Thirteen (13) wells (or 4%) exceeded the U.S. EPA Health Advisory Level, and forty-five (45) wells (15%) exceeded the New York State Maximum Contamination Level (see Fig 2 below).[4] Around the same time (on June 26, 2018), two groundwater monitoring wells within one hundred and fifty (150 ft) downgradient adjacent to South Fork Wind's proposed construction corridor contained PFOS contamination that was double the EPA Health Advisory Level.[5] The source of contamination is upgradient on the opposite side of the Applicant's construction site.[6]

[Click here to download a higher resolution image of Fig. 2.] Fig. 2



To see more maps of PFAS contamination, visit http://www.Wainscott.Life/maps.html.

In 2018, the NYSDEC commissioned AECOM U.S., Inc. to investigate contamination at East Hampton Airport. AECOM released its Site Characterization Report

[4] U.S. EPA Health Advisory Level (HAL) of 70 parts per trillion ("ppt") for combined PFOA/PFOS, and the New York State Maximum Contamination Level ("MCL") of 10 ppt for PFOA and 10 ppt for PFOS.

[5] Wainscott Commerical Center, Draft Environmental Impact Statement, Figure 8, Well MW-3 (PFOA/PFOS of 144 ppt) and MW-4 (PFOA/PFOS of 124 ppt), dated June 26, 2018.

[6] For more information on the Town of East Hampton's attempt to conceal PFAS contamination on Town-owned property – East Hampton Airport – see www.Wainscott.Life.

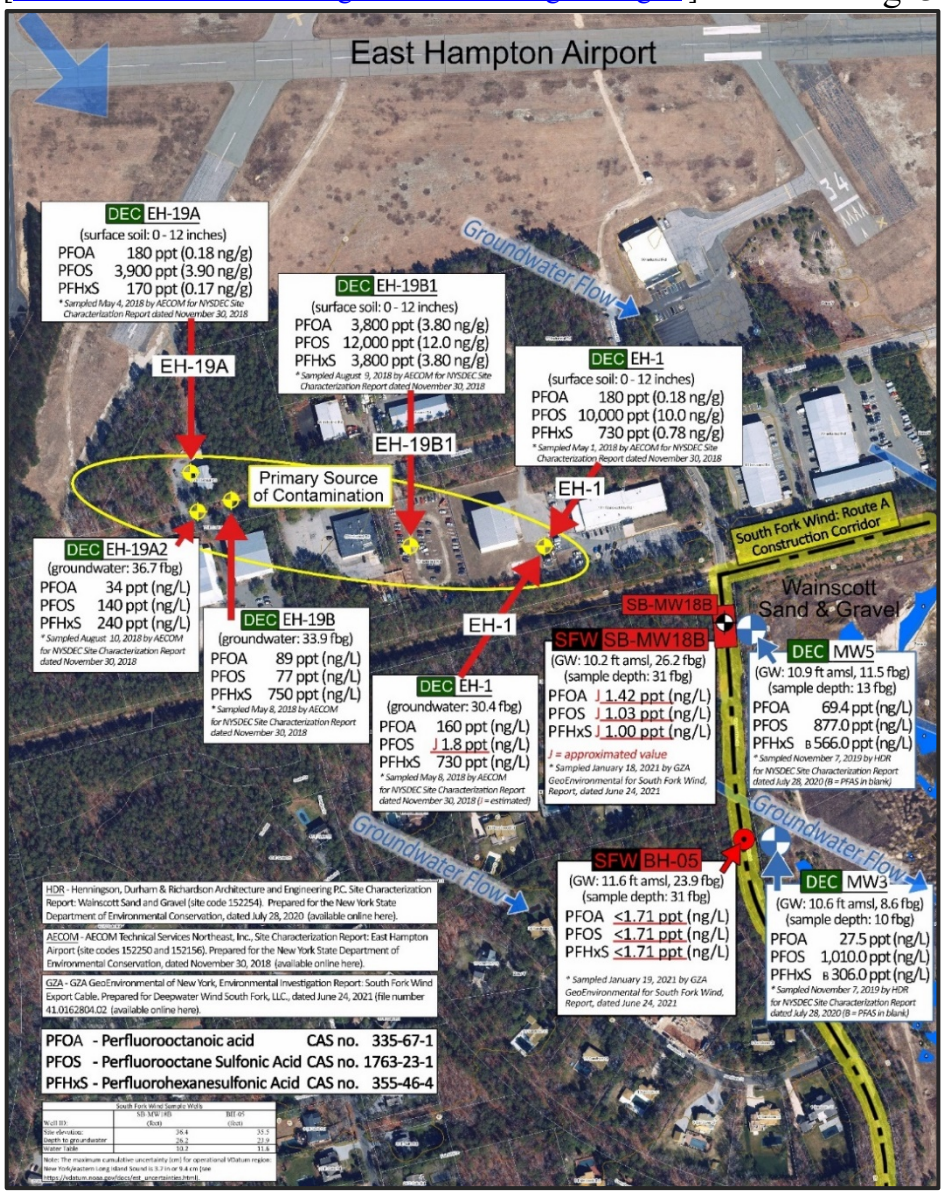
of East Hampton Airport on November 30, 2018. Of the twenty-one (21) soil sample wells tested at varying depths, PFAS compounds were detected in nearly all soil samples collected. The maximum concentration level of contamination was 15 ng/g of PFOS at well EH-1 (duplicate) upgradient within 500 feet of South Fork Wind's proposed construction corridor.

In June 2019, the New York State Department of Environmental Conservation ("NYSDEC") registered East Hampton Airport as an Inactive Hazardous Waste Disposal Site. It classified it as "a Class 2 site that presents a significant threat to public health and the environment" (see Exhibit A).

In July 2020, at the NYSDEC's request, Henningson, Durham & Richardsons ("HDR") released Site Characterization Report for Wainscott Sand & Gravel, a site downgradient and adjacent to the construction corridor.

Two groundwater monitoring wells within one hundred (100 ft) downgradient and adjacent to the proposed construction corridor contained PFOS contamination. Well, MW5 exceeded the New York Standard for PFOS by eighty-eight (88) times(877 ppt). Well, MW3 exceeded the New York Standard for PFOS by one hundred (100) times (1,010 ppt). The source of the PFAS

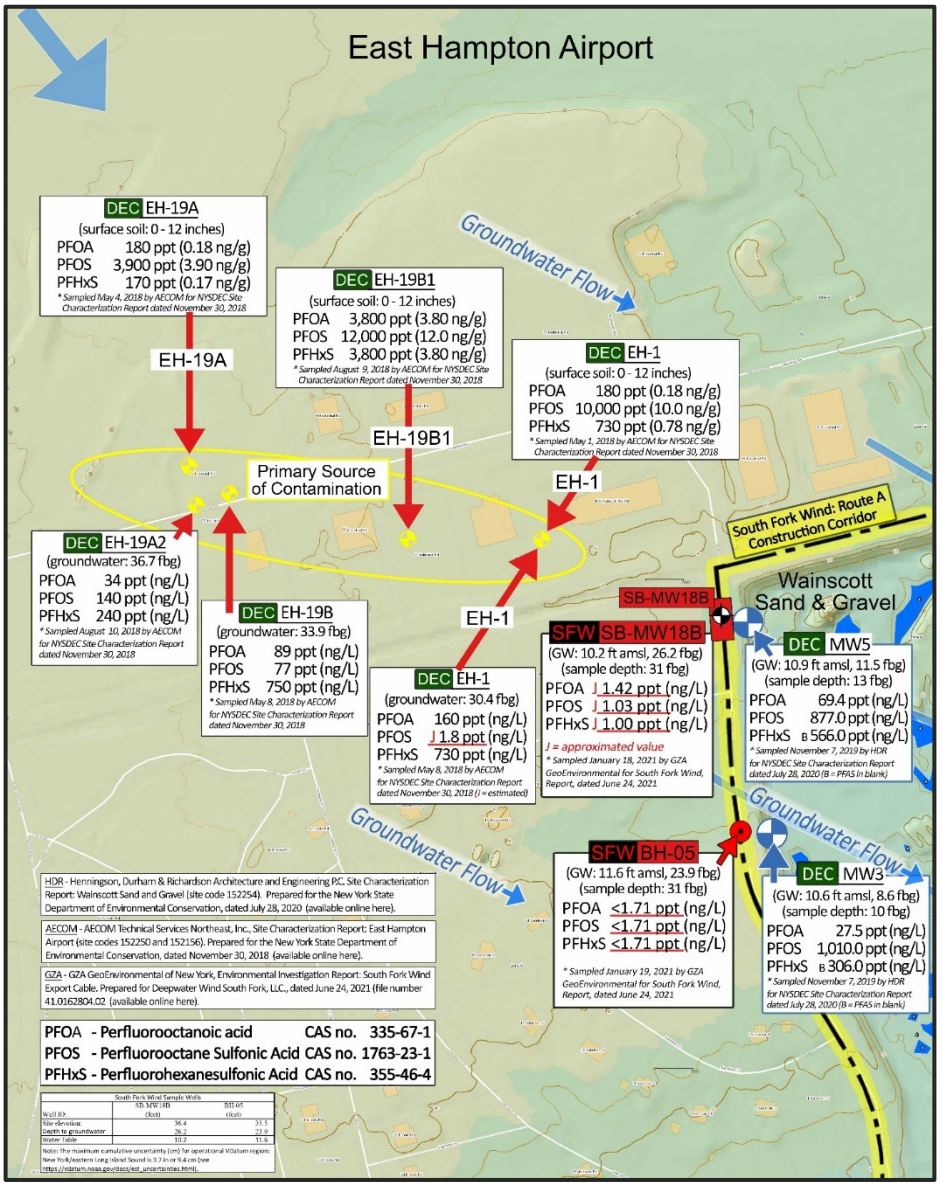
[Click here to download a high-resolution image of Fig. 3.] Fig. 3



contamination is upgradient on the opposite side of the construction site at the East Hampton Airport Superfund site (see Fig 3 and Fig 4).[7]

[Click here to download a high-resolution image of Fig. 4.]

Fig. 4



South Fork Wind tested a few wells along its construction corridor. The tests were conducted one week *after* the evidentiary records in the New York State Public Service Commissions hearing (18-T-0604) had closed. South Fork Wind's sampling plan and results avoided scrutiny by *any* regulatory agency. No witnesses were cross-examined on the testing. South Fork Wind's PFAS contamination results contradict results for PFAS contamination conducted by independent laboratories. For example, South Fork Wind's results for wells SB-MW-18B (see Fig 3 and Fig 4) allegedly contain barely any detectible levels of PFAS contamination.

On the other hand, tests performed for the NYSDEC for Well MW5 just one hundred feet downgradient at a similar depth showed groundwater contamination by PFOS of 877 ppt and PFHxS of 566. South Fork Wind does not explain the difference in results. The stark variance is repeated for South Fork Wind's results for wells BH-05 (see Fig. 3 and 4) that allegedly contain no detectible levels of PFAS contamination. On the other hand, tests performed for the NYSDEC for Well MW3 just one hundred feet downgradient at a similar depth showed

[7] For more information on the Town of East Hampton's attempt to conceal PFAS contamination on Town-owned property – East Hampton Airport – see www.Wainscott.Life.

groundwater contamination by PFOS of 1,010 ppt and PFHxS of 306. In both instances, the source of contamination is upgradient on the opposite side of the proposed construction corridor at East Hampton Airport.

PFAS – Per/ and Polyfluoroalkyl Substances

PFAS is a large group of artificial chemicals that do not occur naturally in the environment. PFAS contamination has been introduced to the environment via industrial processes and consumer products since the 1940s. There are thousands of PFAS compounds, some of which have been more widely used and studied (PFOA and PFOS) than others. Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) are two examples of the most commonly used and studied chemicals in the PFAS group. In New York State, PFOA and PFAS have a Maximum Contamination Level (MCL) each of 10 ppt (parts per trillion). The US EPA Health Advisory Level (HAL) for combined PFOA/PFOS is 70 ppt. (Note: One part per trillion (ppt) equals one drop in twenty Olympic swimming pools.)

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:

- Reproductive effects include decreased fertility or increased high blood pressure in pregnant women.
- Developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes.
- Increased risk of some cancers, including prostate, kidney, and testicular cancers.
- Reduced ability of the body's immune system to fight infections, including reduced vaccine response.
- Interference with the body's natural hormones.
- Increased cholesterol levels and/or risk of obesity.

See www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas.

Statutory Regulations Require Environmental Analysis and Site Investigation

BOEM's Information Guidelines for a Renewable Energy, Construction and Operations Plan ("COP") reads – "Pursuant to 30 CFR 585.626, the COP must include a description of all planned facilities, including onshore and support facilities, as well as anticipated project easement needs for the project [emphasis added]. It must also describe

the activities related to the project, including construction, commercial operations, maintenance, decommissioning, and site clearance procedures. The COP will provide the basis for the analysis of the environmental and socioeconomic effects and operational integrity of your proposed construction, operation, and decommissioning activities."[8] BOEM's guidelines continue: "You must prepare an overall site investigation report for your facility that integrates the findings of the shallow hazard, geological, and geotechnical surveys for a proposed project in accordance with 30 CFR 585.626(a)(6). BOEM recommends that the report include […] Recommendations for mitigating geologic hazards."[9]

Furthermore, BOEM explains that pursuant to 30 CFR 585.626(b), a "complete and detailed project description is the foundation for understanding the impacts your project will have and how it will interact with the environment.[10] The guide also instructs applicants to "[i]nclude the following topics in the desktop analysis: Anthropogenic Conditions and Hazards" and one of many examples provided is "cables/pipelines[.]"[11]

BOEM's requirements are not limited to offshore marine resources or activities on the Outer Continental Shelf ("OCS") in federal jurisdiction. "A COP contains information describing all planned facilities […] along with all proposed activities including your proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities.[12]

South Fork Wind's Non-compliance with Statutory Regulations Requiring Environmental Analysis and Site Investigation

Under the heading of Anthropogenic Activities, South Fork Wind's COP (falsely) claims that there "are no direct […] industrial point sources for pollution into or within the SFWF and SFEC." Point source pollutants are defined to "enter waterways at well-defined locations, such as pipe or sewer outflows are the most common sources of water pollution" (at p. 4-58). South Fork Wind does not identify excessive PFAS contamination at East Hampton Airport.

South Fork Wind (falsely) claims that "[a]ll freshwater groundwater in New York State is Class GA, a source for potable water supply" and ignores overwhelming evidence of PFAS contamination throughout its proposed construction corridor.

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[8] US Department of the Interior, Bureau of Ocean Energy Management, Information Guidelines for a Renewable Energy, Construction and Operations Plan (COP), Version 4.0, dated May 27, 2020 (at p. 6).

[9] *Id.* (at p. 11)

[10] *Id.* (at p. 12)

[11] *Id.* (at p. 60)

[12] *Id.* (at p. 2)

In sharp contrast to the complete absence of *any* reference to known PFAS contamination, South Fork Wind goes into great detail about "median groundwater nitrogen levels in the Upper Glacial Aquifer [that] 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" (see COP at pp. 228-229).

On November 15, 2019, South Fork Wind was presented with much of the information (mentioned above) contained in the NYSDEC and SCDHS PFAS reports during discovery in New York State Public Service Commission (case 18-T-0604). The PFAS information was in the form of an Interrogatory/Document Request SK #01. South Fork Wind responded by saying that it "objects to the information asserted […] on the grounds that the information is inaccurate and not based in fact."

South Fork Wind was asked whether it "has considered the possibility of significant adverse impacts to public health given that the Beach Lane Route A Cable Corridor runs through a residential neighborhood and groundwater protection district?" Again, it responded: South Fork Wind "objects to this request on the grounds that it includes statements that have no basis in facts."

South Fork Wind likely knew of the contamination soon after Suffolk County Department of Health Services issued its Water Quality Advisory for Private-Well Owners in Wainscott on October 11, 2017. Still, there is no doubt that South Fork Wind had detailed knowledge of the extent and nature of PFAS contamination in groundwater and soil at least as early as November 2019 when it was presented with Interrogatory/Document Request SK #01. Regardless, South Fork Wind repeatedly refused to include information on PFAS contamination along its proposed construction corridor from its revised COP submitted to BOEM on February 13, 2020, July 22, 2020, and, again, on May 7, 2021.

For three years, South Fork Wind has dodged, evaded, delayed, and circumvented addressing existing environmental contamination from releases of PFAS chemical compounds that in New York State are defined as hazardous waste.

South Fork Wind has failed to comply with 30 C.F.R. § 585.627, by not submitting information and certifications necessary for BOEM to comply with the National Environmental Policy Act of 1969 (NEPA)[13] and other relevant laws.

It would be reckless of BOEM and other federal agencies to permit the Applicant to proceed with onshore construction, excavation, handling, and transporting contaminated

[13] 42 U.S.C. § 4321 et seq.

material the NYSDEC classifies as "a significant threat to public health and the environment" through residential streets.[14]

South Fork Wind's Flawed Testing and Site Investigation

South Fork Wind has not adequately tested soil and groundwater in its construction corridor for PFAS contamination as required. Furthermore, according to its own plans, South Fork Wind has no intention of testing for PFAS contamination during construction. Despite its multiple failures to protect human health and the environment, South Fork Wind plans to begin onshore construction in a month (in January 2022) regardless.

If South Fork Wind proceeds as planned, approximately thirty-two thousand (32,000) metric tonnes of excavated material, much of which is likely contaminated, will be mishandled and transported along local streets through a residential neighborhood without adequate precautions.[15]

South Fork Wind has not disclosed where it proposes dumping the excavated material containing hazardous waste. As far as we know, contaminated material may be dumped at the Wainscott Sand and Gravel site adjacent to South Fork Wind's construction corridor.

South Fork Wind (falsely) claims to have adequately tested its construction site, but most soil samples were not tested for suspected PFAS contamination. Instead, South Fork Wind tested only a few soil samples and then only at the shallow surface that avoids detecting suspected PFAS contamination towards the bottom of the excavation pit. For example, South Fork Wind plans to bury one of its many vaults downgradient within 500 feet of well EH-1 where PFOS contamination of soil at a detectable level of 15 ng/g (duplicate) exceeds the NYSDEC Guidance Value for the protection of groundwater (3.7 ng/g). Still, South Fork Wind did not test the soil at this location (see Fig. 5 overleaf). In total, four wells upgradient within proximity of South Fork Wind proposed construction corridor exceed NYSDEC's Guidance Value for the protection of groundwater (see Fig 3 and Fig 4). NYSDEC Sampling, Analysis and Assessment for PFAS (June 2021) reads: "Development of site-specific remedial objectives for protection of groundwater will require analysis of additional soil parameters relating to leachability. These additional analyses can include any or all the parameters listed above (soil pH, cation exchange capacity, etc.) and/or use of SPLP." South Fork Wind failed to comply with any of these standards designed to protect the sole-source aquifer and public health.[16]

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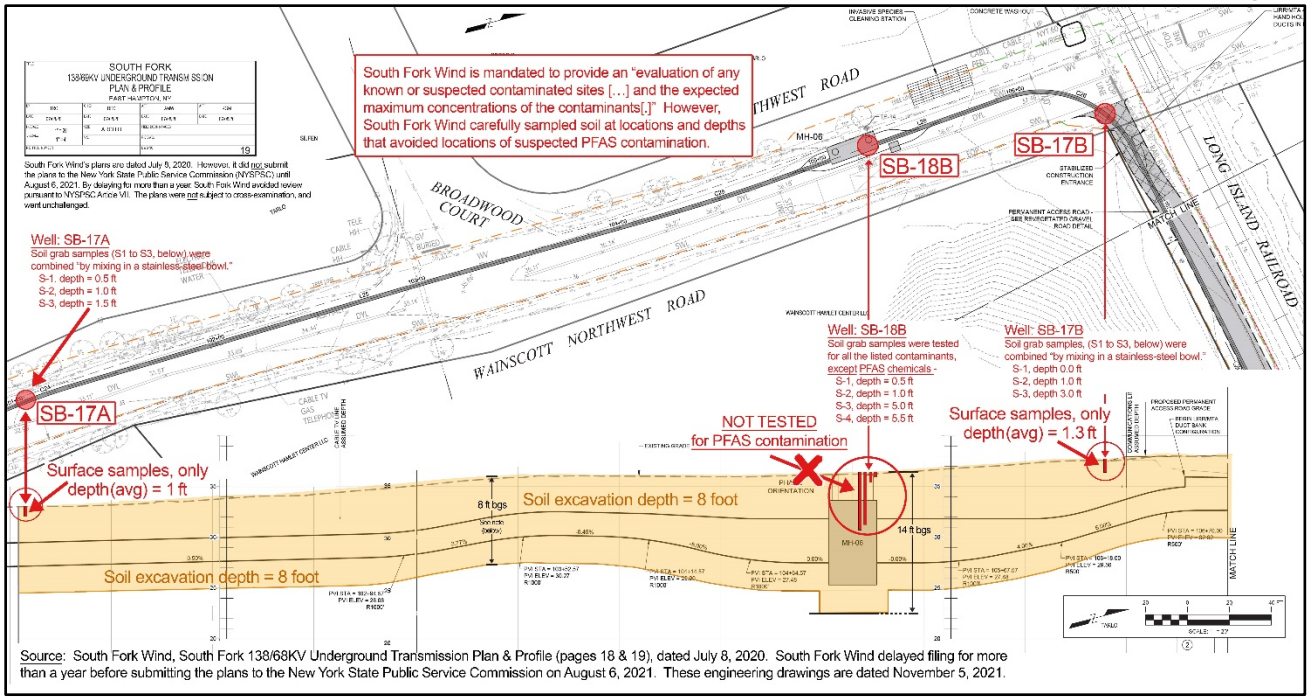
[14] New York State Department of Environmental Conservation ("NYSDEC") State Superfund Site Classification Notice, Inactive Hazardous Waste Disposal Site Program for East Hampton Airport, dated June 2019.

[15] See Final Hazardous Waste and Petroleum Work Plan, Part 2, Attachment B (August 8, 2020).

[16] New York State Department of Environmental Convervation ("NYSDEC"), Sampling, Analysis, and Assessment of Per-and Polyfluoroalkyl Substances (PFAS), Under NYSDEC's Part 375 Remedial Programs (June 2021)

[Click here to download a high-resolution image of Fig. 5.] Fig. 5



Furthermore, South Fork Wind's Article VII certificate conditions mandate 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 (Fig. 6 overleaf).

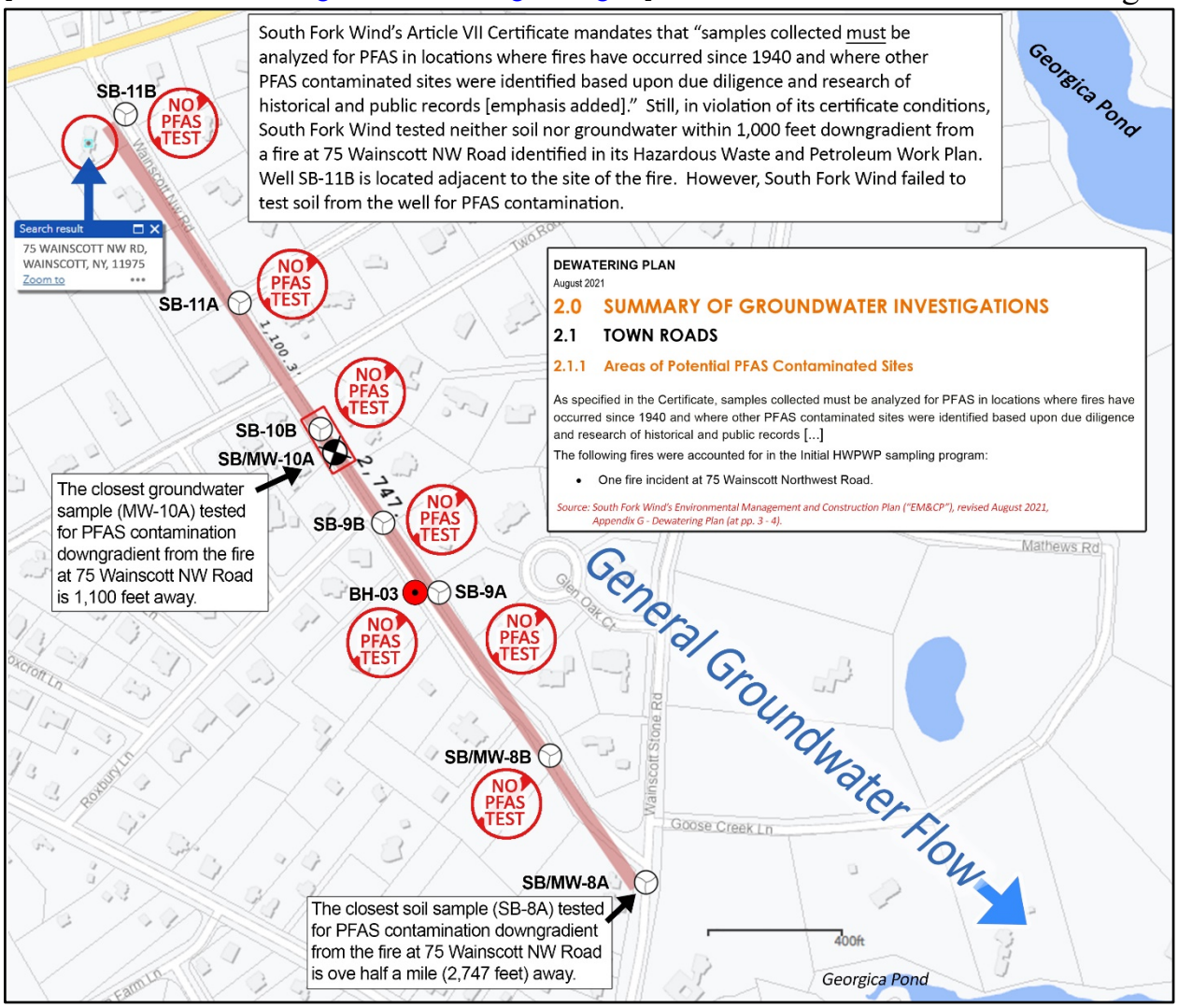
There has been no regulatory review of South Fork Wind's test results. No regulatory agency at either the federal, state, or local level has reviewed South Fork Wind's sampling plan or test results. For example, on November 24, 2021, BOEM approved South Fork Wind's COP that reads – "existing groundwater quality in the analysis area appears to be good and meets NYSDEC (2018) groundwater quality standards."[17] This statement contradicts overwhelming evidence of existing PFAS contamination (as mentioned above), which was provided to BOEM in comments submitted on February 22, 2021 (click here).[18] BOEM ignored groundwater contamination in Wainscott, and one hundred and fifty-three (153) exhibits (of more than 14,000 pages) attesting to other issues, such as Wind Wake Effect and the mismatch between electrical output (supply) and electrical demand. When energy is needed most during the summer, offshore wind generates the least amount of

[17] US Bureau of Ocean Energy Management (BOEM), South Fork Wind Farm, and South Fork Export Cable Project Final Environmental Impact Statement dated August 2021 (at p. 655, section 3.3.2.1.2, ¶ 2).

[18] All submissions to BOEM by Kinsella are available at www.oswSouthFork.info/boem.

power, operating at only twenty-to-thirty percent (20-30%) of total capacity (see Block Island Wind Farm Power Output (click here) and www.oswsouthfork.info/osw-output.

[Click here to download a high-resolution image of Fig. 6.] Fig. 6



BOEM ignores two sites of contamination – East Hampton Airport and Wainscott Sand and Gravel – adjacent to South Fork Wind's proposed construction corridor. Both sites are the subject of two NYSDEC Site Characterization Reports, a Draft Environmental Impact State (for Wainscott Sand and Gravel), a Private Well Survey of nearly three hundred drinking-water wells by Suffolk County Department of Health Services laboratory reports. All these reports show degrees of soil and groundwater PFAS contamination, of which many exceed EPA and New York State standards (adopted August 2020).

Earlier this year (in April), South Fork Wind no longer claimed that it would test "all areas where contamination is likely to be encountered" as it is required to do according to its

New York State Public Service Commission issued certificate conditions.[19] Instead, South Fork Wind now uses the phrase "in any areas with visibly contaminated materials." South Fork Wind's subsequent caveat excludes PFAS chemical compounds as they are neither visible nor have an odor that a construction worker can identify as either PFOA or PFOS contamination.

On November 22, the New York State Public Service Commission approved South Fork Wind's final Environmental Management and Construction Plan (dated September 2021). In it, South Fork Wind commits only to "sampling [soil] if visibly contaminated material is encountered or if groundwater is encountered in areas that were not previously sampled […]"[20]

The New York State Public Service Commission issued Certification of Environmental Compatibility and Public Need to South Fork Wind LLC (case 18-T-0604) is the subject of two separate legal challenges pursuant to Article 78 and are herein incorporated by reference (please click on the link to download the petitions).

- *Simon V. Kinsella et al v. NYS Public Service Commission et al.*, N.Y. Supreme Court, Appellate Div. - 2nd Dept., filed September 9, 2021 (index 006572/2021); and
- *Citizens for the Preservation of Wainscott, Inc. et al v. NYS Public Service Commission et al.*, N.Y. Supreme Court, Appellate Div. - 2nd Dept., filed September 9, 2021 (index: 006582/2021)

National Environmental Policy Act ("NEPA")

Although the Record of Decision states that permitting decisions pursuant to NEPA "will be made at a later time (e.g., USACE5)," BOEM is not relieved of its legal obligations under NEPA. "In accordance with CEQ NEPA regulations (40 CFR part 1501), BOEM served as the lead Federal agency for the preparation of the EIS" (ROD at p. 5-6).

"This ROD [at p. 14] adopts all practicable measures identified in Appendix G of the FEIS to avoid, minimize, and mitigate adverse environmental impacts that could result from the proposed activities." Appendix G of the Final EIS is titled – Environmental Protection Measures, Mitigation, and Monitoring. BOEM has granted approval of a significant portion of South Fork Wind's Final EIS through the back door. BOEM can approve of South Fork Wind's Final EIS, or not. If "BOEM is still undergoing consultation with NMFS under the ESA related to the full suite of proposed actions" (FEIS, Appendix G at p. G-1), then it should not issue a record of decision saying that NEPA permitting decisions "will be made

[19] See Final Hazardous Waste and Petroleum Work Plan, dated April 2021 (at p. 3, ¶ 1).

[20] See Final Environmental Management and Construction Plan, dated September 2021 (at p. 99, section 3.2.7).

at a later time" when in fact its "ROD adopts all practicable measures" of a large part of the Applicant's Final EIS pursuant to NEPA.

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321, et seq., requires that federal agencies take a "hard look" at environmental factors and take them into consideration in their decision-making processes. Under NEPA, an environmental impact statement ("EIS") is required for "major federal actions significantly affecting the quality of the human environment." NEPA §102, 42 U.S.C. §4332(c) requires "full disclosure" that includes a proposed onshore construction corridor.

The NEPA process is focused on agency decision-making (40 CFR 1500.1(c), 40 CFR 1508.18, 40 CFR 1508.23). Therefore, a non-Federal action such as the New York State Public Service Commission proceeding, even if "closely related" to a proposed action, will not be a connected action pursuant to the Council on Environmental Quality regulations because connected actions are limited to Federal actions. Rather, suppose the non-Federal action or its effects can be prevented or modified by BOEM decision-making. In that case, the effects of the non-Federal action are properly considered indirect effects of the BOEM action and must be analyzed as effects of the BOEM action (40 CFR 1508.7, 40 CFR 1508.25(c)).

DOI's regulations implementing NEPA state that the term "reasonable alternatives" "includes alternatives that are technically and economically practical or feasible and meet the purpose and need of the proposed action." 43 C.F.R. § 46.420(b) (see COP at p. 9). BOEM, as the lead agency, has failed to consider joining South Fork Wind with the adjacent offshore wind farm, Sunrise Wind that is owned and controlled by the same joint and equal partners, Ørsted and Eversource. By joining the two projects, more significant economies of scale would be achievable to reduce the cost burden to over one million ratepayers by more than half – South Fork Wind costs 22 cents per kilowatt-hour, whereas Sunrise Wind costs only 8 cents. The elimination of a separate sixty-mile-long transmission cable would undoubtedly have substantial environmental benefits and resolve issues related to onshore PFAS contamination.

Purpose and Need for the Proposed Action (ROD at p. 7)

According to BOEM's ROD – "Cooperating *state* agencies included the Massachusetts Office of Coastal Zone Management (MA CZM), Rhode Island Coastal Resource Management Council (RI CRMC), and Rhode Island Department of Environmental Management [emphasis added]" (at p. 1). Conspicuously missing from the list of cooperating "state" agencies is *any* New York State agency.

The *only* agency responsible for ensuring the contract was awarded to a project that satisfied the stated purpose and need was the Long Island Power Authority (LIPA). During

the New York State Public Service Commission proceeding (docket 18-T-0604), the Administrative Law Judge ruled that the South Fork RFP procurement and its subsequent award of a power purchase agreement were irrelevant and out of the scope of the proceeding on four separate occasions. LIPA was the *only* federal, state, or local agency responsible for the purpose and need of the South Fork Wind Project.

Suppose LIPA was the only agency to have decision-making responsibility regarding the South Fork Wind Project's purpose and need statement. Since it was not a cooperating agency in BOEM's review, how could "[c]ooperating agencies with authorization decision responsibilities have reviewed BOEM's purpose and need statement […] and […] concurred that it meets their obligations" (see ROD at p. 7)? BOEM can't have reviewed South Fork Wind's purpose and need statement.

"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 [emphasis added]" (see ROD at p. 7). LIPA internal documents show that the South Fork RFP procurement was not technology-neutral. At the eleventh hour, this phrase was dropped from the New York State Public Service Commission Order Adopting the Joint Proposal (proceeding 18-T-0604). Also, South Fork Wind was the *only* bidder offering offshore wind resources and was advanced in the procurement process based on that reason alone. In other words, the South Fork RFP procurement was not a competitive bidding process.

BOEM – Social and Economic Resources (30 CFR 585.627(a)(7))

According to BOEM's Information Guidelines for a Renewable Energy COP, *Supra*, South Fork Wind is required to "[d]escribe the onshore economic baseline of the coastal areas that may be affected by your project [and][…] the context of existing socioeconomic activities and resources and extant demographic and economic patterns for construction, operation" that includes "any economic modeling" (at p. 52).

Still, the Applicant has not complied with 30 CFR 585.627(a)(7) and has failed to assess the economic impact of charging 22 cents per kilowatt-hour for its electrical energy when the same renewable energy can be purchased from the adjacent offshore wind farm, Sunrise Wind, for just 8 cents. The Applicant puts the vast difference in price down to the timing of when Long Island Power Authority ("LIPA") awarded a Power Purchase Agreement ("PPA") to South Fork Wind in January 2017. At the time, LIPA agreed to the most expensive renewable energy option available.

Anti-trust violations

In 2016 the U.S. Energy Information Administration, in a simple average of regional values estimated the cost of energy from offshore wind plants coming online in 2022 to be almost two and a half times that of onshore wind and almost twice as much as solar photovoltaic.

The cost comparison between offshore wind and solar photovoltaic is also reflected in local prices on Long Island's South Fork. Around the same time that LIPA evaluated South Fork Wind's proposal for an offshore wind farm, it was also developing the Long Island Community Microgrid Project. The U.S. National Renewable Energy Laboratory ("NREL") estimated that the cost per megawatt of output from the Long Island Community Microgrid Project would have been half the energy price from South Fork Wind. Furthermore, the microgrid proposal would supply power most efficiently when needed on hot sunny summer days when air conditioning usage peaks demand– the problem the South Fork RFP sought to solve but does not.

South Fork Wind's proposal was selected in a procurement process despite failing to satisfy the minimum requirements and specifications of the request for proposals, the South Fork RFP. LIPA awarded South Fork Wind (formerly Deepwater Wind South Fork LLC) a PPA despite the following deficiencies –

a) It is not a "local resource" that is "located on Long Island";
b) It is not an alternative to adding new transmission lines;
c) It does not defer the need for new transmission lines, but instead requires substantial transmission upgrades;
d) It cannot reliably supply power to satisfy peak demand for electricity in response to air conditioner usage on the South Fork in the hotter months from June to September;
e) The project cannot be a source of power until at least 2023 with a proposed commercial operating date of December 31, 2022;
f) It cannot supply a dispatchable resource capable of functioning in Operating Modes that require power to be turned on in response to a "trigger signal" (because turbines that depend on the wind cannot be turned on as demand requires); and
g) It is not a resource designed to meet "performance calculations" that are "no less severe than […] [a] maximum steady wind velocity [of] 130 mph" (offshore wind turbines cease generating power at a wind speed closer to 55 mph).

LIPA's award of a power purchase agreement at inflated prices to a bidder whose proposal did not meet the minimum specifications or requirements as prescribed in the South Fork RFP constitutes procurement manipulation and bid-rigging where consumers, ratepayers, and taxpayers are ultimately cheated. In the case of South Fork Wind, Suffolk County ratepayers would be paying over one billion dollars extra than they would not have had to pay

if the award was subject to a truly competitive procurement process. Such manipulation is illegal and may be subject to prosecution by the Antitrust Division of the United States Department of Justice as it involves electricity generated in federal waters governed by a federal agency that is transmitted into New York State jurisdiction for sale to LIPA at the East Hampton Substation in the Town of East Hampton, New York State. LIPA's award of a PPA to South Fork Wind may contravene the Sherman Antitrust Act that prohibits activities that restrict competition in the marketplace.

The Sherman Act is broad in scope, § 1 of the Act states that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

See *Simon V. Kinsella et al. v. Long Island Power Authority, et al.* (Exhibit B) where plaintiffs seek to annul South Fork Wind's power purchase agreement with LIPA on the grounds that the award violated New York State Finance and Municipal Law. Plaintiffs allege LIPA awarded a $1.6 billion contract for the supply of energy in an opaque non-competitive procurement process at inflated prices where the winning bidder, South Fork Wind LLC (formerly Deepwater Wind South Fork LLC), failed to meet the minimum requirements and specifications of the request for proposals, the South Fork RFP.

The following two documents are herein incorporated by reference (please click on the link to download the complaints).

- *Simon V. Kinsella et al. v. Long Island Power Authority, et al.* N.Y. Suffolk County Supreme Court, filed November 9, 2021 (index: 621109/2021); and
- *Simon V. Kinsella v. Office of the New York State Comptroller*, Albany County Supreme Court, filed July 9, 2019 (index: 904100/2019

BOEM Authority (M-Opinion 37067)

"The Secretary of the Interior must consider certain factors before acting under OCSLA subsection 8(p)(4) (43 U.S.C. § 1337(p)(4)). Specifically, '[t]he Secretary shall ensure that any activity under [subsection 8(p)] is carried out in a manner that provides for [emphasis added] —

(A) safety;

(B) protection of the environment;

(C) prevention of waste;

(H) a fair return to the United States for any lease, easement, or right-of-way under this subsection;

(L) oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection (see COP at p. 5).

By approving South Fork Wind's COP, the Secretary of the Interior has failed to comply with OCSLA subsection 8(p)(4)(A) by placing residents who live near to the Applicant's proposed construction corridor at substantial risk of exposure to hazardous waste in the form of PFAS chemical contamination; OCSLA subsection 8(p)(4)(B) by failing to protect the sole source aquifer on the South Fork of Long Island from further contamination as a result of disturbing existing PFAS contamination in soil and groundwater by the Applicant during construction; OCSLA subsection 8(p)(4)(C) by failing to prevent a huge waste of resources estimated to be in excess of one billion dollars due to the manipulation of the procurement process; and, OCSLA subsection 8(p)(4)(H) by failing to ensure ratepayers and taxpayers receive a fair return given the potential for environmental damage and the overpriced costs of electrical energy from the South Fork Wind project.

The Secretary of Interior's and the Bureau's violations of the Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act declares that "the policy of the United States ... shall be construed in such a manner that the character of the waters above the Outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected.[21]

In approving the Construction and Operations Plan and easement for the Project, the Secretary of Interior violated this provision and will seriously obstruct navigation and fishing within and around the Project area during its construction, operation, and decommissioning over the 20 to a 25-year term of the lease.[22] Despite the requests to the contrary, the Secretary of Interior and the Bureau failed to require South Fork Wind to design, construct, and operate the Project to accommodate the needs of fishermen and others navigating the area, impairing the fishing industry and endangering navigation, particularly during poor weather conditions, at night, and in instances of equipment failure.[23]

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[21] 43 u.s.c. § 1332(2).

[22] See ROD (at p. 15): "The turbine layout must be arranged in a uniform east–west and north–south grid, with 1 × 1 nm spacing between WTGs, and diagonal transit lanes of at least 0.6 nm wide"

[23] See ROD (at p. 15-16): The Vessel Transit Lane Alternative (Transit Alternative) analyzed a 4-nm-wide vessel transit lane […][but the] DOI has not selected the Transit Alternative in this ROD."

The United States, its departments, and agencies have violated the Endangered Species Act

The Supreme Court has described the endangered Species Act as –

> the most comprehensive legislation for the preservation of endangered species ever enacted by any nation. Its stated purposes were "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved," and "to provide a program for the conservation of such ... species .... "16 U.S.C. § 1531(b) (1976 ed.). In furtherance of these goals, Congress expressly stated in § 2(c) that "all Federal departments and agencies shall seek to conserve endangered species and threatened species .... "16 U.S.C. § 1531(c) (1976 ed.) . ... Lest there be any ambiguity as to the meaning of this statutory directive, the Act specifically defined "conserve" as meaning "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary." § 1532(2).[24]

The Supreme Court has concluded that: "The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost."[25] Specifically applicable here, Section 7(a) of the ESA requires:

> Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded or carried out by such … agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species ....[26]

Following this consultation, "the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat."[27]

The agencies have violated the ESA because the Construction and Operations Plan, or the permits issued, do not protect whales

[24] *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, i80 (1978)

[25] *Id*. (at p. 184)

[26] 16 U.S.C. § 1536(a)

[27] *Id.* § 1531

The North Atlantic Right Whale is one of the world's most endangered large whale species, with less than 400 individuals remaining, as the National Marine Fisheries Service states:

> North Atlantic right whales primarily occur in Atlantic coastal waters on the continental shelf, although they also are known to travel far offshore, over deep water. Right whales migrate seasonally and may travel alone or in small groups. In the spring, summer, and into fall, many of these whales can be found in waters off New England and further north into Canadian waters, where they feed and mate. Each fall, some right whales travel more than 1,000 miles from these feeding grounds to the shallow, coastal waters of their calving grounds off of South Carolina, Georgia, and northeastern Florida, though migration patterns vary.[28]

"North Atlantic Right Whales primarily occur in Atlantic coastal waters on the continental shelf."[29] As discussed in Section 2.4, the United States has announced its policy to establish wind projects along the Atlantic shelf and has already granted leases for such projects, totaling almost 2 million acres. This policy will block much of the whales' migration route, but the agencies have not considered this.

Further, although these whales have stocky black bodies with no dorsal fins, the agencies have simply assumed that whale watchers on vessels will be an appropriate, effective way of protecting this endangered species.[30]

Approval of the Construction and Operations Plan further endangered the North Atlantic Right Whale population because the construction of turbines and other Project infrastructure will limit the ability of the National Marine Fisheries Service to conduct critical population surveys. These surveys are conducted through aerial observations, and the airplanes will be unable to fly at the necessary heights in or around the turbine arrays. They are a necessary component to understanding North Atlantic Right Whale population status and measuring impacts or biological changes, and their disruption is likely to greatly increase scientific uncertainty regarding the whales. The National Marine Fisheries Service has determined that there is no way to calibrate to higher altitudes, and with no strategy in place to mitigate this loss, there will be a loss of continuity of this critical long-term data set.

Even though noise significantly impacts the North Atlantic Right Whales' ability to communicate, the Project was approved, putting the endangered species at risk. Right whales communicate using low-frequency moans, groans, and pulses, which may maintain contact between individuals, communicate threats, signal aggression, or be used for other social

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[28] NOAA Fisheries, North Atlantic Right Whale (last visited Sept. 24, 2021), available at – https://www.fisheries.noaa.gov/species/north-atlantic-right-whale.

[29] *Id.*

[30] *Id.*

reasons.[31] The Secretary of Commerce and the National Marine Fisheries Service have authorized the incidental take of 13 of these mammals,[32] even though the species' "extinction is almost certain in the immediate future because of rapid population decline or habitat destruction, and conflicts with construction, development, or economic activity.[33] Since 2017, North Atlantic Right Whales have experienced an ongoing Unusual Mortality Event affecting 50 individual right whales.[34] Thirty-four whales have been documented dead and 16 seriously injured.[35] This represents more than 10% of the population, which significantly impacts such a critically endangered species where deaths are outpacing births.[36]

The measures identified in the September 11, 2020, Biological Opinion fail to adequately protect the North Atlantic Right Whale

Approximately 100 North Atlantic Right Whales, comprising about 25% of the worldwide population, have been recently sighted in proximity to the South Fork Wind lease area. Still, the Secretary of Interior approved South Fork Wind's Construction and Operations Plan (on November 24, 2021) after the National Marine Fisheries Service released a study (on July 29, 2021), confirming that whales use the wind energy areas south of Martha's Vineyard and Nantucket in increasing numbers and more often.

> We found that right whale use of the region increased during the last decade, and since 2017 whales have been sighted there nearly every month, with large aggregations occurring during the winter and spring," said Tim Cole, lead of the whale aerial survey team at the Northeast Fisheries Science Center and a co-author of the study." said Tim Cole, lead of the whale aerial survey team at the Northeast Fisheries Science Center and a co-author of the study.[37]

The North Atlantic Right Whale is the most iconic marine animal on the eastern seaboard of the United States. It is also one of the most imperiled species in the entire world, with fewer than 400 individuals known to exist in the wild. The North Atlantic Right Whale is on the verge of extinction. However, one of its safe havens - where there is ample food and protective areas for birthing and rearing young - is the area immediately south-southwest of Nantucket Island. Unfortunately, this is the exact place that the Bureau has selected for purposes of constructing the South Fork Wind Farm along with some of the largest offshore wind energy arrays ever assembled.

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[31] *Id.*

[32] South Fork Wind Proposed IHA, Table 1 (at 21) South Fork Wind proposed IHA (click here NOAA.gov)

[33] NOAA Fisheries, Species in the Spotlight: North Atlantic Right Whale | PRIORITY ACTIONS: 2021 - 2025 (https://media.fisheries.noaa.gov/2021-04/SIS%20Action%20Plan%202021_NARightWhale-FINAL%20508.pdf)

[34] NOAA Fisheries, North Atlantic Right Whale (last visited Sept. 24, 2021), available at – https://www.fisheries.noaa.gov/species/north-atlantic-right-whale

[35] *Id.*

[36] *Id.*

[37] NOAA Fisheries, Right Whale Use of Southern New England Wind Energy Areas Increasing (July 29, 2021), (Right Whale Use of Southern New England Wind Energy Areas Increasing | NOAA Fisheries)

Associated increases in noise from pile driving, turbine operations, and vessels could contribute to the suite of ongoing stressors impacting the population. Noise has been found to interfere with North Atlantic Right Whale communication and increase their stress levels. In turn, "females that undergo energetic stress from reproduction may be more susceptible than males to dying from chronic injuries such as those from entanglement or vessel strikes."[38] Noise from human activities, such as that which would occur with the wind energy installation and operation of the proposed project, will disrupt the normal behavior of right whales and further reduce their ability to identify physical surroundings, find food, navigate, and find mates.[39] Harm to endangered North Atlantic Right Whales, which is now sometimes inadvertently taken by ship strikes, would be substantially exacerbated by the increased activities attendant to the construction, operation, and decommissioning of the Project, especially pile driving for this Project and cumulatively with other offshore wind projects in the vicinity, which will create massive sound for years, thereby having major impacts on this endangered species likely leading to takes.

A substantial threat to the North Atlantic Right Whale is vessel strikes. Numerous vessels are expected to be involved in the construction of the Project, including but not limited to tugboats, barge cranes, and hopper scows, many of which would be substantially larger and faster than fishing vessels.

The loss of physical space available to the North Atlantic Right Whale, resulting from the construction and operations of the Project, has not been adequately analyzed. Nor has the cumulative effects of the Project and the larger plan to develop wind farms up and down the coast been evaluated.

Temperatures in the area of wind farms are raised around one degree Celsius by the projects themselves, meaning the ocean around the location of various offshore wind farms proposed for New York, Connecticut, Massachusetts, and Rhode Island would be warming at a greater rate than would otherwise occur.[40] Notwithstanding this readily available best scientific and commercial data, the agencies did not account for the additional stress on the North Atlantic Right Whale, fish, and their habitats caused by the localized increase in temperatures attributable to the Project, coupled with similar wind power projects in the area, including potential impacts on essential food supply for the North Atlantic Right Whale and fish.

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[38] NOAA Fisheries, North Atlantic Right Whale (last visited Sept. 24, 2021), available at – https://www.fisheries.noaa.gov/species/north-atlantic-right-whale

[39] *Id.*

[40] Responsible Offshore Development Alliance, Comments on Vineyard Wind's Draft Environmental Impact Statement, dated February 22, 2019 (at pp. 15-16)

Conclusion

I hope the BOEM and other federal agencies can rectify the many failures identified in this 60-day notice of Intent to Sue. Nevertheless, please be advised that I intend to bring suit seeking a judicial remedy unless these statutory violations are resolved.

Sincerely yours,

Si Kinsella

Si Kinsella

Please see New York State Department of Environmental Conservation ("NYSDEC") reports on PFAS contamination (listed below) in the vicinity of South Fork Wind's proposed construction corridor that are herein incorporated by reference.

Fact Sheet.HW.152250.2018-01-05.Airport Well Sampling Press Release SCDHS.pdf

Fact Sheet.HW.152250.2019-06-19.East Hampton Airport Class 02 Listing.pdf

Report.HW.152250.2018-11-12.Alpha Geoscience Hydrogeology Rpt Wainscott S&G.pdf

Report.HW.152250.2018-11-30.Airport Site Characterization Report Final.pdf

Work Plan.HW.152250.2021-06-30.East Hampton Airport Site RIFS WP-FINAL.pdf

Report.HW.152254.2020-07-28.Final SC Report.pdf

STATE OF NEW YORK
COUNTY OF SUFFOLK

Simon V. Kinsella, being duly sworn, says under penalty of perjury:

I am a resident of Wainscott, Town of East Hampton, State of New York. The contents of my letter of twenty-four pages on December 18, 2021, are true to the best of my knowledge, information, and belief.

Simon V. Kinsella

Sworn to before me this
18th day of December 2021

Notary Public

DAVID FINK
Notary Public, State of New York
No. 4526132
Qualified in New York County
Commission Expires February 28, 2023

NEW YORK STATE OF OPPORTUNITY | Department of Environmental Conservation

PUBLIC NOTICE

State Superfund Program

Receive Site Information by Email. See next page to Learn How.

Site Name: East Hampton Airport **June 2019**
Site No. 152250
Tax Map No. 180-1-8.13, 181-1-4.2, 181-2-1, 181-2-3, 181-2-4, 181-2-5, 181-2-6, 181-3-1.1, 181-3-2, 181-3-3, 192-3-37.1, 192-3-42.1
Site Location: 200 Daniels Hole Road, Wainscott, Suffolk County

State Superfund Site Classification Notice

The Inactive Hazardous Waste Disposal Site Program (the State Superfund Program) is the State's program for identifying, investigating, and cleaning up sites where the disposal of hazardous waste may present a threat to public health and/or the environment. The New York State Department of Environmental Conservation (DEC) maintains a list of these sites in the Registry of Inactive Hazardous Waste Disposal Sites (Registry). The site identified above, and located on a map on the reverse side of this page, has been added to the Registry as a Class 2 site that presents a significant threat to public health and/or the environment for the following reason(s):

Fire-fighting foam containing per- and polyfluoroalkyl substances (PFAS) was used and stored on the East Hampton Airport during crash response and training. PFAS's including perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), have been detected in on-site soil and groundwater and off-site private drinking water wells. The concentrations of PFOS/PFOA in the drinking water supply wells exceed the United States Environmental Protection Agency's (USEPA's) drinking health advisory for PFOS/PFOA, 70 parts per trillion. Actions have been taken to mitigate the presence of PFAS in supplies, however, additional actions are needed to define the nature and extent of contamination in groundwater and other environmental media. DEC will keep you informed throughout the investigation and cleanup of the site.

If you own property adjacent to this site and are renting or leasing your property to someone else, please share this information with them. If you no longer wish to be on the contact list for this site or otherwise need to correct our records, please contact DEC's Project Manager listed below.

FOR MORE SITE INFORMATION

Additional information about this site can be found using DEC's "Environmental Site Remediation Database Search" engine which is located on the internet at: www.dec.ny.gov/cfmx/extapps/derexternal/index.cfm?pageid=3

Comments and questions are always welcome and should be directed as follows:

Project Related Questions
Steven Scharf, Project Manager
NYS Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, NY 12233-7015
steven.scharf@dec.ny.gov
518-402-9620

Site Related Health Questions
Sarita Wagh, Project Manager
NYS Department of Health
Empire State Plaza, Corning Tower Rm 1787
Albany, NY 12237
BEEI@health.ny.gov
518-402-7860

DEC is sending you this notice in accordance with Environmental Conservation Law Article 27, Title 13 and its companion regulation (6 NYCRR 375-2.7(b)(6)(ii)) which requires DEC to notify all parties on the contact list for this site of this recent action.

Receive Site Updates by Email

Have site information such as this public notice sent right to your email inbox. DEC invites you to sign up with one or more contaminated sites county email listservs available at the following web page: www.dec.ny.gov/chemical/61092.html . It's *quick*, it's *free*, and it will help keep you *better informed*.

As a listserv member, you will periodically receive site-related information/announcements for all contaminated sites in the county(ies) you select.

Note: Please disregard if you received this notice by way of a county email listserv.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

SIMON V. KINSELLA, PAMELA I. MAHONEY AND MICHAEL P. MAHONEY,

Plaintiffs,

-against-

LONG ISLAND POWER AUTHORITY and SOUTH FORK WIND LLC fka DEEPWATER WIND SOUTH FORK LLC,

Defendants.

Index No.

COMPLAINT

Plaintiffs Simon V. Kinsella, Pamela I. Mahoney, and Michael P. Mahoney for their complaint against Long Island Power Authority ("LIPA") and South Fork Wind LLC fka Deepwater Wind South Fork LLC ("Deepwater Wind"), allege as follows:

Introduction

1. Long Island's South Fork presents a unique challenge to Long Island's power grid. Its peak demand takes places on summer weekend and weekday late afternoons and evenings when an increase in residential air conditioning use drives a corresponding increase in electricity use.

2. In 2015 the Long Island Power Authority asked for "proposals from experienced and qualified entities to acquire sufficient local resources to meet expected peak load requirements until at least 2022 in the South Fork of

Long Island, and 2030 for certain areas east of Buell," as an alternative to adding new transmission lines.

3. The RFP requested proposals for local power production resources located on Long Island that would be dispatchable to meet peak load (or peak electrical demand) and operational by May 1, 2019.

4. LIPA, however, ignored its own criteria for power production resources and entered into a $1.625 billion power purchase agreement with bidder Deepwater Wind for an offshore wind project.

5. Contrary to the RFP criteria, offshore wind-generated power is unreliable and non-dispatchable because it depends on an intermittent resource to generate electricity.

6. Offshore wind turbines cannot be switched "on" if the wind is not blowing.

7. Wind is least likely to be blowing during hot summer months–the precise time when LIPA required a power resource to meet peak loads from air conditioning use.

8. Internal LIPA documents show a correlation between peak summertime temperatures (when demand for electricity peaks in response to an increase in air conditioner use) and low wind conditions when offshore wind turbines cannot reliably supply power to meet peak demand.

9. The Deepwater Wind offshore wind project is not a local power generation resource, is not dispatchable, would not be operational until the end of 2022, and requires a new 60-mile offshore transmission line plus an onshore interconnection facility and substantial local transmission upgrades.

10. The contract award to a non-responsive bidder violated the state's procurement laws and should be declared void.

Facts

1. South Fork Peak Electricity Demand

11. On June 24, 2015, LIPA, through its agent, PSEG Long Island, issued a Notice to Proposers soliciting proposals from experienced and qualified entities to acquire sufficient local resources to meet expected peak load requirements until at least 2022 in the South Fork of Long Island, and 2030 for certain areas east of Buell in the Town of East Hampton.

12. LIPA described electrical load growth on the South Fork of Long Island as increasing faster than the rest of Long Island.

13. The South Fork has a unique load profile where summer, weekend, and holiday activity in the Hamptons and surrounding towns cause electricity demand to peak at a different time than the rest of Long Island.

14. According to LIPA, residential customers drive peak electricity demand on the South Fork, with 60 percent of that demand coming from air conditioning.

15. Many of those residential homes are seasonally occupied in the summer months concentrating a demand for power in those summer months when temperatures rise.

16. South Fork peak demand often occurs on Saturdays–compared to the entire LIPA system which never peaks on a Saturday due to weekday commercial load demand.

17. LIPA described the South Fork of Long Island as a peninsular, semi-isolated electricity load pocket with highly constrained connectivity to LIPA's remaining transmission and distribution system.

18. LIPA projected peak load on the South Fork to be 314 MW in 2019, growing to 341 MW in 2022 (a nine percent increase).

19. LIPA projected peak load for the subarea east of Buell to be 41 MW in 2019, growing to 54 MW in 2030 (a 32 percent increase).

2. LIPA's Request for Proposals

20. The RFP requested proposals for "local resources" "located on Long Island" to meet "peak load" or peak electrical demand as an alternative to adding new transmission lines.

21. Local resources could be load reduction or power production or a combination of the two.

22. Load reduction typically includes behind-the-meter resources, meaning products or services that help the customer reduce power usage, especially during times of peak demand.

23. The RFP required load reduction products or services to be available every day of the week, covering a part of an eight-hour period between 1:00 p.m. and 9:00 p.m. during months that must include the warmer months, from May through to September.

24. The RFP mandated that power production resources comply with "Operating Modes" consistent with dispatchable resources that are capable of being turned on, or ramped-up, remotely in response to a "trigger signal."

25. The RFP required a commercial operating date no later than May 1, 2019, with an alternative date and pricing option for a one-year delay, no later than May 1, 2020.

26. The RFP required that each proposal "stand alone" in satisfying the RFP's requirements.

3. Deepwater Wind's Bids

27. According to LIPA, Deepwater Wind submitted three separate proposals in the South Fork RFP procurement process:

- DWW100 - a ninety-megawatt offshore wind farm (90 MW)
- DWW200 - a battery storage facility at Wainscott (4.9 MW)
- DWW300 - a battery storage facility at Montauk (5.1 MW)

(Neither of the two battery storage facilities were selected to continue past Phase II in the procurement process.)

28. At the time, Deepwater Wind proposed installing 15 six-megawatt wind turbines, with an aggregate nameplate capacity of 90 MW, approximately 30 miles off Montauk Point on eastern Long Island.

29. The project requires a new 60-mile-long transmission line to connect the offshore wind turbines and offshore substation to a new onshore interconnection facility (substation).

30. Deepwater Wind's proposed new transmission line includes substantial onshore infrastructure to accommodate high-voltage cables, such as ductbanks and splicing vaults.

31. Deepwater Wind proposed a commercial operating date of December 31, 2022 (later negotiated to December 1, 2022).

4. Deepwater Wind's Wind Power Bid Deficiencies

32. The South Fork RFP was not designed for an offshore wind project developer to submit a bid.

33. Regardless, LIPA selected Deepwater Wind's proposal despite many deficiencies:

- It is not a "local resource" that is "located on Long Island";
- It is not an alternative to adding new transmission lines;
- It does not defer the need for new transmission lines, but instead requires substantial transmission upgrades;
- It cannot reliably supply power to satisfy peak demand for electricity in response to air conditioner usage on the South Fork in the hotter months from June to September;
- The project cannot be a source of power until at least 2023 with a proposed commercial operating date of December 31, 2022;
- It cannot supply a dispatchable resource capable of functioning in Operating Modes that require power to be turned on in response to a "trigger signal" (because turbines that depend on the wind cannot be turned on as demand requires); and
- It is not a resource designed to meet "performance calculations" that are "no less severe than […] [a] maximum steady wind velocity [of] 130

mph" (offshore wind turbines cease generating power at a wind speed closer to 55 mph).

34. Contrary to state procurement law, LIPA awarded a power purchase agreement to a bidder whose proposal did *not* meet the minimum specifications or requirements as prescribed in the South Fork RFP and its Evaluation Guide.

35. Moreover, LIPA should have disqualified Deepwater Wind's proposal at the outset.

36. According to the South Fork RFP's Evaluation Guide, "Mandatory Criteria" is used to measure a "Proposals' compliance to the RFP and […] 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."

37. LIPA, however, overlooked four instances where Deepwater Wind did not meet mandatory criteria while disqualifying two of the 21 bids for not meeting mandatory criteria.

38. The Evaluation Guide listed as a mandatory criterion a May 1, 2019, commercial operating date required under the RFP.

39. Deepwater Wind proposed a December 31, 2022, commercial operating date–three and a half years later than the required date–that should have led to immediate disqualification in the first phase of the procurement process

40. The RFP required proposals to have a pricing mechanism for delay.

41. That mechanism, however, only allowed for a one-year delay–May 1, 2020, which makes Deepwater Wind's proposed commercial operating date two and half years later than any delay that could still meet the RFP's requirements.

42. Mandatory criteria included the RFP requirement that any "[p]roposal must contain the location of any proposed facility requiring construction and/or permitting" by the submittal deadline (of December 2, 2015).

43. Upon information and belief, Deepwater Wind did not have locations for proposed facilities until one and a half years *after* the submittal deadline.

44. As a stand-alone solution, a proposal could not be conditioned on some other act or omission under LIPA's mandatory criteria.

45. LIPA, however, joined Deepwater Wind's offshore wind project to separate battery storage proposals to make it potentially workable.

46. In other words, LIPA itself salvaged Deepwater Wind's proposal by adding two other conditional acts–agreements for installing two battery storage projects.

47. Deepwater Wind's proposed offshore wind project and 60-mile-long transmission system did not comply with either the mandatory criteria or the material specifications according to the RFP and Evaluation Guide.

5. The LIPA/Deepwater Wind Power Purchase Agreement

48. On January 25, 2017, LIPA awarded Deepwater Wind a twenty-year power purchase agreement ("PPA") that the New York Office of the State Comptroller ("OSC") approved on March 29, 2017.

49. LIPA agreed to purchase electricity from Deepwater Wind at an average price of *22 cents* per kilowatt-hour over the twenty-year life of the contract.

50. In 2019 the New York State Energy Research and Development Agency finalized a contract for an adjacent offshore wind project, Sunrise Wind, only two miles away from Deepwater Wind's project, and Sunrise Wind's cost of electricity is *just 8 cents* per kilowatt-hour.

51. OSC valued Deepwater Wind's PPA at $1.625 billion, yet the cost for the same amount of renewable energy from Sunrise Wind will be only $595 million.

52. LIPA agreed to the most expensive renewable energy option available at the time.

53. In 2016 the U.S. Energy Information Administration, in a simple average of regional values estimated the cost of energy from offshore wind plants coming online in 2022 to be almost two and a half that of onshore wind and almost twice as much as solar photovoltaic.

54. The cost comparison between offshore wind and solar photovoltaic holds up locally on Long Island's South Fork.

55. Around the same time that LIPA was evaluating the South Fork RFP responses, it was also developing the Long Island Community Microgrid Project (the "LI Solar Microgrid").

56. The LI Solar Microgrid was planned for the Town of East Hampton and included 15 megawatts (MW) of new solar photovoltaic generation.

57. The US National Renewable Energy Laboratory ("NREL") estimated the cost of constructing and installing the 15 MW solar facility to be $38.5 million.

58. NREL estimated that it would cost $4.4 million in total operational expenses over twenty years to run the 15 MW solar facility.

59. NREL also provided an estimate of the amount of energy the facility would generate per month.

60. Based on NREL's independent analysis, the cost of power from LI Solar Microgrid's 15 MW solar facility would be half the price of power from South Fork Wind.

61. NREL's analysis factors in periods of no generation at night and low generation on cloudy days.

62. The LI Solar Microgrid proposal would supply power most efficiently as needed on hot sunny summer days when air conditioning usage peaks demand–the problem the South Fork RFP sought to solve.

63. During the summer peak demand period, the cost of energy from LI Solar Microgrid's 15 MW solar facility would have been one-third the price of power from South Fork Wind.

64. Rather than find a way to make a sensible renewable energy project work, LIPA went forward with a project located 30 miles offshore, using technology that is least likely to provide power to meet peak demand as specified in the RFP.

65. The contrived RFP process and the exorbitant price LIPA agreed to pay may have resulted from political pressure for New York to be the first in

the country to build and install a large offshore wind project of fifteen turbines.

66. In his 2017 State of the State, former Governor Andrew Cuomo publicly called on LIPA to approve the Deepwater Wind project.

67. Cuomo got his wish just two weeks later when the LIPA Board approved the Deepwater Wind PPA.

6. Public Authorities Control Board Approval

68. LIPA did not follow statutory provisions mandating that it seek the approval of the New York Public Authorities Control Board ("PACB") before entering the PPA with Deepwater Wind.

69. Under New York law, LIPA cannot undertake any project without approval from the PACB.

70. "Project" is defined as a LIPA undertaking that commits LIPA to a contract with total consideration greater than $1 million and does not involve LIPA's day to day operations.

71. The total consideration of the PPA is $1.625 billion that LIPA must pass on to ratepayers.

72. At the time, the project involved constructing 15 offshore wind turbines, a 60-mile-long undersea cable, a new onshore interconnection facility (substation), and substantial onshore infrastructure, including duct-banks and splicing vaults designed for high-voltage cables to connect the wind turbines to LIPA's transmission and distribution system.

73. LIPA is committed to reimbursing Deepwater Wind for capital costs for the interconnection infrastructure.

74. Upon information and belief, the reimbursable capital costs for the interconnection infrastructure will be greater than $1 million.

75. The $1.625 billion PPA is not a contract for a day-to-day operations matter like a coffee service agreement, office equipment lease, or janitorial services contract.

76. The South Fork wind project is the precise type of project the Legislature intended the PACB to evaluate and decide whether the action (1) is financially feasible; (2) does not materially adversely affect overall real property taxes; (3) will result in lower utility costs to customers in the service area; and (4) will not materially adversely affect real property taxes and utility rates outside the service area.

77. The South Fork wind project is not financially feasible and will increase utility costs to customers in LIPA's service area.

PARTIES

78. Plaintiff, Simon V. Kinsella, resides in Suffolk County and is a taxpayer and ratepayer in the affected service area.

79. Plaintiffs, Pamela I. Mahoney, and Michael P. Mahoney, reside in Suffolk County and are taxpayers and ratepayers in the affected service area.

80. Defendant Long Island Power Authority is a New York corporate municipal instrumentality created under the LIPA Act that, among other things, supplies electric service to Nassau, Suffolk and part of Queens County has

the right under the Public Authorities Law to sue and be sued in its own name.

81. Defendant South Fork Wind LLC (formerly Deepwater Wind South Fork LLC) is a Delaware limited liability company that does business in the State of New York.

VENUE

82. The venue in Suffolk County is proper because it is the county where the Plaintiffs reside and LIPA has facilities involved in this action.

FIRST CAUSE OF ACTION
(For Declaratory Judgment Pursuant to CPLR § 3001 for violations of General Municipal Law § 103 and State Finance Law § 163)

83. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through to 82 as if set forth fully here.

84. Defendant LIPA awarded a contract for the supply of electrical energy to an offeror, Deepwater Wind, whose bid did not comply with bidding requirements and was not responsive, in violation of State Finance Law § 163 and General Municipal Law § 103.

85. Defendant LIPA manipulated bidding specifications in the South Fork RFP procurement process to preclude true competitive bidding in violation of State Finance Law § 163 and General Municipal Law § 103.

SECOND CAUSE OF ACTION
(For Declaratory Judgment Pursuant to CPLR § 3001 for violation of the LIPA Act § 1020-f (aa) and § 1020-b 12-a (iii))

86. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through to 82 as if set forth fully here.

87. Defendant LIPA violated Public Authorities Law § 1020-f (aa) and did not have authority to execute the power purchase agreement without obtaining the approval of the Public Authorities Control Board for a contract or agreement with a total consideration of greater than one million dollars that does not involve the day-to-day operations of LIPA.

REQUEST FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment against defendants as follows:

A. Declaring that the Power Purchase Agreement between LIPA and Deepwater Wind executed on or about February 6, 2017, exists in violation of State Finance Law § 163 and General Municipal Law § 103, and is void;

B. Declaring that LIPA violated Public Authorities Law § 1020-f (aa) by not receiving Public Authorities Control Board approval of the project and that LIPA did not have authority to enter the PPA;

C. Annulling the Power Purchase Agreement in its entirety;

D. Granting Plaintiffs the costs and disbursements of this action; and

E. Granting such other and further relief as the Court believes just and proper.

Dated: Albany, New York
November 9, 2021

Respectfully submitted,

/s/ Cameron J. Macdonald

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February 22, 2021

Chief Michelle Morin
Environment Branch for Renewable Energy
BOEM Office of Renewable Energy Programs
45600 Woodland Road
Sterling, Virginia 20166
Tel: (703) 787-1722
Michelle.Morin@boem.gov

Via USPS registered mail

BOEM online Comment Tracking Number: klh-929i-jwxs

Re: BOEM-2020-0066 - South Fork Wind, LLC
(formerly Deepwater Wind South Fork, LLC)

US Army Corps of Engineers
Public Notice Number: NAN-2020-01079-EME

Dear Chief Morin:

Pursuant to the National Environmental Policy Act ("NEPA") regulations, please find enclosed comments by me on the Draft Environmental Impact Statement ("DEIS") prepared for the construction and operations plan ("COP") submitted by (formerly) Deepwater Wind South Fork, LLC.

The South Fork Wind Farm is the first offshore wind farm to be proposed in New York State and, perhaps, maybe the first of a substantial size to move forward in the United States. Although, in its current form, this is very unlikely. It is a shame that such an opportunity largely has been squandered.

South Fork Wind LLC, formerly Deepwater Wind South Fork LLC (the "Applicant" or "South Fork Wind") proposes to construct and operate fifteen (15) offshore wind turbine generators ("WTG"), a connected cable-inter-array, an offshore substation, a single-circuit offshore transmission cable (of 138 kV), and industrial-scale permanent electrical transmission infrastructure with capacity enough for two (2) submarine cables/two circuits that the Applicant plans to install beneath narrow laneways and streets throughout the quiet residential neighborhood of Wainscott. The electrical transmission infrastructure comprises substantial underground transmission facilities designed to accommodate high-voltage alternating-current (HVAC) cables for the delivery of energy generated from the offshore wind farm with an *initial*

capacity of up to one-hundred-and-eighty megawatts (180 MW) and transmit that energy to a yet-to-be-built substation/interconnection facility before making its connection to the grid at an existing LIPA-owned onshore substation located in the Town of East Hampton on eastern Long Island (collectively, the "Project").

I understand that BOEM is the lead agency. Many of the documents submitted herein relate to the South Fork Wind Farm (SFWF) that the Applicant proposes to construct and operate on Cox's Ledge and the South Fork Export Cable (SFEC), the majority of which is planned for federal waters.

On the other hand, many of the documents submitted herein relate to the onshore portion of South Fork Wind's SFEC. Regretfully, it is necessary to include these documents, otherwise substantial parts of the proposed Project will *not* be subject to *any* environmental review whatsoever.

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.

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."[1]

In the absence of substantial review by the NYSPSC and the Town of East Hampton, and should BOEM likewise *not* require a thorough examination of the onshore part of the Project inasmuch as the offshore part, there will be *no* review, and *no* protections will be afforded the residents of Suffolk County, and specifically, the residents of the Town of East Hampton.

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); destabilizing horizontal directional drilling beneath Wainscott Beach; surreptitious expansion

[1] National Environmental Policy Act ("NEPA"), Section 101(a); 42 U.S.C. § 4331(a)

plans that will increase the size of the wind farm by six-times (to 600 MW) over what residents initially had been told; and the destruction of the character of our local seaside semi-rural neighborhood.

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." [2]

Legal Issues

The Town Board of the Town of East Hampton has failed to conduct any meaningful oversight of the South Fork Wind Project. The Town Board has been accused, rightly, of acting precipitously and on an ill-informed basis by pre-approving parts of the onshore Project and granting to South Fork an easement (the "Easement") subject to conditions over which the Town subsequently will have no control. The Board has bound itself, and its citizens before material facts are known and long before a grant of the Easement would be needed for the project to proceed. In doing so, the Board has acted illegally, arbitrarily, and capriciously, exposing the community it serves to unnecessary risks and limiting its ability to protect the Town's interests during the ongoing regulatory proceedings.

For example, the East Hampton Town Board did not retain any of its own environmental or transmission experts (which it could have sought to induce South Fork to pay for), and instead relied on information it received from South Fork Wind without questioning such information. The Town Board has abdicated any role in environmental review and continues to ignore the extensive PFAS contamination of soil and groundwater throughout the proposed construction corridor; it turns a blind eye to the high price of energy from the Applicant's proposed Project that will be passed onto local ratepayers; and, has taken a passive role in its failure to represent the interests of residents of the Town of East Hampton. Accordingly, a group of over one thousand citizens has supported the commencement of legal proceeding against the Town of East Hampton (see enclosed, *Citizens' for the Preservation of Wainscott, Inc., et al., v Town Board of the Town of East Hampton and Supervisor Peter van Scoyoc, et al.*, Index 601847/2021 [Sup Ct, Suffolk County 2021]).

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

[2] U.S. Const. Amend. XIV; N.Y. Const. Art. I, § 6.

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).

Furthermore, pursuant to the Long Island Power Authority Act ("LIPA Act"), Section 1020-f, the Long Island Power Authority ("LIPA") "shall not undertake any project without the approval of the public authorities control board [PACB.]" Nevertheless, in July 2020, LIPA admitted that it "has never submitted a Power Agreement to the PACB for approval" which is a clear violation of New York's Public Authorities Law. LIPA's failure to obtain PACB approval is likely to render the South Fork PPA and any amendment thereto null.

Price of Power

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), Exhibit K - NYS Comptroller $1,625 Billion valuation). 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.

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.

Furthermore, the NYSPSC refused to address how the Applicant came by securing its power purchase agreement ("PPA"). Astonishingly, the New York Office of the State Comptroller ("NYOSC") approved the PPA pursuant to a non-competitive opaque procurement process where the company administering the procurement, PSEG Long Island, awarded the PPA to its (undisclosed) New-Jersey-based business partner (indirectly through wholly-owned

subsidiaries of its parent company), Deepwater Wind. It just happens that the contract award is more than two-and-a-half-times more expensive ($1.025 billion) than the same amount of renewable energy from an offshore lease area (Sunrise Wind lease area OSC-A 0487) only three miles away from the South Fork Wind lease (OSC-A 0517). This situation is offensive to all ratepayers, taxpayers, and law-abiding residents.

Substation – Danger

Finally, of great concern is the cumulative effects on a residential neighborhood just one-hundred feet away from the East Hampton Substation. At this substation, there are three (3) diesel peaker-plants (of 2 MW each) that were installed nearly sixty years ago (in December 1962) and another jet-powered diesel peaker-plant (of 21.3 MW) that was installed fifty years ago (in December 1970). The age of this equipment at the East Hampton Substation is indicative of the general age of the other equipment and wires in and around the facility (i.e. old and fragile much like myself who was born a month before that jet-diesel peaker-plant was installed).

In the same compound are two large storage tanks: one containing Kerosene No. 2 Fuel Oil (of 135,000 gallons); and the other containing Diesel (of 55,000 gallons). These tanks are in proximity to a new five-megawatt battery facility that recently has been built to support the additional power from the proposed new South Fork Wind Farm of 132 to 180 megawatts (the final size of the proposed wind farm has not been disclosed).

In addition to this mix is a frail and aging local transmission system. There have been two recent electrical fires: one in January 2020 in the neighboring Bridgehampton Substation (see enclosed article in the East Hampton Star); and a transmission fire on Mill Lane in East Hampton in 2016 (see photos enclosed).

Into this dangerous environment, the Applicant plans to connect its proposed 132-to-180-megawatt wind farm and to deliver more than double the power that the system was designed to handle. The gross lack of oversight demonstrated elsewhere gives cause for concern over residents' safety that live only one hundred feet away from the East Hampton Substation.

Please see the list of documents enclosed (overleaf).

Document Title	Author	Date	Reference	Pages
Wind Wake Effect				
Journal of Geophysical Research Atmospheres	Cristina L. Archer, *et al.*	2016	Research Paper	17
A Numerical Study of Wind-Turbine Wakes	Cristina L. Archer, *et al.*	2017	Research Paper	26
In situ evidence of far-field wakes OSW Farms	Platis & Siedersleben, *et al.*	2018	Research Paper	14
Offshore Wind Farm in German Bight	Windenergie Agentur	May 2017	Table	1
Offshore Wind Farms in German Bight (close)			Graphic	1
Offshore Wind Farms in German Bight (pan)			Graphic	1
Micrometeorological Impacts of OSW farms	Siedersleben (13_124012)	2018	Environ._Res._Letter	14
OSW Farm Wakes - WEA off NE US Atlantic Coast	Cristina L. Archer	2019	Study Proposal	10

Wind Data (Excel Spreadsheet, Charts, Tables, Spec's, etc.)				
Avg Max Temp - BH & Montauk (NOAA Weather Data)		2000-2020	Chart & Table	
Block Island Wind Farm (BIWF) Capacity	www.EIA.gov (compiled *by Kinsella)*	2017-2020	Chart & Table	3
Climate – Temperatures, East Hampton	Weather Atlas	Aug 16, 19	Chart	1
Offshore Wind Speed per Month per Hour (NOAA 44008 & 44017)		2015-2016	Charts	2
OSW Power Supply vs South Fork Demand (data)	NOAA/PSEGLI (compiled *by Kinsella*)	2016	Excel Sp/Sh	
Power Curves - Haliade-X, Vestas V164 & V174, Siemens-Gamesa SG8 & SG10			Chart	1
POWER OFF Frequency - NOAA 44017, 44008	NOAA (compiled *by Kinsella*)	2015/16 & 18	Chart	3
POWER OFF Frequency - NOAA Station 44017	NOAA (compiled *by Kinsella*)	2016	Chart, Stack	1
POWER OFF Frequency - NOAA Station 44017	NOAA (compiled *by Kinsella*)	2018	Excel Sp/Sh	3
Hourly Electrical Demand on South Fork	PSEG Long Is. (Excel spreadsheet)	2016-2018	Excel Sp/Sh	4
South Fork Demand vs OSW Supply (132 MW)	NOAA/PSEGLI (compiled *by Kinsella*)	May-Aug '16	Chart	1
SF Electrical Demand vs OSW Output (132 MW)		2016	Charts	5
SF Avg. Temp. & OSW Speed (NOAA 44008 & 44017)	NOAA (compiled *by Kinsella*)	2000-2020	Charts	2
SG 8 Power Curve Output 132 MW (NOAA 44017)	NOAA (compiled *by Kinsella*)	2016	Excel Sp/Sh	
Siemens Gamesa (SG 8.0-167 DD) - Specs	theWindPower.net	Oct 03, 20	Spec's	1
South Fork - Demand vs Supply (data)	NOAA/PSEGLI (compiled *by Kinsella*)	Jan-Dec '16	Report	8
South Fork - Demand vs Supply (data)	NOAA/PSEGLI (compiled *by Kinsella*)	May-Aug '16	Report	3
South Fork Electrical Load & Avg Temp. (2000-2020)	NOAA/PSEGLI (compiled *by Kinsella*)	2016-2018	Charts	2
Wind Data Summary (44008, 44017, BUZM3)	NOAA (compiled *by Kinsella*)	2015-2019	Charts	13

Initial Brief	Filed: Jan 20, 2021	Jan 2021	Brief	34
Motion to Reopen Record	S Kinsella	Jan 2021	Exhibit A	16
Kinsella vs NYS Comptroller (index 904100-19)	NYS Sup. Ct., Albany Court	Jul 2020	Exhibit A(a)	53
LIPA Amendment No 1 (40 MW)	LIPA Board of Trustees	Nov 2018	Exhibit A(b)	50
IR SK#01 SFW Resp Re PFAS	Deepwater Wind	Nov 2019	Exhibit A(c)	12
SFW Environmental Survey	South Fork Wind	Jan 2021	Exhibit A(d)	2
PFAS Contamination (map)	NYSDEC (compiled by Kinsella)		Exhibit A(e)	2
Survey Well Locations (gmaps)	S Kinsella	Jan 2021	Exhibit A(f)	1
Joint Proposal Signatories	(*Compiled by Kinsella)*	Sep 2020	Exhibit B	2

Reply Brief	Filed: Feb 3, 2021	Feb 2021	Brief	12
WESC, DWW, EF Outage Rate	Provided by LIPA (WESC Report)	2016	Exhibit 1	3
WESC, SF RFP Load Cycle Analysis	Provided by LIPA (WESC Report)	2016	Exhibit 2	8
DWW EF Outage Rate Analysis	Provided by LIPA (WESC Report)	2016	Exhibit 3	6

Motion to Reopen Record	Filed: Jan 13, 2021	Jan 2021	Motion	16
Kinsella vs NYS Comptroller (index 904100-19)	NYS Sup. Ct., Albany Court	Jul 2020	Exhibit A	53
LIPA Amendment No 1 (40 MW)	LIPA Board of Trustees	Nov 2018	Exhibit B	50
IR SK#01 SFW Resp Re PFAS	Deepwater Wind	Nov 2019	Exhibit C	12
SFW Environmental Survey	South Fork Wind	Jan 2021	Exhibit D	2
PFAS Contamination (map)	NYSDEC (compiled by Kinsella)		Exhibit F	2
Survey Well Locations (gmaps)	S Kinsella	Jan 2021	Exhibit G	1

Motion to Reopen Record - Supplemental	Filed: Jan 29, 2021	Jan 2021	Supp'l Info	22
LIPA Memo Re South Fork RFP	LIPA to NY State Comptroller	Jan 2017	Exhibit A	34

Document Title	Author	Date	Reference	Pages
South Fork RFP Webex	LIPA FOIL Resp, PSEG Long Is	Jul 2015	Exhibit B	26
South Fork RFP Exec. Committee	LIPA FOIL Resp, PSEG Long Is	Apr 2016	Exhibit C	26
Report on Load Shifting Effect	LIPA FOIL Resp, WESC Report	2016	Exhibit D	5
Report on Load Cycle Analysis	LIPA FOIL Resp, WESC Report	2016	Exhibit E	8
Report on Wind Outage Rate	LIPA FOIL Resp, WESC Report	2016	Exhibit F	3
Wind Outage Analysis	PSEG Long Island	2016	Exhibit G	6
Report on Potential Interferences	PSEG Long Island	2016	Exhibit H	2
Load Reduction Final Selection	PSEG Long Island	2016	Exhibit I	4
South Fork RFP, Clarifying Questions	PSEG Long Island	2015	Exhibit J	38
NYS Comptroller $1,625 Billion Valuation	LIPA	Jan 2017	Exhibit K	5
LIPA Resp to FOIL Appeal	LIPA	Nov 2020	Exhibit L	2
LIPA Cover Ltr to FOIL Resp	LIPA	Jan 2021	Exhibit M	3
PSEG Long Is, Evaluation Guide	PSEG Long Island	Dec 2015	Exhibit N	42
South Fork RFP Proposal Receipt Log (corrupted)	PSEG Long Island	Dec 2015	Exhibit O	1
South Fork RFP, PPA Matrix - Final	PSEG Long Island	2016	Exhibit P	.XLS
Avoided Transmission Cost (Ph II Rev7)	PSEG Long Island	2016	Exhibit Q	.XLS
Avoided Transmission Cost (Ph III Rev10)	PSEG Long Island	2016	Exhibit R	.XLS
LIPA, South Fork Wind Fact Sheet	LIPA	Oct 2019	Exhibit S	4

Testimony Part 1-1 - PFAS Contamination	Filed: Sep 9, 2020 *(by S. Kinsella)*	Sep 2020	Testimony	37
DECinfo Locator - Critical Enviro Areas	NYS DEC	Sep 2020	Exhibit A (p. 01)	1
Groundwater Protect Area (CEA Map #6)	NYS DEC	Feb 1988	Exhibit A (p. 02)	1
Water Recharge Overlay District (CEA)	NYS DEC	Feb 1988	Exhibit A (p. 03)	1
E Hampton Scenic Res Protect Plan	NYS Dept of State (sponsored)	Apr 2004	Exhibit A (p. 04)	1
Summary PFAS Results - Heat Map	Si Kinsella (NYSDEC & SCDHS)	Jul 2020	Exhibit B	1
Report No. 3 - PFAS Contam'n, Wainscott	Si Kinsella	Jul 2020	Exhibit C	91
SC Report of East Hampton Airport	NYS DEC	Nov 2018	Exhibit D (1-9)	269
SC Report - Wainscott S&G	NYS DEC	Jul 2020	Exhibit E	631
Town vs Village , (NYSED Case #20-1787)	Town of East Hampton	Apr 2020	Exhibit F	30
Draft EIS - Wainscott S&G ('Pit')	Wainscott Commercial Center	Jul 2020	Exhibit G	895
PFOA/PFOS Drinking Water Advisory	US EPA	Nov 2016	Exhibit H (p. 01-05)	5
FAQ PFAS	US ATSDR	Mar 2017	Exhibit H (p. 06-09)	4
Release on Drinking Water Standard	NYS Governor Cuomo	Jul 2020	Exhibit H (p. 10-13)	4
Request for Inform'n PFOA/PFOS Survey	NYS DEC	Jun 2016	Exhibit H (p. 14-20)	7
Art VII Case 10-T-0154 Submission	NYS DEC	Aug 2010	Exhibit I-1	10
Staff Proposal "Outline of Issues"	NYS DPS	*	Exhibit I-2	1
PFAS Action Plan	US EPA	Feb 2020	Exhibit J	20
Art VII App, Fig 5, 2-2 w/ PFAS Notes	Applicant (notes by Si Kinsella)	Oct 2018	Exhibit K	1
Superfund Designation - Wainscott S&G	NYS DEC	Sep 2020	Exhibit L	2
PFAS Contamin'n - Wells EH-1 (Airport) to S1	Si Kinsella	Sep 2020	Exhibit M	1
IRs - Si Kinsella #03-#10 to Applicant	Si Kinsella	Jan 2020	Exhibit N	144
Article - West Gate Tunnel, PFAS Remed'n	Australian Financial Review	Feb 2020	Exhibit O	8
PFAS Contam'n - Interim Recomm's	US EPA	Dec 2019	Exhibit P	7
ASTSWMO PFC (PFAS Remediation)	Assoc of Solid Waste Mgt Officials	Aug 2015	Exhibit Q	68
PFAS Standards	MA Dept of Environ'l Protect.	Jun 2018	Exhibit R	12
Shaw Aero - FRS Facility Detail Report	US EPA	Jun 2018	Shaw Aero	1
Shaw Aero - RCRA Hazard Waste (1991/93)	US EPA	Jun 2018	Shaw Aero	10
Griffiths Carpet - "Teflon Treatment"	Griffiths Carpet	Jun 2018	Griffiths Carpet	1
Griffiths Carpet - Online Mapping Svc	Google Maps	Mar 2018	Griffiths Carpet	1
Griffiths Carpet - Online Mapping Svc	Mapquest	Jan 2020	Griffiths Carpet	1

Testimony Part 1-2 - PFAS Contamination	Filed: Oct 9, 2020 *(by S. Kinsella)*	Oct 2020	Testimony	11
Guidelines - Sampling & Analysis of PFAS	NYS DEC	Jan 2020	Exhibit 1-1A	29
Sand Pit' PFAS Results (SC Rpt Site 152254)	NYS DEC	May 2020	Exhibit 1-1B	2
Summary PFAS Results - Heat Map	Si Kinsella (NYS DEC & SCDHS)	Oct 2020	Exhibit 1-1C	1
Testimony Part 1 - PFAS Contamination	Si Kinsella	Sep 2020	Exhibit 1-1D	37

Document Title	Author	Date	Reference	Pages
Testimony Part 2 - Public Interest, Need & Price	Filed: Oct 9, 2020 *(by S. Kinsella)*	Oct 2020	Testimony	52
Kinsella vs NYS OSC - (index 904100-19)	Hon. Richard J. Rivera, A.S.C.J.	Jan 2020	Exhibit 01	3
2015 South Fork RFP - June 24, 2015 (full)	LIPA/PSEGLI	Jun 2015	Exhibit 02	94
Power Purchase Agreement (PPA)	LIPA/PSEGLI/Applicant	Feb 2017	Exhibit 03	139
PPA Amendment No. 1 (add'l capacity)	LIPA/PSEGLI	Nov 2018	Exhibit 04	50
Resp to IR SK #29 - PPA Amendment No. 1	LIPA/PSEGLI	Aug 2020	Exhibit 05	1
PPA Contract Price Table	Office of Attorney General	Nov 2019	Exhibit 06	9
IR - Si Kinsella #32 PSEGLI/LIPA Resp	Si Kinsella	Aug 2020	Exhibit 07	7
IR - Si Kinsella #32 - Emails	Si Kinsella	Sep 2020	Exhibit 08	2
IR - Si Kinsella #32 - Motion to Compel	Filed: Sep 30, 2020 (by S. Kinsella)	Sep 2020	Exhibit 09	29
2015 South Fork RFP - June 24, 2015 (full)	LIPA/PSEGLI	Jun 2015	Exhibit A	94
IR - Si Kinsella #32 to PSEGLI/LIPA	Si Kinsella	Aug 2020	Exhibit B	3
IR - Si Kinsella #32 to PSEGLI/LIPA - Resp	LIPA/PSEGLI	Sep 2020	Exhibit C	4
IR - Si Kinsella #32 - Emails	Si Kinsella	Sep 2020	Exhibit D	2
Kinsella vs NYS OSC (index 904100-19)	Hon. Richard J. Rivera, A.S.C.J.	Jan 2020	Exhibit E	3
NY OSW Ind: Phase 1 Rpt - Sunrise & Equinor	NYSERDA	Oct 2019	Exhibit F	378
South Fork Wind PR - Price 16.3¢	LIPA/PSEGLI	Oct 2019	Exhibit G	4
Power Purchase Agreement (PPA)	LIPA/PSEGLI/Applicant	Feb 2017	Exhibit H	139
NREL Compar OSW Energy Procurement	US Department of Energy	Jun 2020	Exhibit I	66
IR Si Kinsella #29 - PSEGLI Response	LIPA/PSEGLI	Aug 2020	Exhibit J	1
OSW Tech Market Report (2018)	US Department of Energy	Aug 2019	Exhibit K	92
OSW Tech Market Report Adj Strike Prices	US Department of Energy	Aug 2019	Exhibit L	1
LIPA Trustee Board Approval of PPA	LIPA/PSEGLI	Jan 2017	Exhibit M	7
Ørsted A/S - 2018 Annual Report	Ørsted A/S	Dec 2018	Exhibit N	193
Ørsted A/S - 2019 Annual Report	Ørsted A/S	Dec 2019	Exhibit O	183
N.J. Awards Grant for First OSW Project	Wall Street Journal	Oct 2008	Exhibit P	3
Eval'n & Comparison - US Wind & Skipjack	Maryland Public Service Comm'n	Mar 2017	Exhibit Q	210
Eval'n Committee Award Recomm'n	NJ Board of Public Utilities	Oct 2008	Exhibit R	16
IR Si Kinsella #19 - PSEGLI Conflicts of Int	Si Kinsella	Mar 2020	Exhibit S	104
IR Si Kinsella #19 - PSEGLI Response	Si Kinsella	Mar 2020	Exhibit T	8
IR - Si Kinsella #32 - Supplemental Info	Filed: Oct 5, 2020 (by S. Kinsella)	Oct 2020	Exhibit 10	18
Email Response to FOIL Request 2020-0444	Office of the State Comptroller	Oct 2020	Exhibit I	1
Letter Response to FOIL Request 2020-0444	Office of the State Comptroller	Oct 2020	Exhibit II	2
OSC - Vendor Resp Questionn's (C000883)	Deepwater Wind South Fork	Jan 2017	Exhibit III	12
OSC - Vendor Resp Questionn's (C000884)	E Hampton Energy Storage Center	May 2017	Exhibit IV	10
OSC - Vendor Resp Questionn's (C000885)	E Hampton Energy Storage Center	Jul 2017	Exhibit V	12
OSC - Vendor Resp Questionn's (C000885)	E Hampton Energy Storage Center	May 2017	Exhibit VI	10
OSC - Vendor Resp Questionn's (C000883)	DWW, Halmar, Convergent, *et al*	Feb 2017	Exhibit VII	136
OSC - Vendor Resp Questionn's (C000884)	E Hampton Energy Storage Center	Aug 2017	Exhibit VIII	23
OSC - Vendor Resp Questionn's (C000885)	Montauk Energy Storage Center	Aug 2017	Exhibit IX	54
OSC FOIL Request #2020-0444 VRQ	Si Kinsella	Aug 2020	Exhibit X	3
Siemens-Gamesa (SG 8.0-167 DD) Spec's	Wind Energy Mkt Intelligence	Oct 2020	Exhibit XI	1
OSW Power VOID - Deepwater Wind Slide	Si Kinsella	Aug 2019	Exhibit XII	1
PSEG LI - Bridgehampton Substation Fire	The East Hampton Star	Jan 2020	Exhibit XIII	2
LIPA Trustee Board Approval of PPA	LIPA/PSEGLI	Jan 2017	Exhibit M	7
Siemens-Gamesa (SG 8.0-167 DD) Spec's	Wind Energy Market Intelligence	Oct 2020	Exhibit 11	1
Award of Largest US order by Ørsted	Siemens Gamesa	Jul 2019	Exhibit 11	4
Ørsted Selects Siemens Gamesa	Ørsted A/S	Jul 2019	Exhibit 11	4
Wind Power VOID - South Fork Wind Pres.	Si Kinsella	Aug 2019	Exhibit 12 (p. 01-02)	2
Avg Monthly Temperature, E Hampton, NY	Weather Atlas, Weather-US.com	Aug 2019	Exhibit 12 (p. 03)	1
Wind Data: Nantucket, Montauk & Buzz Bay	NOAA - National Data Buoy Center	Aug 2019	Exhibit 12 (p. 04-20)	17
Block Island Wind Farm - Gen & Capacity	US Energy Information Agency	Sep 2020	Exhibit 12 (p. 21-22)	2
Wind Sd (SSW Montauk) 2003-07, 2013/16	Filed: Sep 30, 2020 (by S. Kinsella)	Aug 2019	Exhibit 12 (p. 23-38)	16

Document Title	Author	Date	Reference	Pages
NOAA 44008 - Wind Data (10-min int) 2015	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (a)	841
NOAA 44008 - Wind Data (10-min int) 2016	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (b)	655
NOAA 44008 - Wind Data (10-min int) 2017	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (c)	519
NOAA 44017 - Wind Data (10-min int) 2015	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (d)	596
NOAA 44017 - Wind Data (10-min int) 2016	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (e)	1,184
NOAA 44017 - Wind Data (10-min int) 2017	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (f)	141
NOAA 44017 - Wind Data (10-min int) 2018	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (g)	716
NOAA 44017 - Wind Data (10-min int) 2019	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (h)	304
NOAA BUZM3 - Wind Data (10-min int) 2016	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (i)	877
NOAA BUZM3 - Wind Data (10-min int) 2017	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (j)	873
NOAA BUZM3 - Wind Data (10-min int) 2018	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (k)	870
NOAA BUZM3 - Wind Data (10-min int) 2019	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (l)	549
Weather Data - South Fork (2000 - 2020)	NOAA - Nat Data Buoy Center	Oct 2020	Exhibit 12 (m)	668
Utility Pole Electrical Fire (East Hampton)	Michael Heller	Feb 2016	Exhibit 13	2
Testimony Part 3 - Rebuttal	Filed: Oct 30, 2020	Oct 2020	Testimony	13
IR SK #29 - PSEGLI Supplemental Response	LIPA/PSEGLI	Oct 2020	Exhibit 3-1	1
PFAS Heat Map & SC Report of Wainscott S&G	Si Kinsella (NYS DEC & SCDHS)	Oct 2020	Exhibit 3-2	3
PFAS Lab Rpts - Private Wells in Wainscott	Suffolk County Dept. Health Svc	2017/2018	Exhibit 3-3	416
Email from Deputy Comm'r to Town	Suffolk County Dept. Health Svc	Jun 2018	Exhibit 3-4	11
Rigano Presentation on DEC SC Report	Nicholas C. Rigano, Esq.	Oct 2020	Exhibit 3-5	10
NYSERDA OSW RFI 2018, Bay State Comments	Bat State Wind, LLC	Aug 2018	Exhibit 3-6	15
NYSERDA OSW Policy Options Paper	NYSERDA	Jan 2018	Exhibit 3-7	117
Newsday - LIPA Spend $109M Energy Storeage	Newsday	May 2017	Exhibit 3-8	2
Motion by South Fork Wind to Strike Kinsella Testimony	Filed: Nov 5, 2020	Nov 05, 20	Motion	17
Opp to Motion of South Fork Wind to Strike Testimony - Resp Kinsella		Nov 16, 20	Motion	40
Opp to Motion of South Fork Wind to Strike Testimony - Resp Bjurlof		Nov 16, 20	Motion	1
Opp to Motion of South Fork Wind to Strike Testimony - Resp Cirlin		Nov 16, 20	Motion	3
Opp to Motion of South Fork Wind to Strike Testimony - Resp Cohen		Nov 16, 20	Motion	4
Opp to Motion of South Fork Wind to Strike Testimony - Resp CPW		Nov 16, 20	Motion	7
Opp to Motion of South Fork Wind to Strike Testimony - Resp Gruber		Nov 16, 20	Motion	7
Opp to Motion of South Fork Wind to Strike Testimony - Resp LICFA		Nov 16, 20	Motion	2
Opp to Motion of South Fork Wind to Strike Testimony - Resp Mohoney, Michael		Nov 16, 20	Motion	3
Opp to Motion of South Fork Wind to Strike Testimony - Resp Mohoney, Pamela		Nov 16, 20	Motion	3
Opp to Motion of South Fork Wind to Strike Testimony - Resp Faber		Nov 16, 20	Motion	2
Ruling - Motion to Strike Kinsella Testimony by ALJ Belsito		Nov 24, 20	Motion	7
Demand Letter Re PACB Approval to LIPA	Filed: Feb 19, 2021	Feb 2021	Letter	9
NYS Comptroller FOIL Request & Appeal	S Kinsella	Feb 2021	FOIL Request Appeal	10
Supp'l Resp to IR SK #29 - PPA Amend	PSEG Long Island	Oct 2020	Info'n Request	1
South Fork RFP - Update Re PPA Amendment	PSEG Long Island	Sep 2020	Update	1

Number of Exhibits:	165	Total Pages:	14,650
No. of Duplicate Exhibits:	12	Total Duplicate Pages:	501
Total Number of Exhibits:	153	Total Pages (less duplicates):	14,149

Notes:

1 All the documents herein listed (above) are available at the following URL:

For these reasons and more (as explained in the enclosed documents), I respectfully request extensive federal oversight of this Project. If I can be of any further assistance, please contact me via email (Si@oswSouthFork.info) or on my mobile (1-631-903-9154).

Thank you for your assistance.

Sincerely yours,

Si Kinsella

Si Kinsella

C/c: US Army Corps of Engineers - New York District
ATTN: Chief Stephan A. Ryba
Regulatory Branch
Jacob K. Javits Federal Building
New York, N.Y. 10278-0090

Included: Please see USB storage device with a copy of all exhibits refered to the enclosed documents.

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March 11, 2022

URGENT: Imminent Risk to Public Health

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Law and Policy Section
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Re: URGENT: South Fork Wind
Imminent Risk to Public Health

Dear U.S. Assistant Attorneys General, Secretary Haaland, Secretary Raimondo, Secretary Wormuth, Administrator Spinrad, Acting Assistant Secretary Pinkham, State Attorneys General, Chief Morin, Ms. Wilson, Mr. Singer, and Director Lefton:

South Fork Wind poses an imminent risk to public health and the environment.[1]

Up-to-date, neither the Town of East Hampton ("Town"), the New York State Department of Environmental Conservation ("NYSDEC"), the New York State Public Service Commission ("NYSPSC"), nor the Bureau of Ocean Energy Management ("BOEM") has provided oversight sufficient to ensure South Fork Wind mitigates the risks that its construction will expose our community to contamination, including per- and polyfluoroalkyl substances ("PFAS").

[1] South Fork Wind LLC (formerly Deepwater Wind South Fork LLC).

BOEM FOIA Request (July 6, 2022) Exhibit C - Page 3 of 31

In its "Weekly Status Report" for March 7, 2022, South Fork Wind writes: "Completed Activities[,] Week of February 28, 2022: […] The contractor continued trenching and installing conduit on Wainscott NW Road between the LIRR intersection and Montauk Highway." See Exhibit A and Figure 1 (right), and Figures 2 and 3 (at pp. 4-5, the area shaded yellow marks the location of construction).

Photo of Wainscott Northwest Road looking north towards Sandown Court (taken on March 6, 2022)

South Fork Wind is proceeding with construction *without* testing its proposed construction corridor near the bottom of its planned excavation pits, where PFAS contaminated soil is likely to be detected. The Town of East Hampton promised Wainscott residents that South Fork Would conduct such tests and provide the laboratory test results. Instead, the Town has allowed South Fork Wind to dig up roads with incredible speed.

South Fork Wind is legally mandated to test soil for contaminates and mitigate the risks that its construction will exacerbate PFAS contamination, including PFOA and PFOS that is known to exceed the EPA Health Advisory Level and New York State's Maximum Contamination Levels upgradient within five hundred feet (500 ft) of where it is currently conducting excavation work.

South Fork wind proposes to construct its high-voltage transmission infrastructure immediately above and encroaching into the Upper Glacial Aquifer and through two Critical Environmental Areas designed to protect the safety of the aquifer: (a) the Special Groundwater Protection Area (South Fork); and (b) the Water Recharge Overlay District.[2]

There are six public supply wells[3] within one mile of at least one PFAS Contamination Area of Concern ("AOC") at East Hampton Airport.[4] NYSDEC identified four AOCs at the airport site, two of which are upgradient within one thousand feet (1,000 ft) of South Fork Wind's proposed high-voltage transmission route (see Fig. 2 and 3, overleaf).[5]

This document shows that South Fork Wind's rush to construction is reckless.

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[2] See Testimony Part 1-1 by Kinsella, Exhibit A (of 4 pages): Groundwater Protection CEA & Water Recharge CEA (at pp. 1-3) (NYSPSC DMM: item 133, Exhibit A, p 1).

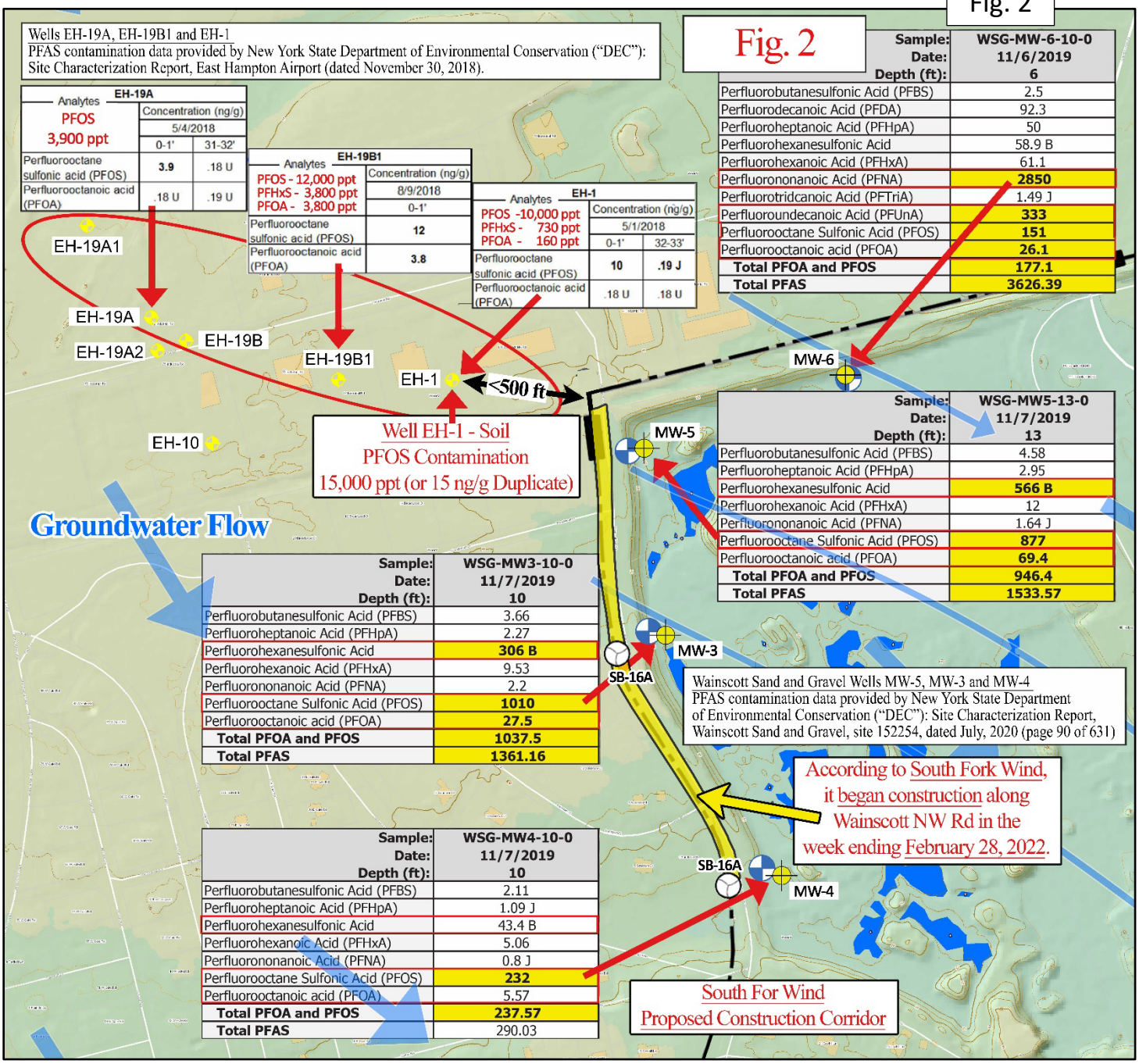
[3] Townline Road Well Field, NYSDEC Wells S-118737 (650 gmp, Magothy Aquifer, depth=435 ft) and S-120019 (650 gmp, Upper Glacial Aquifer, depth=178 ft). East Hampton-Sag Harbor Turnpike, NYSDEC Wells S-102721 (1300 gmp, Magothy Aquifer, depth=387 ft) and S-115545 (1300 gmp, Magothy Aquifer, depth=294 ft). Stephen Hands Path Well Field, Well-1 (650 gmp, Upper Glacial Aquifer, depth=145 ft) and Well-2 (650 gmp, Upper Glacial Aquifer, depth=145 ft).

[4] See Report.HW.152250.2018-11-30.Airport Site Characterization Report Final.pdf (at p. 27 of 268, Figure 8).

[5] See NYSPSC Testimony on PFAS Contamination: Part 1-1 (available at NYSPSC DMM: item 133) and Part 1-2 (available at NYSPSC DMM: item 185). Also, see PFAS maps at http://www.wainscott.life/maps.html

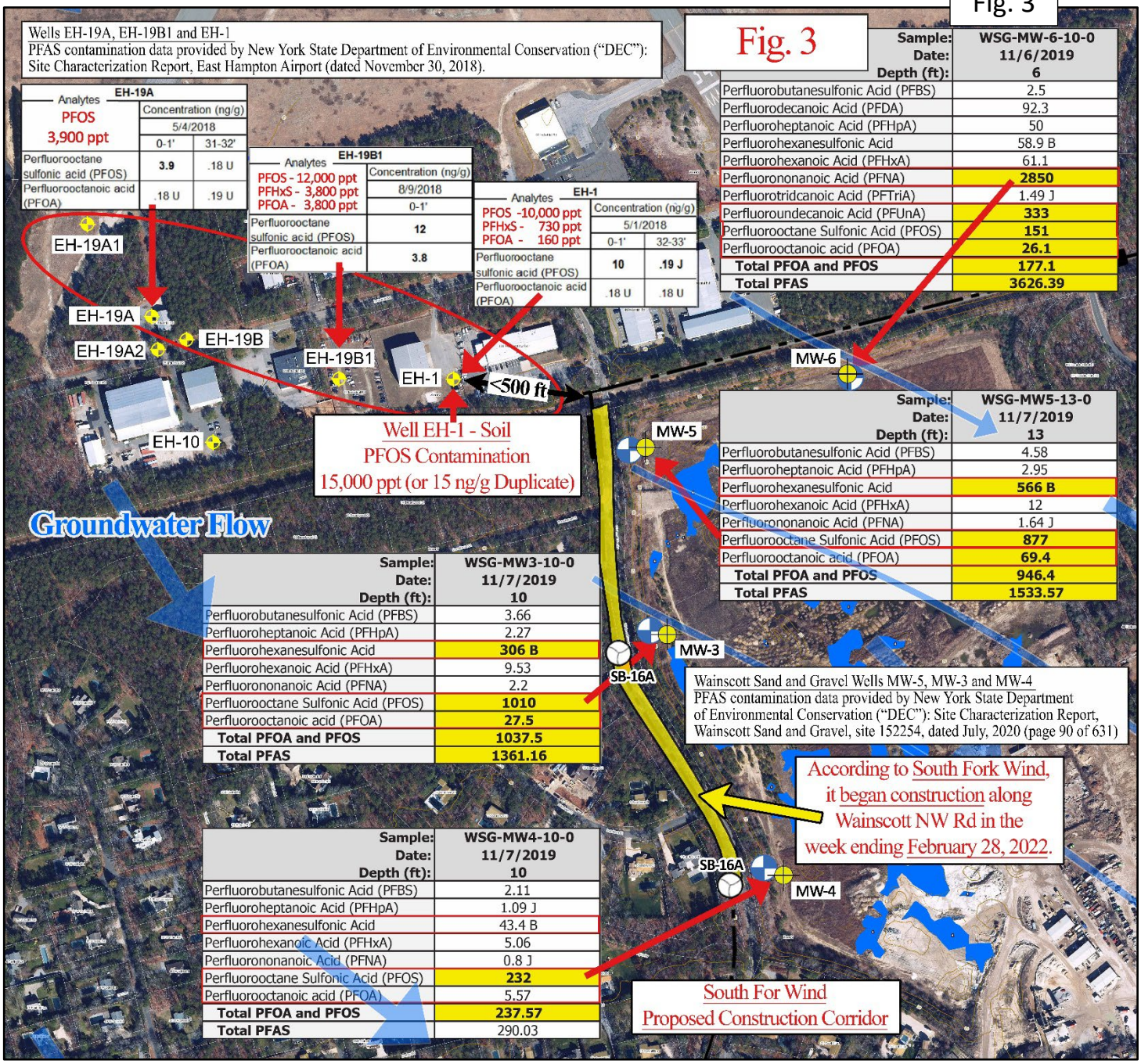
There is no alternative drinking water source on eastern Long Island that could physically, legally, and economically supply all those who depend upon the aquifer for their drinking water.[6]

Fig. 2



[6] The US Environmental Protection Agency ("EPA") designated the aquifer system underlying the South Fork on Eastern Long Island a Sole-Source Aquifer on June 21, 1978 (See US EPA Nassau-Suffolk Aquifer System, Federal Register Notice, Volume 43, No. 120, Page 26611, June 21, 1978 - Sole Source Aquifer Determination for Aquifers Underlying Nassau and Suffolk Counties).

Fig. 3



Prior Testing (in January 2021)

South Fork Wind's proposed onshore high-voltage transmission/construction route is approximately four miles long. Two miles of which runs through a residential neighborhood from the beach northward along Beach Lane to Wainscott NW Road (via Wainscott Main St, Sayers' Path, and Wainscott Stone Rd), where it intersects with the Long Island Rail Road ("LIRR") tracks.

South Fork Wind identifies approximately thirty wells and test pits, some it installed, and others existed from prior uses.

In January 2021 (two weeks *after* the NYSPSC administrative hearing had closed), South Fork Wind conducted limited testing that avoided areas and depths where PFAS contamination would likely be detected at levels exceeding regulatory limits. South Fork Wind avoided testing any soil samples taken towards the bottom of its planned excavation at depths ranging from eight to sixteen feet (8 - 16 ft).

South Fork Wind - Monitoring Well Summary (February 2022)

On February 21, 2022, the Town Board for East Hampton (*not* South Fork Wind) provided a one-page spreadsheet titled South Fork Wind - Monitoring Well Summary (see Exhibit B).

The Monitoring Well Summary appears to be an attempt to determine whether South Fork Wind's construction plans will impact the Town's *only* drink-water supply, the aquifer.

The summary provided by the Town Board raises more questions than it answers, such as –

1. Why was the Monitoring Well Summary provided by the Town Board and *not* South Fork Wind?
2. Who wrote the Monitoring Well Summary; the Town or South Fork Wind?
3. Why has neither the Town Board nor South Fork Wind provided the supporting laboratory test results that Town Councilwomen Overby and Rogers promised at the Wainscott Citizen's Advisory Committee meeting on February 5, 2022?
4. Why are there *no* PFAS test results for soil (only groundwater)?
5. Why has the Monitoring Well Summary *not* been filed with the New York State Public Service Commission and posted on its website?[7]
6. Why have *no* laboratory test results been filed with the New York State Public Service Commission and posted on its website? [8]

In addition to the questionable Monitoring Well Summary provided by the Town, the one-page document is missing the following –

- *All* laboratory reports (signed by a professionally qualified scientist or laboratory);
- *All* test results for the complete list of standard PFAS analytes;[9]

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[7] See New York State Public Service Commission, Case 18-T-060 (online at dps.ny.gov, click here).

[8] *Ibid.*

[9] Perfluorobutanesulfonic Acid (PFBS), Perfluorodecanoic Acid (PFDA), Perfluorododecanoic Acid (PFDoA), Perfluoroheptanoic Acid (PFHpA), Perfluorohexanesulfonic Acid (PFHxS), Perfluorohexanoic Acid (PFHxA), Perfluorononanoic Acid (PFNA), Perfluorooctane Sulfonic Acid (PFOS), Perfluorooctanoic acid (PFOA), Perfluorotetradecanoic Acid (PFTeA), Perfluorotridcanoic Acid (PFTriA), Perfluoroundecanoic Acid (PFUnA), and 2-(N-methyl perfluorooctanesulfonamido) acetic acid, N-Ethyl-N-((heptadecafluorooctyl) glycine.

- *All* PFAS soil contamination test results;
- Dates when samples were taken for testing where "No Exceedances to DEC criteria" have been noted for respective wells (we are left guessing whether tests were performed in 2021, 2022, or at some other time);
- *Any* location information for what appears to be twelve new monitoring wells (signed by a qualified engineer);
- *Any* sampling plan approved by either NYSDEC or BOEM;
- *Any* sampling or boring test logs (signed by a qualified engineer); and
- The extent of seasonal and long-term fluctuations in groundwater height. The Monitoring Well Summary provides only a snapshot of the depth to groundwater on a given date and fails to account for the change in water table elevation over time.

Of the thirty-two (32) monitoring wells listed –

- Twelve (12) appear to be wells with a new reference number (i.e., the wells do not appear on any prior NYS Public Service Commission filing). Conspicuously, *every* well with a new number is missing a test result for PFAS contamination (whether detectible, undetectable, or below the reporting limit). Each well reads "no sample required."[10]
- Seventeen (17) wells read: "No Exceedances to DEC criteria," nine of which do not specify whether the result relates to a sample taken in a prior year or 2022. The remaining four wells (i.e., MW-6B, MW-7A, and MW-8A) read: "No sample-well dmgd [damaged]." No explanation is given as to why the wells were not repaired or re-bored.
- PFAS test results were provided for three (3) wells and then only for the specific PFAS chemical compound.[11] The results for standard PFAS analytes have not been forthcoming.[9]

The scant information provided in February 2022 goes nowhere near to qualifying and quantifying the extent of PFAS contamination necessary to mitigate the risks South Fork Wind's construction poses to human health and the environment. The Monitoring Well Summary appears to be unprofessional by contrivance.

Limited Scope of Previous Soil Samples

According to South Fork Wind's Environmental Sampling Scope of Work, the "purpose […] is to provide an environmental sampling scope of work […] which includes testing of soils and groundwater to discover if contamination is present" and sampled in accordance with DER-

[10] Eleven of the twelve new wells read "no sample required" in the same row for that well, and the other well (MW-8A REP) reads: "replacement well for MW-8A" where well MW-8A reads "no sample required."

[11] Well-4A (PFOA at 82 ppt), Well-4B (PFOA at 15 ppt; PFOS at 13 ppt), and Well-15A (PFOS at 12 ppt).

10.[12] The sampling scope includes "36 borings along the Town Roads (SB-1A through SB-18B), 28 borings along the LIRR (SB-19A through SB-32B), and five borings at the substation/69 kV line (SB-33A through SB-34C)."[13] In total, South Fork Wind tested soil from fifty-nine (59) wells for a broad range of contaminants. However, it tested only twenty-one (21) wells for PFAS contamination, or thirty-five percent (35%) of the total number of wells.

Of the limited number of soil samples tested for PFAS contamination by South Fork Wind, samples were taken *only* from the shallow surface. For example, one soil sample was taken from the surface, literally, at 0.0 feet (S-1 at Well SB-17B). Of the three wells South Fork Wind tested that are closest to the source of PFAS contamination (at East Hampton Airport), one well was *not* tested for PFAS contamination (Well SB-18B), one well was tested to an average depth of just one foot (1.0 ft) (Well SB-17A), and the other well was tested to an average depth of one foot, four inches (1.3 ft) (Well SB-17B).[14] South Fork Wind's planned excavation should have been tested to a depth ranging from eight feet to at least sixteen feet (8 – 16 ft), and probably deeper.

Up-to-date, South Fork Wind has *never* provided PFAS contamination test results for soil samples taken from a depth that corresponds to the bottom of its planned excavation where PFAS contamination is more likely to be.

Fluctuation in Groundwater Levels

South Fork Wind has *not* taken into account fluctuations in groundwater height.

Over time, the aquifer (groundwater) rises and falls. There is typically a drop in groundwater levels on eastern Long Island towards the end of summer, resulting from farm irrigation withdrawals and families vacationing in the "Hamptons." There are also year-on-year changes caused by changes in climate (e.g., droughts, floods, etc.).

The changes in groundwater levels can be seen in the following two monitoring wells that are located at each end of South Fork Wind's proposed onshore construction corridor –

1. Suffolk County Monitoring Well (S62395.1) at the corner of Wainscott Main Street and Five Rod Highway north of Wainscott Pond. The Wainscott Pond well fluctuates as much as 5 feet (see Fig. 4 at p. 10); and

2. Suffolk County Monitoring Well (S46525.1) at East Hampton Airport. The airport well fluctuates as 8.1 feet (see Fig. 5 at p. 11).[15]

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[12] See Hazardous Waste and Petroleum Work Plan ("HWPWP") – Environmental Sampling Scope of Work, Version 2 ("Sampling Scope of Work"), dated January 2021 (at p. 1.1, third paragraph)

[13] *Id.* (at p. 3.7, section 3.3, first paragraph)

[14] To download a detailed map of Wells SB-17A, SB-17B, and SB-18A, see www.oswSouthFork.info, 60-day Notice of Intent to Sue, Fig. 5 (at p. 13), or Click Here to download a high-resolution image of Fig. 5.

[15] On April 1, 2010, Suffolk County Monitoring Well (S62395.1) recorded a high of 1.71 feet below ground surface (ft bgs) and on August 19, 2002, recorded a low of 6.71 ft bgs. On April 22, 2010, Suffolk County Monitoring Well (S46525.1) recorded a high of 24.18 ft bgs and on December 16, 2013, recorded a low of 32.13 ft bgs.

Changes in groundwater height are essential insofar as PFOA and PFOS are "relatively mobile in groundwater, but tends to associate with the organic carbon fraction of soil[.]"[16] As groundwater rises and falls, PFAS contamination impacts the saturated zone and capillary fringe to varying degrees depending on variables unique to each site. For this reason, thorough *in-situ* testing must be performed.

To measure the depth to groundwater at a given time is to take a snapshot at that instant, but it ignores changes in groundwater level over time. Over the past two decades, groundwater height has been fluctuating, and over the same period, PFAS contamination has been leeching and percolating into groundwater from East Hampton Airport. One moves with the other.

PFAS Characteristics – (specifically PFOA and PFOS)

By design, PFAS contamination "preferentially form films at the air-water interface […]. This behavior […] suggests that PFAS accumulates at water surfaces […] [and] may also influence vadose zone transport, where unsaturated conditions provide significant air-water interfacial area."[17] "This includes the potential for enhanced retention in the vadose zone and the capillary fringe [emphasis added][…] For example, […] adsorption of PFOS and PFOA at the air-water interface can increase the retardation factor for aqueous-phase transport, accounting for approximately 50% of the total retention in a model system (well-sorted sand) with 20% air saturation. As a result, air-water partitioning may contribute to retardation of PFAS in unsaturated soils."[18] Moreover, PFOA and PFOS will tend to adsorb "to interfaces of environmental media such as soil/water […][and] associate with the organic carbon fraction that may be present in soil[.]"[19] In other words, PFOA and PFOS contamination are likely to attach and accumulate where the soil and groundwater interact. Such interaction occurs at the water table, which changes height depending on where the groundwater meets the vadose zone.

South Fork Wind has ignored the nature of PFAS contamination, specifically PFOA and PFOS, and how changes in groundwater height impact contamination concentration levels along its proposed cable route, especially towards the bottom of its planned excavation trench.

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[16] See Interstate Technology & Regulatory Council ("ITRC") Environmental Fate and Transport for Per- and Polyfluoroalkyl Substances, submitted by South Fork Wind in New York State Public Service Commission, Case 18-T-0604 (DMM 198), on October 30, 2020 (available online at dps.ny.gov, click here) (at p. 5, blue shaded dialog box).

[17] See Interstate Technology & Regulatory Council ("ITRC") Environmental Fate and Transport for Per- and Polyfluoroalkyl Substances, submitted by South Fork Wind in New York State Public Service Commission, Case 18-T-0604 (DMM 198), on October 30, 2020 (available online at dps.ny.gov, click here) (at p. 7, final paragraphs).

[18] See ITRC 2020 PFAS Technical and Regulatory Guidance Document and Fact Sheets PFAS-1, Updated August 2021, Section 5.2.4.1 - Partitioning to Air/Water Interfaces (available at https://pfas-1.itrcweb.org/) (at p. 8, second paragraph).

[19] *Id.* (at p. 6, first two paragraphs).

Fig. 4

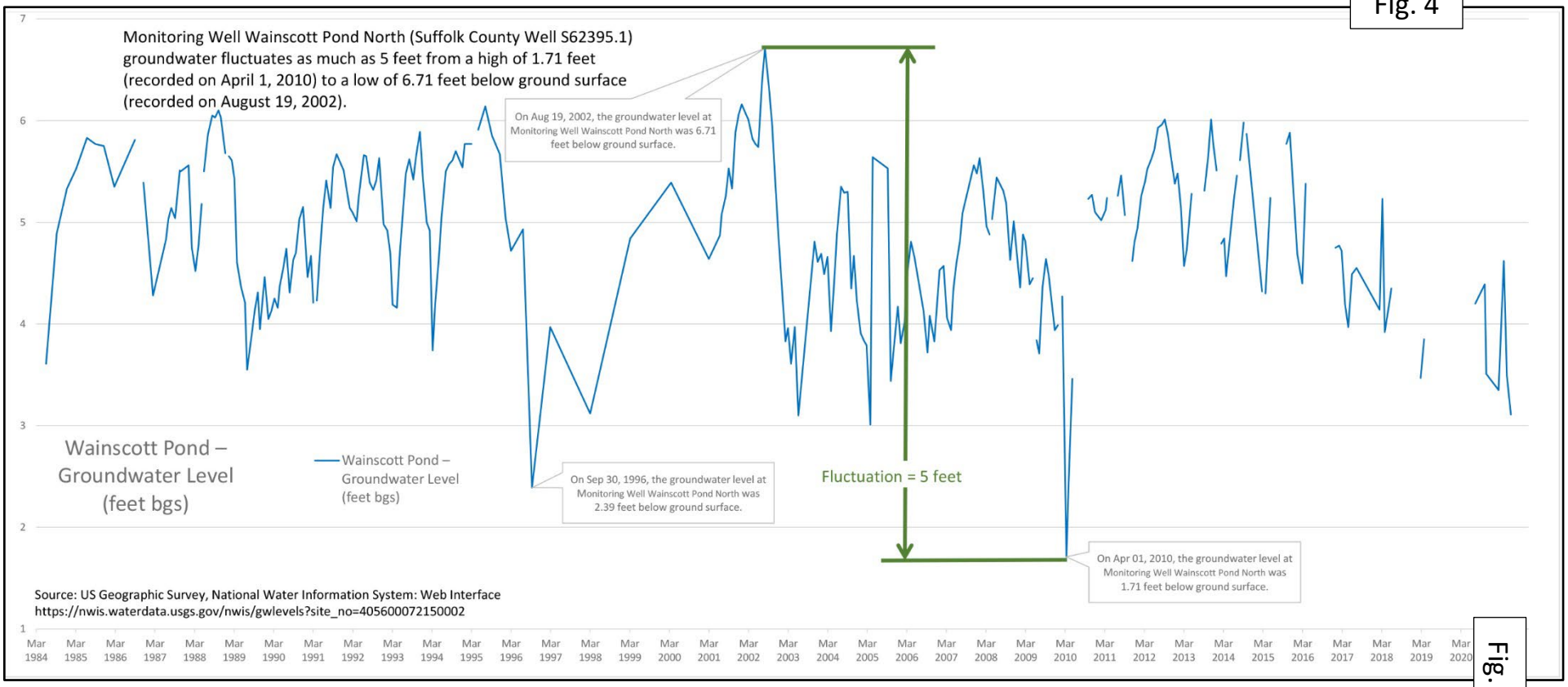
Monitoring Well Wainscott Pond North (Suffolk County Well S62395.1) groundwater fluctuates as much as 5 feet from a high of 1.71 feet (recorded on April 1, 2010) to a low of 6.71 feet below ground surface (recorded on August 19, 2002).
On Aug 19, 2002, the groundwater level at Monitoring Well Wainscott Pond North was 6.71 feet below ground surface.
Wainscott Pond – Groundwater Level (feet bgs)
Wainscott Pond – Groundwater Level (feet bgs)
On Sep 30, 1996, the groundwater level at Monitoring Well Wainscott Pond North was 2.39 feet below ground surface.
Fluctuation = 5 feet
On Apr 01, 2010, the groundwater level at Monitoring Well Wainscott Pond North was 1.71 feet below ground surface.
Source: US Geographic Survey, National Water Information System: Web Interface
https://nwis.waterdata.usgs.gov/nwis/gwlevels?site_no=405600072150002
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Fig. 4

Fig. 5

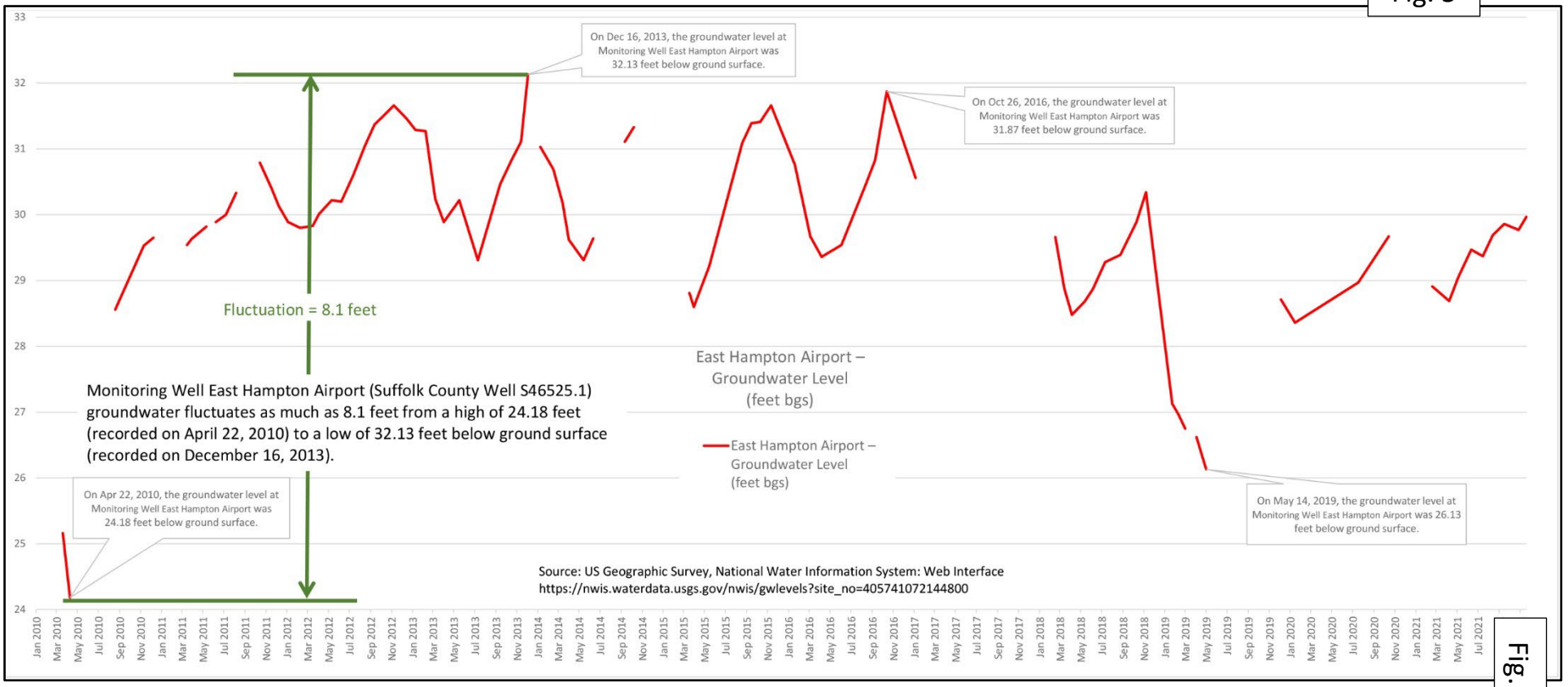
On Dec 16, 2013, the groundwater level at Monitoring Well East Hampton Airport was 32.13 feet below ground surface.
On Oct 26, 2016, the groundwater level at Monitoring Well East Hampton Airport was 31.87 feet below ground surface.
Fluctuation = 8.1 feet
East Hampton Airport – Groundwater Level (feet bgs)
Monitoring Well East Hampton Airport (Suffolk County Well S46525.1) groundwater fluctuates as much as 8.1 feet from a high of 24.18 feet (recorded on April 22, 2010) to a low of 32.13 feet below ground surface (recorded on December 16, 2013).
East Hampton Airport – Groundwater Level (feet bgs)
On Apr 22, 2010, the groundwater level at Monitoring Well East Hampton Airport was 24.18 feet below ground surface.
On May 14, 2019, the groundwater level at Monitoring Well East Hampton Airport was 26.13 feet below ground surface.
Source: US Geographic Survey, National Water Information System: Web Interface
https://nwis.waterdata.usgs.gov/nwis/gwlevels?site_no=405741072144800
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Fig. 5

Three Examples - Wells SB/MW-7A and 8A, and Well SB-16A

Just three of approximately thirty wells are discussed here by way of example. Two wells on Wainscott Stone Road, Wells SB/MW-7A and 8A, are near a hollow that drains into a tributary of Georgia Pond, Goose Creek (see Fig. 7 at p. 15). The third, Well SB-16A, is located on Wainscott NW Road near a depression that runs into a multi-use industrial site, Wainscott Sand and Gravel (see Fig. 8 at p. 16).

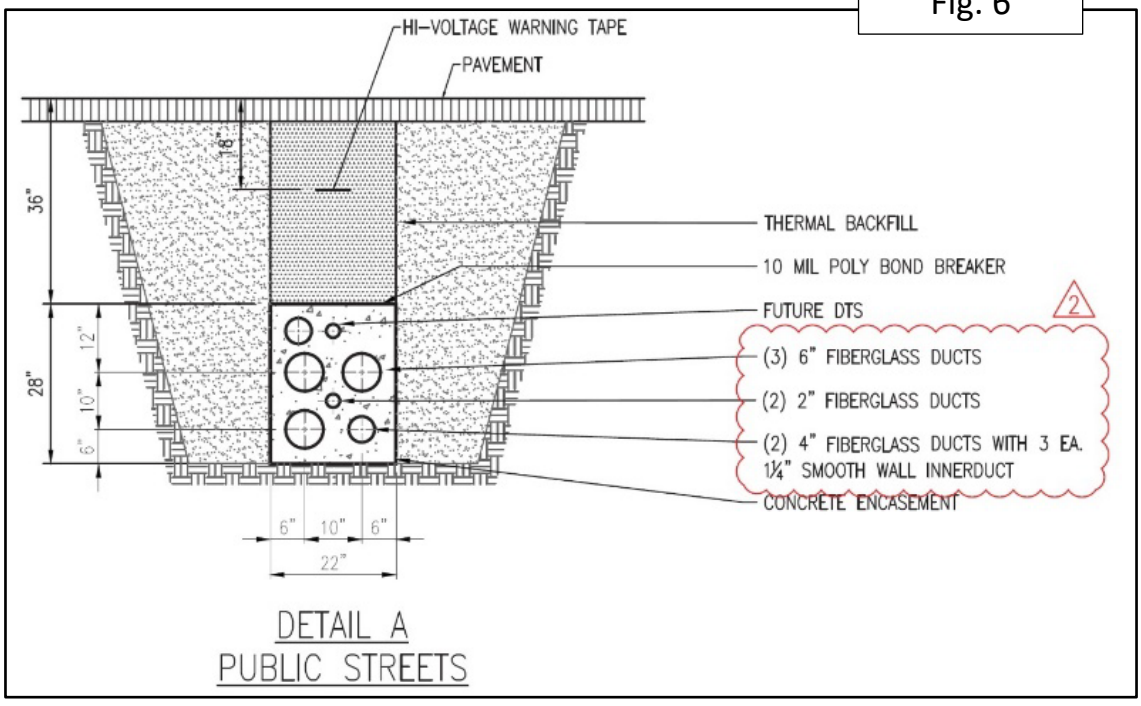
The areas shaded dark blue at the bottom of Figures 7 and 8 represent the level of groundwater when South Fork Wind measured wells in January 2021. The areas immediately above the groundwater level shaded light blue represent the degree to which the water table may have risen and fallen. In low-lying areas near the southern shoreline, the water table fluctuates as much as five feet (5 ft) based on the change in water level observed at NYSDEC Well S-62395.1 located just north of Wainscott Pond (see Fig. 4 at p. 10). In the area north of Montauk Highway approaching East Hampton Airport, the water table fluctuates as much as eight feet (8.1 ft) based on the change in water level observed at NYSDEC Well S-46525.1 located at East Hampton Airport (see Fig. 5 at p. 11).

Excavation Depth for Soil and Groundwater Testing Purposes

The depth of South Fork Wind's excavation for its duct banks has been taken from its recent revision to its Environmental Management and Construction Plan ("EM&CP") submitted to the NYSPSC on February 15, 2022 (see Fig. 6, Drawing #40A, below). The depth from the paved surface of the right-of-way to the base of the concrete encasement is 64 inches or 5⅓ feet.

In Figures 7 and 8, duct bank depth to the bottom of the concrete encasement is marked as a dashed green line (e.g. ----- 5⅓ feet -----).

Fig. 6



According to South Fork Wind's Hazardous Waste and Petroleum Work Plan ("HWPWP"), Part 2, Attachment C – Soil Volume Calculations (revised October 8, 2020) Excavation Volumes for Permitting, only the allowance of 10% or seven inches (7") for "Bulk Volume" has been added below the concrete encasement.

According to the P&P Drawing Notes (see Existing Underground Utilities, No. 8): "ALL TEST EXCAVATIONS SHALL EXTEND TO NOT LESS THAN 2 FEET BELOW THE PLANNED CONSTRUCTION EXCAVATION DEPTH." Although the stipulation applies to utility lines "(IE WATER, SEWER, TELEPHONE, ELECTRIC COMMUNICAIONTS [*sic*]/CABLE ETC)," it is clear that South Fork Wind expects to encounter the utilities, especially given that it identifies sixteen (16) locations where it expects to find such utilities. South Fork Wind requires test excavations to a depth of two feet (2 ft) below the planned excavation depth and, therefore, should also test soil and ground to that depth.

Therefore, the total excavation depth for testing soil and groundwater PFAS contamination is 7.9 feet or 95 inches.[20] In Figures 7 and 8, the total duct bank excavation depth is marked as a dashed red line (e.g. ----- 8 feet -----).

An excavation depth of around 8 feet for soil and groundwater testing purposes is consistent with South Fork Wind's Article VII Application that says its high voltage power cables "will be installed within a new underground duct bank in the public road right-of-way (ROW) […] within a four foot wide by eight foot deep trench."[21] Acting counsel for the Town, John Wagner, informed the Town Board (on September 8, 2020) that splicing vaults could even go as deep as "sixteen to twenty feet" below ground surface. Furthermore, the Construction and Operation Plan South Fork Wind filed with BOEM in May 2021 reads: "The SFEC - Onshore will be installed within the ROW of the existing roadways or the ROW of the LIRR. Existing pavement, gravel, or dirt will be removed and a trench of up to 4 feet (1.2 m) wide and 8 feet (2.4 m) deep will be excavated [emphasis added]."[22] Moreover, South Fork Wind confirms that "ground disturbance associated with cable burial will be limited primarily to […] the Paved Road […] Adequate workspace to accommodate an open trench of up to 4 ft wide by 8 ft deep […] exists within the paved roads and the adjacent road shoulders."[23]

Analysis of Wells SB/MW-7A and 8A, and Well SB-16A –

See Figure 7 (at p. 14) for engineering drawings and notes on Wells SB/MW-7A and 8A. For Well SB-16A, see Figure 8 (at p. 15).

[20] Duct bank depth to the bottom of the concrete encasement (64 inches or 5⅓ feet), in addition to a "Bulk Volume" allowance of 10% or seven inches (7"), and two feet (2 ft) for Test Excavations.

[21] See South Fork Wind's Article VII Application, Section E-3.2.2 Land Cable (at p. E-3-4)

[22] See South Fork Wind's Construction and Operation Plan ("COP"), Revised May 7, 2021, Section 3.2.3.5 South Fork Export Cable – Onshore (at p. 3-51 or 167 of 630).

[23] See South Fork Wind EM&CP, South Fork Export Cable, Section 4.5.1 - Summary of Existing Conditions and Impacts, issued September 2021 (at p. 115, 4th paragraph).

(a) The Splicing vault, MH-03 (in Fig. 7), indicates a depth of ten feet, nine inches (10¾ ft), which appears to be a minor variation of seven inches (7 in) from the construction drawings that shows a depth of eleven feet, four inches (11⅓ ft).[24]

(b) To the bottom right-hand side (of Fig. 7) is a Water Main (16 inches) that intersects with the duct bank. It appears that South Fork Wind will have to lower its duct bank by four feet farther into the groundwater to avoid the large water main. Also, the water main is identified as Test Pit # 6, which further highlights the need for testing soil and groundwater at least two feet underneath the lowest point of planned excavation.

(c) South Fork Wind does *not* quantify groundwater depth (below grade) in Well SB-16A. Therefore, Well MW4, which is approximately one and fifty feet (150 ft) downgradient from Well SB-16A, has been used to calculate the depth to groundwater level. Well MW4 has an absolute groundwater elevation of 9.9 feet, but the elevation is *not* relative to the ground surface: "groundwater elevations are shown in ft AMSL [Above Mean Sea Level]."[25] On the other hand, South Fork Wind uses feet NAVD88 to measure groundwater levels below grade. NOAA's Online Vertical Datum Transformer converted 9.9 ft AMSL to 9.6 ft NAV88. Therefore, the depth to groundwater for Well SB-16A is 14.9 ft NAVD88 (i.e., surface elevation of 24.52 ft NAVD88 less absolute groundwater level of 9.6 ft NAVD88).

(d) CONCLUSION: Duct Bank Testing Depth for Well SB/MW-8A (see Fig. 7) – South Fork Wind's planned excavation encroaches into the existing water-table near Well SB/MW-8A by more than two feet (2ft), and by more than seven feet (7 ft) into soil that at some time over the last twenty years constituted part of the water-table. When taking into account unsaturated soil at the "capillary fringe" (of the water-table), the depth of soil likely to be affected by PFAS contamination is around eight feet (8 ft), in which case soil should be tested to a minimum depth of eight feet (8 ft) below grade.[26] Moreover, it appears as though the duct bank at Well SB/MW-8A will have to be sunk deeper than that specified in South Fork Wind's P&P Drawing to avoid a 16-inch Water Main Line. Therefore, excavation will encroach more than eleven feet (11 ft) into soil likely affected by PFAS contamination, in which case the soil should be tested to a minimum depth of thirteen feet (13 ft) below grade.

(e) CONCLUSION: Duct Bank Testing Depth for Well SB-16A (see Fig. 8) – South Fork Wind's planned excavation encroaches into the soil by at least one and a half feet (1½ ft) that at some time over the last twenty years constituted part of the water-table. When taking into account unsaturated soil at the capillary fringe, the depth of soil likely to be affected by PFAS contamination is more than two feet (2 ft). Therefore, the soil should be tested to a minimum depth of eight feet (8 ft) below grade.

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[24] See South Fork Wind NYSPSC Article VII Application, Exhibit 5, Fig 5, 2-1.

[25] See Wainscott Sand & Gravel Site Characterization Report by HDR, NYSDEC Code 152254, published July 2020 (at p. 91 of 631).

[26] See ITRC 2020 PFAS Technical and Regulatory Guidance Document and Fact Sheets PFAS-1, Updated August 2021, Section 5.2.4.1 - Partitioning to Air/Water Interfaces (available at https://pfas-1.itrcweb.org/) (at p. 8, second paragraph).

Fig. 7

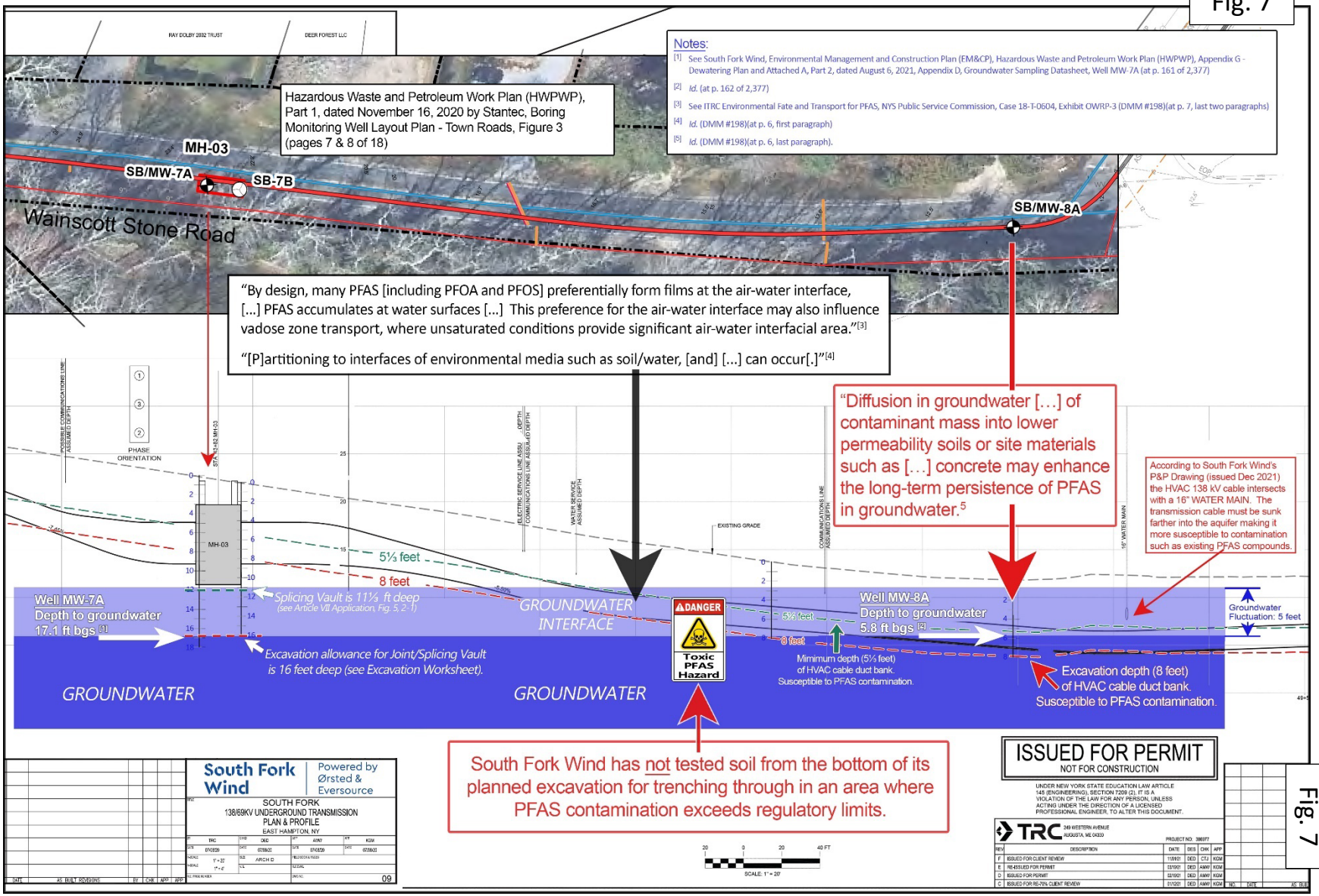
Hazardous Waste and Petroleum Work Plan (HWPWP), Part 1, dated November 16, 2020 by Stantec, Boring Monitoring Well Layout Plan - Town Roads, Figure 3 (pages 7 & 8 of 18)
Notes:
[1] See South Fork Wind, Environmental Management and Construction Plan (EM&CP), Hazardous Waste and Petroleum Work Plan (HWPWP), Appendix G - Dewatering Plan and Attached A, Part 2, dated August 6, 2021, Appendix D, Groundwater Sampling Datasheet, Well MW-7A (at p. 161 of 2,377)
[2] Id. (at p. 162 of 2,377)
[3] See ITRC Environmental Fate and Transport for PFAS, NYS Public Service Commission, Case 18-T-0604, Exhibit OWRP-3 (DMM #198)(at p. 7, last two paragraphs)
[4] Id. (DMM #198)(at p. 6, first paragraph)
[5] Id. (DMM #198)(at p. 6, last paragraph).
MH-03
SB/MW-7A
SB-7B
SB/MW-8A
Wainscott Stone Road
"By design, many PFAS [including PFOA and PFOS] preferentially form films at the air-water interface, [...] PFAS accumulates at water surfaces [...] This preference for the air-water interface may also influence vadose zone transport, where unsaturated conditions provide significant air-water interfacial area."[3]
"[P]artitioning to interfaces of environmental media such as soil/water, [and] [...] can occur[.]"[4]
"Diffusion in groundwater […] of contaminant mass into lower permeability soils or site materials such as […] concrete may enhance the long-term persistence of PFAS in groundwater.[5]
According to South Fork Wind's P&P Drawing (issued Dec 2021) the HVAC 138 kV cable intersects with a 16" WATER MAIN. The transmission cable must be sunk farther into the aquifer making it more susceptible to contamination such as existing PFAS compounds.
5⅓ feet
8 feet
Well MW-7A
Depth to groundwater
17.1 ft bgs [1]
Splicing Vault is 11⅓ ft deep
(see Article VII Application, Fig. 5, 2-1)
Excavation allowance for Joint/Splicing Vault is 16 feet deep (see Excavation Worksheet).
GROUNDWATER
GROUNDWATER INTERFACE
DANGER
Toxic PFAS Hazard
Well MW-8A
Depth to groundwater
5.8 ft bgs [2]
5⅓ feet
8 feet
Mimimum depth (5⅓ feet) of HVAC cable duct bank. Susceptible to PFAS contamination.
Excavation depth (8 feet) of HVAC cable duct bank. Susceptible to PFAS contamination.
Groundwater Fluctuation: 5 feet
GROUNDWATER
South Fork Wind has not tested soil from the bottom of its planned excavation for trenching through in an area where PFAS contamination exceeds regulatory limits.
South Fork Wind
Powered by Ørsted & Eversource
SOUTH FORK 138/69KV UNDERGROUND TRANSMISSION PLAN & PROFILE EAST HAMPTON, NY
ISSUED FOR PERMIT
NOT FOR CONSTRUCTION
TRC
Fig. 7

Fig. 8

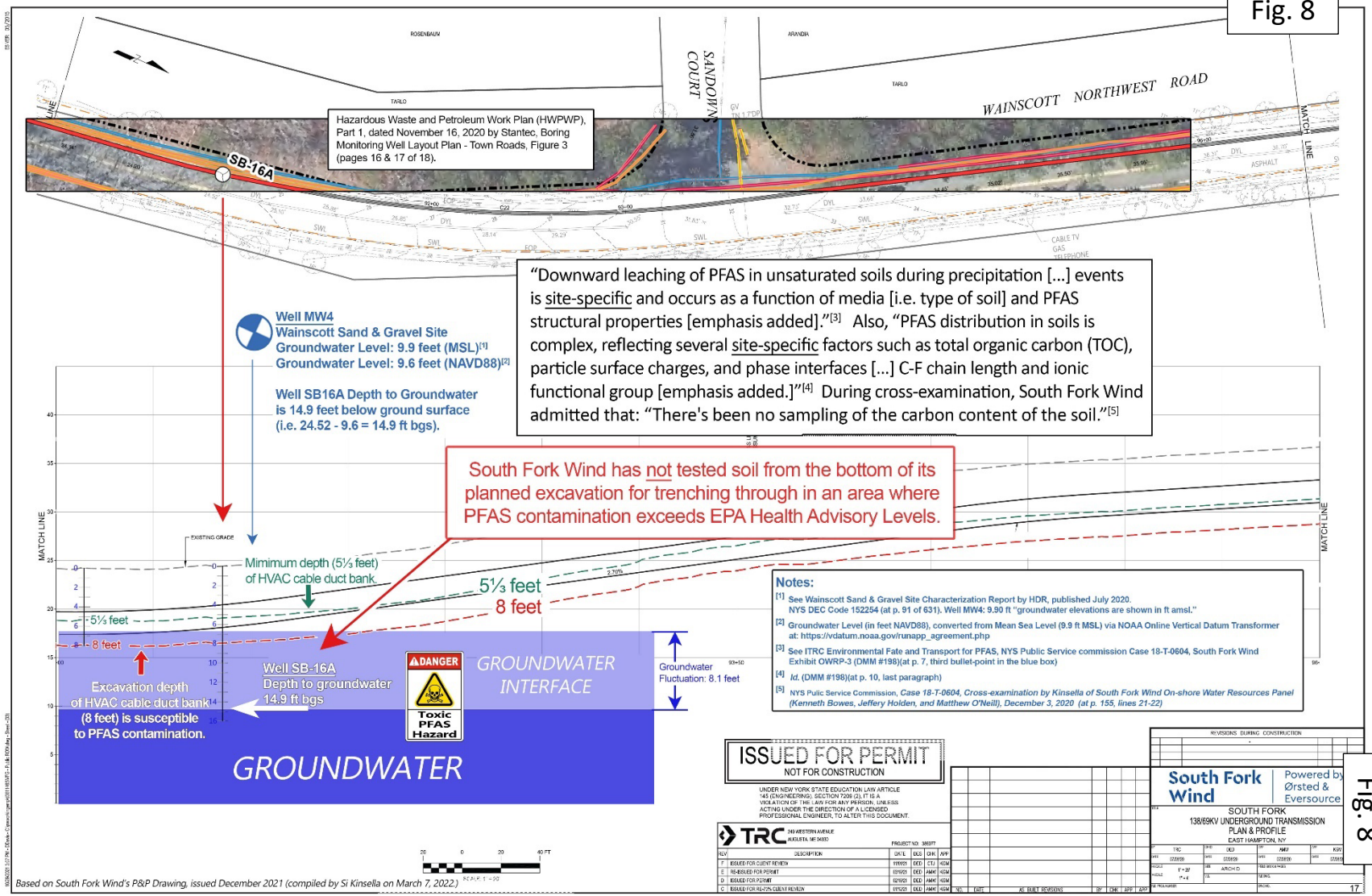
Hazardous Waste and Petroleum Work Plan (HWPWP), Part 1, dated November 16, 2020 by Stantec, Boring Monitoring Well Layout Plan - Town Roads, Figure 3 (pages 16 & 17 of 18).
SB-16A
WAINSCOTT NORTHWEST ROAD
SANDOWN COURT
"Downward leaching of PFAS in unsaturated soils during precipitation [...] events is site-specific and occurs as a function of media [i.e. type of soil] and PFAS structural properties [emphasis added]."[3] Also, "PFAS distribution in soils is complex, reflecting several site-specific factors such as total organic carbon (TOC), particle surface charges, and phase interfaces [...] C-F chain length and ionic functional group [emphasis added.]"[4] During cross-examination, South Fork Wind admitted that: "There's been no sampling of the carbon content of the soil."[5]
Well MW4
Wainscott Sand & Gravel Site
Groundwater Level: 9.9 feet (MSL)[1]
Groundwater Level: 9.6 feet (NAVD88)[2]
Well SB16A Depth to Groundwater is 14.9 feet below ground surface (i.e. 24.52 - 9.6 = 14.9 ft bgs).
South Fork Wind has not tested soil from the bottom of its planned excavation for trenching through in an area where PFAS contamination exceeds EPA Health Advisory Levels.
Mimimum depth (5⅓ feet) of HVAC cable duct bank.
5⅓ feet
8 feet
Excavation depth of HVAC cable duct bank (8 feet) is susceptible to PFAS contamination.
Well SB-16A
Depth to groundwater 14.9 ft bgs
DANGER
Toxic PFAS Hazard
GROUNDWATER INTERFACE
Groundwater Fluctuation: 8.1 feet
GROUNDWATER
Notes:
[1] See Wainscott Sand & Gravel Site Characterization Report by HDR, published July 2020. NYS DEC Code 152254 (at p. 91 of 631). Well MW4: 9.90 ft "groundwater elevations are shown in ft amsl."
[2] Groundwater Level (in feet NAVD88), converted from Mean Sea Level (9.9 ft MSL) via NOAA Online Vertical Datum Transformer at: https://vdatum.noaa.gov/runapp_agreement.php
[3] See ITRC Environmental Fate and Transport for PFAS, NYS Public Service commission Case 18-T-0604, South Fork Wind Exhibit OWRP-3 (DMM #198)(at p. 7, third bullet-point in the blue box)
[4] Id. (DMM #198)(at p. 10, last paragraph)
[5] NYS Pulic Service Commission, Case 18-T-0604, Cross-examination by Kinsella of South Fork Wind On-shore Water Resources Panel (Kenneth Bowes, Jeffery Holden, and Matthew O'Neill), December 3, 2020 (at p. 155, lines 21-22)
ISSUED FOR PERMIT
NOT FOR CONSTRUCTION
South Fork Wind
Powered by Ørsted & Eversource
SOUTH FORK
138/69KV UNDERGROUND TRANSMISSION
PLAN & PROFILE
EAST HAMPTON, NY
Based on South Fork Wind's P&P Drawing, issued December 2021 (compiled by Si Kinsella on March 7, 2022.)

Fig. 8

(f) Splicing Vault Testing Depth: Well SB/MW-7A and SB-7B (see Fig 7) – South Fork Wind's planned excavation pit for Splicing Vault MH-03 corresponds to Wells SB/MW-7A and SB-7B. Vault MH-03 will be installed beneath Wainscott Stone Road on a gradient higher towards the western end of the vault at Well SB/MW-7A and lower at the eastern end at Well SB-7B.

Splicing Vault MH-03 is eleven feet, four inches deep (11⅓ ft), with a total planned excavation depth of sixteen feet (16 ft).

The eastern end of the vault (at Well SB-7B) will encroach into the existing unsaturated soil at the capillary fringe and, therefore, be affected by current groundwater levels. In addition, the Vault will advance by around five feet (5 ft) into soil that, at some time over the past twenty years constituted part of the water table. The soil at the eastern end of the Vault MH-03 should be tested for PFAS to a minimum depth of sixteen feet (16 ft) below grade level.

The soil at the western end of the Vault MH-03 corresponding to Well SB/MW-7A should be tested for PFAS contamination to a minimum depth of seventeen feet (17 ft) below grade level.

Diffusion of PFAS Contamination

"Diffusion is the movement of molecules in response to a concentration gradient […] contaminant mass in groundwater can diffuse into the pore space of lower permeability soils […] Back-diffusion out of these low permeability materials may result in the long term persistence of PFAS in groundwater even after source removal and remediation." [27]

The process of "diffusion can strongly influence the migration of PFAS within and between media." "Diffusion in groundwater […] of contaminant mass into lower permeability soils or site materials such as […] concrete may enhance the long-term persistence of PFAS in groundwater [emphasis added]. For instance, at one site, PFAS penetrated 12 cm into a concrete pad at a fire training area, and diffusion was a contributing process […]." [28]

In Figure 7 (at p. 14 above), South Fork Wind's proposed duct bank is a concrete barrier that will interrupt the natural flow of groundwater into Goose Creek (Georgica Pond). The concrete duct bank has a lower permeability than the surrounding soil/sand particles and groundwater. Over time, PFAS contaminant mass may diffuse and accumulate in the concrete duct bank and enhance the long-term persistence of PFAS contamination. Then, through a

[27] See ITRC 2020 PFAS Technical and Regulatory Guidance Document and Fact Sheets PFAS-1, Updated August 2021, Section 5.3.1 Diffusion In and Out of Lower Permeability Materials (available at https://pfas-1.itrcweb.org/) (at p. 9 of 23, first paragraph).

[28] See ITRC Environmental Fate and Transport for Per- and Polyfluoroalkyl Substances, submitted by South Fork Wind in NYSPSC Case 18-T-0604 (DMM 198) on October 30, 2020, Section 3.2 - Transport (available online at dps.ny.gov, click here) (at p. 6).

process of back-diffusion, where "PFAS dissolved in groundwater that accumulated in lower permeability silt/clay layers [or concrete as discussed above] below the water table may diffuse into the higher permeability zones due to changing relative concentrations[.]" [29]

South Fork Wind has failed to take into account the characteristics of PFAS contamination and the effects its construction will probably have in enhancing and pro-longing further environmental damage.

Existing PFAS Contamination

PFAS contamination exceeding regulatory limits

Beach Lane Well MW-4A had detectible levels of PFOA groundwater contamination at a level of 50 ng/L (sampled January 14, 2021) and 82 ng/L (sampled February 2022). Both levels exceed the NYS Maximum Contamination Level of 10 ng/L for PFOA contamination – by five times (5x) and eight times (8x), respectively.

Well, MW-4B, which is nearby MW-4A, had a detectible level of PFOA and PFOS groundwater contamination of 15 ng/L and 13 ng/L, respectively (both sampled February 2022). The levels exceed the NYS MCL of 10 ng/L.

Wainscott NW Road Well SB/MW-15A had detectible levels of PFOS groundwater contamination of 14.7 ng/L (sampled January 18, 2021) and 12 ng/l (sampled February 2022).

Although some levels of PFAS contamination were detected, South Fork Wind's test results for PFOA and PFOS were inconclusive because the soil samples avoided areas of probable PFAS contamination.

Concerningly, South Fork Wind's P&P Construction Drawings mislead contractors into believing that "NO CONTAMINATED SOILS HAVE BEEN FOUND ALONG THE PROJECT ROUTE." In fact, South Fork Wind does not know whether PFAS contamination exists towards the bottom of its trench because it has *not* tested the soil.

Furthermore, contractors have been issued the following instruction: "QUESTIONABLE MATERIAL SHALL BE SEGREGATED AND STOCKPILED ON AN IMPERVIOUS SURFACE UNTIL TESTED." [30] If contractors encounter contaminated material on a windy day, soil, dust, and debris may spread on the wind and degrade adjoining properties.

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[29] See ITRC 2020 PFAS Technical and Regulatory Guidance Document and Fact Sheets PFAS-1, Updated August 2021, Section 10.3.2 Nature of PFAS Sources (available at https://pfas-1.itrcweb.org/) (at p. 8, 2nd bullet point).

[30] See Notes to South Fork Wind's Revised P&P Drawing, issued Feb 14, 2022, GENERAL NOTES (#2)

Wainscott Stone Road (Well SB/MW-8A)

On January 13, 2022, GZA GeoEnvironmental, Inc. ("GZA") sampled soil from the Wainscott Stone Road Well SB/MW-8A. PFOA was detected in soil at a 0.063 ug/kg concentration level. The result was flagged with a "J," that "indicates the result is less than the RL [reporting limit] but greater than or equal to the MDL [method detection limit] and the concentration is an approximate value." Although the detectible concentration was below the reporting limit (of 0.20 ug/kg for PFOA), the result was in bold typeface, indicating that the "constituent was detected *above* the laboratory reporting limit." Irrespective of PFOA's contradictory result, it is identified as "an approximate value."[31] PFOS soil contamination was not recorded as it was less than the reporting limit of 0.23 ng/L. The results are inconclusive.

GZA also sampled groundwater from Well SB/MW-8A on January 13, 2022. PFOA contamination was detected in groundwater at a concentration level of 3.30 ng/L, and PFOS contamination was 2.64 ng/L. The contamination levels are below New York State's Maximum Contamination Level ("MCL") of 10 ng/L.

In February 2022, the Town of East Hampton provided the Monitoring Well Summary stating that Well SB/MW-8A was damaged and that it had been replaced with Well MW-8A REP. *No* PFAS results have been provided for either groundwater or soil.

Note: The level of PFOS contamination detected in groundwater at Well SB/MW-8A (of 2.64 ng/L) would have exceeded NYSDEC's proposed new groundwater Guidance Value (of 2.6 ng/L). The level of PFOA detected in groundwater (of 3.30 ng/L) is below the proposed new groundwater Guidance Value (of 6.7 ng/L).

Suppose South Fork Wind installed its duct bank as proposed and impede the natural groundwater flow into Georgica Pond. In that case, PFOA and PFOS would probably diffuse and accumulate at the duct bank and enhance the long-term persistence of PFAS entering Georgica pond. Furthermore, in time the underground duct bank will likely become a secondary source of contamination through the process of back-diffusion.

Wainscott Stone Road (Well SB/MW-7A)

In January 2021, GZA did *not* test soil from Well SB/MW-7A or Well SB -7B for *any* PFAS contamination.

GZA sampled groundwater from Well SB/MW-7A on January 13, 2022. The level of PFOA (8.58 ng/L) and PFOS (2.20 ng/L) were both below NYS's MCL of 10 ng/L. However, the level of PFOA contamination (of 8.58 ng/L) would have exceeded NYSDEC's proposed new groundwater Guidance Value (of 6.7 ng/L).

[31] See New York State Public Service Commission, Case 18-T-060 (online at dps.ny.gov, click here), Appendix G – Dewatering Plan Part 2 (at p. 1,306 of 2,377)

In February 2022, the Monitoring Well Summary provided by the Town stated that Well SB/MW-7A had been damaged and was replaced with Well MW-7A REP and that no sample was required on the basis that groundwater was *not* "anticipated." *No* PFAS results have been provided for soil. Well SB -7B was *not* tested for PFAS contamination.

Wainscott Northwest Road (Well SB -16A)

On January 11, 2021, GZA tested soil from the shallow surface of Well SB-16A. Despite a planned excavation depth of eight feet (8 ft), South For Wind's contractors took three samples at an average depth of only twenty inches (20 inches). Soil towards the bottom of the trench has *not* been tested. PFAS concentration levels were undetectable. Groundwater was *not* tested for PFAS contamination.

No PFAS results were provided for Well SB-16A in February 2022.

PFAS Contamination Testing Requirements

On March 18, 2021, the New York State Public Service Commission ("NYSPSC") granted a Certificate to South Fork Wind with conditions.[32] At least three of those conditions mandate that South Fork Wind must comply with NYSDEC's Division of Environmental Remediation ("DER") Technical Guidance for Site Investigation and Remediation ("DER-10").[33] To download NYSDEC DER-10 (click here).

[32] The legality of the Commission's Order Adotping Joint Proposal of March 18, 2021, granting South Fork Wind LLC a Certificate pursuant to Article VII of New York State Public Service Law is subject to three legal challenges. Two legal proceedings have been filed in the Supreme Court of New York State, Appellate Division, Second Department, *Simon V. Kinsella v. NYS Pub. Serv. Commission, et al.* (index no. 06572/2021), and *Citizens for the Preservation of Wainscott, Inc. v. NYS Pub. Serv. Commission, et al.* The third is a complaint filed in the New York State Supreme Court, *Simon V. Kinsella v. Long Island Power Authority, et al.* (index no. 000613/2021). The lower court judges have not ruled on any motions in any of the pending cases for many months. South Fork Wind is proceeding in violation of New York State Law.

[33] Condition No. 52 requires that South Fork Wind provide "a Final Hazardous Waste and Petroleum Work Plan for ***the entire SFEC-Onshore route*** for testing and treatment and/or disposal of soil and groundwater [emphasis added][…] consistent with NYSDEC guidance as set forth in […] DER-10 […] and must include […][a] report of the Initial Hazardous Waste and Petroleum Work Plan consistent with reporting requirements of DER-10[.]" See Order Adotping Joint Proposal (at p. 235-236 of 353), Proposed Certificate Conditions (at p. 22-23). Condition No. 101 requires that South Fork Wind "conform to practices and procedures described in the DER-10 […]." See Order Adotping Joint Proposal (at p. 229 of 353), Proposed Certificate Conditions (at p. 44). Initial Hazardous Waste and Petroleum Work Plan incorporated as Appendix H to Order Adotpting Joint Proposal (of March 18, 2021) reads (at p. 335 of 353): "[a]ll sampling activities must be performed in a manner consistent with NYSDEC guidance including, but not limited to, NYSDEC's Guidelines for Sampling and Analysis of […] Per- and Polyfluoroalkyl Substances ("PFAS") and Technical Guidance for Site Investigation and Remediation ("DER-10") in effect at the time of sampling." See Order Adotping Joint Proposal (at p. 335 of 353), Initial Hazardous Waste and Petroleum Work Plan (at p. 1)

DER-10 "sets forth guidance for characterization of a site[,]"[34] the purpose of which "is to identify potentially contaminated areas at a site."[35] Further, DER-10 "is designed to determine whether a site poses little or no threat to public health and the environment or if it poses a threat and whether the threat requires further investigation."[36] Under DER-10, South Fork Wind is legally obligated to determine the breadth and depth of probable contamination, including PFAS contamination of soil and groundwater along its "entire"[2] proposed Cable Route A construction corridor.

DER-10 requires that South Fork Wind determine subsurface site characteristics, including soil carbon content,[37] hydrogeology (depth to groundwater, groundwater flow), and identify the sources of contamination and migration pathways. Moreover, Certificate condition number forty-four (44) requires that South Fork Wind provide an "evaluation of any known or suspected contaminated sites […] and the expected maximum concentrations of the contaminants[.]"[38]

Furthermore, "PFAS samples shall be collected from visibly impacted soil or directly above the groundwater table."[39]

South Fork Wind's strict adherence to NYSDEC's protocols is of particular importance given its plans for extensive underground construction and excavation work along a two-mile-long corridor, one mile of which runs in between and adjacent to two State Superfund Sites – East Hampton Airport and Wainscott Sand & Gravel (see Exhibit C).

Instead of complying with its legal obligations, South Fork Wind delayed testing soil and groundwater until *after* the Public Service Commission evidentiary hearing had closed, thereby avoiding examination, cross-examination of witnesses, administrative review, and public scrutiny of its standards of testing and test results.

South Fork Wind is legally required to sample and test soil and groundwater for probable contaminants such as PFOA and PFOS and delineate its nature and full extent.

Instead of sampling soil where suspected contamination would likely be, South Fork Wind sampled soil at locations and depths that <u>avoided</u> probable PFAS contamination.

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[34] NYSDEC Technical Guidance for Site Investigation and Remediation ("DER-10") of May 2010, Section 3.1 (a) (at p. 55)

[35] *Id.* Section 3.1 (a) (2)

[36] *Id.* Section 3.1 (a) (1)

[37] Unless otherwise provided in a DER-approved work plan, the Lloyd Kahn method must be used for the determination of total organic carbon in soil and sediment. (See DER-10 Technical Guidance for Site Investigation and Remediation, May 2010 (at p. 44, paragraph 4).

[38] See Order Adotping Joint Proposal (at p. 229 of 353), Proposed Certificate Conditions, Certificate Conditions No. 44 (at p. 16).

[39] Initial Hazardous Waste and Petroleum Work Plan – South Fork Export Cable, Environmental Sampling Scope of Work, dated January, 2021 (at p. 3.9, section 3.4.2, first paragraph)

South Fork Wind has no plan for handling, storing, treating, or transporting hazardous waste through a residential neighborhood and along Montauk Highway to a registered hazardous waste disposal site off Long Island. How can it have such a plan when it does *not* know what or how much contamination is there? For example, South Fork Wind would *not* know the quantity of contaminated groundwater that may have to be removed from Beach Lane (where PFOA groundwater contamination exceeds regulatory limits by eight times in Well-MW-4A). The soil has *not* been tested, so South Fork Wind would *not* know whether it has to be removed or whether construction workers are exposing themselves to contamination.

Residents were promised a "full environmental review will be undertaken as part of the Public Service Commission" proceeding that includes an "in-depth environmental and economic analysis[.]" [40] However, the (so-called) in-depth environmental review did *not* include testing soil or groundwater from South Fork Wind's planned construction corridor for *any* contaminants, including PFAS contamination. For three years, South Fork Wind refused to conduct such tests, preferring to wait until the Public Service Commission evidentiary record had closed.[41]

Notably, neither the Town nor the NYS Public Service Commission has ever hired an independent expert in environmental chemistry, organic chemistry, geology, geochemistry, hydrology, etc., to advise it on the migration and mitigation or remediation of known PFAS contamination. Without expert advice, the town and state cannot effectively provide oversight. Without oversight, South Fork Wind is permitted to make decisions concerning the health of residents where it has neither the obligation nor incentive to act in the interests of anyone other than its shareholders.

Disturbingly, the Environmental Investigation Report for South Fork Wind's proposed onshore construction corridor (revised April 2021) compares groundwater laboratory results to EPA Drinking Water Health Advisory Level for combined PFOA and PFOS;[42] and New York State's Drinking Water Maximum Contaminant Level, but for only 1,4 dioxane, not PFOA or PFOS. It suggests that South Fork Wind is *not* complying with New York State Law regarding state limits for PFOA and PFOS. South Fork Wind gives no reason to exclude New York State's Drinking Water Standards from its comparative analysis of PFOA and PFOS contamination concentration levels but includes other contaminants.[43]

The Source of PFAS Contamination

The principal source of PFAS contamination is the Town-owned East Hampton Airport (located in Wainscott, New York State). In June 2019, NYSDEC registered East Hampton

[40] Town of East Hampton, Town Board Resolution 2018-888, dated July 19, 2018.

[41] South Fork Wind commenced testing its four-mile-long construction site on December 22, 2020, two weeks after the evidentiary record had closed on December 8, 2020.

[42] PFOA or perfluorooctanoic acid, and PFOS or perfluorooctane sulfonate.

[43] See ENVIRONMENTAL INVESTIGATION REPORT, South Fork Wind Export Cable, Revised April 2021, prepared for Deepwater Wind South Fork LLC by GZA GeoEnvironmental of New York, section 4.0 (at p. 6).

Airport as an Inactive Hazardous Waste Disposal Site and classified it as a "site that presents a significant threat to public health and the environment."

The East Hampton Airport site (NYSDEC codes 152250 (link) and 152156 (link)) includes two fire training facilities. The airport is upgradient and adjacent to South Fork Wind's proposed onshore construction corridor. Downgradient on the opposite side of the corridor is a multi-use industrial site, Wainscott Sand and Gravel (NYSDEC code 152254 (link)), which has also been subject to New York State Superfund Program review.

Background

A year *before* South Fork Wind filed an Application for a Certificate of Environmental Compatibility and Public Need ("Certificate") under Article VII of New York State Public Service Law, Suffolk County Department of Health Services ("SCDHS") issued a Water Quality Advisory warning residents living in the vicinity of East Hampton Airport that "PFOS and PFOA have been detected in some of the private wells that have been tested so far." [44] Three months *before* South Fork Wind submitted its application, SCDHS had tested nearly three hundred private drinking-water wells around the transmission cable route and found that thirteen wells exceeded the US EPA Health Advisory Level and forty-five exceeded New York State's Maximum Contamination Level.[45] Around the same time, two groundwater monitoring wells within one hundred and fifty feet downgradient from the proposed transmission corridor were found to have double the EPA Health Advisory Level for PFOS contamination. The source of contamination is upgradient on the *opposite* side of South Fork Wind's proposed cable corridor at East Hampton Airport.[46] The Airport was declared a site that "presents a significant threat to public health and the environment" in June 2018, three months *before* South Fork Wind filed its Article VII application.

Regardless, in the knowledge of such contamination, South Fork Wind filed its application (on September 14, 2018) and chose to run its high-voltage transmission cables for two miles through the middle of the most contaminated soil and groundwater on the South Fork of Long Island, and between two sites registered with the New York State Superfund Program.[47]

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[44] See Water Quality Advisory for Private-Well Owners in Area of Wainscott, issued by Suffolk County Department of Health Services on October 11, 2017 (at p. 1, third paragraph).

[45] See US EPA Health Advisory Level of 70 parts per trillion ("ppt") for combined PFOA/PFOS. The New York State Maximum Contamination Level is10 ppt for PFOA and 10 ppt for PFOS.

[46] See Wainscott Commerical Center, Draft Environmental Impact Statement, Figure 8, Well MW-3 (PFOA/PFOS of 144 ppt) and MW-4 (PFOA/PFOS of 124 ppt), dated June 26, 2018.

[47] In addition to PFAS contamination, a recent New York State Energy Research and Development Authority ("NYSERDA") Offshore Wind Integration Study, recommends the "[a]voidance of residential neighborhoods" when selecting potential onshore high-voltage cable routes. See Offshore Wind Integration Study: Final Report. Prepared for NYSERDA and the New York State Department of Public Service ("NYSDPS"), Appendix D to Initial Report on Power Grid Study, dated December 2020 (at p. D-66).

Also, NYSPSC Administrative Law Judges "recommend that we not encourage the use of the right-of-way for recreational purposes" in reference to the health and safety of high-voltage transmission lines. See Opinion No. 78-13, Opinion and Order Determining Health and Safety Issues, Imposing Operating Conditions, and Authorizing, in Case 26529, Operation Pursuant to those Conditions (at p. 4, first paragraph).

Up until at least November 2019, South Fork Wind objected to information on PFAS contamination "on the grounds that the information is inaccurate and not based in fact." South Fork Wind was asked whether it "has considered the possibility of significant adverse impacts to public health given that the Beach Lane Route A Cable Corridor runs through a residential neighborhood and groundwater protection district?" Again, it responded: South Fork Wind "objects to this request on the grounds that it includes statements that have no basis in facts." [48]

On September 9 and October 9, 2020, detailed testimony on PFAS contamination was submitted as evidence in the NYSPSC Article VII administrative hearing. In response, South Fork Wind filed a Motion to Strike Testimony (on November 5, 2020) on the basis that the testimony on PFAS contamination is "irrelevant to this proceeding." The Motion was denied.

When South Fork Wind selected the transmission cable route, it did not take into account existing PFAS contamination. There are many routes that South Fork Wind could have chosen, but only one of those routes runs between two New York State Superfund sites.

PFOS soil contamination exceeds the DEC Guidance Value by seventeen times upgradient within 500 feet from South Fork Wind's construction of underground vaults and transmission facilities.[49] The NYSDEC also detected high levels of PFOA soil contamination (in the same vicinity) that exceeded its Guidance Values by six times.[50] Notably, the NYSDEC detected the *same* contamination from the airport site in groundwater *and* soil downgradient on the *opposite* side of South Fork Wind's proposed construction corridor. For example, PFOS contamination detected in DEC Well-MW3 exceeds New York State's drinking-water standard by 100 times and in DEC Well-5 by 88 times (see Figures 2 and 3 at pp. 4-5).[51]

Up to date, there has been no formal regulatory review of South Fork Wind's PFAS sampling plan or test results.

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[48] See New York State Public Service Commission, Docket 18-T-0604, Response by South Fork Wind to Interrogatory/Document Request SK #01, dated November 19, 2019.

[49] PFOS (perfluorooctane sulfonate) contamination of 15 parts per billion (ppb) in soil. Well EH-1 exceeds NYSDEC's Guidance Value for Unrestricted Use (0.88 ppb) by seventeen (17) times, and Guidance Value for the Protection of Groundwater (3.7 ppb) by four (4) times. See NYSDEC Sampling, Analysis, and Assessment of Per-and Polyfluoroalkyl Substances (PFAS), June 2021 (at p. 9). Also, see Remedial Investigation/Feasibility Study Work Plan, East Hampton Airport Site ("Airport Remedial Investigation Plan"), by FPM Group for New York State Department of Environmental Conservation (NYSDEC), dated June 30, 2021 (at p. 21 of 271, FPM 2-4) "[…] the maximum PFOS detection (15 ng/g) noted in the duplicate […] at the EH-1 location on the Fire Training Facility portion of the [East Hampton Airport] Site."

[50] PFOA (perfluorooctanoic acid) contamination of 3.8 parts per billion (ppb) in soil. See Airport Remedial Investigation Plan: "The maximum PFOA detection (3.8 ng/g) was noted in the 0 to 1-foot sample from the EH-19B1 location in the parking lot immediately to the west of the Fire Training Facility portion of the Site." The PFOA contamination exceeds NYSDEC's Guidance Values for Unrestricted Use (0.66 ppb) by six (6) times and for Protection of Groundwater (1.1 ppb) by over three (3) times.

[51] See NYSDEC Site Characterization Report for Wainscott Sand and Gravel (July 28, 2020)

Prior Testing by South Fork Wind

South Fork Wind's own test results for wells along its proposed route contradict the independent analysis performed for NYSDEC. Please see the 60-day Notice of Intent to Sue (click here).

Moreover, South Fork Wind's Construction and Operations Plan (COP) filed with the Bureau of Ocean Energy Management (BOEM) claims that there "are no direct […] industrial point sources for pollution into or within" its proposed construction corridor. Point source pollutants are defined to "enter waterways at well-defined locations," such as sites of soil contamination found at East Hampton Airport.[52] In documents filed with federal regulators, South Fork Wind fails to identify *any* PFAS contamination in violation of the National Environmental Policy Act (NEPA).

The 60-day Notice of Intent to Sue (click here) was filed with BOEM on December 18, 2021. The notice provides details on South Fork Wind's failure to comply with its statutory obligations pursuant to NEPA (also the Endangered Species Act regarding the endangered North Atlantic Right Whale, federal anti-trust provisions, and other violations of federal law).

South Fork Wind claims that its offshore wind project is necessary for environmental reasons. If this is true, then South Fork Wind would welcome a thorough environmental review. On the contrary, it has an established pattern of dodging and circumventing such environmental reviews.

Please order South Fork Wind to cease construction until we see complete laboratory test results of soil at a depth of two feet below the lowest point of its planned excavation. Thank you for your consideration.

Sincerely yours,

Si Kinsella

Simon Kinsella

c/c: Peter Van Scoyoc
Town Supervisor
Town of East Hampton
159 Pantigo Road
East Hampton, New York 11937
PVanScoyoc@EHamptonNY.Gov

Sylvia Overby
Town Councilwoman
Town of East Hampton
159 Pantigo Road
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[52] See Deepwater Wind South Fork LLC, Construction and Operations Plan (at p. 4-62).

Cate Rogers
Town Councilwoman
Town of East Hampton
159 Pantigo Road
East Hampton, New York 11937
CRogers@EHamptonNY.Gov

Party Intervenors (via email only)
New York State Public Service Commission
Article VII, Docket 18-T-0604

Wainscott Citizens' Advisory Committee Members (sent via email only)
Carolyn Logan-Gluck, Chair (LoganGluck@gmail.com)
Dennis D'Andrea (ddjudge@aol.com)
Pamela Mahoney (pamelamahoney513@gmail.com)
Anthony Liberatore (hipshake@gmail.com)
Bruce Solomon (bwainenyc@gmail.com)
Philip Young (philyoung167@gmail.com)
José Arandia (jea0711@aol.com)
Barry Frankel (bfrankel@sedorpharmaceuticals.com)
Sally Sunshine (allthingswainscott@gmail.com)
Lori Anne Czepiel (wainscottcaclc@gmail.com)

Please see New York State Department of Environmental Conservation reports on PFAS contamination (below) in the vicinity of South Fork Wind's proposed construction corridor.

Fact Sheet.HW.152250.2018-01-05.Airport_Well Sampling Press Release SCDHS.pdf
Fact Sheet.HW.152250.2019-06-19.East Hampton Airport Class 02 Listing.pdf
Report.HW.152250.2018-11-12.Alpha Geoscience Hydrogeology Rpt Wainscott S&G.pdf
Report.HW.152250.2018-11-30.Airport Site Characterization Report Final.pdf
Work Plan.HW.152250.2021-06-30.East Hampton Airport Site RIFS WP-FINAL.pdf
Report.HW.152254.2020-07-28.Final SC Report.pdf

Weekly Status Report

Week of March 7th, 2022

Exhibit A
(page 1 of 2)

Please note that the Town of East Hampton Trustees have ongoing dredging activities on Wainscott Beach.

Completed Activities

Week of February 28, 2022:

- The contractor continued saw-cutting (shallow cuts in the roadway to outline the trench area that will be opened) along Wainscott NW Road, Sayre's Path, Wainscott Main Street and Beach Lane, to prepare for the start of excavation.
- The contractor continued trenching and installing conduit on Wainscott NW Road between the LIRR intersection and Montauk Highway.

Upcoming Activities

Week of March 7, 2022:

- The contractor intends to continue trenching and installing conduit on Wainscott NW Road between the LIRR intersection and Montauk Highway.
    - Traffic pattern will be one-way alternating lanes, be prepared for delays.
- The contractor intends to begin trenching and installing conduit on Beach Lane.
    - Traffic pattern will be one-way alternating lanes, be prepared for delays.
- The contractor intends to remove vegetation at temporary work areas adjacent to the LIRR corridor.

Week of March 14, 2022:

- The contractor intends to continue trenching and installing conduit on Wainscott NW Road between the LIRR intersection and Montauk Highway.
    - Traffic pattern will be one-way alternating lanes, be prepared for delays.

- The contractor intends to continue trenching and installing conduit on Beach Lane.
    - Traffic pattern will be one-way alternating lanes, be prepared for delays.

- The contractor intends to remove vegetation at temporary work areas adjacent to the LIRR corridor.

If you have any questions about any information contained in this notice or any other Project-related matter, please call our hotline at 631–887–5470 or email us at info@southforkwind.com.

Best Regards,

The South Fork Wind Team

Website: www.SouthForkWind.com
Follow us on Facebook & Twitter: @SouthForkWind
Click here to view the construction progress map. Purple areas indicate active construction area and green areas are completed construction.

Boring ID	Location	Construction	Confirmed GW Depth (ft)	Duct bank depth (ft)	GW depth below duct bank (ft)	Sampling Results
HDD-02	Beach Lane	HDD entry	7.3	9.0	-1.7	No Exceedances to DEC criteria
MW-2A	Beach Lane	TJB	7.7	9.2	-1.5	No Exceedances to DEC criteria
MW-1B	Beach Lane	ductbank	9.0	5.9	3.1	No Exceedances to DEC criteria
MW-3A	Beach Lane	ductbank	10.6	7.9	2.7	No Exceedances to DEC criteria
MW-101	Beach Lane	ductbank	12.5	7.3	5.2	No GW anticipated - no sample required
BH-01	Beach Lane	ductbank	12.5	5.8	6.7	No Exceedances to DEC criteria
MW-4A	Beach Lane	ductbank	14.3	8.1	6.2	PFOA at 82 ppt
MW-102	Beach Lane	ductbank	15.5	7.2	8.3	No GW anticipated - no sample required
MW-4B	Beach Lane	ductbank	15.6	8.3	7.3	PFOA at 15 ppt; PFOS at 13 ppt
MW-5B	Beach Lane	VAULT 2	16.7	10.4	6.3	No Exceedances to DEC criteria
MW-6A	Wainscott Main St.	ductbank	17.1	8.8	8.3	No Exceedances to DEC criteria
BH-02	Wainscott Stone Rd.	ductbank	21.9	5.6	16.3	No Exceedances to DEC criteria
MW-6B REP	Wainscott Stone Rd.	ductbank	23.0	6.2	16.8	No GW anticipated - no sample required
MW-6B	Wainscott Stone Rd.	ductbank	21.7	6.0	15.7	2021 - No exceedances 2022 - No sample-well dmgd
MW-7A REP	Wainscott Stone Rd.	VAULT 3	17.5	11.2	6.3	No GW anticipated - no sample required
MW-7A	Wainscott Stone Rd.	VAULT 3	17.1	11.2	5.9	2021 - No exceedances 2022 - No sample-well dmgd
MW-8A REP	Wainscott Stone Rd.	ductbank	7.2	7.1	0.1	sample collect 2/19 (replacement well for MW8A)
MW-8A	Wainscott Stone Rd.	ductbank	5.8	7.1	-1.3	2021 - No exceedances 2022 - No sample-well dmgd
MW-8B	Wainscott NW Road	ductbank	8.1	6.0	2.1	No Exceedances to DEC criteria
MW 104	Wainscott NW Road	ductbank	12.6	6.6	6.0	No GW anticipated - no sample required
BH-03	Wainscott NW Road	ductbank	14.6	5.8	8.8	Chloroform at 19 ppb
MW-10A	Wainscott NW Road	VAULT 4	19.0	10.8	8.2	No Exceedances to DEC criteria
MW 105	Wainscott NW Road	ductbank	20.6	7.5	13.1	No GW anticipated - no sample required
MW 106	Wainscott NW Road	ductbank	24.1	8.0	16.1	No GW anticipated - no sample required
BH-04	Wainscott NW Road	ductbank	29.4	7.1	22.3	No Exceedances to DEC criteria
MW-12A	Wainscott NW Road	MONTAUK	28.6	9.6	19.0	No Exceedances to DEC criteria
MW-15A	Wainscott NW Road	VAULT 5	29.6	10.6	19.0	PFOS at 12 ppt
MW 107	Wainscott NW Road	ductbank	28.0	6.6	21.4	No GW anticipated - no sample required
MW 108	Wainscott NW Road	ductbank	15.0	6.9	8.1	No GW anticipated - no sample required
MW 109	Wainscott NW Road	ductbank	25.5	6.0	19.5	No GW anticipated - no sample required
BH-05	Wainscott NW Road	ductbank	25.2	6.3	18.9	No Exceedances to DEC criteria
MW 110	Wainscott NW Road	ductbank	25.2	6.3	18.9	No GW anticipated - no sample required
MW-18B	Wainscott NW Road	VAULT 6	27.3	10.9	16.4	No Exceedances to DEC criteria

DEC Limits
PFOA at 10 ppt; PFOS at 10 ppt
Chloroform at 7 ppb

Exhibit B

Exhibit C

Remediation Sites (1 of 2)

Remediation Program: State Superfund Program

Site Name: East Hampton Airport
Site Code: 152250
Site Class: 02

Online Database: Link (click on link)

Document Folder: No Link Available.

Environmental Cleanup and Brownfields

Zoom to

Remediation Parcels (2 of 2)

Remediation Program: State Superfund Program
Site Code: 152250
Site Class: 02

(click on link)
Remediation Parcel Database Record: Site Record

Zoom to

Remediation Parcels (1 of 2)

Remediation Program: State Superfund Program
Site Code: 152250
Site Class: 02

(click on link)
Remediation Parcel Database Record: Site Record

Zoom to

Remediation Sites (1 of 2)

Remediation Program: State Superfund Program

Site Name: East Hampton Aire
Site Code: 152156
Site Class: C

(click on link)
Online Database: Link

Document Folder: Link. Zoom to
Environmental Cleanup and Brownfields

Zoom to

Remediation Parcels (2 of 2)

Remediation Program: State Superfund Program
Site Code: 152156
Site Class: C

(click on link)
Remediation Parcel Database Record: Site Record

East Hampton Airport

Remediation Parcels (2 of 2)

Remediation Program: State Superfund Program
Site Code: 152250
Site Class: 02

(click on link)
Remediation Parcel Database Record: Site Record

Zoom to

South Fork Wind Construction Corridor
Underground Transmission Infrastructure (HVAV 138 kV)

Wainscott Sand & Gravel
Wainscott Commercial Center, Inc.

Remediation Sites

Remediation Program: State Superfund Program

Site Name: Wainscott Sand and Gravel
Site Code: 152254
Site Class: N*

Online Database: Link (click on link)

Document Folder: Link (click on link)

Environmental Cleanup and Brownfields

Zoom to

Environmental Cleanup

Check / Uncheck all

Layer Information

Remediation Parcels

Remediation Sites

Zone of 2,000 feet outward from Route A Cable Corridor

South Fork Wind Construction Corridor

Compiled by Si Kinsela, November, 2019
Source: GISServices.DEC.NY.gov/gis/dil/

STATE OF NEW YORK
COUNTY OF SUFFOLK

Simon V. Kinsella, being duly sworn, says under penalty of perjury:

I am a resident of Wainscott, Town of East Hampton, State of New York. The contents of my letter of thirty pages dated March 11, 2022, are true to the best of my knowledge, information, and belief.

Simon V. Kinsella

Sworn to before me this
13th day of March 2022

Notary Public

DAVID FINK
Notary Public, State of New York
No. 4526132
Qualified in [illegible] York County
Commission Expires February 28, 2023

Shipment Receipt

Address Information

Ship to:	**Ship from:**
U.S. Assistant AG Kim	Simon Kinsella
U.S. Department of Justice	
Environment & Natural Resources Div	100 Wainscott Main St #792
950 Pennsylvania Ave., NW	
Washington, DC	Wainscott, NY
205300001	11975
US	US
2025142701	6319039154

Shipment Information:
Tracking no.: 777318294547
Ship date: 07/06/2022
Estimated shipping charges: 28.91 USD

Package Information
Pricing option: FedEx Standard Rate
Service type: Standard Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 3.50 LBS
Declared Value: 1.00 USD
Special Services:
Pickup/Drop-off: Drop off package at FedEx location

Billing Information:
Bill transportation to: MyAccount-680
Your reference: DOJ, Assist AG KIM
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note