

**FINAL WRITTEN FINDINGS STATEMENT**  
**January 9, 2008**

**Lead Agency:** **Town of Orchard Park Planning Board**  
**4295 South Buffalo Street**  
**Orchard Park, NY 14127**

**Project (Action):** **M.A. Tuffillaro Builders**

**Classification of Action:** **Type 1**

**Contact Person:** **Remy C. Orffeo, Planning Coordinator**  
**Town of Orchard Park Planning Board**  
**4295 South Buffalo Street**  
**Orchard Park, NY 14127**  
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**SECTION 1 – INTRODUCTION AND PROJECT BACKGROUND**

**1.0 Introduction**

This document is the Findings Statement for the proposed project known as Knoche Farms Estate subdivision. The lead agency for the project is the Town of Orchard Park Planning Board (hereafter referred to as “Planning Board”). The project sponsor is M.A. Tuffillaro Builders.

This Findings Statement has been prepared in accordance with Article 8 of the New York State Environmental Conservation Law and its implementing regulations commonly known as the State Environmental Quality Review Act (“SEQR”). The substantive requirements for a Findings Statement are set forth at 6NYCRR Part 617.11(d). A Findings Statement must be issued before an agency can make a final decision to approve a discretionary action that has been the subject of a Final Environmental Impact Statement (“FEIS”). In this case, the underlying action is a request for preliminary plat approval for the proposed subdivision that will consist of a maximum of 97 single-family homes. In accordance with 6 NYCRR Part 617.11(d), this Findings Statement:

1. Considers the relevant environmental impacts, facts and conclusions disclosed in the FEIS;
2. Weighs and balances relevant environmental impacts with social, economic and other considerations;
3. Provides a rationale for the agency’s decision;
4. Certifies that the requirements of SEQR have been met; and
5. Certifies that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the

action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

### **1.1 Description of the Proposed Project (“Action”)**

The project ("action") that has been the subject of a coordinated environmental review consists of the proposed development of the Project Site as a residential subdivision for 97 single-family homes. The project ("action") includes the infrastructure needed to service the single-family homes as well as all required discretionary approvals from the Planning Board and involved agencies.

The Project Site is approximately 78.6 acres in size located at 7796 Milestrip Road (Part of lots 2 and 3, Township 10, Range 7, Buffalo Creek Reservation) in the north eastern portion of the Town of Orchard Park, Erie County, New York.

The subdivision is planned for an undeveloped parcel north of Milestrip Road (Erie County Road 460). Historically, the site was used for agricultural purposes. The project site is generally rectangular in shape and is bounded on the west, northeast, and southeast by former agricultural area; on the south by Milestrip Road and individual residential lots along Milestrip Road; and on the east by property (also referred to as the “Harris Property”) that was formerly used by the U.S. Department of Defense as radar base (from the 1950’s to 1962) and was subsequently used for research purposes by Roswell Park Cancer Institute. The Harris Property is presently vacant. Transit Road (State Route 187), which forms the boundary between the Town of Orchard Park and the Town of Elma, is located less than 0.5 miles to the east of the site.

### **1.2 Chronology of the Coordinated Environmental Review of the Project Pursuant to SEQR**

The former SEQR review of the project (“Action”) has the following chronology:

- The project sponsor submitted a completed Part 1 of the long environmental assessment form (EAF) as required by SEQR. The Planning Board conducted a coordinated environmental review of the project pursuant to SEQR over a period of more than two-years. During the lengthy environmental review, the project was discussed during many public meetings of both the Planning Board and the Conservation Board. After classifying the Project as a Type 1 action, the Planning Board required the Project Sponsor to submit professionally prepared studies and reports to address identified potential adverse environmental impacts including traffic, wetlands, wildlife, the loss of agricultural land and the effect of the project on the health of residents in the subdivision and project vicinity.

The minutes of the many meetings of the Planning Board and the Conservation Board demonstrate the degree to which the Planning Board required the Project Sponsor to provide information on potential adverse environmental impacts of the project.

- The Planning Board issued a positive declaration for the project (“action”) on October 8, 2003.
- A Draft Environmental Impact Statement (DEIS) was submitted by the Project sponsor on June 23, 2006. The Planning Board accepted the DEIS as complete for review on October 4, 2006. Public hearings by the Planning Board were held on December 13, 2006, February 14, 2007 and March 14, 2007 at which time both verbal and written comments were received.
- The Final Environmental Impact Statement (FEIS) was submitted by the Project Sponsor on October 25, 2007 and was accepted as complete on November 14, 2007 by the Planning Board. A Notice of Completion for the FEIS was prepared and sent to the involved and interested agencies including the “Environmental News Bulletin”.
- The Planning Board’s issuance of this Findings Statement represents the final step in the coordinated environmental review of the project.

### **1.3 Incorporation by Reference**

The three volume DEIS, the FEIS, as well as the minutes of the many meetings of the Planning Board and the Conservation Board during which the project was discussed are incorporated herein by reference in their entirety.

### **1.4 Distribution of this Findings Statement**

A complete copy of this Findings Statement will be distributed for filing to each of the involved and interested agencies. The Findings Statement will also be filed with the Town Clerk’s Office.

## **SECTION TWO – ALTERNATIVES**

### **2.0 Introduction**

Section 4 of the DEIS discussed alternatives to the proposed Project that were feasible, considering the objective and the capabilities of the Project Sponsor. In developing and analyzing alternatives, consideration was given to the Project Sponsor’s goal of utilizing the Project Site for single-family homes in accordance with its existing R-2 zoning classification. The expressly permitted principal land uses within the R-2 zoning classification include: one-family dwellings, churches and other houses of worship, farms, recreation areas and schools. The principal land uses allowed upon the issuance of a special exception permit include: golf courses, private recreation clubs, public stables and tennis courts.

### **2.1 Selection of Alternatives**

The proposed subdivision is expressly permitted within the existing R-2 zoning of the Project Site.

The Project Sponsor has at no time expressed an interest in utilizing the site in any manner that would require the zoning classification of the Project Site to be changed. Because the use of the Project Site for multi-family uses including apartments, townhouses and condominiums would require a change in the zoning classification, multi-family uses has not been considered as a reasonable alternative for the purpose of this DEIS.

The use of the Project Site for commercial purposes including retail stores and office buildings was not considered as a reasonable alternative. These commercial uses would clearly be incompatible with the character of the vicinity. The use of the Project Site for commercial purposes would also require a change in the existing R-1 zoning classification.

The reasonable alternatives that have been analyzed by the Project Sponsor include the following:

- The No-Action Alternative;
- The Maximum Build Option; and
- The Proposed Action (Development of a 97-lot subdivision for single-family homes).

## **2.2 Discussion of Alternatives**

Sections 4.1 and 4.2 of the DEIS discussed the alternatives to the proposed subdivision in accordance with the requirements of SEQR as follows:

### **2.2-1 Alternative #1 -No Action**

SEQR requires that the no-action alternative be considered within a DEIS so that the public and the involved governmental agencies can assess the potential environmental impacts of a project as compared to leaving a Project Site in its current state. The "no action" alternative would involve leaving the Project Site in its current condition. Under the no action alternative, the Project Sponsor would not develop the Project Site in accordance with the existing R-2 zoning classification. The no-action alternative would eliminate the potential adverse environmental impacts associated with the development of the Project Site as a residential subdivision for 97 single-family homes. The no-action alternative would prevent any construction activities from taking place on the Project Site. It would prevent the currently vacant land from being utilized for single-family homes. The no-action alternative would not generate any additional traffic or demand for municipal services. It would also result in no filling of jurisdictional wetlands on the Project Site.

The no-action alternative is not consistent with the Project Sponsor's goal of using the Project Site as a residential subdivision. It is also not consistent with the Town's legislative determination that single-family homes are the appropriate land use for the Project Site. The no-action alternative is not economically feasible given the fact the Project Site is privately owned property that was properly zoned at the time it was purchased by the Project Sponsor. The no-action alternative would potentially result

in increased demand to utilize property that is currently not zoned for single-family homes. This result could result in potentially significant adverse environmental impacts since property that may not be suitable for residential development could be the subject of rezoning to allow a residential subdivision.

### **2.2-2 Maximum Build Option**

The “maximum build” option would involve constructing 101 new residences on the site, rather than the 97-homes as currently proposed. This option would use all available space on the site for construction of new homes while remaining in compliance with current zoning regulations. The minimal amount of property would be dedicated to open space.

Although this option could lead to greater economic benefits to the project sponsor (and potentially to local governments from increased tax revenues), the higher density of homes may adversely affect the value of individual lots and the aesthetic appeal of the subdivision in general. In addition, this option would result in greater environmental impacts, as there would be a greater demand for community services such as schools, utilities and fire/police protection. Additional air, water, transportation and noise impacts would also result from the maximum build option, and the 7.3 acres of land currently proposed for dedication to the Town as recreational area would instead be converted to residential use. Due to these factors, the maximum build option was abandoned in favor of the currently proposed preferred alternative.

### **2.2-3 The Proposed Subdivision (“action) – the Project Sponsor’s Preferred Alternative.**

The Planning Board selects the proposed project consisting of a residential subdivision for 97 single-family homes, subject to the conditions and mitigation requirements contained in this Findings Statement, over the other alternatives discussed within the DEIS and FEIS for the following reasons:

1. The utilization of the Project Site as a residential subdivision is consistent with the existing zoning classification of the Project Site.
2. The use of the Project Site as a residential subdivision is consistent with the surrounding land uses.
3. The proposed subdivision is consistent with the Town's previous land use decisions.
4. The "no-action" alternative is not realistic given the existing zoning classification of the Project Site and the fact the Project Site consists entirely of private property.
5. The “maximum build option” would result in greater environmental impacts as there would be a greater demand for community services such as schools, utilities and fire/police protection. Additional air, water, transportation and noise impacts would also result from the maximum build option and the 7.3 acres of land currently proposed for dedication to the Town as a recreational area would instead

be converted to residential use.

6. The proposed subdivision has been selected based on the Planning Board's weighing and balancing of relevant environmental impacts with social, economic and other considerations.

### **Section 3 – Environmental Impacts & Mitigation Measures**

Based on the Planning Board's review of the content of the DEIS, the FEIS, public comments and all relevant documentation addressing potential environmental impact of the Project, the Planning Board makes the following findings and determines that:

#### **3.1 Physiography, Geology and Soils**

1. The proposed subdivision will have potentially adverse environmental impacts on the existing physical features of the Project Site. The proposed subdivision will not significantly alter the site topography and no blasting is expected to be required. The Project Sponsor will utilize soil and bedrock excavated during construction activities on the Project Site to the maximum extent practicable. Any excess materials may be reused or disposed of in accordance with applicable law based on appropriate characterization.
2. The primary adverse environmental impact to the existing physical features of the Project Site will be the disturbance of soils during construction activities including excavations. The disturbance to soils resulting from construction related activities will alter current erosion, flooding and drainage patterns on the Project Site.
3. The regulations for stormwater discharges from construction activities have recently changed. Under Phase II requirements, development/construction activities involving land disturbance of over one (1) acre require authorization under the State Pollution Discharge Elimination System (SPDES) General Permit (GP-02-01) for Stormwater Discharge from Construction Activities. Accordingly, the Project Sponsor will be required to control stormwater runoff according to a stormwater pollution prevention plan and file a Notice of Intent (NOI) with NYSDEC, Bureau of Water Permits, 625 Broadway, Albany, NY 12233-3505 (telephone: 518/402-8098). If authorization under the previous SPDES General Permit for Discharge from Construction Activities (No. GP-93-06) was received, the Project Sponsor is advised to review on-site information for interim compliance.
4. Compliance with the SPDES Permit requirements that are applicable to the proposed subdivision as well as a Sedimentation/Erosion Control Plan ("SECP") will mitigate the potentially significant impacts of the proposed subdivision resulting from stormwater discharges from construction activities to the maximum extent practicable.

#### **3.2 Land Use & Zoning**

1. The Project Site is zoned "R-2 Residential" and this zoning classification expressly permits the property to be utilized as a subdivision for single-family homes.
2. The existing R-2 zoning classification would allow the Project Site to be developed

as approximately 101 single-family homes as opposed to the maximum of 97 single-family homes the Project Sponsor is seeking the approvals and permits to construct.

3. The proposed subdivision is consistent with previous land use decisions that have been made by the Town of Orchard Park for property in the vicinity of the Project Site.
4. The proposed subdivision will not have a significant adverse impact on the character of the Project Site or the surrounding vicinity based on the fact the Project Site is properly zoned and the Project Sponsor is only seeking to utilize the Project Site for a maximum of 97-lots for single-family homes. The existing zoning classification of the Project Site would potentially allow the Project Site to be utilized in a much more intensive manner.

### **3.3 Open Space**

1. The development of the Project Site as a residential subdivision for 97 single-family homes will have a permanent impact to the presently vacant Project Site. The project involves the construction of 97 single-family homes and required infrastructure on privately owned property. The proposed subdivision will result in the permanent conversion of a portion of the Project Site from vacant property to single-family homes and infrastructure.
2. The Project Sponsor will be required to dedicate approximately 7.3 acres of the Project Site to the Town and this property will be open space.
3. The proposed subdivision to be constructed on private property will not have a significant adverse impact in terms of the availability of Town recreation space.

### **3.4 Recreational Opportunities**

1. In accordance with the recommendation of the Conservation Board and requirements of the Town of Orchard Park Subdivision Regulations and relevant sections of New York State Town Law, the Project Sponsor shall be required to dedicate a portion of the Project Site to the Town for recreational purposes.
2. Consistent with the above finding (3.4-1), the Project Sponsor will be required to dedicate approximately 7.3 acres of the Project Site as shown on the proposed subdivision plan.

### **3.5 Socioeconomics**

1. The proposed subdivision will result in economic benefits to the local and regional economy.
2. The proposed subdivision will generate tax revenues for the benefit of the School District, Town and County.
3. The proposed subdivision will not have a significant adverse impact on the Town's ability to provide municipal services. Phasing of the project in three (3) phases over

an anticipated period of five to seven years will serve to mitigate to the maximum extent practicable any adverse impacts to community services.

### **3.6 Educational Services**

1. It is expected that approximately 65-residents of the proposed subdivision at full build-out will be school age children. The proposed project will contribute to cumulative impacts on the number of students in the school system.
2. In a letter dated December 6, 2006 Joan Thomas, Superintendent of Schools, does not support the DEIS for the project. Current forecasts indicate the student population in this portion of the school district is and will exceed the enrollment capacity at Eggert Road Elementary.
3. There are enrollment imbalances throughout the school district. The District has already identified the current capacity issues and has adopted a redistricting plan to balance enrollment. It is anticipated that this was planned to mitigate these cumulative impacts of the various residential developments in the area. Therefore, the Board views this as a cumulative impact for which the School District is presently adopting mitigation measures. Therefore, no further action will be required from the Sponsor at this time.
4. All correspondence from the School District officials shall be included with the FEIS appended documentation.

### **3.7 Transportation/Traffic Impacts**

1. A follow-up updated traffic study was performed by the Sponsor's consultant. Written comments have been received from NYSDOT, the Town Engineer, and the Erie County Highways Department and have been incorporated accordingly into the FEIS.

As noted in the updated study, the proposed Knoche Farms Subdivision will contribute to cumulative traffic impacts of the various recent subdivision developments in the area.

2. The Traffic Impact Study states that a signal and auxiliary turning lanes be considered at the intersection of Milestrip Road and Transit Road. NYSDOT has indicated by letter of September 27, 2007 that they will assess the need for a signal at this location based on existing conditions, and will be responsible for a signal if one is warranted. Likewise, a further assessment by Erie County Highways Department is required of the declining conditions at the intersection of Milestrip Road and North Buffalo Street.
3. The Planning Board does note that Knoche Farms will contribute to each of these problem areas but will not require any further action by the Sponsor at this time. Letters received from NYSDOT, Erie County Highways Department, and the Town Engineer shall be included in the FEIS attached documentation.

### 3.8 Water Resources

1. Construction of the proposed project will take place in an area where the seasonal water table is close to the surface and thus excavations will likely encounter groundwater. No project change can alter this fact; however, similar construction routinely occurs throughout the Town of Orchard Park under similar conditions with no significant adverse impacts.
2. Development of the proposed project will create impervious surfaces (roofs, roads, driveways, etc.) within the project area that will increase both the volume and rate of storm water runoff from the site. However, a storm water management system has been designed for the project that will exceed town requirements for storm water retention and that will use a wet detention pond design that will also provide a waterfront setting for adjacent homes.

The Town of Orchard Park drainage policy requires that a project must store the difference in runoff volume between the developed condition 25-year storm and the existing condition 10-year storm. The proposed design incorporates drainage measures that are intended to comply with the Town's policy. Specifically, when the project is fully developed, the discharge rate in a 10-year storm event will not exceed the discharge rate for the same event on the existing (unimproved) Knoche Farm Estate property. In addition, all homeowners whose lots border the wet detention pond will be required to adhere to a pond maintenance agreement as part of the enforceable covenants in their deeds.

New York State requires that for new developments affecting more than 5-acres of land, a storm water drainage system be included that is designed to ensure that the amount of storm water runoff leaving the site following development does not exceed pre-development levels (State Pollution Discharge Elimination System [SPDES] General Permit GP-02-01).

3. The proposed project will not result in impacts to any NYSDEC-regulated wetlands, but will affect a small federally regulated wetland. Filling of the 0.58-acre wet meadow wetland located on the southwestern property boundary of the site is unavoidable because it is located at the project's proposed entrance/exit to Milestrip Road. Alternatives for the location of the entrance were evaluated but due to boundary constraints and design standards for safe ingress/egress, no other viable alternative exists. The current entrance/entry was sited based on specific design standards and located at the safest location based on line of sight distance. The configuration was reviewed and approved by the Erie County Department of Public Works Division of Highways and therefore that alignment must remain, resulting in an unavoidable impact on the wetland. Any work within the wetland will require the petitioner to obtain a permit from the Army Corps of Engineers. The permit application and process will identify mitigation measures that may be necessary due to the unavoidable wetland impact. However, this federal jurisdictional wetland is isolated and is characterized as having a low functional value due to the low diversity of vegetation and wildlife species identified during the onsite wetland delineation.

4. Federal jurisdictional wetlands and water bodies are regulated by the ACOE under Section 404 of the Clean Water Act (33 U.S.C. 1344). The ACOE has established a Nationwide Permit (NWP) program to regulate activities in federal wetlands that will result in minimal environmental impacts. NWP No. 26 regulates the discharge of dredge or fill materials into "Headwaters and Isolated Waters" that affect less than 0.50-acres of jurisdictional wetlands. The 0.58-acres of fill required for construction of the proposed subdivision is permitted under NWP No. 26, which by definition authorizes projects that will have only minor impacts on water resources.
5. The ACOE's Buffalo District is responsible for wetland regulation in the project area. More than 5-years have passed since the wetland delineation was done for the project site. However, in May, 2005 WET re-examined the property and determined that the previous wetland delineation is still valid. It will be necessary to obtain a Section 404 to impact the 0.58-acre wetland.
6. The project sponsor will develop a wetlands mitigation plan as part of the federal wetlands permitting process administered by the ACOE, Buffalo District. It is anticipated that implementation of this plan will mitigate the loss of this small wetland. Overall, the project is not expected to have a significant adverse impact on the region's wetland resources.

### **3.9 Biological Resources**

1. The development of the proposed Knoche Farm Estates project will result in both temporary and permanent, but minor, impacts to wildlife and vegetation resources. The primary impact to biological resources as a result of the proposed project will be a permanent loss or conversion of former agricultural fields/meadows and brush land currently found on the site and the wildlife habitat it represents, to primarily residential areas.
2. In addition, during construction, the wildlife species that use the existing reverting farmland as habitat will be slightly displaced to the extensive network of fields and woods covering surrounding properties in the area.
3. Overall, the proposed development will result in the conversion of the 78.6-acre former farm including the 0.58-acre wetland and the small farm pond presently located on the site, to the following uses:
  - 53.5-acres of lawns and landscaped areas.
  - 13.5-acres of roads, buildings, and other paved surfaces.
  - 4.3-acres of water surface area (wet detention pond areas).
  - 7.3-acres of meadow land to be dedicated to the Town for open space.
4. In general, the proposed development will modify on-site habitat from uniform open fields/cultivated areas with hedgerows to a mix of landscaped lawn, meadow/reverting field and pond areas. The few existing wooded areas on the site will be retained to the extent practical and will serve as vegetative buffers.

5. The wooded areas along the northern boundary of the site (adjacent to the Haas Property) will not be affected by the proposed project.
6. The proposed project will result in more onsite vegetative diversity, which may be expected to attract a wider range of species than presently use the site. In addition, the habitat types that will be created by the development of the subdivision can be expected to remain relatively constant (i.e., the landscaped lawns, ornamental trees, and wet detention ponds can be expected to be maintained by residents over time). Likewise, the 7.3-acres of meadow that will be dedicated to the town for open space will be preserved and can be expected to gradually change through natural vegetation succession (unless otherwise managed), providing habitat for various wildlife species in the process. In contrast, historically, farming activities conducted on the Knoche Farm Estates property resulted in annual mowing, plowing, and modification of the on-site habitat.
7. The proposed project will not result in any adverse effects to vegetation on adjacent properties.
8. The wildlife species that presently frequent or inhabit the Knoche Farm Estates property are those commonly found in agricultural and rural/suburban areas, such as small mammals (e.g., chipmunk, gray squirrel, rabbits), deer, geese, and a variety of other birds that inhabit open areas. Such species are relatively common in the vicinity and also are adaptable, being found in a variety of habitats. Consequently, the conversion of the existing open field habitat to residential uses will not represent a significant impact, either locally or on a regional scale.
9. In addition, the landscaped residential sites will represent similar habitats to those being displaced and can be expected to compensate, to some extent, for the loss of existing vegetation/habitat. Small mammals, birds (including geese), deer and other species common in rural/suburban areas can be expected to frequent the site after the subdivision is developed.
10. Habitat provided by and in the vicinity of the wet detention ponds may attract some species not presently found on the site. Similarly, the 7.3-acres of open space that will be preserved can be expected to attract birds and other species typical of meadow/shrub land habitats.
11. As a result, only minor terrestrial biological impacts are expected to occur as a result of the proposed project, although these impacts do represent a permanent conversion of existing resources.
12. Consultations with the NYSDEC's Natural Heritage Program have indicated that no state-designated or federal-designated rare, threatened, or endangered species or significant habitats are known or expected to occur in the project vicinity. Further, the former agricultural area does not presently have any habitats likely to support such species.

### **3.10 Cultural Resources**

1. The development of the Knoche Farm Estates Subdivision is not expected to have any significant adverse impacts on archaeological or historic resources. The results

of the Stage I cultural resource investigation conducted of the property (refer to Appendix 2 in the DEIS) revealed that there are no State or National Register listed or eligible properties in, or near the project site. Although surface inspection of plowed fields on the project site revealed 30 prehistoric stray find spots and several scatter historic ceramics and glass, close-interval grids around all of these find spots failed to identify any additional cultural materials.

Based on this testing, the cultural resource survey concluded that the loci lack identifiable and spatial patterning, features, and/or intact archaeological deposits. In addition, the results of the survey determined that further investigations would not likely produce any additional cultural material or other data beyond that recovered during the Stage I investigations. Consequently, no further cultural resource investigations are recommended for the property.

2. The Stage I cultural resources report was submitted to the New York State OPRHP (SHPO) for review and comment on June 7, 2005. The New York State OPRHP reviewed the project to determine the potential for impacts to cultural resources in or eligible for inclusion in the State and National Register of Historic Places. The OPRHP confirmed that the project will have no impact on cultural resources in or eligible for inclusion in the State or National Register of Historic Places (refer to correspondence from OPRHP in Appendix 6 of the DEIS).
3. The materials and field notes from the Stage I investigation will be curated at the SUNYAB for subsequent reference.

### **3.11 Visual and Noise Impacts**

1. The development of the Project Site as a residential subdivision is consistent with surrounding land uses.
2. There will be minor but insignificant impact to visual resources as a result of the project. The Project will not result in significant adverse impacts to visual resources.
3. The Planning Board has determined that noise generated from the proposed subdivision will not have a significant adverse impact.
4. Noise generated during construction of the proposed development will exceed local ambient levels for noise outside of structures. Heavy equipment and power tools during construction generally produces higher than normal noise levels. However, these noise increases will generally be minor, highly localized and temporary.
5. No blasting is expected to be necessary during site preparation activities.
6. After the completion of construction activities on the Project Site, ambient sound levels associated with the proposed subdivision will be comparable to those common in the surrounding vicinity.

### **3.12 Public Utilities and Infrastructure**

Adequate services and utilities will be available to service the proposed subdivision.

Review and approval of services and utilities by relevant Town departments will be required prior to the commencement of construction activities on the Project Site.

### **3.13 Public Health, Safety and Environment**

1. In the early stage of SEQRA review, concerns were raised by Planning Board members and one adjacent neighbor regarding potential subsurface conditions of soil and groundwater. In response, the Sponsor commissioned two investigations of soil and groundwater conditions across the property, pursuant to scopes approved by the Planning Board's consultant Hatch Energy. In addition, the Planning Board initiated multiple efforts to contact The Centers for Disease Control, New York State Department of Health and the Erie County Health Department. In the absence of a response from these agencies, the Planning Board consultant Hatch-Energy was instructed to thoroughly investigate and report its findings relative to public health, safety and environment.
2. Hatch-Energy completed additional follow-up activities and research on behalf of the Planning Board, including discussions with NYSDEC and NYSDOH regarding the acceptability of the proposed residential development in view of the concerns of subsurface soil and groundwater as a result of the Sponsor's on-site sampling program.
3. Hatch-Energy has also carried out an independent search regarding risk levels associated with arsenic and a qualitative risk assessment of the proposed residential use of the property. They noted that some elevation in arsenic levels is often found on land that has previously been used for farming. An investigation of threshold levels for arsenic regulated in other states was also undertaken.

Based on the significant database and investigations completed, the Board has concluded that:

- a. Documented discussions with the NYSDOH have indicated that there is no agency concern in developing the subject parcel for residential use.
- b. In view of Hatch-Energy's recommendations: the fact that the on-site sampling analytical data provided by the Sponsor was based on the collection of composite soil samples from the site; and the fact that the sampling results are consistently close to the best available threshold guidelines identified by NYSDEC/NYSDOH for unrestricted use (13 ppm for arsenic), the Board will require the following measures be implemented:
  1. Any proposed installation of new individual residential wells on the subdivision property must be reviewed and approved by the Town Code Enforcement Officer. In keeping with ECHD practice and NYSDOH standards, well construction and testing will be required to be performed in accordance with NYSDOH standards. The testing program to be carried out will include the standard analytical requirements plus analysis for arsenic in accordance with NYSDOH recommended Water Quality Testing relative to former agricultural properties.
  2. A contingency plan will be implemented for ensuring the safety and health

of the construction workers if any potential safety or health conditions are encountered during construction.

3. Any proposed future rezonings, variances, or special use permits to allow the raising of livestock and the production of animal products should be re-evaluated and approved by the Town Zoning and Planning Boards. As part of this re-evaluation/review process, a detailed risk assessment may be requested or written approval obtained from the NYSDOH for such uses.

It should be emphasized that the above are intended to be precautionary only since at the present time the existing residential zoning does not allow the raising of livestock and the production of animal products, and the public water supply to the subdivision will eliminate the need for a water well supply.

- c. As documented in the FEIS, the Board recognizes that the threshold levels used for making this judgment are taken from NYS Part 375 Regulations for brownfield sites, even though the site is a greenfield site with a past history of agricultural use. However, as noted in the FEIS and by Hatch-Energy during their analysis, this threshold level for arsenic is the best available guideline value for making a decision at this time.
- d. If at any time in the future the current NYSDOH/NYSDEC thresholds change or are further interpreted by these agencies as they relate to greenfield sites as well as brownfield sites our decision will be amended accordingly.

### **3.14 Cumulative Impacts**

1. The revised FEIS has included an assessment by the Sponsor of cumulative impacts of the proposed Knoche Farms Estate. These have been included in the assessment of potential project impacts on:
  - Town infrastructure and community services;
  - The sanitary sewer system, water service and other utility services;
  - Area traffic;
  - The Orchard Park School system; and
  - Area drainage.

For each of these, the associated impacts were assessed for the addition of the proposed Knoche Farms Development and design provisions and/or other mitigation measures have been identified as appropriate. In some cases, such as for traffic and school system impacts, the associated agency or district having responsibility is reviewing or planning mitigation action to address projected cumulative conditions.

2. The Planning Board agrees that the Sponsor has adequately met SEQRA requirements. As noted in the FEIS, other mitigation measures that may be determined to be needed will be resolved during the site plan design, review and approval process.

### **3.15 Site Plan Review Considerations**

1. The FEIS has also identified several areas of concern during the SEQRA review process that will require further evaluation during the site plan review process. It is the Board's opinion that these areas of identified potential impact and consideration of possible mitigation measures will be resolved as part of the final site plan design, review and approval process.
2. Therefore, the following are to be considered, mitigated and resolved as needed at that time:

- a. Onsite wetlands impacts, including any necessary permitting required by the Corps of Engineers and compensatory mitigation as required.

The Sponsor is required to provide an up-to-date delineation of the wetlands as noted by the Corps of Engineers. At that time the site plan layout of building lots may have to be revised to accommodate the updated delineation and/or onsite compensatory mitigation as approved by the Corps of Engineers.

- b. The safety issue noted by the Buffalo Fire Commissioners (BFC) and Public Safety Commissioners (PSC) regarding the proposed single ingress/egress to the subdivision and possible alternatives for resolution. The Planning Board will include BFC and PSC recommendations in their site plan review and development of an acceptable ingress/egress/ plan for the subdivision.
- c. Any remaining issues regarding potable water, sanitary sewer services, drainage, etc., that are part of the site plan design. This should include the amending of the 1984 Sewage Management Agreement between Erie County Sewer District No. 3 and the Town for the Knoche Farms Estates to connect and become part of the District 3 service area.
- d. Concerns noted by adjacent property owners with respect to potential impacts on their property and the need for proper control of drainage leaving the property, buffering, etc. to reduce potential impacts on these properties.

All of the above items are important components of reasonable site plan design that will be addressed during site plan design and review process.

### **3.16 Conclusion**

Having considered the Draft and Final Environmental Impact Statements (EIS) and having considered the preceding written facts and conclusions relied upon to meet the

requirements of 6 NYCRR 617.9, this statement of findings certifies that:

1. The requirements of 6 NYCRR 617.9 have been met;
2. Consistent with the social, economic and other considerations from among the reasonable alternatives thereto, the action as approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the environmental impact statement, and
3. Consistent with social, economic and other considerations to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.
4. (and, if applicable) Consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19 NYCRR 600.5, this action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

December 12, 2007

Revised January 2, 2008

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