



October 31, 2022

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Supervisor Jennifer DeSena,
Members of the Town Council, and
Planning and Environmental Protection Department
Town of North Hempstead
200 Plandome Road
Manhasset, NY 11030

Re: Southern Land Company's Draft Environmental Impact Statement for
West Shore Residences

Dear Supervisor DeSena and Council Members:

The following comments are in furtherance of those that the Coalition to Save Hempstead Harbor (CSHH) submitted at the September 28, 2022, public hearing regarding Southern Land Company's Draft Environmental Impact Statement (DEIS) for West Shore Residences (at 145 West Shore Road). Below, we elaborate on some of the concerns we expressed previously for which we find Southern Land Company's response deficient:

- groundwater contamination
- flood risks
- sustainability of the water supply
- zoning and land use

We describe these concerns following the sections outlined in the DEIS.

3.3 WATER RESOURCES

3.3.2.1 Groundwater

Groundwater Contamination

According to the DEIS, eight soil borings across the subject property found depth to groundwater to range approximately 8 to 17 feet below grade surface. The DEIS also notes that the Phase I Environmental Site Assessment indicates that the groundwater flow beneath the property flows to the east to Hempstead Harbor.

Earlier pages of the DEIS describing the proposed building and engineering considerations state that a “deep foundation system” is recommended to support the building foundations and floor slabs (§3.1.2.1, p. 68). No mention is made of the potential contamination to groundwater or surface water (i.e., Hempstead Harbor) that could result from construction of such a system. No details are offered as to the total depth foundation elements would have to be installed, the potential for surface and subsurface contaminants being disturbed during the installation of this system, and the potential migration of contaminants to groundwater and, because of the flow of groundwater, to Hempstead Harbor.

3.3.2.3 Floodplains

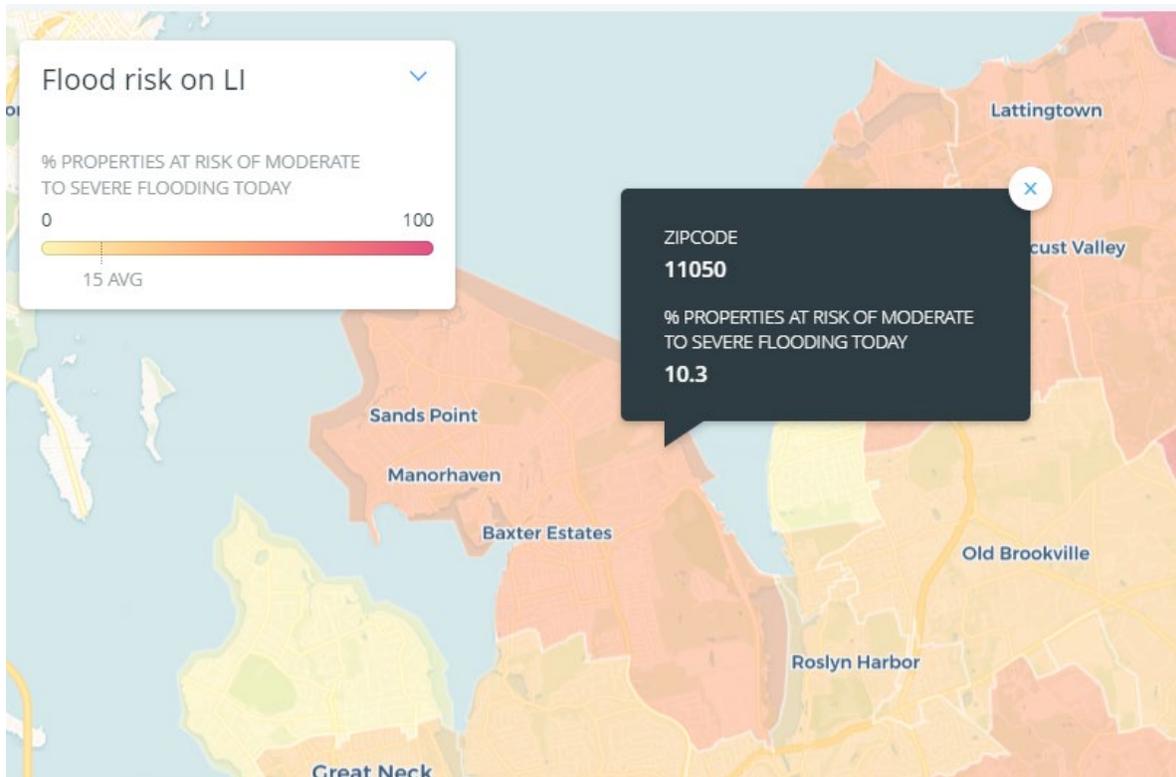
Flood Risks

Figure 3-8 of the DEIS depicts the areas of the subject property that fall within specific FEMA flood zones as per the FEMA Flood Insurance Rate Map. The map indicates that portions of the property fall within FEMA Zones AE, VE, and X, with flood risks ranging from “100-year floods” to “500-year floods” (i.e., risks of flooding ranging from a 1-percent-annual-chance flood event to a 0.02-percent-annual-chance flood event). These flood-risk designations have not kept up the with frequency of recent storm events and their impact on local communities.

It is widely acknowledged that the severity and frequency of significant and property-damaging storm events will increase due to climate change and sea level rise. October 29, marks the 10-year anniversary of Superstorm Sandy, and in recent weeks and days, various media outlets have recounted the stories of devastation and loss of life caused by that storm (for which winds hitting Long Island were below hurricane status). Since Sandy, Long Island residents have been affected by at least four major storms since 2020 (see “Storms That Touched Long Island,” <https://projects.newsday.com/databases/long-island/storms/>):

Henri	August 2021	Category 1 hurricane	Aug. 22: The hurricane was anticipated to be the first of its kind to hit LI since Hurricane Gloria in 1985 but dropped to a tropical storm. Packing wind gusts between high 30s to 40s mph with up to just over 4 inches in heavy downpour.
Ida	September 2021	Category 4 hurricane	Sept. 1: Hurricane Ida caused a momentary tornado watch as up to 2 inches of rain per hour down poured with gusts of about 30 mph. The remnants of Hurricane Ida left more than 13,200 Long Islanders without power and the LIRR suspended service.
Elsa	July 2021	Category 1 hurricane	July 9: Tropical Storm Elsa caused flooding south of Montauk Highway in Lindenhurst, toppled trees, and left nearly 27,000 Long Islanders without power.
Isaias	August 2020	Category 1 hurricane	Aug. 4: More than 25,000 Long Islanders were without power for more than a week after Tropical Storm Isaias’ gusts of up to 78 mph wreaked havoc on the Island.

According to Risk Factor, an online tool by First Street Foundation, about 10% of properties along the west shore of Hempstead Harbor are currently at risk of moderate to severe flooding. (See the graphic below.)



Source: Newsday, *Mapping Flood Risks for Long Island*, September 13, 2022, <https://www.newsday.com/opinion/nextli-data/long-island-flood-climate-risk-factor-first-street-foundation-gu8e3q5d>.

Further, the DEIS includes New York State Sea Level Rise Projections for Long Island (Figure 3-5, p. 102), which shows a low to high projection of 2-10 inches of sea level rise for this decade alone. The DEIS notes that the Town of North Hempstead has not adopted specific regulations to address sea level rise, but the proposed development would be subject to the provisions of Chapter 21 of the Town Code. With respect to meeting the requirements of §21-15(B)(4) of the Town Code pertaining to developments in flood zones VE, the DEIS states that the proposed building would have two floors that are below flood elevation of 16 feet (p. 110). These two levels would be used primarily for parking but also include amenities (such as a fitness space and pool) and support spaces (such as storage spaces and an elevator lobby).

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

3.7 COMMUNITY FACILITIES AND SERVICES

3.7.2.3 Water Supply

Sustainability of the Water Supply

The proposed project's projected water demand is 51,315 gallons per day (§3.7.2.3, p. 207). The estimated demand for water includes use by all residential units within the building, as well as building amenities, facilities, and irrigation.

In earlier pages of the DEIS, a reference is made to the Nassau County groundwater report (2005). The DEIS states that "Despite the increase in water usage, the report notes that there is no threat of running out of available groundwater for water supply purposes, as recharge to the groundwater exceeds the amount of water withdrawn" (§3.3.2.1, p. 95).

At §3.7.3 Proposed Mitigations, the DEIS states: "No significant adverse impacts to community facilities and utilities have been identified. Therefore, no mitigation measures proposed, beyond what is outlined above. The Proposed Action is expected to benefit community facilities with respect to increased tax revenues that would be generated by the new improvements..." (p. 212).

CSHH's long-time concern with respect to new high-density developments has had to do with the adequacy of the drinking water supply. Water districts often give the approval for new connections based on whether there is physical/engineering capacity to pump the water—NOT on consideration of whether the water supply is adequate or whether over-pumpage could result in salt water intrusion or increased pollution risk to the aquifer. (Notably, the Port Washington Water District has not to date provided a letter of water availability to Southern Land Company; see §3.7.2.3, p. 208.) Long Island has one source of potable water, which means extreme precautions must be observed to protect the entire supply.

CSHH has commissioned a water-sustainability report, "Water Supply Sustainability for Hempstead Harbor Communities" (<https://coalitiontosavehempsteadharbor.org/wp-content/uploads/Water-Sustainability-Report-102122.pdf>). This report has been thoroughly researched by Professor Sarah Meyland, MS, JD, who is a well-known expert on the status of Long Island's sole source aquifer. The report investigates the potential impact on local water suppliers of the many multiunit development projects proposed or partially completed along the Hempstead Harbor shoreline, including the projected impact from West Shore Residences. Despite the Department of Environmental Conservation's (DEC) 2016 directive to all water suppliers to reduce peak water demand by 15%, most local water districts failed to even get close to achieving that reduction. In some instances, water use increased. The data collected for this analysis covered three years from 2018 to 2020 and therefore does not include the hot, dry weather events over this past summer, which highlighted the fragility of our local water supply. (See the section below on "Port Washington Water District and Impact of West Shore Residences.")

Response to DEIS Statement Referencing Nassau County Groundwater Report. Before addressing the specific impacts of the West Shore Residences on the water supply, it is necessary to highlight the

statement from the DEIS above (p. 95) that references the 2005 “Nassau County Groundwater Monitoring Program, 2000-2003” report.

According to Professor Meyland, the report presents only a small portion of the total picture of groundwater conditions in Nassau County. Page i of the Executive Summary of the Nassau County Groundwater Monitoring Program report states: “In addition to describing the groundwater monitoring program and presenting the raw data in tabular summaries and graphical representations, the report briefly describes how the County’s groundwater system functions, and how **weather patterns, along with public water supply pumping and other variables, can have a profound effect on the groundwater system. The report points out that many variables have an influence on the groundwater system and must be considered collectively when assessing the overall behavior of the system**” [emphasis added, but see Nassau County Department of Public Works (DPW), 2005, p. i].

Professor Meyland explains that:

“...to compare the relationship between recharge and public water supply pumpage as being equal factors in determining the health of the Long Island aquifer system, is to mislead readers into an incorrect understanding of how the groundwater system works and responds to change. To portray to the public that as long as public water supply pumpage does not exceed recharge means that the groundwater system and water supply are not at risk is flatly wrong. The DEIS statement is incorrect as a matter of science.”

The DPW report (2005, p. i) also notes in the same Executive Summary that “Annual water demand during both 2001 (203 mgd) and 2002 (200 mgd) [the time-frame of the study] significantly exceeded the annual long-term average of 185 mgd.” This is noteworthy because the 185 million gallons per day (MGD) withdrawal level is what the NYS DEC defines as the upper limit of safe withdrawal levels for Nassau County.

More recently, the NYS DEC reported that, during the years 2013 – 2019, groundwater withdrawals in Nassau County exceeded the 185 MGD level, 4 out of 7 years and the average withdrawals over the 7 years was 186 MGD. (*State of the Aquifer*, 2019 update, Long Island Commission for Aquifer Protection, p. 14) Thus, over pumping the groundwater system in Nassau County continues. **Thus, new water demand should be discouraged rather than accommodated.** Public water supply pumpage should be reduced and not allowed to grow further.”

Port Washington Water District and Impact of West Shore Residences. The Port Washington Water District, like other water districts around Long Island, had to address peak water demand this past summer not only during a drought, but also with three of nine wells offline due to the presence of 1,4-dioxane. The water district therefore required Port Washington residents to reduce irrigation usage by 20%.

In 2012, NYS DEC’s benchmark year for comparing and reducing peak season water pumpage, Port Washington WD’s annual water demand was 1,324,795 million gallons (the second highest among water districts around Hempstead Harbor). Peak pumpage (May – September 2012) was 743,878 million gallons, representing 56.1% of total annual pumpage. Over the most recent three years for which water-use statistics were available at publication of CSHH’s “Water Supply Sustainability for Hempstead Harbor Communities,” Port Washington’s average peak pumpage for 2018-2020 was 735.704 million gallons, representing only a 1.1% reduction from 2012 peak pumpage—not the 15% reduction called for by DEC. (See “Water Supply Sustainability for Hempstead Harbor Communities,” Tables 4 and 5 (<https://coalitiontosavehempsteadharbor.org/wp-content/uploads/Water-Sustainability-Report-102122.pdf>)).

West Shore Residences would put further strain on the Port Washington Water District to meet DEC’s peak season water use reduction and actually negate the small reduction the water district was able to achieve. A summary of the impact of West Shore Residences on water demand for Port Washington Water District is provided below based on projections in the DEIS.

145 West Shore Road Proposed Development	Projected Daily Average Demand	Projected Annual Demand	2020 Annual Pumpage for Port Washington	Projected 145 West Shore Road Water Demand as a % increase over Port Washington’s 2020 Pumpage
176 (1 – 3 bedroom units)	51,315 GPD	18,729,975	1.320 BG	1.4%
Projected total occupancy = 378				

*Source: *West Shore Residences, DEIS, 8-2022, p. 207.*

Our fragile aquifer does not have unlimited supply. And as salt-water intrusion and emerging new contaminants force water districts to take wells offline, meeting water demand for even current residential and business use will become increasingly difficult. There is no mitigation for water demand created by West Shore Residences—not because, as the Southern Land Company claims, there is no impact and therefore no mitigation necessary. **On the contrary, there is no mitigation possible that can ensure our adequate drinking water supply.** According to Professor Meyland, “The risk as stated in the DEIS is not one of ‘running out of water.’ The risk is to the type of water the aquifers will hold. There will always be water in the aquifers of Long Island. The real question is whether that water will be drinkable or not without expensive efforts to make it drinkable again.” See also Appendix 1 attached, describing how the groundwater system on Long Island works.

3.5 ZONING, LAND USE, AND COMMUNITY CHARACTER

3.5.3.1 Land Use and Zoning

The number of zoning variances required to build this project is a red flag in and of itself. Zoning regulations are created to protect the community from chaotic, inappropriate, and dangerous

development. Southern Land Company requests a zoning change from the existing R-AAA district of residential single-family housing units to the Multiple Residence (RM) zoning district. Under the current R-AAA zoning, only four single-family houses could be built.

But even if a change to Multiple Residence zoning were allowed, a significant number of additional zoning variances would be needed. Here is a summary provided in the DEIS, p.165. Note the asterisks at the ends of each line in the chart indicating a “variance will be required.” Many of the “Provided” figures are stunning departures from the “Requirements.” The proposed development’s maximum lot coverage alone is nearly double the limit; the minimum front, side, and rear setbacks are extraordinarily deficient.

Table 3-13 Bulk and Dimensional Requirements of the RM Zoning District

Dimension	Requirements	Provided
Maximum Height	3 stories/45 Feet	5 stories/69.75 Feet*
Minimum Plot Area	1,500 SF per family	504 SF/unit*
Maximum Lot Coverage	35%	64.23%*
Minimum Landscaped Buffer Area	10 Feet	6.35 Feet*
Minimum Floor Area	600 SF	Less than 600 SF/unit*
Minimum Front Yard	25 Feet	0.02 Feet*
Minimum Side Yard	25 Feet	6.35 Feet*
Minimum Rear Yard	20 Feet	0.17 Feet*
Minimum Outdoor Recreation Area	100 SF/dwelling unit (17,600 SF)	Less than 100 SF/unit*
Parking Requirements	2.25 spaces per unit 1 space per 1 slip 1 space per 1 EMP	300 Spaces*

*A variance will be required.

According to the Town of North Hempstead’s Planned Waterfront Residential Community Zoning regulations, <https://ecode360.com/9299536>, the following zoning requirements are even more stringent for waterfront development.

- **§ 70-3.21 Height.**
A. No dwelling unit shall exceed two stories, with a maximum building height of 26 feet.
- **§ 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.**

- **§ 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.

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

Zoning codes are designed and developed to protect the community character and, most importantly, to protect the community from hazards. In this case, the project's height is 5 stories above ground level vs. the maximum 2 stories; lot coverage is 64.23% vs. the required maximum of 12%; the setback distance of the front yard is 0.02 feet (about 1/4 of an inch) vs. 35 feet. And of utmost concern, the project is proposed to be **built in the flood plain**, not 25 feet away. Nowhere does the DEIS discuss how the variances they seek may affect the health and safety of the potential on-site residents and the community at large.

Flood Plain. The DEIS states, "As previously indicated, portions of the Subject Property are located with SFHA Zones AE and VE. Under the Proposed Action, portions of the proposed residential building would be located within Zone VE, as would the entirety of the proposed promenade, pier, and marina" (§3.3.3.3, p. 108).

SFHA, or Special Flood Hazard Areas, are defined as the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year, e.g., the 100-year flood. Due to climate change, extreme storm events are more frequent and intense than in the past, making the zoning requirements of the Planned Waterfront Residential Community even more compelling: "NO building or structure shall be built within 25 feet of a Special Flood Hazard Area," <https://ecode360.com/9299536>.

Furthermore, the DEIS states, "In the event of an impending flooding event (i.e., a hurricane), vehicles stored within these [underground] levels would be moved to an alternate location to minimize, to the greatest extent practicable, the loss or damage of property." Where will these cars be moved? There is no above ground parking area that can accommodate 242 cars, even if Lot 1035 is resolved in favor of Southern Land Company. What permits will be required if the cars must be moved to North Hempstead Beach Park?

3.5.3.2 Community Character

In regard to Community Character, the DEIS states, "The first goal set forth in this section is to maintain the small-scale suburban character of the Town....The proposed development is not small-scale....The proposed type of land use (high-density residential), while not in keeping with the traditional suburban development pattern as envisioned in the *Town Master Plan*, addresses the changing demographics within the Town and County, and takes advantage of the Subject Property's unique location on the waterfront" (p. 171). The DEIS describes the proposed project as "supporting a housing type that is responsive to larger real estate trends toward an increasing, cross-generational demand for "surban" communities, or communities that provide a mix between suburban living and

urban amenities including access to public transportation and downtown centers.” Whether the community should transform to a “surban” character should be decided by the affected community, not imposed by a developer who has an economic interest in supporting that outcome. While environmental, zoning, and legal experts may weigh in on the long list of requirements this project must meet in order to go forward, the concept of community character is the area where the public’s voice must be given the greatest weight. It is the area that encompasses the public’s collective values and future vision for the community. At the public hearing held by the Town of North Hempstead on Sept. 28, 2022, the community spoke loud and clear that this proposed project does not fit their idea of community character.

The Long Island Coastal Conservation and Management Plan’s (LICCMP) basic premise is “Successful redevelopment is a process that begins with **redevelopment strategies that are tailored to the needs of the community**. These strategies clearly define the steps in turning a brownfield or other site into a new use that benefits the community and the region” (LICCMP, p. 16). It should be noted that the DEIS failed to use LICCMP to evaluate the proposed project, contrary to the Scoping Document directives.

The DEIS states, “... the Proposed Action would improve community character along the West Shore Road corridor through the reinvigoration of the Subject Property.” CSHH would argue that the proposed “reinvigoration” is contrary to the character of a community that defines itself by protecting and preserving the natural resources of the harbor. This proposed project is the opposite of LICCMP’s objective for redevelopment to be “tailored to the needs of the community.”

No Mitigation Needed?

The DEIS further claims that, “No significant adverse impacts to zoning, land use, or community character have been identified. Therefore, no mitigation measures are proposed.”

This is an astonishing statement. Despite the many failings of this DEIS to address significant environmental and community impacts that would otherwise be protected by zoning and land use laws, the DEIS claims that local zoning laws can be trashed based on Southern Land Company’s deficient analysis. Furthermore, the DEIS fails to discuss (as directed by the Scoping Document) how the size and scale of this proposed project is assessed in the context of the cumulative impact of the many multiunit residential projects already approved and/or proposed along the Hempstead Harbor shoreline. Individually and collectively, these dense projects pose a significant threat to Hempstead Harbor’s water quality, wildlife, and aquifer sustainability.

ADDITIONAL COMMENTS

For 36 years, the Coalition to Save Hempstead Harbor has been documenting the health of the harbor through our award-winning water-monitoring program and working towards restoring what was once one of the most polluted bodies of water along the north shore of Long Island. The result of our efforts and those of our partners and other long-time stakeholders is a harbor that once again supports a diversity of marine life, birds, and other wildlife, including a growing population of ospreys and bald eagles. Water-quality and habitat enhancement projects have been undertaken around the harbor to help ensure that conditions continue to improve. These efforts resulted in the 2011

certification of 2,500 acres of shellfish beds for harvesting at the outer harbor. Innovative aquaculture projects have been initiated to further reduce nitrogen and bacteria loading to the harbor.

CSHH's objections to the proposed West Shore Road development are focused on the potential impact to local resources and, specifically, the potential degradation of Hempstead Harbor's water quality. Our goal is to ensure that the gains we have made over the past 36 years are not threatened by inappropriate development. We have participated in every major commercial and/or multiunit residential proposal along the harbor since the early 1990s. In our experience, so many of the mitigations and technological fixes that are proposed by developers, when put into practice, don't perform as expected.

Further, while CSHH is fully supportive of full cleanup of the site, the cleanup is an obligation of the current owner of the property. For Southern Land Company to offer to assume that obligation, stating its intent to "voluntarily" enter the Brownfield Cleanup Program, to gain financial benefits that will fund the development, and yet claim the cleanup as a benefit of the development is disingenuous.

Also, note that CSHH's colleagues have offered exhaustive comments on other areas of the DEIS. To reduce redundancy, we state here that we fully support and endorse the comments prepared by SMPIL Consulting, Ltd.

Respectfully submitted,



Kay Bromberg, Vice President



Carol DiPaolo, Water-Monitoring Coordinator

APPENDIX 1. THE AQUIFER EQUILIBRIUM EQUATION

By Sarah Meyland, MS, JD, for the Coalition to Save Hempstead Harbor re: Comments, Draft Environmental Impact Statement, submitted to the Town of North Hempstead, October 31, 2022.

To correctly state and understand how the groundwater system on Long Island works, one must first correctly state the relationships that influence the groundwater system. The groundwater system seeks to be a balanced system where:

$$\text{Inflow} = \text{Outflow} \pm \text{Storage}.$$

In this equation, first note that when this equation correctly describes the groundwater system, that system is **hydrologically balanced**. It is in a state of **dynamic equilibrium**.

Inflow means water is entering the aquifer system. Normally, this is assumed to be freshwater derived from precipitation falling on the land surface of Long Island. However, when the system is seeking equilibrium, it also may be saltwater from the surrounding surface water, entering the aquifer, which is described as saltwater intrusion.

Second, the term **Outflow** includes the many ways that groundwater leaves the aquifer system. Outflow includes discharge to streams and ponds, underflow discharge into coastal saltwater bodies, and groundwater withdrawals by pumping.

Storage is the term that recognizes that an aquifer acts as a large water storage container. Groundwater pumped from the aquifer is coming from the water stored in the sandy deposits of the aquifer. Storage helps the aquifers to stay in equilibrium between inflow and outflow when conditions may change.

The DEIS statement suggests that the relationship where **inflow** \geq **pumpage** means the aquifer is safe. This is not true. Why? Because pumpage is not the only outflow of importance. To determine if an aquifer is hydrologically healthy is to account for all of the outflow and change in storage and match it to the water coming into the aquifers or inflow.

The 2005 Nassau County DPW report, "Nassau County Groundwater Monitoring Program," addresses the process of dynamic equilibrium on page 7. The report states:

"Changing conditions, such as increases in water withdrawn from the aquifers to satisfy public water demand and fluctuations in the amount of recharge, are the two main factors that affect the behavior of the groundwater system. Since the flow of water into the groundwater system will always be in balance with the flow out of the system, these changes cause the groundwater system to constantly strive to reach a new equilibrium state. The groundwater system is therefore considered to be in a state of "dynamic equilibrium" as it continually adjusts to change."

The 2005 report continues to explain how the groundwater system adjusts to changing conditions:

“With the great ability the aquifers have to adjust to the impacts of development and to re-establish equilibrium, the flow into the groundwater system still remains in balance with the flow out of the system. The adjustments that the groundwater system made in seeking a new state of equilibrium in response to development include reduced streamflow during dry weather conditions, reduced underflow from the aquifers to the surrounding saltwater bodies, and a permanent lowering of the water table resulting from the installation of sanitary sewers. Thus, the two major environmental impacts of development are reduced streamflow and surface water levels in ponds, and altered movement of the saltwater interfaces along the north and south shores of the County” (p. 7).

In terms of groundwater management, the adjustments that occur in the aquifers to reach a new equilibrium are considered to be the negative and the undesirable consequences of excessive withdrawal of groundwater from the aquifer system.

In fact, it is the significant growth in groundwater pumpage that upsets the equilibrium of the aquifers and causes the negative responses such as loss of stream flow, drop in water tables, loss of surface water and reduced outflow into coastal waters. The way the aquifers increase inflow in order to achieve a new equilibrium is by allowing saltwater intrusion into the aquifers. The saltwater thus becomes an inflow part of the equilibrium formula. This is a serious, negative consequence that damages the long-term sustainability of the groundwater supply in Nassau County.

To make the point clear, it is the **total loss** of water from the aquifers due to outflow that is the important relationship and not simply the impact of pumping alone. Water is leaving the aquifers all the time. Groundwater withdrawals due to pumping only add to the total amount of water lost from the system and upsets the natural equilibrium. It does not take pumping to reach the level of total recharge to upset the aquifers – the impact occurs long before “recharge = pumping” is reached.

The DEIS concludes that the water requirements of the project and increased pumpage required by the development have no impact on the groundwater supply. This is not true. The new water demand it represents will contribute to negative impacts noted above in the DPW report on page 7 – loss of stream flow, reduced underflow, lowering of the water table and increased saltwater intrusion. Of equal concern is that these changes will also have the effect of spreading existing contamination within the aquifer system, putting additional public water supply wells at risk.