

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

WILDLIFE PRESERVATION COALITION OF  
EASTERN LONG ISLAND, by its president WENDY  
CHAMBERLIN, ANIMAL WELFARE INSTITUTE,  
HUNTERS FOR DEER, LLC, LONG ISLAND  
ORCHESTRATING FOR NATURE, THE EVELYN  
ALEXANDER WILDLIFE RESCUE CENTER, INC.,  
ISABELLE KANZ, BARBARA McADAM,  
PATRICK McBRIDE and MICHAEL TESSITORE,

Petitioners-Plaintiffs,

- against -

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, JOE  
MARTENS, in his capacity as Commissioner of NEW  
YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, THE LONG  
ISLAND FARM BUREAU, THE VILLAGE OF  
NORTH HAVEN, and JOHN DOES,

Respondents-Defendants.

**VERIFIED PETITION  
& COMPLAINT**

Index No.: 1245-14

Petitioners-Plaintiffs Wildlife Preservation Coalition of Eastern Long Island, Animal Welfare Institute, Hunters for Deer, LLC, Long Island Orchestrating for Nature, The Evelyn Alexander Wildlife Rescue Center, Inc., Isabelle Kanz, Barbara McAdam, Patrick McBride and Michael Tessitore, by their attorneys Young, Sommer, Ward, Ritzenberg, Baker & Moore, LLC, as and for their Verified Petition and Complaint against New York State Department of Environmental Conservation, Joe Martens, in his capacity as Commissioner of New York State Department of Environmental Conservation, Long Island Farm Bureau, Village of North Haven and John Does allege as follows:

## PRELIMINARY STATEMENT

1. This is a combined proceeding/action brought pursuant to CPLR Article 78 and CPLR § 3001 seeking to annul Deer Damage Permits (DDPs, also known as nuisance permits) issued by Respondent New York State Department of Environmental Conservation (DEC) in 2014 for Eastern Suffolk County as being issued in violation of: a) the State Environmental Quality Review Act (SEQRA), ECL Article 8; b) DEC's obligations under ECL Articles 3 and 11; and c) declaring that DEC may not issue any DDPs that are part of a deer culling program that is being promoted and sponsored by Respondent Long Island Farm Bureau (LIFB) and Respondent Village of North Haven without first complying with SEQRA and preparing an environmental assessment and an environmental impact statement.

2. Beginning in or around July 2013, LIFB in conjunction with the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services Program (hereinafter "USDA-WS"), have been promoting a major and unprecedented program to kill upwards of 5,000 deer in the towns and villages of eastern Long Island. The DEC has been aware of and has cooperated with the LIFB program but has not undertaken any public evaluation of the need for and scale of the program and has not considered the environmental impacts of such a massive culling program in the limited area under consideration.

3. On Friday, February 28, 2014 a DEC spokesperson announced that 12 DDPs (also known as nuisance permits) had been issued for the LIFB program and another 6 permit applications were pending.<sup>1</sup> It is expected that many more applications, perhaps hundreds, will be submitted in the near future.

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<sup>1</sup> On February 26, 2014, a DEC spokesperson announced that 9 DDPs had been issued and another 20 permit applications were pending. The news article *Judge shoots down attempt to stop deer cull*, by Cyndi Murray, The Suffolk Times (Feb. 26, 2014) is attached hereto as Exhibit "S" to the Affirmation of Jeffrey S. Baker, Esq., dated March 5, 2014 ("Baker Aff.").

4. Upon information and belief DEC has issued or is in the process of issuing between 440 and 985 new DDP deer tags to USDA-WS sharpshooters in Suffolk County.

5. DEC is reviewing and approving the DDP applications without considering the overall scale of the LIFB program or establishing a limit on the number of permits that will be issued. DEC is proceeding in issuing the permits without complying with SEQRA.

6. Petitioners strongly believe that DEC and LIFB have significantly overestimated the current deer population in the area and overstated the amount of damage to agricultural resources to justify the program and have ignored the available empirical data demonstrating a far lower deer population.

7. DEC's approval of DDPs not only contravenes SEQRA but is also arbitrary and capricious and violates ECL § 11-0521 and is inconsistent with its own management plan for white-tailed deer and its own guidelines for issuing DDPs.

8. This action is necessary to preserve the status quo and require DEC, as steward for the wildlife in the state, to undertake the mandatory environmental review of the impacts of the deer cull before it authorizes an action which will have a significant adverse environmental impact by reducing local deer populations below a sustainable level and in a manner that will preclude the use and enjoyment of the deer resource by others on eastern Long Island, including hunters and people who enjoy wildlife.

## **PARTIES**

### Petitioners-Plaintiffs:

9. Petitioner-Plaintiff Wildlife Preservation Coalition of Eastern Long Island ("WPCELI" or "Coalition") is an unincorporated association authorized under the laws of New York State. The Coalition is an umbrella organization of individuals and organizations dedicated

to protecting animals in Eastern Long Island. The Coalition Executive Committee is comprised of Wendy Chamberlin (President), Zelda Penzel (Vice President), Jane Gill (Treasurer), and Amy Sullivan (Secretary). The Coalition members include landowners and residents in all of the towns and villages of eastern Long Island. Coalition members also include hunters who hunt on land in eastern Long Island. The Coalition's purpose is advocacy for alternative deer management measures based upon empirical evidence of the actual number of deer and non-lethal best management practices to maintain a sustainable deer population. The Coalition works to educate municipalities and landowners in Suffolk County and on eastern Long Island on alternative deer management practices.

10. The Coalition brings this suit on behalf of itself and members who live, work, recreate and hunt in Suffolk County. These members regularly use private and public lands located in Suffolk County for walking, bicycling, observing wildlife, picnicking, photography, and quiet contemplation, and they enjoy viewing and/or hunting white-tailed deer on these lands. They will no longer be able to enjoy using these private and public lands in the same way if the DEC approves significantly larger numbers (than that issued historically) of nuisance permits in conjunction with the LIFB and USDA-WS or other deer elimination companies kill thousands of white-tailed deer in 2014 (and for an undetermined amount of time thereafter) using high-powered rifles. For hunters, a cull of this magnitude will irreparably harm their hunting opportunities. They will also suffer aesthetic injury when there are less deer on these private lands and LIFB and/or USDA-WS kills individual deer that they have strong personal attachments to that visit and migrate through their private property.

11. Petitioner-Plaintiff Animal Welfare Institute ("AWI") is a nonprofit charitable corporation organized and existing under the laws of Delaware, with its principal place of

business in Washington, D.C. Founded in 1951, AWI seeks to alleviate the suffering inflicted on animals by people, and its mission includes protecting wildlife from harmful exploitation and promoting non-lethal forms of wildlife management. AWI has approximately 31,000 members and supporters worldwide, including on eastern Long Island and Suffolk County. AWI has actively participated in white-tailed deer management issues and planning nationwide.

12. AWI brings this suit on behalf of itself and its members who live, work, and recreate in Suffolk County. These members regularly use private and public lands located in the towns and villages of Suffolk County for walking, bicycling, observing wildlife, picnicking, photography, and quiet contemplation, and they enjoy viewing white-tailed deer on these lands. They will no longer be able to enjoy using these private and public lands in the same way if the DEC approves significantly larger numbers of nuisance permits in conjunction with the LIFB and USDA-WS or other deer elimination companies and kill thousands of white-tailed deer in 2014 (and for an undetermined amount of time thereafter) using high-powered rifles. They will also suffer aesthetic injury when there are less deer on these private lands and LIFB and USDA-WS and others kill individual deer that they have strong personal attachments to that visit, give birth on, and migrate through their private property.

13. Petitioner-Plaintiff Hunters for Deer, LLC is a limited liability corporation authorized under the laws of New York State. Hunters for Deer is an advocacy group for hunters on Long Island and includes members who hunt throughout Suffolk County and members who are residents of Suffolk County.

14. Hunters for Deer brings this suit on behalf of itself and members who live, work, recreate and hunt in Suffolk County. These members regularly use private and public lands located in Suffolk County for observing wildlife and hunting white-tailed deer on these lands.

They will no longer be able to enjoy using these private and public lands in the same way if the DEC approves significantly larger numbers of nuisance permits in conjunction with the LIFB and USDA-WS or other deer elimination companies kill thousands of white-tailed deer in 2014 (and for an undetermined amount of time thereafter) using high-powered rifles. A cull of this magnitude will irreparably harm their hunting opportunities.

15. Petitioner-Plaintiff Long Island Orchestrating for Nature ("LION") is a grassroots not-for-profit corporation. LION and its supporters advocate against various industries who harm animals, including animals used for experimentation, animals used for sport, animals in the fur industry, and animals used for religious sacrifice. LION's mission is to educate the public about animals and advocate for the needs of animals and raise awareness on issues relating to factory farms, vivisection, the fur and leather trade, and the entertainment industry, among others. Members and supporters of LION include residents of Suffolk and Nassau County.

16. LION brings this suit on behalf of its members and supporters who live, work, recreate and hunt in Suffolk County. These members regularly use private and public lands located in Suffolk County for walking, bicycling, observing wildlife, picnicking, photography, and quiet contemplation, and they enjoy viewing and/or hunting white-tailed deer on these lands. They will no longer be able to enjoy using these private and public lands in the same way if the DEC approves significantly larger numbers (than that issued historically) of nuisance permits in conjunction with the LIFB and USDA-WS or other deer elimination companies kill thousands of white-tailed deer in 2014 (and for an undetermined amount of time thereafter) using high-powered rifles. They will also suffer aesthetic injury when there are less deer on these private lands and LIFB and/or USDA-WS kills individual deer that they have strong personal attachments to that visit and migrate through their private property.

17. Petitioner-Plaintiff The Evelyn Alexander Wildlife Rescue Center, Inc. is located in Hampton Bays, servicing the entire eastern end of Long Island, and dedicated to the rescue, medical rehabilitation and release of native wildlife. The mission of the Evelyn Alexander Wildlife Rescue Center, Inc. is to protect the region's wildlife and, among its services, it provides educational programs teaching people to live in harmony with wildlife, including deer. The Evelyn Alexander Wildlife Rescue Center, Inc. opposes the deer cull because its mission is to foster and sustain wildlife and to teach the public how to live with their wild neighbors.

18. Petitioner Isabelle Kanz is an adult and a full-time resident of the Town of Southold; she has lived in the Town of Southold for approximately 35 years and is a member of the Animal Welfare Institute. Ms. Kanz's property is close to farmland, approximately 450 feet from her home. Ms. Kanz enjoys regularly observing the deer near her home. Ms. Kanz and her family moved to the eastern end of Long Island because they wanted to be close to nature and the local wildlife. Oftentimes Ms. Kanz sits with her grandchildren on the porch in late afternoon to wait for the deer to appear; those times are magical for Ms. Kanz and her grandchildren. When installing a new fence, Ms. Kanz ensured that the fence was low enough so as not to obstruct her view of the deer. Ms. Kanz enjoys nature and observes the deer on hikes with her grandchildren through the Soundview Dunes Park and a Suffolk County park located on the corner of Mill Lane and Soundview Avenue located in the Town of Southold. The proposed deer cull in the Town of Southold will have a profound emotional effect on Ms. Kanz and she finds the prospect of a cull very disturbing. Ms. Kanz is opposed to the proposed deer cull in Southold because she feels that killing of deer, including by netting and then shooting the restrained deer, will cause stress to the animals and the methods employed will be inhumane.

19. Petitioner-Plaintiff Barbara McAdam is an adult and a resident of Cutchogue, a hamlet within the Town of Southold and is a member of the Animal Welfare Institute. Ms. McAdam relocated to Suffolk County in 1993 to enjoy a more rural lifestyle and the wildlife, including white-tailed deer. Her property is a 1-acre parcel that is within walking distance of vineyards and farms. Ms. McAdam enjoys observing wildlife, including deer, and is enamored with deer and the opportunity to observe and enjoy deer in her backyard and while going about her daily activities. There are four deer that routinely visit Ms. McAdam's backyard; she can identify all four deer based unique characteristics, including one that is an albino deer and easily identifiable, and has named them Psyche, Athena, Artemis and Apollo after Greek mythological characters. Ms. McAdam opposes the deer cull in eastern Suffolk County because it would harm or kill massive numbers of deer and would irreparably injure her ability to observe and enjoy deer on her property and throughout the community. In addition, Ms. McAdam is gravely concerned that the cull will cause the death of Psyche, Athena, Artemis and Apollo. She is also concerned that the cull will adversely affect her safety and the safety of neighbors and friends due to the presence of sharpshooters at night. If the deer cull is implemented, Ms. McAdam would suffer aesthetic, recreational and emotion injury because she adores and enjoys observing the deer, particularly Psyche, Athena, Artemis and Apollo. She is also concerned that the live trapping of deer using large traps or drop nets will cause enormous stress to the deer.

20. Petitioner Patrick McBride is an adult and has been full-time resident of the Town of Southold for approximately 27 years. Mr. McBride is an avid hunter and has been a hunter for approximately 13 years. Mr. McBride regularly hunts white-tail deer on private land in the Town of Southold, including throughout the Town and in the Hamlets of Cutchogue and Peconic. In the 2013-2014 hunting season, he legally harvested 5 deer. He pays license fees.



He enjoys hunting immensely and is opposed to a deer cull because the cull will reduce the number of deer and interfere with his ability to hunt, the quality of hunting in the Town of Southold, and his enjoyment of observing and hunting deer.

21. In addition, Mr. McBride's family owns a farm, Frank McBride & Sons, Inc., located in the Town of Southold at 10415 Oregon Road, Cutchogue, New York 11935-1130. The Frank McBride & Sons Farm grows a variety of plants and vegetables, including sweet corn, cauliflower, cucumbers, and cabbage; the Frank McBride & Sons Farm experiences little to no deer damage on their farm.

22. Petitioner-Plaintiff Michael Tessitore is an adult resident of East Quogue, a hamlet within the Town of Southampton. Mr. Tessitore is the President of Hunters for Deer, LLC and has been a licensed hunter since the age of 19. Mr. Tessitore uses a bow to hunt deer on Long Island and in eastern Suffolk County. The large-scale cull in eastern Suffolk County proposed by LIFB and USDA-WS will cause significant aesthetic, recreational and economic harm to Mr. Tessitore and members of Hunters for Deer because the cull will diminish the availability of deer for Mr. Tessitore and other hunters to consume in their homes and because the cull will removed deer that Mr. Tessitore and other hunters enjoy observing and enjoy hunting in their natural habitat. Further, the culling of deer in eastern Suffolk County will compromise Mr. Tessitore's ability to observe and hunt deer near his home.

Respondents-Defendants:

23. Respondent-Defendant New York State Department of Environmental Conservation (hereinafter "DEC") is a duly constituted Department of the Government of the State of New York, charged by law with the administrative management of the State's fish,

wildlife, water and other natural resources. DEC's principal place of business is 625 Broadway, Albany, New York, 12233.

24. Respondent-Defendant Joe Martens is the duly appointed Commissioner of New York State Department of Environmental Conservation (hereinafter "DEC"). The DEC's and Commissioner Martens' principal place of business is 625 Broadway, Albany, New York, 12233.

25. Respondent-Defendant Village of North Haven (hereinafter "North Haven") is a duly incorporated village in eastern Suffolk County, New York. North Haven's principal place of business is 335 Ferry Road, Sag Harbor, New York, 11963.

26. Respondent-Defendant Long Island Farm Bureau ("LIFB") is a not-for-profit corporation enacted under the laws of New York State. LIFB's principal place of business is 104 Edwards Avenue, Suite 3, Calverton, New York 11933.

27. Respondents-Defendants John Does are unknown persons or entities who have been issued Deer Damage Permits ("DDPs" also known as Nuisance Permits) by DEC for deer cull activities in Suffolk County in 2014.

#### STANDING

28. In *Matter of Save the Pine Bush, Inc. v. Common Council of City of Albany* (13 N.Y.3d 297, 890 N.Y.S.2d 405, 918 N.E.2d 917), the Court of Appeals held that, in land-use and environmental cases, "a person who can prove that he or she uses and enjoys a natural resource more than most other members of the public has standing ... to challenge government actions that threaten that resource" (*Id.* at 301, 890 N.Y.S.2d 405, 918 N.E.2d 917).

29. Here, the Petitioners-Plaintiffs established that the members and supporters of the Wildlife Preservation Coalition of Eastern Long Island, Animal Welfare Institute, and Hunters

for Deer use and enjoy the white-tailed deer of eastern Suffolk County to a greater degree than most other members of the public.

### VENUE

30. This proceeding is properly venued in Albany County as that is county in which DEC is headquartered. Overall management of the state wildlife program is based at DEC headquarters developing, adopting and implementing deer management plans and overseeing Wildlife Management Units. Gordon Batcheller, DEC Chief Wildlife Biologist who is overseeing and approving this culling operation works at the DEC headquarters.

### DEER MANAGEMENT IN NEW YORK STATE

31. The State of New York owns all of the wildlife in the state, except those legally acquired and held in private ownership. ECL §11-0105.

32. The DEC is charged with the management and propagation of the state's wildlife resources and is required to develop programs to that end, which consider a variety of factors including "the compatibility of production and harvesting of fish and wildlife crops with other necessary or desirable land uses". ECL § 11-0303.

33. In compliance with its mandate under ECL § 11-0303 on October 17, 2011, DEC adopted the "Management Plan for White-tailed Deer in New York State 2012-2016" ("2012 New York Deer Management Plan"). A copy of the 2012 New York Deer Management Plan is attached hereto as **Exhibit "A"** to the Affirmation of Jeffrey S. Baker, Esq. dated March 5, 2014 ("Baker Aff"). The New York Deer Management Plan is a general statewide plan that does not address deer management (both population and control methods) in particular regions, specifically on eastern Long Island and/or Suffolk County.

34. Upon information and belief, there was no SEQRA determination made with regard to the 2012 New York Deer Management Plan. *See Baker Aff.*, at ¶10.

35. The 2012 New York Deer Management Plan did not identify the current population of white-tailed deer in New York or the number of deer required for a stable population. *See Baker Aff.*, Ex. A, *New York Deer Management Plan*.

36. Further, the 2012 New York Deer Management Plan did not evaluate the deer population in Suffolk County or appropriate deer management methods to be implemented in Suffolk County. *See Baker Aff.*, Ex. A, *New York Deer Management Plan*.

37. For management and administration, DEC divides New York State into administrative regions and wildlife management units (“WMUs”). *See Baker Aff.*, at ¶13.

38. DEC divides New York State into nine regions. *See Baker Aff.*, at ¶14.

39. DEC Region 1 covers and includes Nassau and Suffolk Counties (hereinafter “DEC – Region 1”). *See Baker Aff.*, at ¶15.

40. DEC divides New York State into 92 WMUs. *See Baker Aff.*, at ¶16.

41. WMUs are the geographical units DEC uses to manage wildlife resources on a more localized basis including setting hunting and trapping seasons and regulating the number of deer tags permitting the taking of deer in New York State. *See Baker Aff.*, at ¶17.

42. DEC – Region 1 contains two WMUs. WMU 1C encompasses all of Suffolk County. *See Baker Aff.*, at ¶18.

43. Upon information and belief, DEC has not published any official estimates of the number of white-tailed deer in Suffolk County for at least several years.

## DEER NUISANCE PERMITS

44. In New York State, Deer Damage Permits (“DDPs” or “Nuisance Permits”) are used as a means of deer management outside of normal hunting permits which are the primary means of population control. These permits are authorized pursuant to ECL § 11-0521 and are issued at DEC’s discretion. ECL §11-0521 states in relevant part:

§ 11-0521. Destructive wildlife; taking pursuant to permit.

1. The department may direct any environmental conservation officer, or issue a permit to any person, to take any wildlife at any time whenever it becomes a nuisance, destructive to public or private property or a threat to public health or welfare . . . Wildlife so taken shall be disposed of as the department may direct...

45. DEC is obligated to consider the significance of the number of animals to be killed pursuant to a DDP in issuing the permit.

46. DEC has adopted guidance documents for issuing DDPs. Those documents dated September 2, 2008, include “Guidelines for Handling Deer Damage Complaints and Issuing Deer Kill Permits” and “Guidelines for Responsible Nuisance Wildlife Management” and are attached hereto as **Exhibit “B” and “C”** to Baker Aff.

47. Those guidelines provide that DEC personnel must “[d]etermine whether damage is real or perceived” and “[b]e cautious about misidentifying damage from verbal reports.” Baker Aff., Ex. C, *Guidelines for Responsible Nuisance Wildlife Management*, at p. 1.

48. A DDP is required for any and all culls and/or taking of so-called “nuisance animals.” See Baker Aff., at ¶23.

49. DDPs have a limited purpose, specifically “[t]o reduce damage problems on individual properties, WHILE damage is occurring.” See Baker Aff., at ¶24.

50. The DEC Guidelines provide that DDPs are issued only as a last resort after alternative non-lethal methods have been employed and are determined to be unsuccessful. See

Baker Aff., at ¶25, Ex. B, *Guidelines for Handling Deer Damage Complaints and Issuing Deer Kill Permits*, at p. 4-5, and *Deer Damage Mitigation – Decision Making Flowchart*. DDPs are intended for specific identified nuisance and damage problems and were never intended to be issued in large numbers to cover a large geographical area.

51. Upon information and belief, an applicant must submit certain application materials for a DDP and must demonstrate that the animal(s) is a nuisance and otherwise causing damage to property. *See Baker Aff.*, at ¶26.

52. DDPs identify the number of nuisance deer that may be taken (or harvested or killed) and authorize methods that may be used for the harvest, i.e. baiting, netting, weapon type, use of silencer, hunting at night, use of lights. *See Baker Aff.*, at ¶27.

53. Under the DDP a certain number of carcass tags will be issued to the permittee. *See Baker Aff.*, at ¶28.

54. Unused carcass tags must be returned to DEC. *See Baker Aff.*, at ¶29.

55. DDPs are valid for a defined usually short period of time. *See Baker Aff.*, at ¶30.

56. Upon information and belief, DEC issues DDPs on an annual or regular basis to some property owners who claim repeated instances of damage caused by deer. *See Baker Aff.*, at ¶31.

57. DEC does not investigate claims of repeated damages and issues subsequent DDPs as a matter of course. *See Baker Aff.*, at ¶32.

58. In 1994, the DEC issued Declaratory Ruling 11-06 (hereinafter “Declaratory Ruling”). The Declaratory Ruling is attached hereto as **Exhibit “E”** to Baker Aff.

59. The Declaratory Ruling provides that “[a]ctions taken consistent with the [1980] EIS do not require further compliance under SEQR” and that “minor actions” such as “thinning

of fish or wildlife surpluses and weeding of species incompatible with man's interest" do not require further review under SEQRA so long as "these actions are described in and are part of general fish and wildlife management programs for which an EIS has been prepared." See Baker Aff., Ex. E, *Declaratory Ruling*, at 8.

60. Upon information and belief, the Declaratory Ruling was referring to an environmental impact statement for deer management activities prepared by DEC in 1980. (hereinafter "1980 EIS").

61. The contents and scope of the 1980 EIS are unknown. The 1980 EIS is not available for review on-line. The 1980 EIS was requested by counsel for Petitioners-Plaintiffs pursuant to the Freedom of Information Law, Public Officers Law, Article 6 § 84 *et seq.* ("FOIL") on January 24, 2014, but has not been provided to date. Petitioners-Plaintiffs' FOIL requests and acknowledgements by DEC and DEC – Region 1 are attached hereto as **Exhibit "F"** to Baker Aff.

62. Upon information and belief copies of the 1980 EIS may no longer be in existence. See Baker Aff., at ¶36-38.

63. Upon information and belief, no other EIS or any kind of environmental assessment on the management of white-tailed deer has been prepared by DEC since 1980. See Baker Aff., at ¶38.

64. Information regarding DDPs issued by DEC in the last five (5) years has been requested pursuant to FOIL, but to date, no response has been provided by DEC. The FOIL requests and acknowledgments by DEC are attached hereto as **Exhibit "F"** to Baker Aff. According to information on the DEC website, in 2012, the last year for which data is available, statewide a total of 1,544 DDPs were issued on which a total of 5,046 deer were taken. Of those

permits, 139 DDPs were issued in Region 1 and 896 deer were taken on those permits. "New York State White-tailed Deer Harvest Summary 2012" attached as **Exhibit "G"** to Baker Aff.

65. There is no information in the summary about how many DDPs were issued and how many deer were killed in the towns and villages of eastern Suffolk County. *See Baker Aff.*, at ¶41.

66. DEC is proceeding with the current proposed deer cull program (described hereinbelow) and issuing DDPs for a large-scale deer cull without regard to historical levels of deer taken by DDPs and without considering the cumulative impacts and without performing an environmental impact statement pursuant to SEQRA. *See Baker Aff.*, at ¶42.

#### **CURRENT PROPOSED DEER CULL PROGRAM**

67. Upon information and belief, on or about July 29, 2013, the New York Regional Director of USDA-WS met with LIFB Executive Director Joseph Gergela. *See Baker Aff.*, at ¶43.

68. Upon information and belief, in or about July 2013, USDA-WS crafted a program, referred to as the "Long Island Deer Project," in consultation with LIFB. The terms of the Long Island Deer Project are memorialized in a letter from Martin Lowney, State Director, New York Wildlife Services to Joseph Gergela, LIFB Executive Director, dated July 29, 2013. That document proposes taking up to approximately 3,000-5,000 deer in eastern Long Island. A copy of this letter is attached hereto as **Exhibit "H"** to Baker Aff.

69. The Long Island Deer Project is a plan to reduce the number of deer in the 5 eastern towns and villages of Suffolk County and in Brookhaven using methods including: (1) shooting deer with suppressed weapons over bait from elevated stands, (2) shooting deer with suppressed weapons from a mobile vehicle, and (3) capturing deer on bait with drop nets and



killing the deer by a shot to the brain by small caliber suppressed weapons. The program will be conducted in the evening and night. *See Baker Aff., Ex. H, July 2013 Letter, at p.1, 3, 4.*

70. The Long Island Deer Project is projected to be implemented on rural lands (including “large private lands, agricultural lands, and some public lands”) and on suburban/urban lands. *See Baker Aff., Ex. H, July 2013 Letter, at p.4.*

71. The Long Island Deer Project is an effort wherein the LIFB enters into an agreement with USDA-WS for the provision of lethal deer management services, including USDA-WS sharpshooters. Municipalities contribute funds to the LIFB to help defray the cost of the Project and to fund USDA-WS sharpshooters operations in the contributing municipalities. *See Baker Aff., Ex. H, July 2013 Letter, at 4, 8-9.*

72. Upon information and belief, towns have been asked to contribute \$25,000 to LIFB and villages have been asked to contribute \$15,000 to LIFB for the deer cull project. An open letter for Don Louchheim, Mayor of the Village of Sagaponack is attached hereto as **Exhibit “I”** to Baker Aff.

73. The July 2013 letter describing the Long Island Deer Project does not set out the number of deer currently in the 5 eastern towns and villages or on Long Island, nor does the LIFB and/or USDA-WS have any reliable calculation of the current number of deer. *See Baker Aff., at ¶49, Ex. H, July 2013 Letter.*

74. Instead, the Long Island Deer Project sets out that “distance sampling technique was limited in area but *thought* to be reflective of deer densities in 2006 of 10-85 deer per square mile in one town. Regardless, the population estimates are helpful information but efficacy of the deer management project will need to be *measured by public opinion* on whether deer

damage increased, stabilized, or decreased.” See Baker Aff., at ¶50, Ex. H, *July 2013 Letter*, at 3-4 (emphasis added).

75. Thus, the Long Island Deer Project admittedly has only a small sample of data, that is at least 8 years old and, further, purportedly measures the number of deer based on public opinion. See Baker Aff., at ¶51.

76. The Long Island Deer Project failed to recognize or account for actual aerial surveys which counted far fewer deer in the towns surveyed than represented by the LIFB. See Baker Aff., at ¶51.

77. Upon information and belief, there has never been a comparable level of concentrated cull of 3,000-5,000 deer in a short period of time anywhere in New York State. See Baker Aff., at ¶53.

78. Upon information and belief, there has never been a comparable level of concentrated cull of 3,000-5,000 deer in the eastern portion of Suffolk County. See Baker Aff., at ¶54.

79. A cull of 3,000-5,000 deer in eastern Suffolk County represents three to five times the total amount taken by DDPs in all of Nassau and Suffolk Counties in 2012. See Baker Aff., at ¶40, 55.

80. By letter dated January 31, 2014, USDA-WS State Director Martin Lowney represented that the scope of the Long Island Deer Management Project changed and would result in a take of up to 1,000 deer in 2014 but indicated that cull program would continue at a similar or greater pace in subsequent years. This letter is attached hereto as **Exhibit “J”** to Baker Aff.

81. In that letter, USDA-WS admitted that the current proposed deer management project had not been evaluated and that “a fresh look at an existing management problem from time to time is a healthy exercise. Much new information about deer damage management has been published over the last 11 years” and that USDA-WS was preparing a new environmental assessment analyzing a deer management program above 1,000 deer. *See Baker Aff., Ex. J, January 2014 Letter*, at p.1.

82. As of this date, USDA has not prepared the environmental assessment referenced in Mr. Lowney’s letter. *See Baker Aff.*, at ¶58.

83. Upon information and belief, there has never been a comparable level of concentrated cull of 1,000 deer in the eastern portion of Suffolk County. *See Baker Aff.*, at ¶59.

84. A cull of 1,000 deer in eastern Suffolk County is more than the total number of deer taken pursuant to DDPs in all of Nassau and Suffolk Counties in 2012. *See Baker Aff.*, at ¶40, 60.

85. Upon information and belief, the deer cull project is a multi-year effort that will kill approximately 9,000 white-tailed deer on Long Island. The article by N.R. Kleinfield, *New York Times* (Jan. 31, 2014) outlining the program is attached hereto as **Exhibit “K”** to Baker Aff. *See also Baker Aff., Ex. I, Letter from Mayor Louchheim.*

86. On or about February 18, 2014, the LIFB and USDA-WS entered into a Cooperative Service Agreement. The Cooperative Service Agreement is attached hereto as **Exhibit “L”** to Baker Aff.

87. The Cooperative Service Agreement provides that the USDA-WS will conduct cull activities to reduce the deer population “within the local farming community and residential

areas” of the Towns of Shelter Island, Southampton, Southold, East Hampton, Riverhead and Brookhaven. *See Baker Aff., Ex. L, Cooperative Service Agreement, at 1, 2.*

88. The cull will occur on rural lands and suburban/urban lands and include both private and public lands. *See Baker Aff., at ¶64, Ex. L, Cooperative Service Agreement, at Attachment A: Work Plan, p.9.*

89. The cull will use a number of lethal methods including: (1) shooting deer with suppressed firearms over bait from elevated stands; (2) shooting deer with suppressed firearms from a mobile vehicle; and (3) capturing deer on bait with drop nets and euthanizing the deer. *See Baker Aff., at ¶65, Ex. L, Cooperative Service Agreement, Attachment A: Work Plan, p.9-10.*

90. The cull will take place primarily in February and March 2014. *See Baker Aff., at ¶66, Ex. L, Cooperative Service Agreement, Attachment A: Work Plan, p.9.*

91. The Cooperative Agreement fails to identify the number of deer that will be killed as part of the wide-spread cull. *See Baker Aff., at ¶67, Ex. L, Cooperative Service Agreement.*

92. There is no limit on the LIFB/USDA-WS cull pursuant to the Cooperative Agreement and, as such, the agents will have unlimited authority to kill innumerable deer, thus, resulting in a potential massacre and decimation of the white-tailed deer population in eastern Suffolk County. *See Baker Aff., at ¶68.*

93. The LIFB, in conjunction with USDA-WS, has planned and organized a cull of white-tailed deer in eastern Suffolk County that in scope and scale far exceeds any previous cull in the six towns covered by the agreement. *See Baker Aff., at ¶69.*

94. Upon information and belief, the LIFB and/or USDA-WS are organizing landowners’ applications for DDPs to be submitted to DEC. *See Baker Aff., at ¶70.*

95. DEC has not studied or evaluated the environmental impact of the large-scale deer cull planned by LIFB, in conjunction with USDA-WS, in the six towns in eastern Suffolk County. *See Baker Aff.*, at ¶71.

96. There is no reliable estimate of the number of deer on eastern Long Island. While documentation from LIFB/USDA-WS states that there are 30,000 deer (attributing this estimate to DEC), there is no basis of this estimate and, purportedly, it is an arbitrary estimate that overstates the deer population. *See Affidavit of Laura Simon ("Simon Aff.")*, at ¶11.

97. DEC is well aware of the large-scale cull proposed by LIFB and USDA-WS. DEC has approved at least fifteen (15) individual landowner DDPs for the large-scale cull and at least three (3) additional permits are pending review. *See Baker Aff.*, at ¶81.

98. DEC is issuing both new permits and permits for allegedly repeated damage under the LIFB program without considering the overall number of permits and impact on the local deer population. *See Baker Aff.*, at ¶82.

99. DEC has not studied or evaluated the environmental impact of the large-scale deer cull planned by LIFB, in conjunction with USDA-WS, in the six towns in eastern Suffolk County. *See Baker Aff.*, at ¶71,

100. In addition to the LIFB program, a multi-year cull is proposed the Village of North Haven wherein White Buffalo, Inc. will provide lethal deer management services. The news article outlining the cull, Brandon B. Quinn, *North Haven Seeks Multi-Year Deer Culling Contract*, The Southampton Press (February 26, 2014), is attached hereto as **Exhibit "M"** to Baker Aff.

101. Upon information and belief, a cull of approximately 150 white-tailed deer is planned in North Haven. *See Baker Aff.*, at ¶73.

102. In 2013, North Haven contracted with an independent company to conduct an aerial survey of the village using forward looking infra-red to conduct a count of the number of white tailed deer in the village. The Village Deer Committee Summary and Recommendations is attached hereto as **Exhibit "N"** to Baker Aff.

103. The survey, conducted during the optimum period in winter in leaf-off conditions counted only 104 deer in the Village. *See Baker Aff.*, at ¶75, Ex. N, *Village Deer Committee Summary and Recommendations*, at 2-3.

104. North Haven's contract with White Buffalo could result in the eradication of the deer population on the island that contains North Haven. *See Baker Aff.*, at ¶76.

105. It is uncertain whether DDPs are already in place for the wide-scale cull in North Haven. *See Baker Aff.*, at ¶77.

106. DEC has not studied or evaluated the environmental impact of the large-scale cull planned in the Village of North Haven that has the potential to kill all of the deer in the village. *See Baker Aff.*, at ¶78.

#### **DEC'S ACTIONS**

107. DEC has stated that "[w]e consider the deer management problem on the east end of Long Island to be quite serious." This statement was made in a February 19, 2014 letter from DEC Chief Wildlife Biologist Gordon R. Batcheller, attached hereto as **Exhibit "O"**.

108. Regardless of its recognition of the deer management issue in eastern Suffolk County, DEC has not evaluated or studied the deer population in Suffolk County, or on Long Island. *See Baker Aff.*, at ¶80.

109. DEC has not drafted or implemented a deer management plan for Suffolk County or Long Island, and DEC has not conducted any type of environmental assessment for deer

management actions in Suffolk County or on Long Island. Although DEC readily admits there is a deer management issue, it has not developed a plan to address this issue. *See Baker Aff.*, at ¶80.

110. DEC is well aware of the large-scale cull proposed by LIFB and USDA-WS. DEC has stated: “[o]ur staff on Long Island have been working very closely with officials from the east end to develop a comprehensive program tailored to meet the various needs of each municipality and to provide immediate relief relating to the damage they are experiencing....action is needed to provide greater and more immediate relief and a culling operation appears to be the most effective and safe way of doing this.” *See Baker Aff.*, at ¶81, 83, Ex. O, *Batcheller letter*.

111. DEC has either improperly delegated *its* duty to *plan for deer management* on Long Island to LIFB/USDA-WS or has developed a comprehensive plan for deer management on Long Island. *See Baker Aff.*, at ¶84.

112. DEC issues DDPs purely on an individual basis and with no regard to cumulative impacts. *See Baker Aff.*, at ¶85.

113. In addition, DEC has admitted that once all the tags under a DDP are used, additional tags are issued; thus, the DDP is expanded. For DDPs issued in Suffolk County, these additional tags are issued by Josh Stiller, the Wildlife Biologist in Region 1, and/or other Region 1 staff. *See Baker Aff.*, at ¶86.

114. DEC has admitted that there are no controls limiting the issuance of additional tags and that the decision to issue additional tags is delegated to Mr. Stiller and/or Region 1 staff. *See Baker Aff.*, at ¶87.

115. For example, the Town of Southold was issued a DDP identified as: Region 1-2014-194. This DDP allowed a take of 20 antlerless white-tailed deer by bow and arrow and allowed shooting over bait. The permit identified as Region 1-2014-194 is attached hereto as **Exhibit "P"**.

116. Through conversations with DEC, DEC confirmed that, because the culling was successful, the DDP tags were doubled and an additional 20 tags were issued under DDP Region 1-2014-194. Thus, this DDP will result in a total of 40 deer killed under this DDP. *See Baker Aff.*, at ¶89.

117. DEC has also indicated that at least 740 more DDP deer tags have been issued in Suffolk County in 2014 than were issued in 2013 and 440 of those tags are specifically for the LIFB program. *See Baker Aff.*, at ¶90.

118. Upon information and belief, that number may underestimate the number of tags issued to USDA-WS sharpshooters and the total number of DDP deer tags in Suffolk County for USDA-WS may exceed 985. *See Baker Aff.*, at ¶91.

119. There is nothing in DEC's process to programmatically limit the number of tags issued under a DDP or the number of DDPs issued in a given area. Simply put, there is no control or oversight on the expansion of these DDPs and they are expanded without regard to the cumulative impact on the deer population and without regard to whether there are other DDPs in effect. *See Baker Aff.*, at ¶94.

120. In addition, there is no cap on the number of DDPs that can be issued or the number of deer tags that can be issued in any given year. *See Baker Aff.*, at ¶95



121. Because there is no cap on the number of DDPs and deer and there is no programmatic mechanism to control or limit expansion of DDPs, DEC does not know how many DDPs are being issued. *See Baker Aff.*, at ¶96.

122. Similarly, because there is no cap on the number of DDPs or the number of deer that can be killed and there is no programmatic mechanism to control or limit expansion of DDPs, DEC can issue 1,150 DDPs for the LIFB/USDA-WS and North Haven culls or more in eastern Suffolk County. *See Baker Aff.*, at ¶97.

123. In addition, because there is no credible estimate for the number of deer in eastern Long Island, DEC's issuance of DDPs is "biologically and ecologically reckless and could contribute to dramatic impacts" and could substantially reduce the population. *See Simon Aff.*, at ¶11, 12, 13.

124. As such, DEC is proceeding and issuing DDPs for 2014 in a haphazard, arbitrary, post-hoc manner.

125. In addition, DEC is proceeding with the large-scale deer cull and issuing DDPs without following its own guidelines in identifying the nuisance problem. *See Baker Aff.*, Ex. C, *Guidelines for Responsible Nuisance Wildlife Management*.

126. DEC is proceeding with the large-scale deer cull and issuing DDPs without following its own guidelines for issuing such permits and without considering whether the applications are based upon repeat complaints, without conducting field visits, without determining the extent of the damage, and without attempting to resolve the damage issues by alternative methods. *See Baker Aff.*, at ¶100, Ex. B, *Guidelines for Handling Deer Damage Complaints and Issuing Deer Kill Permits*.

127. Upon information and belief, DEC does not know or understand the environmental impacts of the deer cull proposed by LIFB/USDA-WS or the deer cull proposed in North Haven, yet, is issuing DDPs in furtherance of these planned cull programs. *See Baker Aff.*, at ¶101.

128. Upon information and belief, DEC intends to issue DDPs for a take of at least 1,150 white-tailed deer in eastern Suffolk County in the LIFB/USDA-WS and North Haven culls. *See Baker Aff.*, at ¶102.

129. Upon information and belief, DEC does not know or understand the environmental impacts of the deer cull proposed by LIFB/USDA-WS or the deer cull proposed in North Haven. *See Baker Aff.*, at ¶103.

#### **CURRENT POPULATION OF WHITE-TAILED DEER IN SUFFOLK COUNTY**

130. The current number of white-tailed deer on eastern Suffolk County is in significant dispute. Upon information and belief DEC has not published official estimates of the number of white tailed deer in eastern Suffolk County. *See Baker Aff.*, at ¶104.

131. Estimates of 30,000 deer in eastern Long Island is wholly unsupported. *See Simon Aff.*, at ¶11. This estimate (provided in documentation from LIFB and USDA-WS and attributed to DEC) is not derived from any study or survey, nor is it supported by infra-red surveys conducted in the Town of East Hampton and the Village of North Haven. *See Simon Aff.*, at ¶11.

132. In addition, there is no target carrying capacity that can be applied broadly to eastern Long Island and there is no basis for representations that the current deer population in eastern Long Island is three times the biological carrying capacity. *See Simon Aff.*, at ¶¶13, 15, 18. Instead, the current population of deer in eastern Long Island demonstrates that this

particular area can sustain a higher carrying capacity that 10-15 deer per square mile. *See Simon Aff.*, at ¶¶15-18.

133. Deer are present at different densities throughout eastern Long Island depending on habitat quantity and quality, food type and availability, land use and management practices, availability of a mosaic of habitat types, and protection afforded in each habitat. *See Simon Aff.*, at ¶13. Appropriate deer density varies by habitat and is site-specific. *See Simon Aff.*, at ¶18. Thus, a generic “one-size-fits-all” carrying capacity is inappropriate to apply to eastern Long Island, given its varying habitats.

134. There is evidence to suggest that the population of deer in eastern Long Island is lower than 30,000. *See Simon Aff.*, at ¶19.

135. Residents of Suffolk County aver that they have not incurred wide-spread damage to shrubs, landscaping or ornamentals due to the presence of white-tailed deer. *See Affidavit of Wendy Chamberlin*, dated March 3, 2014, at ¶11.

136. There is not sufficient evidence that deer are adversely impacting local agriculture. *See Simon Aff.*, at ¶¶20-21. Suffolk County Farmers have not suffered major crop damage due to the presence of white-tailed deer and Suffolk County farmers’ crops and sales have not been adversely affected by white-tailed deer. According to the 2013 State of the Suffolk County Agriculture Industry report, “[n]early three-quarters of [ ] survey respondents have reached gross sales equal to or exceeding pre-recession levels and incumbent farmers are expecting to increase, rather than decrease, the size of their operation by a 2 to 1 margin.” This 2013 Report is attached hereto as **Exhibit “Q”** to Baker Aff., at p.3.

137. Instead, Suffolk County farmers’ top five challenges are: (1) high production costs, (2) high fuel costs, (3) availability of farm labor, (4) property taxes, and (5) extreme

weather events/climate change. The presence of pests (including white-tailed deer) does not rank in the top five challenges faced by Suffolk County farmers. *See Baker Aff., Ex. Q, 2013 State of the Suffolk County Agriculture Industry*, at 12-13.

138. In addition, an increase in deer-vehicle collisions is not necessarily attributable to an increase in the population of deer. *See Simon Aff.*, at ¶¶25-26.

139. Lyme disease (and any increase in Lyme disease) is not solely attributable to the presence of deer. Efforts to control Lyme disease through hunting deer routinely fail because Lyme disease is a multi-host disease. *See Simon Aff.*, at ¶¶27-29.

140. The presence of white-tailed deer in eastern Suffolk County does not necessarily cause damage to the forests and natural vegetation. *See Simon Aff.*, at ¶¶31-36.

141. In contrast, Suffolk County hunters will incur significant harm if the proposed large-scale cull is implemented as they will be unable to bring venison into their homes for their families and their opportunities to hunt will be diminished. *See Affidavit of Michael Tessitore*, dated March 3, 2014, at ¶ 15; *Affidavit of Wendy Chamberlin*, dated March 3, 2014 (“Chamberlin Aff.”), at ¶19

142. In addition, residents of Suffolk County will incur significant aesthetic, emotional and physical injury if the cull proceeds. *See Chamberlin Aff.*, at ¶¶13-18, 21-23; *Affidavit of Marilyn Flynn*, at ¶¶5, 8, 9; *Affidavit of Barbara McAdam*, at ¶¶5-6, 10, 13-15.

143. The proposed large-scale cull of, at a minimum, 1,150 deer in eastern Suffolk County in winter/spring of 2014, and up to 9,000 deer over the course of the next several years, will have unforeseen consequences and has the potential to negatively impact the environment and community. *See Simon Aff.*, at ¶12; *Baker Aff.*, at ¶108.

**AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST RESPONDENT-DEFENDANT DEC**

144. Petitioners-Plaintiffs repeat and reallege paragraphs 1 through 143 as if fully set forth herein.

145. DEC has violated SEQRA by failing to prepare an Environmental Assessment Form, by failing to make a Determination of Significance and by failing to prepare an Environmental Impact Statement prior to issuing Deer Damage Permits in the Towns of Shelter Island, Southampton, Southold, East Hampton, Riverhead and Brookhaven and the Village of North Haven.

146. The scope and scale and comprehensive nature of the LIFB/USDA-WS and North Haven deer cull programs preclude their classification as Type II SEQRA actions under 6 NYCRR §§ 617.5 and 617.8(2).

147. By considering the applications for DDPs as individual permits, DEC is either illegally segmenting its environmental review or failing to consider the cumulative impacts of the DDPs in a portion of eastern Suffolk County in violation of SEQRA.

148. As a result of the violations of SEQRA, any DDPs issued to property owners and/or applicants in 2014 in Suffolk County, including in the Towns of Shelter Island, Southampton, Southold, East Hampton, Riverhead and Brookhaven and the Village of North Haven must be annulled, and otherwise declared invalid, and DEC must be enjoined from issuing additional DDPs for properties in eastern Suffolk County.

**AS AND FOR A SECOND CAUSE OF ACTION  
AGAINST RESPONDENT-DEFENDANT DEC**

149. Petitioners-Plaintiffs repeat and reallege paragraphs 1 through 148 as if fully set forth herein.

150. DEC acted arbitrarily and capriciously and violated ECL § 11-0521 when it issued DDPs in violation of its own guidelines, the State Deer Management Plan and without sufficient evidence of the alleged damage caused by the deer.

151. DEC acted arbitrarily and capriciously and violated ECL Article 3 by failing to evaluate and plan for the deer management issues in eastern Suffolk County and by failing to consider the cumulative impact of DDPs as part of a comprehensive deer cull in issuing DDPs.

152. Further, DEC acted arbitrarily and capriciously by issuing DDPs without limits or control mechanisms and without regard to the cumulative impact and by identifying the deer management issues in eastern Suffolk as serious, but doing nothing to plan or program deer management efforts.

153. As a result of the violations of ECL § 11-0521 and ECL Article 3, all DDPs issued in 2014 in Suffolk County, including in the Towns of Shelter Island, Southampton, Southold, East Hampton, Riverhead and Brookhaven and the Village of North Haven must be annulled or otherwise declared invalid.

**AS AND FOR A THIRD CAUSE OF ACTION  
AGAINST RESPONDENT-DEFENDANT DEC**

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

155. A declaration that DEC may not issue DDPs above historic levels for applicants and/or properties located in eastern Suffolk County without complying with SEQRA.

156. A declaration that DEC must prepare an Environmental Assessment and an Environmental Impact Statement for the comprehensive cull in eastern Suffolk County.

WHEREFORE, Petitioners-Plaintiffs respectfully request relief as follows:

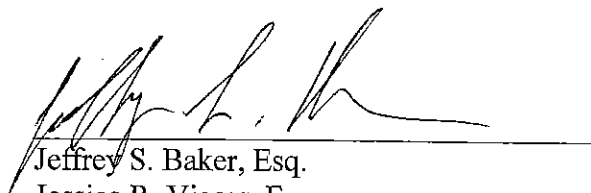
- a. Judgment annulling, and otherwise declaring invalid, all DDPs issued in 2014 to John Does in Suffolk County;
- b. Judgment enjoining Respondent-Defendant DEC from processing any applications and issuing any DDPs to applicants and/or for properties located in Suffolk County until information on DEC's historic issuance of DDPs is furnished to Petitioners-Plaintiffs and until Respondent-Defendant DEC has complied with SEQRA and conducted an environmental assessment and an environmental impact statement on the effects of the proposed large-scale cull in Suffolk County;
- c. Judgment enjoining Respondents-Defendants John Does, or their agents, employees or designees, from acting pursuant to or in accordance with DDPs and/or Nuisance Permits in effect in Suffolk County for 2014;
- d. Judgment declaring that Respondent-Defendant DEC must prepare an appropriate deer management plan for Suffolk County before issuing DDPs in Suffolk County above historic levels;
- e. Judgment declaring that Respondent-Defendant DEC may not issue DDPs above historic levels for applicants and/or properties located in Suffolk County, including the Towns of Shelter Island, Southampton, Southold, East Hampton, Riverhead and Brookhaven and the Village of North Haven, without complying with SEQRA;
- f. Judgment declaring that Respondent-Defendant DEC must prepare an Environmental Assessment and an Environmental Impact Statement for the comprehensive cull in Suffolk County;

- g. Awarding Petitioners-Plaintiffs attorneys' fees, costs and disbursements in this action and such other and further relief that the Court deems just and proper.
- h. No prior application for the relief requested herein has heretofore been made.

Dated: March 6, 2014  
Albany, New York

**YOUNG, SOMMER, WARD, RITZENBERG,  
BAKER & MOORE, LLC**

By:



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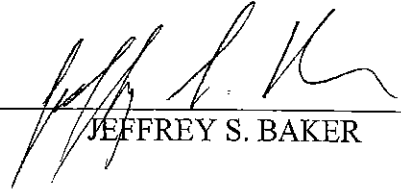


**VERIFICATION**


STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF ALBANY    )

JEFFREY S. BAKER, ESQ., being duly sworn, deposes and says:

I am a member of the firm of YOUNG, SOMMER, WARD, RITZENBERG, BAKER & MOORE LLC, attorneys for Petitioners, in this proceeding and have read the foregoing Verified Petition and Complaint and is familiar with the contents thereof; the same is true to the deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true. This verification is not made by me because Petitioners do not reside in the county in which I maintain an office.

  
\_\_\_\_\_  
JEFFREY S. BAKER

Sworn to before me this  
6th day of March, 2014

  
\_\_\_\_\_  
Notary Public

**JODI L. BARNES**  
Notary Public, State of New York  
Qualified in Schoharie County  
No. 01BA5006685  
Commission Expires Jan. 4, 2015