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March 10, 2015

VIA EMAIL, FAX REGULAR MAIL AND HAND DELIVERY:
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Tim Miller Associates, Inc.
10 North Street
Cold Spring, N.Y. 10516

RE: Comments Village of Kiryas Joel Draft Scoping Outline On 507 Acre Annexation Petition

Dear Mr. Miller:

We are counsel to the Board of Education of the Monroe Woodbury Central School District ("MWCSD").

MWCSD is submitting its written comment on the draft scoping document prepared as part of the environmental review under the State Environmental Quality Review Act ("SEQRA") of a petition for the annexation of 507 acres of land from the Town of Monroe ("Town") to the Village of Kiryas Joel ("Village") dated December 27, 2013.

Initially, we note that the Monroe Woodbury Central School District is an interested agency in both the 507 acre and the 164 acre petitions for annexation of land from the Town to the Village. As an interested agency, MWCSD must be included on all notification as well as circulation of material regarding these actions. Please direct all correspondence and other materials to Elsie Rodriguez, Interim Superintendent, Monroe-Woodbury CSD, 278 Route 32, Central Valley, NY 10917.

Part 1 Environmental Assessment Form:

We provide the following comments on Part I of the EAF:

1. C. Planning and Zoning
   a. C.3 (a): The response that this project will not result in a zoning change is disingenuous. The reality is that the annexation of the land to the Village will result in a substantive change in the zoning and allowance of high density development. The impact of the change of zoning and increased density of use must be addressed.

   b. C.4 (d): We understand that a County park does serve this area and the response should be revised accordingly.

2. D. Project Details: D.1 (b) (a): The amount of acreage of the project site should be inserted.

3. E. Site and Setting of Proposed Action:

   a. E.2 (b): The applicant failed to insert an answer to this questions regarding bedrock.

   b. E.3 (e): While the applicant responds "No" to the question regarding historical or archaeological sites, the applicant does identify an archaeological site in the area. The applicant must remedy the conflict. We note that the applicant failed to insert the name and description of the identified archaeological site.

   c. E.2 (o) and (p): We believe the analysis of the endangered species is faulty. We note that there have been recent sightings of timber rattle snakes. In addition, given the amount of forested land, there exists the potential for nesting and breeding habitat for the Indiana Bat. Moreover, it is not sufficient to rely on the DEC mapper to determine the existence of endangered species or fauna. Therefore, a site assessment and study of the endangered species should be conducted.

Draft Scoping Document:

Turning to the draft scoping document, we provide the following comments regarding, what we note are the inadequacies in the document:

1.) **General Comments**:

   a. **Scoping**:

SEQRA defines scoping as the process by which the lead agency identifies the potentially significant adverse impacts related to the proposed action that are to be addressed in the draft EIS, including the content and level of detail of the analysis, the range of alternatives, the

mitigation measures needed, and the identification of non-relevant issues. Scoping provides the preparers of the EIS with guidance on matters that must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposed action.

MWCSD again questions why only Part 1 and not Part 2 and Part 3 of the Full Environmental Assessment Form ("FEAF") were circulated to the interested agencies and posted on the website repository for SEQRA documents on this project. This information is especially significant as Parts 2 and 3 typically identify the environmental topics for the draft scoping document which must be addressed further in the environmental impact statement ("EIS"). Without this information, MWCSD is denied the opportunity to fully scrutinize and provide comprehensive comment on the scoping document.

Furthermore, the scoping document does not appear to fully identify the proposed actions, range of significant adverse impacts or the level of detailed analysis necessary, including an analysis of the existing services currently provided to the petitioners, potential mitigation measures and alternatives that could be taken to avoid or reduce such impacts. Significantly, the scoping document also fails to include a comprehensive analysis of the impacts on MWCSD or the Village of Kiryas Joel Union Free School District ("KJUFSD") school districts.

b. Generic Environmental Impact Statement

MWCSD remains concerned that the Village continues to pursue a GEIS rather than a site- specific EIS review of the annexation petition. A Generic Environmental Impact Statement ("GEIS") is typically used for the environmental review of a generalized or conceptual project. In this case, the use of a GEIS for a site-specific identified project suggests that the EIS will encompass more than just the 507 acre petition.

Further, the representation that the GEIS is the appropriate vehicle to access the annexation is also disingenuous given the representations as to the purpose of the annexation and the Village applications to increase water and sewer capacity. While it may be accurate that currently, there are no site specific proposals for the development of property within the 507 acres, it is patently clear that given the admitted projection of population growth, the undeveloped acreage coupled with the Village high density zoning will be used to address the housing needed due to the projected population growth.

Therefore, although we submit the GEIS is not the appropriate vehicle to analyze the environmental impacts, the GEIS must include an analysis of the build out of the property under the current zoning of the Town of Monroe versus the Village zoning and the corresponding impacts of such and the capability to address those impacts, including the impact on the school districts. Furthermore, the Village must also identify those projects that may benefit from this review, including the baseline data, criteria and/or thresholds and how the Village and/or the Town might utilize the GEIS to evaluate future development and compliance with SEQRA and thus reduce the need for, or focus the scope of, a detailed impact evaluation on a project-by-project basis.

c. **Segmentation**:

An annexation petition may have profound impacts on the social, economic and environmental character of the community, including potentially significant changes on land use patterns. Accordingly, the environmental review requires the lead agency to identify and take a hard look at the consequences of the "whole" action.

Currently, there are two annexation petitions pending before the Town of Monroe ("Town"). The first is a petition dated December 27, 2013 to annex approximately 510 acres or 177 tax lots from the Town to the Village of Kiryas Joel which is the subject of the draft scoping document. This action was classified by both the Town and Village as a Type 1 action.

The second petition for annexation dated August 20, 2014 proposes the annexation of approximately 164 acres or 71 tax lots also from the Town to the Village of Kiryas Joel. Significantly, the 164 acres are also included in the initial 510 acre annexation petition and constitutes more than 1/3 of the property in that proposed annexation. Of equal importance, this subsequent annexation petition was classified as an unlisted action by both the Village and the Town.

It is indisputable that the admitted purpose and impacts of these two projects are inextricably intertwined and constitute a "whole action" and not separate actions. First, clearly the segmentation of the 164 acre project from the 510 parcel has altered the classification of the action from a Type 1 to an Unlisted Action.

The mere cursory mention of the previous annexation petition in the scoping document and an alleged review of the environmental impacts as an Alternative Chapter to the EIS, does not allow for a full evaluation or hard look at the project required under SEQRA nor does it assuage the issue of impermissible segmentation or the circumvention of the authority of the DEC Commissioner.

d. **Impact to School Districts**:

When rendering a decision on a petition for municipal annexation, the affected municipalities are obligated to determine whether the proposal is in the best overall interest of the public [General Municipal Law, §701]. Further, under General Municipal Law §712, the deliberation and analysis to determine whether the proposal is in the over-all public interest must consider among other issues, the effects on any school district [GML §712 (1)(d)]. Furthermore, in electing to prepare an FEAF, under SEQRA, the lead agency review also demands an impact determination on community character, including the impact on school services.

The alteration of the Village boundary lines will trigger a required concurrent action by both MWCSD and the Village of Kiryas Joel Union Free School District ("KJUFSD") and potentially the State Legislature to address the impact of the annexation on its school district boundary pursuant to Education Law §1504.

What distinguishes this case from other municipal annexation actions is: (1) the current legislative scheme under Education Law §§1504[3] does not address what occurs if the Village's boundaries expand beyond the boundaries of KJUFSD; and (2) the only statutes permitting

school district boundaries to be altered (Education Law §§ 1507 and 1508) require a discretionary act by a board of education. Therefore, before any decision can be reached on the municipal annexation, the impact of the change in the municipal boundaries and legislative changes must be addressed by MWCSD and KJUFSD.

Unique to this proposed action is that the formation of the KJUFSD was statutorily authorized solely because the boundaries of KJUFSD are coterminous with the boundaries of the Village. (See, N.Y. Educ. Law, §1504[3]).

Briefly, after protracted litigation, including a decision by the United States Supreme Court, in 1997, the State amended Education Law §1504[3] to allow any municipality to form a new school district where the municipality was situated wholly within one school district, but its boundaries were not coterminous with the boundaries of that school district, subject to certain criteria.

Upon information and belief, the Village of Kiryas Joel was 1 of 3 municipalities in the State that met this standard and KJUFSD's organization as a school district under that statute was permitted to legally continue.

However, of equal import, Education Law §1504[3] does not address what happens if, as in this case, there is an annexation of property that expands the municipal boundary so that the boundaries of the municipality and the school district are no longer conterminous. As a result, any proposal to alter the boundary may require legislative action before an annexation may be approved.

Currently, the only legislative authority permitting alteration of school district boundaries is §1507 and §1508, both of which contemplate a discretionary action by a school district board of education such as MWCSD.

In addition, depending on the resolution of the school district boundary lines issues, this proposed annexation may negatively impact MWCSD's tax revenues if legislation is enacted permitting the annexed parcels to be transferred to KJUFSD by the loss of valuations and tax rates.

If, however, legislation is enacted which permits the Village boundary line to no longer co-terminate with the boundary line of KJUFSD, it will result in a dramatic increase in the demand on MWCSD to provide for educational services and facilities based on current demographic trends and the fact that the Village zoning allows for greater density development versus the Town zoning.

These are critical issues that have been overlooked in this document and must be addressed.

2.) **Project Description**:

The explanation offered in support of the petition only provides a cursory description that the Village "...is better able to provide community services to the properties proposed for annexation, including but not limited to police and fire protection services, etc." The scoping

document authored by the Village, the "neutral" lead agency now includes an unsubstantiated detailed description of the purpose of the project that is specifically slanted to support the annexation.

The source of the description and purpose of the annexation must be identified, especially given that the lead agency, the Village of Kiryas Joel, is the author of the scoping document.

As with the identified alleged benefits, the project description should also include a more detailed description on specific aspects of impacts and not just general identification of the topics. For example: include a detailed description of the specific impacts on the surrounding communities such as loss of tax revenue, increased traffic or infrastructure demands, water consumption, impact of existing and impacts of annexation on undeveloped land use approvals issued by the Town and impact on county services and school district services as noted above and below.

Furthermore, although it is noted, there is no mention as to the standard of municipal review on the adequacy of the petitions and the impacts if such are deemed deficient.

3.) **Background**:

Rather than relying on outdated demographics from 2009, the scoping document must include a more detailed and current demographic study, including the projected growth rate of the Town and the Village.

The background must also acknowledge the projects that Kiryas Joel by its own admission has on the "drawing board" and whether those projects are slotted to be developed on these annexed lands. Specifically, "municipal park, recreational facilities, a retirement home, a women's service center, a business center, a "park and ride"; community bus transfer station and a water pipeline connection to the New York City Aqueduct."

4.) **Project Purpose Need and Benefits**:

The title of this section must be revised to include the "Impacts and Adverse Consequences" of the project.

Add the following to the list of anticipated issues:

Section 1. Include at the end of this section "Analysis and compliance to the Village and Town comprehensive plan.

Add the following new items to the list of issues:

"5. Impact to formation of KJUFSD pursuant to Education Law.
6. Impact on services provided by Monroe Woodbury School District, including tax implications for each scenario identified under our General Comments Section b above.
7. Impact to local municipality and county regarding services, transportation, water, sewer infrastructures, real property valuation and tax resources.

8. Implications of water infrastructure project and state approvals and funding.
9. Discussion on services the petitioners are currently receiving and the impact on those services if the annexation was approved.
10. Analysis on the impact to existing land use approvals issued by the Town to the proposed annexed lands.
11. Impact of segmenting the annexation petitions.
12. Analysis of alternative measures."

5.) **Approvals Needed**:

While it may be accurate that no direct approvals are required, indirectly, the approval or funding for expansion of the Village water and sewer facilities will directly impact the viability and approval of this project. Therefore, water capacity, infrastructure and sewer capacity must be considered as approvals needed.

However, the Village response to the comments regarding the election to pursue a GEIS may trigger additional required approvals. Moreover, as noted by the applicant, some of the property has received approvals from the Town for land development. Include an analysis on the impact of the annexation on those approvals.

6.) **Land Use and Zoning**:

In his findings regarding the lead agency dispute, Commissioner Martens believes that the high density zoning of the Village "when appropriately sited, is considered more environmentally sustainable and conserves open space." The GEIS must include an analysis of the zoning and development of the properties under both zoning codes and the preservation of open space. Further, the land use and zoning should also include an analysis of the impact on the habitat of endangered species.

It is clear from the descriptions and references to Potential Impacts, in addition to addressing the annexation petition, the Village has chosen to conduct its SEQRA review using a GEIS rather than the commonly used project specific EIS in order to sweep into the GEIS other related actions and thereby, limit future project specific SEQRA review. The Village and property owners must identify in detail the location, size and scope of the projects that are proposed and anticipated, including new housing and the proposed projects on the "drawing board" as noted under our comments to the project description above. These projects may have a significant impact on MWCSD and the services to be provided and costs to educate students. Include an evaluation of the impact to land use and zoning on the Town of Monroe, including impact of the Village high density zoning on the undeveloped lands and the corresponding impact on services, including MWCSD.

Include analysis on the projects Kiryas Joel has proposed as on the "drawing board" and whether those projects are slotted to be developed on these annexed lands. Specifically, "municipal park, recreational facilities, a retirement home, a women's service center, a business center, a "park and ride"; community bus transfer station and a water pipeline connection to the New York City Aqueduct."

In addition, as noted by the applicant, some of the project acreage has received prior approval from the Town for subdivision or land development. The EIS must address the impact of the annexation on those approvals.

7.) **Demographics and Economics**:

It is notable that Kiryas Joel by its own admission states that "due to the high birth rate and large number of marriages that at least 200 new housing units must be built each year." Such growth demands a demands a concurrent expansion of school services and the Village infrastructure (water, sewer, roads, sidewalks, street lights and services).

The EIS should include an updated demographic analysis addressing population growth, housing types and growth and business development for the Town and the Village and how the. demographic analysis and growth of services affect both the KJUFSD and MWCSD. The EIS should also include a breakdown of the revenue analysis of MWCSD by per pupil expenditures. As worded in Section 2 of the Potential Impacts, the topics identified prematurely assume it is a foregone conclusion that the annexation will generate taxes for the school districts. The appropriate analysis is to identify the impacts on tax revenue for both districts as well as the general impact on school populations.

8.) **Community Services and Facilities**:

The EIS should include a detailed analysis on:

- the impact on the school district boundaries and the concomitant impact of MWCSD and KJUFSD regarding the various scenarios of impacts as noted in the General Comments section d above.
- include an analysis of financial impacts to MWCSD based on the potential increase of student population for the development of currently undeveloped property included in the annexation petitions under the Village zoning as compared to the Town zoning.
- the increased costs of services and transportation for MWCSD.
- impacts on recreational services.
- impacts on county services.
- services petitioners currently receive and impacts on such services as a result of annexation.
- analysis of the impact of segmenting the annexation petitions.
- impact of previous subdivision or land use approvals issued by the Town to land in the annexation petition.
- analysis of alternative measures.

9.) **Traffic and Transportation**:

The EIS should include a discussion and impacts on the retention by the Town and/or the County for the responsibility to construct and/or maintain road infrastructure currently serving the proposed land and any future projects. The EIS should also address the impact of previous subdivision or land use approvals issued by the Town to land in the annexation petition.

10.) **Community Water and Sewer**:

The EIS should include an analysis and discussion on:

- impact on the exiting water resources to neighboring communities with the addition of the annexed property and the potential for significant increase in housing development.
- the cost of the expansion of water and sewer infrastructure to the annexed properties, and secondary projects.
- the Village representations to state and federal agencies to secure funding for further infrastructure expansion and supply for water and sewer and the likelihood of success.
- include the impacts if the Village plans to increase capacity and infrastructure fail.
- the current status of financial applications to fund water and sewer capacity and infrastructure expansion, including with the Environmental Facilities Corporation.
- impediments to securing the necessary financial resources to pay for demanded infrastructure and supply development.
- the financial impact or demands on the property owners to contribute to the cost of such development.
- include demands resulting from storm water mitigation from the addition of the new property and secondary projects.
- any financial liability that the Town may incur as a result of the annexation.
- services petitioners currently receive and impacts on such services as a result of annexation.
- impacts of future development.
- analysis of the impact of segmenting the annexation petitions.
- analysis of the impact of previous subdivision or land use approvals issued by the Town to land in the annexation petition.
- alternative measures.

11.) **Natural resources**:

The GEIS must include a mapping of all wetlands located on the properties included in the proposed annexation. This is especially important given that the Monroe Town Code includes a wetlands ordinance that was implemented to enhance the New York State and federal wetlands guidelines. Therefore, the GEIS should include an analysis of the impacts of the wetland ordinances of the Town versus the Village on the proposed annexed lands and the concomitant impact those regulations or absence of regulations will have on future development of the annexed lands.

It is our understanding that the 507 acre project does include habitat for endangered species, including the Indiana bat, the timber rattlesnake and Alleghany wood rat among others. Preservation of these habitats is a true open space ideal. As noted above, the GEIS should include the potential impacts of the high density development on these habitats.

Further, the EAF identifies a designated significant natural community of the Pitch-Pine-oak-heath Rocky summit. These natural resources must be identified in the GEIS and included in the analysis of potential impacts.

12.) **Threshold for Future Environmental Reviews**:

MWCSD restates its previous comments regarding the Village decision to utilize a GEIS; the use of the GEIS on this project is inappropriate and the EIS must address existing approved yet undeveloped projects and the projected increase in population and housing demand that will directly impact the MWCSD.

Again, the Village, the petitioners and the Town must with specificity identify the projects, their size, scope anticipated timelines and the resulting targeted impacts, including the impacts on land use approvals issued by the Town mirroring the information in the EIS on the annexation petition pursuant to the final scoping document.

MWCSD's also repeats its previous comments that the analysis must include the projects Kiryas Joel has proposed as on the "drawing board" and whether those projects are intended to be developed on these annexed lands. Specifically, "municipal park, recreational facilities, a retirement home, a women's service center, a business center, a "park and ride"; community bus transfer station and a water pipeline connection to the New York City Aqueduct."

12.) **Alternatives:**

The alternatives must address each issue and impact identified. The discussion on the alternative 164 acre petition does not dispel the issue of the segmentation of the projects. It is of special note given the different classification of the two actions under SEQRA.

13.) **Growth Inducing Impacts and Cumulative Impacts**:

MWCSD repeats its previous comments above that the EIS must fully identify the current and proposed ("drawing board") projects, including the impacts of previous approvals issued by the Town to land included in the petition.

In closing, while MWCSD has provided comment on the scoping document, such comment does not constitute a waiver of the MWCSD's right in law or equity to bring an action against the Village, the Town or both.

Please feel free to contact us if you have any questions.

Very truly yours,

Judith Crelin Mayle

cc: Jon Huberth, President of the Board of Education, via e-mail only
Elsie Rodriguez, Interim Superintendent, via e-mail only