

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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CITIZENS FOR THE PRESERVATION OF :  
WAINSCOTT, INC., PAMELA MAHONEY, :  
MICHAEL MAHONEY, ROSEMARIE ARNOLD, :  
JOSÉ ARANDIA, OLGA ARANDIA, KENNETH :  
HANDY, JANE HARRINGTON, MITCHELL :  
SOLOMON, LISA SOLOMON, DUNE ALPIN FARM :  
PROPERTY OWNERS ASSOCIATION INC., :  
DUNE ALPIN FARM CORP., ANDREA BERGER, :  
ROBERT BERGER, GUNILLA BERLIN, CINDY :  
CIRLIN, AMY DEPAULO, ROSALIND DEVON, :  
KATHERINE EPSTEIN, DAVID EPSTEIN, NEIL :  
FABER, MARIANO GAUT, DANIEL GETTINGS, :  
TERRY GOLDSTEIN, STEVEN ISRAEL, LYNN :  
JEROME, LINDA KAYE, GEORGE LEE, SUSAN :  
RIELAND, ANTHONY D. ROMERO, ALBERT :  
RUBEN, GIL RUBENSTEIN, ARNOLD SCHILLER, :  
and JUDITH WIT, :

Petitioners-Plaintiffs, :

– against – :

TOWN BOARD OF THE TOWN OF EAST :  
HAMPTON and PETER VAN SCOYOC in his :  
capacities as Supervisor of the Town of East Hampton :  
and Member of the Town Board of the Town of East :  
Hampton, :

Respondents-Defendants. :

– and – :

SOUTH FORK WIND, LLC f/k/a Deepwater Wind :  
South Fork, LLC, :

Nominal Respondent-Defendant. :

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Index No. \_\_\_\_\_

**VERIFIED PETITION  
AND COMPLAINT**

**(ORAL ARGUMENT REQUESTED)**

Petitioners-Plaintiffs, by their counsel Friedman Kaplan Seiler & Adelman LLP, for their combined verified Petition pursuant to Article 78 of the CPLR, and Complaint for declaratory judgment pursuant to CPLR 3001 and relief under General Municipal Law § 51, against Respondent-Defendant Town Board (the “Board”) of the Town of East Hampton (the “Town”) and Respondent-Defendant Peter Van Scoyoc (“Van Scoyoc”), respectfully allege on their own knowledge as to themselves and their own actions, and upon information and belief as to all other matters, as follows:

**PRELIMINARY STATEMENT**

1. This proceeding and action arises out of the very first offshore windfarm in New York history, which Nominal Respondent-Defendant South Fork Wind, LLC formerly known as Deepwater Wind South Fork, LLC (“South Fork”) proposes to build at a cost of over \$1.6 billion off the eastern point of Long Island (the “South Fork Wind Farm”).
2. Given the unprecedented nature of the South Fork Wind Farm for New York State, its importance as East Hampton and other Long Island communities increase their reliance on renewable energy, and the significant environmental issues inherent in such a project, local government leaders would be expected to act deliberately, judiciously, and in a manner calculated to generate maximum community protection and public support for the project.
3. Because there will be significant and protracted state and federal administrative proceedings that will, among other things, bring important facts to light, local government leaders would be expected to withhold judgment, and commit themselves only when necessary, preserving their latitude to act as ultimately may be appropriate, with full knowledge of the project’s impacts, environmental and otherwise.
4. As described below, however, in an effort to appease a publicly-traded multinational company with a market capitalization of over \$70 billion (South Fork’s Denmark-

based half-owner, Ørsted A/S), the Board, acting precipitously and on an ill-informed basis, has pre-approved the project and granted an easement to South Fork (the “Easement”), subject to conditions subsequent over which the Town has 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.

5. Petitioner-Plaintiff Citizens for the Preservation of Wainscott, Inc. (“CPW”) warned the Board several times that proceeding to grant the Easement at this time would be illegal (Gotko Aff. Exs. N, O, & P), and proposed alternatives that would have materially reduced the environmental impacts (Gotko Aff. Exs. R, T-1, T-2, Z, & II).<sup>1</sup> The Board did not respond to any of CPW’s communications, or otherwise attempt to constructively engage with CPW in any way; nor did the Board seriously consider the alternative landing routes presented by CPW.

6. Accordingly, Petitioners-Plaintiffs are compelled to bring this combined Article 78 proceeding and Complaint against the Board, seeking (among other things) an order and declaratory judgment invalidating the Board’s improper grant of the Easement to South Fork.

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7. CPW was formed by concerned citizens and residents for the purpose of preserving the environment and natural beauty of Wainscott – a hamlet located in the Town in

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<sup>1</sup> References to “Gotko Aff.” are to the accompanying *Affirmation of Lance J. Gotko*, dated February 2, 2021.

Suffolk County, New York – whose citizens will directly suffer from the project that South Fork plans to construct pursuant to the Easement. (Gotko Aff. Ex. U.)

8. The Board’s Easement purports to grant access and permission to South Fork to construct, install, operate, and maintain a 138,000-volt electric transmission cable (the “Project” or the “High-Voltage Cable”) through the Town in order to connect the South Fork Wind Farm with a new transmission facility (the “New Substation”) proposed to be built immediately adjacent to the Dune Alpin Farm neighborhood (the “Dune Alpin Neighborhood” or “Neighborhood”). (Gotko Aff. Ex. A.)

9. Virtually all of the land-based part of the High-Voltage Cable (and therefore the Easement) will be located in Wainscott, and will be constructed and primarily run through quiet residential neighborhoods and narrow lanes, including Beach Lane which dead-ends at Wainscott Beach. Moreover, the route that the Easement permits would deposit the High-Voltage Cable, and the New Substation, on the doorstep of the Dune Alpin Neighborhood.

10. Under New York’s State Environmental Quality Review Act (“SEQRA”), before the Board can take “any action they propose or approve which *may* have a significant effect on the environment”<sup>2</sup> – such as actions akin to granting the Easement for the Project – it is required to “prepare, or cause to be prepared by contract or otherwise an environmental impact statement,”<sup>3</sup> that considers and evaluates a number of specified environment-related factors.<sup>4</sup>

11. The New York State Legislature enacted SEQRA to make “environmental protection a concern of every agency,”<sup>5</sup> and to “inject environmental considerations directly into

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<sup>2</sup> N.Y. Env’tl. Conserv. Law § 8-0109(2) (emphasis added)

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 8-0109(2)(a)-(j).

<sup>5</sup> *Jackson v. NY State Urban Dev. Corp.*, 67 N.Y.2d 400,414 (1986).

governmental decisionmaking” to confront and resolve environmental concerns *before* the agencies act.<sup>6</sup>

12. Similarly, before South Fork – or any person – can take *any* action to prepare the site for construction of a major electric transmission facility such as the Project, Article VII of the Public Service Law requires South Fork to apply for and obtain a Certificate of Environmental Compatibility and Public Need (an “Article VII Certificate”) from the Public Service Commission (“PSC”).

13. The PSC will not grant an Article VII Certificate unless it determines (among other things) “that the facility avoids or minimizes to the extent practicable any significant adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations including but not limited to, the effect on agricultural lands, wetlands, parklands and river corridors traverse.”<sup>7</sup>

14. The PSC’s environmental review takes the place of the ordinarily-applicable environmental review required by SEQRA that the Town would have to undertake.<sup>8</sup>

15. But just like SEQRA, the rule under the Public Service Law is that “[*n*]o person . . . shall commence the preparation of the site” of any proposed major utility transmission facility unless and until the PSC issues an Article VII Certificate of environmental compatibility and public need.<sup>9</sup> Getting the Easement in place for the High-Voltage Cable’s route obviously constitutes “preparation” for that route.

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<sup>6</sup> *New York City Coal. to End Lead Poisoning, Inc. v. Vallone*, 100 N.Y.2d 337, 348, 350 (2003); see also *Coca-Cola Bottling Co. v. Bd. Of Estimate of City of NY*, 72 N.Y.2d 674, 679, 681-82 (1988) (annulling agency action that violated the “spirit” and “fundamental policy of SEQRA”).

<sup>7</sup> N.Y. Pub. Serv. Law § 126(1)(c).

<sup>8</sup> See 6 NYCRR § 617.5(c)(44).

<sup>9</sup> N.Y. Pub. Serv. Law § 121(1) (emphasis added).

16. Pursuant to Article VII, South Fork filed an application for an Article VII Certificate with the PSC on September 14, 2018. (Gotko Ex. Q.)<sup>10</sup>

17. The PSC's review of South Fork's application is ongoing, and the PSC has not yet awarded South Fork an Article VII Certificate of environmental compatibility and public need.

18. Instead of *not* proposing or approving any action concerning the Project in the absence of an environmental review (as SEQRA requires), and instead of *waiting* to take any action to commence preparation of the Project's site (as Article VII requires), on January 21, 2021 the Board proceeded to approve a resolution granting the Easement to South Fork. (Gotko Aff. Ex. A & C.)

19. This wrongful action by the Board is illegal. Under SEQRA as folded into Article VII, and given the State's stated interest in protecting the environment in connection with *all* actions taken by governmental bodies, the Board is forbidden from taking any action concerning the Project unless and until the PSC completes its environmental review and issues South Fork an Article VII Certificate.

20. In a vacuum, the Board's illegal granting of the Easement would be baffling. After all, because South Fork cannot start construction on the Project unless and until the PSC issues an Article VII Certificate and a related Order approving South Fork's

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<sup>10</sup> The title of the Article VII Proceeding is *Application of Deepwater Wind South Fork, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 3.5 Miles of Submarine Export Cable from the New York State Territorial Waters Boundary to the South Shore of the Town of East Hampton in Suffolk County and Approximately 4.1 Miles of Terrestrial Export Cable from the South Shore of the Town of East Hampton to an Interconnection Facility with an Interconnection Cable Connecting to the Existing East Hampton Substation in the Town of East Hampton, Suffolk County*, Matter No. 18-02212, Case No. 18-T-0604.

Environmental Management & Construction Plan, and given that federal Bureau of Ocean Energy Management (“BOEM”) approval for the South Fork Windfarm will not be decided earlier than 2022 (Gotko Aff. Ex. WW), the Wind Farm will not become operational until at least the end of 2023 (Gotko Ex. RR). As a result, there is no pressing reason for the Board to have proceeded to grant the Easement at this time. The grant of the Easement *now* is *not* a precondition to PSC and/or BOEM approvals, and will *not* get the South Fork Wind Farm online a minute sooner than otherwise would happen.

21. But the facts reveal that Board’s illegal granting of the Easement was driven by bad faith, authoritarian motives, and irrationality.

22. As set forth below, despite the lack of any pressing necessity, one reason a majority of the Board was motivated to grant the Easement now – in violation of SEQRA and Article VII – is because South Fork has purchased the Board’s compliance by agreeing to pay the Town tens of millions of dollars. (Gotko Ex. B.)

23. The Board’s precipitous action in granting the Easement also was motivated by an undemocratic desire to quash a current, home-rule movement by residents of Wainscott to incorporate as a village, and thus deny the new Village of Wainscott control over whether the Easement should be granted.

24. Moreover, although Article VII reposes in the PSC alone the responsibility to determine whether the Project is environmentally sound, it appears likely that the Board granted South Fork the Easement so that South Fork could use it to sway the PSC’s deliberations, pointing to the Easement as the Town’s *imprimatur*.

25. Evidencing just how ill-informed the Board was in approving the Project, (a) Van Scoyoc has said that the Project is akin to nothing more than installation of a water main

and, accordingly, has totally dismissed the major impacts the Project will have on Wainscott and the Dune Alpin Neighborhood, (b) the Easement leaves “to be determined” many important provisions and plans, including those governing environmental issues, (c) the Board granted the Easement without providing that South Fork may not seek waivers of safety codes, or without full disclosure of any such waivers South Fork will seek, and (d) the reasons articulated by the Board for acting prior to the PSC’s environmental review are false and/or irrational.

26. The 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, and otherwise took a passive role in the Article VII Proceeding hearings – which only reinforces the Board members’ failure to fulfill their responsibility and inform themselves of all information reasonably available to them.

27. For these reasons and those set forth in detail below, the Board’s granting of the Easement was illegal and/or arbitrary and capricious, and Petitioners-Plaintiffs seek an order pursuant to CPLR Article 78, and a declaratory judgment under CPLR 3001, invalidating the Board’s grant of the Easement to South Fork, enjoining the Board from taking any action with respect to the Project unless and until the PSC awards South Fork an Article VII Certificate that is no longer subject to administrative appeal or litigation, and such further relief as the Court deems appropriate.

### **PARTIES**

28. Petitioner-Plaintiff CPW is a corporation formed under the laws of the State of New York, with its principal place of business in Wainscott, Town of East Hampton, Suffolk County, New York. CPW is a local community organization devoted to preserving the natural beauty and bucolic character of Wainscott. CPW supports renewable energy and wind power, and this proceeding does not challenge the South Fork Wind Farm. CPW also is very

concerned about (a) the proposed land route of the High-Voltage Cable, which would come ashore at the foot of Beach Lane and travel through Wainscott on its way to the proposed New Substation, and (b) the dangers, disruptions, and impacts that the construction and installation of the High-Voltage Cable would cause throughout Wainscott, particularly given the number of residences and narrow lane. CPW also insists that the Board follow all laws, regulations, and protocols that require close examination of the way in which South Fork proposes to construct and operate the Project. (Gotko Aff. Ex. U.) CPW has written multiple, detailed letters to the Board setting forth its concerns (Gotko Aff. Exs. K-P), but the Board has refused to respond in any way.

29. Petitioners-Plaintiffs Michael and Pamela Mahoney reside on Beach Lane – in fact, Pamela Mahoney has resided on Beach Lane for 70 years. The Mahoneys gave testimony in the Article VII proceeding detailing (among other things) their concerns about the dangers, disruptions, and impacts that the construction and installation of the High-Voltage Cable on Beach Lane would cause to themselves, their property, and the environment on and around Beach Lane. (Gotko Aff. Ex. Y.)

30. Petitioner-Plaintiff Rosemarie Arnold resides on Rosy Meadow Farm, located on the lot at the corner of Wainscott Main Street and Sayres Path. Her property is encumbered with four easements purchased by East Hampton to maintain the bucolic nature of Wainscott: an historic easement, an agricultural easement, a scenic easement, and a preservation easement. Ms. Arnold is concerned about the dangers, disruptions, and impacts that the construction and installation of the High-Voltage Cable on Main Street and on Sayres Path would cause to herself, her property, and the environment on and around Rosy Meadow Farm.

31. Petitioners-Plaintiffs José Arandia, Olga Arandia, Kenneth Handy, Jane Harrington, Mitchell Solomon, and Lisa Solomon (the “Wainscott Northwest Residents”) reside on or adjacent to Wainscott Northwest Road. They are concerned about the dangers, disruptions, and impacts that the construction and installation of the High-Voltage Cable on Wainscott Northwest Road Beach would cause to themselves, their property, and the environment on and around Wainscott Northwest Road, including with respect to harmful per- and polyfluoroalkyl substances (“PFAS”). Among other things, installation of the High-Voltage Cable under and along Wainscott Northwest Road will entail excavating within a contaminant plume of PFAS that is known (including by the Board) to be present in shallow groundwater in this area. The Wainscott Northwest Residents fear that the excavation for the High-Voltage Cable could become a pathway for movement of PFAS-contaminated groundwater, causing areas – including their property and residential water wells – to be contaminated or further contaminated.

32. Petitioner-Plaintiff Dune Alpin Farm Property Owners Association Inc. (“Dune Alpin POA”) is a corporation formed under the laws of the State of New York. The Dune Alpin POA membership is made up of (a) 57 individual homeowners, and 2 owners of unimproved lots in the Dune Alpin Neighborhood, and (b) the 48 individual members of the Dune Alpin Farm Corp. (the “Dune Alpin Co-op”). All owners of homes or lots in the Dune Alpin Neighborhood, and all owners of shares in the Dune Alpin Co-op, are members of the Dune Alpin POA. The Dune Alpin Co-op also is a member of the Dune Alpin POA.

33. Petitioner-Plaintiff Dune Alpin Co-op is a corporation formed under the laws of the State of New York, that owns the 48 co-op units in the Dune Alpin Neighborhood.

34. Petitioners-Plaintiffs Andrea Berger, Robert Berger, Gunilla Berlin, Cindy Cirlin, Amy Depaulo, Rosalind Devon, Katherine Epstein, David Epstein, Neil Faber, Mariano

Gaut, Daniel Gettings, Terry Goldstein, Steven Israel, Lynn Jerome, Linda Kaye, George Lee, Susan Rieland, Anthony D. Romero, Albert Ruben, Gil Rubenstein, Arnold Schiller, and Judith Wit (collectively, the “Dune Alpin Residents”) are residents of the Dune Alpin Neighborhood.

35. By its terms, the Easement “permit[s] the Cable to follow [a] route” that would deposit the High-Voltage Cable, and the proposed New Substation into which the Cable would connect, immediately adjacent to the Dune Alpin Neighborhood. (Gotko Aff. Ex. A [Schedule A].) The walled New Substation facility would cover some 103,506 square feet (Gotko Aff. Ex. QQ), whereas the houses in the Neighborhood are restricted to 3,000 square feet. As discussed in further detail below, the Dune Alpin Neighborhood already is burdened by the existing East Hampton Substation, which at this time is at least somewhat separated from the Neighborhood by a wooded buffer. The New Substation would eliminate that buffer, and would add to the potential dangers and concerns the residents of the Neighborhood already have from the existing East Hampton Substation, including fires or explosions, water contamination, air pollution, noise pollution, and exposure to electromagnetic fields. (Gotko Aff. Exs. T-1, T-2, V, X & Z.)

36. Respondent-Defendant Board is a five-member body vested with legislative power for the Town. The Board is an “agency” within the meaning of Article 78 of the CPLR. The Board’s principal office is located in East Hampton, Suffolk County, New York.

37. Respondent-Defendant Peter Van Scoyoc (“Van Scoyoc”) is the Supervisor of the Town and a Member of the Board. Van Scoyoc has been the driving force on the Board, and has influenced the Board, to grant the Easement before the PSC’s environmental review has been completed. As set forth below, Van Scoyoc’s public statements reveal him either to be both recklessly ill-informed of the serious impact to Wainscott that will be caused by the

Project and plainly misinformed concerning whether the Easement is necessary at this time, or he is deliberately misleading the citizens of the Town and the Members of the Board. Van Scoyoc's reckless failure to inform himself, and/or his deliberate dissemination of misinformation, has influenced other Board Members to approve the Easement.

38. Nominal Respondent-Defendant South Fork is a limited liability company formed under the laws of the State of Delaware, and maintains an office at 524 Montauk Highway, Amagansett, Suffolk County New York 11930. South Fork does business in Suffolk County, New York. In fact, the South Fork Windfarm and the Project relate to a Power Purchase Agreement (currently in the process of being amended) with the Long Island Power Authority ("LIPA") that South Fork entered into in 2017. In August 2018, South Fork was acquired by Ørsted, AG, a Danish company, for \$510 million. In February 2019, Ørsted announced that Eversource Energy, a Massachusetts company, had purchased a 50% stake in South Fork (and Ørsted's a 50 Revolution Wind project, as well a 257-square-mile tract off the coasts of Massachusetts and Rhode Island) for \$225 million. South Fork is joined as a Respondent-Defendant herein because it is the grantee of the Easement sought to be nullified. *See* CPLR 7802(c). Petitioners-Plaintiffs do not seek any relief against South Fork itself in this proceeding.

#### **JURISDICTION AND VENUE**

39. This Article 78 proceeding is the proper mechanism for seeking judicial review of the Board's action taken in violation of SEQRA/Article VII and/or in an arbitrary and capricious manner. The Board is a "state agency" under Article 78, and the Board's approving a resolution authorizing the grant of the Easement to South Fork is a final action. At a September 8, 2020 Board work session, counsel for the Board explained that once it is entered into, the Easement "takes effect immediately" and "fixes the rights of the parties." (Gotko Aff. Ex. F at 1:03:43, 1:04:32.)

40. Pursuant to CPLR 7804(b) and 506(b), the venue of this proceeding lies in Suffolk County, the judicial district in which Respondents-Defendants took the action challenged, and where the Respondents-Defendants are located.

### **STATUTORY BACKGROUND**

41. The State Environmental Quality Review Act (“SEQRA”) requires “[a]l agencies . . . [to] prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment.”<sup>11</sup> SEQRA applies to both state and local “agencies,” which includes local boards of any cities, counties, and other political subdivisions of the state, including the Town’s Board.<sup>12</sup> SEQRA prohibits agencies like the Board from approving any “action” until it complies with SEQRA. An “action” essentially involves any project activities or agency decisions that “may affect the environment.”<sup>13</sup> Ordinarily, the Board’s conveyance of an easement in connection with a project that may affect the environment requires a detailed environmental review under SEQRA.<sup>14</sup>

42. In connection with electric transmission facilities such as the Project, the responsibility for conducting an environmental review is vested in the PSC who determines whether to issue a certificate of environmental compatibility under Article VII.<sup>15</sup> Under Article VII, “[n]o person . . . shall commence the preparation of the site for the construction of a major

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<sup>11</sup> N.Y. Eenvtl. Conserv. Law § 8-0109.

<sup>12</sup> N.Y. Eenvtl. Conserv. Law § 8-0105.

<sup>13</sup> 6 NYCRR § 617.2(b).

<sup>14</sup> 6 NYCRR § 617.2(b)(1), (3).

<sup>15</sup> N.Y. Eenvtl. Conserv. Law § 8-0111(5)(b).

utility transmission facility” like the Project until the PSC has granted “a certificate of environmental compatibility and public need.”<sup>16</sup>

### STATEMENT OF FACTS

#### The Setting

43. The Town is the easternmost town on Long Island’s South Fork, encompassing 70 square miles, including the Village of East Hampton, a portion of the Village of Sag Harbor, and the unincorporated hamlets of Wainscott, Amagansett, Springs, and (at the eastern-most point of the South Fork) Montauk. (Gotko Aff. Ex. JJ.) South Fork proposes to build the South Fork Wind Farm some 35 miles out to sea east of Montauk Point, which is the eastern-most point of the South Fork.

44. Wainscott, which is located almost 24 miles from Montauk Point (and thus some 60 miles away from the proposed South Fork Wind Farm), is bounded by the Atlantic Ocean to the south, Georgica Pond and the Village of East Hampton to the east, the Village of Sagaponack to the west, and the Village of Sag Harbor to the north.

45. Wainscott is a bucolic rural/residential community. The Wainscott School, founded in 1730, was the last public one-room schoolhouse operating in New York until an annex was built in 2008. Wainscott has vast open spaces and has retained its old feel of a farming community – including its very own farm stand. Wainscott is also home to two ponds, as well as a beautiful community chapel. The jewel of Wainscott is the small, iconic beach, Wainscott Beach, that residents of Wainscott and other residents of the Town enjoy year-round, and is located at the end of the very narrow Beach Lane. Homes are interspersed among potato fields and corn fields in the southern portion of Wainscott, and in the midst of woods in its

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<sup>16</sup> N.Y. Pub. Serv. Law § 121(1) (emphasis added).

northern portion. (Gotko Aff. Ex. U.) Wainscott's population includes individuals who are wealthy, those who are middle class, and those who are poor. According to the U.S. Census Bureau, the estimated median annual income for a household in Wainscott is \$144,375, and 13.5% of the population is below the poverty line. (Gotko Aff. Ex. VV.)

46. The Dune Alpin Neighborhood is bounded by the LIRR right of way to the north, Cove Hollow Road to the east, Montauk Highway to the south, and Green Hollow Road to the west. The Neighborhood is located amidst a beautiful former dairy farm setting, and is an architecturally-designed mixture of co-op units and individual homes. All told, there are 107 families in the Dune Alpin Neighborhood, comprising approximately 200 to 300 residents. (Gotko Aff. Exs. V & X.)

#### **The Proposed Wind Farm and High-Voltage Cable**

47. In 2017, LIPA selected South Fork to provide it with electricity from South Fork's proposed South Fork Wind Farm. South Fork seeks to connect the to-be-constructed South Fork Wind Farm to interconnect into the LIPA electric transmission system by constructing and installing the High-Voltage Cable, a 138,000-volt alternating current electrical cable. (Gotko Aff. Ex. Q.)

48. South Fork's proposed High-Voltage Cable consists of three segments within New York State: (1) a 3.5-mile submarine segment of cable running through New York State territorial waters (with the remaining submarine segment running from the South Fork Wind Farm to New York State territorial waters); (2) a 4.1-mile underground segment of cable running through the Town (almost entirely in Wainscott); and (3) the New Substation to connect the Cable to the existing East Hampton Substation, adjacent to the Dune Alpin Neighborhood. (Gotko Aff. Ex. Q.)

49. South Fork plans to have its High-Voltage Cable come ashore at Wainscott Beach at the foot of Beach Lane, travel under the entire length of Beach Lane, and then continue through Wainscott to a new interconnection facility. (Gotko Aff. Ex. Q.)

50. South Fork originally represented to the Town that it was legally required to obtain the Easement before it could seek state or federal approvals for the Project – but that turned out to be false. (Gotko Aff. Ex. AA.) South Fork has subsequently said that it does not need the Easement until it begins construction and installation of the Cable. (Gotko Aff. Ex. AAA at 2:37:00.)

51. On July 19, 2018, a highly divided Board voted (3-2) to approve a resolution that, on the one hand, acknowledged that the Article VII Proceeding would have to be completed before the Project could proceed, and that “there are serious and substantial issues with the [P]roject that must be addressed and mitigated through the Article VII review”; but, on the other hand, proceeded to state its support for granting the Easement so South Fork could move forward with the environmental and regulatory review of the Project (even though the Board knew by then that the granting of the Easement was *not* a prerequisite for such review). (Gotko Aff. Ex. C.) At the time, Van Scoyoc said the resolution was intended as a mere “signal” of support, and it remained to be seen whether counsel for the Town and for South Fork could iron out all the details of the Easement. (Gotko Aff. Ex. BB.)

52. On September 14, 2018, South Fork filed an application with the PSC for an Article VII Certificate for the Project. (Gotko Aff. Ex. Q.)<sup>17</sup> On December 14, 2018, the PSC Secretary identified ten deficiencies in South Fork’s application that prevented the PSC from starting its review of the Project, including that South Fork failed to make substantive disclosures

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<sup>17</sup> At the time of the application, South Fork’s name was Deepwater Wind South Fork, LLC.

required under the Public Service Law, and the PSC informed Deepwater that “[t]he deficiencies identified by the Department of Public Service Staff (DPS Staff) must be remedied or otherwise cured before the Application can be deemed to comply with PSL § 122 and the public hearing can commence.” (Gotko Aff. Ex. KK.) South Fork’s application was not accepted by PSC as complete until March 15, 2019. (Gotko Aff. Ex. LL.)

53. On March 2, 2019, in advance of Van Scoyoc’s next election campaign, he told a crowded meeting of the Wainscott Citizen’s Advisory Committee (“WCAC”) (which consists of volunteer citizens who promote public awareness of issues concerning Wainscott) that: “Initially, I did not think we needed the Article [VII] process completed to sign” an easement agreement. “I’m no longer sure that’s the way to go.” – “We think that process will probably complete before we sign any agreement.” (Gotko Aff. Ex. DD.)

54. The PSC’s review and public hearing process is ongoing, and it will be months before the PSC issues a decision on South Fork’s application. And if and when the PSC issues an Article VII Certificate to South Fork, there will follow a public review and comment process for the Environmental Management & Construction Plan (“EM&CP”), a series of documents that will be prepared by South Fork and will include detailed plans and specifications for the Project. A complete understanding of the Project’s impacts cannot be achieved by the Board unless and until it reviews the EM&CP, which does not exist at this time. (The EM&CP is discussed in further detail below.)

55. Significantly, the Town applied for and received status as an intervenor party in the Article VII Proceeding, but has not used that status in any proactive way during the Article VII Proceeding hearing. The Town provided no testimony and questioned no witnesses from other parties; and has not made any substantive written filings to the PSC. At no time

during the Article VII Proceeding did the Town ask the PSC to look into any of the many concerns that have been raised by citizens of the Town, including with respect to South Fork's desire to waive its compliance with Town laws; nor did the Town demand that South Fork address those concerns.

56. Despite the fact that the PSC has not yet issued South Fork an Article VII Certificate – *and no requisite environmental assessment of the Project has been undertaken* – on January 21, 2021, the Board approved a resolution authorizing and directing Van Scoyoc to sign an agreement granting the Easement to South Fork. (Gotko Aff. Exs. A & C.)

57. Moreover, the Wind Farm from which the High-Voltage Cable will run has not been constructed, BOEM's approval is not expected to be granted until 2022 (Gotko Aff. Ex. WW), and the Wind Farm will not become operational until the end of 2023 (Gotko Aff. Ex. RR). The granting of the Easement will in no way aid BOEM's approval process or make the Wind Farm operational earlier than what is currently projected.

### **The Easement**

58. The Easement purports to permit South Fork to land the High-Voltage Cable in Wainscott at Wainscott Beach at the southerly end of Beach Lane; and then to follow a route northerly under and along the entire length of Beach Lane; then easterly under and along Wainscott Main Street to Sayres Path; then northerly under and along Sayres Path to Wainscott Stone Road; then northeasterly under and along Wainscott Stone Road to Wainscott Northwest Road; then northerly under and along Wainscott Northwest Road; then crossing under Montauk Highway; then continuing northerly under and along Wainscott Northwest Road (adjacent to the Wainscott Sand & Gravel site (the "Gravel Pit") and just south of the East Hampton Airport (Gotko Aff. Ex. A [Schedule A]) – both of which are contaminated with harmful per- and

polyfluoroalkyl substances (“PFAS”) (Gotko Aff. Exs. W-1, W-2, W-3, and W-4). The High-Voltage Cable would then double back easterly along the Long Island Rail Road’s right-of-way approximately 2 miles (crossing Daniels Hole Road, Stephen Hands Path, and Buckskill Road) to the New Substation to be built immediately adjacent to the Dune Alpin Neighborhood. (Gotko Ex. A [Schedule A].)

59. The roads that the High-Voltage Cable will traverse in Wainscott south of Montauk Highway are all narrow and pass through quiet neighborhoods, farm fields, and woods.

60. Beach Lane in Wainscott is the only public road in Wainscott providing access to Wainscott Beach. It is a 19-foot, paved way flanked by a quiet residential neighborhood and fields given over to agriculture.

61. Bounded on the south by Wainscott Main Street, and on the east by Sayres Path, is the bucolic Rosy Meadow Farm which, as noted, is encumbered by an historic easement, an agricultural easement, a scenic easement, and a preservation easement.

62. Wainscott Stone Road is a lovely, narrow, winding road which passes through a quiet residential neighborhood with homes and woods on either side.

63. Wainscott Northwest Road south of the Highway similarly passes through a quiet residential neighborhood with homes and woods on either side. And Wainscott Northwest Road north of Montauk Highway, while somewhat wider, is generally wooded with houses along the way.

64. These neighborhoods, fields, and woods are all representative of Wainscott’s bucolic nature.

65. The Easement permits South Fork to use the property it covers “for the limited purposes of constructing, reconstructing, installing, repairing, replacing, maintaining,

operating, using, inspecting, patrolling, decommissioning, and removing” the High Voltage Cable through these neighborhoods, including all “raceways, conductors, terminals, sustaining and protective fixtures, underground expansion stabilizers, manholes, hand holes, junction boxes, foundations, fittings, and all housings, connectors, switches, and any other equipment or appurtenances” necessary to operate the High Voltage Cable. (Gotko Aff. Ex. A at § 1.1.)<sup>18</sup>

66. In exchange, South Fork has also agreed to a Community Host Agreement, pursuant to which South Fork promised to pay two \$500,000 “milestone” payments to the Town (and to the Trustees of the Freeholders and Commonalty of the Town of East Hampton (the “Trustees”)) – the first payment to be made 90 days after the Community Host Agreement is signed and the second payment to be made 90 days after construction of the High Voltage Cable begins. The Community Host Agreement further provides that within six months of the High Voltage Cable becoming operational, South Fork will pay the Town and Trustees \$870,000 as the first of 25 annual installments; thereafter, South Fork will pay to the Town and the Trustees such annual installment amount, plus 2% per year, for the following 24 subsequent calendar years, with the aggregate of such annual payments totaling \$27,866,361.00. (Gotko Aff. Ex. B at §§ 2.4, 2.5.)

#### **The Project Raises Significant Environmental and Other Impacts for Wainscott**

67. As noted above, the Board has acknowledged that a “*full environmental review* will be undertaken as part of the Public Service Commission review of the Project,” (emphasis added), and that “*there are serious and substantial issues with the [P]roject that must be addressed and mitigated through the Article VII review*” (emphasis added).

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<sup>18</sup> Significantly (but apparently a fact that did not give the Board pause), Ørsted has never landed a major offshore wind sea-to-shore power cable in a residential neighborhood in its home-country Denmark. (Gotko Aff. Exs. U [at GE-6] & HHH.)

68. Van Scoyoc, however, either as a result of his failure to inform himself or reckless disregard of the impacts the Project will have on Wainscott, has publicly suggested that the Project is comparable to Suffolk County's laying of a water main on Beach Lane in 2018. (Gotko Aff. Ex. CC.)

69. The High-Voltage Cable, however, would entail far more disturbance, thousands of feet of directional drilling, high-decibel noise, diesel fumes, miles of trenching for installation of a concrete encased duct bank system, splice boxes and manholes, cable pulling into the duct system, splicing together of cable segments, complex logistics and methods, environmental hazards, and extend over significantly more time than the Beach Lane water main project. (Gotko Aff. Ex. II.)

70. Whereas the installation of a water main to directly serve residents is a common occurrence on Long Island such is not the case for a high-voltage electric transmission cable. In fact, the landing of an offshore wind farm high-voltage cable in New York State is unprecedented.

71. As a threshold matter, it is not just Beach Lane at issue here. As noted, the route permitted by the Easement would be installed under, and affect residents, homeowners, and farms adjoining, Beach Lane, Wainscott Main Street, Sayres Path, Wainscott Stone Road, and Wainscott Northwest Road; and will cross Daniels Hole Road, Stephen Hands Path, and Buckskill Road. In addition, the Easement permits the High-Voltage Cable to follow a route that will end in a lot adjacent to the Dune Alpin Neighborhood, where it will connect to the New Substation to be built approximately 100 feet away from the Neighborhood.

72. In addition, unlike a water main, the High-Voltage Cable that would snake its way through the narrow lanes and quiet residential neighborhoods of Wainscott will be

carrying 138,000 volts of electricity, creating risks of electrical fires, electric short circuits, violent energy releases in manholes, water contamination, and electromagnetic fields. Moreover, the Easement contemplates that, in connection with the Project, South Fork will use and store Hazardous Materials,<sup>19</sup> and acknowledges the potential for spills of petroleum and other hazardous chemicals during the course of the Project.

73. Moreover, unlike the water main on Beach Lane, the landing of the High-Voltage Cable from the ocean will involve drilling under the beach and sensitive dunes of Wainscott Beach at the foot of Beach Lane. Beach erosion from storms will necessitate sand replenishment operations in order to maintain the minimum 30-foot cable burial depth beneath Wainscott Beach, which could disrupt use of the beach and endanger sensitive flora and fauna onshore and offshore. (Gotko Aff. Exs. II.)

74. The trenching on Wainscott Northwest Road will be adjacent to the Gravel Pit, and just south of the East Hampton Airport, which, as noted, are contaminated with harmful PFAS.<sup>20</sup> Installation of the High-Voltage Cable in this area will entail excavating within the PFAS contaminant plume that is known (including by the Board) to be present in shallow groundwater in this area. Excavation for the High-Voltage Cable therefore could become a pathway for movement of PFAS-contaminated groundwater, causing areas – including residential

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<sup>19</sup> The Easement defines “Hazardous Materials” as “(1) any substance that requires investigation, remediation, or other response or corrective action under any Environmental Laws, or (2) any substance that is or hereafter becomes defined as a hazardous waste, hazardous substance, extremely hazardous substance, hazardous material, hazardous matter, hazardous chemical, toxic substance, toxic chemical, pollutant, contaminant, or other similar term in or pursuant to any Environmental Laws, or (3) any asbestos or asbestos-containing material, polychlorinated biphenyls (‘PCBs’) or equipment or articles containing PCBs, petroleum, diesel fuel, gasoline, or other petroleum hydrocarbons.” (Gotko Aff. Ex. A.)

<sup>20</sup> In June 2019, the New York State Department of Environmental Conservation added 47 acres at the East Hampton Airport to its Registry of Inactive Hazardous Waste Disposal Sites, also known as “Superfund Sites.” (Gotko Aff. Ex. EE.)

water wells – to be contaminated or further contaminated. (Gotko Aff. Exs. II, W-1, W-2, W-3 & W-4.)

75. The trenching required for the High-Voltage Cable also is significantly more extensive than that needed for a water main. The depth of the water main trench on Beach Lane was just 4 feet, 9 inches. By contrast, the trench for the High-Voltage Cable along the roads of Wainscott will be 8 feet deep (and sometimes deeper where transition or splicing vaults are proposed). Because of the deeper and wider trenching involved, there will be far more transport of soil, bedding and backfill material needed for the High-Voltage Cable, which will have to be trucked to the affected sites. (Gotko Aff. Ex. II.)

76. At various locations along the route, excavations for the High-Voltage Cable will be 10 feet wide to accommodate subsurface concrete splice vaults that are 29 feet long, comparable to the size of shipping containers. These vaults will be buried beneath the road at intervals of 1,200-1,500 feet and (according to South Fork's Article VII application filed with the PSC) there will be three of these concrete vaults installed on Beach Lane; another at the intersection of Beach Lane and Wainscott Main Street; another at the intersection of Main Street and Sayres Path; another at the intersection of Sayres Path and Wainscott Stone Road; another at the intersection of Wainscott Stone Road and Wainscott Northwest Road; two on Wainscott Northwest Road south of Montauk Highway; and four more on Wainscott Northwest Road north of the Highway. (Gotko Aff. Ex. II.)

77. Within the splice vaults the cable sections will be spliced together. Future cable failure can occur at the splices, if, for example, the splice is contaminated during initial installation. This type of splicing cannot be rushed, and the installation or future splice repair

must be completed by highly skilled workers. So once a splice or splice repair is started, the work will continue day and night until completed. (Gotko Aff. Ex. II.)

78. Unlike the relatively narrow area needed to install a water main, the space needed for construction of the High-Voltage Cable is very wide. Indeed, the Easement Agreement grants South Fork “a 20-foot-wide corridor” for the purposes of construction – and for the southernmost 1,000 feet of Beach Lane the Easement will cover the entire width of Beach Lane. In addition to this 20-foot construction corridor, the Easement grants South Fork a “temporary easement” alongside the construction corridor to place and maintain field offices, equipment, pipes, valves, meters, and the like; and to park vehicles. This “temporary” easement would exist from the moment South Fork breaks ground until the High-Voltage Cable goes into commercial operation – which could mean multiple seasons of construction clutter in Wainscott. (Gotko Aff. Ex. II.)

79. Accordingly, while the High-Voltage Cable is being constructed and installed, the affected roads – which are narrow already – will be significantly constricted, impeding traffic and emergency vehicles (particularly perilous on dead-end Beach Lane), and increasing hazards to pedestrians. South Fork has said that (notwithstanding the narrowness of the lanes, the 20-foot construction corridor, and the temporary construction easement) during construction a 10-foot access lane will be maintained, which is to be shared by vehicles and pedestrians – but such constricted access over the 7-month construction period will significantly impact residents and beach visitors and will introduce safety risks that have so far gone unaddressed by South Fork. The Easement Agreement contemplates that at times during construction a complete lack of access to a road may be “temporarily unavoidable.” (Gotko Aff. Exs. A & II.)

80. The time needed for installation of the High-Voltage Cable also will not be comparable to installation of the water main, which took just five months. Although South Fork originally told the Town it could complete installation of its High-Voltage Cable in a single shoulder season, the Easement Agreement grants South Fork 30 months to complete the Project (with the right to ask for more time). A previous core assertion of South Fork and the Town for preferring a Wainscott route was just one 5-month period of construction. The *sextupled* time frame means up to 30 months of construction noise, traffic disruption, and the dangerous narrowing of already narrow lanes throughout Wainscott. (Gotko Aff. Ex. II.)

81. And whereas the water main project occurred within a single year from mid-February 2018 to mid-July 2018, the Town has given South Fork the right to be able to perform its 30 months of work from October 1 through April 30 over the span of at least two years (an increase from South Fork's originally promised November 1 through March 31). But South Fork would have the right to continue through May 15 if needed to complete the most disruptive construction, the horizontal direction drilling ("HDD") – and South Fork can punch through even the May 15 deadline if it pays the Town only \$250,000, which is a trivial amount in the context of a Project this size. And on a daily basis (Monday through Saturday) South Fork has the right to work from 7 am to 7 pm, and to continue beyond 7 pm to complete "construction activities that require a continuous work effort once started." In addition, HDD activities would be allowed to continue "24x7" if necessary to complete the sea-to-shore transition of the High-Voltage Cable. This will necessitate a yet-to-be-drafted noise reduction plan, given the high decibel level of HDD. (Gotko Aff. Ex. II.)

82. An additional stark difference between the water main installation and the proposed transmission cable installation is that a 600 to 800-foot stretch of Beach Lane near its

southern end will be occupied by the sea-to-shore transition work zone for all or most of a 7-month construction window, and possibly over more than one construction season. This work zone will include burial of the sea-to-shore transition vault, which measures 35 feet long, 8 feet wide, and 10 feet in depth. A drilling rig will be situated within the Beach Lane roadway, surrounded by 12-foot-high noise walls. Other materials and equipment will be staged within the work zone, including mud pumps, generators, a slurry plant, de-silter, backhoe, boom truck, and crane, along with areas for parking and storing other equipment, facilities, and materials necessary to support cable installation. Nothing remotely comparable to this kind of construction setup was needed for the Beach Lane water main installation. (Gotko Aff. Ex. II.)

83. In addition, as compared with the laying of the water main, construction of this large High-Voltage Cable Project will not be able to be performed in accordance with local zoning requirements or other regulatory approvals and, as a result, South Fork ultimately will need to seek waivers of those requirements. (Gotko Aff. Ex. II.)

84. Just recently, Van Scoyoc said he was “disappointed” by Wainscott opposition to the Project because “I guess the result of all this would be some manhole covers in the road in Wainscott . . . .” (Gotko Aff. Ex. HH.) This glib comment is just as misplaced as Van Scoyoc’s water main analogy. It ignores the work to be performed over the span of 25 years, necessary to keep the High-Voltage Cable buried at least 30 feet under Wainscott Beach. It ignores the complexity of the maintenance and repair work (for example to the splice vaults) that will need to be performed during that period. It ignores the fact that the infrastructure South Fork plans to install (8 ducts enclosed in concrete, with only 3 being used at this time) may well be used in the future to expand the amount of cables and electricity, foreshadowing further

environmental impacts and disruptive construction in the years ahead. (Gotko Aff. Exs. Z & II.)<sup>21</sup> And it ignores the significant disturbance that would be required at the end of 25 years when the High-Voltage Cable is decommissioned and ripped up and out of the streets of Wainscott. (Gotko Aff. Ex. II.)

85. In sum, South Fork’s High-Voltage Cable Project is a *major construction project*, that will cause *significant* disruption in Wainscott, and (as acknowledged by the Board itself) is fraught with “*serious and substantial issues*.” Van Scoyoc’s reliance on the “water main” analogy, and his comment about manhole covers, evinces either a reckless failure to inform himself of the facts or a deliberate suppression of them. Van Scoyoc’s urging the Board to grant the Easement, and the Board’s proceeding to do so, based on his irrational analysis, was an arbitrary and capricious act.

**The Project Raises Significant Environmental And Other Impacts For The Dune Alpin Neighborhood**

86. As noted, the route that the Easement will permit the High-Voltage Cable to follow will bring the Cable into the New Substation to be built immediately adjacent to the Dune Alpin Neighborhood.

87. The New Substation would create significant environmental and other impacts to the residents of the Dune Alpine Neighborhood (Gotko Aff. Ex. II).

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<sup>21</sup> The South Fork Wind Farm project already has been expanded once, when it was increased from 90MW to 132MW capacity. This significant change (together with Ørsted’s acquisition of Deepwater Wind South Fork, LLC in August 2018) caused New York State Assemblyman Fred Thiele, who represents the South Fork of Long Island, to withdraw his support for the project on January 24, 2019, stating: “Because of the ‘bait and switch’ tactics of Deepwater/Ørsted, I cannot trust them with my community’s future.” (Gotko Aff. Ex. XX.)

88. The parcel to the east of the Neighborhood on which the New Substation would be built (the “Adjacent Parcel”) is within a Special Groundwater Protection Area designated by the NYS Department of Environmental Conservation (“NYSDEC”).

89. NYSDEC spill records exist for the Adjacent Parcel (Gotko Aff. Ex. PP), and it is listed on the federal Resource Conservation and Recovery Act (RCRA) large hazardous waste generator database. (Gotko Aff. Ex. NN.)

90. The Dune Alpine Neighborhood is already burdened with electric-related infrastructure. The Adjacent Parcel already houses the existing, East Hampton 69kV Substation; electric generator peaker plants, used during the summer and powered by oil; portable electric generators, used during the summer and powered by natural gas; a compressed gas loading area with gas being delivered often via large trucks; a large fuel storage tank; and a battery energy storage system.

91. The New Substation – which will be a walled-in facility covering some 103,506 square feet (Gotko Aff. Ex. QQ) – will be within 100 feet of the Dune Alpin Neighborhood.

92. Building the New Substation will effectively eliminate the wooded buffer acreage between the existing substation and nearby homes, and add to the potential dangers and concerns the residents of the Neighborhood already have, including fires or explosions; water contamination; air pollution; noise pollution; and exposure to electromagnetic fields. (Gotko Exs. V, X, & II.)

93. Residents of the Dune Alpin Neighborhood have raised all of these concerns known to the Board, to no avail.

94. The Board's granting the Easement, heedless of the dangers and burdens that will be brought to the doorstep of the Dune Alpin Neighborhood by the route permitted by the Easement, was arbitrary and capricious.

**The Project Raises Significant Unresolved Issues Regarding PFAS Contamination**

95. As noted, the trenching for the High-Voltage Cable on Wainscott Northwest Road raises significant issues regarding PFAS contamination.

96. PFAS are a large group of man-made chemicals that have been used in industry and consumer products worldwide since the 1950's. PFAS do not occur naturally, but are widespread in the environment. PFAS are found in people, wildlife and fish all over the world. Some PFAS can stay in people's bodies a long time.; and some PFAS do not break down easily in the environment. (Gotko Aff. Ex. FFF.)

97. The NYSDEC advises that if drinking water contains PFAS above the EPA Lifetime Health Advisory, one should consider using an alternative or treated water source for any activity in which water might be swallowed (e.g., drinking, food preparation, cooking, brushing teeth, and preparing infant formula). (*Id.*)

98. The NYSDEC further advises that some scientific studies suggest that certain PFAS may affect growth, learning, and behavior of infants and older children; reduce fertility in women; interfere with the body's natural hormones; increase cholesterol levels; affect the immune system; and increase the risk of cancer. (*Id.*) (About PFAS, *see also* Gotko Aff. Ex. DDD.)

99. As noted, the installation of the High-Voltage Cable along Wainscott Northwest Road will entail excavating within the PFAS contaminant plume that is known to be present in shallow groundwater in this area. Excavation for the High-Voltage Cable therefore

could become a pathway for movement of PFAS-contaminated groundwater, causing areas – including residential water wells – to be contaminated or further contaminated. (Gotko Aff. Exs. II, W-1, W-2, W-3 & W-4.)

100. In addition, because the water table is so high throughout Wainscott, it will be necessary for South Fork to perform “dewatering” of the trenches when they are dug out. Nature abhors a vacuum, so the dewatering of water drawn into the trenches will draw even more nearby water into the trenches – which, in turn, will pull even more water from adjacent areas toward the dewatering trench. Accordingly, the Easement contemplates that Ørsted’s dewatering operations could “influence or draw in . . . contaminants from” contaminated sites. (Gotko Aff. Ex. A.)

101. During the Article VII hearings, South Fork acknowledged the following:

(a) The persistence of PFAS compounds in the environment creates a potential danger to both the environment and public health. (Gotko Aff. Ex. EEE at 92.)

(b) The PFAS contamination near the Airport can move laterally with groundwater (*id.* at 19), and such contamination would most likely be encountered via migration of groundwater toward the Project area (*id.* at 163-65.)

(c) The groundwater flow from the Airport where the contamination exists is generally to the southeast (*id.* at 21), and it is reasonable to assume that PFAS contamination from the Airport property is being carried with the flow of groundwater in a southeasterly direction (*id.* at 22) – toward Wainscott Northwest Road.

(d) There is, in fact, PFAS contamination at the Gravel Pit site south of the Airport, which borders the LIRR right of way, along South Fork’s proposed land route from Beach Lane to the New Substation. (*Id.* at 26-28.)

(e) It is fair to assume that “there’s a connection” between the contamination located at the Gravel Pit and the contamination plume located at the Airport. (*Id.* at 34-35.)

(f) South Fork does not have sufficient information to determine the extent to which the onshore Cable route may intersect the shallow PFAS plume emanating from the Airport. (*Id.* at 25-26.)

(g) South Fork lacks information concerning the extent of trenching that will intersect the water table. (*Id.* at 37-38.)

(h) Because excavations along the Applicant’s proposed Beach Lane route will intersect the groundwater table (*id.* at 36), contaminants in either soil or the groundwater may be encountered as a result of excavation and dewatering activities along the proposed route (*id.* at 37).

(i) South Fork does not have any analysis of what types of contamination it may encounter along the construction route. (*Id.* at 175-76.)

(j) The trench where the cable will be buried is not “water tight” (*id.* at 42-43) – thereby leaving open the very real possibility that the trenching itself will create a pathway for the migration of PFAS contamination.

(k) South Fork has not performed any analysis concerning the potential impact of contaminated groundwater encountered during construction and its resulting effect upon soil and groundwater conditions, including potential impact upon the drinking water wells of adjacent landowners. (*Id.* at 46-47, 50-51.)

(l) South Fork has not conducted an analysis concerning the probable environmental impacts of contaminated soil encountered during construction – in fact,

South Fork currently lacks data regarding PFAS contaminants that potentially exist in soils that may be encountered. (*Id.* at 176-77.)

(m) South Fork does currently know how it will appropriately deal with, and dispose of, contaminated groundwater and soil during construction. (*Id.* at 69-72.)

102. Despite the foregoing dangers of PFAS, the known presence of PFAS in Wainscott, and the wholly inadequate information from South Fork concerning PFAS, the Board proceeded to grant South Fork the Easement, which does not impose any remediation obligations on South Fork if – or, more likely, when – it encounters PFAS in groundwater and soil when installing the High-Voltage Cable; and instead leaves actual plans for any such remediation to be worked out later. In so doing, the Board acted illegally, in violation of SEQRA and/or Article VII, and in an arbitrary and capricious manner.

#### **CPW Proposed Alternative Routes With Materially Reduced Environmental Impacts**

103. South Fork's application before the PSC in the Article VII Proceeding claims, without support, that of the Town's nearly 70 miles of waterfront (Gotko Aff. Ex. JJ), only two locations are viable for the High-Voltage Cable's sea-to-shore landing site: Beach Lane in Wainscott or Hither Hills State Park in Montauk. The application concludes, with minimal explanation, that Beach Lane is South Fork's preferred site – even though Montauk would be far closer to the South Fork Wind Farm than Wainscott. (Gotko Aff. Ex. II.)

104. South Fork's Hither Hills Route B alternative, among other things, placed the High-Voltage Cable on the Main Streets in Amagansett and East Hampton Village. Potential impacts from this alternative route would have included multiple construction seasons, traffic disruptions along 11 miles of Montauk Highway and local roads, 73 road crossings, impeded access to local businesses, and construction-related noise. Given the severity and duration of

these impacts it appears that South Fork may well have offered its Hither Hills route as an option designed to be unappealing, thereby focusing attention solely on the Beach Lane route from the beginning of the Article VII Proceeding. (Gotko Aff. Ex. II.)

105. Although it was not CPW's responsibility to do so, CPW spent its own resources to develop and present alternative routes that would have significantly fewer environmental impacts. (Gotko Aff. Ex. II.)

106. CPW developed improvements to South Fork's Hither Hills Route B corridor by utilizing the LIRR right of way instead of village streets as much as possible, thereby substantially eliminating disruption on Montauk Highway and Main Streets in Amagansett and East Hampton Village. CPW's two proposed Hither Hills routes also would have few residential impacts, if any, and would eliminate the need to build the New Substation adjacent to the Dune Alpin Neighborhood. (Gotko Aff. Ex. II.)

107. Similarly, CPW's proposed Atlantic Avenue landing and cable corridor alternative would eliminate beach access and safety concerns inherent to South Fork's Beach Lane preferred route, while minimizing construction-related impacts on residential streets. CPW's Atlantic Avenue route also would eliminate the need to build the New Substation adjacent to the Dune Alpin Neighborhood. (Gotko Aff. Ex. II.)

108. CPW presented these alternatives in the Article VII Proceeding through the testimony of expert witnesses. (Gotko Aff. Exs. R, T-1, T-2, & Z; *see also* Gotko Aff. Ex. II [Ex. 3]) which is a chart summarizing the impacts the different routes would have, and showing that CPW's alternative routes would be far less impactful than the routes proposed by South Fork.)

109. The Town did not attempt to constructively engage with CPW in any way; nor did the Board give serious consideration to the alternatives presented by CPW. Although the Town is an intervenor party in the Article VII Proceeding, its counsel did not ask CPW's expert witnesses any questions. (Gotko Aff. Ex. II.)

110. By proceeding to grant the Easement in the face of alternative routes that are less impactful than the Beach Lane route, and before the PSC has weighed in on the Beach Lane route and the alternative routes, the Board acted illegally in violation of SEQRA and/or Article VII, and acted in an arbitrary and capricious manner.

**The Board Purported To Solicit Public Comments On The Easement – But Then Granted The Easement Without Providing Answers To The Multiple Questions And Concerns Raised**

111. Despite the Board's July 19, 2018 resolution acknowledging that a "full environmental review [of the Project] will be undertaken as part of the Public Service Commission review of the Project," and that "there are serious and substantial issues with the [P]roject that must be addressed and mitigated through the Article VII review"; and despite Van Scoyoc's public statement on March 2, 2019 that, "We think [the Article VII] process will probably complete before we sign any agreement" with South Fork; on December 14, 2020, Van Scoyoc issued a press release announcing that the Easement had been negotiated between the Town and South Fork. The press release stated that the Easement would be the subject of a public meeting of the Board on January 12, 2021, and that "[p]ublic comments will be accepted." (Gotko Aff. Ex. MM.)

112. In advance of the January 12, 2021 meeting, CPW submitted a detailed, 25-page, single-spaced letter to the Board raising a host of issues and questions concerning the Easement. (Gotko Aff. Ex. P.) WCAC also submitted a letter, dated January 11, 2021, voicing

its questions and concerns, and during the Board's meeting the Chair of the WCAC called in and read aloud from portions of the letter. During the course of the meeting, a number of questions and concerns about the Project were raised by members of the public. (Gotko Aff. Ex. H.)

113. At the end of the portion of the January 12 meeting given over to the Easement, Van Scoyoc stated that the Board would consider the many questions and concerns that had been raised, and would get back to the public with answers. (Gotko Aff. Ex. H.) And during the Board's meeting on January 19, 2021, the Chair of the WCAC called in to ask whether the Board would be responding to the questions and concerns raised in the WCAC's January 11 letter, and Van Scoyoc stated that the answers would be forthcoming. (Gotko Aff. Ex. I.)

114. But Van Scoyoc's assurances turned out to be hollow as no answers, written or oral, were ever provided. Indeed, just nine days later, at the January 21 Board meeting where the Easement was approved by a divided 4-1 vote, Van Scoyoc declared that he personally "didn't hear anything new" at the Board's January 12 meeting. (Gotko Aff. Ex. J.) In so stating, Van Scoyoc evidenced either that he did not heed the many comments that raised substantial issues about the Project (including those raised in CPW's 25-page letter and in the WCAC's letter), or that he viewed the Town's hearing process merely as a check-the-box exercise.

115. The dissenter on the Board pointed out (among other things) that there was no reason the Easement had to be granted at this time; the Article VII Proceeding is ongoing, and thus the Board does not have the benefit of the PSC's environmental review of the Project; waiting until the Board has the benefit of the PSC's review would not hamper or delay the Project; there are issues that are currently unresolved, but will be resolved through the Article VII Proceeding; the Board needs to understand all the environmental issues before acting; South Fork's plans for dealing with environmental issues do not yet exist, and thus the Board has never

reviewed those plans; the Board cannot just look at the Easement in a vacuum, and needs to consider the South Fork Wind Farm project as a whole; and if the Board were to refrain from granting the Easement at this time, it will have a much better understanding of the Project's impacts. (Gotko Aff. Ex. J.)

116. In proceeding to grant the Easement without, in any respect, addressing the multiple questions raised, and by rendering the Town's hearing process meaningless, the Board's action was arbitrary and capricious.

### **The Board's Grant Of The Easement Is Illegal**

117. As noted, the Town Board's July 19, 2018 resolution acknowledged that the construction of the High-Voltage Cable is a Type II action requiring an Article VII Certificate (6 NYCRR § 617.5(c)(44)), and specifically observed that a "*full environmental review will be undertaken as part of the Public Service Commission review of the Project.*" (Gotko Aff. Ex. E [emphasis added].) The Town Board further acknowledged that "*there are serious and substantial issues with the [P]roject that must be addressed and mitigated through the Article VII review.*" (*Id.* [emphasis added].)

118. Despite the fact that the PSC has not completed its "full environmental review", or addressed and mitigated the environmental impacts, the Board proceeded to grant the Easement.

119. In fact, at the January 21, 2021 meeting when the Easement was approved, Van Scoyoc declared that he didn't "see a difference whether we sign it now or after" the PSC's environmental review is complete. Van Scoyoc's flippant attitude is completely contrary to the rigorous analysis that the laws of this State require be conducted *before* the taking of any action in connection with this major infrastructure Project.

120. The Board's taking "action" before an environmental review of the Project has been completed violates SEQRA and Article VII. As a result, the Board's granting of the Easement is illegal.

**The Easement Leaves A Host Of Environmental  
And Other Significant Issues "To Be Determined"**

121. The desultory nature of the Board's review of its precipitous grant of the Easement is made manifest by numerous environmental and other significant issues that the Easement leaves "to be determined."

122. The Easement incorporates by reference the terms and conditions of the Article VII Certificate – which does not yet exist. (Gotko Aff. Ex. A.)

123. The Easement also incorporates by reference the terms and conditions of an Environmental Management and Construction Plan (the "EM&CP") – which also does not yet exist, and would be prepared only after issuance of the Article VII Certificate and must be separately approved by the PSC. (Gotko Aff. Ex. A.)

124. The Easement Agreement references the EM&CP some 55 times. (Gotko Aff. Ex. A.) According to the Easement, the EM&CP will set forth to-be-determined standards for important issues such as:

- (a) the method of installing and maintaining the Cable and any conduit through which it passes;
- (b) specifications for materials, structures, or components on or in the Easement Area;
- (c) details concerning street work to be undertaken for the construction, maintenance, repair, replacement, and decommissioning of the High-Voltage Cable;

- (d) traffic controls;
- (e) an Avian Management Plan for rare, threatened, and endangered avian specie;
- (f) a Northern Long-Eared Bat Monitoring and Impact Minimization Plan;
- (g) a Wetland Impact Minimization and Mitigation Plan;
- (h) a detailed Soil Handling and Erosion Control Plan;
- (i) a Spill Prevention, Control, and Countermeasure Plan;
- (j) a Final Hazardous Waste and Petroleum Work Plan;
- (k) a Dewatering Plan;
- (l) measures to protect the integrity, operation, and maintenance of any nearby electric, gas, telecommunication, cable, internet, water, sewer, and related facilities;
- (m) a Vegetation Management Plan (which will include a Tree Protection Plan);
- (n) an Invasive Species Control and Management Plan;
- (o) appropriate measures to minimize fugitive dust and airborne debris from construction and other activities;
- (p) a Lighting Plan;
- (q) specifications for restoration of all areas, pavement, curbs, driveways, sidewalks, drainage and erosion control structures and measures, vegetation, landscaping, and other features disturbed during construction, installation, repair, replacement, or removal of the Cable to their pre-construction contours and condition;

- (r) a plan for off- and on-shore study of electromagnetic fields; and
- (s) a Decommissioning Plan.

(Gotko Aff. Ex. A.)

125. In addition, while the Town would not approve the building of a house without a construction plan, the Board granted the Easement without South Fork having submitted a detailed construction plan to the Town for this massive Project.

126. The Board acted in the absence of other important documents that do not exist. The Easement Agreement says that the Town’s resolution authorizing the Agreement will be subject to “approvals, authorizations, and environmental reviews required for this Easement Agreement, as set forth on Schedule C of this Agreement” – but if one turns to Schedule C it says: “**(TO BE COMPLETED)**”. (Gotko Aff. Ex. A.) Similarly, the Easement Agreement refers to a “Road Use and Crossing Agreement, in the form attached to Schedule B as Exhibit 1,” which governs South Fork’s use of the Easement, but that Exhibit 1 also says: “**(TO BE COMPLETED)**”. (Gotko Aff. Ex. A.)

127. The granting of the Easement with so many important provisions and plans “to be determined” – including those governing environmental issues – was a violation of SEQRA and/or Article VII, and was arbitrary and capricious.

**Inability To Comply With/Waivers Of Safety Codes**

128. During the Article VII Proceeding, CPW presented sworn expert testimony that in order to construct the sea-to-shore High-Voltage Cable on the dead-end, narrow Beach Lane in a residential neighborhood, South Fork will not be able to comply with – and necessarily will need to seek waivers of – multiple New York State fire and building safety code provisions. (Gotko Aff. Ex. S)

129. Specifically, at least two provisions of the New York State Building Code cannot be complied with under the circumstances:

- Section 3301.2: “Construction equipment and materials shall be stored and placed so as not to endanger the public, the workers or adjoining property for the duration of the construction project.”
- Section 3306.1: “Pedestrians shall be protected during construction, remodeling and demolition activities as required by this chapter and Table BC3306.1.”

(Gotko Aff. Ex. S)

130. And at least three provisions of the New York State Fire Code cannot be complied with under the circumstances:

- Section 503.2.1: “Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), exclusive of shoulders, except for approved security gates in accordance with Section FC503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).”
- Section 503.2.3: “Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities.”
- Section 503.2.5: “Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an approved area for turning around fire apparatus.”

(Gotko Aff. Ex. S)

131. Despite being on notice of this dangerous situation, the Board did not require South Fork to disclose whether it will be seeking waiver of these or any other safety code provisions. The Board’s granting the Easement without either the Easement providing that South Fork may not seek such waivers, or without full disclosure of any such waivers South Fork will seek, was arbitrary and capricious.

**There Is No Legitimate Reason For The Granting Of The Easement At This Time**

132. The Board has never articulated a legitimate reason why the Easement had to be granted at this time, before the PSC's completion of its environmental review.

133. Van Scoyoc has publicly stated: "From my standpoint there's been plenty of environmental review." (Gotko Aff. Ex. FF.) In so stating, Van Scoyoc either was attempting to create a false impression that environmental review of the Project has taken place (even though the PSC has not yet opined on the Project, BOEM's Environmental Impact Statement is not final, the EM&CP does not yet exist, and the Town at no time has retained independent environmental experts to advise it); or was stating his opinion that *zero* environmental review is "plenty."

134. Van Scoyoc, in an attempt to justify the rush to grant the Easement, and to convince his fellow Board Members to grant the Easement, misrepresented as recently as the Board's January 19, 2021 meeting that if the Easement were not granted at this time, "this project will fail." (Gotko Aff. Ex. I.) Van Scoyoc gave no support whatsoever for this bald assertion.

135. Similarly, Van Scoyoc and others on the Board attempted to justify the granting of the Easement by the urgent need to "do something" without further delay about climate change. (Gotko Aff. Exs. I & J.) But there is no linkage between granting the Easement now and "doing something" about climate change. The granting of the Easement now will not get the South Fork Wind Farm online and operational any sooner than had the Board waited to see the results of the PSC's environmental review.

136. Van Scoyoc and others on the Board also attempted to justify the granting of the Easement now by saying that they have already taken a lot of time talking with South Fork about the Easement and considering it (Gotko Aff. Exs. I & J) – as if the mere *taking* of time were equivalent to the wise *use* of time to obtain the important information about the Project that

the Board does not possess. Just because Van Scoyoc and the Board had an enormous amount of time to do a lot, does not mean they actually got anything done.

137. The Board's granting the Easement, predicated on a real or pretended belief of any or all of these false and/or irrational notions, was arbitrary and capricious.

**Money Is A Key Explanation For The Board's Illegal Action**

138. It is not hard to identify one major reason why the Board proceeded to grant the Easement illegally despite the lack of an environmental review from the PSC or an emergent reason to act now. The answer is money.

139. The Host Community Agreement with South Fork provides for payments to the Town (and to the Trustees) totaling approximately \$28.9 million in return for the grant of the Easement South Fork wants for its High-Voltage Cable to make landfall in and travel through Wainscott. (Gotko Ex. B.)<sup>22</sup>

140. The Board's desire for money for the Town, however, does not give the Board the power to grant the Easement illegally and/or in an arbitrary and capricious manner.

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<sup>22</sup> While Van Scoyoc touted the \$28 million package as a great boon to the Town, it appears that the Town Board was outmaneuvered. On December 8, 2020, it was reported that the nearby Town of Riverhead had extracted a community benefits agreement providing for the payment of \$56 million in return for granting permission for the siting of a large solar farm. The Riverhead Town Supervisor said: "The East Hampton project . . . is constantly used against our project, but theirs is substantially larger. Ours is only one-sixth of the 132 megawatts from East Hampton." "Riverhead will be receiving \$56 million in total for this project over the course of 30 years, and East Hampton will be receiving \$34 million [sic] over the course of 20 years. We out-negotiated East Hampton." (Gotko Aff. Ex. GG.)

**Another Reason For The Board's Illegal Action Is To Evade A Citizens' Movement To Incorporate Wainscott As A Village**

141. Since the Project was first proposed and Beach Lane identified by South Fork as the preferred landing site for the High-Voltage Cable, Van Scoyoc and the Board have acted with a cavalier attitude toward the legitimate concerns of the citizens of Wainscott.

142. On December 1, 2018, the WCAC voted overwhelmingly (10-2) against a Beach Lane landfall site due to concerns that had been voiced by community members. When this was reported to the Board at its December 4, 2018 work session, some Board Members actually laughed. (Gotko Aff. Ex. CCC at 1:27:00.)

143. On December 11, 2018, CPW sent a letter the Board, accompanied by a petition signed by over 1,200 community members, opposing the routing of the High-Voltage Cable through Wainscott. (Gotko Aff. Ex. TT.)

144. On December 24, 2018, the WCAC sent a letter to the Board noting that it had “repeatedly requested that the proper environmental reviews be undertaken before the Town grants any ‘on shore’ easement to [South Fork] ... be that landing Beach Lane in Wainscott or some other landing site,” and that “[a]s a Town appointed body representing the people of Wainscott, the WCAC requests that the Town *not* grant an easement to [South Fork] to come on shore at Beach Lane.” (Gotko Aff. Ex. SS.)

145. Despite the well-known significant opposition to the Beach Lane route for the High-Voltage Cable, the Board has repeatedly taken actions (including the scheduling of Board meetings and in connection with the written agendas of those meeting), or permitted South Fork to take actions, with no notice or last-minute notice, preventing the citizens of Wainscott and others from any meaningful opportunity to be heard.

146. For instance, despite the Board's knowing at least as early as mid-December 2018 that South Fork had asked for permission to dig nearly 200 pits throughout Wainscott and to bore two one-hundred-foot holes near Wainscott Beach's fragile dunes (the "Excavation Request"), Van Scoyoc made no mention of the Excavation Request at a packed January 5, 2019 meeting of the WCAC where the Project was discussed for three hours. Notice to the public of the Excavation Request was not made until the Board's working session of January 15, 2019, where it was discussed as though its grant was a foregone conclusion. Following the January 15 working session, CPW sent two letters to the Board, on January 31, 2019 and February 7, 2019, detailing CPW's concerns regarding the Board's decision-making process as to South Fork, urging the Board to be inclusive in that process, and reminding the Board of its legal fiduciary duties to the Town's residents to investigate and make informed decisions as to any request by South Fork. (Gotko Aff. Exs. K & L.) Days in advance of its February 7, 2019 regular meeting, the Board publicly posted an Agenda of issues and resolutions to be addressed at the meeting. That Agenda made no reference to the Excavation Request or anything regarding South Fork. Just before the meeting was to begin, however, the existing Agenda was quietly amended to make a conspicuous change: at the meeting, Van Scoyoc would be sponsoring a resolution approving the Excavation Request. (Gotko Aff. Ex. M.) Thus, the Board engaged in a gambit that would hide its intention to discuss and approve the Excavation Request until the last minute, and thereby avoid participation by the Town residents who were most interested and affected.

147. Relatedly, for two years CPW has sent the Board multiple, detailed letters voicing its concerns, including letters warning that a grant of the Easement before the Article VII Proceeding concludes would be illegal. (Gotko Aff. Exs. K-P.) The Board did not deign to respond to any of CPW's letters, or otherwise attempt to constructively engage with it any way.

148. Concerned citizens of Wainscott, given the shabby treatment they have received from their elected officials, have strongly supported a widely-reported movement to incorporate Wainscott as a Village. This initiative has been led by CPW. A Village of Wainscott would, among other things, have a legal say in whether the Easement should be granted. Specifically, a Village of Wainscott would be empowered to convey the real property (including leases and easements) within its borders.

149. The incorporation campaign was announced with great fanfare on July 4, 2020, in a full-page declaration of Wainscott's grievances that ran in the East Hampton Star. (Gotko Aff. Ex. BBB.)

150. In a July 16, 2020 email (which CPW obtained via a Freedom of Information Law request), a member of *Win With Wind*'s steering committee blithely made the following tactical suggestion to the Board:

*Am I missing something? Because I cannot, for the life of me, see any advantage to East Hampton were Wainscott to incorporate. I would suggest that granting the easement required for [South Fork]'s Beach Lane cable landing would be a good place to start. I think we all know that [CPW's] move to secede from the town is really all about that cable. Would granting that easement not take some of the wind out of their sails?*

(Gotko Aff. Ex. UU.)

151. On December 30, 2020, a petition with the requisite number of signatures was filed with the East Hampton Town Clerk, setting in motion a referendum to be held among the residents of Wainscott whether it should be incorporated as a Village. (Gotko Aff. Ex. O.)

152. The timing between the July 16, 2020 email and the December 30, 2020 filing of the petition, on the one hand, and the Board's acceleration of its consideration of the Easement, on the other hand, is not a coincidence. The conclusion is inescapable that the Board acted "to take the wind out of the sails" of the Wainscott incorporation movement.

153. Accordingly, in addition to giving Wainscott short shrift because of the lure of money, the precipitous rush to undermine the integrity of the Article VII process was motivated by an undemocratic desire to end-run Wainscott's initiative towards self-determination.

**FIRST CAUSE OF ACTION**  
**(Pursuant to CPLR 7801, et seq.)**

154. Petitioners-Plaintiffs repeat and reallege paragraphs 1 through 153, as if fully set forth herein.

155. The Board's granting the Easement to South Fork was a violation of lawful procedure under SEQRA and/or Article VII of the Public Service Law because any action by the Board regarding the High-Voltage Cable cannot be taken unless and until the PSC has awarded South Fork an Article VII Certificate.

156. In addition, the Board's granting the Easement to South Fork was arbitrary and capricious, including because (a) Van Scoyoc believes that the Project is akin to nothing more than installation of a water main, and is uninformed regarding the major impacts the Project will have on Wainscott and the Dune Alpin Neighborhood; (b) the Easement leaves "to be determined" many material provisions and plans, including those governing environmental issues; (c) the Board granted the Easement without providing that South Fork may not seek waivers of safety codes, or without full disclosure of any such waivers South Fork will seek; (d) the Board granted the Easement for the Beach Lane Route without adequate consideration of alternative routes that are less impactful to the environment; (e) the Board granted the Easement in the face of South Fork's inadequate knowledge concerning PFAS, and how it will be dealt with and contained during construction; (f) the reasons articulated by the Board for acting now are false and/or irrational; (g) the Board's granting the Easement was unduly motivated by South

Fork's promise of money; and (h) the Board's granting the Easement was motivated by an undemocratic desire to quash the movement for Wainscott to incorporate as a village.

157. By reason of the foregoing, the Town Board's approval of the Easement to South Fork should be adjudged to be null, void, arbitrary and capricious, and of no force and effect.

**SECOND CAUSE OF ACTION**  
**(Declaratory Judgment)**

158. Petitioners-Plaintiffs repeat and reallege paragraphs 1 through 157, as if fully set forth herein.

159. Pursuant to CPLR 3001, the Court should declare the Board's actions conveying the Easement to South Fork to be an unlawful violation of SEQRA and/or Article VII of the Public Service Law.

**THIRD CAUSE OF ACTION**  
**(General Municipal Law § 51)**

160. Petitioners-Plaintiffs repeat and reallege paragraphs 1 through 159, as if fully set forth herein.

161. As set forth above, the Board's granting the Easement to South Fork was illegal.

162. In addition, the Board's actions imperil the public interest by granting an Easement to South Fork without the PSC having performed the requisite environmental review of the Project.

163. The Board's granting the Easement to South Fork is a waste of public property because the Easement will improperly enable South Fork to lay the High-Voltage Cable through public property, irreparably harming such property.

164. Pursuant to General Municipal Law § 51, the Court should hold that the Board's actions in granting the Easement to South Fork are annulled and vacated as illegal acts that waste public property.

**WHEREFORE**, Petitioners-Plaintiffs demand an order and judgment be granted in favor of them and against Respondents-Defendants Board and Van Scoyoc pursuant to CPLR Article 78, CPLR 3001, and General Municipal Law § 51, as follows:

(a) Vacating and annulling as illegal, arbitrary, and capricious (a) the Board's Resolution, dated January 21, 2021, authorizing and directing Van Scoyoc to execute an Easement Agreement with South Fork, and/or (b) the Easement Agreement itself;

(b) Declaring that the Board's Resolution, and/or the Board's granting South Fork the Easement, before the PSC has issued South Fork an Article VII Certificate was contrary to SEQRA (N.Y. Envtl. Conserv. Law § 8-0109) and/or Article VII of the Public Service Law;

(c) Annulling and vacating the Board's Resolution and/or its granting the Easement to South Fork as illegal acts that waste public property;

(d) Preliminarily and permanently enjoining the Board and Van Scoyoc from taking any action with respect to the Easement unless and until the PSC awards South Fork an Article VII Certificate that is no longer subject to administrative appeal or litigation; and

(e) Granting such other and further relief as the Court may deem just, proper, and equitable, together with Petitioners-Plaintiffs' costs and disbursements.

Dated: February 2, 2021

FRIEDMAN KAPLAN  
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VERIFICATION

LANCE J. GOTKO, an attorney admitted to practice in the State of New York, affirms the following under the penalties of perjury:

I am an attorney for Petitioners-Plaintiffs in the within proceeding. I have read the foregoing petition and know its contents; that the same is true of my own knowledge except as to matters therein stated on information and belief and as to those matters I believe to be true. The basis for my information and belief is the testimony and exhibits attached to my accompanying affirmation, and publicly available documents.

I make this Verification pursuant to CPLR 3020(d)(3) because Petitioners-Plaintiffs are not in the county in which I have my office.

Dated: February 2, 2021



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Lance J. Gotko