

State Environmental Quality Review Findings Statement - Amendment

Deer Management Plan Village of Cayuga Heights Tompkins County, New York

Adopted: November 20, 2012

This document is an Amendment of the Findings Statement prepared and adopted by the Village Board of Trustees on April 4, 2011 (the "Findings Statement") pursuant to and as required by 6 NYCRR Part 617.11 implementing the New York State Environmental Quality Review Act (SEQRA). This Findings Statement Amendment draws upon the information in the Village of Cayuga Heights (the "Village") record in connection with the Village's program for deer management (the "Deer Management Plan," or "DMP") as set forth on the Village's website; the Draft Environmental Impact Statement (DEIS) dated November 1, 2010, and comments received on the DEIS at a duly noticed public hearing held on December 6, 2010, along with written comments received on the DEIS; the Final Environmental Impact Statement (FEIS) dated March 14, 2011, and comments received on the FEIS between March 14, 2011 and ten days thereafter; the Findings Statement itself; the Decision, Order and Judgment dated September 14, 2011 of the State of New York Supreme Court, Honorable Phillip R. Rumsey, Justice Presiding (the "Supreme Court Decision"), in the action brought against the Village by opponents of the DMP seeking annulment of the DMP and challenging the Village's SEQRA review of the DMP, along with all documents filed in connection with such action; the Memorandum and Order dated June 14, 2012 of the State of New York Supreme Court Appellate Division, Justice Lahtinen presiding (the "Appellate Court decision"), in the appeal of said action, along with all documents filed in connection with such appeal; and such information and materials provided to or obtained by the Village since undertaking the DMP.

In preparing this Amendment of the Findings Statement the Village of Cayuga Heights Board of Trustees has given due consideration to the DEIS, FEIS, the Findings Statement itself, community and agency input and other documents reviewed and considered in conjunction with the SEQRA process. Further, this Amendment of the Findings Statement incorporates by reference the facts and conclusions in the DEIS and FEIS relied upon by the Board of Trustees to support its decisions, and considers and balances the relevant environmental impacts with "social, economic and other considerations" which form the basis for its decision (6 NYCRR 617.11(d)).

Pursuant to Article 8 (SEQRA) of the Environmental Conservation Law and 6 NYCRR Part 617, the Village of Cayuga Heights Board of Trustees as Lead Agency made and adopted the findings set forth in the Findings Statement and makes and adopts the

additional findings set forth in this Amendment. **The Findings Statement and all of the findings set forth therein are hereby incorporated in their entirety into this Amendment by reference.** All capitalized terms used in this Amendment but not defined herein will have the respective meanings given to such terms in the Findings Statement.

A. Additional Information Obtained Since the Findings Statement and Additional Findings.

1. Confirmation of the Village's Compliance with SEQRA

The Supreme Court decision provided confirmation that the Village's SEQRA review of the DMP was wholly consistent with the requirements of the SEQRA process. The Court concluded that "there is sufficient evidence in the record to show that [the Village] complied with SEQRA," that the DMP "adopted by [the Village] is generally consistent with the DEC's recommendation for managing deer populations in urban and suburban areas" and that the petitioners' "contentions have been considered and have been rejected." Following the Village's receipt of the Supreme Court's confirmation that Village had in all respects satisfied the requirements of SEQRA and that the DMP could proceed, the Village began the necessary steps for implementation of the DMP.

2. Further Confirmation of the Village's Compliance with SEQRA

The opponents of the DMP then appealed the Supreme Court decision. The Village again prevailed, with the Appellate Division in toto affirming the Supreme Court decision. The Appellate Court decision concluded as follows.

We are unpersuaded by petitioners' contention that respondent failed to provide sufficient data for informed public comment and failed to take a hard look at important adverse impacts of the plan. The DEIS was detailed in describing the problem, the proposed solution, the potential impacts, and the alternative approaches. Moreover, the DEIS was similar in its recommendations to the DRAC report, which had been issued and made public over a year before the DEIS was issued. There was ample information and sufficient time to comment, as reflected by over 60 comments received. The comments were sufficiently addressed in the FEIS. The issues of human treatment of the deer problem as well as asserted potential impact on human health were adequately considered. The remaining issues have been considered and are unavailing."

3. Proceeding with Implementation of the Deer Management Plan

Subsequent to receiving the Appellate Court decision, the Village proceeded with implementation of the DMP. In order to undertake both the sterilization component of the DMP as well as the culling component of the DMP, the Village sought the written

consent of property owners to use their properties for each component of the DMP. The Village sent consent forms to all property owners in the Village. A copy of the "Landowner Consent Agreement" form is attached for reference. Once the Village had collected the written consents of property owners, the Village consulted further with Dr. Paul Curtis ("Dr. Curtis") of Cornell University, who had been providing consulting services to the Village regularly throughout the development and implementation of the DMP, and with Dr. Anthony DiNicola ("Dr. DiNicola") of White Buffalo, Inc. ("WB"), the wildlife management firm that the Village has intended to contract with for implementation of the DMP.

Some owners of parcels in the Village responded that they did not consent to use of their property for the culling of deer. In accordance with NYS Environmental Conservation Law Section 11-0931(4), the discharge of a firearm within five hundred feet from a dwelling house is illegal without the consent of the owner of such house (except in specified circumstances, such as the authorized use by a police department). The Village identified the locations of the dwellings of the owners who did not provide consent to culling and measured a five hundred foot radius around each such dwelling. The dispersal of these properties throughout the Village resulted in the five hundred foot radius circles around such dwellings covering a majority of the area of the Village. As a consequence, only limited locations in the Village currently would be available as sites for the culling of deer. As a result of the Village's analysis of the property owner responses and consultation with the Village's experts, the Village determined that the Village currently would not have an adequate number of feasible sites to cull deer in order for the culling component of the DMP to succeed.

4. Further Consideration of Alternatives for Implementation of the DMP.

In recognition that the Village currently would not have an adequate number of feasible sites to cull deer for the culling component of the DMP to succeed, the Village undertook further consideration of other options for management of the excessive population of deer in the Village in accordance with the DMP. In the process of developing the DMP, the Village had considered and reviewed, including in the DEIS, the FEIS and the Findings Statement, the alternative of sterilization only as a deer population management alternative. "Under this alternative," the Findings Statement stated, "... greater numbers of deer would need to be sterilized in order to stabilize the herd at the numbers recommended by the DRAC. This option is slower and more expensive than culling alone or the combined approach of sterilization and culling. It would take three to five years to stabilize the herd, and herd reduction would not be evident for five to six years ..." In connection with undertaking the sterilization component of the DMP, the Village had received from the NYS DEC a License to Collect or Possess up to 60 female deer for the purpose of surgical sterilization (the "LCP"). A copy of the LCP is attached for reference.

The Village consulted with various officials at NYS DEC who have been aware of and involved with the Village's DMP, as well as with Dr. Curtis and with Dr. DiNicola. Dr. Curtis explained certain relevant aspects the deer management program that he has been conducting for many years on the Cornell University campus, immediately

adjacent to the south of the Village. In particular, Dr. Curtis explained that the Cornell program had achieved a sterilization rate of 90-95% of the female deer, and that after approximately 3-4 years of maintenance of that level, the population of the deer herd on the Cornell property had stabilized and was indicating a decline. In addition to relaying these results to various Village officials, Dr. Curtis presented this information to the full Village Board at its regular meeting on November 13, 2012.

For in excess of a year, the Village has been discussing with Dr. DiNicola the terms of a proposed contract for WB to undertake both the sterilization and the culling components of the DMP. These discussions have been undertaken primarily between Dr. DiNicola and the Village attorney, with regular consultation with the Village's Mayor, Deputy Mayor and Deputy Treasurer. Evaluation of the proposed contract terms, and, in particular of the various cost components of the work, made it abundantly clear that mobilization costs for the work were a substantial expense. Consequently, significant costs advantages would accrue to the Village if more of the work could be completed immediately following one mobilization effort than if WB had to conduct only a portion of the work on one occasion, and then return to the Village, re-mobilize and continue with the work on subsequent occasions.

The Findings Statement had noted that the sterilization component of the DMP would take place over a two year period, and that it would not be expected that the physical activities to achieve sterilization would be significantly disruptive as they would be of a short duration. This "short duration" was indicated in the Findings Statement to be "over several months annually." As the terms of the WB contract evolved, it became clear that the sterilization work could be completed in an even shorter time frame, particularly if a greater number of female deer were permitted to be sterilized initially, without having to undertake re-mobilization for additional work on subsequent occasions. Also of relevance was the point made in the Findings Statement that "Depending on decisions made by the Trustees the sterilization effort could take place over one or more seasons."

Given the Village's collection of the foregoing information, and taking into account the information previously collected by the Village, as set forth in the Findings Statement and elsewhere in the SEQRA documentation for the DMP, the Village determined to further consider the use at this time of sterilization only as a deer management tool. In order to proceed with this possibility, the Village contacted NYS DEC to request modification of the LCP to authorize the Village to capture a larger number of female deer for sterilization. In response to the Village's request, on November 16, 2012, the NYS DEC issued to the Village a modification of the LCP that authorizes the Village to capture up to 145 female deer for sterilization. A copy of this permit is attached for reference.

5. Impacts of Proceeding with Implementation of the Deer Management Plan.

The Village has considered all of the information contained in the Findings Statement and elsewhere in the SEQRA documentation for the DMP, as well as all of the additional information obtained by the Village since the adoption of the Findings

Statement. For the reasons outlined in this Amendment of the Findings Statement, the Village currently will not have the opportunity to undertake the culling component of the DMP and would consider currently proceeding with management of the deer population in the Village by increasing the number of female deer sterilized.

The most significant impacts considered and evaluated in the Findings Statement and the other SEQRA documentation for the DMP were (1) the actual impact on the deer that would be euthanized in the culling component of the DMP and (2) the degree of public controversy related to the DMP. As noted in the DEIS, "Controversy has been caused by opposition to culling the deer herd and, to a much lesser degree, by opposition to sterilization. Opposition comes from a relatively small minority of resident and primarily from individuals living outside of the Village." Uncontrovertibly, the inability of the Village currently to undertake the culling component of the DMP and sterilization of a larger number of deer instead will result in significantly less actual impact on the deer. Likewise, the Village's current inability to proceed with the culling component of the DMP substantially diminishes the public controversy concerning the DMP. Also as noted in the DEIS, in the event that no culling were to take place, "community objections to this aspect of the proposed program would be placated." In summary, currently proceeding with sterilization of a greater number of deer and without culling does not result in any impacts that were not already considered and evaluated in the SEQRA process and largely eliminates the most significant impacts that had been identified in the SEQRA process.

B. The SEQRA Process.

1. Amendment of Findings Statement.

In accordance with SEQRA (6 NYCRR Part 617) the Village had prepared, reviewed and adopted the Findings Statement. Further in accordance with SEQRA, if a modification or change of circumstances related to the project requires a lead agency to substantively modify its decision, findings may be amended and filed in accordance with subdivision 617.12(b) of SEQRA. This Amendment of the Findings Statement constitutes such an amendment of the Village's findings.

2. Required Permits & Approvals.

As the Lead Agency, the Village of Cayuga Heights has primary responsibility for review of this proposal. The only other agency that has permitting authority is the New York State Department of Environmental Conservation, who has authority to grant the requisite wildlife management permits.

C. Conclusions

The Village of Cayuga Heights Board of Trustees finds and certifies that:

- The Village Board has given due consideration to the Draft and Final EIS, the Findings Statement and information derived from other documents and public hearings and Trustee meetings during the course of this SEQRA review process;
- This Findings Statement Amendment has been prepared pursuant to and as required by 6 NYCRR Part 617;
- Consistent with social, economic and other essential considerations of the proposed action, the No Action condition and other reasonable alternatives, the proposed action assessed in the Draft EIS, the Final EIS, the Findings Statement and this Amendment of the Findings Statement is an action that avoids or minimizes adverse environmental impacts to the maximum extent practicable; and,
- Consistent with social, economic and other essential considerations, to the maximum extent practicable, potential adverse environmental effects revealed in the environmental impact statement process will be avoided or minimized by various plans and policies and procedures that will be incorporated into the Deer Management Plan as identified as likely and practicable in the Draft EIS, Final EIS, the Findings Statement and this Amendment of the Findings Statement.
- The Trustees as the Lead Agency have considered reasonably related long-term, short-term, direct, indirect, and cumulative impacts, including other simultaneous or subsequent actions and determined that there are no significant long-term cumulative impacts.

Village of Cayuga Heights Board of Trustees



Signature of Responsible Official

Kate Supron

Name

Mayor

Title

November 20, 2012

Date