



David J. Cooper
Jody T. Cross ●
Marsha Rubin Goldstein
Jeremy E. Kozin
Helen Collier Mauch ▲
Daniel M. Richmond
Brad K. Schwartz
Lisa F. Smith ●
David S. Steinmetz ■
Krista E. Yacovone
Michael D. Zarin

March 10, 2015

By Electronic Mail and Overnight Delivery

Tim Miller
Tim Miller Associates, Inc.
10 North Street
Cold Spring, New York 10516

**Re: Comments on Draft Scope for DGEIS;
Proposed Annexation of 507 Acres of the
Town of Monroe Land by the Village of Kiryas Joel (“Annexation”)**

■ Also admitted in D.C.
● Also admitted in CT
▲ Also admitted in NJ

Dear Mr. Miller:

As you will recall, this Firm represents United Monroe, a group committed to transparent and open government, whose members include residents of the Town of Monroe (the “Town”) and others who live in the surrounding community. Subject to a full reservation of its rights, United Monroe submits the following comments on the Draft Scoping Outline for Proposed 507-Acre Annexation to Village of Kiryas Joel, dated February 6, 2015 (the “Draft Scope”).

In sum, the Draft Scope is wholly deficient for a variety of reasons, including, but not limited to, the fact that (i) it does not require the draft generic environmental impact statement (“DGEIS”) to discuss the impacts of the high density development intended for the Annexation area, even though such development is the goal of the Annexation, and (ii) it fails to account for the Village of Kiryas Joel’s (the “Village”) serial violation of multiple local, State, and Federal land use and environmental laws.¹ Given that this review under the State Environmental Quality Review Act (“SEQRA”) is intended to assist the Village and the Town in determining whether the Annexation is in the public interest, the DGEIS must consider the adverse impacts of the high density housing, unregulated development and legal noncompliance that Annexation would bring.

¹ To the extent the Draft Scope relates to issues connected with the 164-acre Annexation Petition, filed August 15, 2014, United Monroe hereby incorporates by reference all of its comments on the 164-acre Annexation Petition, which were submitted by Letter dated September 30, 2014. It bears note that the subject Draft Scope is virtually identical to the Scope adopted for the 164-acre Annexation Petition.

I. United Monroe Submits These Comments Under A Reservation Of Rights

Initially, United Monroe makes clear that it is submitting these comments under a full reservation of its rights to object to these proceedings, if necessary, at a later date.

A. Annexation Would Violate Establishment Clause

As explained in greater detail in a Letter from United Monroe to the Monroe Town Board, dated May 15, 2014 (“May 15th United Monroe Letter,” annexed hereto as Exhibit “A”), the Annexation would violate the Establishment Clause of the United State Constitution. The Annexation would constitute an improper delegation of political power based upon religious criteria. The Town would be ceding “important, discretionary governmental powers” to the Village, which the United States Supreme Court has already recognized is a political subdivision whose franchise is determined by a religious test. See Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet, 512 U.S. 687, 114 S. Ct. 2481 (1994). The Village should consider the constitutionality of the Annexation before it proceeds to waste any further time or resources on what appears to be a vain effort.

B. Village Is Unable To Properly Serve As Lead Agency Under SEQRA

The Village’s review under SEQRA is illegitimate because the New York State Department of Environmental Conservation (“DEC”) erred in selecting the Village as Lead Agency for the review. DEC erred in its selection of the Village as Lead Agency because the Village serially fails to abide by all lawful land use and environmental laws and regulations. With all due respect, as further described below, it is clear that the Village has no regard for land use laws and environmental regulations, let alone any respect for the duties conferred on it by SEQRA.

This poor track record shows that the subject SEQRA review, with the Village at the helm as Lead Agency, will not adequately study the potential adverse impacts of the Annexation on the environment and community. Moreover, the Village’s track record shows that it will not involve the public in the environmental review of the proposed Annexation, as SEQRA requires. Indeed, the Village’s disregard for public input in the SEQRA process was demonstrated by its insistence on holding its Scoping Session on the night of a major snow storm.

II. Substantive Deficiencies In The Draft Scope

A. Improper Use Of Generic EIS

The draft Scope circulated by the Village does not meet the requirements under SEQRA for the preparation of a DGEIS. Generic EISs are more general or conceptual in nature than a site- or project-specific EIS. This allows a Lead Agency to identify and broadly analyze “the cumulative impacts of a group of actions, or a *combination of impacts from a single action.*” SEQR Handbook, at 146 (emphasis added); see also 6 N.Y.C.R.R. § 617.10(a) (“[A generic EIS] may present and analyze in general terms a few hypothetical scenarios that could and are likely to occur.”) The draft Scope, however, fails to identify the hypothetical build-out scenarios that are

likely to occur after Annexation. This is disingenuous where, as here, the Village's own representations to State agencies indicates that it will pursue development of high density housing for over 50,000 people in the annexed lands.

In particular, according to the Village's Updated Budget Analysis that the Village submitted to the State Environmental Facilities Corporation ("EFC") in connection with the bonding of the Aqueduct Connection Project (EFC #16906), the Village projected that there would be 8,550 new residential connections and 1,500 new commercial connections by the year 2045. (See Budget Analysis, annexed hereto as Exhibit "B.") Assuming six people would live in each new residence, this contemplates the addition of 50,000 people.

In response to this analysis, EFC asked if "the growth projections for the Village [in the Budget Analysis could] be viewed as reasonable given that the available space within the Village does not support the long-term projections." (See Aqueduct Connection Project Business Plan Supplement II, dated Jan. 31, 2014, copy annexed hereto as Exhibit "C.") In response, the Village advised EFC about the proposed Annexation, and stated that "if indeed annexed into the Village, that opportunity [to rezone or develop the subject properties] exists and *would reasonably accommodate the anticipated growth described in the Business Plan.*" (*Id.* (emphasis added).) In the same paragraph, the Village noted the maximum allowable development under existing Town Zoning, and added that "[t]his does not account, however, for potential rezoning for increased densities." (*Id.*)² As such, not only did the Village make clear to EFC that its business model for the bonding of the aqueduct depended upon increasing the allowable density of the Annexation area, but it also unambiguously signaled that this increase in density would be sufficient to accommodate the full development projected in the Budget Analysis -- 8,550 new residential connections and 1,500 new commercial connections by the year 2045. It would be completely irrational for the DGEIS not to study the impacts of high density development at this extreme level, particularly where such development may cause extreme impacts on land use, fiscal resources, community facilities, utilities, infrastructure, and natural and cultural resources.

Because generic EISs do not focus on detailed site- or project-specific scenarios, SEQRA requires that generic EISs consider (i) *hypothetical scenarios as alternatives that could occur under the proposed action, including all reasonable alternatives that could achieve the project sponsor's objectives*; (ii) thresholds and conditions that would trigger the need for supplemental determinations of significance or site-specific EISs; and (iii) a preliminary scope of environmental issues that would need to be addressed in any supplemental EISs. SEQR Handbook, at 146; 6 N.Y.C.R.R. § 617.10(c) (emphasis added) (providing that generic EISs and their findings must "set forth conditions or criteria under which future actions will be undertaken or approved, including requirements for any subsequent SEQRA compliance. This may include thresholds and criteria for supplemental EISs to reflect specific significant impacts, such as site

² The Village's representations to EFC obviously conflict with the maxim that municipalities are not permitted to use annexation to evade current zoning constraints. See, e.g., Bd. of Trustees of Spring Valley v. Town of Ramapo, 264 A.D.2d 519, 694 N.Y.S.2d 712, 714 (2d Dept. 1999) ("Annexation may not be used as a means by which the owner of land in one municipality may escape the effect of that municipality's local legislation by having the land transferred to an adjoining municipality."). United Monroe reserves its rights on this issue as well.

specific impacts, that were not adequately addressed or analyzed in the generic EIS.”). There is no rational basis for considering thresholds for future environmental reviews if there is no discussion of the potential developments that would trigger application of such thresholds. Any thresholds developed without consideration of possible build-out scenarios would have no basis in substantial evidence.

Section III of the draft Scope (“Thresholds for Future Environmental Reviews”), however, fails to set forth any build-out scenarios to be considered in the DGEIS. It does not delineate the hypothetical build-out scenarios that could occur after Annexation, including worst case scenarios. This is particularly inappropriate here, where the Village has made clear that the goal of the Annexation is to develop high density housing in the annexed lands. The build-out scenarios considered in the DGEIS must include the development projected by the Village to EFC -- *i.e.*, 8,550 new residential connections and 1,500 new commercial connections by the year 2045.

This is not a situation where the environmental review of an annexation should be limited because development objectives are unknown. *Cf. See City Council of Watervliet v. Town Bd. of Colonie*, 3 N.Y.3d 508, 789 N.Y.S.2d 88, 93-94 (2004). To the contrary, the Village has already represented to a State agency that it will promote development at intense levels on the land it would like to annex in order to fund significant infrastructure expansion. As such, the environmental review should “be more extensive” and “address the specific use of the property [that the Village laid out for EFC] in evaluating the related environmental effects.” 789 N.Y.S.2d at 94.³

Consideration of such growth inducing impacts is therefore critical here. *See SEQOR Handbook*, at 147 (stating that a “generic EIS should describe any potential that proposed actions may have for ‘triggering’ further development”). As DEC, the agency primarily responsible for SEQRA’s implementation, states, “[i]f such a ‘triggering’ potential is identified, the anticipated pattern and sequence of actions resulting from the initial proposal should be assessed.” *Id.* Of special relevance here, DEC further states that “[t]he generic EIS should identify upper limits of acceptable growth inducement in order to provide guidance to the decision maker.” *Id.* (emphasis added).

The draft Scope should be revised to indicate that the DGEIS must study hypothetical build-outs that might occur as a result of the Annexation, including the development of 8,550 new residential connections. This would provide calculations, evaluations, and analyses of the potential significant adverse environmental impacts of the potential build-out and resulting from development that would comply with the existing Town zoning, as well from development under potential Village rezoning. To facilitate this exercise, the DGEIS should include a

³ Notably, the SEQRA Findings adopted by the Village in connection with the development of the water supply pipeline, which is the subject of the Village’s discussion with EFC, state that “[t]he project does not involve the expansion of the Village’s distribution system into previously undeveloped or subserved areas but will allow the existing Village to be served with a new source of water supply.” (Resolution Adopting Amended Findings Statement (Mar. 31, 2009), at 4 (emphasis added), annexed hereto as Exhibit “D.”) The Findings indicate that the pipeline was not intended to serve areas outside the Village’s present boundaries. Certainly, no environmental review has been conducted in this regard.

discussion on family size and growth patterns for the populations projected to inhabit the Annexation area. (See Draft Scope, at 5.) All build-out scenarios must identify the specific areas where development might be placed and the location of all natural resources and sensitive environmental receptors on or in proximity to such areas. This would provide additional information with which to develop thresholds for future development. In addition, the necessity for, and benefit of, developing high density housing in the area proposed for annexation must be studied. (*Id.*; see also Section II.C *infra.*)

B. DGEIS Must Consider Village's Serial Legal Noncompliance

Moreover, the DGEIS needs to consider the Village's systemic disregard for environmental regulations and other laws affecting the public interest, and the unregulated development this situation allows.

In a written request under the State Freedom of Information Law ("FOIL"), dated August 18, 2014, for example, United Monroe requested that the Village provide basic information relating to its planning processes, including copies of all determinations made by any Village agencies under SEQRA, such as positive declarations, negative declarations, conditional negative declarations and/or findings statements. (See FOIL Request to the Village, dated Aug. 18, 2014, annexed hereto as Exhibit "E.") In response, the Village did not produce *any* determinations made under SEQRA. (See Letter from Javid Afzali, Esq., to Daniel Richmond, Esq., dated Sept. 29, 2014, annexed hereto as Exhibit "F;" Letter from Javid Afzali, Esq., to Daniel Richmond, Esq., dated Nov. 10, 2014, annexed hereto as Exhibit "G;" E-mail from Javid Afzali, Esq., to Krista Yacovone, Esq., dated Nov. 19, 2014, annexed hereto as Exhibit "H.") Indeed, the Village's poor track record in implementing SEQRA is well-documented. See Cnty. of Orange v. Vill. of Kiryas Joel, 11 Misc.3d 1056(A), 815 N.Y.S.2d 494 (Sup. Ct. Orange Cnty. 2005) ("One cannot presume that the requisite 'hard look' was taken based on the thickness of the DEIS or because the [agency's] consultants were highly regard in their fields."), aff'd as modified, 44 A.D.3d 765, 844 N.Y.S.2d 57 (2d Dept. 2007). The Village's history of SEQRA noncompliance is a legitimate line of inquiry where the subject action (*i.e.*, the Annexation) would make the Village responsible for additional SEQRA review in the future. (Cf. N.Y.S. D.E.C. Commissioner's Policy, "Record of Compliance Enforcement Policy," at 3 (establishing that "the environmental compliance history of a permit applicant is a relevant consideration regarding qualification for permitting").)⁴

⁴ Courts will consider an agency's history of noncompliance with environmental regulations when reviewing the adequacy of any environmental review conducted by that agency. See, e.g., Citizens Advisory Comm. on Private Prisons, Inc. v. U.S. Dept. of Justice, 197 F. Supp. 2d 226, 251 (W.D. Pa. 2001), aff'd, 33 F. App'x 36 (3d Cir. 2002) ("[I]n cases where the agency has already violated [the National Environmental Policy Act], its vow of good faith and objectivity is often viewed with suspicion."); Nat'l Res. Def. Council, Inc. v. U.S. Army Corps of Eng'rs, 457 F. Supp. 2d 198, 222 n.178 (S.D.N.Y. 2006) (citing Citizens Advisory Comm. on Private Prisons when discussing federal regulations prohibiting agencies from preparing an EIS simply to justify decisions already made, and requiring agencies to show a good faith and objective review of potential environmental impacts of the proposed action). Assessment of the Village's history of poor environmental stewardship is therefore critical to an analysis of the proposed Annexation.

United Monroe has also confirmed that the Village does not fully adhere to other critical land use requirements. In its August 18th FOIL request, United Monroe also asked the Village to provide basic information relating to its planning processes, including (i) the identities of the members of the Village Planning Board and Zoning Board; (ii) documents relating to Village Planning Board and Zoning Board Members' satisfaction of applicable training requirements since January 2012; (iii) all Planning Board and Zoning Board agendas, minutes, and resolutions since January 2012; and (iv) copies of all referrals made to the Orange County Planning Department pursuant to Section 239-m of the New York State General Municipal Law since January 2012. (See Exhibit E.)⁵ The Village's response demonstrated that it routinely violates municipal planning and zoning requirements, including that its Planning and Zoning Board members do not satisfy the State-required training programs, and that it never refers land use applications to the Orange County Planning Department, as is required by law. (See Exhibits F-H.)

The Village's consistent failure to comply with these basic requirements, which provide municipalities with mechanisms to protect the environment and the community when making land use decisions, are further indicative of the Village's inability to oversee and direct the SEQRA process for the Annexation. The DGEIS must consider the full implications of the unfettered development that would be allowed by the Village's legal noncompliance.

Furthermore, both DEC and the U.S. Environmental Protection Agency have found repeated violations in the Village of applicable environmental protection requirements. (See Letter from United Monroe to DEC, dated Apr. 4, 2014, annexed hereto as Exhibit "I.") These include violations of the Clean Water Act and failure to comply with State permitting requirements during construction activities and operations of its wastewater treatment plant. (See Letter from Daniel Richmond, Esq., to the Honorable Vincent L. Briccetti, dated Nov. 24, 2014, annexed hereto as Exhibit "J;" Letter from Krista Yacovone, Esq., to Robert L. Ewing, dated Dec. 3, 2014, annexed hereto as Exhibit "K;" Letter from Krista Yacovone, Esq., to Patrick Ferracane and Jennifer Zunino-Smith, dated Dec. 16, 2014, annexed hereto as Exhibit "L.") The DGEIS also needs to consider the environmental implications of the Village's track record in this regard.

Again, inasmuch as this SEQRA review is intended to assist the Village and the Town in determining whether Annexation is in the public interest, the DGEIS must consider the adverse impacts of the unregulated development and legal noncompliance that Annexation would bring.

C. DGEIS Must Consider Annexation's Need And Benefits To Entities Other Than Private Annexation Petitioners

It is important to bear in mind that the Village's environmental review is purportedly being conducted in connection with an annexation determination, which would require the Village and the Town to consider potential impacts to "the remaining area of the local

⁵ The Village initially did not even acknowledge the request, which is deemed by operation of law to be a constructive denial of the request, and United Monroe was compelled to commence an administrative appeal by letter dated September 15, 2014.

government or governments in which the territory is situated.” See N.Y. Gen. Mun. Law § 711. The Village cannot conduct its environmental review in a vacuum, and consider only the “[n]eeds and benefits to *private annexation petitioners* for services provided by Village of Kiryas Joel, Town of Monroe, County of Orange and school districts.” (See Draft Scope, at 5 (emphasis added).) Section I.B of the draft Scope should specifically analyze the potential needs and benefits of not only the private petitioners, but also of the Village, the Town, the County and the school districts. (See id.)

D. Inadequate Study Of Potential Adverse Environmental Impacts

The framework for environmental analysis presented by the draft Scope is woefully deficient, wholly omitting certain areas of study from the environmental review process and failing to adequately provide for others. This violates SEQRA, and will not produce the robust review necessary to protect the environment.

As the Village must be aware, courts will not accept inadequate environmental review, no matter how well packaged or by whom it was performed. See Cnty. of Orange, 815 N.Y.S.2d 494. As the Appellate Division, Second Department held in County of Orange, which concerned the Village’s proposed water pipeline:

- The Village did not “fully identif[y] the nature and extent of all of the wetlands that would be disturbed or affected by the construction of the proposed water pipeline, how those wetlands would be disturbed, and how such disturbance, if any, would affect the salutary flood control, pollution absorption, groundwater recharge, and habitat functions of those wetlands;”

- “[N]either the DEIS nor the FEIS fully identified the location, nature, or extent of the bodies of surface water into which wastewater from the proposed treatment plant would be discharged, and which State classes and standards of quality and purity apply to those water bodies;”

- “Nor did the DEIS or the FEIS adequately identify how much effluent would be discharged into those bodies of water over what periods of time, what the nature of the effluent might be, and what the effect upon those bodies of water are likely to be;”

- “[T]he DEIS and the FEIS were [also] rendered inadequate by the absence of a site-specific and design-specific phase 1–B archaeological study;” and

- “[T]he DEIS and the FEIS provided no demographic analysis or projections with respect to the effect of the availability of a steady and stable supply of potable water on population movement into or out of the Village.”

Id. at 61-62. For these reasons, the Second Department held that the Village Board of Trustees failed to take the requisite “hard look” under SEQRA. Id. at 62.

The thrust of the SEQRA process is a concern for the protection and persistence of environmental and natural resources. See N.Y. Env'tl. Conserv. Law § 8-0101 ("It is the purpose of [SEQRA] to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state."). Environmental review under SEQRA is intended to "systematically consider environmental factors early in the planning stages of actions that are directly undertaken, funded or approved by local, regional and state agencies." SEQR Handbook, at 3. By commencing environmental review of potential impacts early in the approvals process, "projects can be modified as needed to avoid adverse impacts on the environment." Id.

The draft Scope falls drastically short of achieving any meaningful review of potential adverse environmental impacts. The following discussion tracks the topics as they are addressed in the draft Scope, and not necessarily in order of priority.

1. Land Use and Zoning

As discussed supra, the Village's history of SEQRA noncompliance, respectfully, is a legitimate line of inquiry where the subject action (i.e., the Annexation) would make the Village responsible for additional SEQRA review. (Cf. N.Y.S. D.E.C. Commissioner's Policy, "Record of Compliance Enforcement Policy," at 3.) Again, the Village has demonstrated its routine failure to comply with SEQRA, its failure to satisfy local planning and zoning requirements, and its repeated violation of federal and state environmental laws.

Development, including under the scenarios about which the Village advised EFC, would require sound land use and environmental review and, thereafter, appropriate enforcement. Absent a functioning planning process, future development could proceed without limitation or concern for the surrounding community. Moreover, failure to enforce environmental requirements could cause additional adverse impacts. Accordingly, the draft Scope must require the DGEIS to address the Village's pattern of noncompliance with established planning, zoning and environmental laws, regulations, and practices, and discuss the potential adverse environmental impacts that may flow from the Village's consistent disregard for legally mandated requirements.

The DGEIS should also consider possible impacts that each potential development scenario could have throughout the area, including potential changes in land use and zoning patterns and how these changes may impact adjacent uses. Specifically, the DGEIS must analyze the effects of creating 8,550 new residential connections and 1,500 new commercial connections in the annexed area by 2045. Again, assuming six (6) people living in each new household, this could inject more than 50,000 people into the annexed areas. The DGEIS needs to consider the adverse impacts of this extraordinarily intense high density development on the environment and neighboring communities. Potential mitigation measures should include a discussion of smart growth techniques and sustainability initiatives, including that the development of high density housing in the Annexation lands will eliminate hundreds of acres of green space.

The DGEIS must specify that it will discuss existing land uses and residential densities of adjacent lands in the Town and Village of Woodbury, the Town of Blooming Grove and the Village of South Blooming Grove. When discussing “historic development patterns,” the DGEIS should also include such development patterns in the Town and Village of Woodbury, the Town of Blooming Grove and the Village of South Blooming Grove.

In addition, the Village’s Comprehensive Plan and the Town’s Comprehensive Plan should be discussed when preparing the DGEIS.

2. Demographics and Fiscal Resources

The DGEIS should provide for a fiscal impact analysis of the potential costs that the Town and Village might incur as a result of the proposed Annexation and under each potential development scenario. This should include costs associated with increased demand on Town and Village services as a result of potential development scenarios, such as the cost for providing school services for the estimated number of new schoolchildren. This should include a discussion of how the proposed Annexation would increase demand for aid and/or services that the Village currently receives from governmental sources. When analyzing the projected population using services, the DGEIS must address the Village’s projected development of 8,550 new residential connections and 1,500 new commercial connections in the annexed area by 2045.

The discussion of fiscal impacts must include an overall assessment of the economic viability of the Village, which has a limited revenue base, various tax-exempt properties, and few commercial properties. The Village should be required to show that it has adequate revenue and alternative-source funding to provide municipal services under each potential development scenario. These possible fiscal impacts will be important to a consideration under Municipal Annexation Law as to whether the proposed annexation is “in the over-all public interest.” See N.Y. Gen. Mun. Law § 711.

The DGEIS should also consider the possible fiscal impacts that Annexation may have on adjacent land uses. Again, the Village’s annexation determination will require the Village and the Town to consider potential impacts to “the remaining area of the local government or governments in which the territory is situated.” *Id.* Thus, the DGEIS should study future assessed property values in areas in the Town adjacent to the lands proposed for Annexation. Similarly, the DGEIS should examine the fiscal implications of Annexation on taxpayers in not only the Village and the Town, but also on taxpayers in Orange County and of New York State.

3. Community Services and Facilities

As part of its discussion on community services and facilities, the DGEIS must include a review of the Village’s economic capacity to provide these services. Specifically, the DGEIS must discuss the *ability* of both the Town and the Village to provide police, fire, and EMS services, health care services, school services, sanitation, and public works under each potential development scenario. This should include identification of the respective agencies that currently provide these services, as well as those that would provide them after Annexation, including

personnel, budgets, and projected impacts on services. The DGEIS should specifically consider the Village's and Town's respective fire department capacities⁶ to respond to emergencies in high density residential developments, which would require the equipment to reach top-level floors in higher buildings. Mitigation measures, such as increased funding or equipment upgrades for each service provider under each potential development scenario, must be discussed.

Furthermore, the DGEIS should discuss existing telecommunication, electric, and natural gas lines in surrounding areas, and describe the ability of these utility providers to service each potential development scenario. Possible utility improvements to service the area under the potential development scenarios must be proposed. Sewer and water issues, as discussed below, warrant special consideration.

4. Traffic and Transportation

Any development scenario in the proposed Annexation area may require the construction of new roads and sidewalks. The DGEIS should discuss the proposed construction of roads and sidewalks in each development scenario and the linkage to existing roads in both the Town and Village. This discussion should include potential improvements to roadways, intersections, traffic signals, turn lanes and road widening, as well as related stormwater, drainage and wetland impacts. This discussion also must focus on the Village's need for a separate off-ramp from Route 17. The DGEIS should also consider the poor condition of many of the Village's roadways, including the condition of County Route 44 (Ridge Road) following the installation of the transmission water main.

The intersections of County Route 44 and State Route 208, Schunnemunk Street and Route 208, and Seven Springs Mountain Road and Mountain Road should all be included among the locations described and analyzed in the DGEIS traffic study. In addition, data collection at all intersections should use methodologies from the latest Highway Capacity Manual and should include both counts and turning movements. The draft Scope should provide that studies of weekday a.m. and p.m. peak hour traffic at the specified intersections will be conducted while public schools are in session. Weekend a.m. and p.m. traffic should also be studied to provide a discussion of Sunday conditions and potential impacts. The Village's religious holiday schedule must be considered to provide comprehensive and accurate traffic data for all potential peak/off-peak traffic scenarios. Pedestrian traffic and sidewalk usage should also be studied.

The DGEIS must discuss traffic and transportation conditions under each potential development scenario, including under the Village's projected development of 8,550 new residential connections and 1,500 new commercial connections by 2045. This includes a discussion of emergency vehicle access, proposed parking lots, mass transit options, and pedestrian access. These conditions should also be discussed under a no-build scenario. Mitigation measures should be proposed to limit potential adverse impacts on traffic flow and the environment under each potential development scenario.

⁶ The Village Fire Department apparently now receives support from the Town of Monroe Volunteer Fire Department.

This Section should also recognize the State Department of Transportation, the County Department of Public Works and other agencies whose approval may be required under each development scenario. These agencies should also be added to the list of “Interested Agencies.” (See Draft Scope, at 14.)

5. Community Water and Sewer

The DGEIS should study the projected water and wastewater volumes required and generated by each potential development scenario. As noted above, the Village’s SEQRA analysis of the water pipeline specifically did not envision use of this pipeline beyond the Village’s present boundaries. (See Exhibit C, at 4.) In fact, the Village has recognized the limited water supply in this area, noting recently that “[d]ue to the pressures on the groundwater aquifer from all local communities, the existing supply has become inconsistent and unreliable.” (See Verified Petition and Complaint, Village of Kiryas Joel v. Town of Blooming Grove, No. 2014-6346, ¶ 34 (Sup. Ct. Orange Cnty. Aug. 15, 2014), annexed hereto as Exhibit “M.”) The Village’s ability to provide water and waste treatment services to the lands it would like to annex must be assessed. Moreover, the potential impacts of the provision of water through the pipeline to other areas must be considered.

This analysis should include potential impacts on wastewater quality and quantity, as well as consider whether modifications might be required to existing wastewater treatment plants or if new facilities would be required. The regulatory requirements applicable to such modifications and/or construction should be discussed, and all agencies with permitting jurisdiction over such actions must be identified. The analysis in this section should also include potential impacts on firefighting capabilities.

The DGEIS must include a review of the Village’s economic capacity to provide water and sewer to the annexation area, including under the potential development scenarios. Specifically, the DGEIS should detail whether sanitary flows generated under each proposed development scenario would affect the existing sewer system, and describe potential increases in or reductions of inflow and infiltration. The DGEIS should then discuss the likelihood under each development scenario and rate of sewage flow that a new treatment plant would have to be constructed. This necessarily involves a discussion of the funding capacities of both the Village and the Town to undertake new construction, and the general timeline for such construction. Potential expansion of the Harriman plant, as discussed in the draft Scope, must also be reviewed, including how such expansion would comply with County standards. (See Draft Scope, at 10.) In addition, the specific potential fiscal impacts of expanding the Harriman plant should be assessed, particularly focusing on impacts to members of Orange County Sewer District No. 1, and to the County of Orange.

Analysis in this section should consider the Village’s past failures in connection with its current sanitary sewer system. (See Exhibit I.)

6. Natural Resources

Many of the significant environmental impacts that typically comprise individual sections of the EIS have been improperly subsumed into Section II.F (“Natural Resources”) of the draft Scope. Section II.F provides for the discussion of “existing characteristics of Kiryas Joel and annexation lands, as they apply to any unusual or constraining condition in the following areas”: (i) geology, soils and topography; (ii) unique or unusual habitats, Designated Significant Natural Communities and protected species; (iii) Town, State and federal regulated wetlands, protected streams and other surface water bodies; and (iv) stormwater management. (See Draft Scope, at 11.) Each of these areas should be discussed within its own separate section.

i. Geology, Soils and Topography

The DGEIS should identify existing soils and bedrock geology in the Annexation lands, using the most current Soil Survey of Orange County, New York, prepared by the United States Department of Agriculture, Natural Resources Conservation Service, and other available mapping. Field investigations should be conducted to confirm published information and to locate, measure, and stake out any areas of rock outcroppings. The description of site geology, soils, and soil capacity classes should include a discussion of the underlying bedrock and soil conditions, their capacity to support development, including any limitations or development constraints, changes in drainage patterns, and ability to support natural vegetation that may be presented due to depth of bedrock and/or groundwater. These considerations will be critical to determining potentially reasonable development scenarios and the mitigation measures necessary to reduce any potentially significant adverse impacts.

The DGEIS should also discuss the character of geology and soils, potential impacts to bedrock, outcroppings and soil conditions, and proposed sediment and erosion control measures to avoid or mitigate significant adverse impacts under potential development scenarios, including under the existing Town zoning and under the Village’s zoning. This should include the potential impacts of grading and excavation, possible changes in plant species growing areas due to soil erosion or movement, and compliance with local laws governing soil erosion and sediment control, such as Chapter 46 of the Town of Monroe Town Code.

With respect to topography, the DGEIS should describe and map the existing topography of the Annexation lands, including identification of any areas of steep slope. It should also identify changes to the topography and any potential area of disturbance to steep slopes and rock outcroppings as a result of potential development scenarios. Steep slopes and rock outcroppings affect the location and viability of possible development projects, and are constraints that should be identified early in the environmental review process.

ii. Unique or Unusual Habitats

This Section should discuss any unique or unusual habitats in the proposed Annexation area. Specifically, the DGEIS should analyze whether each proposed development scenario will affect any unique or unusual habitats in or in proximity to this area and delineate the

specific mitigation measures required to reduce any significant adverse impacts as a result of each development. Any agency with jurisdiction over potentially affected areas should be identified.

iii. Wetlands and Watercourses

The DGEIS should identify the location, boundaries, size, vegetative type, and hydrologic conditions and functional values of all wetlands and watercourses in or in proximity to the Annexation area, or that may be affected by development in the Annexation area, specifically including the Ramapo River. Any wetlands in the area should be delineated by a certified wetlands delineator, and field investigations should be conducted to locate, measure and stake out wetlands. The Town and State 100-foot wetland buffer should be identified.

The DGEIS should also identify any potential areas of disturbance, potential hydrologic changes to wetlands, including changes in the direction, quality and quantity of runoff, and any other significant adverse impacts to identified on-site and connected off-site wetlands, water resources, vegetative communities, and/or hydrologic conditions. This should include a study of potential significant adverse impacts to the Ramapo River and corresponding impacts on downstream communities. These potential impacts should be assessed under the various development scenarios, under both the Town and Village zoning. Such analysis will inform what reasonable development scenarios would best protect environmental and natural resources. Again, any agency with jurisdiction over potentially affected areas should be identified.

iv. Stormwater Management

The DGEIS should describe existing conditions for drainage patterns in the Annexation area, including existing flow patterns under the statistical 2-, 10-, 25-, and 100-year storm events. It should detail any existing municipal stormwater collection and treatment systems currently active adjacent to the proposed annexation lands, and should analyze the effects of stormwater runoff in this area on Town and Village drainage infrastructure. The DGEIS should also discuss each municipality's annual stormwater reports.

The DGEIS must provide specific parameters for stormwater management under potential development scenarios. It must require a legally compliant Stormwater Pollution Prevention Plan ("SWPPP") under each scenario. Given the tendency for high density developments in the Village, the requirements for a SWPPP for such a development should be explicitly outlined in the DGEIS. The DGEIS should also include, under each scenario, a discussion of potential impacts to the Annexation areas and surrounding areas due to changes in rate of flow/absorption, increase in contaminants due to impervious surfaces, and impacts of parking lots. Specifically, the DGEIS should focus on the high percentage increase in impermeable surfaces and therefore increased stormwater runoff under high density development scenarios.

This Section should also recognize DEC and local permitting requirements that may be implicated under each development scenario.

7. Cultural Resources

The “Cultural Resources” section should be renamed to include “Historic and Cultural Resources” to provide a comprehensive overview of the areas to be studied. The DGEIS should assess correspondence from the New York State Historic Preservation Office for the Annexation area. Mitigation measures should be proposed to reduce any potential adverse impacts.

The DGEIS includes “visual impacts and community character” as two sub-points within the “Cultural Resources” section. (See Draft Scope, at 11.) “Visual impacts and community character should be instead included as its own heading within Section II (“Environmental Setting, Anticipated Impacts and Proposed Mitigation Measures”) of the DGEIS.

A discussion of visual impacts and community character is crucial to the analysis under the State Municipal Annexation Law as to whether the proposed annexation is “in the overall public interest.” See N.Y. Gen. Mun. Law § 711. As the Court of Appeals has held, SEQRA analysis is not limited to the physical impacts of a proposed action. Chinese Staff & Workers Ass’n v. City of New York, 68 N.Y.2d 359, 509 N.Y.S.2d 499, 503 (1986). It is well-settled that the environmental concerns covered by SEQRA include socio-economic concerns and impact on existing community character. N.Y. Env’tl. Conserv. Law § 8-0105(6) (defining “environment” as “*physical conditions which will be affected by a proposed action, including . . . existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character*” (emphasis added)). As the Court of Appeals has held:

[T]he impact that a project may have on population patterns or existing community character, with or without a separate impacts on the physical environment, is a relevant concern in an environmental analysis since the [SEQRA] statute includes these concerns as elements of the environment.

Chinese Staff, 509 N.Y.S.2d at 503. This includes “the potential displacement of local residents and businesses,” regardless of whether the Annexation may effect these impacts primarily or secondarily or in the short terms or in the long term. Id. at 503-04.

It is also well-settled law that the environmental concerns covered by SEQRA include aesthetics and visual impacts. See, e.g., WEOK Broad. Corp. v. Planning Bd. of Lloyd, 79 N.Y.2d 373, 583 N.Y.S.2d 170, 176 (1992) (indicating that consideration of “negative aesthetic impacts,” such as the visual effect of radio transmission towers on the local community, can be an important factor in SEQRA review and can constitute a sufficient basis upon which to base SEQRA determinations); Scenic Hudson v. Town of Fishkill Town Bd., 258 A.D.2d 654, 685 N.Y.S.2d 777, 780 (2d Dept. 1999) (annulling town board rezoning, and indicating that EIS should have been prepared where proposed action would have a “significant negative impact on the region’s visual environment,” air quality and public health and safety, among other things).

The DGEIS must consider the possible impacts that the proposed Annexation, as well as each potential development scenario, would have on the character of the adjoining areas. This analysis should include potential impacts on existing patterns of population concentration, distribution, or growth. See N.Y. Env'tl. Conserv. Law § 8-0105(6). Again, the DGEIS should also discuss the currently applicable zoning of the proposed Annexation lands, the purpose of the current zoning requirements, and the effects that rezoning would have on Town residents. This discussion should include the potential displacement of Town residents, including displacement resulting from declining home values. The DGEIS should explain the consequences of converting rural land to high density development, specifically rezoning the land for 8,550 new residential connections and 1,500 new commercial connections by 2045. The DGEIS should also review such a conversion for consistency with all applicable planning documents, including the comprehensive plans of both the Town and the Village, the Orange County Comprehensive Plan, the Orange County Greenway Compact, the Orange County Open Space Plan, and the Ramapo River Watershed Management Plan. In addition, this section should include a discussion of lighting impacts as a result of each proposed development scenario on surrounding communities. Mitigation measures should be proposed to limit any potential adverse impacts on these communities.

The DGEIS should also include a review of aesthetic and visual impacts to surrounding communities in both the Town and the Village. Specifically, the DGEIS should identify in text and photographs the visual characteristics and significant visual resources in the proposed Annexation area, as well as in proximate areas with affected viewsheds, including, but not limited to, viewsheds from scenic resources. The DGEIS should include a viewshed analysis based on the potential heights of buildings under each proposed development scenario, identifying the worst case viewsheds and conditions that could have a clear line of sight toward the developments. Mitigation measures should be proposed to limit any potential adverse impacts on visual resources, including scenic views.

In addition to the Highlands Trail/Long Path and Gonzaga Park, the DGEIS should specify that it will study potential impacts to the Heritage Trail, Crane Park, and the new Village private park on Larkin Drive.

E. Areas Of Potential Adverse Environmental Impacts Omitted From The Draft Scope

There are certain critical areas of study of environmental impacts that have been wrongfully omitted from the draft Scope all together. These areas include: (i) vegetation and wildlife; (ii) air quality and noise; and (iii) hazardous waste.

1. Vegetation and Wildlife

The DGEIS should identify existing vegetation and wildlife in the proposed Annexation area, including identification of any endangered species. The DGEIS should discuss potential impacts to vegetation and wildlife under each potential development scenario, including

possible impacts to endangered species, displacement of wildlife, and impacts to landscaping, and identify mitigation measures to reduce any potential adverse impacts.

2. Air Quality & Noise

The DGEIS should assess existing noise and air levels in the proposed Annexation area. The DGEIS should study possible increases in noise and potential adverse impacts to air quality, specifically in relation to surrounding communities in both the Town and Village, and propose mitigation measures to reduce any potential adverse impacts. When discussing traffic specifically, the DGEIS should assess increased impacts to air pollution from public buses. The air quality & noise study should not be limited to traffic impacts, but should assess potential adverse impacts resulting from residential and commercial use, municipal services, and any other area where such impacts could result.

3. Hazardous Waste

The DGEIS should include a Phase I assessment of the proposed Annexation area and, if necessary, a Phase II analysis. It should also discuss whether any brownfield sites exist within the proposed annexation area. Should such brownfields exist, the DGEIS should identify measures to limit contamination and potential adverse impacts to residents under each development scenario.

III. Conclusion

United Monroe wants to make clear that they do not take any issue with the Village residents themselves, many of whom very likely want to see the same changes in transparency and open government within the Village as United Monroe members. United Monroe wishes to work with these citizens to encourage a constitutionally sound, legally compliant path forward. Please let us know if you have any questions.

Respectfully submitted,

ZARIN & STEINMETZ

By: 

Daniel M. Richmond
Krista E. Yacovone

Tim Miller Associates, Inc.

March 10, 2015

Page 17

DMR/mth

encs.

cc: United Monroe
Robert L. Ewing (via overnight mail)
Environmental Analyst II
New York State Department of Environmental Conservation
Commissioner David Church (via email)
Orange County Department of Planning
Orange County Sewer District No. 1 (via email)
Orange County Department of Public Works (via email)
Town of Monroe Town Board (via email)
Assemblyman James Skufis (via email)
Javid Afzali, Esq. (via email)
Counsel to Village of Kiryas Joel Board of Trustees
Steven Barshov, Esq. (via email)
Counsel to Monroe KJ Consulting LLC