



Coalition to Save Hempstead Harbor

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March 21, 2021

Supervisor Judi Bosworth and
Members of the Town Council
Town of North Hempstead
200 Plandome Road
Manhasset, NY 11030

Re: Southern Land Company's Draft Scope for West Shore Residences

Dear Supervisor Bosworth and Council Members:

The Coalition to Save Hempstead Harbor (CSSH) respectfully submits the following comments in regard to Southern Land Company's draft scope of issues to be included in the draft Environmental Impact Statement.

In broad terms, the proposal to build a 7-story, 176-unit residential building on West Shore Road is inappropriate for construction along the shores of Hempstead Harbor. While we appreciate efforts to address the cleanup of contaminated parts of the property, construction of this proposed shoreline development would be an imbalanced tradeoff of huge proportions considering the height, density, cumulative impact, and potential environmental damage to Hempstead Harbor. Further, we question how this proposal was not dismissed at the outset by virtue of including 4.4 acres of surface water into the 7 acres required for this development and the associated calculations regarding allowable density, lot coverage, parking, etc.

Aside from this critical question of private ownership of underwater lands, the proposed project will require numerous zoning variances or waivers, including for height, multiunit construction, and parking inadequacy. Zoning laws are enacted to manage urban/suburban development in a well-thought-out plan. Our concerns about allowing variances to local zoning laws in this instance are amplified given the potential adverse impacts this project will create for Hempstead Harbor.

We have included our specific comments on the Draft Scope in the attached pages; each reference to the Draft Scope is noted by page number.

Regards,

Kay Bromberg
Vice President

**CSHH COMMENTS ON DRAFT SCOPE
FOR THE
DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE WEST SHORE RESIDENCES**

Page 1, Overview, second paragraph: “The Subject Property includes approximately 2.69 acres of land area and 4.48 acres in water.”

According to the Town of North Hempstead’s (TNH) zoning for a Planned Waterfront Residential Community (PWRC), the minimum lot area for a multiunit development is 7 acres. (See <https://ecode360.com/9299478>, 70-3.22 Minimum Lot Areas.)

As mentioned in our attached letter, we don’t understand how 4.48 acres in water can be included in the 7 acres required for this proposed development. According to Ralph W. Hill, PLS, in the NYS Office of General Services, State Asset & Land Management, “Submerged land in Hempstead Harbor cannot be privately owned” (as stated in email correspondence). So how can the developer include 4.48 acres in water in the minimum acreage required for the proposed development?

Page 2, Description of the Proposed Action, third paragraph: “A total of 300 shared parking spaces would be provided on the Subject Property and adjacent Lot 1035, including 58 surface spaces and 242 garage spaces located on two levels beneath the residential building. As the proposed 300 parking spaces would be less than the required 428 spaces, the Applicant is seeking a parking waiver.”

One of the few amenities offered by this project, is public access to the waterfront. The adjacent town property, lot 1035, is anticipated to provide 58 extra parking spaces in return for this amenity. If most of these spaces are reserved for public use during the day, as they should be in order to guarantee public access, that would leave only 242 spaces for daytime residential use—a deficit of 186 parking spaces or 43%. How will this project accommodate the shortfall and/or keep parking needs from spilling over into other neighborhoods?

Page 4, Potentially Significant Adverse Impacts, Soils & Topography, second paragraph: “An evaluation of potential impacts to soils and topography and strategies to minimize such impacts will be included in the DEIS. A description of measures that will be implemented to mitigate impacts due to potential erosion and off-site sediment transport will be presented. The DEIS will also discuss the changes in topography and provide estimates of cut and fill that would result from the Proposed Action.”

We have several questions related to this statement:

- According to the project’s Environmental Assessment Form (EAF), “the average depth to the water table on the project site” is “10± feet.” How will the project control for the risk of contamination to ground waer during excavation and construction of the underground parking floors?
- How will water intrusion and flooding of the underground floors be prevented in extreme rain events or even moderate storm events coinciding with high tide?
- How will sea level rise affect these floors?
- What material will be used for “fill?”

Further, related information was left out of the EAF and marked “TBD.”

- What is the total area to be dredged or excavated?
- What is the maximum area to be worked?
- What would be the maximum depth of excavation or dredging?

Page 5, Potentially Significant Adverse Impacts, Water Resources, Stormwater Management, second paragraph: “Existing and post-development drainage conditions will be described and evaluated.”

In EPA’s *Urban Storm Water Preliminary Data Summary* (4-1) (https://www.epa.gov/sites/production/files/2015-10/documents/usw_b.pdf), the adverse impacts on receiving waters associated with stormwater discharges are divided into three general classes:

1. Short-term changes in water quality during and after storm events including temporary increases in the concentration of one or more pollutants, toxics, or bacteria levels.
2. Long-term water quality impacts caused by the cumulative effects associated with repeated storm water discharges from a number of sources.
3. Physical impacts due to erosion, scour, and deposition associated with increased frequency and volume of runoff that alters aquatic habitat.

These three classes of adverse impacts do not seem to be adequately referenced in the Draft Scope. Although the Draft Scope acknowledges in a following section on Ecological Resources that Hempstead Harbor is classified by NYSDEC as an impaired waterbody (included on the NYS Section 303(d) List of Impaired/TMDL Waters), no mention is made of the potential increases in pollutants emanating from the project site during construction and post-construction operation through stormwater runoff.

Given the project’s location at the bottom of the slope of Beacon Hill Road to the north and the adjacent hillside on the west plus the increasing incidence of climate-related extreme weather events, the proposed development should be compelled to meet the highest stormwater retention standards included in the Nassau County Stormwater Management Plan 2019, i.e., *“With regard to larger developments, or sub-divisions, the County has developed the same requirements based on current engineering practice. These guidelines recommend that eight (8) inches of on-site storage be provided when no connection or overflow to another drainage system is possible. In those cases where connection or overflow to another drainage system is possible and allowable, then five (5) inches of on-site storage should be provided. These guidelines, whether 5 or 8 inches, insure that stormwater runoff generated at the development is contained within the site and will not be discharged to the waters of the United States, thereby providing a protective safeguard to those waters”* (see page 30, <https://www.nassaucountyny.gov/DocumentCenter/View/1296/2019-NCSWMP?bidId=>).

“Where will retention ponds be placed on a plot where water/submerged land is already 62% of the claimed property?”

Below is one of the renderings provided by Southern Land Co. The landscaping shows a steep decline in elevation from the evergreen trees down a vegetated slope to the seawall.



The EAF states that only 3.8% of the property is “moderately well drained.” If a heavy rain overwhelms the retention capacity of the vegetated area, how will runoff from an abundance of impervious surfaces be prevented from entering Hempstead Harbor at this point and similar ones around the project?

Page 6, Potentially Significant Adverse Impacts, Ecological Resources, third paragraph: “Site disturbance under the proposed action would extend into the tidal wetland area, including the removal of a concrete pier, subsequent dredging, and installation of a new dock. There is also the potential for indirect impacts to the adjacent wetlands and surface waters, such as may result from the discharge of stormwater runoff during construction, as well as the long-term effect of site-generated runoff during project operation. These potential impacts will be analyzed, and suitable measures will be identified for mitigation.”

Under NYS’s Tidal Wetlands Act, DEC regulates activities in tidal wetlands and their adjacent areas extending, in general, up to 300 feet inland from the wetland boundary. What is the buffer zone between the wetland boundary and the multiunit building? Will construction activities occur in the wetland adjacent areas—300 feet inland of the wetland boundary—and how will damage and disturbance be mitigated? Where are the wetlands in the new Southern Land Co. renderings?

CSHH has worked consistently for 35 years to restore the health of the harbor to a level that supports 2,500 acres of recertified shellfish beds across the northern section of the harbor. What measures will be taken to prevent spreading pollutants from upland areas and contaminated sediments during the Brownfield cleanup? Where will contaminated soil and dredge spoils be disposed? Who will monitor and verify that no impact occurs to the shellfish beds?

Page 6, The nature, extent, and significance of potential impacts, including impacts during demolition and construction, of the Proposed Project on fish and wildlife habitat will be evaluated.

Building impacts kill upwards of a billion birds every year. The New York City Council adopted Local Law 15 in November 2020, which requires that materials that reduce bird strike fatalities be installed on newly constructed or altered buildings. The Local Law became effective on January 10, 2021.

Building design can have a major impact on reducing bird mortality rates. The new design features enacted into law by NYC should be a requirement for any new construction such as this proposed project. In addition, the Draft Environmental Impact Statement should require a full study for the potential impact of its multiunit building and glass facades on both native and migratory species.

According to the Audubon Society, “Over the past 30 years, over 250 species have been documented at Sands Point, which comprises a variety of habitats unique in Nassau County. The site is also an important stopover site for shorebirds; 100-200 individuals are regularly seen at Prospect Point alone during fall migration.” How will construction activities and the ultimate loss of habitat impact the bird and other wildlife populations?

(See <https://www.audubon.org/important-bird-areas/little-neck-bay-hempstead-harbor>.)

Page 7, Land Use Zoning and Community Character, first paragraph: “As part of this effort, the applicable zoning regulations and any pertinent land use plans and similar documents will be reviewed and analyzed....”

Noticeably absent from the long list of zoning and land-use plans is the TNH’s Planned Waterfront Residential Community Zoning regulations, <https://ecode360.com/9299536>. CSHH is particularly concerned about the following zoning restrictions as provided in the Planned Waterfront Community Zoning document:

- **§ 70-3.24 Lot coverage.**

A.

The lot coverage of all buildings within a Planned Waterfront Residential Community, including any accessory structure or building, shall be as follows:

(2)

For multiple-unit developments, the lot coverage shall not exceed 12% of the lot area.

It is assumed that 12% applies to the land area of 2.69 acres and does not include the underwater land owned by the state. According to the EAF, the impervious surface of the project is 1.40 acres, or 52% of the land-based property. To be fair, 1.40 acres probably includes walkways and driveways. What is the lot coverage of just the combined buildings?

- **§ 70-3.26 Required yards and setbacks.**

B.

For multiple-unit developments, there shall be a minimum distance to any property line of 35 feet for any new development.

What are the setback distances?

D.

No building or structure shall be built within 25 feet of a Special Flood Hazard Area.

According to the EAF, the project site is in a 100-year flood plain. The FEMA flood zone map identifies this property as being in a VE zone with an elevation of 16 ft. The definition of a VE zone is:

High Risk Coastal Areas

VE, VI - 30 Coastal areas with a 1% or greater chance of flooding and an additional hazard associated with storm waves. Base flood elevations derived from detailed analyses are shown at selected intervals within these zones.

According to the DEC, standard development requirements within a coastal "V" zone are: *“New construction and substantial improvement or substantially damaged structures must be elevated on pilings, columns or sheer walls such that the bottom of the lowest horizontal structural member supporting the lowest elevated floor is elevated to or above the base flood elevation (plus two feet beginning in 2007). Detailed standards exist regarding how to elevate the structure.”* (See <https://www.dec.ny.gov/lands/40576.html>.)

Also according to the DEC, “All proposed floodplain development must meet the "no adverse effect" criteria, while proposed floodway development must also meet the "no-rise" criteria. Any proposed development within the floodway requires a hydraulic analysis to demonstrate “no-rise.” (See <https://www.dec.ny.gov/lands/24281.html>.)

What are this project’s plans to meet these testing and construction criteria?

Page 8, Traffic and Parking, second bullet, list of intersections through which site-generated traffic would pass.

The intersections of Northern Boulevard and Mineola Avenue and Old Northern Boulevard and Mineola Avenue in Roslyn should also be included in the list.

Page 9, Community Facilities and Services, second paragraph: “Expansion of the Port Washington Water Pollution Control District will be required to service the Proposed Project. A description of the proposed sewer infrastructure will be provided, and associated impacts and compliance with relevant design construction standards will be analyzed.”

If a sewer failure occurs (due to blockage or power outage), the impact is magnified with service to a densely populated multiunit development. Additional monitoring and containment equipment should be outlined in the DEIS for pump stations, etc., to prevent the types of failures that occurred on February 28, 2021, January 8, 2021, and May 26, 2020. On these events, failures from pump stations on West Shore Road allowed 2,500, 1,000, and 75,000 gallons, respectively, of untreated sewage to flow into wetlands of Hempstead Harbor.

What is the impact on traffic and pedestrian walkways during a buildout of sewer infrastructure?

Third paragraph: “The DEIS will analyze the increased demand for potable water supply that would be placed on the Port Washington Water District by the proposed development, and the capabilities of the district to accommodate this demand. The DEIS will also discuss the current moratorium on requests for water connections to the Port Washington Water District, put in place to ensure existing water demand is met while treatment of district wells to meet 1,4-Dioxane maximum contaminant levels is undertaken.”

In addition to the question of how much the Port Washington Water District can pump, consideration must be given to the long-term sustainability of the aquifer to support the needs of additional new developments throughout Long Island. An Island-wide discussion about the risk of salt-water intrusion, emerging contaminants, and depletion of our sole source aquifer cannot be put off any longer. Long Island is at the tipping point in dealing adequately with drinking water supply as well as treatment of drinking water and wastewater to protect the health of residents and Hempstead Harbor’s ecological resources.

Groundwater expert, Professor Sara Meyland offered these comments in regard to Nassau County’s Master Plan 2010-2030, back in **2011**; the situation is much more serious and urgent today: “First, the fact that average water demand has reached 190 MGD, documents that Nassau County has exceeded the “safe yield” level for the aquifers. The County itself set safe yield at 185 MGD. By definition, when more water is withdrawn from the aquifer than the aquifer system can reasonably accommodate, undesirable consequences can result. The Master Plan fails to explain that Nassau County is already experiencing negative consequences.” (For full comments, see <https://www.nassaucountyny.gov/DocumentCenter/View/6054/MPCCommentsSarahMeylandNYIT2311?bidId=>.)

In February 2018, notably Town of North Hempstead officials plus local county, state, and NGO leaders announced their united opposition to the state’s proposal to allow wells in Queens to reopen and draw potable water from the aquifer (<https://www.nassaucountyny.gov/CivicAlerts.aspx?AID=6043>). State Senator Todd Kaminsky stated:

"Our aquifers are already under assault and years of over pumping and mismanagement are contaminating the groundwater. The pristine Lloyd aquifer is a birthright for Long Islanders and a source of water for the rest of the state in case of a catastrophic emergency. Casual drilling into the Lloyd without demonstrated urgency is grave mistake that we cannot afford to make. That is why I have joined a bi-partisan coalition of legislators urging the DEC to refrain from issuing any permits until a study on its impacts is completed,"

At the same time, public officials recommended that a comprehensive water resources management plan be prepared for Long Island. Until this management plan is developed to guide sustainable practices, no large-scale water requests should be permitted.

The impact to the supply of potable water is not the sole burden of this particular project. But neither can its contribution to the overall depletion of natural resources be ignored. If the sole source aquifer is compromised, all communities on Long Island are at risk.

Page 11, Use and Conservation of Energy

This section of the Draft Scope mentions only very briefly and generally that there will be descriptions in the DEIS of energy sources and anticipated energy consumption during the construction and operational phases of the proposed project. No mention is made as to whether green building-design principles will be used in the construction and maintenance of the exterior and interior of the proposed project. Will some level of LEED (Leadership in Energy and Environmental Design) certification be sought?

Further, climate change must be addressed now and requires a dramatic response to energy consumption and conservation, as outlined in NYS’s 2019 Climate Leadership and Community Protection Act (CLCPA), with the following targets:

- 70% Renewable Energy by 2030
- 100% Zero-emission Electricity by 2040
- 85% Reduction in GHG Emissions by 2050

The Southern Land Co. project calls for natural gas to supply its energy needs. However, building new gas infrastructure locks in greenhouse gas emissions for the foreseeable future. How will this energy system comply with the CLCPA targets, the first of which is only 9 years away? What will this project's main source of energy be in 2050?

According to CLCPA, the following provisions must be considered by all state agencies:

“29 § 7. Climate change actions by state agencies.

- 1. All state agencies shall assess and implement strategies to reduce their greenhouse gas emissions.*
- 2. In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, all state agencies, offices, authorities, and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law. Where such decisions are deemed to be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits, each agency, office, authority, or division shall provide a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located.”*

Furthermore, the NY DEC has already affirmed this position in regard to denying a permit in 2019 to build a pipeline that would have increased the availability of natural gas on Long Island. The agency wrote: “...it is already clear that achievement of the Statewide GHG emission limits established pursuant to ECL Section 75-0107, as well as achievement of net zero emissions in all sectors of the economy, will ultimately require a transition away from natural gas and other fossil fuels to produce energy.”

CSHH's comments only begin to suggest the need to address the cumulative impact of large multiunit development projects taking place throughout the North Shore and the rest of Long Island. The issues of water supply and contamination as well as stormwater runoff were mentioned above. But the basic issue of stress on all natural resources, habitat, air quality, climate change, and sustainability needs a larger discussion. The cumulative impacts of all recent, currently constructed, and proposed development projects around Hempstead Harbor must be considered with those of the proposed West Shore Residences in all aspects of the Draft Environmental Impact Statement. Business as usual has brought us to the brink of no return. It is time to make better decisions for the future.